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State and Local Finance Data Disappears

Analysts and policymakers are losing their most consistent, thorough source of state and local finance data for 2001 and 2003. The US Census Bureau did not publish state-by-state data on local government finance for fiscal year 2001 and will not be publishing it for 2003, a practice begun in 1970. In lieu of this data, the Census Bureau is publishing local finance estimates for the country as a whole. However, the Census Bureau will report the state level data for 2002 through the Census of Governments Report, and this data will be functionally similar to what was available before the Bureau stopped publishing such information, according to the government agency.

These data enable analysts and policymakers to evaluate state and local fiscal policy, examine multi-year trends, and compare spending and revenues across states. [Local finance data](#) includes local and state general revenues (taxes, charges, fees, utilities, unemployment) and expenditures (education, social services, transportation,

public safety, interest on debt).

This information provides a comprehensive, standard data set for local and state finances. Many states and local governments do not have a centralized data collection process. States also differ greatly in how and what they collect, therefore, without the US Census Bureau state and local finance data comparisons across states will be impossible.

Budget constraints forced the Census Bureau to collect data from fewer local governments in each state. In previous years, the sample comprised approximately 15,000 local governments. In 2001, they collected information from only about 7,000 local governments. Without data from a sufficient sample of each state's cities and counties, estimating local expenditures for an entire state becomes statistically unreliable.

Given the current fiscal crisis in many states, it is a particularly inopportune time for this change in data collection because it could severely limit analysis of state and local finances.

Digging Ourselves out of the \$7 Trillion National Debt

The growing national debt and deficits as far as the eye can see prompt varied reactions.

The head of the congressional accounting office roundly criticized the federal government's ability to track spending and performance. In a [speech](#) at the National Press Club on Wednesday, September 17, Comptroller General David Walker of the General Accounting Office (GAO) suggested - what would seem to be obvious - that long-term costs of spending and tax proposals should be taken into account before they are passed into law. He also urged institution of a government-wide strategic plan and performance goals (currently federal agencies are each required to develop a strategic plan, performance goals, and performance reports under the Government Performance and Results Act) and improvement of the over-all organizational structure of the government.

Meanwhile, legislators are trying to save money by eliminating waste, fraud and abuse. Under the FY 2004 budget resolution, congressional authorizing committees are supposed to find savings in various entitlement programs by identifying waste, fraud and abuse that can be corrected - the target is \$137 billion in savings over ten years. About half of the authorizing committees missed their September 2 deadline to produce their proposals; but the [House Ways and Means Committee](#) finished its proposal, identifying Medicare reforms and stopping overpayments in the Supplemental Security Income Program and Unemployment Insurance programs as their primary targets, with smaller savings from welfare programs and Social Security.

Internet Tax Bites the Dust in the House

The moratorium on state taxation of Internet services is likely to be extended.

Last week, the House voted to continue a prohibition on taxing Internet services. On September 18, by voice vote, the House extended the current moratorium, scheduled to expire on November 1, on taxation of Internet services like e-mail, access, bandwidth, or digital transmissions by cities, states or counties.

In addition to extending the tax ban, the House bill also removed a "grandfather clause" included in past versions of the legislation that allowed ten states that had already enacted Internet taxes before 1998 to collect them. The 10 states are Hawaii, New Hampshire, New Mexico, North Dakota, Ohio, South Dakota, Tennessee, Texas, Washington and Wisconsin.

Under the House legislation, states are also prohibited from taxing Internet DSL services when it is bundled with regular telephone service. Several states have passed or are poised to pass taxes on those "bundled" services, since traditional voice telecommunications services have long been a source of tax revenue for states and localities.

States have been looking to Internet taxation for ways to generate revenue, especially in light of major budget

cuts they are facing. The communications industry remains concerned that taxing Internet services could greatly harm the industry. A similar debate rages over whether a sales tax should apply to items sold through the Internet.

Americans are Worried about the President and his \$87 Billion Request for Iraq

Recent polls indicate that Americans are growing increasingly worried about the Administration's handling of a number of issues.

Recent polls indicate growing dissatisfaction with President Bush's policies, particularly his economic policies and his long-term plans in Iraq.

The most recent [Gallup poll](#), which has showed steady and consistent approval ratings for President Bush in the range of 58 to 60 (with a high of 71 percent in mid-April after he announced victory in Iraq), suddenly plunged to an approval rating of only 52 percent. That poll also showed only 45 percent approved of Bush's handling of the economy, and decreasing approval of his managing of foreign affairs and the war in Iraq (although nearly two-thirds support Bush's handling of terrorism). More tellingly, Americans seem to be increasingly dissatisfied with the way things are going - with 58% reporting general dissatisfaction with the direction the country is headed.

The Gallup poll found that 59 percent felt that Bush does not have a clear plan for handling the situation in Iraq. This may be why a slim majority, 51 percent, oppose spending an additional \$87 billion on Iraq and terrorism activities. See [America's Future Public Opinion Watch](#) for an analysis of the Gallup poll and the results of another poll, from Knowledge Networks, on how Americans view the war on terror.

The same results as those in the Gallup poll are found on other surveys. A nation wide [survey](#) of 1,001 likely voters conducted by the Democracy Corps found a loss of public trust towards President Bush, especially in terms of the war on Iraq and the economy. Those surveyed gave the Democrats a 20-point advantage over Republicans on handling the budget and deficits.

A new [Washington Post-ABC News poll](#) reveals that six in 10 Americans do not support the President's proposal for \$87 billion to fund military and reconstruction efforts in Iraq and Afghanistan. The poll also finds that Bush's ratings are falling on domestic issues - to the lowest point of his presidency (see table below). Even on subjects such as education, where the president enjoys substantial support, the degree of support has dropped since April 2003. On no survey issue has support for the way the president is handling the issue gone up since April, and in only one area, the environment, has it held even since April.

Do You Approve or Disapprove of the Way Bush is Handling....

April 2003 Compared to September 2003

	April 2003 Approval/ Disapproval	September 2003 Approval/ Disapproval	Net Change
Cost, Availability & Coverage of Health Insurance	-23	-29	-6
Prescription drug benefits for the elderly	+04	-19	-23
The Federal Budget	-7	-19	-12
The Economy	+7	-14	-21
Social Security	+11	-3	-14
Taxes	+4	+0	-4
Situation in Iraq	+53	+6	-47
The Environment	+9	+9	+0

International Affairs	+46	+10	-36
Education	+25	+17	-8
Homeland Security	+51	+31	-20
Campaign Against Terrorism	+60	+43	-17

APPROPRIATIONS UPDATE - MISSING THE DEADLINE AGAIN

FY 2004 appropriations unlikely to be completed by the start of the new budget year.

This year it appeared the trains would run on time. Congress vowed to complete the annual appropriations bills with enough time for the president to sign them before the new fiscal year begins on October 1.

Despite those good intentions the appropriations bills are not likely to get done before the new fiscal year starts in a little over a week. In fact, not one appropriations bill has yet been sent to President Bush.

Some of the problem involves Republicans wrestling with each other over spending priorities. With tax cuts and increased spending on the military, lawmakers are having a hard time deciding whether to cut domestic spending or increase the size of the deficit even more. One key sticking point has been how much will be spent on homeland security, with Democrats offering amendments to increase spending that Republicans have voted down. Additionally, there are a variety of "riders," or legislative restrictions that have caused friction between the White House and Congress. Three public issues include using the spending bills to alter the administration's position on OMB's competitive sourcing initiatives, Department of Labor's overtime pay, and FCC's media ownership rules.

House legislators are planning a continuing resolution, perhaps for one month, to fund the government past October 1. Some Republicans have indicated that they are quite satisfied with running the government through continuing resolutions because it would curtail funding increases that are being debated on some appropriations bills. The next few weeks should prove very interesting.

Economy and Jobs Watch: Political Business Cycle?

Economy and Jobs Watch Update

A familiar theory to students of political economy is one that was put forth in a paper by William Nordhaus in 1975. Nordhaus described what the path of the economy might look like if presidents were able to manipulate the economy for electoral gain.

His theory was that presidents, to the extent that they can influence the private economy, would have a strong incentive to boost total economic output just prior to an election. By cutting taxes or increasing spending just before the election, their chances of reelection are improved, and the full negative consequences of the policy would not be felt until after the election.

The result, according to the Nordhaus theory, is a "political business cycle" in which, every 4 years, the economy goes through a boom and bust cycle where the booms come just prior to the election, and busts come just after the election (to reduce inflation and prep the economy for a strong recovery).

In Nordhaus' model, the delayed cost of boosting the economy was higher inflation. In light of the current economic and political situation, the full long-run consequences of continuing current policy include a ballooning deficit that will eventually lead to higher interest rates, and the need for cutbacks in Social Security, Medicaid, and other domestic programs. Since the federal government can run annual deficits, these problems can be pushed off until after the next election - but they will materialize eventually. At the very least, current policy has all but killed serious Social Security and Medicare reform, and has precluded expanding vital domestic programs

including education, scientific research, park services, national highway and infrastructure improvements, and many, many others.

While Nordhaus' article was intended to present a descriptive model of the political business cycle, it could also be viewed as a manual for how to win reelection. The first step is to throw the economy into a recession in the early years, and then to seek recovery just prior to the election. While it is impossible to know if this was indeed the intention of the current administration, the facts seem to fit this story rather well.

- The path of real GDP (see below) shows a weak economy in the first part of the administration - average annual growth was just 1.5% during the first two years of the administration. Some signs point to a quicker pace this year and next.
- The tax cut policy proposed by the president in 2001 contained very little stimulus for that year - most of the benefits were phased in over time. (The tax rebate idea originated from the Democrats.)
- More recently, the administration is requesting \$87 billion in additional military spending. If you had to pump a large sum of money into the economy quickly so as to improve output growth, the easiest way is to give it to the defense department - an agency that is very skilled at spending large sums of money very quickly. In fact, in the second quarter of this year, defense spending increases accounted for over half of total output growth.
- The economy is currently much weaker than in the period prior to the 2001 inauguration - yet the administration has been touring the country telling everyone how strong the economy is - and how the recovery is well underway. This is in contrast to the doom and gloom picture painted by the vice president and others in late 2000, when the economy was actually much stronger. The administration perhaps believes that now is the right time to convince people, businesses, and even congress to spend, spend, spend - perhaps hoping to improve their 2004 election chances.

The fly in the administration's ointment, however, appears to be the path of employment. Based on historical comparisons, employment should be considerably higher at this point in the business cycle than it is. Currently, employment is 1.1 million below the level at the start of the recovery. In contrast, on average, recoveries after World War II have seen a net increase in 3.8 million jobs by this point in the cycle - which means that we are currently 4.9 million jobs behind schedule.

It is impossible to know if Nordhaus' theory will prove to be correct this time around, but with millions of lost jobs, and half a trillion in deficits, the country cannot afford to have our leaders play reelection politics with the economy.

(A note to the economists reading this article. The Nordhaus model was built on a framework of an old-fashioned Phillips curve unemployment, inflation tradeoff. Once we take expectations into account, we would see more pronounced cycle in inflation and less of a cycle in output - in the extreme case of rational expectations would imply no cycle in output. Kenneth S. Rogoff and Anne Sibert in a 1985 paper were able to reintroduce output cycles even when expectations were rational by incorporating differing levels of presidential competence which were not directly observable. In addition, the work of Douglas Hibbs and Alberto Alesina create political business cycles that result from differences in the preferences for economic outcomes between political parties.)

DHS CII Docket Published, Not User-Friendly

The Department of Homeland Security (DHS) finally published public comments to the proposed Critical Infrastructure Information (CII) rule on its website. OMB Watch published the comments on our site Sept. 3 after DHS failed to post them according to its timeline. Although the comments are now publicly available through DHS, the entire dissemination process DHS followed has been poor and could set a bad precedent for the agency's future rulemakings.

The agency posted the CII comments several layers deep on the website and made no announcements on the home page, or its news or press sections. The only search term that produces a link to the comments is "Critical Infrastructure Information." And even that only gets the user to a central CII page from which another link must be followed to get the docket. Because the CII docket is so hard to find, very few people will actually see the comments.

Additionally, the docket files are in a zip format, sometimes difficult to access. In order to read the files, they must be first downloaded and then unzipped. A simple word or PDF would be much more user friendly and allow interested parties to view the comments online.

The process of getting DHS to post the comments early was difficult. Initially, the department stated the comments would only be available when the final rule was published. OMB Watch and other public interest groups pushed for earlier disclosure and eventually DHS agreed.

Allowing public comments is an integral part of the rule making process, as is providing access to those comments. The Bush administration has placed a heavy emphasis on e-government and e-rulemaking in particular. However, this is the first time DHS has put out a rule. OMB Watch hopes this is not the model that DHS will follow in future rulemaking efforts.

GAO Report Indicates Less FOIA Information Under Ashcroft

Federal agencies are limiting public access because of a 2001 memo from Attorney General John Ashcroft, according to a congressman watchdog agency.

The General Accounting Office (GAO) released a report saying, a significant percentage of Freedom of Information Act (FOIA) officers have reduced the amount of information available to the public because of Attorney General John Ashcroft's infamous October 2001 memo. Ashcroft's memo instructed agencies to exercise greater caution in disclosing information requested under FOIA.

The GAO investigated the impact of Ashcroft's memo, in response to a request from Sen. Patrick Leahy (D-VT). GAO's methodology included reviewing FOIA policy documents and surveying 183 FOIA officials at 23 federal agencies.

Almost a full third of the total number of FOIA officials surveyed (31 percent) reported that because of the memo there was a decreased likelihood that their agencies would make a discretionary release of information. Additionally, one-fourth of the FOIA officials surveyed reported that Ashcroft's memo has changed the use of specific FOIA exemptions. For a single memo the impact indicated by this simple survey is considerable.

Others have reported that the GAO report indicates that the Ashcroft memo has had no effect on the amount of information released by the government. These stories note that nearly half of the FOIA officials noticed no change since Ashcroft changed the policy. Glaringly, they seem to overlook the impacts the investigation has revealed as well as the report's shortcomings, which might explain some of the lopsided survey results.

It is likely that the GAO investigation fails to capture the full impact of Ashcroft's memo. GAO neither verified any of the opinions stated by the FOIA officials nor did they survey FOIA requesters to gauge their perceptions of changes. It is possible that changes have occurred without FOIA officials perceiving an actual "change" or "a reduction of information."

Another study also indicates that FOIA officials may not be the best resource to determine a change in implementation. As reported in a previous OMB Watcher article, the National Security Archives recently conducted an independent audit of agencies to gauge the impact of the Ashcroft memo and found agencies' implementation of FOIA requests in disarray. The audit found varied responses from agencies to the Ashcroft memo showing that, so far, it has impacted some agencies more than others.

Finally, the Ashcroft memo is only one component of a new and overarching agenda of secrecy the Bush administration continually advocates. The impact this memo has had on information indicates that fuller investigations should be made into the interaction and full effect of all these secrecy policies.

Charitable Giving Bills Headed to Conference Committee

On September 17 the House passed legislation with tax breaks for charitable giving. The bill, the Charitable Giving Act of 2003 (H.R. 7), is now headed to a conference committee with the Senate. The Senate passed a similar bill, the CARE Act (Charity Aid Recovery and Empowerment Act, S. 476), last spring. In addition to tax breaks for contributions to charities, H.R. 7 provides money for a Compassion Capital Fund, simplification of lobbying rules for charities, reduction in excise taxes for foundations, and authority for states to transfer money from welfare to social service programs. This article includes a summary of the major provisions of H.R. 7, a look at how it compares to the Senate bill, the controversial issues facing the Conference Committee and the administration's position.

Summary of H.R. 7 Major Provisions

Charitable Giving

The biggest tax incentives for charitable giving are:

- **Non-itemizer Deduction:** Contributions over \$250 for single filers and \$500 for joint filers can be deducted, with a ceiling of \$250 on the amount deducted. This is the most expensive tax break in the package, even though it will only be in effect for tax years 2004 and 2005. The Joint Committee on Taxation has estimated the cost spread out over ten years at \$2.8 billion.
- **IRA Rollover:** Donors age 70 1/2 and over could donate without tax consequences to charities when they rollover their Individual Retirement Accounts. This provision would take effect after December 31, 2003 and cost \$2.7 billion over ten years.
- **Increase Ceiling on Deductions for Corporate Contributions:** Current law only allows corporations to deduct up to 10 percent of their taxable income for charitable contributions. H.R. 7 gradually increases this cap, starting with 11 percent in 2004 and adding an additional 1 percent each year, reaching 15 percent in 2008 and remaining at that level until 2012. In 2012, the cap would become permanent at 20 percent. The cost of this provision is estimated at \$1.52 billion over ten years. Some are surprised at the costs since most corporations do not now hit the 10 percent ceiling.

The bill also includes a deduction for food donations and expands the deduction for contributing scientific research property, computer technology and equipment for educational purposes. Additionally, it allows Depts. of Interior and Agriculture to award tax-free grants to private landowners for land that is set aside for habitat or wildlife protection.

Foundations

H.R. 7 reduces the tax on net investment income for private foundations to a flat 1 percent, down from the current rolling percentage that could have gone as high as 2 percent. It also disallows some administrative expenses from counting toward foundations' "payout." Foundations are required to "payout" at least 5 percent of their assets in charitable distributions each year. The House bill initially disqualified all administrative costs -- rent, salaries to employees, etc. -- to be counted toward the payout calculation. This would have effectively raised the payout for foundations and could have significantly increased the grant dollars given out each year. An analysis by the National Committee on Responsive Philanthropy predicted it could increase payout by as much as \$3.2 billion annually. The Council on Foundations vigorously opposed the measure, saying it could force some foundations to spend down their endowments.

The debate on the payout issue was intense, with members of Congress citing scandals involving lavish foundation spending on offices, salaries and other administrative costs. However, during the Labor Day recess many members heard opposition from local foundations. When Congress returned, the Ways and Means Committee's scheduled consideration of the bill for September 9. Chairman Bill Thomas (R-CA), with support from Majority Leader Tom DeLay (R-TX) did an about face by introducing an amendment allowing most administrative costs. The provisions, as passed, have three parts. Payments over \$100,000 a year to "disqualified persons" and non-coach airfare cannot be counted towards payout. "Disqualified persons" are those with substantial powers or financial interests in the foundation, including trustees. Second, only costs for coach-class commercial airfare will count towards payout. Finally, only costs "directly attributable to direct charitable activities; grant selection; grant monitoring and administration activities; compliance with applicable federal, state or local law; or furthering public accountability of the private foundation" can count toward the payout calculation.

A study released in early September focused on fees paid to foundation trustees, using data from 1998 IRS filings and telephone interviews. Foundation Trustees Fees: Use and Abuse, published by the Georgetown Public Policy Institute, shows that the 238 foundations in the study collectively paid their board members nearly \$45 million. The bulk of these payments were under \$100,000: 14 of 176 large foundations paid their board members more than \$100,000 each and 5 out of 63 smaller foundations paid their board members more than \$100,000 each. H.R. 7's limited disallowance on administrative costs will not result in significant reductions in trustee fees counting toward the payout requirement or significant increases in grants to charities. Some have argued that the new provision might even serve as an incentive to pay trustees up to \$100,000 per year. (Moreover, the bill does not address self-dealing rules. Trustees currently can earn significant revenue by providing services to the foundation.)

The Council on Foundations sent a letter to Ways and Means Committee Chair Thomas praising the compromise on administrative costs, saying "adequate oversight and enforcement of laws Congress has already passed would prove to correct the behavior of any who would flout the law." The letter also praised the reduction in the excise tax, saying the impact "will redirect millions in annual tax payments by private foundations from the federal treasury to charities and charitable activities without endangering the long-term viability of foundation endowments." However, there is no requirement in H.R. 7 that redirects these funds for grants.

Simplification of Rules for Charity Lobbying

H.R. 7 simplifies the lobbying rules for charities. Not considered controversial, the provision eliminates the distinction between direct and grassroots lobbying, doing away with the need for complicated cost allocation and record keeping. It does not change the overall limits on charity lobbying. It would allow charities to spend their lobbying dollars on whatever combination of direct and grassroots lobbying makes the most sense for them. The effective date in the House bill is January 1, 2004. OMB Watch, along with a broad coalition, has strongly supported the provision.

Compassion Capital Fund

H.R. 7 authorizes the Compassion Capital Fund for the Secretary of Health and Human Services (HHS) to "Support and Replicate Promising Social Service Programs." It allows HHS to make grants to nonprofits and to provide other groups with technical assistance, information on capacity building and best practices. Research on best practices of social service organizations can also be funded. The bill allows an appropriation of up to \$150 million for FY 2004, and "such sums as may be necessary for fiscal years 2005 through 2008". ([See related story on the Compassion Capital Fund in this issue.](#))

Social Services Block Grant

Section 305 of H.R. 7 allows states to transfer up to 10 percent of funds received for welfare programs under the Temporary Assistance to Needy Families Act for Social Services Block Grant programs.

Other Provisions

Section 201 establishes a process for automatic revocation of tax exempt status for organizations designed as terrorist groups by Executive Order or under Section 212 of the Immigration and Nationality Act. The revocation cannot be appealed and the provision becomes effective on the date of enactment. Sec. 203 allows groups to go to court for a declaration on their qualification for tax-exempt status when the IRS rejects their application. This is effective for determinations made after the date of enactment.

Comparison to Senate Bill

Many provisions in the House bill are similar to the Senate's version. For example, both call for a temporary tax

deduction for charitable donations made by those who do not itemize. Both bills allow non-itemizers to deduct up to \$250 after the first \$250 is donated without the tax break. Both bills also allow elderly people to rollover money from their Individual Retirement Accounts to charities without tax consequences, although there are differences that still need to be resolved. The House bill allows the rollover at age 70 ½, but the Senate bill allows it at age 59 ½. And both bills dropped provisions pushing Bush's faith-based, charitable choice plan.

Both the House and Senate passed a provision that simplifies the lobbying rules for charities. As mentioned earlier, the provision eliminates the distinction between direct and grassroots lobbying, doing away with the need for complicated cost allocation and record keeping. It does not change the overall limits on charity lobbying. However, the effective date in the House bill would be January 1, 2004, while the Senate bill would take effect on January 1, 2003.

Parts of House bill are significantly different from the Senate's version. For example, the Senate bill "pays" for the cost of tax incentives (\$12.3 billion over 10 years) through elimination of corporate tax shelters; the House does not have any offsets. The House bill will cost \$12.6 billion over 10 years, which would either be added to the deficit or force spending cuts to make up for the lost revenue.

The Senate bill included \$2.35 billion for FY 03 and \$1.3 billion for FY 04 for the Social Service Block Grant (SSBG), and the House bill does not. This was a key reason some groups supported the bill. But the President indicated he no longer supported the increased funding for SSBG after the Senate dropped the charitable choice provisions from its bill. Both bills allow 10 percent of funds appropriated under the Temporary Assistance for Needy Families to be transferred to the Social Service Block Grant.

The House bill also has two provisions affecting foundations that are not in the Senate bill. These might cause controversy in a House-Senate conference. The first provision changes an excise tax, which foundations pay on net investment income to a flat 1% from a rolling percentage that can go as high as 2%. The second provision disallows some administrative expenses, including trustee fees over \$100,000, from counting toward the required 5 percent annual foundations distributions to charities. Senator Kay Bailey Hutchison introduced a bill in July that disallows all trustee fees from inclusion in the payout calculation. The rest of Sen. Hutchison's Philanthropy Expansion and Responsibility Act of 2003 (S. 1514) is similar to the H.R. 7's foundation provisions.

The Senate bill breaks up the same level of funding for the Compassion Capital Fund among four agencies, while the House bill directs all the funds to the Dept. of Health and Human Services (HHS). Under the Senate version the money is divided as follows: \$85 million to HHS, \$15 million to the Corporation for National and Community Service, \$35 million to the Department of Justice and \$15 million to the Department of Housing and Urban Development. It defines "social service organization" as one with no more than six full time equivalent employees providing social services and a current social services budget of less than \$450,000. The agencies are required to coordinate their efforts so that funds are distributed equitably and duplication is avoided. In addition, no agency can award more than one grant to the same group for the same purpose.

The Administration's Position

The White House expressed general support for the House bill in a September 18 Statement of Administration Policy, but said it has concerns about some of the tax provisions. But the most interesting point was its recognition that the bill does not contain revenue-raising provisions to cover the cost of the tax incentives for giving. The statement said, "The Budget Enforcement Act's pay-as-you-go requirements and discretionary spending caps expired on September 30, 2002. The Administration support the extension of these budget enforcement mechanisms in a manner that ensures fiscal discipline and is consistent with the President's budget. The Office of Management and Budget's (OMB) cost estimate of this bill is currently under development."

The statement did not specify what its concerns on tax incentives are. However, Treasury Assistant Secretary for Tax Policy, Pam Olsen, told the Ways and Means Committee that Treasury does not support provisions allowing charities to make grants for collegiate housing (tax deductions for contributions to fraternities and sororities) and a pilot forest conservation program, since it would only affect the state of Washington.

What's Next- Conference Committee Issues

With ballooning deficits and the Iraq war costs putting pressure on Congress to offset any tax cuts with revenue raising provisions, the \$12.3 -\$12.6 cost of this legislation will be a major issue for the conference committee. Rep. Roy Blunt (R-MO), the House Majority Whip and a lead sponsor of H.R. 7, said this would be a major item in conference negotiations. He also said he believes offsets are unnecessary. His Democratic co-sponsor, Rep. Harold Ford, Jr. (D-TN) supports offsets, but said he believes the legislation is so important that it should pass even if it does not pay for itself. Blunt and Ford estimated that the bill will increase charitable giving by \$40-\$50

billion over ten years.

After the Ways and Means Committee approved H.R. 7 on September 9, Senator Rick Santorum (R-PA), a lead sponsor of the CARE Act, said, "We're going to fight for the Senate bill".

House Democrats tried twice to pass amendments providing the offsets for H.R. 7's cost. During committee consideration of the bill Rep. Lloyd Doggett (D-TX) proposed an amendment that would have closed corporate tax loopholes. That amendment was defeated. During the floor debate the proposal was raised again, along with restoration of funds for the Social Service Block Grant, in an amendment offered by Rep. Benjamin Cardin (D-MD). That was defeated by a 203-220 vote.

OMB Asks for Comments on Proposed Changes to Audit Form

Nonprofits that get federal grants have an opportunity to suggest ways audit forms can be streamlined for reports auditors make to them and reports grantees must submit to the federal government. [A Federal Register notice](#) invites comments on changes proposed for current audit forms, including the SF-SAC and single audit reporting packages. Comments are due on or before October 14.

The changes proposed by the Office of Management and Budget (OMB) include adding DUNS numbers for identification purposes, giving auditors more options for categorizing their conclusions and eliminating some data elements. The [proposed new SF-SAC form](#) and instructions are included in the announcement.

The Federal Audit Clearinghouse uses the information in audit forms to make sure audit reports reach the right officials and identify grantees that need to file reports and have not done so. The information is available to the general public on the Internet at <http://haverster.cnesus.gov/sac/>.

Soft Electioneering vs. Issue Advocacy: Where is the Line?

On September 8 the Supreme Court heard arguments in the case challenging the constitutionality of the new campaign finance law, officially called Bipartisan Campaign Reform Act (BCRA). The major issues argued were restrictions on "electioneering communications" and soft money contributions to political parties. The arguments illustrated the difficulty in drawing the line between genuine issue ads meant to impact legislation and campaign ads. Ads that promote or attack candidates without expressly urging votes for or against a federal candidate have been labeled "issue advocacy." As a result, nonprofits involved in non-electoral issue campaigns can find themselves caught in a gray area between genuine issue advocacy and electioneering communications. A recent settlement in an enforcement case at the Federal Election Commission (FEC) involving lobbying ads about Florida everglades conservation illustrates the problem.

In 1995, the Coalition for Good Government ran television ads supporting a sugar tax to pay for conservation programs in the Florida everglades. At that time Sen. Richard Lugar (R-IN) was chair of the Senate Agriculture Committee, which was considering the bill. He was also a presidential candidate. The Coalition's lobby campaign was successful in getting Lugar's support and ran the ads in Florida. The ads had pictures of bumper stickers, including one reading "Lugar for President". The U.S. Sugar Corp., which opposed the conservation tax, filed a complaint with the FEC.

The FEC found that the bumper sticker in the ad was "express advocacy" for Lugar and the Coalition should have filed disclosure reports, since Florida was conducting a straw poll on presidential candidates. (Under BCRA's new electioneering communications provision, the appearance of the ad could be a criminal offense.) The Coalition settled the case in early September, paying a \$9,000 fine. Their attorney, campaign reform advocate Trevor Potter, said the group was trying to influence the legislation, not the presidential campaign. He called the enforcement action "a classic case of the commission going after a small actor while ignoring the bigger issues."

BCRA bans broadcasts sponsored by corporations, including nonprofits, from referring to federal candidates within 60 days of an election or 30 days of a primary. The Federal Election Commission has exempted 501(c)(3)

organizations from the rule because these groups are prohibited from supporting or opposing candidates for office. However, BCRA sponsors Reps. Chris Shays (R-CT) and Marty Meehan (D-MA) have sued the FEC challenging the regulation. The Supreme Court will ultimately decide the issue. A ruling is expected by the end of this year.

A [transcript](#) of the Sept. 8 Supreme Court oral argument has been posted online by the Campaign Legal Center.

Compassion Capital Fund Sub-Grant Policy Challenged

A [grant announcement](#) for the Compassion Capital Fund (CCF) Demonstration Program has been challenged by [Americans United for Separation of Church and State](#) (AU) because it instructs intermediary organizations not to consider the religious nature of programs in selecting sub-grantees. AU sent a letter to Clarence Carer, Director of the Office of Community Services at the Department of Health and Human Services (HHS), explaining its objections and asking for a response by September 18. It said the policy might lead to unconstitutional federal support of religious content in programs.

AU's letter points out the instructions violate the administration's own policy prohibiting federal funds from supporting inherently religious activities. The administration published [Guidance to Faith-Based and Community Organizations on Partnering with the Federal Government](#) earlier this year that makes it clear government programs and religious activities must be separated so that government funds do not subsidize the religious activity.

AU requested the removal of the language prohibiting inquiries about the religious nature of programs offered by potential sub-grantees from any and all information to intermediaries and sub-grantees. It also asked HHS to withhold approval for intermediary organization plans to distribute sub-awards that do not reflect a clear understanding of both Constitutional and administration restrictions, and a commitment to operate within those limits.

Nearly \$4.2 million in federal grant funds will be distributed to intermediary grantees under the CCF Demonstration Program. At least a quarter of these funds are to be redistributed to community and faith-based organization sub-grantees for capacity-building activities that sustain their social service provision.

The policy would exacerbate problems with tracking the activities of sub-grantees. A [study](#) by the Roundtable on Religion and Social Policy published last year found that it is nearly impossible to track how money awarded to sub-grantees is being used. The new Compassion Capital Fund policy makes this accountability problem more serious.

Senate Votes to Block Overtime Changes Despite Veto Threat

The Senate recently voted to block changes that would strip millions of workers of eligibility for overtime pay, despite the threat of a presidential veto.

The Bush administration, on March 31, [proposed changes](#) to federal overtime standards that would make it easier for employers to deny overtime compensation to certain workers while guaranteeing time-and-a-half pay for those earning less than \$22,100.

The Senate approved an amendment to the Department of Labor's appropriations bill, offered by Sen. Tom Harkin (D-IA), by a vote of 54 to 45, that would block only those changes limiting overtime eligibility -- retaining the provision guaranteeing time-and-a-half pay for low-income workers.

"The Harkin amendment is the right measure for America's workers because it stops the Bush administration from taking away workers' right to overtime pay, but would not prevent the Department of Labor from raising the threshold for low-income workers to receive overtime pay," [said John Sweeney, president of the AFL-CIO](#).

Labor Secretary Elaine Chao, however, vowed to move forward with the changes, stating, "The Department of Labor will continue our efforts to strengthen overtime protections for workers."

The appropriations must get through the House, possibly as part of a House-Senate conference. It would then be considered by the President at which time he can veto the spending bill.

Meanwhile, the administration is also promoting a proposal that would, among other things, allow the secretary of defense to eliminate civilian employees' collective bargaining rights, as well as the ability to appeal management decisions to suspend, demote, discipline or fire, according to the Washington Post.

Senate Votes to Repeal FCC Media Ownership Rules

The Senate recently voted to overturn the Federal Communications Commission's (FCC) controversial new media ownership rules that would allow media conglomerates to own more newspapers, as well as television and radio stations.

Invoking the rarely used Congressional Review Act, Sen. Byron Dorgan (D-ND) offered a "resolution of disapproval" against the rules that passed by a vote of 55 to 40. A similar measure must now pass the House, where there is broad opposition to the rules. Even if this happens, however, President Bush could still override Congress with a veto, as he has threatened to do.

Under the rules, which the FCC issued in June, a single company could own TV stations reaching up to 45 percent of the national TV audience, up from 35 percent. The changes would also allow a company to own newspapers as well as TV and radio stations in the same market.

"These new rules, if implemented, would allow media corporations to consolidate control over more outlets than ever before, especially for lower income people who can't afford satellite cable and the Internet," said Pete Tridish, of the Prometheus Radio Project, a group challenging the FCC's changes in court.

The rules were scheduled to take effect this month, but a federal appeals court granted a stay pending full judicial review.

Agencies Slow to Implement Environmental Justice Order

EPA and the departments of Interior, Transportation and Housing and Urban Development have not fully incorporated environmental justice principles into their work as required by a Clinton-era executive order, according to a report by the U.S. Commission on Civil Rights (USCCR).

The USCCR found that the four agencies have made progress in addressing environmental justice but noted a number of shortcomings. Specifically:

- The agencies have not established accountability and performance outcomes for programs and activities. Not one of the agencies examined reported any comprehensive assessments of their environmental justice efforts.

USCCR believes that assessments are necessary for assessing the success of environmental justice initiatives. In particular, the commission recommends that agencies identify disproportionately and adversely affected communities and create explicit goals for reducing risks.

- A commitment to environmental justice issues is often lacking from agency leadership. The commission found that EPA leaders have demonstrated support for promoting environmental justice but noted that leadership at the other three agencies has not made the same commitment.

"The leadership at key federal agencies sometimes lacks commitment to ensuring that low-income communities and communities of color are treated fairly during the environmental decision-making process," noted Mary Frances Berry, chairperson of the commission. "As a result, the agencies do not incorporate environmental justice into their core missions and existing programs are not evaluated."

Executive Order 12898, signed by President Clinton in 1994, requires all federal agencies to identify and address health or environmental problems that disproportionately afflict minority or low-income populations.

OMB Finalizes Changes to Regulatory Decision-Making

OMB's Office of Information and Regulatory Affairs (OIRA) issued final guidance today that instructs federal agencies on specific analytical methods for regulatory decisions.

This guidance, which contains few substantive changes from the draft version released in February, commits to put "more emphasis on cost-effectiveness analysis as well as benefit-cost analysis" than the Clinton-era guidance it replaces -- raising the bar on new health, safety and environmental protections. Specifically, the guidance:

- **Emphasizes monetization and "net benefits" decision-making.** OIRA's proposed guidance pushes for health and safety benefits to be expressed in terms of dollars and cents, so agencies can calculate and demonstrate "net benefits" (benefits minus costs). Unfortunately, benefits can be extremely difficult or even impossible to monetize, which skews cost-benefit analysis to favor inaction. The final guidance includes improved language for considering non-quantifiable factors, but OIRA's track record leaves doubt that this will matter during implementation.

For instance, EPA recently proposed a rule to protect the trillions of fish and aquatic organisms that are sucked up and killed each year by power plants, which use rivers, estuaries, and oceans to cool their systems. In performing its cost-benefit analysis, EPA did not monetize losses of invertebrate species, such as lobsters, crabs, and shrimp, as well as endangered or threatened species, nor did it consider the interrelationships of the species affected. Rather, EPA's estimate was based exclusively on the commercial value of the fish that would have been caught had they not already been killed by power plants. This accounts for less than 20 percent of the total fish killed by cooling systems.

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

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

Cost-effectiveness analysis avoids some of the problems in monetizing benefits, but nonetheless, it too can lead to skewed and timid decision-making. For example, a cost-effectiveness analysis that looks at costs relative to the number of lives saved would miss a whole slew of other significant benefits, such as non-fatal disease or injury, effects on ecosystems, and equity considerations. Moreover, the least protective regulatory alternatives are frequently estimated to be the most cost-effective. This is because additional levels of protection are forecast to require increasingly demanding and more costly methods. Forcing decisions based on a cost-effectiveness test may lead an agency to inappropriately choose a less protective

alternative -- because it is the most "cost-effective."

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

- **Requires additional analysis for \$1 billion rules.** OIRA raises the bar for rules with "economic effects that exceed more than \$1 billion per year," requiring agencies to provide "a formal probabilistic analysis of the relevant uncertainties." OIRA does not say why it decided to propose this new, seemingly arbitrary threshold, along with this more demanding analysis of uncertainty. Instead, it seems to be pressing increasing levels of analytical rigor for its own sake.

At some point the need to reach a decision and take action should take precedent, especially when lives are at stake. Such analysis could prove extremely resource intensive, causing further delays in an already ossified rulemaking process -- which OIRA's proposal would willingly tolerate. Health and safety could suffer as a result, without any improvement in regulatory decision-making.

- **Requires discounting of lives saved in the future.** "Discounting" -- already common practice in monetizing benefits -- rests on the premise that a life saved today is worth more than a life saved tomorrow. The further in the future a life is saved as a result of regulatory action today, the more it will be discounted from its "present value," and the less likely the action will pass a cost-benefit test. This analytical and value-laden choice has significant implications for regulation aimed at preventing cancer ([click here](#) for further discussion).

OIRA's proposed guidance directs agencies to use two separate discount rates -- 7 percent and 3 percent -- in calculating the "value of a statistical life" and present the results of both. The Clinton guidance refers agencies to [OMB Circular A-94](#), which was revised at the end of the first Bush administration and also advises a 7 percent discount rate. Perhaps the biggest difference is the current OIRA's commitment and aggressiveness in enforcing this approach.

- **Promotes use of "life years" in evaluating fatality benefits.** Agencies commonly base benefit estimates on the "value of a statistical life" (VSL), drawn from the number of lives expected to be saved by regulatory action. On top of VSL estimates, OIRA's guidance asks agencies to consider using "value of statistical life years" (VSLY), which looks at the number of life years saved as opposed to the number of lives. This would skew against protections for the elderly, who have fewer life years remaining ([click here](#) for further discussion).

The guidance was released as part of OMB's annual report on the costs and benefits of federal regulation (for OMB Watch's comments on the draft report, including the cost-benefit guidance, [click here](#) and [here](#)). [This report](#) also describes the progress agencies have made in acting on regulatory recommendations submitted to OMB by outside parties as part of [last year's report](#). These recommendations came largely from industry groups and [heavily targeted health, safety, and environmental standards](#). Of these recommendations, federal agencies have already acted on 96 and plan on addressing 34, according to the report.

Ashcroft Budes Slightly on Patriot Act Secrecy

After receiving sharp criticism, Attorney General John Ashcroft has decided to release a fragment of information available on how the USA Patriot Act is being used in libraries. This follows pointed words by Ashcroft, characterizing the concern voiced by those worried about library surveillance as "hysterics."

Ashcroft made public a confidential memo to FBI Director, Robert Mueller, which revealed that the government has not yet used the provision that allows it to monitor records from libraries and bookstores. In a speech last Thursday Ashcroft stated, "The fact is, with just 11,000 FBI agents and over a billion visitors to America's libraries each year, the Department of Justice has neither the staffing, the time, nor the inclination to monitor the reading habits of Americans. No offense to the American Library Association, but we just don't care. . ."

The [Department of Justice](#) did not disclose how they have used national security letters, a similar device used to obtain business records, although sources say that such letters have been used dozens of times.

Although the release of the library information is a positive step for the department, the reluctance to release any other information on how the Patriot Act is used is troubling. The [American Civil Liberties Union \(ACLU\)](#) and the [Electronic Privacy Information Center \(EPIC\)](#) brought a complaint to court last October under the Freedom of Information Act in order to access this very information. The case was dismissed, only to be told the information was classified, Congress also asked the Justice Department for information on how the act is used, and did not receive it.

Ashcroft's decision to release the information comes amidst a struggle between those who want to strengthen the Patriot Act provisions, and those who believe the act should be dismantled. Public interest groups—both liberal and conservative— and lawmakers have recently attacked portions of the legislation. ACLU filed a lawsuit July 30 challenging the section that allows FBI agents to secretly obtain records and personal belongings of citizens and permanent residents. The groups contend that the provisions violate individual rights, but because information is not made public, it is hard to point to concrete examples.

Rep. C.L. "Butch" Otter (R-ID) passed a rider to an appropriations bill in the House halting funds for the "sneak and peak" provisions of the bill that allows delayed notifications of searches. Otter is drafting additional changes to the bill stating, "what we have to do is, brick by brick, take the most egregious parts out the Patriot Act."

Conservatives also fear the law's broad powers and are advocating for great transparency as well. The American Conservative Union worries that the broad definition of terrorists could apply to militia members or anti-abortion activists.

Ashcroft and Patriot Act supporters believe the law is crucial for anti-terrorism efforts, citing examples such as the ability to connect foreign intelligence information with criminal investigators. Ashcroft is currently touring the U.S. to promote the Patriot Act and dispel myths. At the same time, he is pushing for new expansions of the law. The only way to assure the public that their rights are not being violated is to disclose more information about the Act and how it is being used.

Administration Hid Number of Detainees in Iraq

U.S. officials have been hiding the actual number of prisoners in Iraq for months, after a [news report](#) last week placed the new number at 10,000. Of these prisoners, 3,800 are considered "security detainees" and went unreported for months. Officials said they previously did not have a proper category for the prisoners, therefore leaving them out of the actual count.

Brigadier General Janis Karpinski vaguely defined security detainees as "those who have attacked coalition forces" or were suspected of involvement in or planning of such attacks. These detainees have fewer rights than enemy prisoners of war.

The administration's flimsy excuse that the detainees were not reported because they lacked a proper category is extremely troubling. It raises the questions "what other actions and information is the administration not

reporting to the public merely because it has not figured out proper terminology?" and "how long will citizens have to wait to find these things out?"



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