



» The Watcher » November 3, 2003 Vol. 4 No. 22

In This Issue

Federal Budget

Economy and Jobs Watch: GDP Update

Kyl Still Pushing for Permanent Estate Tax Repeal

Appropriations Still in Knots

Congress Moves to Fund Efforts in Iraq & Afghanistan

Congress Slow to Extend Unemployment Benefits

Information Policy

NAS Holds Workshop on OMB Peer Review Standards

Nonprofit Issues

FEC Seeks Exemption from Do-Not-Fax Rules for PACs and Political Parties

CARE Act Stalled Again

Comments Filed on Proposed Charitable Choice Rules for Veterans Administration

Scientists Threatened with 'Ideological Shackles'

Regulatory Matters

GAO Finds OMB Regulatory Review Not Well Documented
Administration Challenged on Clean Air Rollback

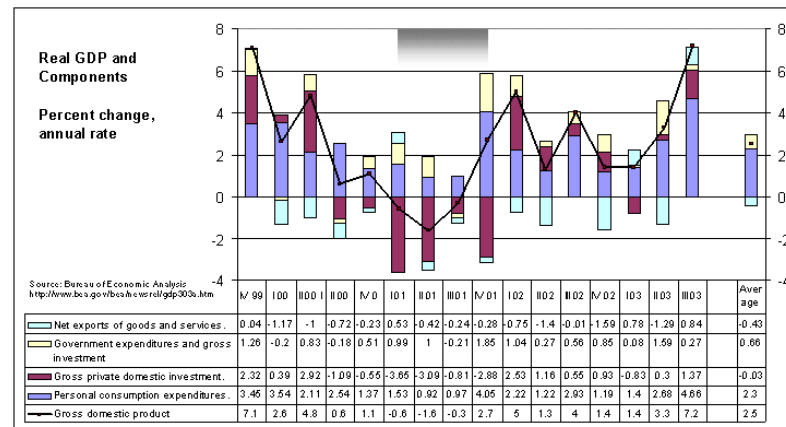
Right-to-Know

Proposed ExxonMobil Plant to Test New Restrictions on Information

Economy and Jobs Watch: GDP Update

Total output as measured by Gross Domestic Product (GDP) grew at an annual rate of 7.2% in the third quarter, the Bureau of Economic Analysis reported last Thursday.

The strength in recent GDP was largely the result of strong consumer demand (see graph below).



[View large image](#)

While the strong three month period is certainly encouraging, it is important to note continuing points of weakness including:

- The economy has lost 1.1 million private sector jobs since the end of the recession in November 2001.
- The economy has lost 3.2 million private sector jobs since the start of the recession in March 2001.
- At 12.4 percent, poverty is on the rise – and nearly 20 percent of children under 5 live in households below the poverty threshold.
- State governments continue to face their worst fiscal crisis since WWII.
- The federal government is set to run a deficit of over \$500 billion in 2004.

In addition, the sustainability of this growth is questionable. As the Economic Policy Institute notes, “many of the causes underlying this growth are temporary: one-time tax cuts lifted disposable income; mortgage refinancing increased household spending; and a decline in inventories contributed to a lower trade deficit.” In order to keep acceptable levels of growth, there needs to be a sustained improvement in the labor market and continuing increases in real incomes.

Given the large increase in war-related spending, billions in tax rebate checks, and interest rates at historically low rates, it would be surprising if we did not see a good quarter of growth eventually. However, the fact that we have seen two years of stagnant growth and dismal employment outcomes – even after the end of the recession – shows that current economic policy has been poorly tailored to the current economic realities.

Kyl Still Pushing for Permanent Estate Tax Repeal

Sen. Jon Kyl (R-AZ) is making a new push to permanently repeal the estate tax in spite of budget deficits and a growing national debt (not to mention its fundamental unfairness).

Under changes enacted in June 2001, the estate tax will be repealed for one year only (2010). In 2011, the estate tax will be restored, at the exemption levels and tax rates in effect in 2001. Kyl introduced a joint resolution Oct. 24 expressing the sense of Congress S.J. Res. 21 that this should not happen -- that the repeal should be extended each year until it is ultimately made permanent. This resolution was placed on the Senate General Calendar on Oct. 27, bypassing consideration by the Finance Committee. Consideration of the resolution is at the discretion of Senate Majority Leader Bill Frist (R-TN) and could occur at any time, possibly within the next few weeks.

On Oct. 21, the Washington Post reported that Kyl, who has always been a vociferous champion for complete and permanent repeal of the estate tax, is also quietly considering another tactical direction -- estate tax "reform." Under this "reform," the estate tax would be reduced to 15 percent -- the current rate on capital gains and dividends -- and apply to only individuals with more than \$15 million and couples with more than \$30 million.

Currently, the estate tax kicks in at \$1 million for individuals and \$2 million for couples, with the highest tax rate at 49 percent. Under the provisions of the June 2001 tax cut, the exemption level is scheduled to slowly rise until it reaches \$3.5 million for individuals and \$7 million for couples in 2009, with the highest tax rate at 45 percent. The huge exemption levels and low tax rate reportedly under consideration by Kyl would virtually eliminate the estate tax.

Appropriations Still in Knots

Congress has completed only three of the 13 appropriations bills for fiscal year 2004, which began Oct. 1. In the meantime, several continuing resolutions -- which continue funding at last year's levels -- have kept the government afloat.

On Oct. 30, Congress passed its second continuing resolution (CR) extending to Nov. 7 (just as the first CR was set to expire). The House appears to be considering a long-term CR through Jan. 31, but the Senate wants to complete the appropriations process by Nov. 21 when recess begins. The prospect of an omnibus bill including all appropriations not yet passed remains a strong possibility.

Congress Moves to Fund Efforts in Iraq & Afghanistan

The president's request for \$87 billion seems to be on the way to final passage.

A House-Senate conference committee agreed to an \$87.5 billion emergency supplemental appropriation (HR 3289) for military and operations in Iraq and Afghanistan, along with Iraq reconstruction. The conference report also eliminated the Senate provision that made half of the \$20 billion in Iraq reconstruction funds into a loan, and not a grant. The House passed the conference report on Oct. 30, and the Senate is expected to follow suit.

Congress Slow to Extend Unemployment Benefits

Unemployed workers may face another bleak holiday unless Congress passes legislation extending benefits.

The economy may be doing better, but unemployment remains high. For those who can't find a job, the economic upturn is no consolation. The federal-extended-benefits program will expire Dec. 31. Four million workers have exhausted their benefits without finding work. Last year, around the same time, Congress left town before passing an extension of benefits, causing unemployment checks to stop for many during the holidays.

Currently, there are two competing proposals to extend these benefits, one by congressional Democrats and the other by House Republicans.

In both the House and Senate, Democrats have put forth legislation to continue the program through December 2003, which includes a provision to expand the program to provide a minimum of 26 weeks of benefits (with seven additional weeks of benefits in 18 "high unemployment" states). The House Republican legislation would continue the extension through June 2003 without adding any weeks of federal extended benefits. According to the National Employment Law Project (NELP), it would help an estimated 2.4 million fewer workers than Democratic proposals.

See the NELP's [special website](#), "Laid Off and Left Out," for more information, to sign a letter from unemployed workers to President Bush, or to participate in a "worker forum" to share your experiences or read other people's comments.

NAS Holds Workshop on OMB Peer Review Standards

The National Academy of Sciences (NAS) has scheduled an all-day workshop on peer review for Nov. 18. The workshop is an effort to foster greater dialog on the Office of Management and Budget's (OMB) recent draft bulletin proposing uniform standards for peer review throughout the federal government.

According to a draft agenda, the speakers are predominately regulators and academics, with a few public interest groups and others also represented (though not all speakers have been confirmed). It has been reported that almost 80 people have already registered to participate in the workshop.

The workshop will explore peer review by federal agencies and the potential implications of OMB's proposed policy. OMB is accepting comments on the peer review bulletin through mid-December; however, the workshop allows for direct interaction with OMB officials.

NAS has not yet posted the agenda or registration information on its web site. Those interested in registering for this free event are urged to contact Anne-Marie Mazza either by email at amazza@nas.edu or by phone at (202) 334-2469. Dr. Mazza is the director of NAS's science, technology, and law program, which is hosting the event.

FEC Seeks Exemption from Do-Not-Fax Rules for PACs and Political Parties

On Oct. 14, the Federal Election Commission's (FEC) general counsel wrote to the Federal Communications Commission (FCC) asking that PACs and political parties be exempt from new rules (which take effect in January 2005) that require advance permission before sending "unsolicited fax advertisements." The FEC letter noted that the Telecommunications Consumer Protection Act (TCPA) defines an "unsolicited fax advertisement" as *commercial* speech only, and that political fundraising should be exempt on First Amendment grounds. This same argument could also apply to nonprofit organizations that do not engage in electoral politics, such as public charities and social welfare organizations.

The FEC letter cited several federal court cases and a recent FCC statement that recognize the ban on unsolicited commercial messages, but not noncommercial speech. The FEC goes on to "respectfully suggest that the FCC

clarify in its rules that faxes that are political speech do not satisfy the TCPA's definition of 'unsolicited advertisements' because they lack the requisite commercial purpose, even if unsolicited." The FEC argues that candidates, parties and political action committees use faxes to "advertise events, solicit contributions ... they might urge elected officials or members of the public to take a particular position on pending legislation or similar public policy issues."

For more information on the FCC's do-not-fax rules see our [previous Watcher story](#) and the [National Council of Nonprofit Associations](#) website.

CARE Act Stalled Again

Senate Democrats are objecting to their exclusion from conference-committee meetings on a number of bills by refusing to add the child tax credit and extension of several tax provisions to the CARE Act. Late last week, Sen. Rick Santorum (R-PA), a sponsor of the CARE Act, told a meeting of nonprofits that Democrats are playing politics with the bill, but Minority Leader Tom Daschle (D-SD) told BNA, "We can't agree to participate in conferences that lock us out."

Earlier, the CARE Act was held up because Sen. Tom Harkin (D-IA) had concerns that one of the expiring tax provisions (Section 420 of the tax code) could weaken the viability of pension funds. The Republicans agreed to changes that resolved that issue, but beside the clash over conference committee procedures, there are still major questions to be answered to reconcile the Senate and House versions.

This includes how to make up for the revenue loss from charitable giving incentives, how to fund the Social Services Block Grant program, and the appropriateness of fees for foundation trustees. If the impasse continues, the CARE Act could remain on the table until next year, or be included in an omnibus tax bill at the end of the year.

Comments Filed on Proposed Charitable Choice Rules for Veterans Administration

On Oct. 30, OMB Watch filed comments on proposed rules for religious organizations that receive grants under the Homeless Providers Grant and Per Diem Program administered by the Department of Veterans Affairs. The comments object to rule changes that would allow religious discrimination in hiring for federally funded positions and permit religious content in service programs. The comments also called for stronger accountability standards. Click [here](#) to read the full text of the comments.

Scientists Threatened with ‘Ideological Shackles’

In early October, congressional Republicans sent a list to the National Institutes of Health (NIH) identifying more than 150 scientists with grants to conduct research on HIV and sexual behavior. NIH responded by contacting these researchers, apparently to put the agency in better position to defend the grants.

Soon after this began, some of these researchers alerted Rep. Henry Waxman (D-CA) -- who has created a [web site on political influence over science](#) -- and expressed fear of losing their funding.

“This atmosphere of intimidation is unacceptable,” Waxman wrote in a letter to Tommy Thompson, secretary of Health and Human Services. “These researchers, who are tackling serious and intractable health problems, have done nothing wrong ... Contacting and alarming the researchers sets a terrible precedent.”

What’s worse, officials within HHS appear to have been involved in compiling the list, according to Waxman, since some of the information included is not available to the public. Furthermore, a number of researchers are listed without any corresponding grants but with the notation “nothing found on HHS search.” Nonetheless, the Traditional Values Coalition, which represents tens of thousands of churches nationwide, asserts that it was the author of the list.

John Burklow, an NIH spokesperson, [told the Baltimore Sun](#) that the agency asked congressional staffers for a list of about 10 questionable grants mentioned at an Oct. 2 hearing at which NIH Director Elias Zerhouni testified.

However, NIH was mistakenly sent the list of 150, according to Burklow, prompting the agency to contact the researchers.

While some researchers have reported that calls were merely informational, most have found them unsettling. One scientist on the list, Liana Clark of Children's Hospital of Philadelphia, told the Associated Press, "I just keep thinking that this is a bad nightmare and I am actually going to wake up from all this."

If HHS did indeed help produce the list, it represents a deeply troubling sign. "Imposing ideological shackles on this research would be a serious public health mistake," wrote Waxman, who requests an explanation from Thompson by Nov. 7.

GAO Finds OMB Regulatory Review Not Well Documented

Under the Bush administration, OMB's Office of Information and Regulatory Affairs (OIRA) has significantly affected the substance of health, safety and environmental standards but failed to consistently document its influence, according to a report by the General Accounting Office (GAO).

OIRA reviews and must approve all major regulatory proposals. Executive Order 12866, issued in 1993, establishes transparency requirements that require both OIRA and agencies to disclose certain information about this review process. In particular, agencies must identify substantive changes made to rules during OIRA's review and at OIRA's suggestion, and OIRA must disclose all documents exchanged with agencies.

GAO examined the effects of OIRA review on 85 health, safety and environmental regulations that were changed, returned or withdrawn during a one-year period; OIRA significantly affected 25 of those rules "by suggesting changes that revised the scope, impact or costs and benefits of the rules, returning the rules for reconsideration by the agency, or, in once case, requesting that the agency withdraw the rule from review."

These reviews were not always clearly documented, making it difficult to assess OIRA's influence. Most notably, GAO found that:

- OIRA frequently becomes involved in the early stages of regulatory development -- that is, before an agency formally submits a proposal for review. Indeed, OIRA Administrator John Graham has made such "upfront"

involvement a priority. However, OIRA has interpreted E.O. 12866 to require documentation of changes only during the formal review period -- even though informal review can be much more significant. “[R]estricting the transparency requirements ... only to a brief period of formal review seems antithetical to the intent of those requirements,” GAO stated.

- OIRA’s descriptions of its contacts with outside parties did not always clearly indicate what rule was discussed or what organizations the parties represented.
- In recording the outcome of its reviews, OIRA used the code “consistent with change” to signify all types of changes made to rules -- from minor grammatical edits to significant, substantive changes.
- OIRA interprets E.O. 12866 to require disclosure only of documents exchanged by staff at the branch chief level and above. As a result, it has failed to disclose documents exchanged between lower level OIRA staff and agency personnel -- the level at which many substantive changes occur.

GAO recommended that Joshua Bolten, director of OMB, take specific steps to address these issues. However, in written comments on the report, Graham disagreed with most of GAO’s recommendations and committed only to provide clearer descriptions of contacts with outside parties. OMB Watch has previously raised these transparency concerns and documented OIRA’s efforts to weaken a host of health, safety and environmental proposals.

Administration Challenged on Clean Air Rollback

Attorneys general from 12 states and the District of Columbia recently filed a lawsuit challenging a major rollback of the nation’s clean air standards that will allow increased pollution from the oldest and dirtiest power plants. A coalition of conservation and public health organizations has filed suit as well.

Under the rule changes, plants can upgrade their facilities without having to install the latest anti-pollution controls (as they were previously required to do under EPA’s New Source Review program) even if it results in new emissions. Anti-pollution controls must be added only if upgrades exceed 20 percent of the value of all equipment used to produce electricity, an extremely high threshold.

This loophole will result in at least 20,000 premature deaths per year, 400,000 asthma attacks, and 12,000 cases of chronic bronchitis, according to the Clean Air Task Force.

“This is an attack on the Clean Air Act by the Bush Administration,” said New York Attorney General Eliot Spitzer. “The President is taking the nation in the wrong direction on environmental policy. We should not be relaxing emission control standards when air pollution continues to cause such devastating health and environmental problems.”

New York and several other states previously filed a lawsuit challenging yet another Bush rollback, issued Dec. 31, 2002, that similarly opens loopholes to allow air pollution from industrial facilities.

Just days before the lawsuits were announced, the non-partisan National Academy of Public Administration endorsed a study showing that the Bush administration’s rule changes could lead to a nearly 1.4 million-ton rise in air pollution in 12 states. The study was sponsored by the Environmental Integrity Project and the Council of State Governments/Eastern Regional Conference.

Meanwhile, the General Accounting Office released a report that concluded the rule changes also could limit public access to emissions data and make it more difficult to uncover abuses by industrial facilities. “Overall, the final rule could result in less assurance that the public will have access to data on facility changes and the emissions they create, as well as input on decisions about undertaking these changes in the first place and controlling their emissions,” according to GAO. “Less information would make it more difficult for the public to monitor local emissions and health risks, as well as compliance with NSR.”

Proposed ExxonMobil Plant to Test New Restrictions on Information

Mobile, Ala., appears to be the testing ground for new restrictions on energy information. Inquiries into a proposed natural gas plant will test if policies meant to increase security will actually compromise the public's safety.

Immediately following the Sept. 11 attacks, the Federal Energy Regulatory Commission (FERC) began restricting access to information it deemed too sensitive and detailed. This approach culminated with a new rule allowing FERC to control who had access to Critical Energy Infrastructure Information. Many have charged that the rule is overly broad and vague, allowing FERC to restrict information critical to ensuring the accountable and safe operation of energy facilities.

Now ExxonMobil is proposing to build a liquefied natural gas plant just south of Mobile, close to residential areas. Residents and other interested parties will be making numerous inquiries into the potential risks associated with this plant. This will be the first significant test of whether FERC's new rule will stifle discussion about safety and environmental concerns.

Research on liquefied natural gas indicates that a fire in a single tanker compartment could result in a wall of flames a half-mile wide and hundreds of feet high. If an entire tanker caught fire, people two miles away could suffer second-degree burns. An elementary school and numerous homes are located within one mile of the proposed plant site.

An ExxonMobile spokesperson refused to comment on what types of information the corporation might attempt to withhold. Under the new rule, companies label information CEII when submitting it to FERC. The commission then withholds the information from the general public and only grants access to those who it determines have a need to know.

The company could try and restrict access to accident planning scenarios and other matters related to possible plant hazards, which companies have long sought to withhold from the public. The policy has already been used by another company, Dominion, to restrict access to the emergency response plan for a liquefied natural gas terminal in Maryland.



© 2001 OMB Watch

1742 Connecticut Avenue, N.W., Washington, D.C. 20009

202-234-8494 (phone)

202-234-8584 (fax)

ombwatch@ombwatch.org