In This Issue

Administration Kills Contractor Responsibility Rule

Two days after Christmas, with no one around to object, the Bush administration quietly revoked a Clinton-era rule that promotes greater accountability for federal contractors -- to make sure they comply with important public protections. Specifically, this contractor responsibility standard instructed government contracting officers to look at a bidding company's compliance with the law (including tax laws, labor laws, employment laws, environmental laws, antitrust laws and consumer protection laws) before awarding taxpayer dollars.

Industry groups, such as the U.S. Chamber of Commerce, fought aggressively against the rule, arguing that it amounts to "blacklisting" -- that companies could be barred from receiving federal contracts with no due process. In fact, each determination under the rule was to be made on a case-by-case basis for the contract in question, and would not constitute "debarment" for all federal contracts. In other words, a company that is denied one contract on the basis of its legal track record is still eligible to be considered for another federal contract. The blacklist existed only in the imagination of industry lobbyists.

The allegations of the rule's threat to due process were equally dubious. The rule required contracting officers to coordinate adverse determinations with agency legal counsel, to notify bidders if found non-responsible, and to provide the basis for that determination. If a company disagreed with that determination, the Federal Acquisition Regulation already provides for an appeal process (as directed in Executive Order 12979, Agency Procurement Protests). Moreover, the rule also made clear that in making a judgment, contracting officers should give the greatest weight to convictions or civil judgments rendered against the prospective contractor in the preceding three years.

Nonetheless, as in other cases, the administration proved very responsive to industry's objections, first suspending the rule back on April 3, 2001, signaling its eventual repeal. At the time, OMB Watch submitted testimony to the administration objecting to its proposed action.

OMB Identifies Regulations for Repeal

As part of its annual report to Congress on the costs and benefits of federal regulation, released last week, the Office of Management and Budget (OMB) published a list of 23 "high priority" regulations it believes should be rescinded or revised. Many of these regulations are health, safety, and environmental standards, including major clean air and water standards (e.g., New Source Review and Total Maximum Daily Loads). The Environmental Protection Agency (EPA) has the most rules on the list with eight, while the Department of Labor is second with five, including one under the Fair Labor Standards Act and another under the Family and Medical Leave Act.

This target list is another sign that John Graham, administrator of OMB's Office of Information and Regulatory Affairs (OIRA), which has responsibility for carrying out the report, intends to make his office an aggressive player in setting the regulatory agenda across agencies, likely at the expense of strong health, safety and environmental protections. It also marks a departure from the Clinton-era OIRA, which gave agencies greater deference to define their own objectives and priorities; agencies, after all, have the statutory authority delegated by Congress, the technical and scientific expertise, and the proximity to affected parties -- including regulated interests and the intended beneficiaries of regulation -- that OIRA lacks.

In its draft report published last May, OMB asked for suggestions from the public on specific regulations that could be rescinded or changed to increase benefits to the public. OMB received 71 such suggestions -- 44 of which were from George Mason's conservative Mercatus Center -- and after its initial review of the comments, placed the suggestions into three categories: "high priority," "medium priority," and "low priority." There were 23 rules rated "high priority," which, OIRA explained, it is inclined to agree with and will examine further. There were 30 rules listed as "medium priority," about which OIRA decided it needs more information, and 24 other suggestions were listed as "low priority," the merits of which OIRA was not convinced.

As for the cumulative cost-benefit analysis, OMB's report estimated that the costs of complying with environmental, health, and safety regulations range from about $150 billion to $230 billion annually, while benefits range from $250 billion to more than $1 trillion. These estimates -- which OMB Watch has argued contain enormous analytical limitations -- are similar to estimates made by the Clinton administration in last year's report.

OMB Issues Final "Data Quality" Rules

On January 3, 2002, the Office of Management and Budget (OMB) issued final "data quality" rules, effective immediately. The rules were published pursuant to a rider on the FY 2001 Treasury and General Government Appropriations Act (P.L. 106-554), which requires OMB to publish guidelines that "provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies." The rider requires agencies to issue their own implementing guidelines that include "administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency."

OMB proposed the data quality rules on June 28, 2001. After receiving a number of comments (see OMB Watch's comments), OMB published interim final rules on September 28, 2001, and sought additional comments on one provision. The rules published last week are final rules providing additions and refinements to the interim final rule published on September 28.

By April 1, 2002, each agency covered by the Paperwork Reduction Act must publish a notice for comment in the *Federal Register* providing guidelines for implementing the rider for its agency, along with how the agency will develop the administrative mechanism that allows people to seek and obtain appropriate correction of information maintained and disseminated by the agency. After consideration of public comments, each agency must submit its plan to OMB by July 1, 2002. The plan must be put into place by the start of the next fiscal year, October 1, 2002.

The administrative mechanism shall apply to all information that the agency disseminates, regardless of when the agency first disseminated the information. The agency must institute a pre-dissemination review for data quality for new information disseminated after October 1, 2002.

Campaign Finance Reform Nearing Goal In House

OMB Watch has urged Reps. Christopher Shays (R-CT) and Marty Meehan (D-MA) to strengthen the portion of their bill dealing with exceptions to the ban on broadcast "issue advocacy" during an election cycle.

Last July the Shays-Meehan campaign finance reform bill (H.R. 2356) stalled in the House of Representatives over a procedural rule that campaign finance reform advocates said would have unfairly limited debate on the bill. A petition to discharge the bill from committee to the House floor gained strong momentum within days of being filed, and had 205 of the necessary 218 votes by the time Congress recessed on August 3. Then the issue was put on the back burner in the fall while Congress concentrated on the national response to the September 11 attacks.

But as the year drew to a close additional members signed, and brought the total to 214 by the end of 2001. Rep. Christopher Shays (R-CT) has expressed optimism about reaching the required 218 signatures soon after Congress reconvenes on January 23. At least one member, Rep. Richard Neal (D-MA), has said he would be the 218th signature.

Although discharge petitions are rarely successful, campaign finance reformers used them successfully in 1998 and 1999. Once 218 members sign the petition, the bill will come up for debate on the floor, with a rule allowing votes on several substitute bills. A list of Representatives who have signed the Discharge Petition is available on the House website.

OMB Watch has urged Reps. Christopher Shays (R-CT) and Marty Meehan (D-MA) to strengthen the portion of their bill dealing with exceptions to the ban on broadcast "issue advocacy" during an election cycle. While an exception allowing nonprofits to air candidate debates and forums was included, other nonpartisan, non-electoral communications, such as grassroots lobbying calls-to-action and get-out-the-vote messages, could still be prohibited. Though the bill would allow the Federal Election Commission (FEC) to make rules exempting these activities, it does not require the FEC to act. If the FEC failed to deal with the issue, nonprofits would find their broadcast advocacy rights severely limited during federal election cycles. OMB Watch is urging the sponsors to require the FEC to come up with rules protecting these rights.

FEC Won't Appeal Ruling Against Its Express Advocacy Definition

On December 11 the FEC decided not to seek Supreme Court review of a Virginia case finding their regulation, 11 CFR 100.22, unconstitutional. The vote was a 3-3 tie, and a majority is needed to request the Solicitor General to take up the case.

As the 2002 election cycle approaches, nonprofits wanting to know whether their public statements are unregulated issue advocacy or regulated electioneering ("express advocacy") will have to consult a map for the answers. The reason is that federal appeals courts in different parts of the country have issued contradictory rulings on whether or not the Federal Election Commission's (FEC) definition of what constitutes "express advocacy" is constitutional. On December 11 the FEC in effect decided not to seek Supreme Court review of a Virginia case finding their regulation, 11 CFR 100.22, unconstitutional. The vote was a 3-3 tie, and a majority is needed to request the Solicitor General to take up the case.

In the Virginia case, *Virginia Society for Human Life v. FEC*, the Court of Appeals for the 4th Circuit found the definition of "express advocacy" as statements "taken as a whole and with limited reference to external events, such as the proximity to an election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat" of a candidate, to be unconstitutionally vague. Similar rulings have been made in the 1st and 2nd Circuits, making the regulation unconstitutional in 12 states: Connecticut, Maine, Maryland, Massachusetts, New Hampshire, New York, North Carolina, Rhode Island, South Carolina, Vermont, Virginia and West Virginia. Puerto Rico is also covered by the 1st Circuit. The regulation was found constitutional in another case in the 9th circuit, so that it still applies in the remaining 38 states.

In states where the regulation has been found invalid, only messages that explicitly call for election or defeat of a federal candidate will be regulated by the FEC. The FEC only has jurisdiction over federal elections, so these court rulings do not affect state election laws.

State And Local PACs Seek Exemption From IRS Disclosure Law

The difficulty for state and local PACs arises because of the way soft money is often spent. Only "hard money" is subject to FEC regulation and soft money spent on federal elections is often mixed with soft money spent on state and local elections. The law's purpose is to force disclosure of soft money spent on federal elections.

Since requirements for the disclosure of political action committees' (PACs) soft money expenditures became effective in 2000, there have been calls to exempt state and local PACs that report their expenditures to state election commissions. These efforts were renewed at the end of 2001, although no action was taken. House Ways and Means Committee Chair Bill Thomas (R-CA) has stated his support for some kind of exemption, and the issue can be expected to come up again in 2002.

The law requires nonprofits whose primary purpose is influencing elections (under Section 527 of the tax code) and who have annual receipts of $25,000 or more to register with the Internal Revenue Service (IRS). They must also disclose contributions of $200 or more and expenditures of $500 or more. In addition, PACs with incomes over $25,000 must file IRS Form 990, an information return that other nonprofits are also required to submit. There are three exceptions to these requirements: groups with annual gross receipts of less than $25,000, those exempt under Section 501(c), or those subject to FEC regulation.

The difficulty for state and local PACs arises because of the way soft money is often spent. Only "hard money" is subject to FEC regulation and soft money spent on federal elections is often mixed with soft money spent on state and local elections. ("Hard money" refers to funds spent directly advocating for or against a specific federal candidate.) The law's purpose is to force disclosure of soft money spent on federal elections. To do that the bill sweeps in all PACs to prevent mingling of soft money spent on federal, state and local elections to evade disclosure.

The result is that PACs that only work on state and local elections are forced to register with the IRS, disclose contributions and spending, and file the annual information returns, creating a burdensome, duplicative reporting scheme. The challenge for lawmakers this year will be to find ways to eliminate duplicative reporting for state and local PACs, while retaining the ability to capture information on soft money expenditures. One element of a solution would be to continue requiring state and local PACs to register with the IRS and file Form 990, so that the IRS and the public can know how soft money is being spent.

State Update: Michigan

Michigan House passes bill after dropping language that would have prohibited Michigan nonprofits from using any resources that are "from a public body or a person acting on behalf of a public body" for advocacy around a state ballot initiative.

As reported in the last Watcher, the Michigan House was considering a bill that would prohibit Michigan nonprofits from using any resources that are "from a public body or a person acting on behalf of a public body" for advocacy around a state ballot initiative. This language was dropped from the bill before House passage, but House Speaker Rick Johnson (R) has said the language will likely end up "in another set of legislation." There has been no indication when this will come up again.

The original purpose of the bill, according to the Speaker, was to prohibit groups such as the Michigan Municipal League from using dues paid by government bodies in ballot campaigns. Michigan nonprofits, however, pointed out that the language was broad enough that moneys from government employee contribution campaigns might also have been affected.

Daschle's Speech, Fiscal Responsibility and Tax Cuts

Senate Majority Leader outlined the country's urgent domestic and military priorities and compared the pre-tax cut possibilities for domestic investment with the current post-tax cut reality's "unnecessary fiscal bind," but he did not directly call for a delay in the tax cut as a solution to this fiscal conservative's dilemma.

On Friday, January 4, in a speech at the Center for National Policy Senate Majority Leader Tom Daschle (D-SD) laid out his proposal for legislation to help the economy recover and sustain long-term growth. His "economic growth plan" is a combination of immediate one-year economic stimulus proposals and long-term domestic investment initiatives.

In addition to the original components of the Democrats' economic stimulus package-- an increase in weekly unemployment payments, an extension of the number of weeks a person may receive unemployment benefits, and a tax rebate for low-income workers -- Daschle added two new short-term elements in his speech. The first, a "Jobs Creation Tax Credit," would reimburse the cost of increased payroll taxes to any business that hires new employees or gives current employees a raise. The second is a revised version of the depreciation bonus for businesses proposed by Democrats and Republicans last month. In place of the Senate Democrats' original proposal of a one-year 10% depreciation bonus or the House Republican's three-year 30% bonus, Daschle has proposed a 40% bonus for the first 6 months and a 20% bonus for the next 6 months to provide an increased incentive to businesses to purchase new equipment sooner rather than later. (Daschle likened this proposal to the extremely popular 0% financing option car companies offered last month.) Both the Jobs Creation Tax Credit and the increased depreciation bonus are billed as one-year initiatives to encourage companies to spend (or hire) now, when the impact on the economy is most needed.

The other half of Daschle's economic recovery package, however, has a long-term focus and is aimed at maintaining growth and building capacity to generate future growth. It includes increased spending on homeland security and the public health system (to restore confidence and increase consumer spending) and spending on education, job training, and technology (to provide for well-educated, qualified American workers to spur on the next wave of technological development). Daschle also gave his full support to "fast track" trade authority for the President (for a view against "fast track," see this Economic Policy Institute analysis) though he coupled it with a demand for increased assistance in job training for workers displaced by increased trade. He cited the need for a revised energy plan both as a means of reducing US dependence on foreign oil and as a means of generating economic growth through the investment in alternative energy research. Daschle closed his speech with a criticism of the recommendations issued by Bush's Social Security Commission. He stated that any proposal to create private accounts for Social Security, a program he called the "most successful government program in history," could come only as one part of a large plan to "restore fiscal discipline and … extend the solvency of the Social Security system."

Daschle's attention to long-term investments in the nation's economy, students, low-wage workers, and national public health infrastructure is welcome. One element was noticeably absent -- a means to pay for these investments without bringing the budget further into deficit. Though he expressed confidence in the ability of the White House and Congress to devise legislation to generate economic growth, help alleviate some of the recent budget pressures and eventually return the budget to surplus, such legislation would, at least initially, enlarge the deficit. While many economists actually support temporary deficit spending as a means of recovering from a recession, Daschle seems to be focused on "fiscal discipline" and "fiscal responsibility" that is limited to avoiding deficits and the "mistakes of the past." Having eliminated temporary deficit spending as an means to accomplish our national priorities, Daschle described the remaining alternatives as a choice between ignoring the "critical needs" he identified and "raiding the Social Security surplus."

There is, however, one other option - one that is perceived by most as too politically damaging to address: delaying or even rolling back the tax cut signed into law in June. Daschle did address the problems of the tax cut and even cited the Congressional Budget Office's (CBO) August 2001 report that credited the tax cut for 2/3 of the drop in the 10-year budget surplus projections. He compared the pre-tax cut possibilities for domestic investment with the post-tax cut reality of an "unnecessary fiscal bind," but he did not make that final step and announce a delay in the tax cut as a solution to this fiscal conservative's dilemma.

He may as well have though, since President Bush in his weekend speeches to workers in Oregon and California, called a delay in the implementation of the June tax cut a "tax raise" and warned that "not [sic] over my dead body will they raise your taxes." But in his response, Daschle denied this charge and explained that, far from raising taxes, he was actually proposing additional tax cuts in the form of the Jobs Creation Tax credit and the accelerated depreciation bonuses for businesses.

All of this may be entirely beside the point, anyway, for as many political pundits have observed, last week's speeches are more an indication of the rhetorical and political battles to come in this year's elections and less so of any true legislative agenda of either side. With everyone from Office of Management and Budget (OMB) Director Mitch Daniels to House Budget Committee Ranking Member John Spratt (D-SC) predicting deficits for the next few years (see related story, this issue), many people, like Republican strategist Grover Norquist, are predicting that all other issues will be subordinate to the budget debate. It seems unlikely that with this divided Congress and in an election year, there will be much substantive agreement. However, the focus on the budget, which represents the resources necessary to accomplish our national priorities, may present an opportunity for a real debate about federal investments to strengthen our communities, schools, health systems, and education and job training programs. Perhaps. But, we must urge our representatives to understand "fiscal responsibility" much more broadly than the absence of a deficit.

More Budget Deficit Estimates Released

Though estimates by Democrats and Republicans of the size of the deficits differ, and will continue to grow substantially depending on the amount of additional homeland security and defense spending approved this year, both sides agree that the deficit will likely be at least $15 billion -- the Democrats are predicting it could be as large as $70 billion.

Sunday's *New York Times* reported that the Democratic staff of the House Budget Committee and the Republican staff of the Senate Budget Committee are both predicting budget deficits for the next few years. Though the size of the deficits differ, and will grow substantially depending on the amount of additional homeland security and defense spending approved this year, both sides agree that the deficit will likely be at least $15 billion -- the Democrats are predicting it could be as large as $70 billion. These deficits will continue for the next few years, but there will still be an overall surplus for the 10-year period ending in 2011 -- though the government will have to use some of the Social Security surplus to meet its general needs, instead of to pay down the national debt. The 10-year surplus estimates vary slightly, with the House Democratic staff predicting $1.79 trillion and Senate Republican staff predicting $1.86 trillion.

FY 2002 Appropriations Update
Congress completed its work on the last 3 FY 2002 appropriations bills (Defense, Foreign Operations, and Labor-HHS-Education) on December 21 and the President is expected to sign all three of them and bring the appropriations season to an official completion. According to usbudget.com, the bills are being readied for the President's signature and he is expected to sign them on January 10, when the Continuing Resolution - passed on December 20 - expires.

Both predictions are a far cry from the massive surpluses estimated last January, when the White House Office of Management and Budget (OMB) was predicting a 10-year surplus of $5.6 trillion and a FY 2002 surplus of $231 billion. A mid-year revised estimate of the 10-year federal budget picture issued by the Congressional Budget Office (CBO) in August 2001 indicated that 2/3 of the then-$2.2 trillion drop in the 10-year budget surplus was due to the effects of the tax cut signed in June. CBO is expected to release its latest 10-year estimate of the budget in late January, and the President will issue his budget for 2003 on February 4, which will also contain estimates of the budget picture for the next few years.

NPTalk: Community Technology Centers Policy Overview

Existing federal programs emphasize collaboration among important community-based and community-focused actors and institutions. Though popular among grant recipients and vital to program beneficiaries, the supporter base has not been effective in sustaining widespread support and visibility on the Hill around broader community technology policy goals and objectives.

Recently-passed FY 2002 appropriations present a mixed picture for federal community technology funding. The Department of Education's Community Technology Centers (CTC) program, funded at $65 million in FY '01, will receive $32.5 million under the Labor-HHS-Education appropriations bill passed by Congress in late December and awaiting President Bush's signature. The Technology Opportunities Program (TOP), housed under the Department of Commerce's National Technology Infrastructure Administration, receives $12.4 million under the FY 2002 Commerce-Justice-State appropriations signed into law last November, down from $45 million in FY '01. But the Department of Housing and Urban Development's Neighborhood Networks program, an initiative which has received no funding since its inception in 1995, will receive a total of $20 million in VA-HUD spending under the Public Housing Capital Fund and HOPE VI funds to revitalize severely distressed public housing.

The Bush Administration's first budget request emphasized a consolidation, if not elimination, of individual technology access and education technology programs -- especially those thought to be duplicating efforts and perceived as inaccessible to small, local community efforts. The Administration's request, however, called for both higher funding for CTCs, and a shift in program administration to the HUD Neighborhood Networks program, at a funding level of $80 million. While this would have represented in increase in the amount spent for community technology overall, in keeping with the President's campaign pledge, it also raised concerns among supporters and current recipients of the Education Department grants. Among them were fears that support for existing projects, funded by three-year matching grants, might be at risk, as well as the America Connects Consortium, the only federally-sponsored CTC coordination, improvement, and outreach network.

More fundamental was the worry that community technology would continue to be viewed as a range of disparate, if not competing, interests among schools, libraries, nonprofit organizations, businesses, and other community institutions, contributing to the confusion around what each accomplishes. The Education CTC program provides matching grants to develop access points for computers, information and telecommunications technology in the context of educational services and skills training for those lacking such access at home, work or school. TOP supports public-private-nonprofit efforts to help develop the national advanced telecommunications and information technology infrastructure to help deliver social services -- including education, health, employment, and public safety -- to underserved rural and urban areas across the country. Neighborhood Networks works through private/public partnerships to establish multi-service central points utilizing information technology in areas of low- and moderate-income multi-family housing. In addition, there are technology access and training initiatives administered by a number of other federal agencies, yet with little to no coordination among them.

Last May, Sens. Edward Kennedy (D-MA) and Barbara Mikulski (D-MD) were successful in getting the first-ever authorizing language for the federal CTC program added to the Senate version of the Elementary and Secondary Education Act (ESEA) bill, which included $100 million for the creation and expansion of more than 1,000 CTCs. Mikulski, who became chair of the Senate VA-HUD Appropriations subcommittee last spring, however, also pushed for full funding of the President's CTC request under HUD, signaling that support of both programs might be possible. By mid-November, however, the reauthorized ESEA bill lacked the proposed $100 million program funding level, elimination of TOP (long threatened throughout most of the year) seemed likely, and funding for community technology centers was in jeopardy -- barring approval of a last-minute Senate request for current level funding of CTCs under the Education Department's Fund for Improving Education, and reduced funding for HUD Neighborhood Networks.

The existing federal programs emphasize collaboration among important community-based and community-focused actors and institutions, as well as innovation, dissemination of promising practices, and evaluation and replication of successful models. Though popular among grant recipients and vital to program beneficiaries, the supporter base has not been effective in sustaining widespread support and visibility on the Hill around broader community technology policy goals and objectives. This has resulted in a shift away from rallying cries attacking the digital divide, and towards the daunting question of "access to what, by whom, towards what end?"

More troubling has been growing criticism from smaller community-based organizations and initiatives that federal funding is difficult to access, administer, or sustain, due to burdensome application and reporting procedures, and competition from groups with more resources, experience, and expertise in garnering support. In response to these concerns, the Education Department posted its final rules regarding competitive funding on November 30, 2001, allowing the secretary of education latitude in holding separate competitive rounds for, or assigning competitive preference to, novice applicants in discretionary grant programs.

Given the current economic uncertainty around sustainable funding for new and existing programs, there is heightened urgency upon the broader community of technology access interests to articulate their needs for coordinated federal investments to help spur innovative and effective approaches to technology access, knowledge and skills, and utilization for individual and community development and participation in civic, social, and economic life.

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In This Issue

New Priorities and Future Tax Cuts

Kennedy, Daschle and their Republican counterparts have made clear over the last 4 months that the nation is now facing new problems (on top of existing problems) and we cannot afford a debate over semantics. Instead, we must address the problems laid out by Daschle and Kennedy over the last 2 weeks and by the President in his State of the Union address next week.

In the last issue of the Watcher, we noted that in his January 4 speech Senate Majority Leader Tom Daschle (D-SD) avoided a direct confrontation with the politically tenuous proposition to hold off the next phase of the June tax cut until the needs of the country, the economy and the federal budget better allowed for it. Instead, Daschle outlined the problems the country was facing, reminded his audience of the size of the 10-year tax cut the President signed last June, maintained his own commitment to a fiscal responsibility defined by the size of the federal budget deficit or surplus and allowed his listeners to draw their own conclusion as to an appropriate way of navigating through these contrary elements. Though his lack of directness was recognized by many commentators as a shrewd political move by a likely Presidential candidate, the OMB Watcher also noted that he and our nation's other policy makers must come to define fiscal responsibility "much more broadly than the absence of a deficit." Last week, Sen. Edward Kennedy (D-MA) became the most senior of these policy makers to do so publicly.

In a speech at the National Press Club on January 16, Kennedy outlined a plan for a federal budget that represents and meets the needs of the nation's priorities including fully funding programs like Head Start, a prescription drug plan for seniors, a true living -- not minium -- wage, and enforcement and oversight of the nation's laws and regulations protecting against discrimination. Recognizing that even those who would support these values would likely also question whether the country could find sufficient funds, Kennedy predicted that, "we can afford to do what is right if together we return to fiscal responsibility." And connecting the dots between the choices laid out by Daschle last week, Kennedy drew his conclusion: "Whatever the merits or demerits of last year's tax bill, it was enacted in what now seems a very different and distant time. Today, for the sake of our country, we must transcend the old boundaries of debate. We must think anew, and act responsibly. We can and should postpone a portion of the future tax cuts that overwhelmingly benefit the wealthiest taxpayers." His proposal called for delaying the enactment of $350 billion worth of future tax cuts over the next 10 years, while maintaining the $1 trillion in existing tax cuts, future tax cuts for families making less than $130,000 a year, and the child tax credit and "marriage penalty relief." (Rep. Jan Schakowsky (D-IL) proposed a similar delay on the tax cuts in her "First Things First Act" last October.)

Nevertheless, over the last week, many people, including the President's Chief Economic Adviser, Larry Lindsey, have accused Kennedy and other Democrats of working to meet their own "long lists of spending proposals" at the expense of the nation's economic success. Lindsey has also suggested that Kennedy's speech has done the nation a great favor by "making explicit the Democrats' economic plan [to] increase taxes." (Many, including the Center on Budget and Policy Priorities (CBPP) in its latest analysis, have pointed out that under Kennedy's plan, "no tax rates would be raised above their current level" and that, indeed, "95 percent of tax filers would be unaffected by his proposal, and even those with the highest incomes would continue to see their taxes reduced over the decade." The CBPP report also provides a detailed response to Lindsey's and Treasury Secretary Paul O'Neill's claims that the vast majority of the higher income taxes "proposed" by Kennedy would be paid by business owners filing individual returns.)

To some extent, however, it is unfortunate that this has developed into a debate over whether delaying a future tax cut is a tax increase or not. As Kennedy, Daschle and their Republican counterparts have made clear over the last 4 months, the

nation is now facing new problems (on top of existing problems) and we cannot afford a debate over semantics. Instead, we must address the problems laid out by Daschle and Kennedy over the last 2 weeks and by the President in his State of the Union address next week. The Democrats have taken a step in the right direction by creating for the public a big picture view of not only the upcoming challenges and problems but also the opportunities and choices we have as a country. We must help them take the next step by letting them know we support reevaluating the $1.35 trillion tax cut in the light of our new and existing national priorities and delaying some of the tax cuts to more easily meet those priorities.

Faith-Based Initiatives Working Group Report Released

Recommendations are, for the most part, in agreement with the positions of OMB Watch on faith-based issues.

A working group on faith-based and community initiatives headed by Sen. Rick Santorum (R-PA) and former Senator Harris Wofford has released its recommendations for legislation. These recommendations are largely in agreement with the positions of OMB Watch on the faith-based issues (see our "Charitable Choice" page for more information).

Major recommendations include:

- Initiatives to increase charitable giving, both from individuals and institutional donors
- Increased technical assistance to small organizations
- Setting up separate 501(c)(3) organizations for churches that wish to deliver social services
- Forbidding employment discrimination for any federally-funded position, as well as racial discrimination for any program, even if it is ostensibly based on religious beliefs

While the recommendations made in the report are in no way binding, since Santorum is one of the champions of this legislation, it is assumed that many of them will find their way into legislation. Read the full report .

Court Rules Unconstitutional Direct Grant to Faith Works

A federal district court in Wisconsin has held that a direct government grant to Faith Works, which operates a program for recovering addicts, is unconstitutional because the program integrates religious activity with direct social services. Read the court's opinion in *Freedom from Religion Foundation v. Faith Works Milwaukee*. (A login ID is required to access this document from the PACER system. See PACER for more information.)

OMB Watch Launches First Issue of the Executive Report

This monthly report will provide an in-depth look at a variety of executive branch issues.

The Executive Report (available at http://www.ombwatch.org/execreport/), a monthly online report that will come out on the third Wednesday of each month, is designed to take an in-depth look at a variety of executive branch issues. These include issues such as electronic government, information policy, the regulatory process, devolution, enforcement of health, safety and environmental protections, as well as other cross-cutting issues dealing with government accountability. In examining such issues, we will look both broadly across government and at specific agencies, with a particular focus on the Environmental Protection Agency (EPA) and OMB's Office of Information and Regulatory Affairs (OIRA), which has review authority over all health, safety and environmental regulations.

We invite you to peruse the contents and if you like what you see, please subscribe.

EPA Seeks to Delay Pollution Cuts for Utilities

Though announcement serves as another example of how the Bush administration will cater to industry interests at the cost of public health, EPA spokesperson says it is not an attempt to roll back the rule.

Just one week after the Justice Department ruled that lawsuits filed by the Clinton Administration against power plants that failed to install clean-air devices (new source review requirements) should proceed, Environmental Protection Agency (EPA) Administrator Christie Whitman last week notified 70 members of Congress that she would seek court approval to postpone a requirement that utilities cut their coal emissions significantly by May 2003. Though clearly another example of how the Bush administration will cater to industry interests at the cost of public health, EPA spokesperson Joe Marytak said that this was Whitman's attempt to "harmonize" court-ordered compliance dates for different plants, not an attempt to roll back the rule, according to this article in the New York Times.

Currently, utilities have until May 2003 to significantly cut pollutants that cause low-lying smog to drift into other states. Whitman's request would extend that date by one year, to May 2004. In 1997, eight Northeastern states filed a petition that asked the federal government to crack down on interstate smog; as Governor of New Jersey at that time, Whitman was one of the petitioners. Now, as EPA Administrator, she is arguing on behalf of the utilities.

The Bush Administration Weakens Wetlands Rules

On January 14 the Army Corps of Engineers announced changes to several wetlands rules that will make it easier for developers, mining companies and others to qualify for general permits to dredge and fill wetlands, according to the Washington Post. This action comes on the heels of an October 2001 decision in which the Army Corps of Engineers issued a policy that allows developers to offset losses of wetlands on one site by protecting wetlands, or even dry land, elsewhere. This move came even after a National Academy of Sciences report found that the Corps' mitigation policy was not providing for "no net loss" of wetlands.

As the Washington Post reported on January 15, Interior Secretary Gale Norton and Deputy Interior Secretary Steven Griles, who lobbied for mining interests before joining Interior, were involved in a controversy over "missing comments" that the Fish and Wildlife Service submitted to the Army Corps -- the comments were critical of the Corps' plan to weaken the rules and Norton evidently failed to give those critical comments to the Corps. Earlier this year, Norton was accused of altering Fish and Wildlife Service data regarding the effects of drilling in the Artic National Wildlife Refuge (ANWR), in an attempt to remove obstacles from drilling in the ANWR. It is painstakingly clear that Bush's appointees to protect the environment are wreaking havoc on our environmental protections. Read more in the full Bush Regulatory Report.

Scalia Escapes Senate Confirmation to Become DOL Solicitor

As Solicitor, Scalia has jurisdiction over a wide range of legal and regulatory issues, ranging from mine safety and job training, to migrant workers and pension rights.

On January 11, President Bush announced a one-year recess appointment for Eugene Scalia, son of Supreme Court Justice Antonin Scalia, to serve as the Solicitor for the Department of Labor. The Bush White House cited Constitutional authority to appoint Scalia during the recess, escaping the Senate confirmation process while allowing Scalia to serve until Congress recesses again at the end of next year. The Senate Health, Education, Labor, and Pensions Committee narrowly approved Scalia by a vote of 11-10 on October 16, 2001, but the controversial nomination had not been brought to a vote on the floor when Congress adjourned in December.

As Solicitor, Scalia has jurisdiction over a wide range of legal and regulatory issues, ranging from mine safety and job training, to migrant workers and pension rights. A very controversial nomination, Scalia represents the most strident opponents of an ergonomics standard to protect workers against repetitive motion injuries. Scalia represents the typical Bush nominee, however, in that he has built his career opposing a specific regulation, and will now be in a powerful position at the very agency in charge of regulating the issue he has been fighting against. As Solicitor, his name will go on many briefs that find their way to the Supreme Court, which may require his father, Antonin, to recuse himself.

For more on Scalia and the line up of President Bush's nominations to Environmental, Health, Safety, and Civil Rights posts, see OMB Watch's first issue of the Executive Report, a monthly online report addressing regulatory and access to information issues (see related article, this issue).

Critical Infrastructure Information

OMB Watch is building a new website to serve as a central point of access to information on Critical Infrastructure Information.

OMB Watch has obtained a letter from a group of industry associations, including the U.S. Chamber of Commerce and the National Association of Manufacturers, addressed to President Bush on December 21, 2001, in support of the Davis-Moran bill (H.R. 2435), and the Bennett-Kyl bill (S.B. 1456). OMB Watch and other environmental, civil liberties, and consumer protections groups circulated a sign-on letter opposing the Bennett-Kyl bill. Both of these letters and additional information can be found at http://www.ombwatch.org/info/cii, a new site OMB Watch is building to serve as a central point of access to information on Critical Infrastructure Information. Please send any information you would like to post to ombwatch@ombwatch.org.

NPTalk: File Sharing Among Nonprofits

NPTalk considers some benefits, and costs, around peer-to-peer for organizations.

"Peer-to-peer," an effort to broaden the network capacity of individual users by distributing the workload and access to files among individual users, has usually only been considered in the context of file sharing and attendant copyright issues. Should nonprofits be taking a "napster" on the technology, or are there applications which can serve as a wake-up call to the sector. NPTalk considers some benefits, and costs, around peer-to-peer for organizations.

"Unauthorized" Appropriations

Last week, the Congressional Budget Office (CBO) issued its annual House and Senate reports listing the various FY 2002 appropriations whose authorization has expired or will expire before the start of FY 2003.

Though it is often true that such programs get funded each year long after their authorizing language has expired, technically, such action requires a vote in each house of Congress. In practice, this means that programs whose authorization has expired can be used to force a debate on spending priorities -- a likely event in the coming budget process, as estimates of the FY 2002 budget deficit range from $40 - $70 billion. Though mandatory or "direct spending" programs, such as Social Security and Medicare, usually receive permanent authorization, CBO notes that others such as the Food Stamp program, "require periodic renewal."

For a list of which of the FY 2002 appropriations appear on CBO's list of expired or expiring authorizations, see the CBO reports

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In This Issue

Court Blocks Bush Appointment to Civil Rights Commission

A U.S. District judge ruled on Monday, February 4 that the Commission on Civil Rights had no vacancy to fill and thereby blocked Bush's appointment of a replacement for Commission Chairwoman Mary Frances Berry. The Justice Department has indicated that it will appeal the ruling. For more on the Commission and Bush's appointment, see this Washington Post article.

SSA Evaluates Financial Impact of Bush Commission's Recommendations

On January 31, the Social Security Administration's Chief Actuary released its analysis of the financial impact of the Bush Commission's recommendations for the privatization of Social Security. For more on the significance of the recommendations and the SSA's analysis, see the Campaign for America's Future.

The Bush Budget: Reagan Redux

OMB Watch will continue to analyze the President's FY 2003 Budget. Please see the OMB Watch website over the next week for further analyses of homeland security spending, cuts to human needs spending, and spending increases on future tax cuts. The President's Budget is now online. The Washington Post has provided an agency-by-agency overview of the President's proposed spending increases and cuts.

Okay... we've been here before. The President proposes massive increases in military spending, slashes domestic spending, and cuts taxes. The result: a massive build-up in deficit spending, a large portion of government spending going towards interest payments on a ballooning debt, and gaps in the social safety net of the country. While that is a picture from the Reagan years, it is also a snapshot that can be gleaned from the Bush budget sent to Congress today.

The Bush budget, the first completely developed by his administration, proposes yet more tax cuts, coupled with increased spending for military and homeland security – and all of it paid for by huge cuts in domestic programs (cuts that are unlikely to be supported by Congress) and increased deficits. The $2.13 trillion FY 2003 budget proposes a 3.7% increase in spending over this year. Defense spending gets a whopping $48 billion increase, an increase that is larger than the military budget of any other country, according to an analysis by the Center for Arms Control and Non-Proliferation. Homeland security would double to $37.7 billion, with $11 billion over two years going to address biological terrorism. The general feeling is that Congress will agree to the military and homeland security proposals.

But lots of other domestic programs strongly supported by members of Congress would be eliminated and significantly cut according to the Bush budget. For example, Bush proposes the elimination of hundreds of "earmarked" projects that members of Congress insert each year for their home districts. These are not likely to be eliminated in any given year, but especially not in an election year such as this one. Bush also proposes large cuts to highway and environmental programs. For example, he would take a $9 billion slice out of highway spending and reduce spending on water projects undertaken by the Army Corps of Engineers. Few of these cuts in domestic spending will be popular.

Last summer the President got away with a massive $1.35 trillion tax cut targeted to the wealthy mostly because of what appeared to be a large surplus. Most of the tax cuts are phased in over a 10-year period and have not yet been implemented. Because of budget rules, last summer's tax cuts "sunset," or expire, at the end of 2010. With the need for increased spending to respond to terrorism and the economic downturn, it would make sense to suspend the tax cuts that have not been phased in. Yet, Bush proposes to extend these tax cuts by two more years, going until 2012, at a cost of $344 billion. He also proposes an additional $247 billion in tax cuts that include:

- Tax relief for corporations;
- Even greater breaks for wealthy individuals than last summer's tax cut; and
- A tax credit that will pay as much as $2,500 a year in private school tuition for children whose public schools are operating below state standards.

Rosy Scenario Pays Another Visit

During the Reagan years, OMB used economic assumptions and proposals that were highly unlikely in order to present an optimistic budget picture. Bush plays the same trick. For example, in order to demonstrate the need for an economic stimulus that places a heavy emphasis on tax cuts, the budget assumes very low economic growth this year. But suddenly, the economy will explode with the annual rate of growth of the Gross Domestic Product (GDP) jumping from 0.7% in 2002 to 3.8% in 2003. (By way of comparison, the "Blue Chip Consensus" estimates that the rate of growth of GDP will be 1.0% in 2002 and 3.4% in 2003.)

Similarly, the President assumes there will be $1.2 billion in revenue generated from drilling in the Arctic National Wildlife Refuge (ANWR), a controversial proposal that would need to be passed by Congress. There are also spending assumptions that are unlikely. For example, the President has said he supports prescription drugs for Medicare recipients. But he estimates the cost at only $190 billion over the next 10 years, whereas most experts put the cost much higher.

The result is the same as the Reagan budgets that predicted, year after year, smaller deficits – even surpluses -- when in reality the deficit bulged. Like Reagan, Bush's rosy picture will never happen.

Bush Deficits -- FY 2002 - 2004
(in Billions of Dollars)

Fiscal Year	2002	2003	2004
Total Deficit	-$106	-$80	-$14

Whatever It Takes!

Wouldn't it be great if we could resolve to do whatever it takes so that everyone who works can afford shelter and food, or to clean up the nation's water and air, or make sure no child goes to bed hungry -- just as we've resolved to do whatever it takes to fight the war on terrorism?

The President said in his State of the Union address that the price of freedom and security is never too high, and the United States will pay whatever it takes. His budget reflects the costs of increased spending for security against terrorists. It provides the largest increase in military spending in twenty years -- since Ronald Reagan's Cold War defense build up, as well as increased funding for "homeland" security, which primarily includes defending against bioterrorism, protecting our borders from terrorist incursions, insuring that firefighters, the police, and emergency workers are prepared, and improving information sharing and technology. As a nation, we face new challenges to our peace and security and new claims on our resources after September 11. But what does it take to be truly free and secure, beyond protection from terrorists? And how do we pay for it? The President answers that we will simply take money away from "wasteful" domestic programs to provide the necessary resources to the war against terrorism. According to the President, then "whatever it costs" involves no sacrifice at all.

Actually, though, there are costs, and those who are less likely to complain or have their complaints heard are the ones who will pay the price. While the President sounds like he is concerned with giving resources to people in need -- to extend unemployment benefits and health insurance coverage for the unemployed, improve education and pre-school, provide prescription drug coverage to seniors -- he is really just offering up a few very limited tokens while simultaneously proposing that the budget for discretionary programs (almost all that government does outside of entitlements like Social Security and Medicare) be increased by only 2%, barely enough to keep up with inflation.

In other words, the cost of insuring the "ordinary" peace and security of working families and the communities in which they live is too high a price to pay. We aren't willing to meet the basic needs of all of our citizens, make sure no child is hungry, protect the environment, or insure jobs and job training to every worker, whatever the cost. Wouldn't it be great if we could resolve to do whatever it takes so that everyone who works can afford shelter and food, or to clean up the nation's water and air, or make sure no child goes to bed hungry?

The really hard thing about this is that there is a simple way out of the conundrum. In May 2001, the President signed into law the largest tax cut since President Reagan's tax cuts, at a cost of almost $1.4 trillion over ten years. If we'd simply delay implementation of the tax cuts we'd have the resources for a homeland security that includes not only protection from terrorists, but safe and livable communities and what we need to be productive individuals and healthy families. If future tax cuts were frozen beginning with the cuts scheduled for 2003, we could save close to $500 billion. (See Citizen's for Tax Justice's analysis).

This would also require a sacrifice. Who would pay the cost? The wealthiest 1% percent of the country who would have received 84% of the benefits of the fully phased in tax cut if it were frozen after 2002. Their sacrifice would not be nearly as painful as not being able to get health care for your child because of cuts to the Child Health Insurance Program or being unable to support your family because of cuts in job training programs or drilling in wilderness areas to create revenue. But that's not how the President sees it -- he proposes to permanently extend the tax cuts that were due to expire in 2011. Not only are there no costs to be paid -- we can afford more tax cuts. But many actually do pay.

Table: FY 2002-03 Percentage Growth in Discretionary Budget Authority

Note: Many of the increases noted in the table below are due to programs specifically concerned with the President's $37.7 billion Homeland Security budget. For a more-detailed analysis of the components of the Homeland Security and other agency budgets, please see the OMB Watch website for other analyses.

Agency	Percentage Growth
Agriculture	0.5 or less
Commerce	0.5 or less
Defense	12
Education	1
Energy	5
Health & Human Services	9
Housing & Urban Development	7
Interior	0.5 or less
State & International Assistance Programs	4
Justice	-1
Labor	-7
Transportation	19
Treasury	5
Veterans Affairs	7
Corps of Engineers	-10
EPA Operating Program	2
FEMA	114
NASA	1
National Science Foundation	5
Small Business Administration	2
Social Security Administration	5
Smithsonian	6

Source:Table S-6, Summary Tables, *Fiscal Year 2003 Budget of the U.S. Government*

Amendment To Permanently Repeal Estate Tax

Demise of economic stimulus package brings end to efforts to make estate tax repeal permanent -- for now, at least.

Debate on Sen. Tom Daschle's (D-SD) proposed economic stimulus package came close to a standstill last week, as Senators proposed more than 50 amendments to H.R. 622, an adoption credit bill that is serving as the legislative base for this second attempt at economic stimulus legislation. Among the more alarming amendments was one offered by Sen. Jon Kyl (R-AZ) to make repeal of the estate tax permanent.

You'll recall that, as part of the overall Bush tax cuts enacted last summer, the estate tax was slowly phased out over a ten-year period, expiring in 2010. Because of cost considerations the entire tax cut law "sunsets" in 2011, which means that the estate tax, after being repealed for one year in 2010, will be reinstated in 2011. Kyl's amendment, S.A. 2758, would make estate tax repeal permanent by repealing the sunset at the end of 2010.

Permanent repeal of the estate tax has nothing to do with expediting an economic recovery -- any effect of an extension of estate tax repeal would not be felt until 2011, many years after most economists predict the economy will have made a full recovery. Nevertheless, Kyl and many others in Congress have made estate tax repeal a top priority, and many assume that even if the amendment is unsuccessful this time, they will try to bring it up again later this Spring. Adding to the likelihood of another attempt is the strong support of President Bush. In his FY 2003 Budget released today (see related story, this issue), he proposes a permanent extension of all of last year's tax cuts -- including repeal of the estate tax, which alone would cost $104 billion over the years 2003-12.

It seems likely that this amendment will be voted on this week -- perhaps as early as Tuesday, February 5 -- and it is important that we continue to remind our Senators of the significance of the estate tax to our country's well-being. The estate tax helps to provide federal and state revenues for needed programs and services, reduce concentrations of wealth, and encourage charitable giving. Now, more than ever, permanent repeal of the estate tax would be the wrong step for the country:

- In the President's State of the Union speech, he reminded us of the need to reexamine our priorities and allocate our resources accordingly. Surely, with increased spending to strengthen our nation's military, public health systems, air transportation security, national borders, education, and with the pressing financial and health needs of America's families, we cannot afford to give further tax breaks to the country's wealthiest estates.
- All but 6 states face budget deficits this year and because almost every state has a balanced budget requirement, they are now looking for areas to make up their billion-dollar shortfalls. It would be counter-productive for Congress to help alleviate the state fiscal crisis with an increase in Medicaid-matching rates, while it does nothing to remedy the loss of revenue states must endure with the repeal of the estate tax (49 states get revenue from the federal estate tax in the form of a "pick-up tax," or credit).
- Finally, the Senate is currently trying to construct legislation that will help to both expedite the recovery of the economy and bridge the gap for people and the states until the recovery reaches them -- and also allow enough funds to begin meeting the many other needs of the country. Permanent repeal of the estate tax will meet neither of these aims, is very costly and, thus, does not belong in an economic stimulus package.

Again, we urge you to contact your Senators to tell them to oppose the Kyl amendment (#2758) to the economic stimulus bill or any amendment to permanently repeal the estate tax. You may use the OMB Watch contact service to email your Senators or to obtain the numbers to call or fax your Senators directly.

For more information on the role of the estate tax in the nation's charitable giving, see the National Committee for Responsive Philanthropy and the Forum of RAGS.

The Role of Government Performance in the FY 2003 Budget

As we have said before, if improving government performance is limited to threatening agencies with cuts, rather than working together with Congress and the Administration to truly make government more effective and useful to citizens, we can't expect much good to come from this new attempt at improving government.

Much of President Bush's budget rests on the idea that he will achieve huge savings by trimming government waste -- primarily by curtailing unsuccessful programs -- and his 2003 budget emphasizes government performance and results. The President bases this on a simple formula -- if "objective" measures show that a program is succeeding, it will get resources, but, if not, the program needs to be "reinvented, redirected, or retired." Little is said about the difficulties of performance measurement, for instance, how hard it is to measure outcomes over the long-term, or how tempting it is to set goals that can be met rather than ambitious and useful goals, or about whether a good, well-conceived program may not be succeeding because of a lack of resources. We think there is a difference between efficiency and effectiveness and between what government does and what the market can do. The President's emphasis leans more towards efficiency and market-based solutions.

The budget contains "scorecards," rating each agency with red, yellow or green dots --red being the worst, green being the best, and yellow being a middle score. Agencies are "graded" on five criteria:

- Human capital - developing the strategies to attract and retain "the right people, in the right places, at the right time" and make high performance a "way of life in the federal service."
- Competitive sourcing - creating a "market-based" government with market-based competition.
- Financial management -- improving each agency's bookkeeping as well as tracking down overpayments and errors in benefit and assistance payments.
- Expanded e-government.
- Budget Performance integration -- making sure that "dollars will go to programs that work; those programs that don't work will be reformed, constrained, or face closure." Further, as measurement techniques improve, those programs that yield the best bang for the buck will get the most bucks.

The current "baseline" scorecards are covered with mostly red dots, a few yellow dots, and only one green dot, for financial management at the National Science Foundation. The text makes clear that the poor scores represent the government that the President "inherited," and that he has a commitment to eliminating and reducing programs that don't produce. As we have said before, if improving government performance is limited to threatening agencies with cuts, rather than working together with Congress and the Administration to truly make government more effective and useful to citizens, we can't expect much good to come from this new attempt at improving government.

GAO Prepares to Sue Cheney

GAO has power under federal law to conduct investigations for purposes of congressional oversight of the executive branch, as well as to sue officials that defy Congressional authority.

In this statement issued on January 30, The General Accounting Office (GAO) explains why it plans to sue Vice President Dick Cheney within 2 to 3 weeks, marking the first time in its 80-year history that GAO will sue a federal entity. (See related article in the Washington Post). Cheney and the White House continue to deny GAO requests to turn over the participant names, dates, times, and topics of meetings between members of Cheney's energy task force and outside groups and individuals. GAO has power under federal law to conduct investigations for purposes of congressional oversight of the executive branch, as well as to sue officials that defy Congressional authority.

In his refusal to meet the demands of transparency, Cheney continues to uphold the right of the White House to receive advice from citizens in private, without those conversations being released to the public. GAO has limited its request to specific information (noted above) that, even if disclosed, will not reveal the substantive content of the meetings.

Rep. Henry Waxman (D-CA), ranking minority member of the House Government Reform Committee, and John Dingell (D-MI) wrote a letter to Cheney stating that if the White House won this case in court, it would be "virtually immune from routine oversight," and that by setting a precedent such as this one, "executive privilege would never have to be invoked." Waxman and Dingell write in closing, "we do not believe that the American people . . . support radically changing our system of government so that the White House is accountable to no one."

In a related case, Judicial Watch, Inc (a nonprofit watchdog organization) filed suit against the National Energy Policy Development Group (D. D.C., No. 01-1530) in July 2001 for the minutes of meetings held by the Task Force. A D.C. District Court Judge ruled (on January 31) that the Bush Administration must explain, by February 5, why handing over information about its meetings to Judicial Watch would violate the Constitution. As Waxman and Dingell noted in their letter, both the GAO and Judicial Watch cases will be very important in setting precedent for future situations in which the Executive Branch refuses to disclose information to Congress or to the public.

Judge Rules in Favor of Congressional Tool for Information Access

The ruling could have great implications, especially in light of the fact that The General Accounting Office (GAO) is preparing to sue Vice President Dick Cheney for information about the meetings of his energy task force.

In a landmark court decision on January 18, 2002, a federal district judge ruled in favor of the 16 minority members of the Government Reform Committee who filed suit under the "seven member rule" for disclosure of adjusted data from the 2000 census. The "seven member rule" (5 U.S.C. § 2954) is a federal statute enacted in 1928 that dictates that an agency must release information if it is requested by at least seven members of the House Government Reform Committee (or five of the Senate Governmental Affairs Committee members). This marks the first time a lawsuit has employed the "seven member rule."

The ruling could have great implications, especially in light of the fact that The General Accounting Office (GAO) is preparing to sue Vice President Dick Cheney for information about the meetings of his energy task force (see related article, this issue). Rep. Henry Waxman (CA), ranking democrat on the House Government Reform Committee, hailed the seven member rule decision as "an important tool for the public's right to know," and provides more information about the case on this website.

Information Collection Requests up for Expiration

Normally, when agencies have pending paperwork requests at OIRA that do not get reviewed by the expiration date, approval for one year is inferred under the Paperwork Reduction Act (PRA).

OMB Watch recently reported on a regulatory hit list compiled by industry with the help of Barbara Kahlow, an aide for Rep. Doug Ose (R-CA) The list was compiled from information collection requests (ICRs), also called paperwork requests, that agencies must submit to the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) for approval every three years. Potentially, OIRA could disapprove or revise an information collection request, leaving the associated regulation unenforceable, even if that regulation has been on the books for years. When the "list of 57" came out, we reported that 2 of the ICRs had already expired and 7 would be expiring in the next 6 months -- 3 of these were due to expire at the end of last year.

Normally, when agencies have pending paperwork requests at OIRA that do not get reviewed by the expiration date, approval for one year is inferred under the Paperwork Reduction Act (PRA). Recently, however, OIRA explained to OMB Watch that the existing delay of government mail is interfering with agencies' submissions arriving to OIRA on time, so OIRA is extending expiration dates by a month each time it fails to meet the deadline and agencies are to continue working under the current ICR approval. It is unclear how long the temporary approval will last.

At least three paperwork requests, two of which were on the "list of 57," have had their expiration dates extended. OMB Watch noticed that at least three ICRs due to expire on December 31, 2001 had their expiration dates pushed back to January 31, 2002, and will presumably be extended yet again to February 28, 2002, though as of February 4, the expiration dates on those ICRs in OIRA's Inventory of Approved Information Collections database were still January 31, 2002. The Environmental Protection Agency's (EPA) sewage sludge ICR (OMB No. 2040-0004), the Department of Health and Human Services' (HHS) ICR for an application to market a new drug (OMB No. 0910-0001), and the Department of

Labor's (DOL) ICR for a blood-borne pathogen/needlestick safety standard (OMB No. 1218-0246) are among those being postponed at OIRA. OMB Watch will continue to monitor the ICRs on the list of 57 and others to determine what actions OIRA might be taking to rollback important environmental, health, and safety regulations.

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In This Issue

House Passes Shays-Meehan Bill 240-189

A substitute bill sponsored by Reps. Chris Shays (R-CT) and Marty Meehan (D-MA) passed the House of Representatives at 2:40 a.m. on February 14 by a vote of 240-189. 198 Democrats and 41 Republicans voted for the bill.

During the debate the sponsors entered colloquy language into the record that clarifies the Federal Election Commission's role in defining exceptions to issue advocacy restrictions in the bill. Exceptions could be created for broadcasts that are "wholly unrelated to an election." The colloquy, proposed by OMB Watch and Independent Sector, makes it clear that the FEC should conduct a rulemaking and act within 90 days of the effective date of the new law.

The following amendments were made to the bill Shays and Meehan filed last summer:

1. New effective date: November 6, 2002 (the day after Election Day).
2. National parties can spend soft money through the end of 2002 to pay outstanding debts.
3. Contribution limit for House races increased from $1000 to $2000.
4. Provisions requiring the lowest unit rates for broadcast advertising by candidates were deleted.
5. Contribution and spending limits were raised for House candidates with self-financed opponents.
6. Parties will not be able to use soft money for building or office construction.

The next step will be a fight in the Senate over whether or not a conference committee is held. Reformers want to avoid a conference, which they feel will give opponents a chance to weaken the bill 60 votes will be needed to avoid a filibuster aimed at forcing the conference. Sen. Mitch McConnell (R-KY), who has led the fight against campaign finance reform bills in the Senate, has not yet committed to a filibuster. He said he is still reviewing the bill, but has concerns about restrictions on issue advocacy. He also noted that the House bill does not have the limits on fundraising by federal officeholders for 501(c) organizations that were in the Senate version. As passed, Shays-Meehan would allow federal officeholders to raise an unlimited amount of money for 501(c) organizations as long as the money is not earmarked for voter registration within 120 days of a federal election, get-out-the-vote (GOTV) drives connected to a federal election or ads that attack or promote a specific federal candidate. Federal officeholders could help raise funds for GOTV and voter registration drives from individuals only, and the amount raised could not exceed $20,000.

Since the McCain-Feingold campaign finance bill passed by a 59-41 margin, McConnell may have enough votes to force the bill into a conference committee. However, one Senator who voted against the bill last year, Sen. Ernest Hollings (D-SC), announced he would vote for the bill this time around. That gain may be offset by Sen. Robert Torricelli (D-NJ), who pushed for a requirement that broadcasters provide candidates with their lowest unit advertising rate. This provision was taken out of the House bill after heavy lobbying by the broadcast industry. Sen. Ted Stevens (R-AK), who voted for McCain-Feingold last year, has raised concerns about unequal tax treatment between contributions to nonprofits and campaigns. However, a spokesperson in his office said it is premature to speculate on his cloture vote. The President has said he will not make a decision on whether or not to sign the bill until he has something in front of him. If the bill is signed into law, McConnell has promised to file a suit challenging its constitutionality.

See the Campaign Finance Institute's summary of the bill's provisions.

Read the full text of the House colloquy on issue advocacy.

Civil Rights Group Sets Long Term Campaign Finance Reform Goals

The California-based Greenlining Institute released recommendations for campaign finance reform from a civil rights perspective on February 12, the day the House of Representatives started debating the issue.

Their recommendations are based on consultations with minority and low-income community leaders and a study of campaign contribution patterns in California. While some recommendations are addressed in pending campaign finance reform legislation, others are not, and will require a continued push for reform.

The recommendations are:

- Ban soft money contributions to political parties
- Regulate issue advocacy funding
- Institute a voluntary public financing system to cap campaign expenditures
- Restore public benefit mandates for TV and radio
- Allow low-income filers to participate in Presidential election funding

Both the Shays-Meehan and McCain-Feingold bills ban soft money contributions to political parties (see related story, this issue). Greelining's proposals on issue advocacy call for regulation through disclosure and contribution limits for groups that spend over $25,000 a year on targeted broadcasts and mass mailings that identify a federal candidate and are made within 60 days of an election. This is less restrictive than the bills pending in Congress, which ban broadcasts that identify a candidate within 60 days of an election or 30 days of a primary. The report also notes that the Federal Communications Commission (FCC) has not enforced a 1971 law that requires broadcasters to provide their lowest rates to candidates during the campaign season, and calls for closing the loophole that allows broadcasters to bump campaign ads into less desirable time slots if a higher paying customer wants to purchase prime time. This forces candidates to pay the top rate in order to assure prime-time airing. This provision is in the McCain-Feingold bill, but was taken out of the Shays-Meehan bill.

The report notes that no contribution to the Presidential Election Campaign Fund is made if a taxpayer has no tax liability, even if the filer indicates that they want the allocation made. Because 1 in every 4 tax filers has no liability, and the funds come from the Treasury and not the individual tax filer, this process excludes a significant segment of the population from participating in the Fund. The report says revising the check off system would "broaden political participation" and "enhance the future financial strength of the public funding system."

Moving in the opposite direction, Rep. J.C. Watts Jr. (R-OK) has introduced a bill (H.R. 3709) that would make such contributions "after-tax," rather than an allocation from the Treasury. These contributions could also be earmarked for a political party. Watts' statement said, "The taxpayer has no voice as to whom these funds go or where these funds will be spent," and noted that the $200 million the Fund spent in 2000 could be better used in the Treasury.

The Greenlining Institute is a multi-ethnic coalition of nonprofits that focuses on public policy, leadership training and advocacy to promote economic development for low-income and minority communities in California.

The report and research results can be found on the organization's website.

FEC To Hold Public Hearing on Proposed Internet Rules

The Federal Election Commission (FEC) has scheduled a public hearing on its proposed rules on three Internet-related political activities.

The hearing will be on March 14 at 10 a.m. at the FEC's hearing room. Last year the FEC announced three new proposed rules regarding use of the Internet in federal campaigns. The proposal came after its 1999 Notice of Inquiry on a wide range of issues relating to Internet-based election activity by individuals, corporations, nonprofits and labor organizations. The proposed rules are largely responsive to the more than 1,300 public comments received in the 1999 inquiry.

The new rules would cover the following areas:

- **Volunteers: Proposed 11 CFR 117.1**

  The rules will not regulate volunteers that use their personal computer and Internet access for federal campaign activity.

- **Hyperlinks: Proposed 11 CFR 117.2**

  Under this proposed rule links to candidate and party websites from the sites of corporations, nonprofits and labor unions will not be considered campaign contributions if the link or surrounding text does not contain "vote for" or

"vote against" type language and if there is no charge or if only a nominal amount is charged.

- **Endorsement Press Releases: Proposed 11 CFR 117.3**

  Current regulations limit corporate and nonprofit communications for or against candidates to their members and executive personnel and their families. However, the rules have allowed these organizations to announce candidate endorsements to the press. The proposed rule would allow posting press releases about candidate endorsements on the public portion of a group's web site if they are posted on the same basis as other press releases and limited to an announcement of the endorsement and the reasons for it.

Any party that wishes to testify should contact:

Rosemary C. Smith
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999 E Street, NW
Washington, DC 20463

Or fax to 202/219-3923 or submit electronically at internetnprm@fec.gov.

View comments filed in this proceeding, including those of OMB Watch on the FEC website.

Faith-Based Compromise Reached

After months of wrangling between the House, Senate and White House, a compromise on the Administration's Faith-Based Initiative has been reached. The CARE act of 2002 (S. 1924) was introduced on February 8, and contains several major provisions.

These provisions include:

1. Tax incentives for giving,
2. Provisions for equal treatment of nongovernmental organizations that apply for federal grants,
3. Fast-track processing by the IRS of applications for 501(c)(3) status by small organizations applying for federal funds, and
4. Funding for six new programs.

The main tax provisions of the bill include lowering foundation excise taxes, direct tax-free donations to charities from Individual Retirement Accounts for individuals over 67 years old, a higher corporate donation ceiling, and a charitable contribution tax deduction of up to $400 ($800 for couples) for non-itemizers. Most of the tax provisions are only in effect for FY2002-2003, so they officially cost somewhere between $11-13 billion, but could be drastically more expensive if extended. While these provisions would have been a nice giving incentive in better times, the money the Treasury loses because of them may hurt the charitable community in the long run (see related article).

The bill does not include the controversial "charitable choice" provisions that passed in the House version (H.R. 7). The House bill would allow churches using federal money to discriminate in hiring and exempt churches from some government regulation.

Read OMB Watch's full analysis of the bill.

Proposed Non-Itemizer Deduction Raises Concerns

Instead of questioning the wisdom of the tax cut enacted last summer or proposing to delay its implementation until support for key domestic investments is provided -- which is what should be done -- we now have to weigh an acknowledged valuable tax break, the non-itemizer deduction, against vitally needed federal programs.

The Lieberman-Santorum faith-based bill, the Charity Aid, Recovery, and Empowerment (CARE) Act (S. 1924), represents a positive compromise from the Bush charitable choice proposals. Yet the provision to allow taxpayers who do not itemize to take up to a $400 deduction ($800 for couples) for charitable contributions raises some concerns. While this sounds very good, in today's economy it may prove yet another straw that is breaking the back of spending on domestic programs. For those in the 15% tax bracket, this cut translates into a $60 tax break for individuals giving the maximum. While the CARE act is more responsible than the charitable choice bill passed in the House last year (H.R. 7), the cost of ten years is more than $40 billion. Because the cost is so high, the Senate bill proposes the tax incentives for only two years, or roughly $8.4 billion, with the knowledge that the provisions will likely be extended after that.

At the same time, the President has proposed a budget that takes a huge whack out of domestic discretionary spending, the very component of the federal budget on which nonprofits are heavily dependent. According to the Senate Budget Committee, there would be a cut of 6.2% for domestic programs (other than homeland security) when compared to what is needed to maintain the current level of programs and services. While not all the cuts will materialize, nonprofits already have taken a huge hit through the tax cuts enacted last summer, such as the phasing out of the estate tax. The estate tax would have generated an average of roughly $34 billion per year for the rest of the decade, roughly two times the size of the cuts that are proposed for domestic spending.

Against this picture of budget cuts, does the non-itemizer make sense? Independent Sector, a leader in advocating the non-itemizer, points out that nonprofits will get $1.15 for every $1.00 the government loses in revenue. However, there are a series of questions that need to be asked:

1. **Will the non-itemizer really generate that much in new contributions, or is this a way to give those who are now contributing a way to receive a tax break?** No one knows for sure how much new giving will occur, but a number of tax experts have raised this concern and the tax-writing committees are listening.
2. **Even if it does generate new contributions, which nonprofits would really benefit from the non-itemizer deduction?** Most experts seem to acknowledge that religious congregations will benefit, but it is not clear who else will.
3. **Will the non-itemizer deduction be as difficult to administer as tax experts say?** Past IRS employees and others in the tax-writing committees argue that the non-itemizer is a prescription for fraud, and additional resources will need to be used to prevent this.
4. **Is this an appropriate substitute to direct funding of services?** Conservatives want to downsize the government and shift responsibility from Washington to local control and private, voluntary initiative. This shifting of funding from government to private donors is unlikely to compensate for diminished ongoing federal support of key programs

There are ways to approach the non-itemizer deduction that would reduce its cost and target the benefit to new or increased contributions. For example, the deduction could be limited to what is given over a set floor amount. This approach was recommended in The Nonprofit Agenda: Recommendations to President George W. Bush to Strengthen the Nonprofit Sector, which was based on results of a national survey of nonprofits and developed by an Advisory Group of state and local nonprofit leaders. They recommended that, "the deduction threshold should be high enough to encourage giving but low enough to allow broad participation and benefit the 49% of households with taxable incomes of less than $30,000 a year."

Instead of questioning the wisdom of the tax cut enacted last summer or proposing to delay its implementation until support for key domestic investments is provided -- which is what should be done -- we now have to weigh an acknowledged valuable tax break, the non-itemizer deduction, against vitally needed federal programs. The real solution is addressing the tax cuts from last summer. Until critical domestic spending issues are addressed, the non-itemizer deduction does not make sense.

Read OMB Watch's full analysis of the trade-offs involved in the decision about the non-itemeizer.

Legal Services Restrictions Under Review, Lawsuit Filed

An internal Legal Services Corporation (LSC) review of restrictions on legal aid programs has recommended no change in restrictions prohibiting LSC grantees from using LSC or other funds for class action litigation, legislative advocacy and community education.

This includes the "program integrity regulation," which requires physical separation between LSC-funded recipients and any organizations that engage in these restricted activities. (See 45 C.F.R. 1610)

In December four legal service programs in New York City, a private charity and pro bono attorney filed suit against the Legal Services Corporation challenging the constitutionality of these restrictions. It also challenged the bar on programs' collecting attorneys fees in successful cases. The suit, Dobbins v. Legal Services Corporation, follows the 2001 Supreme Court ruling in Velazquez v. Legal Services Corporation, which invalidated a restriction barring legal aid lawyers from challenging welfare reform laws. The plaintiffs are being represented by the Brennan Center for Justice, whose legal director said, "The federal government should be encouraging, not thwarting, the generosity of communities working for equal justice for low-income people. This is a disastrous and mean-spirited policy. We are urging the court to find these laws unconstitutional and strike them down."

The LSC Task Force identified two high priority areas for the LSC Board's review: regulations governing the make-up of LSC grantee boards that make it difficult to have diverse backgrounds on them, and more flexible sanction procedures that apply to LSC grantees accused of violating LSC regulations. Low priority was given to the issue of a private co-counsel's "applications for fees."

Community Technology Programs Cut Back in FY 2003 Budget

The proposal calls for eliminating two successful community technology programs -- one at the Department of Commerce, the other at the Department of Education -- and increasing a HUD program that *allows* funds to be used for community technology programs but does not require it.

On February 4, 2002, President Bush released his FY 2003 budget request. The proposal calls for eliminating two successful community technology programs -- one at the Department of Commerce, the other at the Department of Education -- and increasing a HUD program that *allows* funds to be used for community technology programs but does not require it.

Echoing the priorities for community technology laid out in the FY 2002 budget proposal, the Department of Education Community Technology Centers program, which is currently funded at $32.5 million, would be eliminated, in favor of an effort under the Department of Housing and Urban Development's Neighborhood Networks program, currently funded at $20 million (divided between $15 million under the Public Housing Capital Fund and $5 million under HOPE VI programs). The President's FY 2003 request for Neighborhood Networks is for level funding. There has been no information available, to date, as to exactly how the program will allocate funds, or if/when funding will be available on a competitive basis for community technology center applicants.

The FY 2003 budget also calls for level-funding of $1 billion for the Department of Education's 21st Century Learning Centers program, to establish or expand academic enrichment opportunities for students and learning opportunities for their families outside of school hours -- during the week, weekends, and summer periods -- in school districts with high concentrations of poverty and/or low-performing schools. Money would be available to the states through formula grants, which are then distributed to local school districts on a competitive basis. The Department's Educational Technology State Grants (an initiative to boost technology integration in classroom environments) into which the Department's existing Preparing Tomorrow's Teachers to Use Technology, Technology Innovation Challenge Grants, and Technology Leadership Activities would be folded, is also to be level-funded at $700.5 million. The effort would continue to provide formula grants to the states, which in turn would distribute half to all districts by a formula, and the remainder to the most high-need districts, to acquire technology skills, expertise, and training resources. The President's request also includes level funding of $25 million for AmeriCorps/VISTA information technology training efforts directed towards students and teachers in low-income areas.

The biggest change, however, is the outright elimination of the Technology Opportunities Program under the Department of Commerce's National Telecommunications & Information Administration, which Congress funded at $12.4 million this year. To date, the three-year old CTC program has distributed some $100 million in matching grants to over 200 organizations to develop or expand over 500 community technology access points and centers for information and telecommunications technology in the context of educational services and skills training for those lacking such access at home, work or school. The seven-year old TOP program has, to date, awarded 530 grants, across all 50 states, Puerto Rico, the District of Columbia, and U.S. Virgin Islands, totaling $192.5 million grants leveraged by $268 million in matching funds from local sources, to support public-private efforts to develop the national advanced telecommunications and information technology infrastructure for delivery of social services -- including education, health, employment, and public safety -- to underserved rural and urban areas across the country.

These programs have proved to be extremely effective as evidenced by a new Commerce Department report, "A Nation Online" released on February 5. The report found Internet use among the poorest households in 2001 increased by 25%, among blacks by 33%, and among Hispanics by 30%. Households headed by single mothers had a 29% increase in Internet usage, the highest growth rate among different types of households.

Read more for the details on the fate of these community technology initiatives.

Tax Cuts vs. Everything Else

We can either choose to pay now, or we will have to pay later -- preventing social ills is much cheaper in the long run. From a purely economic standpoint, many economists agree that a return to deficits is not a problem -- running a surplus would actually be more of problem -- and that this economic climate prescribes more government spending, not less.

With the return to budget deficits because of the combination of the added expenses of September 11th and the war, the effects of the economic recession, and the lost revenue due to the previously enacted tax cuts, Democratic leadership has focused primarily on the need to be fiscally responsible to avoid creating deeper deficits. There has been little direct criticism of the tax cut and the effect of its drain on resources, presumably because of the President's popularity and public support. Few are calling for postponing the tax cut, because the President has made it clear that, "not [sic] over my dead body" will it be rescinded or postponed. While the Democratic strategy may be to ultimately show that the tax cuts are not affordable, the current emphasis on fiscal responsibility seems misplaced. The President's budget, though cleverly crafted so as not to reveal it, would cause substantial cuts in spending for human needs programs, with domestic discretionary programs (excluding Homeland Security) facing cuts of 6.2% in 2003. (See Sen. Kent Conrad's (D-ND) "Review and Analysis of the President's FY 2003 Budget".)

Democrats have long championed the responsibility and role of an effective government to do what the market will not do. The country has priorities that are more important than tax cuts, and our failure to address them may create social deficits that are far graver than a few years of budget deficits. We can either choose to pay now, or we will have to pay later -- preventing social ills is much cheaper in the long run. From a purely economic standpoint, many economists agree that a return to deficits is not a problem -- running a surplus would actually be more of problem -- and that this economic climate prescribes more government spending, not less.

We think the emphasis ought to be on the trade-offs made necessary because of the cost of the tax cuts passed back in March, before our circumstances changed so dramatically. Why is our focus on the tax cuts? It would be easy to postpone tax cuts -- they are being phased in throughout the next ten years, so we could postpone cuts at any point as they are

phased in. Additionally, we can pick and chose the provisions to postpone based on the knowledge that many of the tax cuts primarily benefit wealthier taxpayers and corporations (see Citizens for Tax Justice analysis). The tax cuts, unlike the war or the recession are fully in our control. They are a source of revenue that can easily be tapped. Finally, in spite of the country's many urgent obvious needs, tax cut proponents continue to push for even more cuts and to make those tax cuts already passed -- which would otherwise end in 2011 -- permanent, thereby further limiting the resources that are available for other purposes. (For one example of this effort, see related story, this issue.) We ought to be fighting just as hard to see that our resources are used where they are needed most -- for education and job training, for expanded unemployment benefits, for child care and early education for all children, for affordable housing, for health care -- the list goes on and on.

A few members of Congress are calling for a change so that we take care of "first things first." Rep. Jan Schakowsky (D-IL) was first to call for such a change when she introduced "The First Things First Act" on October 2, putting on hold the parts of the tax cut that benefit the wealthy until there is an adequate response to the terrorist attacks of September 11 and its impacts on workers; until the Social Security and Medicare Trust Funds are solvent; until there is a Medicare prescription drug benefit; until school modernization and 100,000 new teachers are hired; and until there is a reduction in the number of people with worst-case housing needs. See Representative Schakowsky's press release for more information.

On January 16, 2002, Sen. Edward M. Kennedy (D-MA) gave a speech at the National Press Club. He specifically acknowledged the need to stand with the President on the war front, but urged us to also join together to meet the great domestic challenges we face and address "the urgent needs of our people in areas like jobs, education, health care, and equal rights." Kennedy proposed that whether it were right or wrong, the tax cut was enacted in a different time, and we should now agree to "postpone a portion of the future tax cuts that overwhelmingly benefit the wealthiest taxpayers…until we are certain that we can afford a prescription drug benefit for senior citizens, make the needed investments in education and health care, protect Social Security and fully provide for the common defense." Under Kennedy's proposal, we could save $350 billion over the next ten years by avoiding future reductions in the tax rates paid by taxpayers in the highest income brackets and keeping the estate tax on estates over $4 million. Kennedy argues that since these won't take effect until 2004 and 2006, and, in the case of the estate tax, 2011, they will not hinder our recovery from the recession but will insure reductions in long-term interest rates now by instilling the public with more confidence in the budget situation over the next ten years. This tax cut freeze proposed by Kennedy would keep tax cuts for everyone but the richest according to an analysis by Citizens for Tax Justice.

The latest Congressperson to talk explicitly about freezing parts of the tax cut is Sen. Paul Wellstone (D-MN), who proposed on February 12, 2002, to freeze the rates of the wealthiest 1 percent of Americans where they are now, saving $121 billion over the next ten years. Wellstone also objects to repeal of the Corporate Alternative Minimum Tax, a provision contained in the House Ways and Means Committee's first Economic Stimulus Package bill. He would invest the savings in schools and kids, especially to see that the Individuals with Disabilities Act is fully funded so that all children with disabilities can get special education.

Senators Kennedy and Wellstone have not yet introduced legislation.

If you agree that given a choice between tax cuts and meeting the needs of our people and communities, you would choose the latter, you should give your representatives your support for freezing or postponing some or all of the tax cuts. This need not be considered a choice that is disloyal or unpatriotic. Whatever your position on tax cuts before September 11 and the economic recession, times are different now and the trade-offs are starker. Are future tax cuts for the wealthy, which haven't even gone into effect yet, more of a priority than education, health care, housing, prescription drugs, and extending the solvency of Social Security?

The Game of Ping-Pong, or "The Economic Stimulus Package Debate"

Less than two weeks ago, many observers -- including OMB Watch -- were predicting that an end, at least for the foreseeable future, had come for the debate on an economic stimulus package.

Senate Majority Leader Tom Daschle (D-SD) scheduled a vote on February 6 to determine whether the Senate would stop the stream of amendments to the bill and proceed with debate on his proposed economic stimulus package (also called a "vote on cloture"). As predicted, his bill did not receive the required 60 votes (56-49, see voting record on Thomas), and Daschle removed the stimulus bill from the Senate's schedule. That same day, Senate Republicans called for a vote on their proposed stimulus package -- similar to that passed by the House late last fall -- but were also unable to secure the 60 votes (48-47, see voting record on Thomas).

The Senate was able to agree on a single measure that had been included in both stimulus proposals and, by unanimous consent, passed a 13-week extension to the current allotment of 26 weeks of unemployment benefits for laid-off workers. Many in the Senate explained that they felt that passing the unemployment benefits extension by itself would offer the most expeditious path to addressing some of the most urgent needs created by the current recession, while also enabling the Senate to move on to other issues.

When the bill reached the House, however, it became clear that the economic stimulus debate was anything but resolved. The House took up the Senate's 13-week extension bill and then amended it by tacking on just about all of the provisions from its economic stimulus package (H.R. 3259) passed in December 2001. In addition to the 13-week unemployment extension, the House passed the following provisions on February 14 (225-199) see vote count):

(Cost estimates are provided in the Joint Committee on Taxation's February 14 report, "Estimated Budget Effects of the Revenue Provisions of the 'Economic Security and Worker Assistance Act of 2002")

- **"Supplemental Stimulus Payments"** (These are the tax refunds -- $300 for individuals; $600 for couples -- to those who did not receive them under the Bush tax cut in June 2001.)

- **Acceleration of the creation of the 25% tax cut bracket to 2002** (Under current law this would not occur until 2006.)
- **Increase Individual AMT exemption** (The exemptions, which are an attempt to reduce the number of middle-income tax payers impacted by the Alternative Minimum Tax, will expire at the end of 2006.)
- **Various Business Tax Provisions** (Among other provisions, these include an accelerated rate of depreciation of equipment.)
- **Corporate AMT Modification** (Unlike the original bill passed by the House, this new bill does not repeal the corporate AMT and only impacts future payments -- it does not call for the refunding of past payments by corporations. Nevertheless, with a 10-year cost of $16 billion, this provision is the second most expensive of the bill's entire $153 billion 10-year cost -- second only to the $44 billion cost of accelerating the formation of the 25% income bracket.)
- **Extension of Various Expiring Tax Provisions**
- **TANF Supplemental Grants for Population Increases in FY 2002 and a 1-Year Extension of TANF Contingency Funds** (Total, 10-year cost for these two provisions is $330 million.)
- **Tax Benefits for Areas of New York City Damaged by Terrorist Attack**
- **"Displaced Worker Health Insurance Credit"** (Provision creates a 60% refundable tax credit for the purchase of health insurance -- either COBRA or private insurance -- by unemployed workers.)
- **"Employment and Training Assistance and Temporary Health Care Coverage Assistance Provisions**

It is worth noting that many of the provisions passed by the House last week fall under the Congressional Budget Office's category, "Small Bang for the Buck," indicating that the provision would have little positive impact on the efforts to stimulate the economy relative to its costs to the federal government. This was especially true for the corporate AMT reductions, other business tax cut incentives, and acceleration of income tax bracket reductions.

Shortly after the House vote, the Senate passed its 13-week extension again, this time as a substitute to the House's original economic stimulus package, H.R. 3090.

The Center on Budget and Policy Priorities (CBPP) pointed out that the House-passed plan was the same one that failed in the Senate last week and so the future of an economic stimulus package is now more uncertain than ever -- even as various economists report that the country's unemployed workers need help immediately. CBPP released a report following the House vote on Thursday indicating that 11,000 workers exhaust their 26 weeks of unemployment every day and predicts that by the end of the first half of this year, 2 million workers will have used up their allotment of unemployment benefits. The report also provides a state-by-state listing of the number of workers who have already, or soon will, reached the end of their unemployment benefits. Last month the Economic Policy Institute (EPI) issued an analysis explaining that even as many economists report the start of a recovery for the economy, many American families will not benefit from such a nascent recovery -- and will actually continue to struggle until the economy returns to a growth rate of 3.0% to 3.5%. The EPI report suggests that even if the economy recovers at the rate currently expected, unemployment could reach 6.0% or even 6.5%, further underscoring the need for assistance to unemployed workers and other low-income Americans.

It remains unclear whether any "economic stimulus" package will pass at all. If not, it is likely that the unemployment extension will become its own legislation, divorced from anything to do with "economic stimulus" since that effort seems doomed.

Estate Tax Repeal Sense of Senate Amendment Tacked onto Farm Bill

An update on the efforts of Sen. Jon Kyl (R-AZ) to repeal the estate tax.

As reported in the last issue of the OMB Watcher, there are many members of the Senate determined to make repeal of the estate tax permanent, even though such a costly measure would benefit less than 2% of the country's wealthiest estates each year, further exacerbate the fiscal crises currently facing state governments, and use up federal revenue that could be used to strengthen the nation's social programs.

Estate Tax Repeal's Impact on States

A recent report from the New Jersey Policy Perspective (NJPP) illustrates the havoc the 2001 tax cut's repeal of the estate tax is wreaking on the already strained New Jersey budget. The report offers a state-level solution to the problem created by the federal estate tax repeal process, which actually ends the states' ability to "pickup" a portion of the federal tax for themselves earlier than the federal government's estate tax ends. The NJPP website also provides links to the 3 newspapers that have thus far endorsed its proposal, as well as an op-ed piece that ran in the New York Times New Jersey edition.

Sen. Jon Kyl (R-AZ) is one of the Senate's most avid proponents of complete repeal of the estate tax, regardless of the cost or repeal's impact on the nation's priorities. When last week's failure of the economic stimulus packages (see related story, this issue) prevented his proposal for permanent repeal (introduced as an amendment to the Daschle stimulus package) from coming up for a vote, Kyl introduced the amendment again -- this time by attaching it to the Senate's farm bill.

As the Senate worked to finalize debate and vote on the farm bill (S. 1731), which includes a reauthorization of the Food Stamps program and restoration of Food Stamps benefits to documented immigrants (see the FRAC analysis for more

information), Kyl offered an amendment expressing the "Sense of the Senate" that the estate tax should be made permanent by eliminating the sunset of the estate tax repeal in 2011. The Kyl amendment passed, 56-42 (see vote count).

This vote reinforces the need to continue calling and writing your members of Congress to remind them of the importance of the estate tax and your desire to have the money used to repeal the estate tax go to paying for the more-pressing needs of the country. For more on the estate tax and contact information for your Senators and Representatives, see OMB Watch's Activist Central page

The Bush Budget and Budget Process

President Bush's budget proposes a number of budget process changes that he believes will allow budgeting to be accomplished in a more fiscally responsible manner.

Some of the changes proposed by the President come up year after year, without being enacted. It is most difficult to change the budget process, since it often means changing the balances of power over allocating resources. Following are a few of the changes that the President proposes. In future editions of the Watcher, we will cover more:

1. **Change from a concurrent budget resolution to a joint budget resolution.**

   CURRENT PROCESS: The President issues his budget, and Congress issues its budget resolution. Neither is binding. The congressional budget resolution is simply a blueprint for spending.

   PROPOSED CHANGE: Congress would present a joint budget resolution to the President for a signature. If s/he signed it, it would be law and govern spending decisions for the year. If s/he refused to sign it, it would revert to a concurrent resolution.

   PURPOSE OF THE CHANGE: To streamline the budget process by getting this major step accomplished early (in the spring). To allow for budget enforcement through the legally binding budget resolution by using across-the-board cuts to keep spending in line with the budget resolution.

   ARGUMENTS AGAINST: Congress won't be able to begin considering spending bills until a resolution is in place and so, rather than speeding up the process, this could delay appropriations by adding another contentious step. It shifts power from Congress to the President. It would allow the Budget Committees and congressional leadership more power than Ways and Means and Appropriations Committees.

2. **Continuation of limits on discretionary and mandatory spending.**

   CURRENT PROCESS: The budget enforcement measures in the Balanced Budget Amendment (BBA) to limit discretionary spending (the discretionary caps) and restrain expansions in mandatory programs and cuts in taxes (pay-as-you-go or PAYGO) ended in 2002. There is no current enforcement process.

   PROPOSED CHANGE: The President proposes that enforceable limits on spending should continue either through the change to a joint budget resolution with the resolution limits enforced through across-the-board-cuts, or by legislatively extending the BBA enforcement, using the discretionary and mandatory spending levels as proposed in the President's 2003 budget.

   PURPOSE OF THE CHANGE: Fiscal responsibility defined as limiting spending and avoiding budget deficits.

   ARGUMENTS AGAINST: Discretionary spending continued to fall under the strict discretionary spending limits under the Balanced Budget Amendment. During the past few years when there has been a budget surplus, the limits were unrealistically low. The limits are often ignored and/or appropriators find ways around them, like using "emergency" spending that is not subject to the caps. Fiscal responsibility ought to be defined as meeting the needs of families and communities and not allowing an "investment" deficit to occur.

3. **Changes in classification of programs from "mandatory" to "discretionary."**

   CURRENT PROCESS: Spending that is subject to yearly appropriations decisions is "discretionary" spending and spending that is mandated by law and rises or falls depending on increased or decreased eligibility or cost of living increases is "mandatory." These categories are rarely changed.

   PROPOSED CHANGE: Given the rise in the proportion of spending for mandatory programs (now at 64% of the budget), the President proposes to reclassify three programs from mandatory to discretionary and to review other programs for possible reclassification.

   PURPOSE OF THE CHANGE: To give the President and Congress more control by adding programs to the scrutiny and consideration of the annual appropriations process.

   ARGUMENTS AGAINST: Programs that are legal entitlements should not be subject to the annual appropriations process. Included in the list for consideration are the Black Lung Disability Fund, the Civil Service Retirement Disability Fund, Social Security benefits to Disabled Coal Miners (all entitlement programs) as well as the Vocational Rehabilitation Program, the Child Care Entitlement to the States and the Social Service Block Grant. However, the only three programs the President proposes to actually switch are very limited and constitute only a tiny proportion of the budget.

4. **Change from an annual budget to a two-year (biennial) budget.**

   CURRENT PROCESS: The budget is determined annually.

   PROPOSED CHANGE: The budget would be determined every two years, on the even year.

   PURPOSE OF THE CHANGE: To allow more time for oversight on the odd years. To allow time for more oversight of mandatory spending, since so much effort would not need to be devoted to getting appropriations passed every year. To simplify the budget process. To make the appropriations process less political because it occurs only in non-election years.

ARGUMENTS AGAINST: There could be unforeseen events and/or programs that need less or more money, which could not be anticipated so far ahead of time. It is too hard to foresee the needs in the second year, which would lead to the need for supplemental bills. Biennial budgeting would reinforce the status quo, since it's more likely that if a program will be funded for the same level for two years, in spite of the cost of inflation or other reasons an increase might be needed. Spending decisions are complicated by election year considerations and this biennial proposal would be done in even years. Finally, the yearly appropriations process is, itself, a form of oversight.

The President's proposals can be found in the Analytical Perspectives volume of the budget, starting with page 283.

Graham Rejects Tire Safety Standard

Using his review authority as administrator of the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA), John Graham rejected a rule from the National Highway Traffic Safety Administration (NHTSA) that would have required automakers, by 2007, to install a system in all cars that would alert drivers when their tires are under-inflated.

Following the recall of 10 million Firestone tires, Congress ordered the agency to mandate a tire-pressure indicator in new cars. Investigators in the Firestone case found that under-inflated tires were a possible cause of the tire failure, which resulted in 271 deaths. In response, NHTSA proposed putting a pressure sensor in each tire, which would alert the driver through a dashboard indicator.

Graham, however, found this solution lacking. Instead, he argued that NHTSA should allow a cheaper "indirect" system, favored by automobile manufacturers, which works with anti-lock brakes to measure the rotational difference between the tires, determining whether the speed is slower for any one tire; unlike the "direct" system proposed by NHTSA, this would not inform the driver which tire was under-inflated, and likely would not be as reliable.

Nonetheless, Graham argues that allowing such an indirect system would actually be safer because it would serve as an incentive for manufacturers to install anti-lock brakes, which are thought to be safer than other brake systems but are not required. Indeed, in his letter to NHTSA, Graham expressed concern that manufacturers will actually stop putting in anti-lock brake systems in order to offset costs incurred from having to install direct tire pressure monitoring systems.

If Graham is so concerned about the need for anti-lock brakes, and the farfetched possibility that manufacturers may abandon them in the face of this new tire pressure requirement, then perhaps the solution is to require anti-lock brakes as well. Graham indicated to the Washington Post that this is a possibility OIRA is looking at -- which is, itself, notable, since one would think such a regulation would fall within NHTSA's domain -- but it is unclear whether even this would change his feelings on a direct tire pressure standard.

See related articles in the Washington Post, New York Times, and Boston Globe.

Right-to-Know Update

The issue over public access has taken a new urgency after the September 11th terrorist attacks with some -- often including those who opposed public access before September 11 th -- arguing that we should not be providing information that could be used by terrorists to do damage.

On December 7, 2001, the FBI's National Infrastructure Protection Center (NIPC) discussed terrorism and the use of the Internet in its Highlights. The newsletter identified seven factors to consider when publishing information to the Internet. For example, one factor is whether the information is available elsewhere on the Internet. Following its December newsletter notice, NIPC issued an advisory on January 17, 2002, warning that the Internet has made "arcane and seemingly isolated information quickly and easily retrievable" and that information useful for planning attacks on the U.S. infrastructure "is being accessed from sites around the world." The agency once again issued its seven security factors to consider before posting information to the Internet.

Also on January 17, 2002, James K. Kallstrom, Director of the Office of Public Security and James G. Natoli, Director of the Office of State Operations in New York, issued confidential memo to agency heads and commissioners on "agency sensitive information." The memo instructs agencies to review all "sensitive" information held by the agency and what information is made publicly accessible via the Internet, freedom of information, or other ways. Sensitive information should no longer be made available to the public except where specifically required by law. Logs over the past year of who has accessed sensitive information should be made available to the Office of Public Security and the Office of State Operations. All of this was to be accomplished by February 17 and certified by agency heads through a confidential report.

Since September 11, there have been fundamental shifts in public access policies and procedures. Four areas in which there have been changes include:

1. **Vast amounts of information have been removed from government web sites.**

   The scope of what has been removed is vast and it has been done without any policy guidance or careful vetting. In most agencies it is lower-level staff that are making the decision to remove the information, mostly taking a "better safe than sorry" approach. More than five months after the terrorist attacks, the government still has no official policy with regard to what it removes from web sites or what it will restore.

   Some examples of what has been removed include (a full list is available on OMB Watch's website):

- The Nuclear Regulatory Commission (NRC) shut down its entire web site in early October. The site included detailed information such as the longitude and latitude coordinates of 103 nuclear plants, technical data on plant operations, detailed engineering schematics of plant systems and components, and aerial photographs. Immediately after the terrorist attacks, NRC was criticized for having too much information on the Internet. Then, after shutting down its Web site, the commission was criticized for having none.

- The Environmental Protection Agency (EPA) discontinued providing Risk Management Plans, which provide information about worst-case scenarios if a major disaster occurred at a chemical plant. This is the same information that is still publicly available through OMB Watch's RTK NET. The American Chemistry Council, the trade association for chemical manufacturers, and other trade associations, such as the American Water Works Association, have lobbied for years to limit or shut down public access to information about hazardous chemicals being used in the community, including through public reading rooms -- and now justify removal with the threat of terrorism.

- The Agency for Toxic Substances and Disease Registry (ATSDR) removed a report that notes that, "security at chemical plants ranged from fair to very poor" and that "security around chemical transportation assets ranged from poor to non-existent." The report, *Industrial Chemicals and Terrorism: Human Health Threat Analysis, Mitigation and Prevention*, does not provide information about individual facilities. Moreover, a Google search found two non-government sites that provide a copy of the ATSDR report.

- The Federal Energy Regulatory Commission (FERC) has removed tens of thousands of documents from the Internet and from public reading rooms, cutting off access to detailed information on hydropower plants, natural gas and oil pipelines, electric transmission lines and other "critical infrastructure." FERC has made public statements about the importance of public access, but has also said that the agency might require recipients of the information to register to obtain passwords, personal identification numbers or digital signatures to limit distribution to those deemed to need the information. For certain information, the agency has talked about requiring individuals to sign nondisclosure agreements. Community groups note that the maps of pipelines are essential to help residents know about pipelines that have not been checked or have weaknesses. They point to the death of children in Washington who were playing around a pipeline that was uninspected and blew up.

- The Federal Aviation Administration (FAA) has removed data from its web site on enforcement actions. The FAA's web site allows users to download a number of different databases. This includes records of accidents and incidents, pilot and maintenance training schools, and until recently, data on enforcement actions, which is called the EIS database. This database is used to identify security breaches at airports. While the FAA has removed this information, Logan Airport has taken the opposite approach. They are supplying the public with information about security issues to assure the public that security is improving.

- State level information has also been removed. Pennsylvania removed environmental information on issues such as water and air quality, as well as mining operations and soil conditions, from its web site. New Jersey has removed chemical information from its web site, including information on 30,000 private sector facilities that must report on chemical storage, including quantities and types of containers, for about 1,000 to 1,200 different chemicals. Florida is withholding public access to information on crop dusters and certain driver's license information.

- A number of maps have been removed from web sites. For example, the St. Petersburg Times reported, that the National Imagery and Mapping Agency "stopped selling large-scale digital maps to the public through its Web site and turned off the search engine on its Web site that allowed customers to download maps from its archives." Another example, the Office of Pipeline Safety within the Department of Transportation has posted a note to its web site saying that they "have discontinued providing open access to the National Pipeline Mapping System."

2. **Information is being destroyed.**

   On October 12, 2001, the Federal Depository Libraries received a request, on behalf of the U.S. Geological Survey's (USGS) Associate Director for Water, to destroy all copies of a CD-ROM publication: Source area characteristics of large public surface water supplies (19.76:99-248 USGS Open-File Report no. 99-248). This CD-ROM provides information about water sources, such as dams and reservoirs, including maps of their locations.

   The destruction orders, which officially came from the Government Printing Office (GPO), was sent to librarians at 335 federal depository libraries across the country. There have been past requests to recall various information products, but only when the information was incorrect or outdated, never because of a policy decision to keep it secret.

   The GPO action created great concern in the library community. But the concern barometer really jumped when FBI agents visited some Arkansas libraries to verify that the CD-ROMs had been destroyed. They also requested information on who had used the CD-ROMs when they were public information. There have been no other reports of similar FBI visits.

3. **The policies underlying public access are changing.**
   The safety net of public access is the Freedom of Information Act (FOIA). Nonprofits throughout the country rely heavy on FOIA as a vehicle for obtaining information, holding government accountable, and more.

   Attorney General John Ashcroft issued a memorandum on October 12, 2001 urging federal agencies to exercise greater caution in disclosing information requested under FOIA. The memo affirms the Justice Department's commitment to "full compliance with the Freedom of Information Act," but then immediately states it is "equally committed to protecting other fundamental values that are held by our society. Among them are safeguarding our national security, enhancing the effectiveness of our law enforcement agencies, protecting sensitive business information and, not least, preserving personal privacy."

   This new policy supersedes a 1993 memorandum from then-Attorney General Janet Reno that promoted disclosure of government information under FOIA unless it was "reasonably foreseeable that disclosure would be harmful." This standard of "foreseeable harm" is dropped in the Ashcroft memo. Instead, Ashcroft advises, "When you carefully consider FOIA requests and decide to withhold records, in whole or in part, you can be assured that the Department of Justice will defend your decisions unless they lack a sound legal basis..."

Thus, the new message from the Attorney General to the agencies is to, where possible, withhold the information from disclosure. This is a fundamental reversal of past policies that emphasized, where possible, to disclose the information. Other policies are changing. In January, OMB released "data quality" guidelines. These guidelines serve as a potential tool to limit dissemination of government information and to add another layer of bureaucracy that can slow down government rulemakings.

4. **The procedures for using reading rooms has become more restricted.**

   Although public reading rooms are no substitute for the Internet, there are changes being made to procedures for using the reading rooms that limit access. For example, in many agencies, you now need to be "cleared" to enter the building. Additionally, you need an "escort" to take you to the reading room. In some agencies, the escort must stay with you in the reading room and lead you to the bathroom and to the exit when you leave. Information is not in all reading rooms. Some agencies have designated that only selected reading rooms will have certain information, making it increasingly difficult for the public to get the information.

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In This Issue

Welcome to the New Look of the OMB Watch Website and OMB Watcher Online

With this new site, we can host public and private forums, and allow you to give greater feedback about the materials we post. We have also added tools that facilitate your getting more involved in public policy matters by not only sending email to Congress, but state and local elected officials, and local news media.

We are very excited about the new site as it provides many new features and services that our old site could not offer. The site is organized by topic area with a variety of informative and interesting articles in each topic. In order to return to our home page click on the "Home" link near the top of the page or simply click on our logo.

During the next few months, we will be refining the features and adding content, so you may experience some problems - although we hope none will occur. Please let us know your comments, questions, and suggestions regarding the new OMB Watch site by posting a message to the Reactions Forum.

This new site will also enable you to comment about each issue of the OMB Watcher Online. You can try it out by posting a comment about or suggestion for the new format of the Watcher here in the OMB Watcher Online Vol. 3 No. 5 Forum

We will use your comments in shaping both the main site and the OMB Watcher over the next few months.

We created this new site to make it easier for you to get to our information. Our new search engine should enable you to locate information, both quickly and easily. In short order, we will have a search engine that also allows you to find information on other key sites in the public interest community. At the bottom of every article are links to other related topics and documents to make it easier for you to find things.

Conference Announcement

RECLAIMING AMERICA: Progressive Strategy for a New Era APRIL 10-12, Washington DC 2002 is a high-stakes year for American democracy. Campaign for America's Future invites you to join hundreds of citizen and labor activists, policy experts, and progressive political leaders for a national conference on progressive strategy for the new era. For more information visit www.ourfuture.org or call 1-888-748-7010.

Homeland Security vs. HHS is No Choice At All

Just as investments in the nation's public health and emergency medical systems, in the name of homeland security, are good for the country, so, too are investments in non-emergency, non-defense programs that help to meet the needs of the country's struggling communities. Tax cuts should not prevent us from addressing both.

The President's FY 2003 Budget, released February 4, includes $37.7 billion worth of "homeland security" spending. Among the categories specified under this $37.7 billion heading are "Supporting first responders," "Defending against biological terrorism," "Securing our borders," "Sharing information and using information technology," and "Aviation security." The remaining $12.2 billion of the homeland security total is designated as "Other homeland security." GovExec.com reports that White House Office of Homeland Security Director Tom Ridge has said that the nation's homeland security strategy is still being developed and will not be finished until Summer 2002. This means that the FY 2004 budget is likely to include further increases to reflect the "full agenda" for homeland security. This is spending for a cause that most policy makers and the public have given strong support to.

OMB Watch has argued for some time now, however, that to be effective, a national strategy for increased homeland security must go beyond securing the nation's borders, airports, and infectious disease research facilities. The speeches and proposed legislation of the nation's policy makers are too narrowly focused on the defensive measures of security, and not enough on the many preventative measures necessary to ensure that our day-to-day lives are also grounded in security – security in the knowledge that we and our neighbors are not forced to choose between a visit to the doctor's office and a nutritious dinner, or dinner and a warm, safe home in which to sleep at night, or child care and training for a better-paying job. The President's budget boasts a $5.5 billion increase in spending for the Department of Health and Human Services, which works to address minimizing the need for such impossible choices, but the Department's overall increase masks the details of numerous cuts to many of these programs.

In fact, many of the overall increases shown in the FY 2003 proposed budget seem to be made up, in large part, of homeland security increases. According to the calculations of the Senate Budget Committee's Democratic staff, when homeland security spending is extracted, all other domestic discretionary spending actually takes a 6.2% cut.

Specifically, of the total $5.5 billion HHS increase, $1.7 billion goes to the National Institutes of Health (NIH) to "perform fundamental research leading to the development of vaccines, therapeutics, diagnostic tests, and reliable biological agent collection." According to the President's Budget, another $1.2 billion will go to "increase the capacity of state and local health delivery systems to respond to bioterrorism attacks," with $590 million of this total going to hospitals for "infrastructure improvements such as communications systems and decontamination facilities" and $210 million for states to assess their bioterrorism response capacity.

Thus, while increasing funding to protect against health catastrophes brought about by "biological terrorism," the President's budget freezes at FY 2002 levels and even cuts many of the programs that work to ensure the day-to-day health needs of our country's low-income, rural, and uninsured communities are met. Here is a quick look at some of the Health and Human Services programs that will receive cuts or which will receive the same level of funding they received last year. (Remember that, because of inflation, maintaining the same level of funding from year to year actually results in a cut in terms of the purchasing power of the program's dollars.)

Also, as George Krumbhaar, of GalleryWatch's USBudget analyses, notes, a cut (or an increase) in a specific line item of a program does not provide any information as to the total funding changes for the program as a whole -- so please see the Appendix of the President's FY 2003 Budget for other line-by-line spending notes.

Health and Human Services Cuts in President's FY 2003 Budget (in millions of $)

	FY 2002	FY 2003
Rural Health Programs		
Rural Health Policy Development	17	6
Rural Health Outreach Grants	51	38
Rural Health Flexibility Grants	40	25
State Offices of Rural Health	8	4
Rural Access to Emergency Services	13	2
Children and Family Services Programs		
Community services block grants	650	570
Community food and nutrition	7	7
Community services discretionary	39	39
Health Resources and Services		
Maternal and Child Health Block Grant	732	732
Healthy Start	99	99
Healthy Start	6	6
Centers for Disease Control and Prevention		
Chronic disease prevention and Health promotion	753	697
Environmental Health	157	155
Occupational Health & Safety	287	258
Public Health Improvement	150	119

Surely some of the benefits of a fortified public health, emergency medical care, and infectious disease response system will befall those in the communities impacted by the cuts outlined above. And no one would want to be in the position to choose between addressing existing needs and investing to prepare for potential future needs, but we shouldn't be forced to make these tradeoffs. Indeed, we would not have to contend with such stark choices at all if we were to use the monies now tied up in the $1.35 trillion tax cut to pay for these pressing immediate and long-term needs. The President's budget

proposal recognizes the importance of spending money now to invest in research and expansion of the capacity of the nation's health systems to respond to a bioterrorism threat – an investment that will not pay off for some time (and hopefully we will never need to test such readiness), but the budget must reach farther and spend money now to meet the many other pressing needs – in place long before September 11 and only exacerbated by a slowed economy and layoffs -- of the nation's struggling communities.

President Issues Welfare Reauthorization Proposal

The President released his Welfare Reform Agenda last week and with it came much concern from those who are currently working to ensure that changes are made to the 1996 welfare reform law to address the needs of those who are working (currently defined as a success under the 1996 welfare reform law measurement) but are still unable to provide for the basic needs of their families.

Under the President's proposal, the program's work requirement will increase from 50% to 70% by 2007; the plan also increases the minimum number of hours spent at a job or in a program "designed to help achieve independence" to 40 per week; $300 million will be directed to programs that "encourage healthy, stable marriages;" new waiver authority to states that will enable them to fine tune a welfare program to meet local needs. The President's plan continues the 1996 ban on welfare benefits to non-citizens who entered the US after 1996 and creates a 5-year waiting period before documented immigrants become eligible for food stamps.

For a more detailed analysis of the President's proposal and alternatives, see:

- Coalition on Human Needs' "Welfare Reauthorization Policy Recommendations"
- CBPP's "Administration's Tanf Proposals Would Limit -- Not Increase -- State Flexibility"
- NETWORK's "Response to President Bush's Proposal for Welfare Reform"

John Graham Advises EPA to Improve Information Policies

John Graham, administrator of OMB's Office of Information and Regulatory Affairs, today released a "prompt letter" to the Environmental Protection Agency (EPA) urging the agency to take three steps to improve public access to its information. Graham's top priority is to have EPA establish an identification number for each facility reporting information to the agency.

EPA began working to establish such a system in 1995, but those efforts have since fallen behind other priorities. Graham notes that an identification number would make it easier for other governmental entities and the public to use the Toxics Release Inventory (TRI)database in combination with other databases -- a position OMB Watch has long advocated. Coincidentally, EPA's information chief, Kim Nelson, has plans to advance the use of a facility identification system.

Ideally, such an identification system should be put in place across government, allowing the public to call up a particular facility from one location on the web and get most or all the information it reports to the government, including TRI data, any OSHA infractions, SEC data, etc. As it currently stands, no such integrated system exists, making the data much less powerful. Similarly, there is a need for a corporate identification system so that it is known who owns various facilities.

Also part of the prompt letter, Graham advises EPA to adopt a system that would allow facilities to report data electronically at a single entry point -- which would be aided by establishing a single identification system for each facility. Such a system, Graham suggests, would improve data quality, provide a comprehensive data set for use by government and the public, and eliminate duplicative reporting requirements and the associated burden on regulated facilities for making multiple submissions of the same data to EPA.

Finally, Graham advises EPA to find ways to expedite the yearly release of TRI data, which has been slow coming in recent years. Graham suggests that EPA encourage greater use of electronic reporting by respondents in order to reduce transcription and the quality control burden on the agency. Graham notes that the quality control burden should be on the reporting industry -- not on EPA -- though EPA currently shoulders this burden.

Previously, OMB Watch has been critical of Graham's use of prompt letters -- of which five have been issued so far -- questioning whether OIRA, with its limited staff and expertise, should be so aggressively engaged in agenda setting for which the agencies are statutorily charged. Yet we are less concerned in this case -- and not just because we happen to agree with him. Like a previous prompt letter to FDA on trans fatty acid, Graham is highlighting activity that the agency itself has declared important and initiated. While the prompt letter may not be the right tool, EPA should be held accountable for not taking these important steps to improve dissemination to the public.

DOE Forced to Turn Over Energy Task Force Documents

In a ruling that upholds the public's right to access government information, a D.C. federal district court ordered the Department of Energy (DOE) on February 21 to hand over documents to the Natural Resources Defense Council that relate to the workings of Vice President Dick Cheney's energy task force.

NRDC sued the DOE under the Freedom of Information Act (FOIA) after originally asking the agency last April for basic information about its role in Cheney's task force, including details on meetings held at DOE or that the agency participated in. In this press release, NRDC hails the decision and reports that it plans to publicly disseminate "the names of participants, dates of meetings, and the topics discussed."

This victory for the public interest comes just after the General Accounting Office -- the investigative arm of Congress -- filed suit on February 22 against the administration demanding information on participants in White House meetings on energy policy.

As OMB Watch reported previously, Cheney, with the backing of the White House, is refusing to meet GAO's demands for transparency, claiming that he is upholding the right of the White House to receive advice from citizens in private, without those conversations being released to the public. GAO, however, has dropped demands that the White House disclose substantive interactions, requesting instead that it merely list the individuals and affiliated interests it met with as part of the energy task force. Yet the White House has refused this as well.

The White House was recently scolded by judges in two separate cases brought by Judicial Watch, a conservative organization, for this resistance. U.S. District Judge Emmet Sullivan said "I assume the government is stalling" in one case, and U.S. District Judge Paul Friedman accused the administration of "gamesmanship" when it argued for throwing out the other case, as reported by the Associated Press.

The Washington Post recently reported that the White House, undeterred by such criticism, will seek to have the statute empowering GAO declared unconstitutional if it fails in its defense against the GAO lawsuit. This move would sharply curtail the legislative branch's oversight of the executive branch, which is a valuable tool for public access to information -- especially given the extraordinary amount of influence private industry seems to have over Bush White House.

Bush Administration?s E-Government Strategy Released

Vice President Cheney recently (February 27) unveiled the administration's plans to harness the Internet to make government more responsive and accessible, focusing mostly on transactions, such as the filing of taxes, while giving little attention to the dissemination of information.

Billed as one of the president's top five agenda items, this initiative -- as detailed in a report by the president's task force on electronic government (commonly referred to as e-government) -- will focus on four types of interactions with the federal government: citizen transactions, business transactions, intra-governmental transactions, and government (i.e., state or local) to government (i.e., federal) interactions.

Citizen interactions, for example, include such transactions as filing taxes electronically, making online reservations to a national park, finding out if you qualify for student loans, or applying for government benefits online. The e-government task force has promised that citizens should be able to use FirstGov.gov -- the federal government's web portal, which is currently being upgraded -- to find what they are looking for within three clicks of the mouse.

Not surprisingly, this commitment comes as more and more people are using the Internet to interact with government. A recent Hart-Teeter poll found that most Internet users (76%) and over half (51%) of all Americans have now visited a government web site. Moreover, the poll found, Americans have a positive view of e-government, high expectations for what it can accomplish and are increasingly willing to invest their tax dollars in improvements. A previous Hart-Teeter poll in 2001 found that Americans look for government at all levels to become far more accountable to the public as the key result of e-government, the same result found in this year's poll.

To begin the expansion and improvement of e-government, the administration proposes 24 projects that vary across areas of government (some of which won't be operational until 2004 as part of a staggered deployment). Perhaps the most crucial project focuses on privacy and security, and promotes e-authentication to protect online transactions, including, for example, the signing of a document via email with an electronic signature. Recently, Energy Secretary Spencer Abraham became the first-ever Cabinet member to send a digitally-signed document to the president. Yet much work needs to be done before such transactions can take place on a widespread basis between citizens and the government. If the transactional promise of e-government is to be realized, the task force points out, there must first be a clear, reliable method to protect information on individuals and establish identity.

However, while the transactional side of e-government is important -- it has the potential to dramatically save time and resources for all involved -- the task force report fails to effectively promote greater public access to government information -- which in the Hart-Teeter poll the public ranked as a key tool for holding government accountable. For example, the task force does not seek to make government data more useful and accessible. This can easily be accomplished by (1) better identifying and cataloguing information that is available; (2) identifying information that is not available online and taking steps to make it available; (3) ensuring that all online databases are properly searchable; and (4) integrating or linking government databases to allow the public to view data across agencies and program areas.

President Bush's e-government strategy is not the first attempt to promote e-government. In May of 2001, Sen. Joseph Lieberman (D-CT) introduced the "E-Government Act of 2001," supported by OMB Watch, which sets up a framework and a process for moving the executive branch forward to provide better electronic access to government information. The

administration, which has not yet given support to Lieberman's legislation, should work with Lieberman so that a comprehensive vision for e-government can be achieved.

FERC Proposes Changes to Public Access Policies

The Federal Energy Regulatory Commission (FERC) seeks public input on "changes that should be made to its regulations to restrict unfettered general public access to critical energy infrastructure information, but still permit those with a need for the information to obtain it in an efficient manner." The request for public input was published January 16, 2002 by FERC and appeared in the January 23, 2002 Federal Register. Read the press release on FERC's site.

A month after the September 11 terrorist attacks, FERC issued a policy statement removing significant amounts of information from its web site. The policy statement instructed the public to use the Freedom of Information Act for future access. The current "notice of inquiry" is intended to help FERC determine what changes should be made to the October policy statement.

The FERC Notice also instructs companies making filings with the agency on how information that contains critical energy infrastructure information can be treated confidentially until the final decision on the Notice is published.

Public comments are being accepted until March 11, 2002. In a most unusual manner, FERC notes that it has a non-public index that may be helpful to commenters. To view the index, called Overview of Previously Public Documents and Candidates for Critical Energy Infrastructure Information, the public must sign a non-disclosure agreement.

Debate Continues on Nonitemizer Deduction

Why do OMB Watch and the Center for Budget and Policy Priorities worry a proposed charitable tax incentive may not be a good idea? The President's budget proposes deep cuts in domestic programs. To learn more read the full story.

On February 21 OMB Watch and the Center for Budget and Policy Priorities issued a joint letter to the nonprofit community that criticized the $400 per person version of the nonitemizer deduction in recent faith-based compromise legislation (S. 1924, named the "Charity Aid, Recovery and Empowerment" (CARE) Act) as too costly and not generating enough new charitable contributions. The letter emphasized that, in light of last summer's $1.35 trillion tax cut, additional planned tax uts, and proposed cuts in domestic programs, the $400 per person nonitemizer deduction does not make sense. For more, read the full text of the letter.

The CARE Act, co-sponsored by Sens. Rick Santorum (R-PA) and Joe Lieberman (D-CT), is a compromise on the President's controversial faith-based initiative. Independent Sector has endorsed the nonitemizer deduction and issued a letter outlining its support for the nonitemizer deduction provisions.

While OMB Watch continues to support the concept behind the nonitemizer deduction, we believe the design and structure of the current version in the CARE Act would not generate enough new giving to justify the cost to the Treasury. The tax cuts of last year, combined with the recession and effects of September 11, have already greatly reduced the resources available for investment in domestic programs. (Read more on this year's budget situation.) We hope that a full examination of these issues will be made as the Senate bill comes under consideration.

For more information, read this full explanation of our position on the CARE Act's nonitemizer deduction.

Another OMB Watch position letter on the nonitemizer deduction appeared in the *Chronicle of Philanthropy* in the issue dated March 7, 2002.

Graham Pushes Regulatory Priorities in President's Budget

As administrator of the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) -- which has authority to review and possibly reject or amend agency regulatory proposals -- John Graham is pressing agencies to adopt particular analytical methods to assess regulatory costs and benefits that would rig the result and undoubtedly lead to less protective health, safety, and environmental standards.

Graham points to his preferences in the president's recent budget submission to Congress, noting that new formal guidance to agencies on how to conduct monetization is forthcoming: "OMB has committed to update periodically its guidelines for regulatory analysis, which are used when OMB reviews agency rulemakings."

In particular, Graham stresses the importance of "league tables" for setting regulatory priorities. These tables are intended to compare the costs and benefits of one type of regulation, such as auto safety, to another, such as environmental protection. As an example, Graham presents his own league table of rules already on the books, which includes four rules from the Environmental Protection Agency (EPA), four from the Department of Transportation, and two from OSHA. From this table, Graham notes "the tendency for safety rules to be more cost-effective than health rules." For instance, DOT's rule on head impact protection scores well while EPA's NOx SIP Call rule on air quality and OSHA's rule on methylene chloride (to prevent against cancer) do not.

Ideally, according to Graham, league tables should be used to compare programs across agencies at the beginning of the regulatory process for proposed rules (rather than rules that have already been adopted). This "is more useful for synoptic

purposes or for decision making by governmental entities with inter-agency responsibility (e.g., appropriations committees and OMB)," Graham writes. Based on Graham's presentation, this seems to suggest a trimming of agency budgets that deal primarily with health or the environment, such as EPA, and perhaps redistributing the savings to safety agencies, such as DOT, that deliver more "cost-effective" rules. As Graham points out, "The table suggests that we need to do a better job at both refining estimates of the cost-effectiveness of regulatory proposals and setting priorities for the use of the nation's limited resources to protect citizens from health, safety, and environmental risks."

Yet this policy position is a direct result of Graham's analytical choices, which are open to question. In formulating the league table, Graham employs his favored method to monetize the costs and benefits of each rule. As explained in this OMB Watch analysis, the mere process of monetization, regardless of method, inevitably fails to capture crucial benefits. In the case of Graham's league table, the benefit estimates are derived almost exclusively from avoided fatalities. They exclude or devalue other impacts, such as morbidity, effects on ecosystems, and equity considerations. Moreover, even for measures of avoided fatalities, which Graham has included, benefits are greatly understated as a result of Graham's analytical preferences.

Specifically, Graham monetizes benefits by focusing on life-years saved (as opposed to the number of individual lives saved, as commonly practiced), assuming no benefit until the first life-year is saved. From the beginning, then, this method of computing benefits will inevitably bias the system against regulations such as cancer prevention -- which has a long latency period -- that primarily benefit the elderly (who have fewer "life-years" remaining) and people in the future. Yet on top of this, Graham then discounts the value of life-years saved in the future by 5 percent for EPA rules (7 percent for other rules) from the point that the first life-year is expected to be saved. To use an example from Georgetown Law Professor Lisa Heinzerling, a regulation that, on average, prevents fatality at the age of 35 would save 42 life-years assuming a life expectancy of 77 years. Discounting 5 percent from each life-year starting at age 36, the present value of the 42nd life-year saved would be approximately 1/8 of a year.

Not surprisingly, no such discounting is advised on the cost side of the equation to account for inevitable economic growth -- which produces more resources to be spent on regulation over time -- or well-documented adaptive effects, such as technological advances or "learning by doing." As a result, cost estimates frequently prove overblown in the real world. For instance, EPA estimated in 1990 that acid rain controls would cost electrical utilities about $750 per ton of sulfur dioxide emissions; yet the actual cost today is less than $100 per ton, billions of dollars less than what was initially anticipated.

With overblown cost estimates, combined with Graham's approach to discounting and use of life-years, it's hard to see how the government would ever again produce a regulation that primarily is directed against diseases of old age. From these value-laden analytical choices, Graham suggests the emphasis should be on safety regulation, which can save young people today, while we should curtail health and environmental regulation, which do not fare well under his "cost-effectiveness" test.

Yet, the need to pose such a tradeoff remains unclear. Certainly, safety regulations are important (although so far, Graham seems weak even here, as evidenced by his recent rejection of the Department of Transportation's (DOT) tire safety standard). But should this type of regulation preclude other regulations to protect public health and the environment? Graham has previously accused the government of "statistical murder" for failing to pose such tradeoffs, and his promotion of league tables is clearly an attempt to move in that direction. This formulation assumes a fixed national budget for risk reduction, where a dollar spent on Risk A means a dollar less to spend on Risk B. Yet the United States has a $9 trillion economy, of which only a tiny fraction is devoted to risk reduction. Of course, agencies and decision-makers must prioritize activity within fiscal constraints. But frequently the hard tradeoffs posed by Graham -- pitting one life-saving measure against another -- are unnecessary and lead down a path to inaction.

In the end, the effort to monetize benefits and the debate over methodology is just a distraction that masks the true policy choices that must be made. Because of the many assumptions and analytical games that go on to arrive at a dollarized figure -- which only the practitioner can sort out and truly understand -- it would be more useful to decision-makers and more transparent to the public if non-monetary benefits were simply described (quantitatively to the extent feasible) by stating, for example, the expected number of lives saved over a given period of time. As it stands now, numbers are thrown around like rhetorical grenades and no one really knows what they mean.

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House Budget Committee "Balanced" Budget Resolution for FY 2003

The budget resolution that the House Budget Committee marked up and passed by a party line vote (23-18) on March 13, is expected to head to the Floor for debate this week. The budget resolution is not a law, but is a broad outline for spending and tax cuts for FY 2003, which begins on October 1, 2002 and runs through September 31, 2003.

The House budget resolution provides for $2.1 trillion in spending. Predictably, defense appropriation spending gets a dramatic increase of 13+ percent from last year, for a total of $394 billion. (The budget resolution is not named "The **Wartime Budget** to Secure America's Future" for nothing.) The other part of discretionary spending -- non-defense spending -- will be increased by only 1.3 percent from last year, less than the cost of inflation, for a total of $366 billion. Many programs received no increase at all, but are "level-funded." Because the costs of services will not keep up with inflation, this will mean cuts in everything from energy to the environment to social services and child care funding.

The resolution allows for $4.4 billion in tax cuts for FY 2003 and $27.8 billion in tax cuts over the next five years. No reconciliation instructions are included, so these tax cuts are "optional."

The Budget Committee took great pains to pass a (semi-)"balanced" budget, in an attempt to deflect criticism that the Bush tax cut, passed in May 2001, will force the budget into deficit. This "balancing" was only achieved through:

- Using Office of Management and Budget (OMB) baseline figures rather than Congressional Budget Office (CBO) figures, since CBO shows a baseline surplus of only $6 billion while OMB shows a baseline surplus of $41 billion. Virtually the entire difference between the two comes from an OMB assumption that federal revenues under current law will be substantially higher than CBO believes.
- Counting as available over $200 billion in Social Security (off-budget) revenues, and playing down the fact that Social Security Trust Funds will be used to pay for the budget, and not for debt reduction.
- Not really counting the $43 billion economic stimulus package passed in early March, since it results from the September 11 attacks (even though $34.5 billion of that bill paid for tax cuts to businesses and only $8.5 billion went to the unemployment extension).
- Only crafting a five-year budget resolution rather than the usual ten-year, thus avoiding having to talk about future budget deficits.

The bill fails to address needs for more spending, including:

- It allows for only $5 billion each year in FY 2003 and 2004 (but magically up to $350 billion over ten years) for a Medicare prescription drug benefit. There can be no meaningful prescription drug benefit legislated during the next two years, since there is not nearly enough money. There is no indication where the $350 billion ten-year total will be found suddenly after the next two years.
- It does not allow for the cost of what will be a necessary adjustment to the individual alternative minimum tax. For more information, see OMB Watch's AMT Primer.
- It is unlikely that domestic discretionary spending can be appropriated at levels less than those of FY 2002, and it is hardly in the interest of true domestic security that education, research and development, job training,

community revitalization, and other domestic discretionary programs be reduced.

- Small business advocates, a powerful lobby, are upset that a provision to allow them to write off up to $40,000 in office machinery and equipment in one year (instead of the current limit of $24,000), was not included in the Economic Stimulus Package and they, too, will probably be placated.

The Senate Budget Committee will likely mark up its budget resolution this week, but it is not likely to be debated by the full Senate until after Congress returns from its spring recess -- the week of April 8. The real difficulty will be to get House and Senate agreement on a budget resolution -- a feat that many feel will be impossible. If no joint budget resolution is accomplished, the House and Senate can still proceed, but it is likely to be very difficult to get a conference agreement on the appropriations bills, which **is** necessary. In other words, we can anticipate a contentious appropriations season.

States and Local Governments to Lose Funding for Many Programs

A new National Priorities Project report highlights the cuts slated for state and local governments under the President's FY 2003 budget proposal. These cuts will only further complicate matters for the vast majority of states that are already contending with budget crises. For more on the cuts and there state-by-state impact, see the full NPP analysis. The analysis will continue to be updated over the next 2 weeks, and readers are encouraged to check the NPP website if they do not see their program area covered in the analysis and tables.

GAO Report Identifies Flaws in Government Information Policy

The federal government's plan for managing information is inadequate to meet potential challenges of the post-September 11th environment, as well as broad information challenges the government may face as it becomes more electronic, according to a new report from the General Accounting Office -- the investigative arm of Congress.

GAO notes that the recent terrorist attacks "have highlighted information as both an asset and a critical tool, essential to achieving the fundamental purposes of government." For instance, there is an imperative need to protect critical federal systems from computer-based attacks; there is a need for law enforcement officials across different agencies to share information on domestic and international criminals and terrorists; and there is an ongoing need to improve the public health infrastructure that detects disease outbreaks.

In 1980, the Paperwork Reduction Act (PRA) created the Office of Information and Regulatory Affairs (OIRA) -- housed in the Office of Management and Budget (OMB) -- to provide leadership, policy direction, and oversight of government-wide information activities, including collection, dissemination, security and privacy, and management of information technology (IT). To address these responsibilities, OIRA is required to develop and maintain a government-wide plan for information resources management (IRM).

To fulfill this obligation, OIRA designated the 2001-2002 strategic plan developed by the Chief Information Officers (CIO) Council as the government-wide IRM plan. The CIO Council was established by Executive Order 13011 in 1996 as the principal interagency forum for improving agency IRM practices. However, GAO found that the CIO plan is not effective or comprehensive enough to serve as a government-wide IRM plan or to fulfill OIRA's requirements under the PRA.

GAO's report comes on the heels of the release of the Bush administration's E-Government Strategy. This plan mostly ignores ways to increase public access to government information, which the public believes to be crucial for accountability, and the most important goal for e-government, according to a recent poll. See this OMB Watch analysis of the administration's E-Government Strategy.

Data Quality Meetings To Be Held

Data Quality meetings abound in Washington DC this week. The National Academy of Sciences is hosting a public workshop focused on OMB's "Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies" on March 21 and 22. This workshop is being organized by the Ad Hoc Committee on Data Quality under the auspices of the Science, Technology, and Law Program of The National Academies. The registration deadline is Tuesday, March 19 and there is no registration fee. Information on the workshops can be found on this National Academies website.

Under the final OMB data quality guidelines agencies must issue their own implementing guidelines by October 1, 2002. The Environmental Protection Agency (EPA) will conduct an online conference March 19-22 to discuss what its data quality guidelines should be. The EPA also plans to publish its proposed guidelines on May 1, followed by a public hearing on the issue on May 15.

The Data Quality guidelines have become extremely controversial. Some business groups have identified the OMB guidelines as the best thing since passage of the Administrative Procedure Act in the 1940's. They believe the new guidelines present opportunities to challenge regulatory protections. The Center for Regulatory Effectiveness, an organization representing business interests, has, for example, already sent a letter challenging the National Assessment on Global Climate Change on the basis of the OMB guidelines.

State and Local PACs Not Reporting to IRS Could Owe Millions in Penalties

The Internal Revenue Service (IRS) has said that state and local PACs that have failed to register could owe millions in penalties, and they are evaluating how to proceed.

The "Stealth PAC" Act passed by Congress in 2000 was intended to provide disclosure of soft money contributions and spending by political action committees that is not regulated by the Federal Election Campaign Act because they do not expressly support or oppose candidates. The law requires PACS, exempt under Section 527 of the Internal Revenue Code, to register within 24 hours of organizing. They are also now required to file Form 990, an annual information return. The law applies to state and local political action committees as well as those that are focused on federal elections.

But many state and local PACs were unaware the new law applied to them, since they are not involved in federal elections and make financial reports to state agencies. PACs with funds over $25,000 are subject to a penalty of 35% of their total funds if they fail to file. The IRS has said that state and local PACs that have failed to register could owe millions in penalties, and they are evaluating how to proceed. In the meantime, Congress is expected to see renewed efforts to exempt state and local PACs that report to state agencies. Sen. John McCain (R-AZ), sponsor of the original law, has stated he does not think this issue should be dealt with until action is completed on major campaign finance reform legislation he has co-sponsored with Sen. Russell Feingold (D-WI).

ICANN: Barriers to Participation; Nonprofit Domain Constituency Expanded

The Internet Corporation for Assigned Names and Numbers, a private-sector nonprofit constituting one of the major international Internet technical standards organizations, recently adopted a set of measures that increasingly prevents more public accountability to and participation from the Internet community -- including individuals and nonprofit organizations. It also issued its decision regarding nonprofit Internet domain space.

On February 25, 2002, the president of the Internet Corporation for Assigned Names and Numbers (ICANN) issued a proposal to redefine the body's administrative structure away from direct public participation by the Internet user community via at-large elections for board members.

Created in October 1998, ICANN serves as the administrative body for the domain name system and directory of Internet server addresses. In essence, it oversees the very system that determines the identity and location of websites and e-mail addresses, and is involved in setting policy around topics including domain name disputes, root server security, and competition.

The ICANN leadership consists of a 19-member board. This includes the ICANN president, four members of the original interim board, nine representatives from its three support organizations (domain name, address supporting, and protocol), and five at-large board seats. The at-large seats, set to expire in fall 2002, were first filled through a global online election held in October 2000 by the Internet community. There are also several advisory groups and committees and task forces, some consisting of board members. Funding for ICANN operations comes mostly from operators of top-level domains and firms that handle public Internet domain registrations.

As a technical standards body it does not address policy issues around privacy, network security, online content, or business and consumer protections, which are directly addressed by individual governments (including legislative and law enforcement entities) and international bodies. The U.S. government exercises oversight of ICANN activities, most visibly through the Department of Commerce's National Telecommunications and Information Administration (NTIA), the Energy and Commerce Committee of the U.S. House of Representatives, and the Senate Commerce Committee.

The ICANN president's February 2002 proposal called for a reduction of board seats to 15 members. The president would continue to hold a seat, but the three support organizations would be eliminated in favor of representation from a new technical advisory committee and policy councils, which would engage actors representing both the generic (i.e. .aero, .biz, .com, .coop, .info, .museum, .name, .net, .org, .pro) and geographic "country code" (e.g. .ca, .de, .jp, .uk) top-level domains.

Most troubling to ICANN critics, business and public interest groups, and individual users, was the proposal regarding at-large seats: candidates proposed by a special board nominating committee and voted upon by individual governments would fill five at-large seats.

Long-criticized as a slow-moving, under-performing body that has to date been unsuccessful in engaging broad global interest and participation among the Internet community in what are generally perceived as arcane technical details, ICANN was originally organized as a nonprofit private-sector corporation, with a self-imposed mandate to engage Internet stakeholders -- including individual users -- through "private-sector, bottom-up, consensus-based means" to addressing the sometimes arcane technical issues around international Internet operations. In response to uncertainty around the role of public participation among Internet users, the board set up an independent At-Large Study Committee (ALSC).

The president's proposal was defended as a means to address concerns raised in the ALSC's 11/15/02 final report, especially around the potential abuses around the online election mechanisms used to select at-large board members. It was also suggested as a means to generate increased interest and involvement (and possible funding) by government bodies and local country-code domain name operators, both of which currently only function in a limited ad-hoc advisory capacity. This structure, furthermore, was said to not preclude continued Internet community ability to offer suggestions and proposals through public forums and more localized community-driven Internet-focused efforts that have more user activity and support.

Critics counter that it would effectively, however, eliminate the very element of democratic representation and participation upon which the organization itself was founded, for the sake of creating a board with more governmental involvement. There is also concern that more direct involvement by governments will move ICANN into the very policy areas it asserts non-participation at present, without any public accountability.

During its March 14, 2002 meeting in Accra, Ghana, the ICANN board approved a resolution which fails to guarantee that direct elections for even a portion of board seats will continue, out of concern for the current means of online elections with respect to their "fairness, representativeness, validity and affordability ... among an easily captureable pool of self-selected and largely unverifiable voters."

The board, however, did vote for the development of a restructuring committee, made up of current board members, to revisit the ICANN mission, functions, and board structure. Some members of the board state that future elections-- on- or off-line-- while not expressly guaranteed, have not been ruled out of consideration in advance by the committee.

The ICANN board is slated to take up the restructuring committee's recommendations at its June 2002 meeting in Bucharest, Romania. Curiously, the board, however, failed to follow through on an effort to create an independent review committee to monitor and address disputes around ICANN activities.

Nonprofit Domain Constituency Expanded

In a separate development, the ICANN board voted its support for a set of recommendations around the ".org" domain name space.

Internet domain registrar VeriSign has, since 1992, had a nearly exclusive hold on registering domain names that end in .org and .net, which it has agreed to relinquish in order to focus on commercial and individual customers.

Under the terms of a May 2001 deal eventually reached with ICANN and the U.S. Department of Commerce, VeriSign can operate the .net registry until June 2005, the .com registry until 2007, and the .org registry until December 2002. VeriSign would then permanently give up its ability to run the .org registry, but could bid again to run the .net registry. In return, VeriSign would set up a US$5 million endowment for a new nonprofit group to run the .org registry, and a US$200 million sum for 10 years worth of research to find ways to improve the efficiency of Internet registries.

The deal would not make the company exempt from antitrust laws, and it agreed to undergo audits on a regular basis each year to ensure that its domain name registration and name registry functions were kept completely separate. The deal, finalized in May 2001, came under scrutiny by several public interest groups, commercial competitors, and members of Congress, because it was reached without public scrutiny or input.

The January 17, 2002 recommendations of ICANN's Domain Name Supporting Organization Names Council recommended both that .org be kept exclusive for formally recognized nonprofit and public interest groups, but that it also include "noncommercial expression and information exchange, unincorporated cultural, educational and political organizations, and business partnership with non-profits and community groups for social initiatives," and that preference for the future operator of the .org registry to be a widely regarded and supported non-commercial entity.

All ICANN-affiliated registrars, however, would be able to continue to register .org domain names as well. Potential applicants for the .org domain would have to establish and articulate a vision for the .org audience, and how the domain should be marketed to them, such that both registration and broader participation in the governance of the domain are guaranteed. The nonprofit entity, however, would have to establish a "bright-line" between domain name registration and domain registry functions.

Any revenues generated from registrations could be channeled back into activities related to participation by non-commercial registrants in maintenance, administration and governance activities. Current .org domain name holders would have to have their registrations protected during the transfer process away from VeriSign. New registrants would receive a certain measure of protection from disputes by existing nameholders, but existing ICANN domain name dispute resolution policies would apply.

In addition to agreeing to the DNSO Names Council report, the ICANN board voted to move ahead with the formulation of a request for proposals for parties interested in assuming responsibility of the .org registry, though it did not pledge to give exclusive consideration of a nonprofit/non-commercial operator for the .org domain space as called for in the DSNO recommendations.

Graham Grilled on Possible Regulatory Roll Backs

Rep. John Tierney (D-MA) grilled John Graham, administrator of the Office of Information and Regulatory Affairs (OIRA), on whether he is seeking to roll back regulation at the request of affected industry at a March 12 hearing in the House Subcommittee on Regulatory Affairs.

The hearing focused on a report by Graham's office that suggested a host of major health and environmental regulations, including clean air and water standards, need to be revised or repealed. "High priority" rules that appeared on Graham's list were dominated by suggestions from the conservative, industry-funded Mercatus Center, which was represented at the hearing by Susan Dudley. *The Washington City Paper* recently ran a cover story on the Mercatus Center and its corporate contributors.

In response to criticism that this reflects an anti-regulatory bias, Graham has indicated to OMB Watch that he will make clear in seeking comments for his next report on federal regulation (which is an annual requirement directed by Congress) that OIRA is interested in nominations for both "more" and "less" regulation, "as long as the analytic case for overall public welfare is made clear." A draft report is expected to be out for comment in the very near future.

Other witnesses at the hearing included Joan Claybrook (see testimony here), president of Public Citizen, and Georgetown law professor Lisa Heinzerling, who both testified on OIRA's slant against health, safety, and environmental protection, as well as the shortcomings of the cost-benefit estimates presented in Graham's report, which often rely on data that is misleading, outdated, and inaccurate.

For more detail on Graham's actions at OIRA, see this OMB Watch analysis.

Bush Administration to Ease Environmental Laws for Coal Powered Plants

The Bush administration plans to ease off of older coal-fired power plants that have violated clean air standards in favor of "incentives for voluntary reductions in toxic emissions," according to this article in the Washington Post.

This decision will formally alter enforcement efforts initiated by the Clinton Environmental Protection Agency (EPA), which brought dozens of lawsuits after it uncovered hundreds of cases where aging power plants failed to install pollution control equipment during major modifications, a direct violation of the New Source Review (NSR) provision of the Clean Air Act. Instead, the Bush EPA will seek to curtail new lawsuits while pursuing voluntary efforts -- though it is unclear exactly what this means -- as well as new "legislation to force cuts in pollution at plants that don't voluntarily cooperate," according to the Post.

The Justice Department told the Post that ongoing litigation against power plants would continue "but clearly indicated a lack of enthusiasm." Of particular note, two major utilities, Virginia Electric and Power Co. and Cinergy Corp., were on the verge of settling lawsuits when President Bush ordered a review of the lawsuits upon taking office. Yet the resulting review and shift in policy has led the two utilities to back away from a settlement in the hopes of a sweeter deal.

As OMB Watch previously reported, the Bush administration missed its own deadline to make NSR recommendations in August of 2001 and has yet to release its comprehensive package of legislative recommendations.

President Bush's relaxation of New Source Review requirements has serious health implications for many Americans. It is estimated that pollution from old coal-powered plants causes roughly 30,000 premature deaths per year. A recent study (March 5, 2002) by the Journal of the American Medical Association concludes that people living in the most heavily polluted metropolitan areas have a 12 percent increased risk of dying of lung cancer than people in the least polluted areas, conclusively linking long-term exposure to fine particles of air pollution from coal-fired power plants to an increased risk of dying from lung cancer.

Public Still At Risk of Chemical Plant Attack

The Washington Post reported last week that a previously undisclosed study by the Army surgeon general concludes that as many as 2.4 million people are at risk of being killed or injured in a terrorist attack against a U.S. toxic chemical plant in a densely populated area. This shocking number is twice as high as previous government estimates of possible casualties of a worst-case scenario involving terrorist attacks on chemical plants.

This report is similar to one the Department of Justice (DOJ) was supposed to submit to Congress by August 2000 on chemical plants' vulnerabilities to terrorist attacks. Because the DOJ missed that deadline, and in light of the events of the September 11th attacks last year, the Natural Resources Defense Council (NRDC) filed a lawsuit in federal district court charging that DOJ has failed to submit the report to Congress, as required by an amendment to the Clean Air Act. OMB Watch reported on the missed deadline and according to the Washington Post, Bush administration officials have notified Congress that they will not meet an August 5, 2002, deadline for the final report because of inadequate funding.

In a recent letter to the Environmental Protection Agency (EPA) Administrator Christine Todd Whitman, Greenpeace cites the above-mentioned Army study, the late DOJ study, and EPA's inaction to address the threats that chemical plants pose to the public all as reason for grave concern. In light of the evidence of significant threats, Greenpeace urged Whitman to support legislation (S. 1602) that Sen. Jon Corzine (D-NJ) has introduced that would significantly reduce hazards at chemical plants.

EPA Announces Plans to Restrict Access to Envirofacts

On March 14, 2002 the Environmental Protection Agency (EPA) emailed an announcement to Envirofacts users explaining that it will no longer allow direct access to the Envirofacts databases. In the email to Direct Connect Users, EPA stated that, "As part of our continuing efforts to respond to Homeland Security issues . . . starting April 1, 2002, Direct Connect access will no longer be available to the general public. Direct Connect access to Envirofacts will only be available to U.S. EPA employees, U.S. EPA Contractors, the Military, Federal Government, and State Agency employees."

However, even on this short list of approved users there is a clear shift from "right-to-know" to "need-to-know." On the new registration form all applicants are required to explain the reason they need direct access to Envirofacts. Additionally all State Agency employees and EPA Contactors must obtain "sponsorship" from a US EPA manager (branch chief or higher).

Limited and less flexible access to Envirofacts databases will continue to be available to the public via the Envirofacts website. EPA created the Envirofacts Warehouse to provide the public with direct access to the wealth of information contained in its databases. An explanation of the new Direct Connect access policy can be found on EPA's website.

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IRS Allows Charitable Contribution Receipts by E-Mail

In a revision of Publication 1771, "Charitable Contributions -- Substantiation and Disclosure Requirements," the IRS has confirmed that a charity can provide acknowledgement of a contribution electronically. For contributions of $250 or more, a written receipt must also be sent.

The full text of Publication 1771 is available online, in Adobe Acrobat format on the IRS website.

NPTalk 2002 Reader Survey

On NPTalk's third anniversary, we invite you to participate in the following online survey. It'll help us to make NPTalk more useful to you over the course of the next 3 years and beyond.

NPTalk was launched in March 1999 as a simple list to disseminate occasional information around the role of technology in nonprofit policy and advocacy work. It quickly grew into a daily forum on nonprofit technology and advocacy-related items, covering a broad range of topics, highlighting a growing number of nonprofit resources, and sharing strategies to help improve nonprofit thinking and use around technology in public policy participation, with an average daily readership of 1,000 organizations in the U.S. and abroad.

Our third anniversary provides a great opportunity to assess both our track record and our future direction, as we work to improve the range of services we can offer. To that end, we are conducting our first ever NPTalk reader survey throughout the month of April. Your input is crucial, so please take a moment to participate.

NPTalk Reader Survey

Resolutions Not Worth Keeping

The FY 2003 Congressional budget plan is probably not going to be a resolution worth keeping.

In the last OMB Watcher, we reported that the House Budget Committee had approved a budget resolution on March 13. The full House passed the resolution on March 20. The House plan was billed as a "balanced" budget -- by using the more generous OMB budget assumptions (instead of the more conservative Congressional Budget Office numbers) and by not counting the cost of the so-called economic stimulus package. To balance the budget, in spite of the huge increases in defense and "homeland defense" and even more tax cuts, will require cutting domestic spending (almost everything the government does, except for defense and entitlement programs like Social Security). Excluding the increases in "homeland security," cuts to other domestic discretionary programs will be in the $17 billion range for next year and more than $82 billion over five years, according to the Center on Budget and Policy Priorities (CBPP).

The Senate Budget Committee budget resolution is only a little improved in terms of allowing for adequate domestic investment. Under the Senate plan, there would be slightly more money for education and other social programs during the next few years, but in the long term there would still be substantial cuts in domestic discretionary spending over the next decade. The Senate plan also requires a review of defense needs after 2004, rather than the House plan's blanket approval of a $10 billion "defense reserve fund."

There is one big difference.

The House resolution would make permanent the huge tax cut passed in the spring, which is due to end in 2011. The Senate resolution does not. It requires next year's Congress to come up with a plan to cut spending (even more) or raise taxes to insure that the Social Security surplus is only used for debt reduction. Unfortunately, the Senate failed to use the opportunity presented by the budget resolution process to go on the affirmative, and call for postponing the phasing in of the tax cut. Stopping the tax cut right now, when middle income Americans have already gotten almost all of their benefits from it, would save $600 billion in the next decade, according to the Center on Budget and Policy Priorities.

Stopping the tax cut, or at least postponing it, would allow us to meet the new challenges brought on by September 11, **without** cutting resources for the domestic investment that is fundamental to our domestic security and economic vitality. Providing kids with a good education, giving adults the job training and supports necessary to succeed on their own, undertaking important research and development, protecting the environment, improving transportation and water and sewer systems, strengthening the social safety net -- there are a myriad of important "investments" that will give us a return in the future, prevent the more expensive problems that will certainly result if we fail to take care of needs now, and allow us to meet the challenges of an aging population.

A resolution worth keeping would be to stop, or at least postpone the tax cut. No fingers need to be pointed. The budget picture changed after September 11 and the economic downturn. We can't afford the tax cut right now, without huge and harmful reductions in domestic spending. As E.J. Dionne, Jr., writes in his Washington Post op-ed of March 26, 2002, it is time to "challenge the conventional wisdom on taxes" so we can accomplish the things that we all agree are worth doing. The Senate is still stuck on "saving" the Social Security surplus for debt reduction. What they don't say is that "saving" the Social Security surplus is a purely rhetorical device that has little to do with saving Social Security and will be at the cost of the investments that benefit all Americans see this OMB Watch analysis for more details. Resolving to postpone the tax cut is the right thing to do.

Using Social Security's Surplus for Current Needs

Policy adjustments to Social Security – and not locking these surplus funds away – are the key to "saving" Social Security.

Senate Budget Committee Chairman Kent Conrad (D-ND), in commenting on the current federal budget debate, observed that, "the real test for this Congress is whether or not we're going to face up to our long-term challenges." The Chairman is absolutely right in directing the country to examine the long-term impact of its policy makers' budget decisions. Before we can be prepared to deal with our long-term domestic challenges, however, we must correctly identify just what these challenges are.

Though our domestic policy makers are caught up in a struggle to lob at one another accusations of "destroying" Social Security, while working quickly to illustrate why their own plan will "save" it, neither side is doing nearly as much as it says it is to "save" Social Security … and neither is doing quite so much to ruin it. Saving, or, for that matter, bankrupting, Social Security has little to do with how we spend its massive surpluses over the next 15 years. The reason, put most simply, is that those surpluses are so large that the government cannot let them idle, while it waits for more of the country to retire and begin drawing on this social insurance policy. Policy adjustments to Social Security – and not locking these surplus funds away – are the key to "saving" Social Security.

Thus, given the current situations on our domestic, international, social and economic fronts, we must rethink our current strategies and realize that the Social Security surplus is not – and should not be considered to be – untouchable. Social Security funds must be spent on something – debt reduction, tax cuts, or programs for the current and future well-being of the country. Paying down our national debt reduces the amount of money we have to pay each year in interest costs, which frees up money from general revenues to pay for increased Social Security withdrawals and future domestic needs. In the meantime, it does nothing to begin addressing those current domestic needs. Tax cuts do nothing to directly lower our interest payments or to reduce our total national debt. They lower revenue, and thus limit our ability to address urgent domestic problems, all while providing very little – if any – help to the nation's productivity or to increase the ability and number of workers to enter higher paying jobs. Only the third choice – investing now (to avoid paying even more later) to repair crumbling schools and roads, build a comprehensive public health system, provide job training to open up better paying and more gratifying job opportunities to low-wage workers, and provide health care to the millions of uninsured and underinsured Americans – offers a real return on this Social Security surplus money.

As Conrad noted, we must focus clearly on our country's "long-term challenges." Unquestionably, these include ensuring Social Security remains the effective, protective safety net that it has been for the last 65 years. But, with so many additional pressing problems, the country cannot afford to hold to an arbitrary assignment of excess Social Security

revenues to the sole purpose of debt reduction. In the current political environment, in which there is no common voice pushing for a freezing of the President's $1.35 trillion tax cut to free up needed funds, it is time to reopen the debate about using Social Security's excess funds to address current needs – doing so will not harm Social Security and it will likely put the country in a stronger position 35 years from now to address the problems we will face then.

For a more complete comparison of the three options currently available for the Social Security surplus, please see the full version of this analysis.

Trustees Issue 2002 Annual Report on the State of Social Security

Last week, the Social Security Board of Trustees issued its 2002 Annual Report on the status of Social Security's finances, in which it extended its estimates of the number of years before Social Security's surpluses will reach certain key milemarkers.

Specifically, it extended:

- By one year (from 2016 to 2017), the year by which revenue from payroll taxes of current workers will no longer be sufficient to pay for retirees' benefits. At this point, Social Security will begin using the interest it earns each year from the government bonds it owns to make up the difference.
- By two years (from 2025 to 2027), the year by which payments to beneficiaries will exceed incoming payroll tax revenue and interest payments. At this point, Social Security will begin drawing on its massive surpluses it's been building for this very reason to continue to provide full benefits to all retirees.
- By 3 years (from 2038 to 2041), the year by which Social Security's surpluses will have been used entirely. At this point, without any changes to the current system, incoming payroll taxes will be sufficient on their own to pay for 73% of currently scheduled benefits for all retirees. (For a look at how 73% of scheduled Social Security benefits stacks up against current benefits, see the table below.)

Social Security Benefits Payable to Average Wage Earner – With No Changes to Tax or Benefits Structure (In Current 2002 Dollars)

Year of Retirement	Scheduled Benefit	Payable Benefit	Percent of 2002 Benefit
2002	14,357	14,357	100.0
2005	14,357	14,357	106.1
2010	15,618	15,618	115.5
2015	16,406	16,406	121.3
2020	17,278	17,278	127.7
2025	18,180	18,180	134.4
2030	19,159	19,159	141.6
2035	20,218	20,218	148.8
2040	21,361	21,361	157.9
2045	22,571	16,477	121.8
2050	23,834	17,399	128.6
2055	25,135	18,348	135.6
2060	26,494	19,341	143.0
2065	27,927	20,387	150.7
2070	29,444	21,494	158.9
2075	31,049	22,666	167.6
2080	32,739	23,899	176.7

(Assumes Retirement at Normal Age)
Source: Social Security Trustees Report 2002, Table VI.E11 and author's calculations, based on chart and calculations from Social Security Trustees Report 2000 in "Social Security Myth #2184 – There Won't Be Anything Left for Me,", Dean Baker, CEPR, February 20, 2001.

This is not the first time these so-called exhaustion dates have been extended, and analysts such as the Economic Policy Institute's Christian Weller and the Center for Economic and Policy Research's Dean Baker and Mark Weisbrot point out that even these postponed exhaustion dates are based on extremely conservative, even pessimistic economic growth projections. For additional perspective on just how sound Social Security really is, see this related article, and a recent Center on Budget and Policy Priorities' comparison of the size of the projected Social Security shortfall and last year's tax cut.

$50 Billion Per Year is Not Pocket Change

As reported in the *Washington Post* on March 25, advocates of estate tax repeal have redirected their efforts to state legislatures, pressuring them to "update" their estate tax laws to reflect the changes implemented in last June's $1.35 trillion tax cut.

With a 10-year cost to the federal government of $138 billion, the phase out and one-year full repeal of the federal estate tax makes up the third largest component of last year's massive tax cut. At the time the tax cut was passed, many people pointed out that the true costs of the repeal provisions were disguised by the limited 1-year duration of full repeal, and that the Federal government would actually lose at least $50 billion for each year full repeal remained. Another less well-known cost-cutting gimmick used to cram the costly estate tax repeal into an overloaded tax cut package was the early phase-out of the credit for state estate taxes.

In 37 states and the District of Columbia a portion of the federal estate tax paid by estates located in those states goes to the state's general revenue fund. According to a Center on Budget and Policy Priorities (CBPP) January 2002 analysis, in 2001, this "pick-up" tax brought in nearly $5 billion in revenue, an average of 1.3% of the states' general revenue funds. In another 12 states, which levy their own estate (or inheritance) taxes, $662 million was generated. The same CBPP report shows that, as a result of the rapid phase-out of the states' "pick-up" tax measures, as well as the phase-out and full repeal of the federal estate tax, 49 states and the District of Columbia stand to lose an estimated $6.5 billion in FY 2003. This loss represents a substantial chunk of state revenue shortfalls, which are projected to total almost $50 billion for all states in FY 2002 and are expected to continue through FY 2003. The recently enacted economic stimulus legislation will further exacerbate budget shortfalls by reducing corporate income tax revenue (most states also collect their corporate taxes based on those the federal government collects) and by not providing federal assistance to state budgets.

A February 2002 report from the National Council of State Legislatures (NCSL) indicates that at least 30 states have implemented budget cuts to help balance their budgets -- a state requirement in 49 states. The NCSL report emphasizes that the "magnitude of budget gaps has been significant enough that even programs that often are spared from cuts, such as K-12 education, have been reduced in some states." Other examples of the impact of these revenue declines include cuts to job training and child care programs, the cancellation of capital projects including badly needed improvements and modernizations for overcrowded schools, state hiring freezes, and increases in state employee health care plans. Though some analysts are saying that the national economy appears to be out of the thick of the recession, many are predicting that state budgets will continue to suffer as their local economies are slower to recover.

State revenue shortfalls and the resulting enacted and anticipated spending cuts make recent campaigns by estate tax repeal advocates all the more troubling. In Washington State, for example, Seattle Times publisher Frank Blethen led others in advocating that the state legislature drop its pickup tax. In a February 11 editorial piece in the paper that was simultaneously covering the deficit-ridden state budget woes, the Seattle Times argued that Washington State should shrink its estate tax "unless this state wants to be known for hoisting a flag hostile to family-owned business." Washington's legislature and those of at least 8 other states and DC rightly decided that they could not afford to grant the estimated 2% of their wealthiest residents with taxable estates this costly tax break. Instead, they will make the changes in their state laws to enable them to levy an estate tax, just as they have for more than 75 years, even as the federal estate tax repeal provisions diminish their revenue. But, as the Washington Post reported, "supporters of the [estate] tax cut have vowed to begin a state-by-state battle to repeal the estate tax in as many places as possible."

Congress should not have passed a tax cut it could only fit into last year's budget resolution at the expense of state budgets and services. With so many pressing health care, homeland security, infrastructure and education needs at the federal, state and local levels, Congress and the President should reconsider this costly and unfair tax cut and relieve some of the pressure on state governments. Until that happens, however, state legislatures and governors must hold strong against the self-described "powerful [estate tax repeal] lobby," for $50 billion each year in lost federal revenue -- and $7 billion in state revenue -- is certainly not pocket change.

Recent Activity on Faith-Based Charity Legislation

A review of recent activity on faith-based charity and charitable giving legislation.

Effectiveness Report Released

A report released by the University of Pennsylvania's Center for Research on Religion and Urban Civil Society has found no proof that religious social service programs are more effective than secular ones. The report, which was based on 25 other studies on the subject, did not find fault with faith-based programs, but found no evidence of their much-touted increased effectiveness, and called for more research on the subject.

Meanwhile, the Rockefeller Institute's Roundtable on Religion and Social Service Policy has begun a national study of faith-based social services. The study will focus on the efficacy of faith-based organizations, as well as the future of faith-based social service.

Charitable Contribution Bill Markup

Senate Finance Committee Chairman Max Baucus (D-MT) has said that his committee could mark up a bill expanding tax incentives for charitable giving after the Senate returns from the spring recess. It is not known if the bill marked up will be the Santorum-Lieberman compromise faith-based charity bill (The CARE Act (S. 1924)), or if different legislation preferred by Baucus will be used, or if a compromise between the two will be offered. It is unlikely, however, that any Senate legislation will contain the most controversial "charitable choice" elements of H.R. 7, the faith-based charity bill that passed the House last year.

Non-Itemizer Deduction Still In Doubt

The fate of the tax proposal that allows those who do not itemize on taxes to take a deduction for charitable contributions is still uncertain. It is known that key staff members to Baucus and Sen. Charles Grassley (R-IA), the ranking member of

the Finance Committee, do not support the non-itemizer in the CARE Act because of its cost in lost federal revenue and/or its uncertainty in generating much new charitable giving.

On March 13, 2002, the research arm of Congress, the Congressional Research Service (CRS), released an analysis of legislative proposals to deduct charitable contributions for those who do not itemize their taxes. Based on the economic effect of the deduction, they conclude that, "the impact of the proposed deduction on charitable giving is likely to be relatively small." In fact, CRS claims that for every dollar in lost federal revenue, there will be only 12 cents in new charitable giving and only 6 cents of that will be for activities outside of religious sacramental services. For details, see this OMB Watch report.

This was followed by a March 18 Joint Committee on Taxation (JCT) report, "Description of Revenue Provisions Contained in the President's Fiscal Year 2003 Budget Proposal," which provided a review of the President's plan for the non-itemizer deduction. JCT described arguments for and against the proposal and concludes on page 11, "The proposal adds complexity to the tax law." JCT points out there would be additional record keeping to substantiate a contribution was made to a qualified charity.

JCT adds: "In addition, the proposal, like any other 'non-itemizer' deduction, would undermine the purpose of the standard deduction, which exists in part to relieve taxpayers with small deductions from the burdens of itemization and substantiation. One motivation behind the substantial increase in the standard deduction in the Tax Reform Act of 1986 was that '[t]axpayers who will use the standard deduction rather than itemize their deductions will be freed from much of the record keeping, paperwork, and computations that were required under prior law.'" (Quoting from JCS-10-87, May 4, 1987, page 11)

On March 21, the Center on Budget and Policy Priorities published a report on the non-itemizer deduction that echoed the concerns raised by CRS and JCT. Regarding the proposal in the CARE Act, they conclude that the tax break is "a cost that is difficult to justify given the deterioration in the long-term budget outlook."

Rep. Scott Sends Letter, Rep. Watts Campaigns

Rep. J.C. Watts (R-OK), a strong proponent of H.R. 7, went on the offensive in Connecticut, the home state of Sen. Joseph Lieberman (D-CT), who is one of the lead supporters of the Senate's faith-based charity bill. The Senate's CARE Act contains many of the same provisions of H.R. 7, but does not contain the highly controversial "charitable choice" provision that allows religious congregations to compete for government grants for social service work. Watts said that the "armies of compassion are waiting for the Senate to follow the House's lead and pass a solid faith-based bill" and also called for the Senate to bring its legislation to a conference with the House after passage. A conference on the legislation would "reopen old wounds" according to a Lieberman spokesman, and might prevent either piece of legislation from becoming law.

Meanwhile, Reps. Barney Frank (D-MA), Bobby Scott (D-VA) and Chet Edwards (D-TX) sent a letter to all 100 Senators, suggesting ways to pattern non-discrimination language for the CARE Act along the lines of AmeriCorps and Senior Corps. The bill currently allows faith-based groups working with federal funds to discriminate in hiring by allowing them to only hire members of their own faith.

House Committee Revises Stealth PAC Law

State and Local PACs May Get Exemption From Reporting.

The "Stealth PAC" Act passed by Congress in 2000 was intended to provide disclosure of soft money contributions and spending that is not regulated by the Federal Election Campaign Act because the activities funded do not expressly support or oppose candidates. But since the act became law, state and local PACs have lobbied for an exemption, claiming the requirements duplicate reports they must file with state election commissions. On March 28 they made progress toward that goal, getting an exemption included in H.R. 3991, the “Protection and IRS Accountability Act of 2002.” Most of the act is aimed at Internal Revenue Service (IRS) reforms, but it also eliminates requirements for political action committees, exempt under IRC Section 527, to file notification reports for state and local candidates that file with state or local election commissions. The bill will now be considered in the Senate.

Many state and local PACs were unaware of the requirements, assuming the rules only applied to federal elections. If the law is enforced as written, some campaigns could face steep fines. See this OMB Watch analysis for details. It is not clear what action the IRS will take if the reporting requirement is eliminated.

Bush Administration Weakens Medical Privacy Rules

In a move hailed by the health care industry, the Bush administration announced on March 27 that it would roll back medical privacy standards put in place at the end of the Clinton administration.

Specifically, the administration plans to revoke a requirement that patients give written permission before their medical records can be disclosed to doctors, hospitals, pharmacies, and insurance companies -- safeguards seen by many, including the Health Privacy Project, as the core of the Clinton privacy rules. Under the new plan, medical providers may use patients' records as long as they inform patients of their privacy rights and request written acknowledgement from them, even after the records have been used. As the Washington Post points out, the key change in this policy is that control of the records is shifted from the patient to the provider.

Tommy Thompson, secretary of the Department of Health and Human Services (HHS), announced the proposal in a press release on March 21, 2002, arguing that the changes would ensure privacy while improving access to care.

The new proposal would also allow parents to have access to medical records of their children, such as information about mental health, abortion, and treatment for drug and alcohol abuse -- which privacy advocates argue will prohibit some teens from seeking medical treatment in those sensitive areas. According to the New York Times, the Bush administration

proposal makes it clear that state law governs disclosures to parents.

Some parts of the original Clinton standards -- which were initially suspended by the administration -- are retained in the Bush proposal. In particular, patients will have the right to inspect their own medical records and possibly offer corrections.

GAO Report Examines Effect of White House Memo Halting Regulations

Fifteen rules that were scheduled to go into effect at the beginning of the Bush administration but were delayed by a White House memo have still not gone into effect, according to a recent report by the General Accounting Office (GAO) -- the investigative arm of Congress.

On President Bush's first day in office, January 20, 2001, White House Chief of Staff Andrew Card issued a memo directing all federal agencies to halt publication of new rules, completed at the very end of the Clinton administration, in the Federal Register. GAO determined that potentially 371 rules were subject to the memo, but only 90 were blocked on this basis.

Of these 90 rules, more than half were from the Department of Health and Human Services, the Department of Transportation, the Department of Agriculture, and the Environmental Protection Agency, and 65 of the 90 were determined by those agencies to be "significant or substantive" in nature. Yet according to GAO, "The agencies generally did not provide the public with a prior opportunity to comment on the delays in effective dates or rule changes, frequently indicating that notice and comment procedures were either not applicable, impracticable, or were contrary to the public interest."

By January 20, 2002 (one year after the memo), GAO determined that 75 of the 90 delayed rules had gone into effect. Of these, GAO identified three rules that had been withdrawn and replaced with new rules -- including an HHS rule on "protection of human research subjects" -- and nine rules that had been altered in some way but not withdrawn. The remaining 15 rules that have not taken effect include some potentially significant actions, such as:

- A Forest Service rule protecting national forests from new road building;
- A Department of Energy rule setting higher energy conservation standards for air conditioners and heat pumps;
- A rule from the Federal Aviation Administration restricting flights over Grand Canyon National Park; and
- A rule from the Mine Safety and Health Administration to protect miners from diesel particulate matter exposure.

A number of these rules were also identified as a "high priority" for review in a report from the Office of Management and Budget. Read more about that report.

In a number of cases, GAO points out that agencies have indicated they intend to change or withdraw a rule that has been allowed to take effect. This includes, for instance, a rule from the Department of the Interior placing restrictions on snowmobiling in Yellowstone and Grand Teton National Parks, as well as a rule from the Bureau of Land Management on "onshore oil and gas operations."

Clean Air Standards Upheld, Again

The Environmental Protection Agency (EPA) can finally move forward with its 1997 clean air standards for smog (ozone) and soot (particulate matter) following a ruling in its favor from the U.S. Court of Appeals for the D.C. Circuit on March 26 -- marking "a victory for breathers," according to Frank O'Donnell of the Clean Air Trust.

The ruling clears up the remaining legal issues over EPA's action that were left unresolved by the Supreme Court -- which earlier this year unanimously reversed a decision by a lower court to strike down the standards. Specifically, the D.C. Circuit found that EPA had not overstepped its legal authority, and that the standards were not arbitrary or capricious.

The decision comes amid mounting evidence of the dangers of fine particulates in the air (which frequently originate from vehicle engines, power plants, or wood fires) and ozone pollution. A study released earlier this month from the Journal of the American Medical Association found that long-term exposure to fine particulates significantly increases the risk of lung cancer. Other studies have shown that ozone exposure not only aggravates childhood asthma, but can also cause it. Now it is up to EPA to enforce the standards so that we will be protected from this damaging pollution in reality and not just legally in the courtroom.

As the Washington Post editorializes, President Bush could help by stopping efforts within his administration to weaken enforcement actions against heavy-polluting, older coal-fired power plants.

FERC Update

On March 25, the Federal Energy Regulatory Commission (FERC) stopped accepting comments on its ideas for limiting public access to "critical energy infrastructure information" (CEII). FERC first released an initial policy statement addressing this issue in October 2000, and followed it up with a January 16 Notice of Inquiry (NOI) in the *Federal Register*. The Notice of Inquiry sought public input on possible regulatory changes that would allow the agency to restrict unfettered general public access to CEII, but still permit those with a "need-to-know access to such information. The FERC Notice also indicated that until the agency takes final action on this issue, companies could self-identify CEII information that the agency will keep confidential.

The Notice also referenced a non-public index, entitled Overview of Previously Public Documents and Candidates for Critical Energy Infrastructure Information, that described the documents likely to be covered by this rule change. To view the appendix the public had to sign a non-disclosure agreement and any comments submitted with reference to the appendix would be considered confidential. According to FERC's docket records, 40 people signed agreements of non-disclosure in order to read the non-public appendix, the majority of which were power company and industry representatives.

According to FERC's docket, 49 comments were submitted on the Notice of Inquiry on behalf of 59 entities (some comments were on behalf of multiple organizations). Power companies and their associations dominated the process, submitting 29 comments, of which 5 were non-public because of signing the non-disclosure agreement. (Edison Electric Institute and Mid American Energy Company each submitted a non-public and a public comment; the other three were mixed with portions of their comments being public). The docket also revealed that government offices and agencies, primarily utility commissions, also had a fair level of participation with 7 comments. Only 6 public interest organizations, including OMB Watch, made comments. Additionally, a handful of non-power companies and private citizens submitted comments in this process.

While a majority of the comments, due primarily to the predominance of industry comments, were supportive of FERC's efforts, there were numerous commenters that either completely objected to FERC's actions or at least raised serious concerns. American Superconductor Corporation, for example, advocates possibly increasing information dissemination, noting, "efforts to suppress this information will not make the system stronger, or less vulnerable." The company states, "the grid must have much greater flexibility, capacity and "intelligence,'" and that "one useful approach is to publish more information about the state of the grid."

In its comments, the Utilities Commission for New Smyrna Beach, Florida raises its "significant reservations concerning the practicality, efficacy and legality" of FERC's proposals. New Smyrna concludes that CEII information is "already so broadly disseminated that restrictions of the type proposed in the NOI would be unlikely to provide significant additional security to U.S. energy infrastructure."

Indeed even PJM Interconnection, a company responsible for the operation and control of the bulk electric power system throughout major portions of five Mid-Atlantic states and the District of Columbia, urges FERC to only restrict disclosure "when it would increase the threat materially."

View the Docket of comments online.

Whitehouse Memo Orders Review of Information Procedures

On March 19, a little over six months after the terrorist attacks of September 11, the White House took action to "safeguard information" in the name of homeland security. The White House released two memos providing steps agencies should take to protect government information from being used by terrorists.

The memos are striking in two ways. First, it is surprising how little guidance the memos provide to agencies. For example, there is no information to help agencies in determining what information should be restored to web sites or what steps agencies should take in developing criteria to use in determining what information should be restored or restricted. There is no discussion of involving the public to help sort through the balancing between public access and security that might be needed.

Second, the memos are very troubling in their reach. The White House talks of "sensitive documents" without defining what the term "sensitive" means. One of the memos encourages agencies to review "sensitive but unclassified" information for the "need to protect such sensitive information from inappropriate disclosure..." While the memo calls for a balancing with the benefits "that result from the open and efficient exchange of scientific, technical, and like information," it places a heavy emphasis on nondisclosure. In fact, it provides rudimentary arguments for using the Freedom of Information Act (FOIA) as a means for exempting such information from public disclosure.

The first memo, from White House Chief of Staff, Andrew Card, was sent to the heads of all federal departments and agencies ordering them to undergo "an immediate reexamination" of current measures for identifying and protecting information on weapons of mass destruction. The Card memo goes on to broaden the focus beyond just information on weapons of mass destruction to also include "other information that could be misused to harm the security of our nation and the safety of our people." However, this categorization of "information that could be misused to harm" is so broad and general that an enormous amount of information that is significantly beneficial to the public would be included. Agencies and departments have 90 days to conduct this review and report to the Office of Homeland Security.

The second memo was from Laura Kimberly, Richard Huff, and Dan Metcalf, the Acting Director of the Information Security Oversight Office at the National Archives and Records Administration and the Co-Directors of the Justice Department's Office of Information and Privacy, respectively. The second memo provides guidance, prepared at Card's request, for this effort.

The vague guidance urges each agency to look at its classified, reclassified and declassified information, but also creates a new category, called "sensitive but unclassified." The guidance states that the decision to withhold information from the public "should be carefully considered, on a case-by-case basis," and that agencies should refer to the new October 12, 2001 policies established by Attorney General John Ashcroft regarding implementation of the Freedom of Information Act. The guidance also indicates that the government may consider information filed voluntarily by companies to be protected from the Freedom of Information Act under the existing trade secrets and confidential business information exemption.

These memos, by themselves, do not demonstrate an erosion of public access. But they are part a larger mosaic that represents a huge shift from policies premised on the belief that the public has a right-to-know to one based on need-to-know. Increasingly agencies are requiring the public to justify how they would use the information in order to determine whether public access should be granted. From our perspective, this trend is very disturbing.

The full text of the memos is available online.

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In This Issue

Watch Out For The Super-Waiver

The new "super-waiver" legislation proposed in the House is dangerously broad and should be opposed by all nonprofits concerned with social justice.

A legislative provision with far-reaching effects that should be of concern to all nonprofits has been included in the TANF welfare reauthorization bill that will be marked up this week in the House. This "super-waiver" legislation has been introduced by Reps. Wally Herger (R-CA) and Buck McKeon (R-CA) as part of the TANF reauthorization bill (at page 88 of H.R. 4090, The Personal Responsibility, Work and Family Promotion Act of 2002) that will be marked up in the House in two subcommittees (Ways and Means Committee and Committee on Education and the Workforce) on Wednesday (April 17) and Thursday (April 18).

What is a "super-waiver?" This "super-waiver" legislation would allow the Secretaries of Health and Human Services and Labor (Herger bill), and Education (H.R. 4092, the McKeon bill) to approve requests by states to waive federal statutory and regulatory requirements, with hardly any restrictions, applicable to ANY program under those Departments in order for the states to conduct "demonstration projects." (Medicaid is exempt, however.) States have only to show that the waiver "has a reasonable likelihood of achieving the objectives of the program or programs involved" and that the waiver request is neutral in cost. If the appropriate Secretary does not act upon a state request within 90 days, it is presumed approved and can go forward. Waivers can last for up to five years and can be renewed.

The purpose is to allow states the local flexibility to design and run programs without being bound by federal statutes and regulations. Giving states the ability to design programs that are tailored to their particular circumstances is an idea supported by many people -- the problem is that this super-waiver legislation is much too broad. For example, the waiver provision for demonstration projects under TANF had prevented waivers of federal worker protection or minimum wage laws, and was specifically geared towards program improvement and innovation. In many cases, this resulted in useful state demonstration projects. The new proposed super-waiver legislation, however, is rife with problems. Without substantial modification and restrictions, it should be opposed by all nonprofits concerned with social justice and human needs.

The state waiver request could be used to transfer money from Head Start to another program, even programs not under the jurisdiction of the three departments. It could be used to create new block grants diminishing targeted services. It could be used to change eligibility requirements for programs (e.g., shift participation from 150% of poverty line to 100%) to save money or demonstrate improved performance. It could be used to waive various requirements imposed on a program, such as the requirement to do an environmental impact statement when constructing a school or various civil rights protections or insuring prevailing wages are paid under Davis-Bacon. It could be used to implement various initiatives not approved by Congress, such as expansion of charitable choice. Because the bill is written so broadly, the waiver requests could be used for just about anything.

Is passage of super-waiver legislation likely? This legislation would wrest considerable power away from Congress, moving programmatic and funding decisions from congressional appropriations and authorizing committees to the Executive Branch. While it should be expected that the President would support such additional powers, it is surprising that Congress would consider such delegations, particularly to waive any statutory requirements. Nevertheless, it will likely happen unless there is strong opposition raised by nonprofits. Moreover, the super-waiver might be extended to programs in other departments. In his April 2 speech announcing his new early childhood education initiative, President Bush expressed support for expanding the super-waiver ability to the Departments of Agriculture (USDA) and Housing and Urban Development (HUD).

Is this new legislation? Not really. In 1996, Congress came very close to passing similar legislation, the "Local Empowerment and Flexibility Act" (H.R. 2086), sponsored by Rep. Chris Shays (R-CT) in the House and by Sen. Mark

Hatfield (R-OR) in the Senate (S. 88). This legislation differed from the current super-waiver in four ways:

- It covered all of government, whereas this provision only covers HHS, Education, and DoL;
- It covered discretionary spending programs, whereas this provision also covers entitlement programs (excluding Medicaid);
- It allowed community panels to request the waivers, whereas this provision only allows states to make the waiver requests; and
- It created a "Community Empowerment Board" made up of the heads of federal departments and major agencies to approve or reject requests for waivers, whereas this provision has the Secretary of the applicable agency receiving the request making the decision.

Nonetheless, many of the issues with this year's super-waiver legislation are strikingly similar. OMB Watch analyses on the 1996 legislation are available online (See Analysis of S. 88 and Analysis of H.R. 2086). The nonprofit community organized a strong coalition to oppose the local flexibility legislation, and was finally successful. The bill passed in both the House and the Senate, but in the wee hours of the morning, as the bill was being debated in conference, President Clinton threatened to veto the legislation, and the super-waiver was stopped.

What are the problems?

- The bill is too broad, allowing any state to request a waiver from regulations and statutes that apply to any program under HHS, Education or Labor (specifically excepting Medicaid).
- The bill can undermine regulatory and statutory protections. The bill has no provisions to prevent state waivers of regulations that safeguard health, occupational safety, and the environment, or that promote civil and reproductive rights, or that allow equal opportunity for education, disability services, or any number of the protections guaranteed by federal statute and regulations.
- The bill does not require that a demonstration project actually improve an existing program, or be a well-evaluated test of an innovative program. In the application, states must describe how the waiver is expected to "improve or enhance" the purposes of the program or programs involved "from the standpoint of quality, of cost effectiveness, or of both." This provision gives too much authority to improvements in programs being based on either quality or cost effectiveness. It is possible the quality of the proposed waiver might not even be an issue, if it is determined to be cost-effective. Even when quality is emphasized, no benchmarks are identified against which to measure "quality."
- Accountability can be greatly undercut. While states must assure that there will be ongoing and final evaluations of the waivers, there is no provision for an independent evaluation. There is also no assurance of data collection, potentially undermining a national database about program performance and achievement.
- If a state request for a waiver is not approved or rejected by the Secretary within 90 days, it is deemed approved, without any evaluation at all. If a Secretary is overwhelmed with waiver requests or cannot coordinate with other departments (if the waiver requests cuts across jurisdictional boundaries), the presumption is on approval.
- Without congressional authority, the bill would allow the transfer of significant resources from one program to another -- funds for low-income programs could be transferred to another program serving an entirely different population. It would not matter that Congress appropriated "x" amount of dollars for one program and "x" amount for another. Eligibility provisions made at the federal level could be waived by states.
- There are no provisions for public input and there are no assurances of public accountability. Could states waive various cost principles and audit requirements? This legislation would not seem to prevent that from happening.
- The super-waiver provision would also terminate currently existing waiver programs under TANF, some of which have continued from waivers under the old Aid to Families with Dependent Children (AFDC) program, and many of which are the foundations of state welfare programs -- which raises a more fundamental question: Why is this provision needed?

What's the Future?

The rumor is that Republicans are realizing that this super-waiver legislation is far too over-broad, and will amend the legislation during the mark-up to make the provision seem more palatable. For example, they may limit the waiver authority to specified programs and/or provide certain types of statutory requirements that could not be waived. This was the approach taken in 1996 to make the local flexibility legislation seem more reasonable.

This seems to be part and parcel of the general strategy to draft a truly outrageous bill and then "fix" it, so it becomes less troublesome, but frequently remains bad legislation. But the "fixed" version gives the impression that the sponsors are quite reasonable. Given the number of problems with the super-waiver provision, it would require a major rewriting to "fix" it. We will be watching the results of the mark-up and keep you posted.

In the meantime, if you have thoughts about how this super-waiver legislation could affect you or the people with whom you work, let us know. You can vote in our online poll or send your comments directly to the OMB Watch staff: please email them to ombwatcher@ombwatch.org.

OMB Watch Online Poll: Super-Waiver

OMB Watch is closely following renewed efforts to develop a "super-waiver" for states (see OMB Watcher story). Please help us by taking part in our Super-Waiver Poll.

OMB Watch is closely following a renewed effort by the President and some members of Congress to create over-broad "Super-Waivers" that would enable states to secure waivers of ANY requirement of ANY program in the Departments of Education, HHS, and Labor -- the approval of the Secretary of the overseeing Department would be sufficient.

OMB Watch is very concerned about the implications for students, low-income communities, worker safety and health, the environment, and many other important areas that fall under these three departments. (See related OMB Watcher story.) If you have thoughts about how it would affect you or the people you work with, please let us know. We are interested in examples of how this type of super-waiver might play out in your state.

Please help us in our efforts by taking part in our Super-Waiver Poll.

You can also provide more detailed comments directly to OMB Watch staff: please email them to ombwatcher@ombwatch.org.

Tax Day

As people around the country bring last-minute work on their tax returns to a close today, the House Republican leaders are gearing up for their annual "Tax Freedom" day – a time for denigrating government spending and the taxes that enable the government to provide the services that help support the country. This year, the legislative focus of their Tax Freedom day is likely to be the introduction, on April 18, of legislation to make permanent last year's $1.35 trillion tax cut, which expires (or "sunsets") at the end of 2010.

The tax cut's short duration was a direct result of its size and enormous cost to the federal government – the only way to cram the tax cut into the program and tax cut spending limits agreed to by the House and Senate last year was to have the tax cuts end after 2010. In all, 87% of the 10-year tax cut will not take effect until the second 5-year period, beginning in 2008, according to the Center on Budget and Policy Priorities (CBPP). This has created some bizarre situations. For example, full repeal of the estate tax will only come after an 8-year phase out, and will only last for 1 year. For other tax cuts, including those that benefit middle-income tax payers, it will mean either an early termination date or a later effective date. The adjustments made to the Alternative Minimum Tax (AMT), necessary to prevent millions of middle-income tax payers from owing more on their income taxes because of the President's tax cut, for example, will last only 4 years and end in 2006.

Ironically, though the country's ability to pay for expensive tax cuts that favor the most wealthy among us has only decreased over the last year, while its need for government spending has continued to increase, House Republicans and President Bush have made it clear that making the tax cuts permanent will take precedence over paying for more teachers, providing access to job training centers for workers around the country, health care for the uninsured, and an adequate, affordable prescription drug plan for seniors, among the many other spending options people around the country prefer over tax cuts.

A recent CBPP analysis derived from the Congressional Budget Office's calculations shows that making all of the tax cuts permanent would cost an additional $397 billion – just in 2011 and 2012, alone – this would translate into a $4 *trillion* drain on the federal budget over the decade beginning in 2012. According to CBPP's analysis, when the tax cut has taken full effect, just that part of it that benefits the top 1% of the nation's wealthiest will be 1.5 times larger than the entire budget of the Department of Education. If, however, the tax cuts were held at their current level, the CBPP analysis indicates that the vast majority of the country would continue to receive the maximum benefits the tax cut can offer to them, the nation's wealthiest tax payers would also continue to receive a substantial tax cut, and the country would have an additional $500 billion over the next 10 years to allocate to its priorities.

With so many pressing needs and with the American public's full support behind an exchange of tax cuts for spending on education, health care, unemployment benefits, and a prescription drug benefit for the elderly, it remains unclear why the House Republican leadership continues to push to make the tax cuts permanent. As a Washington Post editorial noted today, contrary to the campaign speeches of the President and many other Republicans, "Right now, it looks a lot more like the federal government is shortchanging citizens over the long term than overcharging them." We need our representatives in Washington (for a list of the few who have, see OMB Watch's "A Sacrifice Worth Making") to stand up to the "investment deficit" that will surely result from making the tax cuts permanent – a day when the government allocated the resources to ensure that all Americans had the education and training and opportunity and resources to provide for themselves and their families would indeed be something worth celebrating.

Data Quality Approaches

Government agencies are busy working on their data quality guidelines with many looking to a draft release for public comment in May. According to the Office of Management and Budget (OMB) guidelines, issued January 3, 2002, each agency must implement agency specific information quality guidelines by October 1, 2002.

A great deal of concern surrounds the Data Quality guidelines since several business groups categorized these guidelines as the best opportunity to challenge regulatory protections since passage of the Administrative Procedure Act in the 1940's. One organization, The Center for Regulatory Effectiveness, didn't even wait for the guidelines to be finalized before challenging, in a letter to the White House Office of Science and Technology Policy, the National Assessment on Global Climate Change on the basis of the OMB guidelines. The Environmental Protection Agency (EPA) appears to be one of the main targets of these industry groups in their efforts.

While high quality data is important and useful in policy process and decision-making, OMB Watch is worried that this guidance will allow certain stakeholders to bog down EPA's efforts to protect the health and environment of U.S. citizens. EPA, which already has procedures in place to improve data quality, should make specific efforts to structure its guidelines in such a way as to safeguard itself from this potential outcome.

The hope is that the data quality process will actually engender greater dissemination of information with constructive efforts to correct errors and improve data after its release. The data quality guidance issued by OMB specifically states that these standards and procedures should not be an impediment to agencies disseminating information to the public.

Indeed EPA has a useful integrated error correction process for many of its databases. The mechanism has been up and running for 18 months, receiving over 1,000 correction requests, resulting in 120 actual data corrections. A critical component of this error correction system is the process by which data that has been questioned in an error report is not removed from dissemination but only flagged to acknowledge its status as "under review." This is a case where dissemination has been a boon to data quality by allowing broader efforts to improve the databases.

OMB Watch has encouraged EPA to utilize requirements in the administrative mechanisms for correction that would minimize any undue burden on the agency, such as requiring that data challenges be submitted in a timely manner (limit of 90 days after dissemination), submitters establish that they are "an affected party," and explain in what way they have been "harmed."

OMB Watch has also urged EPA to model its data quality guidelines on the principles that guided the establishment and operation of its integrated error correction system. EPA should build upon its experience from this system in its efforts to deal with other forms of information outside of databases. It is unlikely that EPA will ever have perfect data or unquestionable scientific information, especially within the resource and time constraints that it must operate to protect human health and the environment. The EPA should be establishing guidelines and procedures that encourage and assist data correction while avoiding removal of data or information.

OMB Watch will continue tracking this process of establishing data quality guidance at EPA, as well as at other key agencies, and plans to participate in the process in the future.

President Continues to Push Faith-Based Program

In a speech at the White House last week, the President noted that contributions to many charities have declined, and urged Congress to pass the CARE Act (S. 1924), the faith-based compromise bill sponsored by Sens. Joseph Lieberman (D-CT) and Rick Santorum (R-PA) as one way to address the problem.

The bill has incentives for charitable giving, including a deduction for contributions by nonitemizers, and provisions for equal treatment of faith-based and other organizations in the federal grantmaking process.

OMB Watch feels that the bill is far superior to the House version passed last year, but we have questioned whether the version of the nonitemizer in the CARE Act would generate enough new giving, given the cost in lost federal revenue, combined with the large tax cut of last summer. The Congressional Research Service (CRS) has issued a report that says it would generate only 12 cents in new giving for every dollar lost to the treasury. Of that amount, half would go to non-religious sacramental activity. The CRS report suggests there may be other ways of offering the non-itemizer that might be more efficient. Another Congressional report, however, from the Joint Committee on Taxation was critical of any type of non-itemizer.

The President urged action in the Senate Finance Committee by Memorial Day. However, Committee Chair Max Baucus (D-MT) and Ranking Member Charles Grassely (R-IA) are said to be concerned about the cost of the nonitemizer, and may modify or eliminate the provision. However, because the White House continues to advocate for the non-itemizer deduction, the future remains unclear.

If the CARE Act passed it would have to be reconciled with a much different version, (H.R. 7), passed by the House last July. That bill contains controversial charitable choice provisions that would allow direct funding of congregations and hiring discrimination based on religion for publicly funded staff positions. There may be room for compromise, however. Last week Health and Human Services Secretary Tommy Thompson told a House committee that he is opposed to discrimination with federal funds.

Senator Grassley Asks for Investigation of Charities' Fundraising

Sen. Chuck Grassley (R-IA) has asked the Internal Revenue Service (IRS), the Federal Trade Commission and the Department of Justice to conduct an investigation of charities that raise large amounts of money, but use only small amounts for charitable purposes.

While the request specifically cites the Children's Wish Foundation International, which has spent only 8% of its funds on charitable purposes over the past 10 years, the investigation will look at the entire charitable sector.

The investigation will also look into the scrutiny that the IRS gives to charities' income versus expenses, the IRS's standards for revoking the tax-exempt status of misleading charities, the number of complaints that were referred to the IRS by states concerning charitable tax fraud, and whether the IRS should share information about its examinations of charities with states. The investigation will also focus on off-shore telemarketers who fraudulently solicit contributions to charities. Grassley has asked for the agencies to respond by May 2, 2002.

Online Monitoring of Corporate and Foundation Philanthropic Policy Influence

An often overlooked realm of nonprofit use of technology for advocacy involves access to information, not only with respect to government, but also financial information from corporations and nonprofits themselves. One way such information is used is to demonstrate the influence of special interests on public policy formulation, discourse, and decision-making, under the veneer of nonprofit public interest work and/or grassroots activity. Are there special interests hidden behind the online philanthropic policy watchdogs?

The following was originally posted to the NPTalk online forum.

An **April 16, 2001 NPTalk** and a **December 13, 2001 Wall Street Journal editorial** by Kimberley Strassel point out that there are legitimate questions around what constitute grassroots activity, as more direct big dollar resources find their way into "astroturf"-- grassroots activity generated, organized, and conducted within a fixed time period, around a single issue, by actors or entities who are not themselves grassroots actors, yet shield their involvement and influence in the overall proceedings.

While Strassel asserts that the scope of corporate involvement in such activity is expanding, such that it is bankrolling questionable activist activity by grassroots groups, creating the "illusion" of on-the-ground public interest activity and foundation-backed "research," the NPTalk piece points out that "besieged" corporate actors are responsible for bankrolling a number of campaigns designed to confuse, if not undermine, legitimate grassroots activity -- especially in the regulatory arena.

Strassel lauds a website called **Activist Cash**. Launched in mid-December 2001, ActivistCash is powered by a growing database of Internal Revenue Service (IRS) documents (currently over 100,000 pages) filed by targeted tax-exempt nonprofits (and foundations that support them). It purports to counter, under a banner of right-to-know, a "... web of anti-consumer activism -- promoting false science, scare campaigns, inflated public health causes, and sometimes violent anti-consumer 'actions'" by educating the public and donors around the duplicity of funders, and nonprofits who mislead foundations, into funding "...politicized polemics under the guise of 'research,' or who funnel money to a cadre of activist networks."

Approximately 20 groups are currently profiled, featuring commentary on their motivations, financial information, connections to one another, and contradictions in their activities or public statements. In addition to financial records, individual management staff, directors, and trustees are listed such that, when clicked on, their links to other profiled groups are revealed.

The ActivistCash.com effort, however, assumes that there is an imbalance in the amount of information available to the public, with nonprofits and their foundation donors responsible for withholding the disproportionate amount of that information. It also assumes the existence of a network of civic-minded foundations, infiltrated by activist plants, that are steering philanthropies further and further away from their missions, and more towards coordinated attacks on a under-resourced corporate/private sector community. Well, guess what? ActivistCash.com doesn't necessarily come clean on its own site about the source of its funding.

While it asserts that it receives no foundation funding ("unlike the activists we track", it proudly asserts), it makes passing reference to a sister site called **ConsumerFreedom.com**. This is the site for the Center for Consumer Freedom, a coalition of 30,000 restaurant and tavern owners (as well as individual alcohol and tobacco interests) engaged in public outreach and education, research, and training activities in opposition to regulations on drinking, health, food safety, tobacco, labor, and environmental issues and the groups that advocate around them.

As a counterweight to the ActivistCash, **MediaTransparancy.org** has provided access to news and commentary around conservative foundations and donors, the groups that benefit from their support, and the issues around which they are most active. Since July 1999, it has attempted to fill the gap between awareness of foundations that support conservative groups and causes, and information on the groups receiving such money, by providing access to information around the people involved in both camps, how the money is spent, and the amount of funds that have been distributed since 1990.

Users can track funding sources behind movements around faith-based charities, public school privatization, social security privatization, influence in state and local courts, and even the controversial "Arkansas Project" through which over US$2 million in conservative funding was funneled through two nonprofits established by a conservative magazine to conduct questionable inquiries into former President Clinton's private life and activities in his capacity as Arkansas governor.

There are, however, two features that stand out in particular. First is the grants database, which lets users search by funder, recipient, people involved, purpose of the grant, or a combination thereof (including date range of funding). Even more interesting is the "Fundometer." This is an online gauge of how much bias a given web URL has compared to the donor database. In other words, if you enter a website URL, it conducts a search against the database of people, funders, and recipients, and reports back where there is potential overlap by way of text as well as two graphical displays: a traffic light ("red" means high conservative bias, "green" low conservative bias) and a corresponding meter gauge. Click on any of the results that turn up, and you can find out about the entities and funding it has received or given.

The site, much like ActivistCash.com, makes a convincing case that a small pool of donor resources supports organizations

that are tied to institutions of policy ranging from the academic, legal, think tank, media, and government, such that ideology is effectively formulated, developed, tested, disseminated, marketed, and infused into decision-making while masquerading as legitimate policy deliberation and citizen-based and/or grassroots advocacy.

Since both corporations and nonprofits are required to disclose information and financial records around their operations, this raises questions around how much information is available to the public, such that it can determine what interests are actually behind what types of public interest advocacy.

One of the compelling elements of both sites is their quest not only to provide public access to financial data, but also reveal the broader philosophical framework through which donors and recipients interact to affect policy. Similar resources can also be found through the **National Committee for Responsive Philanthropy**, which also reports on the role of conservative donors in shaping public policy (including the use of think tanks), and **OpenSecrets.org**, which tracks campaign donations by corporate actors. Mediatransperancy.org is actively looking to explore other ways conservative influence is felt, particularly in the court of popular culture and opinion, something also explored by **PR Watch** and **Fairness and Accuracy in Reporting**, which track corporate and media influence in shaping public policy. [NOTE: While not exclusively focused on foundation or corporate influence on policy through the media, another organization, **Accuracy in Media**, does provide occasional investigation, critique, and analysis on these themes, albeit from a conservative perspective.]

Also, **PR Watch's Impropaganda Review** provides a reference explaining the history and techniques behind "front groups" or vehicles through which industry actors (including trade associations) and their public relations resources attempt to influence media and public opinion by planting editorials or news articles which favor a particular position, and/or underwriting research that is passed off as independent or unbiased but that actually reflects the sponsors wishes.

The issue is that by failing to reveal who is funding what articulations of opinion and bias in material that is ultimately cited as "proof," such influence is based on "lies of omission" perpetuated as a rationalization, to paraphrase PR Watch's words. In short, it is manufactured news used against legitimate public interest entities to counter (or blunt, if not block) genuine public interest perspectives from gaining visibility in the media and press.

Resources Cited

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12/13/01 Wall Street Journal editorial
Kimberley Strassel

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PR Watch

Fairness and Accuracy in Reporting

Accuracy in Media

PR Watch Impropaganda Review

NPTalk Reader Survey 2002

On NPTalk's third anniversary, we invite you to participate in the following online survey. It'll help us to make NPTalk more useful to you over the course of the next 3 years and beyond.

NPTalk was launched in March 1999 as a simple list to disseminate occasional information around the role of technology in nonprofit policy and advocacy work. It quickly grew into a daily forum on nonprofit technology and advocacy-related items, covering a broad range of topics, highlighting a growing number of nonprofit resources, and sharing strategies to help improve nonprofit thinking and use around technology in public policy participation, with an average daily readership of 1,000 organizations in the U.S. and abroad.

Our third anniversary provides a great opportunity to assess both our track record and our future direction, as we work to improve the range of services we can offer. To that end, we are conducting our first ever NPTalk reader survey throughout the month of April. Your input is crucial, so please take a moment to participate.

NPTalk Reader Survey

Bush Administration Peddles Ergonomics Smokescreen

Over a year after Congress voted to repeal Clinton-era ergonomics standards at the urging of President Bush, the Department of Labor (DOL) announced on April 5 the release of its replacement "plan" that is nothing more than a smokescreen to mask the administration's unwillingness to seriously address injuries caused by repetitive motion -- the most pressing health and safety issue confronting the workplace today.

An estimated one million workers suffer from serious injuries related to ergonomic hazards each year, according to a January 2001 report from the National Academy of Sciences, and these injuries cost the economy $45 billion to $50 billion annually. Yet the administration appears not to take this seriously.

Assailed by AFL-CIO President John Sweeney as "a meaningless measure," the administration's plan does not commit to enforceable standards, and only mentions Labor's intention to develop *voluntary* guidelines for industries that it has not yet even identified.

Oddly, the administration's plan also calls for the formation of an advisory committee to evaluate research on work-related musculoskeletal disorders caused by repetitive motion, even though this research is the responsibility of the National Institute of Occupational Safety and Health (NIOSH). At the same time, the administration has proposed to cut $20 million from the NIOSH job and safety budget and $10 million from the OSHA enforcement and training budget.

Despite Labor Secretary Elaine Chao's stated commitment "to help workers by reducing ergonomic injuries in the shortest possible time frame," corporate interests -- which have fought tooth and nail against any ergonomics standard for more than a decade -- have won out with the Bush administration once again.

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In This Issue

Update: Super-Waiver is the Wrong Tool for the Job

Since being introduced as part of the TANF reauthorization bills earlier this month, the President's "super-waiver" provision has undergone several significant revisions. The original provisions included in Rep. Wally Herger's (R-CA) H.R. 4090, and Rep. Buck McKeon's (R-CA) H.R. 4092, TANF bills allowed for governors to request a waiver of any statute or rule applied to any program in the Departments of Labor, HHS, and Education. All that would be required of the governor was a proposal showing how the waiver was neutral in cost. The Secretary of the petitioned department would have 90 days to sign off on the proposal, and if the state received no response within 90 days, the proposal could be deemed approved.

During the subcommittee-level debate, the scope of these bills was somewhat narrowed and the versions of the bills passed last week provided for fewer eligible programs and included a collection of vaguely-worded restrictions on the type of federal laws eligible for waiver. The subcommittee-passed bills look like this:

Super-Waiver Provisions Passed in House Subcommittees

TANF Reauthorization Bill and Sponsor	House Subcommittee	Eligible Programs
H.R. 4090, Rep. Wally Herger (R-CA)	Ways and Means	Unemployment Insurance TANF Child Support Social Services Block Grant (SSBG)
H.R. 4092, Rep. Buck McKeon (R-CA)	Education and the Workforce Subcommittee on 21st Century Competitiveness	Child Care and Development Block Grant (CCDBG) Wagner-Peyser (Employment Services public employment offices, a part of the "One-Stop" workforce development services delivery system) Job Opportunities for Low-Income Individuals (JOLI) Adult-Education and Family Literacy Act

The two bills have identical language regarding restrictions on the waivers. The bills prohibit the waiving of Section 241(a) of the Adult Education and Family Literacy Act and "any provision of law relating to civil rights; purposes of goals of any program; maintenance of effort requirements; health or safety; labor standards under the Fair Labor Standards Act of 1938; or environmental protection."

Though the number of programs eligible for these super-waivers has been reduced and the above list of restrictions added, OMB Watch remains concerned about this provision. Our primary concerns include: (For a full list, see the April 15 Watcher article.)

- **Transfer of funds:** Super-waivers may expose the communities these federal programs are intended to serve to cuts in already-tight funding, with no input and limited oversight by Congress. These waivers could allow a state to redirect funding that was appropriated for low-income job training, for example, to road repair.
- **Waiving of federal eligibility standards:** Though many of these eligible programs are established as block grants

with few federal definitions and restrictions, those federal standards that do exist work to ensure that a certain baseline is met by service providers to all participants, regardless of the state program they are enrolled in.

- **Manipulation of Program Goals:** In addition to limiting funding and eligibility, super-waivers may also allow for a change in program focus to accomplish limited ideologically-motivated agendas on the state level, that would never secure sufficient Congressional support on the national level.

- **Vague Restrictions:** Though both versions of the super-waiver legislation enumerate a variety of categories of federal regulations not eligible for waivers, the list refers to only two specific statutes, and thus leaves open to debate just which federal laws would be included. For example, the legislation mentions that federal laws relating to “civil rights” are not eligible for waivers. Without enumerating the specific federal civil rights statutes, however, it is not possible to be certain whether the Americans with Disabilities Act, for example, would also be protected from state waivers.

On top of these concerns comes the possibility that additional programs and/or entire departments may be added as these two bills are consolidated, with little time for the full debate and investigation that a development of such-far reaching powers warrants.

OMB Watch does not object to state flexibility and believes that states should have the ability to mold a federal program to meet state-specific needs and conditions, but this "super-waiver" is the wrong tool for this job. If states require more flexibility for a specific program, the changes should be made in the authorizing legislation of that program. Overly-broad language that creates more uncertainty and vulnerability is the wrong approach.

We Cannot Make Estate Tax Repeal Permanent

Estate tax repeal proponents, unwilling to postpone their agenda to eliminate the country's most progressive tax, even in the face of an ever-increasing number of costly national priorities and an estimated $100 billion deficit for this fiscal year (see related story, this issue), have continued to push for permanent repeal at every opportunity.

The latest vehicle tapped for this controversial measure was the Senate's energy bill, which was itself already embroiled in a heated 5-week long debate. To avoid further delay to the energy bill the extraneous tax legislation would have created, Senate Majority Leader Tom Daschle (D-SD) secured a deal with Minority Leader Trent Lott (R-MS) by which the Senate's most ardent and active repeal voices (Sens. Jon Kyl (R-AZ) and Phil Gramm (R-TX)) agreed to withdraw their repeal amendment from the energy bill in return for Daschle's agreeing to allow a separate vote on repeal later this Spring.

Likelihood of Passage

Senate rules require 60 votes to make repeal permanent, and many observers had assumed that the repeal advocates were still many votes shy of this magic number. In a "Sense of the Senate" vote on last month's farm bill, however, the Senate showed its nominal support for permanent repeal in a 56-42 so-called "message vote." This vote made it clear that repeal advocates were much closer to the 60 votes they need to make repeal permanent. (The two members not voting, Sens. Robert Bennett (R-UT) and Pete Domenici (R-NM) are strong opponents of the estate tax and would likely vote to make repeal permanent.) Unlike the Sense of the Senate vote, which has no legislative force, this upcoming vote will move permanent repeal quickly along the legislative process, as the Senate will be using a House-passed bill calling for permanent repeal. This means that the bill could go straight on to the President, who has urged the Senate to pass permanent repeal legislation and would surely sign the bill with great fanfare.

Many observers have noted that Lott, Gramm, Kyl and other outspoken repeal proponents are hoping that November's close mid-term elections will pressure a few more Senators to vote for making full repeal permanent in this upcoming vote. Foremost among the reasons put forth by Kyl and Gramm in their floor speeches on the matter are the owners of small farms and family businesses liable for the tax and the promise of a powerful economic boost offered by making repeal permanent. An upcoming May 22 Capitol Hill rally and lobbying campaign led by repeal advocates will likely be carrying a similar message.

The facts do not support either of these arguments: IRS statistics show that fewer than 2% of the nation's family farms and small businesses pay this tax as it is currently structured – the number of farms and businesses will likely drop further as the exemption increases over the next 10 years. In all, only 48,000 of the wealthiest estates pay any estate tax in any given year. Nevertheless, the federal government receives, on average, $33 billion each year from the tax, and state governments receive an additional $6 billion each year. A recent Joint Committee on Taxation (JCT) report shows that repeal would cost nearly $100 billion over 10 years, and more than $55 billion in the first year of full repeal.

To these purely financial costs, however, must be added the opportunity costs of not investing this money in the many needs of localities, states, and the country as a whole. While the country continues to ready its first responders at home and wage war abroad, it must also contend with the aging of its population and its infrastructure. Around the country, people continue to ask that these needs -- health care for all, affordable prescription drugs for its seniors, education for its young, and job training and child care to help its families transition with the economy -- be placed above tax cuts of any sort. With so many pressing concerns, we hope that the small, but vocal group of repeal advocates will put the country's well-being above that of their estates. At the very least, they should allow for a reform that would ensure small farms and small businesses were protected while allowing the estate tax to continue in its long tradition of redirecting a portion of the wealth held by the top 2% of the country to the security and development of the country as a whole.

Nonprofits to Preserve the Estate Tax, a coalition of nonprofits from around the country that opposed permanent repeal during last year's tax cut debate, is reemerging to counter this latest effort to eliminate the estate tax. The coalition will continue to oppose permanent repeal on the grounds that repeal:

- Is fiscally irresponsible
- Violates our nation's sense of fairness

- Will have a powerful negative impact on states
- Will hurt charities

To read more about the estate tax preservation efforts of OMB Watch and the Nonprofits to Preserve the Estate Tax, see OMB Watch's Estate Tax Page. If you would like to receive updates on this work, or take part in it, please email estatetax@ombwatch.org and include your name, organization, phone number and fax number.

The Deficit is Growing! The Deficit is Growing!

The Congressional Budget Office (CBO) has issued its latest report on the FY 2002 budget deficit, which is now expected to reach up to $100 billion.

In introducing the President's FY 2003 budget request, Office of Management and Budget Director Mitch Daniels had warned that this year would be awash in tough spending choices, and CBO's recent projections provides even stronger ammunition for those who aim to "bring fiscal discipline" to the federal budget at the expense of a whole host of small, but important federal programs. But is trading a handful of relatively small federal programs for a handful of other small programs really the solution to our projected $100 billion budget deficit woes? (To help orient yourself in the world of federal budget numbers, consider this: the two loan programs mentioned here comprise approximately 5% of the Department of Education's annual budget of $50 billion; by comparison, repealing the estate tax for one year would cost $55 billion and the cost of providing the Home Mortgage deduction to home owners comes to $100 billion each year.)

In ordinary budget crunches, such tough choices would certainly be necessary, but we are not in an ordinary budget deficit. Again, for purposes of orientation, it may be useful to note that this projected $100 billion deficit is only 1% of GDP. In previous deficit years, the size of the deficit relative to GDP was much higher:

Previous Budget Deficits as a Percent of GDP

Year	Percent of GDP
1982	4.0
1983	6.0
1984	4.8
1985	5.1
1986	5.0
1987	3.2
1988	3.1
1989	2.8
1990	3.9
1991	4.5
1992	4.7
1993	3.9

And approximately 40% of this year's deficit is due to last year's slowdown of the economy, which most economists are predicting is now on its way to a full recovery. In the meantime, the prevailing school of economic thought urges deficit spending under these slowed economic conditions. (Indeed, in its most recent economic report, the Bureau of Economic Analysis (BEA) attributed 1.4 percentage points of its estimated 5.8-point annual rate of growth in GDP to the recent increases in government spending.)

The other factor that distinguishes this year's deficit from previous deficits is the substantial role last year's $1.35 trillion tax cut plays in it. Another 40% of this year's deficit is due to last year's massive tax cut – and the size of the tax cut's contribution to the budget shortfall increases over the next 10 years. A recent Center on Budget and Policy Priorities (CBPP) analysis shows that freezing the tax cuts at their current level would free up $500 billion for the federal government over the next 10 years, rendering such "tough choices" far less necessary.

Supplemental vs. The Budget Deficit

The House Appropriations Committee will not be marking up the President's FY 2002 $27.1 billion supplemental spending request, as scheduled for tomorrow – and, in fact, the delay on the supplemental seems to be indefinite at this point, according to many sources.

Apparently the hold-up on the supplemental, which mostly provides extra funding for defense and homeland security spending, arose when House members made it clear they planned to make additional requests to the President's $27 billion request. Among these, according to a report by the Washington trade publication BNA, was $650 million for election reform, requested by House Speaker Dennis Hastert (R-IL). The House leadership is concerned that the supplemental will be the starting pistol for a race to tack on numerous spending requests that will further enlarge the projected $100 billion deficit for FY 2002 (see related story, this issue).

In the Senate, similar concerns over spending priorities and recognition of the fact that there will be little chance to reconcile a House budget resolution with a Senate budget resolution have led to an indefinite postponement of a crafting of a Senate budget resolution (see this April 1, 2002 Watcher article).

Religious Electioneering Bill Loses Sponsors

As reported previously in the Watcher, Rep. Walter Jones (R-NC) has introduced a bill (H.R. 2357) that would allow religious congregations to support or oppose candidates for office without losing their tax exemption or ability to receive deductible contributions, as long as election related efforts do not amount to a substantial portion of their overall activities. Currently, 501(c)(3) charities are banned from participating in partisan electioneering. This would act as a huge loophole to recent campaign finance reforms as well as allow for tax-deductible political contributions.

Although the bill currently has over 110 co-sponsors, two co-sponsors of the legislation, Reps. Steve Largent (R-OK) and Joe Scarborough (R-FL) have recently resigned from the bill. A third, Rep. James Traficant (D-OH) has recently been convicted of several felony bribery charges and cannot vote on any legislation due to House rules. The bill has been referred to the Ways and Means Committee and may be addressed before the end of this session. This bill comes as the IRS exempt organization compliance division has picked partisan political contributions by charities as one of its main areas of focus for education and enforcement efforts this year.

OMB Watch Comments on Electronic Filing of Form 990

With more and more individuals filing their taxes electronically, it should come as no surprise that the IRS is looking to expand e-filing to other venues. The comment period has just closed on the IRS Form 990 e-filing proposal, and they report receiving many positive comments on the proposal.

OMB Watch's comments focused on public use of Form 990 data, citing the 15,000 daily visitors that access GuideStar to find financial data on charities, often as a precursor to making donations. Data on GuideStar consists of scanned 990 forms, and as such is not searchable. Electronic submission of data would allow for a much more powerful database of information taken from Form 990. The comments also point out that electronic submission would simplify the reporting process for nonprofits, especially because many states accept Form 990 for state reporting requirements. Electronic filing would also make the job of regulators easier.

Comments from Independent Sector also strongly encouraged the IRS to implement e-filing, citing the increased ease of filing for nonprofits, and cautioned that electronic filing must indeed be made easier than paper filing. The Urban Institute also filed comments that stressed the importance of e-filing for those who conduct research on the nonprofit sector.

Independent Sector and the Council on Foundations are providing leadership for a group of organizations working on this issue. The activity of the group is called the Electronic Data Initiative for Nonprofits (EDIN). Contact Independent Sector's Pat Read at 202/467-6100 for more information.

Online Voting and Voter Education, Revisited

In the US and elsewhere, an effort is being made to capitalize on improvements in online security and assistive technologies to use online voting to make voting more accessible, increase overall voter participation, and specifically, turnout among younger voters. The question is whether public confidence will support any changes in voting procedures before technology can be seen as a means to improving voter turnout.

In February 2002, the Council for Excellence in Government released **a study** by Hart-Teeter called "E-Government: To Connect, Protect, and Serve Us" The study was based on two telephone surveys, one of 961 American adults (including an oversample of 155 Internet users), the other of 400 government decision-makers (200 federal, 100 state, and 100 local level). Among other findings, one set of figures stands out: overall support for online voting for federal elections, including congressional and presidential races, managed to drop from 38% in August 2000 to 33% in November 2001. On the flip side, opposition to online voting in federal elections rose from 59% in August 2000 to 61% in November 2001-- with some 51% strongly opposed to the idea.

What is the source of the drop in interest? Some likely culprits include concern over the integrity and security of potential online voting systems, individual voter privacy in the wake of some well-publicized security breaches involving inadvertent federal and state government disclosure of information online, and confusion that arose from the real-world voting process that bred confusion in the infamous November 2000 presidential elections.

Even more interestingly, 60% of Internet users surveyed were opposed to online voting in federal races as well. Only 16% of both the public and all Internet users surveyed thought that allowing voters to learn about the records and positions of candidates for public office was the most important way "e-government" could help make government more accountable to the public. But, curiously, of users with Internet access at home or work (if not both), 44% said they would be likely to access online information about candidate voting records, versus 20% who said they were not likely to do so.

All of this might suggest that online technology does not yet (if ever) stand a chance for being accepted as means of voting for elected office, but might enjoy a growing level of interest and trust for educating voters as to who's running and the policy issues involved in the races, right? Well, maybe...

Consider that by February 2001, a number of online efforts to provide better access to information for voters had fizzled during the dot-com shakeout, most notably Voter.com. This site provided access to political news and issues from journalists and advocacy groups across the political spectrum, customized to individual user tastes, and also allowed users to compare their views to that of candidates for elected office, and receive updates on ballot results.

As discussed in a **February 29, 2000 NPTalk**, Grassroots.com had acquired the **Democracy Network** (DNet), a joint effort of the League of Women Voters Education Fund (LWVEF) and the Center for Government Studies (CGS). LWV is a nonpartisan political organization that, since 1920, has worked to encourage active citizen participation in public policy through voter education activity. LWVEF, since its start in 1957, increases understanding of major public policy issues through voter guides, candidate forums, town meetings, and community and leader debates. CGS, a nonpartisan organization, designs and helps implement innovative approaches to improve the process of media and governance, and also works in substantive areas of campaign finance, ballot initiatives, digital divide, higher education, health care and state and local finance.

DemocracyNet (DNet) was launched by CGS in 1996, using creative interactive web technology to spark online candidate debates and improve the quality and quantity of voter information-- in essence, allowing the user to become the online "moderator" of candidate debates by selecting the candidates and issues of interest. DNet also provided in-depth coverage of hundreds of campaigns including Presidential and congressional races, state-level elections, local office contests, and ballot initiatives via a searchable online database of text and multimedia content. It was, in short, a strong nonprofit effort aimed at increasing voter understanding of important public policy problems, allowing candidates to debate their positions in an" electronic town hall" before an online audience, and fostering greater civic participation and interaction between voters and candidates.

Addressing concerns about the credibility and integrity of nonprofit involvement with a for-profit entity, Grassroots gave both LWVEF and CGS seats on its board, the founder and former president of CGS was made chairman of Grassroots.com, and Grassroots.com pledged to make unrestricted cash contributions to LWVEF and CGS to further their educational missions. In turn, Grassroots.com was to utilize the 1,100 local LWV chapters to collect candidate statements and information, to offer online candidate debates, voter-candidate interactions and electoral information accessible by zip code, in an attempt at the time to cover some 120,000 elections from the Presidential races down to local school-board contests.

But, after only one year under its wings, Grassroots.com and the League of Women Voters **reached a mutual agreement** to release DNet back under the auspices of the League, albeit without the leadership of its founder and the corporate support it had previously enjoyed. Grassroots.com had expanded the capacity of the service to make it available in some 7,000 federal, state, and local elections for 17,000 candidates during the year 2000, while LWV provided much needed outreach to facilitate candidate participation in, and citizen access to, information and online debates.

To be sure, it was not a venture that had an easy time attracting foundation support when it was a nonprofit effort originally, at the very least given the technical support logistics involved. Outside of corporate support for the overall operations, the significant funder base supports the effort through the individual state LWV chapters, and not the DNet service directly.

So if the public isn't willing to accept online voting, per se, while interest in access to some form of data on candidates for public office is strong -- depending upon the source and means for accessing it-- but the commercial and foundation marketplace have not responded with a huge flow of money to support such efforts, what does that say?

Two things come to mind. First, there will always be a potential nonprofit opportunity to provide access to this information-- no matter how local or specialized-- as long as the public is interested in voting-related information that commercial entities and government itself treat as a low priority (due either to low potential for revenue or limited resources).

One good example of this comes from the California Voter Foundation, which has archived a **database of all campaign promises** offered up by candidates for California elected office races during the year 2000. The archive contains campaign statements, agendas, issue positions, and platforms from the major party candidates for the 15 congressional and 16 state legislative office in California's 2000 general election around issues devoted to affordable housing, clean air and water, jobs and the economy, neighborhoods, parks and open space, schools and education, and traffic and transportation. The value of such nonprofit knowledge bases is that the public has the means to hold candidates accountable in an environment where campaign websites are frequently updated and edited, and the potential for such information being "revised" or "lost" is high.

Second, that sometimes there is just as much, if not more, effort needed to not so much educate the public, but remind it of what it claims it wants and expects in an increasingly online world. Investments in information access and more participatory civic frameworks online do not come cheap and without experimentation, but they don't succeed without actual public participation either.

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Grassroots.com 2/12/01 Press Release

Archive of Campaign Promises
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Administration Moves to Clear Way for Dumping, Mountaintop Mining

The Bush administration is moving forward with a new rule that would allow mining companies to dump dirt and rock waste into rivers and streams, potentially clearing the way for new “mountaintop mining” -- a controversial practice that involves the removal of mountaintops to access lucrative low-sulfur coal, according to the Washington Post, and other sources.

EPA officials have benignly described this rule -- which still must be submitted, and then approved, by OMB's Office of Information and Regulatory Affairs (OIRA) -- as a simple effort to harmonize differing definitions of "fill material" between EPA and the Army Corps of Engineers, which shares responsibility with EPA for granting dumping permits under the Clean Water Act. Yet environmental groups -- while acknowledging the need for harmonization -- charge that the rule would substantially weaken clean water protections in the process.

In particular, it would eliminate the "waste exclusion," and institute an "effects-based test" for deciding whether material can be dumped in waterways -- an approach strongly backed by mining interests. This removes a chief barrier to mountaintop mining, which generates large amounts of dirt and rock waste, and grants new discretion to the Army Corps of Engineers in deciding whether to allow dumping.

In a March 25 letter (page 1, page 2) to President Bush, eight Republican members of the House took issue with this decision, writing, "While any effort to grant the Army Corps of Engineers the authority to issue permits for this destructive practice is indefensible enough, it is equally alarming that this proposal would reach even further, opening waters across the United States to being filled and destroyed by many types of waste, including other kinds of mining wastes."

Besides rock and dirt, the new rule amazingly opens the door for the disposal of trash in waterways as well. According to BNA, a Washington trade publication, the rule notes that "materials generally considered to be garbage or trash, such as recycled porcelain bathroom fixtures like toilets, sinks, or even junk cars, can be cleaned and placed in waters of the U.S. to create environmentally beneficial artificial reefs."

As stated above, this proposal must receive the approval of OIRA before it can take effect, although this may be a foregone conclusion. OIRA Administrator John Graham has often been criticized for having a knee-jerk reaction against any regulatory restrictions, and is likely to be sympathetic to this sort of roll back. Nonetheless, Graham maintains that his mind is open, that he has a long history of supporting regulation where it is needed. Yet to this point, Graham’s OIRA has rejected 20 agency regulatory proposals, many for cost reasons; in no case has he rejected a rule for being insufficiently protective. If Graham’s mind is as open as he says it is, this might be a good place to start.

Supreme Court Rules Against Expansion of 'Takings' Claims

In a major victory for the environment, the Supreme Court ruled in a 6-3 decision that governments are not required by the Constitution to pay compensation to landowners in cases where development is temporarily prohibited, as reported in the April 23 Washington Post.

"Land-use regulations are ubiquitous and most of them impact property values in some tangential way -- often in completely unanticipated ways," Justice John Paul Stevens wrote in rejecting the plaintiffs' argument that government freezes on development amount to "takings" of private property, which under the Fifth Amendment requires just compensation. "Treating them all as . . . takings would transform government regulation into a luxury few governments could afford."

The case grew out of a dispute between hundreds of people who bought land around Lake Tahoe during the 1970s and the Tahoe Regional Planning Agency (TRPA), which sought to postpone building on the land while it planned for likely runoff from development that could damage the pristine lake. In 1981, TRPA ordered the first of two moratoriums on development, and after becoming entangled in litigation, the moratorium has never been lifted.

Property-rights advocates hoped to use this case to further press their broad interpretation of the Constitution's takings amendment; recently, the Supreme Court has ruled that certain land-use regulations may constitute a takings, requiring just compensation. Yet the plaintiffs argument that any moratorium on development, regardless of duration, required compensation went much further than the Court was willing to go.

Chief Justice William Rehnquist, Antonin Scalia, and Clarence Thomas dissented in the decision.

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In This Issue

The Ever Expanding Superwaiver

A superwaiver provision is moving through the House that would bring a huge shift of power to the Executive Branch and states to override congressional authorizations and funding decisions for a variety of low-income programs.

The superwaiver is part of the TANF welfare reform authorization bill (H.R. 4700) that is expected to come before the House on Wednesday or Thursday of this week (May 15 or May 16). As was feared, the provision is much more troublesome than previous versions (see this article in the last issue of the OMB Watcher). While these superwaiver provisions are in the TANF bill, they go well beyond concerns about welfare reauthorization. If enacted, the superwaiver would represent a huge shift of power from the Legislative to the Executive Branch of government. The superwaiver would undermine the power of Congress, as our elected legislators, to authorize programs and appropriate funds. It would also undermine the power of citizens and taxpayers to affect deliberations and decision-making about federal programs and funding.

The superwaiver or "State-Flex" provisions are being pushed under the guise of giving more flexibility to states to administer low-income programs. However, they go far beyond "flexibility" and provide the means for states and the Executive Branch (through Cabinet Secretaries) to bypass Congressional authority and redirect Congressionally-authorized funds with no public input and little accountability. President Bush is playing a key role in advocating for the superwaiver.

What is the Superwaiver?

It allows a state to apply to each Federal agency with jurisdiction over any of the below-named programs for an unlimited number of waivers to "integrate" two or more of these programs, waiving many of the statutory and regulatory requirements attached to the individual programs.

What programs would be affected?

The following expanded list of programs have all been included in the legislation:

- TANF
- Social Services Block Grant
- Most job-training programs under the Workforce Investment Act (except Title C)
- Job Opportunities for Low-Income Individuals
- Employment Services under the Wagner Peyser Act
- Adult Education and Family Literacy Act
- Child Care and Development Block Grant
- United States Housing Act (except most of the Section 8 rental program and the Section 7 program for designated public housing for occupancy by certain populations)
- Titles I, II, III, IV of the McKinney-Vento Homeless Assistance Act
- Food Stamp Program

Given the substantially expanded number of programs, this version does add some very vaguely defined "safeguards," including the requirement of performance objectives, ongoing and final evaluations, and a presentation and report to Congress (after the fact). There are still only three primary requirements for approval:

- The project has a reasonable likelihood of achieving the objectives of the programs that are included.
- The project must have a reasonable expectation of meeting cost neutrality requirements, i.e., the cost of administering the project shouldn't exceed the cost of the individual programs.
- The project involves the coordination of two or more programs.

As before, a waiver cannot be granted that violates civil rights, the purposes or goals of the program, maintenance of effort requirements, health or safety, labor standards, environmental protection, and some other requirements specific to each of the covered programs. However, waivers of provisions to do with eligibility or benefits or virtually anything else not covered by the previous list ARE allowed.

H.R. 4700 also returns to the legislation the provision that if the Secretary of a Department fails to approve an application for a waiver within 90 days, the waiver is considered granted.

The superwaiver gives unprecedented authority to the executive branch at the expense of congressional appropriating and authorizing committees. It would allow the waiver of the eligibility and benefit standards that were authorized by Congress for each program. It would allow provisions that were congressionally mandated specifically to protect low-income people to be undermined. It would allow funds to be shifted from one program to another program, superceding the appropriations decisions made by Congress every year. Finally, rather than the largely open and transparent Congressional proceedings, the granting of waivers would be a closed-door deliberation between the Executive Branch and a state (or if not approved in 90 days, solely the state's discretion), with no opportunity for outside participation.

For a more detailed analysis see today's Center on Budget and Policy Priorities analysis.

More than 200 nonprofit organizations from around the country and representing a variety of areas of interests, signed on to a letter urging House members to oppose the super-waiver. Read the letter and see who signed on.

Stop Permanent Repeal of the Estate Tax

This alert provides background information on the estate tax and 5 action steps you can take to help prevent repeal of the estate tax. Read through the alert and then contact your Senators through this legislative link -- the talking points included in this alert are also available there to provide suggestions for your letter or call to your Senators.

What is the Estate Tax?

The estate tax is applied when someone leaves behind an estate worth at least $1 million at the time of death. There is no tax on the first $1 million, a limit which rises gradually to $3.5 million by 2009. Additionally, there is no limit on amounts of money that can be given to charitable organizations in order to lower the size of the estate to be taxed.

What is Current Law?

Last summer as part of the massive Bush tax cut, the estate tax was temporarily repealed for one year -- 2010 – and will be reinstated in 2011. This year, the House passed a bill to permanently repeal the estate tax, which will cost $100 billion over the next decade and $850 billion over the next 20 years.

So What's Happening Now?

Sen. Phil Gramm (R-TX), along with Sen. Jon Kyl (R-AZ), have received assurances from Majority Leader Tom Daschle that they can bring up an amendment to permanently repeal the estate tax before June 28.

What Can You Do?

Call or write your Senators and tell them to vote *AGAINST* the Gramm/Kyl amendment for permanent repeal of the estate tax.

The other side is making this their number one issue. According to Dan Danner, a Vice President for the National Federation of Independent Business and a leader in the Family Business Estate Tax Coalition, "It appears the 'death tax' repeal is doable now, so our recommendation is, 'Go for it.'" Groups such as the National Association of Wholesalers-Distributors "are putting as much shoulder behind this as we possibly can. If we can succeed with the 'death tax,' we'll create significant momentum to make the rest of the tax cuts permanent. If we fail, there will be no more action until after the elections."

We need to get our voice heard against these powerful special interests. Here are five things you can do:

1. Fax a letter, call, or email your Senator to vote NO on the Gramm amendment to permanently repeal the estate tax. Go to OMB Watch's Action Page and simply type in your zip code in the box provided. Talking points are provided as suggestions.
2. Visit your Senator during the upcoming Memorial Day congressional recess (May 27 –June 3). Now is a good time to schedule meetings with your Senators (or their staff) to tell them the many reasons why permanent repeal is the wrong choice for your state and the country. We are preparing additional state specific talking points -- so check back here in the next few days.

3. Write letters to the editor or op-eds for your state and local newspapers -- check back here in the next few days. To send a letter to the editor to your newspaper, visit the media section of this Alert System

4. Volunteer to get others engaged. If you are willing to help, contact OMB Watch's Ellen Taylor (taylore@ombwatch.org) or Cate Paskoff paskoffc@ombwatch.org), or United for a Fair Economy's Chuck Collins (ccollins@faireconomy.org).

5. Review our Estate Tax Resource Page for more information about the estate tax.

Talking Points

Permanent repeal of the estate tax:

- **Is fiscally irresponsible and sets the wrong priorities for the country** – Permanent repeal of the estate tax would cost the federal government just under $100 billion over the next 10 years, with $55 billion of this coming in 2012 alone; it will cost $850 billion over the next 20 years. At a time when we have so many other pressing needs – ensuring the strength of Social Security and Medicare, providing for homeland security, and educating our children – we just cannot afford to repeal the estate tax.
- **Violates our nation's sense of fairness** – A founding principle of our country is the notion of an equal opportunity for all. Repealing the estate tax is a gift to multi-millionaires at the expense of 99% of American taxpayers. Ultimately, it will shift more taxes onto the rest of us.
- **Will hurt charities** – The estate tax strongly promotes charitable giving and the creation of charitable foundations. Eliminating it will have an adverse impact on the services provided by nonprofits in our communities – even as repeal also diminished the federal and state revenue for these services.

Agency Data Quality Guidelines Issued

In the last two weeks, most agencies covered by the Paperwork Reduction Act published proposed guidelines to implement the Data Quality Act, which was passed as a rider to an appropriations bill. The agency guidelines are to comport with guidelines developed by the Office of Management and Budget (OMB) earlier this year. The list of agency guidelines is available online. Most agencies provide until the end of May to submit comments on the guidelines.

The OMB guidelines require agencies to establish procedures for ensuring high quality of the information disseminated and used by agencies. OMB notes that as the importance of the information grows so too does the obligation to ensure quality with "influential" information requiring the highest standard. OMB argues that there are three types of "influential" information, each requiring levels of transparency so that the results can be reproducible. For analysis of risks, OMB urges agencies to adopt or adapt its preferred choice for doing risk assessments. Most agencies seem to have adapted the OMB procedures.

OMB also requires agencies to have in place administrative mechanisms by October 1 to allow "affected persons" to seek and obtain timely correction of information disseminated by the agency. In its final action on the guidelines, OMB added a requirement that agencies are to establish an appeals process for those unhappy about agency actions on error correction. The guidelines leave it to agencies -- or perhaps the courts -- to determine how formal the appeals process must be and whether it is an adjudicatory one. It also leaves it to agencies to determine how long the public will have to raise corrections that are needed.

Many in the public interest community are concerned that this administrative mechanism will be a tool for industry to slow down, if not stop, agency regulatory activities since regulations are based on research that will be subjected to the Data Quality Act. The Chamber of Commerce has argued that these Data Quality guidelines are the most important regulatory change since passage of the Administrative Procedure Act in the 1940s.

OMB also instructs agencies to develop pre-dissemination quality reviews for information the agency disseminates after October 1. Agencies may utilize existing practices to meet this requirement.

There are many other requirements agencies must determine, such as how they will use independent, external peer review. OMB urges such peer review, but indicates it, alone, may not be sufficient for determining data quality. OMB also adopts a peer review policy that does not require public disclosure of whether peer reviewers have any conflicts of interest.

Most of the smaller agencies have provided a parroting of the OMB guidelines suggesting that it will still take time to know how these new rules will be implemented. One agency, EPA, notes at the onset that a core mission of the agency is dissemination of environmental information in order to strengthen environmental protections. It appears to be one of the few agencies that starts from that premise.

OMB Watch will be preparing additional materials on the agency data quality guidelines. We will also be speaking at a public meeting EPA is providing on May 15.

PACs Get Extension for Filing IRS Reports

The IRS has extended the deadline for PACs to file their registration and disclosure reports to July 15.

Since the Stealth PAC law became effective in July 2000 there has been confusion about which political committees exempt under Section 527 of the tax code are required to file reports at the Internal Revenue Service (IRS). Many state and local PACs wrongly assumed they were exempt because they do not support federal candidates and file reports at the state level. Efforts to exempt such groups have failed to pass in Congress, and many could have been liable for millions in fines for non-filing.

The IRS has extended the deadline for PACs to file their registration and disclosure reports to July 15. (See IRS Notice 2002-34) After that date any group failing to file will be subject to the penalties. In an effort to encourage voluntary compliance and educate Section 527 organizations about their obligations under the law, the IRS has issued a new fact sheet detailing what forms are needed, and how the deadlines are determined.

Rumors Swirl Around CARE Act

The faith-based initiative compromise bill introduced in the Senate by Sens. Joe Lieberman (C-CT) and Rick Santorum (R-PA) is expected to come before the Senate Finance Committee before Memorial Day, and rumors about substitute bills and amendments continue to circulate.

Senate Finance Committee Chair Max Baucus (D-MT) and Ranking Member Charles Grassley (R-IA) are said to be preparing a substitute that would drop or modify the nonitemizer deduction and possibly add some recommendations from the Joint Tax Committee's (JCT) 2000 report on nonprofit disclosure. It is not known which of these JCT recommendations might be added, but the focus is likely to be on fundraising practices. OMB Watch, Independent Sector, the Alliance for Justice, and other nonprofits joined together to oppose many of the JCT disclosure recommendations for lobbying as being overly burdensome and intrusive.

The substitute bill may also include a JCT recommendation that would simplify the rules governing lobbying by 501(c)(3) organizations that choose the expenditure test to measure their lobbying. This change would eliminate the distinction between direct and grassroots lobbying, but would keep the direct lobbying expenditure cap.

No Alternatives for TOP and CTCs Available in FY 2003

On May 20, the federal Community Technology Centers (CTC) program is expected to release it's third grant notice, to help create and expand technology access within the context of educational opportunity and lifelong learning for the public in underserved and economically distressed urban and rural areas. This may, however, also be the last grant notice for the program.

The program, begun in 1999 under the Department of Education's Office of Adult and Vocational Education, has, to date, distributed some $72 million in matching grants to more than 200 organizations in support of over 500 community technology centers. This third grant notice, will include some 80 matching grants from $75,000 to $300,000 and will help create and expand technology access within the context of educational opportunity and lifelong learning for the public in underserved and economically distressed urban and rural areas.

Under the Administration's budget request for FY 2003, the CTC program would be eliminated, in favor of support of a number of other department initiatives, including the formula grant 21st Century Community Learning Centers (CLC) program. CLC supports academic enrichment opportunities for K-12 students and their families in school districts with high concentrations of poverty and/or low-performing schools during after-school, summer, and weekend hours. Unlike CTCs, CLCs do not provide technology access and training for education or workforce skills as a primary service. CLCs, moreover, are specifically school-based efforts, whose programs are not necessarily open to the wider public.

The Administration proposed to offset the potential gap in community technology investments by providing funding for the Neighborhood Networks program under the Department of Housing and Urban Development. Launched in 1995, the initiative has helped to coordinate public-private collaboration between community partners and residents in low- and moderate-income multifamily housing (as well as individual efforts under other HUD-supported programs) around technology access and skills training for residents.

While the Neighborhood Network centers directly engage residents in their operations and administration, the scope of activity is heavily focused on services to the residents themselves, and not the broader public -- though in many cases centers do provide activities open to residents in surrounding communities. More significantly, the Neighborhood Networks only provide outreach, technical support and assistance, but not federal grants, to centers and their coordinating partners, which in turn must demonstrate self-sufficiency and sustainability -- including income-generating revenue streams -- before their inclusion in Network activities. Though the Administration's FY 2003 budget requests level funding of $20 million, it does not call for any actual funding to support grants activity similar to the existing federal CTC program.

The other key community technology initiative slated for elimination under the FY 2003 budget is the Technology Opportunities Program (TOP), currently funded at $12.5 million. Started in 1994 under the Department of Commerce's National Telecommunications Infrastructure Administration, the program provides matching grants for local collaborative efforts to build advanced telecommunications and information technology infrastructure for delivery of social services -- including education, health, employment, and public safety -- to underserved rural and urban areas. Despite leveraging of $192.5 million in grants with $268 million in matching funds from local sources to develop over 530 public-private efforts, the program has been frequently targeted for elimination. Most recently, it was attacked on an unlikely front.

In late 2001, as much as $390 million of the $400 million available under the E-Rate program -- under which fees collected from telecommunications firms by way of consumers provide a range of discounted telecommunications services to schools and libraries -- was slated to be funneled to support expansion of the Rural Health Care (RHC) program for the next two years. RHC, a universal service initiative designed by the Federal Communications Commission to provide discounts on telecommunication services to rural health care providers for telemedicine and telehealth efforts, is currently capped at $10 million. Because RHC discounts consist only of the difference between rates charged to urban and rural providers, the program has never enjoyed the popularity of E-Rate. Post-September 11 concerns around bioterrorist attacks and inadequate community emergency response systems, however, prompted House Commerce Chair Billy Tauzin (R-LA) to introduce legislation expanding the scope of RHC to enhance community-level capacity to support telemedicine and emergency information.

Concerned that such an arrangement would siphon off funding available for school and library telecommunication connections and services, E-Rate supporters worked with House Commerce Ranking Member Rep. John Dingell (D-MI) on compromise language that instead would have diverted all TOP funding for two years to support RHC expansion for urban, rural and Native American telemedicine projects -- despite TOP's established track record on similar projects. A Senate version of the legislation called for increases in the information and communications technology equipment capacity for health care providers, but without use of TOP or E-Rate to fund expansion or federal-state coordination for such efforts. The differences around the House bill, which passed by an overwhelming vote at the end of February, will be addressed in conference, currently slated for late May. A number of Senate conferees have already expressed support for TOP funds to not be committed exclusively to telemedicine infrastructure improvement.

In addition, Sen. Max Cleland (D-GA), along with Rep. Edolphus Towns (D-NY), introduced legislation in mid-March to establish a digital network technologies program under TOP, which would provide educational and job training opportunities through initiatives aimed at students, teachers and faculty, and related personnel within historically Black, Hispanic, Asian-Pacific Islander, Alaskan and Hawaiian, and tribal-serving institutions of higher learning.

Survey for Nonprofits With Government Grants

Federal agencies are now working to streamline the federal grants process. We are conducting an online survey of nonprofits to provide input to the agencies on priorities.

In 1999, Congress passed the Federal Financial Assistance Management Improvement Act, Public Law 106-107 initiating a process to create uniform grant applications and reports. (The law is the result of nonprofits advocating for this streamlining process and passed Congress unanimously.) Federal agencies are now working to implement the law, and a major focus of the program is E-Grants.

OMB Watch is co-sponsoring with GuideStar and the Urban Institute the Streamlining Nonprofit Grants Management Project, which is a nonprofit sector response to this federal initiative. We are organizing a sector-wide network to address grants management issues of special interest to nonprofits. We will prepare and submit comments and recommendations to the federal government and facilitate implementation of selected recommendations.

Nonprofits that receive government funds are urged to complete the survey and join the Streamlining Grants Management Project's network to help us establish priorities for nonprofit federal grantees.

For detailed information about the Federal initiative see the Grant Streamlining page on our website.

Court Rejects Move to Allow Dumping from Mountaintop Mining

A recent ruling in federal district court casts doubt over a Bush administration plan that would allow dumping of dirt and rock waste from mountaintop mining into valley rivers and streams.

In the May 8 decision (*Kentuckians for the Commonwealth v. Corps of Engineers, S.D. W.Va.*, No. 2:01-0770, May 8, 2002), Judge Charles H. Haden blasted a new "final rule" by the Army Corps of Engineers and the Environmental Protection Agency (discussed in the last issue of the Watcher) to expand the Corps' definition of allowable "fill material," saying it addresses "political, economical, and environmental concerns to effect fundamental changes in the Clean Water Act (CWA) for the benefit of one industry" -- the mining industry.

The rule, which was published in the *Federal Register* a day after Haden's decision, would allow the Corps to approve dumping from mining companies in river valleys -- virtually inevitable in mountaintop mining -- under Section 404 of the CWA. However, Haden found that Section 404 does not permit such dumping for the sole purpose of waste disposal.

"'Fill material,' as regulated under Sec. 404, refers to material deposited for some beneficial primary purpose: for construction work, improvement and development in waters of the United States, not waste material discharged solely to dispose of waste," Haden wrote. "Accordingly, approval of waste disposal as fill material under Sec. 404 is … beyond the authority of either administrative agency, the Corps or the Environmental Protection Agency (EPA). To approve disposal of waste other than dredge and fill regulations rewrites the Clean Water Act."

However, EPA spokesperson Joe Martyak told BNA (a Washington trade publication) that agency officials disagree with the decision and would seek a stay in the ruling pending an appeal; a lawyer for the plaintiffs, Kentuckians for the Commonwealth, countered that the court's decision "effectively invalidates the rule."

Such changes suggested by the Corps' rule, fundamental to the CWA, "should be accomplished and considered in the sunlight of open Congressional debate and resolution, not within the murk of administrative after-the-fact ratification of questionable regulatory practices," Haden declared. Yet Congress does not seem likely to side with the Corps. In fact, Rep. Christopher Shays (R-CT) and Frank Pallone (D–NJ) recently announced legislation, The Clean Water Protection Act (H.R.

4683), which would reinstate the original definition of fill material.

Although expressly prohibited, the Corps has still permitted the dumping of mining waste in streams and rivers over the years -- with devastating consequences. A 1998 study by the U.S. Fish and Wildlife Services, for instance, found that through July 1995, 345 miles of Kentucky streams already had been destroyed by such "valley fills," as noted by Kentuckians for the Commonwealth.

OMB Watch had suggested that John Graham, administrator of OMB's Office of Information and Regulatory Affairs (OIRA), which acts as regulatory gatekeeper across agencies, reject the joint rule from the Corps and EPA. After all, Graham has said that he would stand up for regulation where it's needed, that contrary to his critics, including OMB Watch, he has no anti-regulatory bias. Nonetheless, OIRA granted approval to the dumping rule after a review of just one day. In comparison, it took OIRA an average of 45 days to approve EPA rules proposed in the first four months of this year.

OMB Pushes Consolidated Online Rulemaking

The Office of Management and Budget (OMB) has announced that it will create a single web site where citizens can comment on proposed agency regulations, according to a May 6 memo from OMB Director Mitch Daniels to heads of agencies and executive departments.

There are a number of agency web sites dedicated to online rulemaking, yet they are often difficult to find, and a user must know which agency is proposing which rule in order to find it in the current system. OMB's On-Line Rulemaking Management E-Government initiative (OLRM), as the project is called, will streamline the process so that users may find all proposed rules on one web site.

A recent Pew Foundation survey on how people use government agency web sites found that 23 million Americans used the Internet to comment on proposed rules, regulations, and policies in 2001, a clear sign that more and more people are using the Internet to get involved in government.

The OLRM initiative is part of the President's E-Government Strategy, which seeks to use the Internet to improve government services and transactions.

Secrecy at the EPA

On May 6, 2002, President Bush granted Environmental Protection Agency (EPA) Administrator Christine Todd Whitman the authority to classify information as "Secret." This order was published in the May 9, 2002, *Federal Register*. The delegation of this authority is provided in accordance with Executive Order 12958 of April 17, 1995, entitled ''Classified National Security Information.''

Executive Order 12958 prescribes a uniform system for classifying, safeguarding, and declassifying national security information. According to E.O. 12958, information may be classified at three levels: Top Secret, Secret, and Confidential. President Bush's May 6 order allows Administrator Whitman to classify information as Secret or Confidential, but not as Top Secret. The Executive Order indicates that Confidential should be used for information which an unauthorized disclosure could reasonably be expected to cause "damage" to national security, Secret classification for "serious damage" and Top Secret for "exceptionally grave damage."

Once the information has been classified a person can only gain access to the information if it meets three requirements:

1. An agency head or the agency head's designee determines eligibility for access;
2. The person has signed an approved nondisclosure agreement; and
3. The person has a "need-to-know" the information.

According to EPA sources, the Agency discovered shortly after September 11 that its authority to classify material that could pose a threat to national security was limited. Based upon their concern that some of the information EPA might develop in its efforts to learn more about potential chemical, biological, or radiological threats could potentially have national security implications it re-applied for original classification authority. It is also reported that the authority is expected to be used "sparingly," if for no other reason than the fact that few EPA employees have clearance.

While President Bush's May 6 order only grants this classification authority to Administrator Whitman, under E.O. 12958 the Administrator also gains the ability to delegate the authority to classify original information secret or confidential to other government officials such as senior EPA officials.

EPA's policy over the past dozen years has been to operate in the sunshine. Republican EPA Administrator William Reilly promulgated a "fishbowl" policy where the agency should operate as though it were in a fishbowl for all to see, and a Democratic administration continued this policy. Where it needs secrecy, EPA already has the authority to make confidential business information (CBI) confidential, along with enforcement information being used in a legal case and information that is considered pre-decisional.

The May 6 order follows a March 19 White House memo instructing agencies to carefully consider whether "sensitive but not classified" information should be disclosed to the public. Unlike this new order, the terms "sensitive budget not classified" are not defined.

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In This Issue

Estate Tax Repeal Advocates Up the Stakes in Estate Tax Debate

In an effort to re-emphasize their dogged commitment to tax breaks for the very wealthy, House Republicans announced last week that they would bring up the issue of permanent estate tax repeal for a vote shortly after they return from their Memorial Day recess - on June 5 or 6.

H.R. 2143, introduced by Rep. Dave Weldon (R-FL) last June, calls for removing the "sunset," or expiration, provision only on estate tax repeal, which was included in last year's $1.35 trillion tax cut. Under last year's tax cut, the estate tax will be repealed for one year in 2010, but will be re-instated in 2011. (In April, the House passed a bill removing the sunset for the entire tax cut bill, which included the estate tax.)

The House action intended to put additional pressure on the Senate to permanently repeal the estate tax. Senate Majority Leader Tom Daschle (D-SD) has agreed to allow Sens. Phil Gramm (R-TX) and Jon Kyl (R-AZ) to bring a repeal proposal to a vote by June 28.

More than 98% of all estates in the US are exempted from paying the estate tax, which is applied when individuals leave behind estates worth at least $1 million ($2 million for couples) at the time of their death. There is no tax on the first $1 million per individual, and amounts in excess of $1 million are taxed at various rates, starting at 37 percent. As a result of last summer's tax legislation, the amount that is exempted from taxation rises to $3.5 million ($7 million for couples) and the highest taxable rate drops from 55 percent to 45 percent by 2009.

Americans for a Fair Estate Tax (AFET), a broad-based non-partisan coalition of nonprofit groups, including civic, labor, social justice, faith-based, and environmental organizations, as well as organizations providing human services, is working to prevent passage of permanent repeal in the Senate. AFET advocates that instead of repealing the tax on multi-million-dollar estates, Congress should reform the estate tax to ensure that family farms and small businesses are not unfairly taxed while keeping 98 percent of taxpayers exempt and safeguarding Medicare, Social Security, education, charities and other key national priorities that would be threatened by a complete repeal. More information on this issue can be found online at www.ombwatch.org/estatetax, which will soon be at www.fairestatetax.org. The site has general fact sheets, state fact sheets, analyses, a recent press release, and a cover letter from selected AFET members.

AFET's website also contains a direct link for contacting your Members of Congress and for writing letters to the editor of your local paper. To get involved with AFET, email estatetax@ombwatch.org.

House-Passed Superwaiver is Even Worse Than Earlier Versions

The Administration's "superwaiver" proposal that passed the House on May 16 as part of welfare reform (H.R. 4737) would provide cabinet secretaries with new, far-reaching authority to approve state applications to waive federal laws and regulations affecting a number of programs -- even more than earlier versions indicated.

These programs include:

- job training programs under the Workforce Investment Act;
- the employment service;
- adult education programs;
- the Child Care and Development Fund;
- public housing;
- homelessness programs;
- the Temporary Assistance for Needy Families block grant;
- the Social Services Block Grant; and
- food stamps.

In spite of the relatively little attention it is getting in the press, the super-waiver represents a huge and sweeping change. These provisions have a number of serious problems that could negatively affect many low-income and other domestic programs. The super-waiver is heralded as a great step forward for "state flexibility," but it goes far beyond flexibility. It allows states, with only Executive Branch approval, and no public input, to waive program rules, including cutting benefits

to one group of recipients to use the savings for another group of recipients, changing income eligibility requirements, targeting populations who are easier to serve instead of those who Congress intended to be served, and even changing the very nature of a program. While new language was added that disallows waivers to transfer money from one appropriations account to another, this addresses only a few of the concerns that have been raised, and does nothing to stop transfers of money within a program area.

The Senate must now pass its version of welfare reauthorization and then the House and Senate must reconcile the legislation in conference. Even though there is no indication that super-waiver provisions will be included in the Senate reauthorization legislation, the super-waiver is a very high priority of the President and could be added either during Senate floor debate or in conference. It is important that you let your Senators know the problems you see in the super-waiver legislation. For more information see OMB Watch's summary or this Center on Budget and Policy Priorities analysis.

House Passes $29.6 Billion Supplemental

Before adjourning for its week-long Memorial Day recess, the House passed the President's emergency supplemental appropriations bill on May 24, in a 280-138 vote. Supplemental appropriations bills, such as this one, are common tools to bridge the gap between one fiscal year's appropriations and the next. This $29.6 billion supplemental, $2 billion more than the President's initial $27.1 billion request, will provide added funding for this fiscal year, which ends September 30.

According to the House Committee on Appropriations summary of the bill, the bill provides $15.8 billion for the Defense Department - which is $1.8 billion more than the President had requested. In addition, it provides $5.8 billion for "Homeland Security," including approximately $3.9 billion for the newly-created Transportation Security Administration, $380 million for the Army Corps of Engineers and the Department of Energy for "additional security requirements at the Nation's nuclear facilities and security improvements for Army Corps of Engineers facilities," and $112 million for the FBI's investigative work. Another $5.5 billion comes in the form of assistance for New York's recovery efforts. The full text of the supplemental is available online.

The Senate will not begin to consider the supplemental until it returns from the Memorial Day recess on June 4. The Senate Appropriations Committee has passed its own supplemental, S. 2551, which totals $32 billion.

Research on Nonprofit Advocacy Released

Preliminary findings of a multi-year study of nonprofit charitable organizations' public policy participation indicate strong recognition by nonprofit leaders of the importance of public policy participation as it relates to serving their mission and community. However, a number of key barriers stand in the way of unleashing nonprofits' civic potential.

The Strengthening Nonprofit Advocacy Project (SNAP), which is a joint effort of OMB Watch, Tufts University and Charity Lobbying in the Public Interest, is the first national research effort designed to investigate the public policy role of 501(c)(3) nonprofit organizations. The goals of the research are to determine nonprofits' level of involvement in public policy issues, and to identify factors that motivate their involvement as well as factors that impede involvement.

Some of the key findings were that 86% of survey respondents say they participate in policy matters through direct lobbying, mobilizing the public to lobby, or testifying, although the frequency of such activity is very low and inconsistent. Also, while nonprofit leaders cite advocacy on policy issues as important, persistent barriers including time, limited staff and volunteer capacity, money and complexity of the federal lobby rules deter more frequent involvement. Nonprofits that depend on government and foundation revenues, view such revenue sources as presenting barriers to participation.

To view the full preliminary findings click here. An Executive Summary is also available. The comprehensive report on this study will be released in the fall of 2002.

GAO Issues Report on Exempt Organizations

The General Accounting Office has issued a report requested by the Senate Finance Committee that reviews oversight of charities and makes recommendations for improvement. Tax-Exempt Organizations: Improvements Possible in Public, IRS and State Oversight of Charities is available at Report GAO-02-526.

The report found that Form 990, the annual return filed by most charities, does not provide adequate information for oversight, and advises caution in using data derived from it. It also finds that the IRS lacks "results-oriented goals and strategies for its oversight of charities," and that inadequate data sharing between the IRS and state charity officials is also a problem. The report recommends that the IRS develop results-oriented goals and measures for oversight as well as procedures for sharing data with the states. It also recommends that the IRS improve the reliability of the data it collects from the charitable community.

NPTalk Spring 2002 Reader Survey Results

Results and observations from the NPTalk 2002 Reader online survey conducted between April 1 and May 1, 2002. We hope this summary will prove useful to other groups as they conduct their own member/reader/user surveys.

Before we share the findings from our first-ever reader survey, we wanted to share a few notes and observations:

- We received about a 7% response rate out of roughly 900 subscribers. Our average subscriber base throughout the year is about 1100. We currently do not actively advertise the list, so folks who find us generally do so through word of mouth.

- Survey reminders were included, somewhat discretely, in the headers of each NPTalk throughout April, with 2-3 reminders circulated to the whole list during that period as well. We did not, however, compare the online survey with, say, one conducted via e-mail to the readers, either as an attachment or within the body of a message. It might be worth exploring in the future whether these approaches, individually or in tandem with an online version might boost the response rate.

- While we don't have proof, we're speculating that an online survey of this type would only be filled out by those who have either a relatively strong positive or negative reaction, due to a certain level of familiarity beforehand, such that they are motivated to actually follow a link in an e-mail message to a web page requiring them to fill out information. So it might be more difficult to engage, if not ascertain, the thoughts of those who are either relatively new and/or lack some type of previous inclination towards the object of an online survey.

And now to the findings...

Who's Reading NPTalk

- About a quarter of respondents have received NPTalk in the e-mail inbox for at least three years. 28% have been reading NPTalk for 1-2 years. An equal percentage of respondents (23.4%) have read NPTalk for two years and 6 months or less.

- Some 22% of NPTalk respondents are on the Mid-Atlantic US (including Washington, DC), and 20% are in the western US. Nearly 19% are in the northeast US;11% in the Midwest; 9% in the Southwest; nearly 8% Pacific Northwest; and about 5% in the Southeast. Roughly 2% each are spaced out nationally, located in the U.S. South, or in Europe.

- About 44% of NPTalk respondents work in nonprofit service, support, or technical assistance organizations. About 19% work for nonprofit policy organizations. Just fewer than 10% are interested individuals or work in the foundation/philanthropic sector; some 6% work in the private sector, about 5% each work in academia and nonprofit trade associations, and 3% work in the public sector.

- 20% of the readers who responded represent executive/management positions, 19% research, program, or project staff within their organizations. Administrative/operations, marketing and outreach, and technology staff each made up 9% of the respondent pool, and 8% training and technical assistance. Legal and government affairs positions, membership, technology consultants, and development staffers each made up 3% of the pool. Budget/ finance staff and program directors made up 2% each. Outside vendors made up nearly 5% of the respondents, compared to the almost 2% represented by volunteers.

- How did they find us? About 37% heard about us through colleagues, 19% through another discussion list or online forum, and 14% through another non-OMB Watch website. Nearly 16% first learned about NPTalk through our parent organization, OMB Watch. Three-fourths of respondents have visited the OMB Watch site, half of all respondents also belong to an OMB Watch information list, 45% read about OMB Watch in some other venue, 20% learned about us through a colleague, 17% found us through a search engine. Some 16% have either interacted with OMB Watch directly on issues with which we work, or attended a workshop or training involving our staff.

What NPTalkers Read

- 47% preferred to keep NPTalk as a daily e-mail digest compared to 45% who would rather receive NPTalk as a weekly e-mail update containing content summaries with links to the full online version of individual items. 45% actually read NPTalk each day, compared to 44% who read it 1-2 times a week.

- So what do NPTalkers actually pay attention to in each digest? The most read items include:

    1. Technology News and Nonprofit Policy Items (98%)
    2. Nonprofit Advocacy and Technology Examples (83%)
    3. Opening Content Summary Index (81%)
    4. Followups/ Responses to Items and Questions (55%)
    5. Notices (Jobs, Press Releases) (53%)
    6. Event Notices (50%)

- The least read items include:

1. Requests (Information, Volunteers, etc.) (44%)
2. List Administrator Notes (36%)
3. NPTalk explanatory notes preceding individual postings (33%)
4. List Instructions at the end of each digest (14%)

Value of NPTalk

- When asked if they'd be willing to pay for NPTalk, 23% of respondents said "Yes", while 64% said "No". But, 85% said they were "satisfied" or "very satisfied" with our service to you (14% had no strong feelings either way). Oh well, *sigh*...

- When asked to cite how NPTalk has been most useful to them or their organizations, the following represent the highest reported items:

    1. Keeping abreast of policy issues affecting nonprofits (70%)
    2. Providing reference information (64 %)
    3. Highlighted nonprofit case examples or groups (45%)
    4. Locating technology resources (44%)
    5. Learning online and offline advocacy techniques (28%)
    6. Identifying fundraising opportunities (20%)

- When asked to rate NPTalk overall along certain criteria (1 being lowest, 5 highest), here's how the respondents scored us, on average:

    1. Is a trusted/credible information source (4.1)
    2. Is consistent in quality (3.9)
    3. Addresses topics of importance (3.9)
    4. Has useful work-related content (3.8)
    5. Is something I enjoy reading (3.8)
    6. Features material not found elsewhere (3.7)
    7. Contains items I forward to colleagues (3.5)
    8. Answers my questions (3.4)
    9. Generates discussion/debate (3.0)
    10. Is repetitive/duplicates content from other sources (2.3)

What's Desired from NPTalk

We asked what types of content NPTalk readers would like to see more (or less) or less of. The respondents surveyed cited the following:

- Would Like to See More:

    1. Nonprofit advocacy examples
    2. Nonprofit technology resources
    3. Nonprofit conferences and events
    4. Funding opportunities
    5. Training opportunities

- Maintain Current Level of:

    1. Nonprofit Action Alerts/Calls to Action
    2. Reader responses/reader-generated content
    3. Commentary/editorial

- Would Like to See Less:

    1. Question and answers to general nonprofit matters
    2. Job Notices

Additional Thoughts

We also gave survey participants the opportunity to share their overall thoughts and opinions and suggestions. This often tells you way more than any set of numbers could (and how!). Here's a condensed version of what they said:

NPTalk is unique, unusual, and not easily categorized. It is carefully written and thorough, with a truly knowledgeable editor (despite the self-admitted occasional spelling and grammatical errors). The conversational tone, eclectic range of topics, and open nature is appealing, and the editorial comments are helpful in providing context for individual items. The

quirky introductions and historical (and random pop-cultural references), help keep the proceedings interesting.

Though it takes positions and is biased, it does, more often than not, present other arguments and perspectives to consider. Given the shotgun approach to presenting information, something of interest or relevancy is bound to come up for individual readers and those who work closely with nonprofits. It's a useful part of the growing continuum of online nonprofit resources that helps to keep the sector informed of issues that are often inaccessible or fall through the cracks.

Full-length articles are inappropriate for a daily digest, so either provide a short summary and link, or allow subscribers the option to receive individual items. Longer postings make for difficult readings, so readers may wind up stopping or skipping items after a few sentences. The archiving abilities through e-mail are helpful, but the online archives need to be streamlined and improved for better ease-of-use.

NPTalk comes out too often, and does not allow individual filtering of information, such that topics of interest and or relevance are received. There is not enough information on resources or events outside of the Washington, DC area. Not enough list members seem to contribute as much information as NPTalk itself cranks out, and when there is other information, too often it's from vendors hawking products, or shameless self-promotion from individuals or organizations. While interesting, some of the lengthier analysis heavy on policy or technology minutiae could be shorter, though it's helpful to know who are the players (especially corporate and government) that affect the activities of nonprofits and their constituencies.

NPTalk is a good way to keep on top of what's happening on other key resources and forums, when there isn't time to read and digest everything floating around out there. Yet, it has a distinct niche in the nexus of technology, policy and social/voluntary/civic action, and the information has a long shelf life after the initial posting, especially the listings of resources and reviews of services to nonprofits.

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In This Issue

House Passes Permanent Repeal of the Estate Tax (Again)

The House wanted its vote on Thurs. June 6th on permanent repeal of the estate tax (H.R. 2143) to send a signal to the Senate showing widening support for repeal. The vote did send a signal, though not the one the House had intended.

It was 256 in favor and 171 against. (Click here to view final vote results.) The House vote reveals not more, but less support for permanent repeal from its previous vote to make estate tax repeal permanent in April 2001 (H.R. 8, with 274 in favor and 154 against). Only 41 Democrats voted for repeal this time, as opposed to 58 last year. Moreover, the vote on a Democratic alternative, offered by Rep. Earl Pomeroy (D-ND), lost by the narrow margin of 245-190. The Pomeroy substitute included an immediate exemption of $3 million ($6 million per couple). Currently, $1 million (double for couples) is exempted, rising to $3.5 million (double for couples) in 2009.

The House vote yesterday shows that our efforts are making a difference. Now it's time to call or email your Senators to support fair and reasonable reform of the estate tax and to oppose making repeal of the estate tax permanent -- you can use this link to email your Senators directly.

Please see www.fairestatetax.org for more information.

Estate Tax Briefings

A successful nonprofit briefing on the estate tax was held on June 6. A press briefing to release the results of a nationwide poll by Greenberg Quinlan Rosner Research will be held Wednesday, June 12.

AFET Estate Tax Briefing for Nonprofits

The briefing held by Americans for a Fair Estate Tax (AFET) on June 5, 2002 provided a wealth of information about the value and fairness of the estate tax in the United States and the need to reform—and not repeal—the tax. Over sixty people attended and the event highlighted how the unique resources and energy of the nonprofit community are being mobilized to counterbalance the multi-million dollar campaign pro-repeal advocates are conducting.

Sen. Jon Corzine (D-NJ) and Bob Van Heuvelen, Chief of Staff for Senate Budget Committee Chair Kent Conrad (D-ND), discussed the loss of federal revenue from permanent repeal and the effect on the ability of the country to meet its priorities. Sen. Corzine spoke about repeal of the estate tax as “flying in the face of a meritocracy, a democracy, all the things this nation is about,” including the ideal that every American should have the opportunity to succeed. He noted that some reasonable reform measures might be needed to further protect truly small businesses and family farms, but emphasized that the benefits of permanent repeal would fall overwhelmingly to the very wealthiest few in the country. Sen. Corzine said that repeal would be good neither for the well-being of his own children, nor “for the betterment of the nation.” He concluded his speech with the question, “So, if it’s not fair, and it’s fiscally irresponsible, and doesn’t bring us together [as a nation] – why would we do it?”

Joel Friedman, from the Center on Budget and Policy Priorities examined some of the most egregious misrepresentations of the estate tax propagated by pro-repeal advocates in a recently issued summary. At the top of this list is the idea that

estate tax repeal won't really cost the country very much. A recent Joint Committee on Taxation (JCT) analysis of permanent repeal estimates the cost to be $56 billion in 2012, which skyrockets to nearly $750 billion in the 2nd decade – or just when the Baby Boomers will begin retiring. He further illustrated the importance of estate tax revenue by estimating that over the next 75 years, the revenue lost from estate tax repeal will equal approximately 40% of the projected Social Security shortfall over that period. The Center's full analysis reveals the misleading and inaccurate claims being made by proponents for repeal.

Among the other claims that the NFIB and others have made is that the estate tax destroys numerous small businesses every year. The reality is that since the exemption level is currently at $1 million and rising to $3.5 million, only about 3% of all estates paying an estate tax have a business that constitutes the majority of the estate's assets. So, most of the "family-owned businesses" that will benefit from repeal of the estate tax will be those not-so-small family-owned businesses: for instance, the Mars candy company, Levi-Strauss, and the E & J Gallo Winery, to name a few of the not-so-small businesses that are affected by the estate tax.

The results of another key element of the AFET effort – a national poll conducted in May – will be released on Wednesday, June 12 at a national press briefing. The poll shows strong support for reform of the estate tax over permanent repeal. The poll results will be available on the Americans for a Fair Estate Tax website on Wednesday afternoon.

If you would like to get more involved in the work of Americans for a Fair Estate Tax, email estatetax@ombwatch.org. We urge everyone to learn about this issue, email and call your Senators, and urge others to do so. Repeal of the estate tax will be raised in the Senate sometime this month, so it is important to act now.

Comment Salvos Exchanged in Data Quality War

Extensions granted
In response to the extremely short public comment period most agencies were offering on their draft data quality guidelines, Citizens for Sensible Safeguards, a broad-based coalition of organizations representing health, safety, civil rights, and environmental concerns, sent a letter to Office of Information and Regulatory Affairs (OIRA) Administrator John Graham requesting an extension to the deadline for filing comments on federal agency data quality guidelines. Similar letters were sent to several key agencies requesting that they extend they public comment periods.

After some deliberation OIRA extended the deadline for agencies to submit their final guidelines to OMB for review and approval by 30 days, from July 1, 2002 to August 1, 2002. The Office of Management and Budget (OMB) still intends to hold firm to the October 1, 2002 deadline for agencies to implement the guidelines.

Sen. Joseph Lieberman (D-CT) also wrote OMB regarding an extension on comments. Lieberman also made the point that agencies should have until at least January, if not February, 2003. This is because the statute gives agencies one year after OMB publishes final guidelines to finalize their guideline. The OMB guidelines were published on Sept. 28, 2001, on an "interim final" basis and then significantly revised on January 3, 2002 as final guidelines. That version had errors and corrections that required it to be republished twice, withthe last one on February 22, 2002. OMB has not responded to Lieberman's point.

OMB left extension of public comment period entirely up to the individual agencies, most of which took at least some advantage of the opportunity. Most agencies offered extensions ranging from 2 weeks to the full 30 days

Public comments are filtering into the agencies as many rushed to meet the original deadline. Those agencies, such as the Environmental Protection Agency (EPA), with online dockets of the public comments being submitted offer an interesting insight into the debate that is raging around the issue of data quality guidelines.

Industry Comments
Some of the most extensive sets of comments being submitted to various agencies are, not surprisingly, from the Center for Regulatory Effectiveness. The CRE submitted to all federal agencies a 26 page long set of generic comments covering 16 major points. The full list of major issues the CRE raised in its generic comments are as follows:

- Exemptions from Applicability of the Data Quality Guidelines – requesting that no information or methods of dissemination be exempted from the data quality guidelines
- Retroactive Application of the Data Quality Guidelines – pressing agencies to apply the guidelines to all information disseminated on or after the October 1 implementation deadline regardless of when the information was first disseminated
- Individual Agency Guidelines Must Comply with OMB's Interagency Guidelines: and There Are No Case-By-Case Exemptions From Applicability Of The Guidelines – Demanding that all information be covered and that the guidelines be recognized as legally binding
- Inclusion of Rulemaking Information in the Data Quality Act Petition Process – stating that agencies should not exclude information handled under rulemaking
- Third-Party Submissions of Data to An Agency – asserting that all information submitted to agencies which is made public should be subject to the data quality guidelines
- Definition of "Affected Persons"/Definition of a "Person" – pushing for broad definitions
- Deadline for Deciding a Petition – advocating short restrictive deadlines for agency responses
- Who Decides the Initial Petition? – noting that a specific individual or office should be noted as responsible
- Who Decides Appeals? – urging that appeals be specifically handled independent of the original disseminator
- Must the Agency Correct Information When It Agrees with a Petition? – again pressing that the guidelines be binding and that agencies be required to act
- What is the Standard for Rebutting the Presumption of Objectivity Resulting from Peer Review? – asking agencies to specify requirements in proving that information is not objective
- How is "Influential Information" Defined? – calling on agencies to issue a specific but broad definition
- What is "Objective" and "Unbiased" Information on Risks to Human Health, Safety and the Environment? – urging that agencies also describe how they will ensure that assumptions, inferences and uncertainty factors in risk

assessments meet data quality standards
- Application of the SDWA Health Risk Assessment Standards – requests that SDWA standards be adopted rather than adapted
- Robustness Checks for CBI – requesting that robustness check of Confidential Business Information (CBI) be subject to the guidelines
- Use of Third-Party Proprietary Models – recommending that agencies adopt a prohibition against proprietary third party models

The overarching effect of the CRE comments is clearly to make the data quality guidelines apply to as much as possible and to be as binding as possible. The CRE decried the exemptions of certain types of information and dissemination from the data quality guidelines comments. OMB established numerous exemptions in the guidelines it provided agencies. Several agencies expanded on these exemptions in their draft guidelines. The CRE takes issue with the method that several agencies have proposed to reduce duplicative efforts by excluding information handled under rulemaking processes from consideration under data quality act, since procedures exist within the rulemaking process to handle these issues. The CRE also complains that agencies are indicating that the guidelines are not legally binding.

The CRE rates the agency guidelines as "satisfactory" or "unsatisfactory" on 14 major points. It is interesting, and more than a bit telling, that on 6 of these 14 points no agency has drafted its guidelines in agreement with CRE's point of view. According to the CRE's generic comments, there doesn't seem to be any shortage of "unsatisfactory examples" among the data quality guideline drafts.

Other Comments
Several public interest groups, including NRDC, have submitted comments to several agencies, particularly to EPA. OMB Watch is also drafting both generic comments, which will be submitted on behalf of various public interest groups concerned with data quality guidelines, and specific analysis and comments for selected agencies. It is probably not that surprising that the generic comments, based strongly on the basic sensible principles developed by members of Citizens for Sensible Safeguards, run in almost direct opposition to those submitted by the CRE. The comments support and encourage agency efforts to minimize the coverage of the guidelines and to avoid establishing extensive new procedures that would be burdensome to agencies. In the general comments public interest groups urge agencies to:

- Include statements explaining the agency's commitment to, and the usefulness of, public dissemination of information
- Explain that "data quality" is only one factor to consider (along with budget constraints, importance of information, timeliness of information, etc.) and that it should not supercede the agency's primary mission
- Clearly state that the data quality guidelines are not legally binding on agencies
- Expand and detail the types of information and dissemination exempt
- Develop an administrative mechanism that places the burden of proof on the requestor, accepts only data corrections, and minimizes the undue burden on the agencies by eliminating duplicative requests including those more appropriately handled through other processes such as rulemaking
- Limit reconsideration to showing due diligence in the initial consideration of a request
- Resist efforts to develop too stringent requirements on risk analysis and to only consider adaptation of the Safe Drinking Water Act (SDWA) principles
- Limit the requirement for peer review and when used strive for balanced panels free of conflicts of interest and require reporting of those conflicts that are unavoidable
- Define "influential" information narrowly, employing a high threshold for coverage
- Establish a running public docket of requests and changes
- Clearly state that the data quality guidelines do not apply to third party information.

Survey Conducted on Streamlining Government Grants

Last month, as part of the Streamlining Nonprofit Grants Management Project, OMB Watch conducted an online survey of nonprofits that receive government grants to determine priorities in the implementation of the Federal Financial Assistance Management Improvement Act of 1999. 365 groups responded, representing national, state and local groups and faith and community based organizations.

Those who took the survey listed finding grant opportunities and applying for grants as very high priorities for simplification. Coordinating grants between government agencies is also a high priority, as 48% of respondents receive funding from 4 or more agencies. The survey also suggests that coordinating grants streamlining across all levels of government is important as 58% of those responding get multiple grants from different levels of government for the same program.

For the full results click here.

Charitable Choice Advocates Continue Regulatory, Legislative Efforts

While the CARE Act has hit a snag in the Senate over the costs of tax cuts for charitable giving, non-tax portions of the bill dealing with federal grant rules for faith-based organizations could become even more controversial if the bill passes the Senate and goes to conference with the House.

There have been private assurances that the Senate CARE Act, if it passes, would bypass a House-Senate conference. But advocates opposing the faith-based provisions in the House bill are very nervous that the House – as well as federal agencies -- will try to impose the "charitable choice" approach in HR 7, which passed the House last summer, to allow religious activity to be interwoven with government programs and relax grant rules and regulations for faith-based groups. For example:

National Service Reauthorization: The National and Community Service Act of 1990 expressly prohibits discrimination based on religion by grantees in providing benefits and hiring of staff for federally funded positions. In late May Rep. Peter Hoekstra (R-MI), chair of the House Education and Workforce Committee's Subcommittee on Education, unsuccessfully sought repeal of this language in the Citizens Service Act Act (HR 4854), the recently approved reauthorization of the program. Rep. Hoekstra's proposal would have eliminated requirements that grant applicants file statements certifying that program funds would not be used to provide a direct benefit to "instruction as part of a program that includes religious worship" or to "construct or operate facilities devoted to religious worship and to maintain facilities primarily or inherently devoted to religious instruction or worship." (Title 42 Chapter 129 Section 12584). He did not propose elimination of the ban on using federal funds for direct religious instruction or proselytization. The proposal was withdrawn in the face of a major public fight and opposition from Ranking Member George Miller (D-CA) and Rep. Bobby Scott (D-VA). The conservative Family Research Council furiously responded, claiming the "AmeriCorpse" bill "should not become the standard for the President's faith-based efforts."

Department of Labor Grants: On April 17 Dept. of Labor Secretary Elaine Chao announced "the first new grant program in the entire federal government targeted specifically at the faith-based and community groups." A total of $15.5 million for programs under the Workforce Investment Act of 1998 will have three components: $10 million to states and $5 million for regional intermediaries to link and develop networks of faith-based and community organizations with the One-Stop Career System, and $500,000 for 25 grants of $20,000-25,000 for faith and community based groups for employment training and other services.

Like the National and Community Service Act, Workforce Investment Act the Workforce Investment Act expressly prohibits discrimination based on religion by grantees in providing benefits and hiring of staff for federally funded positions. The April 17 grant announcements for state and intermediaries included requirements for compliance with this non-discrimination language, but the announcement for the small faith based and grassroots organizations failed to include it. On May 1 Americans United for Separation of Church and State sent DOL a letter objecting to the omission and requesting an amended grant announcement. The amended announcement was published in the Federal Register on May 13, stating that grant funds cannot be used for "instruction in religion or sacred literature, worship, prayer, proselytizing or other inherently religious practices", and that grant recipients "may not and will not be defined by reference to religion." In addition, the amended announcement makes it clear that religion may not be a requirement for receiving benefits or consideration for employment in the program.

The announcement defines grassroots and small faith-based organizations as groups that have their headquarters in the community where they provide services, a social service budget of $300,000 or less and no more than six full time equivalent employees.

Department of Education: Early this year the Dept. of Education also omitted civil rights protection requirements in its grant announcement for the 21st Century After School Program, created by the "Leave No Child Behind Act of 2001". A coalition of civil rights, education and other organizations wrote to Education Secretary Roderick Paige in March, stating that the guidance must be amended to include the civil rights standards in the law. However, a new draft issued on May 13 only prohibits discrimination against beneficiaries, and contains confusing references to employment discrimination exemptions for religious organizations that only apply to non-federal funds. Another letter has been sent objecting that the new guidance does not mention the prohibition on religious discrimination against program staff that is part of the law.

The Department of Health and Human Services issued a grant announcement for the Compassion Capital Fund on June 5. $25 million of the $30 million in the program will go to intermediary organizations that provide technical assistance to faith and community based groups. A 50% match will be required. Intermediaries will be able to make sub-grants for start up costs, operation or expansion of social service programs. The remaining $2 million will be used to create a National Resource Center to coordinate the intermediary grantees and "work directly" with then "to ensure that faith- and community based organizations receive effective and appropriate assistance". It will also develop tools for general use by small organizations, including a web site. Another $1.6 million is set aside for research on model programs and best practices of grantees, and $1 million will be used for short-term research on "roles and promising approaches by diverse types of faith- and community-based organizations that focus on homelessness, hunger, at-risk children, the transition from welfare to work, and intensive services for those most in need such as addicts and prisoners." The announcement states that funds cannot be used for worship, prayer or religious instruction. During Senate consideration of funding for the program last November a colloquy between Senators Jack Reed (D-RI), Tom Harkin (D-IA) and Arlen Specter (R-PA) stated "It is important to note that this appropriations bill is not changing any of the rules or standards for government funding of religious organizations…"

Is the FBI Watching You?

The Department of Justice announced new guidelines for the Federal Bureau of Investigation (FBI) that dramatically expand their authority to conduct investigations that are not related to criminal activity and engage in surveillance of religious, political and advocacy organizations.

A broad coalition of national organizations lead by the Electronic Privacy Information Center sent a letter to the Senate Judiciary Committee and the House Committee on Judiciary asking for oversight hearings on the new guidelines. The letter cites concerns about the "FBI's authority to search through electronic databases without satisfying any legal standards" and "unchecked surveillance of lawful religious and political activity". The coalition asked that the hearings address the Attorney General's legal authority to make the changes, the impact on constitutionally protected activity, and how Congress will oversee implementation of the new guidelines and report to the public.

For a detailed analysis of the new guidelines see the Center for Democracy and Technology's summary.

EPA Announces New Online Rulemaking System

The Environmental Protection Agency (EPA) recently announced the launching of a new web service, called EPA Dockets, to allow the public to search regulatory documents and submit comments on rulemakings electronically.

EPA's previous online rulemaking system, the Regulatory Public Access System (RPAS), which served as a pilot for the new system, similarly allowed users to submit comments electronically, but did not provide complete access to rulemaking dockets, including public comments, which could only be viewed in paper format at various EPA docket libraries in Washington, D.C. Unlike other agencies, EPA will also accept comments on an anonymous basis through its new web site, though it encourages users to identify themselves to ensure consideration.

EPA will use a phased-in approach to bring all of its dockets into the new system -- which began on May 31 with the Office of Solid Waste and Emergency Response, the Office of Air and Radiation, the Office of Water, and the Office of Prevention, Pesticides, and Toxic Substances. However, at the moment, not all rulemaking materials from these offices are available through the new site; some public comments are only indexed -- and still available only through paper copy -- and the site only provides docket information for rulemakings in which the comment period is still open, not old rulemakings.

Dockets from other offices, including the Office of Environmental Information and the Office of Enforcement and Compliance Assurance, are to be added to the system in the fall of 2002. Look for an upcoming article comparing various agency online rulemaking systems in the next issue of OMB Watch's Executive Report.

NHTSA Issues Weakened Tire Pressure Monitoring Rule

On June 5, the National Highway Traffic Safety Administration (NHTSA) issued a watered down standard to guard against under-inflated tires -- which are linked to numerous deaths each year -- after its first attempt was rejected by OMB's Office of Information and Regulatory Affairs (OIRA), which must approve all major regulatory actions.

The new final rule will allow manufacturers to choose between installing a "direct" system, which relies on a pressure sensor in each tire that could alert the driver of an under-inflated tire through a dashboard monitor, and a less reliable, yet cheaper, "indirect" system, which works with anti-lock brakes to measure the rotational difference between the tires, determining whether the speed is slower for one tire compared to the others.

Over the next three years, NHTSA will continue to study and accept input on whether to require direct systems, as it originally proposed to do, with a final verdict to be announced by November 2006. Such a delay pushes back the date of full implementation should NHTSA ultimately decide in favor of direct systems, as there would undoubtedly be a phase-in period of at least several years -- potentially costing lives in the meantime.

NHTSA's original standard, rejected by OIRA, required direct tire pressure monitoring systems to be installed in all vehicles by 2007, which NHTSA estimated would avert 10,271 injuries and 141 fatalities a year. According to OIRA's estimates, indirect systems would avert 5,000 injuries and 70 fatalities.

Yet incredibly, OIRA Administrator John Graham argued in his return letter that a standard allowing indirect systems would actually produce greater safety benefits overall because it would serve as an incentive for manufacturers to install anti-lock brakes, which are necessary for an indirect system to work.

Pointing to a recent study by Charles Farmer of the Insurance Institute for Highway Safety, Graham concluded that the resulting increase in anti-lock brakes would save 118 to 266 lives a year, on top of the 70 fatalities averted from indirect systems. According to Graham, this "yields a total of 188 - 336 fatalities averted or between 47 and 195 more than with direct systems."

Yet Graham appears to be overly enthusiastic in his appraisal of anti-lock brakes based on the available evidence, as discussed in detail here. After Graham's return letter, Farmer met with NHTSA on March 23 to discuss his study -- which Graham calls the "best estimate" available -- and according to the meeting log filed by NHTSA, "Mr. Farmer thought that Dr. Graham of OMB was being optimistic in assuming that antilock brakes would produce fatality benefits." *That's any fatality benefits at all!*

In other words, the author of the study that formed the foundation of OIRA's return letter explicitly rejected Graham's

conclusions, yet Graham chose to ignore this, insisting that NHTSA allow indirect systems anyway. This willful misinterpretation of the evidence seems to indicate that the concern over anti-lock brakes was really just a diversion tactic, meant to distract from the bottom-line action: Graham has rejected the safest possible standard as a result of cost objections from the auto industry, which incidentally has contributed generously over the years to the Harvard Center for Risk Analysis, where Graham served as director prior to his confirmation as OIRA administrator.

EPA Likely to Require "Terror Checks" at Chemical Plants

According to Associated Press reports last week, the Environmental Protection Agency (EPA) may finally begin to require chemical plants to assess their vulnerabilities to a terrorist attack, and then take measures to reduce those risks.

While chemical plants have always posed significant risks to communities from “routine” accidents, the terrorist attacks of Sept. 11 prompted a reassessment of these threats and greater sense of urgency in addressing these risks, and as OMB Watch previously reported here, chemical plants have failed to effectively address the threats on their own.

A senior EPA official reported that EPA wants to require plants to conduct mandatory vulnerability assessments, which would be similar to the Risk Management Plans that facilities are required to submit under the Clean Air Act that document what might happen in the case of an accidental release of chemicals from the plant. Chemical facilities would be required to assess how they might be vulnerable to an attack, and take measures to minimize the harmful effects of a potential attack.

EPA is reportedly unsure whether or not a law is needed in order to enforce the new "principles" for chemical plants, which are due to be released by EPA Administrator Whitman any day now. However, a law such as Sen. Jon Corzine's (D – NJ) Chemical Security Act (S. 1602), would go a long way in giving EPA the enforcement authority to protect communities from the great risk of accidents or terrorist attacks at a chemical plant. S. 1602 directs the EPA and Department of Justice (DOJ) to work with state and local agencies to inventory hazardous chemical sources and determine which are a high-priority risk. EPA and DOJ would then work to reduce those risks by requiring the companies that manufacture, use, or store hazardous chemicals to make processes inherently safer by reducing chemical quantities, switching to safer chemicals, or storing chemicals under safer conditions, starting with the facilities that pose the greatest risk.

Though S. 1602 has been sitting in the Senate since it was introduced in October 2001, it will reportedly be marked up in the next couple of months.

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In This Issue

Sludge -- Good for Fish?

Last Wednesday, June 19, the House Resources Committee held a hearing on the dumping of 200,000 tons of toxic sludge into the Potomac River by the Army Corps of Engineers.

"And, despite the fact that this practice is in blatant, indisputable violation of both the Clean Water Act and the Endangered Species Act, the Environmental Protection Agency (EPA) is in the process of re-issuing the Corps' permit to dump," according to Rep. George Radanovich (R-CA), chairman of the Parks Subcommittee. A recent story in the Washington Times reports that internal EPA documents argue that the sludge actually serves to protect fish by discouraging them from swimming where fishermen are present. "To suggest that toxic sludge is good for fish because it prevents them from being caught by man is like suggesting that we club baby seals to death to prevent them from being eaten by sharks. It's ludicrous," Radanovich told the Times.

Estate Tax Repeal Proponents Launch New Round of Misleading Attack Ads

Repeal proponents may have failed to secure enough Senate support to make estate tax repeal permanent (see this OMB Watch article) in their June 12 vote, but that vote seems to have only strengthened their resolve. They have launched attack ads against a number of Senators who voted to for reform over repeal of the estate tax instead of repeal it.

One such ad, a 60-second radio spot targeting Sen. Paul Wellstone (D-MN) can be heard online. Apparently, the ad, sponsored by Americans for Job Security, is being run in several states targeting, in addition to Wellstone, Sens. Tom Harkin (D-IA), Tim Johnson (D-SD), and Jean Carnahan (D-MO). AJS is a conservative business-led nonprofit, an offshoot of the Chamber of Commerce. The Annenberg Public Policy Center provides information about AJS, noting that they are an anti-tax, less regulation, shrink-the-size-of government group.

If the Wellstone ad weren't real, it would be laughable. Unfortunately, it is real and filled with falsehoods, innuendo, and omissions of key facts:

- **Falsehoods: In the ad, a farm owner asks his wife, in disbelief, "Paul Wellstone actually voted to tax people because they died?"** Despite what repeal advocates may say in their ads and fact sheets, the estate tax is not a tax on death, but rather a tax on the transfer of wealth -- great amounts of wealth, it should be said, from one person to another. More than 98% of estates never even have to file estate tax returns -- it is only those estates valued at more than $1.0 million ($2.0 million for couples) that must file an estate tax return, and this

exemption amount will rise to $3.5 million ($7.0 million for couples) in 2009.

- **Innuendo: Later in the ad, the man's wife says that they are going to write to Wellstone and tell him to, "Keep his [Wellstone's] money-grubbing hands off our farm."** Currently, fewer than 2% of estates -- and an even smaller percentage of farms -- pay the estate tax. Under current law, by the end of this decade, only 75 Minnesota estates will have any estate tax liability. Wellstone, however, actually went a step farther and voted for two different reform options -- one would have exempted all small businesses and family farms; the other would have accelerated the rise in the exemption so that beginning next year estates valued at $3.0 million ($6 million for couples) would have paid no estate tax. Neither of these reform alternatives passed the Senate, but they would have meant that only the top 0.5% of estates across the country would have paid the estate tax by the end of the decade -- and very, very few in Minnesota would have had to pay any tax.
- **Omission: The ad's couple makes the usual claim of pro-repeal advocates and bemoans the fact that, "We're going to have to sell the farm."** But according to recent USDA data, the average value of farms in Minnesota and surrounding states ranges from approximately $686,000 for small farms to $1,847,000 for very large farms. Given that the exemption for couples is currently $2 million, it means that most of Minnesota's family farms are already exempt from the tax -- and by 2009 hardly any would be covered. So if they couple in the ad had to sell the farm, you can bet they must be pretty darn wealthy.

The results of a recent poll make it clear that when the voting public is given a chance to hear *both* sides of the estate tax debate, 58% support reform and only 37% support repeal. The poll indicates that when they are given more information about the estate tax and who actually pays it, voters support reform over repeal by a margin of 2 to 1. Given this knowledge, it's not surprising that repeal advocates are trying everything they can to circulate thoroughly misleading and frightening information.

A Resounding "No" to Estate Tax Repeal

On June 12, the Senate rejected a proposal by Sen. Phil Gramm (R-TX) to make repeal of the estate tax, which under current law only expires for only one year, in 2010, permanent. Repeal advocates needed 60 votes to send the House-passed estate tax repeal bill on to the President for his signature, but only received 54 votes -- 44 Senators, including 2 Republicans, voted against repeal. This is even fewer votes than repeal proponents received in February on a non-binding .

The Senate also voted on, but did not pass, two Democratic reform alternatives, which would have preserved the estate tax but introduced other changes to exempt even more than the 98% of Americans who do not currently have any estate tax liability. One proposal, by Sen. Kent Conrad (D-ND) which received 38 votes, would have accelerated the higher exemption rates which were signed into law as part of last year's $1.35 trillion tax cut – immediately raising them to $3.0 million ($6.0 million for couples) through 2009 and $3.5 million ($7.0 million for couples) thereafter. The other, offered by Sen. Byron Dorgan (D-ND), would have exempted all qualified family owned businesses and farms from any estate tax liability and kept in place current exemptions that are scheduled to rise to $3.5 million for an individual in 2009, and received 44 votes.

With the many pressing concerns facing us -- strengthening our emergency response systems, educating and investing in our children, ensuring that the Social Security system remains strong for future generations, providing an affordable prescription drug plan for the country's seniors, and finding real ways to ensure that people have the education, job training and support they need to care for themselves and their families -- the Senate was correct to recognize that there are no leftover resources to provide tax breaks to the wealthiest 0.5% of estates. (Congress' Joint Committee on Taxation had estimated that permanent repeal of the estate tax would cost $100 billion in the decade ending in 2012 -- $56 billion in 2012 alone -- and other estimates show that repeal would cost the country more than $740 billion in the second decade of repeal.)

American Public Supports Reform -- Not Repeal
The Senate, however, was not only facing a lack of resources as it considered permanent estate tax repeal, but also a lack of interest among the American public for this costly and unfair tax cut. Polls conducted over the last 4 years show that tax cuts consistently rank at or very near the bottom of Americans' priorities, with issues such as ensuring Social Security's strength, providing a prescription drug benefit for seniors, and education remaining at the top of their lists. Moreover, the estate tax comes in last when compared with all the other tax cuts that are already a low priority.

A poll conducted in May by Greenberg Quinlan Rosner Research for OMB Watch and Americans for a Fair Estate Tax, shows that when voters are given a choice between repealing or reforming the estate tax, 58% support keeping it, with some reforms, especially those that would provide more protection for small farms and businesses. When they learn more about the estate tax and who it affects, their support grows to a margin of 2 to 1. In other words, when scare tactics are dispensed with and the facts are made known, 67% of those surveyed support reform of the estate tax.

Speaking at a press briefing to release the results of the poll, Conrad illustrated both the massive costs of repeal and the inherent unfairness of spending hundreds of billions of dollars to offer a tax break to the wealthiest of the wealthy by noting that, "Mr. Skilling, the former CEO of Enron, would benefit to the tune of $55 million if the estate tax is repealed," and that represents all of the Social Security taxes of "30,000 Americans earning

Estate Tax Polling Results

Get more background information and data from this poll.

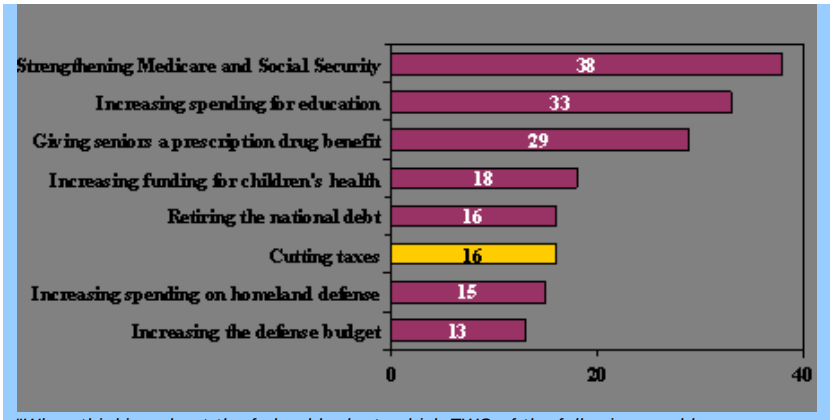
Federal Budget Priorities

$30,000 per year." Bill Gates, Sr, himself one of these wealthiest of the wealthy and an outspoken opponent of estate tax repeal, succinctly summarized the many strikes against repeal, saying, "Congress should reject the notion of wholesale repeal in the short term because it is fiscally reckless, and in the long term because we recognize the importance of protecting our democracy from a further buildup of hereditary wealth."

What's Next?
Even with the lack of support for repeal among voters, the objections of many who actually pay the estate tax, and the lack of resources to pay for a tax cut for a few thousand estates, repeal advocates will nevertheless continue in their efforts to make repeal permanent. Shortly after the vote, Gramm said he would bring the issue up again after October 1, when the rules that require 60 votes (called a "supermajority") to pass such proposals expire and revert back to a "simple majority" of just 51 votes. (For more on Senate efforts to reinstate these rules to preserve this key feature of the deliberative quality of the Senate, see this related article). Proponents of repeal have already launched a round of attack ads in Missouri, South Dakota, and Minnesota. For more on these ads and their use of innuendo and erroneous information, see this OMB Watch article.

Though neither reform alternative secured enough votes to pass, it was clear that Senate Democrats (and some Republicans) are now calling for responsible, reasonable, fair reform -- not repeal -- of the estate tax. With last week's vote policymakers can now turn to the important process of investigating just what that reform measure looks like.

See www.fairestatetax.org for more information on the estate tax, the efforts of the nonprofits coalition, Americans for a Fair Estate Tax, polling results and updates on recent action and statements about the estate tax.



"When thinking about the federal budget, which TWO of the following would you personally give the highest priority to?"

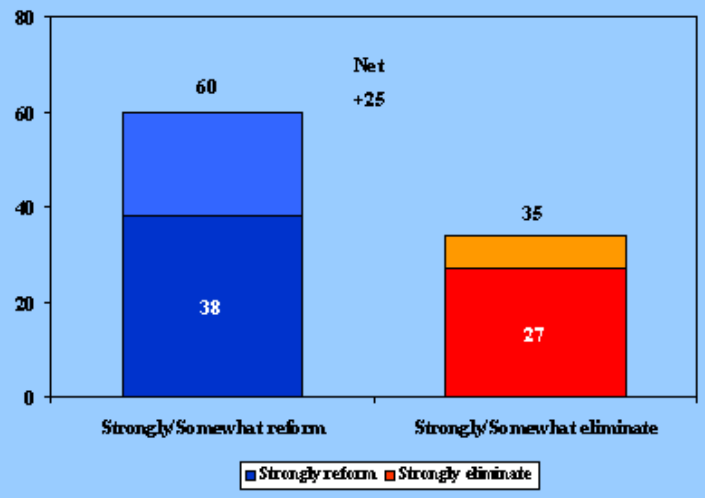
Repeal Message

Some people say we should eliminate the estate tax because it's nothing but a death tax that punishes those who succeed, especially small business owners and farmers. First, they spend their lives paying taxes on their hard earned money. Then, when they die, the government turns around and taxes it again. Children are often forced to sell the business or farm just to pay the taxes. We can't rob parents of the ability to provide security for their children.

Reform Message

Some people say eliminating the estate tax is a gift to multi-millionaires at the expense of 99 percent of American taxpayers. Giving them a new tax break would sacrifice our commitments to strengthen Medicare and Social Security, improve education, and fight terrorism. Instead, we should reform the estate tax to protect small businesses and family farms. That's the best way to advance the priorities that benefit all Americans.

Reform vs. Repeal



Do you favor eliminating the estate tax or simply reforming it to protect small businesses and family farms? Do you strongly favor (eliminating/reforming) it or somewhat favor (eliminating/reforming) it?"

Budget Process, October 1, And Tax Cuts

With the expiration of key Senate budget rules on October 1, tax cuts will get easier to pass.

With Sen. Phil Gramm (R-TX) vowing to bring permanent repeal of the estate tax back to the Senate floor this session, and the House voting one by one to make each element of last year's tax cut (which expires after 2010) permanent, attention turned last week to budget process and budget rules. Permanent repeal of the estate tax did not succeed in the Senate, even though 54 Senators voted for it, because the rules currently in place require a 60 vote "supermajority" for passage (see this related article). However, on September 30, 2002, various budget rules under the Budget Act will expire, and estate tax repeal, for example, would only require a simple majority, or 51 votes, to succeed, if it were to come to the Senate floor.

While the budget process is difficult to comprehend, and is hidden behind the substantive debates, it has very important implications for policy and legislation.

Last week, Sens. Kent Conrad (D-ND) and Russ Feingold (D-WI) introduced an amendment to the Department of Defense authorization to extend the expiring Senate budget rules in order to insure that there is a high threshold of support before passage of additional tax cuts beyond anything specified in the budget resolution (if one is passed this year). Specifically, the amendment would have:

- Extended, for five years, the 60 vote Senate supermajority requirement to waive budget points of order in the Senate, including those protecting Social Security, limiting total spending including tax cuts, and enforcing spending caps. For example, the estate tax vote on June 12 was not actually a vote on making the estate tax permanent, but a vote on waiving the budget rules of order, requiring 60 votes to succeed. Since it failed, the underlying substance was never voted on. With the expiration of the 60 vote supermajority requirement, a point of order would only take 51 votes to make repeal of the estate tax, or any other expiring or new tax provisions, a reality.
- Extended, for five years, budget enforcement act provisions, including rules to enforce discretionary caps.
- Extended discretionary spending levels, or caps, for two years, setting the caps at $768.1 billion in 2003 and $786.5 in 2004.
- Extended the Senate pay-as-you-go rule that disallows using any of the so-called Social Security surplus to pay for new tax cuts or new mandatory spending.
- Provided for the allocations among the thirteen appropriations bills from the total discretionary cap.

Since Republicans objected to the Conrad-Feingold amendment, it, too, needed 60 votes to pass. Unfortunately, it was defeated on June 20 by only one vote. What does this mean? Given a tight election year, the desire to avoid public backlash over filibustering, and the Republican obsession to pass more and more tax cuts, the expiration of the budget process rules on October 1 allows more room for tax cuts. More tax cuts, when there are so many other pressing priorities, are a really bad idea. While OMB Watch has never supported unrealistic caps on discretionary spending, the potential that the expiration of the budget rules would make it easier for the Senate to cut taxes seemed to be a worse outcome than two more years of discretionary spending caps.

It is possible that cooler heads will prevail and the Senate will once again extend the budget rules that help it remain the "greatest deliberative body." It could do so on a must-pass bill such as debt ceiling extension or anti-terrorism supplemental appropriations. We will keep you posted about other attempts to extend the budget process rules, as well as the continuing threat of more tax cuts.

Bumping Our Heads Against the Debt Ceiling

On June 28, the day Congress is planning to leave for the July 4 recess, Treasury Secretary Paul O'Neill has warned that the government will run out of money to pay its bills unless Congress increases the limit on how much the Treasury can borrow. This means parts of government, if not all of it, will no longer properly function, and government will default on its bills. This has been publicly described as a showdown between the Bush administration and Congress, but in fact it is really a showdown between Bush and the Republicans in the House.

The Senate already approved a bill to raise the debt ceiling by $450 billion, up from $5.95 trillion, on June 11, the same day that Sen. Phil Gramm (R-TX) proposed permanent repeal of the estate tax which would have cost another $100 billion over ten years. It was ironic that the same day the Senate was debating increasing the amount the government can borrow, it was also voting on increasing the debt by giving a tax break to the very, very wealthy. Nonetheless, the Senate approved the debt extension -- although at an amount lower than the $750 billion the Bush administration requested.

House Republicans are in a Bind

The White House now wants the House to pass an increase as well, but House Republican leaders are refusing to bring the issue up for a vote because they say they don't have enough support from their Republican colleagues to pass it. The reason the debt ceiling has to be increased is because of last year's $1.35 trillion tax cut -- and they do not want to draw attention to that fact, especially in an election year. In an attempt to sidestep this political stumbling block, House Republicans included provisions in its supplemental bill that would allow the increase to the debt ceiling to be added during the House and Senate conference on this piece of emergency spending legislation providing funds for anti-terrorist activities. In other words, they are trying to bury it in other more popular legislation.

The debt ceiling, currently $5.95 trillion, sets the limit on the amount of money the U.S. government may legally "borrow" by issuing Treasury bonds to the public, as well as the amount of money it may borrow from its own various accounts, such as the Social Security "trust fund." According to a January 2002 CRS report, when the government reaches the debt limit, that is, it cannot "issue new debt," it cannot free up enough funds to cover its expenses and obligations.

Democrats want the debt ceiling extension bill to be on its own and to be publicly debated. Senate Majority Leader Tom

Daschle (D-SD) has said he will not support an anti-terrorism spending bill that has the debt ceiling on it, which forces the House Republicans to face this difficult issue head on. House Democrats have said they will support only a one-month increase of $100 billion and want to use the month to come to an agreement on a budget for FY 2003.

Yet House Majority Leader Dick Armey (R-TX) acknowledges that Republicans do not have enough votes to pass a debt ceiling bill if it is free-standing. He has made the argument that the administration is playing the part of "Chicken Little" and says that there are gimmicks that can be used to give the House more time to find a way to accomplish the debt extension. O'Neill is having none of that. He notes that payments to Social Security beneficiaries will be suspended at the beginning of July and interest payments to various trust funds, including Social Security, will also come due.

But, maybe it's really just an old fashioned game of "Chicken" that we're witnessing -- O'Neill has also noted that, "It's not a question of whether we're going to do it or not, it's just a question of how close to the cliff we're going to run before we do what we know we need to do." The current debt limit was set in August 1997, and there have been more than 25 temporary and permanent increases in the last 20 years. So, why the hang-up on this seemingly cut-and-(very)-dry issue?

For politicians who are reluctant to be seen by their colleagues and their constituents as spendthrifts, the decision to vote to raise the debt limit can be a difficult one. But, as noted above, it is more than a little perplexing that a chamber so eager to spend billions of dollars to make costly tax cuts permanent is so unwilling to pass a measure that would make it possible for the government to continue meeting its financial obligations. Instead of arguing over the debt limit, our country's elected officials should be debating the merits of last year's tax cut and the huge strain it will continue to place on our resources for at least the next 10 years. Since few in Congress seem to be willing to do that, they should pass the necessary increase and move on to the business of allocating the country's remaining resources to our many needs.

Congressman Tauzin Supports Information Restriction

House Energy and Commerce Committee Chairman Billy Tauzin (R-LA) and senior Committee Republicans announced their support for increasing government secrecy in the name of national security. In a July 19 letter, the Republicans wrote the Director of Homeland Security, Tom Ridge, to indicate their "continued concern that sensitive information regarding potential vulnerabilities... are fully protected from improper public disclosure." The Republicans also encouraged Ridge to "coordinate a comprehensive and consistent approach for assessing threats and vulnerabilities posed by potential terrorist actions to America's critical infrastructure and manufacturing facilities."

The letter comes as Congress is considering creation of a new Homeland Security Department. It also comes at a time when the Environmental Protection Agency (EPA) is rumored to be considering a proposal to mandate that thousands of industrial, chemical manufacturing, storage and treatment facilities located across the United States conduct vulnerability assessments of the risks posed to their operations from intentional acts of terrorism. This proposal is very similar to Sen. Jon Corzine's (D-NJ) Chemical Security Act, S. 1602 (see related article).

Tauzin and the co-signers seem uncomfortable with EPA's pursuing the vulnerability assessments. "[W]e are concerned that the Clean Air Act [the authority EPA is using to mandate the assessments] was not enacted with deliberate terrorist actions in mind, and does not provide either the statutory authority or the appropriate framework for such assessments." The Republicans would prefer to grant that authority to the new Department, and recommends that, "rather than having individual Federal agencies and critical infrastructure sectors develop differing assessment models and security programs, the new Department should develop and promote a single framework for conducting vulnerability assessments across the critical infrastructure sectors." Even though the administration's bill does not transfer any of the EPA's expertise to the new agency.

But it seems the real concern is over public access to information about vulnerabilities. The letter notes, "we must ensure that vulnerability assessments are never allowed to be used as roadmaps for terrorist action." They add that the Clean Air Act does not "shield them [the assessments] from improper public disclosure." Under the Clean Air Act, EPA would make such information available to the public in order to help people protect their health and safety. According to recent surveys, most people do not know that they live within a vulnerability zone. These assessments could help families make informed decisions about where to live, where to send their kids to day care or school, and what dangers generally exist.

The Republicans may want to require the vulnerability assessments in the Homeland Security bill because of a provision inserted by the Bush administration. Section 204 of the bill creates a huge loophole in the Freedom of Information Act (FOIA), our safety net for right-to-know:

"Information provided voluntarily by non-Federal entities or individuals that relates to infrastructure vulnerabilities or other vulnerabilities to terrorism and is or has been in the possession of the Department shall not be subject to section 552 of title 5, United States Code [the Freedom of Information Act]."

This broad and vague exemption raises a number of important questions:

- Exactly what types of information would be withheld?
- What qualifies as "infrastructure" or "vulnerabilities"?
- What counts as "voluntarily provided"?
- Is voluntarily-submitted information that "is or has been in the possession of the Department" (a sweeping phrase) exempt from disclosure even if it was obtained by another agency as part of the regulatory process?

Without these answers, this exemption could create a black hole into which companies dump information and through which they escape public scrutiny. Unfortunately these unanswered questions do not seem to trouble Tauzin and the other co-signers of the letter. And it fits exactly what the chemical industry has wanted all along -- less public disclosure about what it is doing.

This is not the first time this troubling concept has been raised. The Critical Infrastructure Information Act (S. 1456), recently pushed by Sens. Robert Bennett (R-UT) and Jon Kyl (R-AZ), proposes to exempt voluntarily-disclosed "critical infrastructure" information from FOIA -- a concept fiercely opposed by environmentalists, reporters, libraries, and other public interest groups. A recent letter, signed by 45 of these groups, urged Senators to oppose the Bennett/Kyl legislation.

Unfortunately, this issue has found its way into Bush's Homeland Security Act, and we're left wondering why. Certainly, it has nothing to do with the creation and elevation of a new department. In addition, we must wonder why Tauzin and his co-signers felt that this issue alone among the numerous complexities of establishing a new cabinet-level department required a specific letter of support. Perhaps it is because the provision is the least established or proven proposal in the bill. Indeed, as the debate surrounding the Bennett/Kyl bill suggests, such a broad new exemption from FOIA is a highly complex issue deserving of careful consideration and detailed handling. This clearly cannot be accomplished with a single sentence.

Beyond Tauzin, the other House members signing the letter were: Committee Vice Chairman Richard Burr (R-NC), Health subcommittee Chairman Michael Bilirakis (R-FL), Energy and Air Quality subcommittee Chairman Joe Barton (R-TX), Telecommunications and the Internet subcommittee Chairman Fred Upton (R-MI), Commerce, Trade and Consumer Protection subcommittee Chairman Cliff Stearns (R-FL), Oversight and Investigations subcommittee Chairman James Greenwood (R-PA) and Environment and Hazardous Materials subcommittee Chairman Paul Gillmor (R-OH).

Amicus Brief Filed in Challenge to Legal Services Restrictions

One hundred nonprofits and foundations joined forces in a friend of the court brief filed in federal District Court in support of four legal service programs in New York City, a private charity and pro bono attorney that are challenging advocacy restrictions on private dollars of legal service programs. The case, Dobbins v. Legal Services Corporation, was filed in December 2001, and seeks an injunction barring enforcement of rules that bar legal services programs from using private funds for lobbying, participating in agency rule-making, claiming court ordered attorneys' fee awards, and filing class actions on behalf of low income clients and communities.

This "program integrity" regulation forces legal services programs to create physically separate organizations for advocacy with their private dollars, or deny low-income clients access to this type of advocacy. (See 45 C.F.R. 1610)

The restrictions were imposed by Congress in 1996, after the Legal Services Program had been threatened with elimination. They are renewed annually through the appropriations process. During this same time the nonprofit community successfully stopped Rep. Ernest Istook's (R-OK) efforts to impose similar advocacy restrictions on all nonprofits that receive federal funding. But, as John Edie, General Counsel to the Council on Foundations said in a Foundation News and Commentary article, "At first glance, this case appears to affect only funding that helps provide legal services to the poor. But, in fact, the implications are much wider. The ultimate disposition of the Dobbins case could make clear to Congress that, in the absence of a compelling reason, it cannot place limits on private donations to organizations that also receive some federal funding, particularly when the private donations are funding speech."

The amicus brief argues that the legal services restrictions unconstitutionally infringe on the freedom of charitable donors and nonprofits by limiting their ability to spend private funds and target their resources as they see fit. It explains how the "third sector's ability to innovate and to enhance democracy hinges on its ability to act in partnership with government, while remaining free of unnecessary, onerous restrictions." To illustrate how unnecessary these restrictions are the brief explains how the government can (and does) ensure that its funds are not spent on prohibited activities without a requirement of physical separation, pointing out that:

"For example, since 1984, federal grant rules have prohibited federal grantees from using federal funds, either directly or indirectly, for a variety of advocacy related activities and costs. Neither physical nor organizational separation is required. Instead, the Office of Management and Budget's Circular A-122 defines unallowable costs and establishes procedures for allocating expenses…..There is, consequently, no justification for LSC to require legal services offices to do so much more…" (p. 23-24)

The Legal Services Corporation has filed a motion seeking dismissal of the case. The National Legal Aid and Defender Association and several legal services programs have also filed an amicus brief. This suit follows the 2001 Supreme Court decision in Velazquez v. Legal Service Corporation, which invalidated a restriction barring legal aid lawyers from challenging welfare reform laws.

For more information see the Brennan Center's fact sheet on Dobbins v. Legal Services Corporation.

2001 Giving USA Study Released

Some $212 billion in charitable giving was generated in 2001, a 0.5% rate of growth significantly lower than the 6% rate of growth in 2000, according to the 2002 edition of Giving USA, a publication of the AAFRC Trust for Philanthropy, researched and written by the Center on Philanthropy at Indiana University, released June 20. Arguably the most surprising news is that charitable giving centered around September 11th activities constituted less than 1% of all giving for the year.

Produced by the American Association of Fundraising Counsel (AAFRC)Trust for Philanthropy, in partnership with the Center on Philanthropy at Indiana University, the Giving USA study looks at giving trends in four areas: gifts from living individuals; gifts made through bequests; gifts from corporations and corporate foundations; and foundation grants. For all 2001 giving tracked in the study, individuals represented 75.8% $160.7 billion), foundation grants came in at 12.2 % ($25.9 billion), bequests contributed 7.7% ($16.3 billion), and corporate giving 4.3% ($9.05 billion).

In a year marked by a damaged economy, new combinations of causes to which funds were directed, and both new and decreasing current donor bases, September 11th was not the only influence on giving. The nearly $2 billion in gifts made as part of disaster recovery and relief efforts around September 11th accounted for only 0.9% of the total given in 2001. While estimates on future corporate and foundation gifts were not included in the figure, individuals reportedly gave $1.25 billion, and Foundation Center estimates peg corporate giving and foundation grants at $410 million and $195 million

respectively.

The study points out that in years where several key economic indicators -- such as personal income growth and corporate pretax profits -- grow slowly or fall, the rate of growth in giving tends to follow suit. Yet 2001 giving still managed to come in at levels of over 2% of gross domestic product. See more information, including details on ordering the study.

Reprinted from June 20, 2002 NPTalk.

Senate Finance Committee Passes Amended CARE Act

The Senate Finance Committee passed the Chair's amended version of the CARE Act (S. 1924, the Lieberman-Santorum compromise on the President's faith-based initiative) on June 18 by a voice vote.

The main portions of the bill create new incentives for charitable giving and specify equal treatment of faith-based and secular nonprofits when applying for federal grants. It also simplifies the rules on lobbying by 501(c)(3) groups that use the expenditure test in the IRS rules, by doing away with the distinction between direct and grassroots lobbying, but continuing the use of the direct lobbying expenditure ceiling.

It is not clear whether the bill will come up on the Senate floor before the summer recess. Some Senators, including Sen. Jeff Bingaman (D-NM), have raised concerns about the cost of the bill, and whether the revenue raising offsets it contains are sufficient. Finance Committee member Sen. John Kerry (D-MA) has said he opposes the deduction for non-itemizers because it is "not good tax policy," but he does support a provision that allows deductions for gifts made from rollovers of Individual Retirement Accounts (IRA). Because $2.5 trillion dollars are held in IRAs the potential for new giving from this provision is huge. However, there is concern that charities that serve low-income households, may not be well-positioned to get donations from those with IRA's negating an important purpose of the tax incentive package.

See for more details on the Finance Committee version of the CARE Act.

No ICANN Fix It

The nonprofit organization responsible for the management of the Internet's domain name space has recently drawn renewed criticism from Congress, international governments, nonprofits, and the broader online public, most recently for a series of reorganization proposals developed to address earlier concerns about transparency, accountability, and fairness around its deliberations and overall operations.

Since the start of its contract with the U.S. Department of Commerce in 1998, the California-based nonprofit Internet Corporation for Assigned Names and Numbers (ICANN) has been responsible for determining how issues around domain name registrations are handled. In order to obtain full management and control of the Internet domain name registry, ICANN is obligated to ensure that competition is increased in the domain name registration industry, the system itself is more secure, and that overall maintenance and governance process itself is more participatory, open, and accountable to the online public. The current contract is set to expire on September 30, 2002.

Marked by a steady stream of turbulence and controversy, ICANN critiques generally focus on:

- uncertainty of its mission and role, whether it is limited to coordinating maintenance of the domain name system and its technical stability and security, by providing an international forum for discussion and consensus building, versus serving a global Internet policy-setting or treaty-making organization
- its inability to foster, much less support, significant involvement by the broader online public in its deliberations
- its perceived inability to operate in a fair, transparent, accountable manner, that is amenable to the dictates of the various governmental entities and regulatory bodies affected by its deliberations, as well as other parties responsible for various Internet functions around the world

Until ICANN's contract expires, the U.S. government exercises a degree of authority, oversight, involvement, and influence unlike that of any government entity in the world, through the Department of Commerce's National Telecommunications and Information Administration (NTIA), the U.S. House of Representatives Energy and Commerce Committee, and the Senate Commerce, Science and Transportation Committee.

That level of involvement has long stirred distrust and discontent, as there is currently no representation of any government interests on ICANN's board. In fact, of the total 13 board members, ICANN has still only managed to officially seat five of nine members representing the Internet public interest community, called for under the original organizing charter. By contrast, the other nine board members, one selected by each of the ICANN domain name supporting organizations, have been seated. Only the Government Advisory Committee (GAC) provides the means for government input in ICANN activity, but this is limited to non-binding recommendations, rather than direct involvement.

There have been, however, attempts to maintain working relationships between ICANN and international intergovernmental entities, particularly the World Intellectual Property Organization (WIPO), the United Nations agency that advocates on behalf of intellectual property protections and enforcements through treaties around the world. WIPO helped develop the dispute mechanism employed by ICANN in matters involving combined domain and trademark name disputes. During its Internet Domain Name Process Second Session, however, concerns were repeatedly raised about the US government's direct involvement in ICANN, ICANN's potential role as a de facto trademark processing and arbitration body, and its decision making authority as a private entity operating under an amalgam of laws and rules around matters to a degree that potentially trumps international and intergovernmental arrangements. Similar concerns were echoed in the European Union presidency's June 3, 2002 draft statement sent to the EU Transport and Telecommunications Council, which is comprised of the telecommunications ministers from the 15 EU member countries. The Council followed suit during its proceedings, issuing signals on June 17, 2002 that ICANN needed more direct involvement from other governments, in order to prevent it from exceeding its boundaries. These articulations suggest that ICANN's role, whether unintentional or by design, inches more towards a global Internet governance body, rather than an inclusive international cooperation around the Internet's backbone.

In a May 29, 2002 open letter to NTIA Administrator Nancy Victory, a group of nonprofits, led by the Media Access Project, called for ending the current agreements granting ICANN administration of the domain name system, and replacing it with a competitive auction for administration rights. The groups articulated this "wake-up call" to direct attention to the lengthy approval of new top-level domains, in addition to the needs of non-commercial domain name holders in the overall governance framework; and what it considered a disregard for direct participation by the online public.

Just two days later, the ICANN Committee on Evolution and Reform, created to follow up a February 25, 2002 reform proposal drafted by president and CEO M. Stuart Lynn, issued its own set of recommendations. Public input was accepted on the specific recommendations in the report, in advance of the June 24 - June 28, 2002 ICANN board meeting in Bucharest, Romania to adopt the reform proposals.

This reform committee proposed an ombudsman to receive public complaints and report, on its discretion, those meriting action to the ICANN board; a public participation manager to encourage more involvement from the online public in ICANN activity; and an arbitration process through which non-binding decisions could be rendered around individual allegations of ICANN violations of its own by-laws. But the proposals stop short of addressing key participation and accountability concerns. For example, the committee calls for the ICANN board to consist of 13 to 19 members, including 5-11 members chosen by a nominating committee, and one seat reserved for representation from the Government Advisory Committee. There is not, however, a recommendation to reserve seats for representatives directly elected by the Internet public. More importantly, the reform recommendations do not spell out who would actually sit on the nominating committee itself, much less how ICANN will generate funds to sustain itself and its activities.

On June 10, 2002, Sen. Conrad Burns (R-MT) announced his intention to introduce legislation calling for more direct federal involvement in overseeing ICANN's operations, in order to ensure that it is limited to management of the domain name system, rather than broader Internet policymaking. Burns expressed concern that ICANN is operating without the transparency and accountability expected of federal agencies, and also criticized the Commerce Department for not being more watchful of ICANN activity to ensure that obligations were more aggressively met.

On June 12, 2002, the Senate Commerce, Science, and Transportation Subcommittee on Science, Space, and Technology hearing featured several critiques of ICANN's current operations and calls for increased scrutiny and oversight. It did not, however, produce any visible signs that ICANN's contract would end. Rather, several voices (including Burns') signaled interest in extending the contract, despite potential legislative activity to curb ICANN's scope of activity in the near future. GAO testimony during the same hearing urged the Commerce Department to issue an assessment of ICANN's performance and fulfillment of its obligations to date, something that NTIA's Victory promised to deliver as a publicly available document around the time of contract renewal.

ICANN continues to be roundly criticized for its April 2, 2001 agreement with the Commerce Department to extend Internet domain name registrar VeriSign's exclusive control over the domain name registry for ".com" Internet addresses in perpetuity, and the ".net" domain name registry, in exchange for releasing control of the ".org" registry. In addition, ICANN was sued in March 2002 by one of its own board members, chosen under direct elections by the online public, for failing to provide access to corporate records, a violation of state law. The ICANN board offered to grant limited access upon signing a confidentiality agreement with the ICANN board. That move prompted the nonprofit Electronic Frontier Foundation to file a motion on May 21, 2002 with the Superior Court of Los Angeles seeking to give the board member immediate access to the records. As of this writing, the matter is still awaiting resolution.

Resources

5/21-5/24/02 Proceedings
WIPO Second Session on Internet Domain Name Process
http://www.dnso.org/clubpublic/council/Arc10/pdf00001.pdf

6/3/02 Draft Statement to Transport and Telecommunications Council
European Union Presidency
http://register.consilium.eu.int/pdf/en/02/st09/09526en2.pdf

6/17/02 Results
European Union's Transport and Telecommunications Council Meeting
http://www.ue2002.es/portada/plantillaDetalle.asp?opcion=0&id=2196&idioma=ingles

5/29/02 Open Letter to NTIA
http://www.mediaaccess.org/filings/DoCrebidfinal.pdf

2/25/02 ICANN Reorganization Proposal
ICANN President & CEO, M. Stuart Lynn
http://www.icann.org/general/lynn-reform-proposal-24feb02.htm

5/31/02 Recommendations
ICANN Committee on Evolution and Reform
http://www.icann.org/committees/evol-reform/recommendations-31may02.htm

6/11/02 Press Statement
Senator Conrad Burns (R-MT)
http://burns.senate.gov/p020611a.htm

6/12/02 Testimony from Peter Guerrero
Director, Physical Infrastructure Group
U.S. General Accounting Office
http://commerce.senate.gov/hearings/061202guerrero.pdf

4/21/01 ICANN-VeriSign agreement
http://osecnt13.osec.doc.gov/public.nsf/docs/icann-verisign-0518

5/21/02 Electronic Frontier Foundation filing
on behalf of Karl Auerbach, ICANN board member
http://www.eff.org/Infra/DNS_control/ICANN_IANA_IAHC/Auerbach_v_ICANN

Race to Transfer .org Intensifies

On June 18, 2002, the Internet Corporation for Assigned Names and Numbers (ICANN) closed the bidding to both nonprofit and collaborative applicants that represent the future management of the .org Internet namespace.

As mentioned in a March 18, 2002 NPTalk Internet domain registration giant VeriSign agreed to give up its decade-long exclusive hold on .org registrations, in exchange for a advantageous arrangement to manage .com and .net registrations. Under the terms of a May 2001 agreement with ICANN and the U.S. Commerce Department, VeriSign will operate the .org registry until December 2002.

The January 17, 2002 recommendations of ICANN's Domain Name Supporting Organization Names Council (DNSO) suggested that .org be kept exclusive for formally recognized nonprofit and public interest groups, as well as any noncommercial interest in communications, cultural, educational, political, collaborative or community focused entities. It also stressed that the future operator of the .org registry should itself be a well-regarded nonprofit entity, yet all current ICANN-affiliated registrars could continue to register .org domain names -- currently a $10 million revenue generator numbering nearly 3 million registrations -- as well. While agreeing with the bulk of the DNSO report, the ICANN board did not promise to give exclusive consideration of the registry management to a nonprofit group.

On June 18, 2002, the Internet Corporation for Assigned Names and Numbers (ICANN) closed the bidding to some 11 entities expressing serious interest in managing the .org domain name registry. In addition to domain name registry firms, the pool of contenders is an eclectic mix of nonprofit and for-profit collaborators, including:

- Global Name Registry, manager of the new .name domain in a joint bid with the International Federation of Red Cross and Red Crescent Societies;
- the nonprofit Internet Society (coordinating body of the Internet Engineering Taskforce standards group) and Afilias Global Registry Services, current managing entity of the .info domain registry in a joint bid with IBM and a DNS hosting service;
- the Internet Multicasting Service (the force behind the first Internet radio station) and the Internet Software Consortium (developer of open-source critical information infrastructure software for the Internet), the combination of which has pledged to make publicly available for free the database toolset that would power the registry (Incidentally, the founder of IMS played a major role in developing the Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system of publicly-available corporate filings under the U.S. Securities and Exchange Commission, and the ISC founder also co-founded the anti-spam Mail Abuse Prevention System (MAPS));
- the nonprofit clearinghouse Union of International Associations and current .org domain registry owner VeriSign
- Unity Registry, a joint effort consisting of the manager of the .coop domain (Poptel) and the .au country-code top-level domain for Australia (AusRegistry);
- two nonprofit applicants established especially for the application process, the DotOrg Foundation and the .Org Foundation.

A final decision is expected by the end of August 2002. More information on the bidders, including their proposals, are located online: http://www.icann.org/tlds/org/applications-received-18jun02.htm

Administration to Relax Clean Air Protections for Aging Power Plants

The Bush administration recently announced its decision to roll back clean air protections for older, coal-fired power plants, allowing them to modernize without installing the latest technology to cut down on emissions, as reported in the Washington Post.

Sen. James Jeffords (I-VT), chair of the Environment and Public Works Committee reacted angrily to the announcement, indicating he would use subpoena power to find out how the Bush administration reached its decision, and whether it was unduly influenced by big polluting power plants. In response, officials at the Environmental Protection Agency (EPA) say they plan to turn over documents after their proposal is reviewed by the Office of Management and Budget's Office of Information and Regulatory Affairs, though Jeffords is still pressing forward.

"This appears to be the biggest rollback of the Clean Air Act in history," Jeffords said in a prepared statement. "It is clear by [this] action that this Administration is intent on undoing more than 25 years of progress on clean air. The question is why?"

The decision, expected for some time, formally alters enforcement efforts initiated by the Clinton administration, which brought dozens of lawsuits after it uncovered hundreds of cases where aging power plants failed to install pollution control equipment during major modifications, a direct violation of the New Source Review (NSR) provision of the Clean Air Act.

Instead, the Bush administration will relax standards for upgrades, as described by the Natural Resources Defense Council, while curtailing new lawsuits. In particular, the administration intends to expand the definition of "routine maintenance," which is exempt from New Source Review, allowing utilities to make more extensive upgrades without having to install new anti-pollution equipment.

In devising this new rule, which EPA Administrator Christie Todd Whitman estimates could take three years, EPA will ask for comments on a range of cost thresholds from 1.5 percent to 15 percent of the unit's value being repaired. This proposed expansion of "routine maintenance" will reportedly be challenged in court as inconsistent with the Clean Air Act by environmental and health organizations, as well as states that suffer from the transport of pollution from other states.

Meanwhile, the administration says it will continue ongoing litigation initiated under President Clinton, but the shift in policy, and the administration's cozy relationship with industry, undoubtedly makes it much less likely those cases will be resolved on favorable terms.

Less than a week after the administration's announcement, the General Accounting Office -- the investigative arm of Congress -- released a report finding that electric power plants that began operating before 1972 emitted 59 percent of the sulfur dioxide and 47 percent of the nitrogen oxides (which are regulated under the Clean Air Act) from fossil fuel units in 2000, even though they generate only 42 percent of all electricity by such units.

This has serious health implications for many Americans; such pollution causes an estimated 30,000 premature deaths per year. A recent study (March 5, 2002) by the Journal of the American Medical Association linked long-term exposure to fine particles of air pollution from coal-fired power plants to lung cancer, concluding that people living in the most heavily polluted metropolitan areas have a 12 percent increased risk of dying of lung cancer than people in the least polluted areas.

In writing the Clean Air Act, Congress exempted older plants from compliance with new emissions standards because it was generally thought they would be phased out -- an assumption that turned out to be wrong. Yet instead of pushing these plants to clean up their act, the Bush administration seems intent on giving them a permanent free pass.

Battle of the Bills

The Senate is currently considering two chemical security bills that seem just about as diametrically opposed to each other as two bills could be.

Sen. Jon Corzine's (D-NJ) Chemical Security Act (S. 1602) is scheduled for mark-up this week. Corzine's bill would require that facilities that pose hazards to their neighbors look for safer processes and adopt them where feasible. Under the act:

- The EPA and the Department of Justice would identify the highest-priority facilities;
- Those facilities would conduct vulnerability assessments and evaluate options both for improving site security and for reducing chemical hazards through safer materials or processes; and
- Facilities would implement the most effective options.

The Chemical Security Act functionally represents a next step beyond the Risk Management Plans currently collected from chemical facilities under the Clean Air Act. Corzine's bill moves on from simply cataloging the risks to assessing potential methods of reducing the risk and making these facilities safer for workers and the communities around them.

The Clean Air Act Amendments of 1990 require some 15,000 industrial facilities to prepare Risk Management Plans. These plans inform workers and nearby communities about the potential consequences of a major chemical release. By educating the community and the facility's managers, the plans are intended to reduce hazards, prevent pollution, save lives, and protect property. Since September 11th, the plans have taken on added importance as communities weigh the possibility that a release could be caused intentionally by terrorists.

Unfortunately another bill in the Senate is calling for a step backwards concerning the RMPs and chemical plant safety. Sen. Kit Bond's (R- MO) "Community Protection from Chemical Terrorism Act" (S.2579), would eliminate all public access to the RMPs. People who live or work near chemical facilities would be denied information about these risks in the name of fighting terrorism. At the same time, the federal government would do nothing to reduce the chemical hazards that make industrial facilities a target for terrorists in the first place. It would:

- Keep communities in the dark about the threat to their own health and safety;
- Do nothing to physically reduce chemical hazards or improve chemical site security; and
- Shirk federal responsibility.

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