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Needs UP, Services DOWN

Today, more Americans are looking to the government for help, yet the budgets of government-funded social service programs are dwindling.

In spite of better news on the economic front, the government budget crisis is far from over. The legacy of the Bush tax cuts, which decreased federal revenue and negatively impacted state finances, lead to a greater need for services that cannot be met by strapped cities, states and nonprofit service providers. These cuts are especially hard for low-income working families, the unemployed, and the poor. Some examples follow:

According to the annual survey by the U.S. Conference of Mayors:

- Requests for emergency food assistance during the past year was **UP** by an average of 17 percent in the twenty-five cities surveyed. Meanwhile, services were **DOWN** leading to an estimated 14 percent of those requests unmet.
- The overall requests for emergency shelter during the past year was **UP** by an average of 13 percent and requests by families was **UP** by 15 percent. However, services were **DOWN** causing an estimated 30 percent of the overall requests and 33 percent of the requests by families going unmet.
- Requests for assisted housing during the past year was **UP** by an average of 83 percent. But with services

DOWN, only 33 percent of all low-income households were eligible for assisted housing, and the average wait to receive services increased to two years.

Other indicators:

- According to reports by the Center on Budget and Policy Priorities, **UP** to 1.6 million low-income individuals, including a half a million children, are losing health care coverage due to budget cuts. Yet again, services are **DOWN**: Six states -- Alabama, Colorado, Florida, Maryland, Montana, and Utah -- have simply stopped enrolling children who are eligible for the State Children's Health Insurance Program (SCHIP). Cuts in health care coverage put an increased burden on private and public hospitals and clinics. The number of uninsured Americans, **UP** by two million from 2001, was 43.6 million in 2002. This number is expected to increase because the expiration of the $20 billion in federal assistance for state fiscal relief on July 1, 2004, which is unlikely to be renewed.
- According to The College Board, the annual costs of college tuition and fees for a four year public college is **UP** 14.1 percent to $4,694. The annual cost for a two-year public college is **UP** 13.8 percent to $1,905. (The annual cost of a private four-year college only increased 6% to $19,710). Most states have cut funding for higher education.
- Last year, eleven states cut K-12 school funding. Included in the cuts were the elimination of reading specialists, all-day kindergarten and pre-school programs, summer school for 9th, 10th, and 11th grades, and transportation to and from school. Nine states from the previous year had to make same type of cuts.

While headlines might boast good economic news, unemployment remains high, the jobs that are being created are low-wage jobs,

What are the causes of increased needs? The Mayors' report listed the causes of hunger in order by frequency:

- **unemployment**
- **low-paying jobs**
- **high housing costs**
- **medical or health care costs**
- **homelessness**
- **poverty or lack of income**
- **substance abuse and mental health problems**
- **reduced public benefits**
- **child care costs**
- **limited life skills**
- **downturn and weakening of the economy**
- **transportation expenses or the lack of transportation**
- **lack of information about Food Stamps**
- **lack of nutritional education**
- **increase in the senior population.**

The reported causes of homelessness were:

- **lack of affordable housing**
- **mental illness and lack of needed services**
- **low-paying jobs**
- **substance abuse and lack of**

and many families are struggling for basic food and shelter needs. Adding to the plight of many Americans is the strong indication that a new round of budget cuts will take place at the state level during the coming fiscal year. At the same time, the size of federal budget deficits and a growing national debt will have a chilling effect on increases in spending for programs and services that weave the safety net, provide the means for people to escape poverty, and ensure the government services that we all depend upon. Both middle-class and low-income Americans are feeling the pinch. Many of the things that people worry about -- wages, jobs, health care, credit card debt, retirement security, etc. -- are becoming more of a problem according to a report by the Campaign for America's Future.

needed services

- **unemployment**
- **domestic violence**
- **poverty**
- **prison release.**

The list of social needs above makes a strong case for more, not less, investment in the services needed to lift people out of poverty. The list includes long-term challenges, such as the aging population and the flux of prisoners being released due the expiration of their mandatory minimum sentences. Unfortunately, these important issues remain on the back burner of the nation's political agenda.

The President is expected to introduce more tax cuts in his forthcoming State of the Union address and FY 2005 budget proposal. Most presidential candidates are calling for their own tax cuts as well. Tax cuts, which are ultimately cuts in revenue, will result in a government that is less and less able to provide the services that most Americans want and need. At the same time, the President is proposing a massive increase in spending for space exploration. While this maybe a worthy cause, it is essential to get priorities sorted. This means the federal government needs the revenue base to address these types of domestic needs.

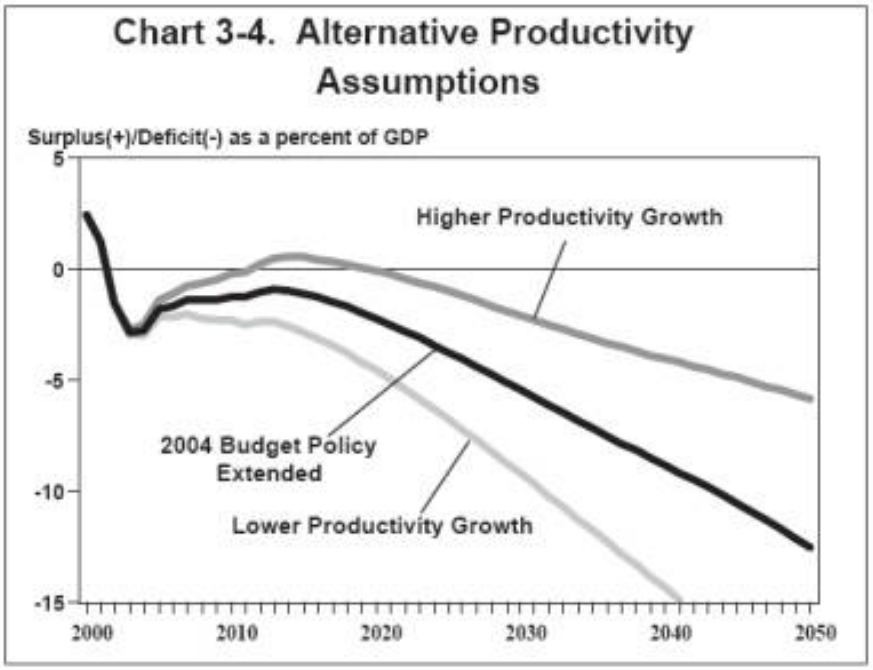
Economy and Jobs Watch: Long-term Budget Choices

Several new reports have pointed to the weakness of the long-run U.S. fiscal situation. A wide range of observers -- from independent analysts to conservative think-tanks, from international aid organizations to congressional analysts, and even from the administration itself -- are all pointing to the fact that current tax and budget policy is not sustainable. (See links below).

All long-range projections point to increasing pressures on the budget. The proper response ought to be to secure the revenue base of the federal government now in order to avoid both costly adjustments down the road and passing large debts to future generations. Yet there are indications that the Bush administration will continue to avoid this problem and even try to drive revenues below their already record-low levels -- at 16.5 percent of gross domestic product, federal revenue for 2003 was at its lowest level since 1959.

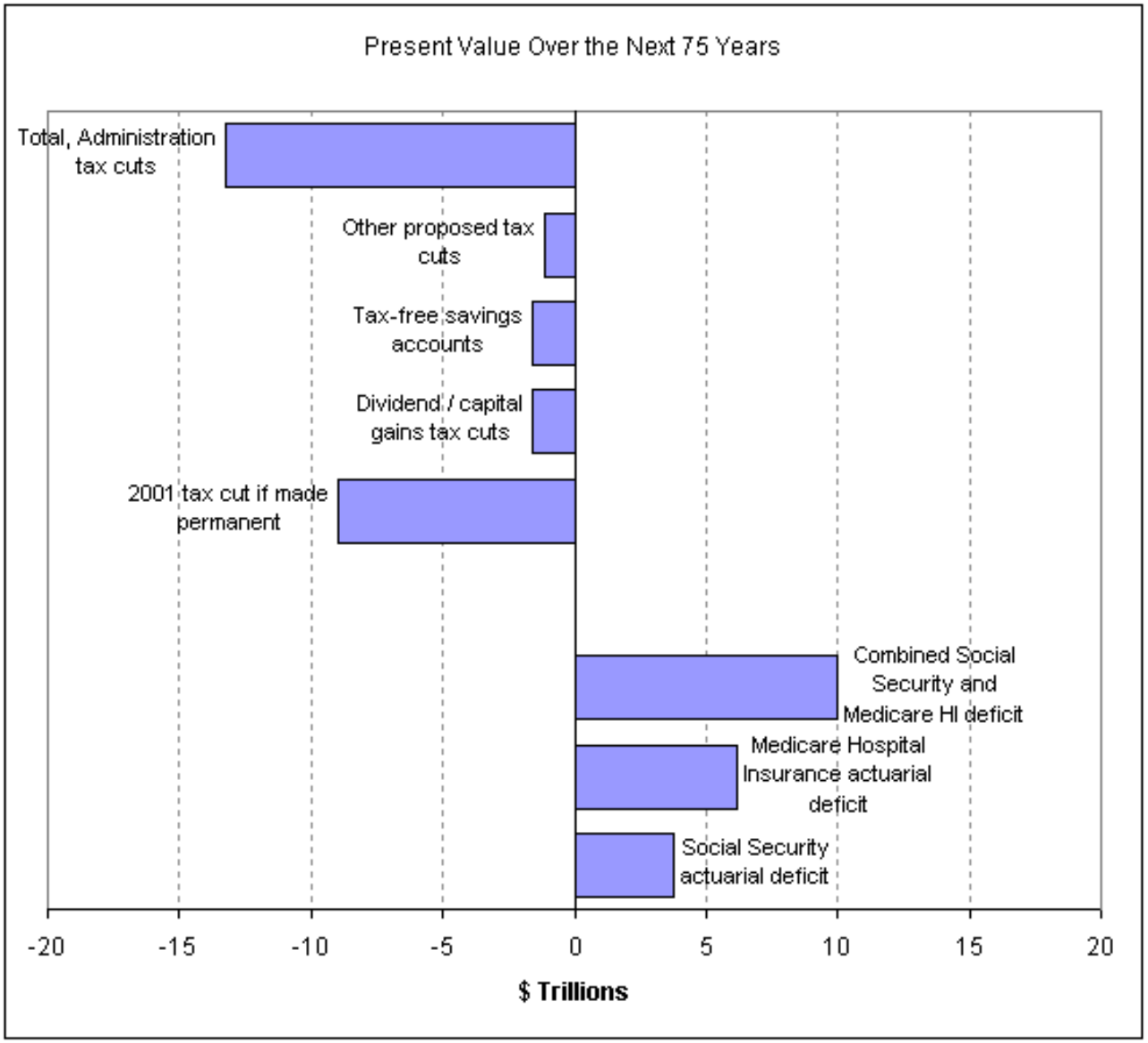
This dismal long-run situation was avoidable. Changes to tax laws in 2001 and 2003 represented huge windfalls to wealthy Americans, and only minor savings to the majority of taxpayers; and transformed record surpluses into record deficits. Over the next 10 years, forecasters are putting the 10-year deficit at between $5 and $5.5 trillion. (See Brookings Report, Table 1.)

The situation is even worse when you look forward to the next 50 to 75 years. The Bush administration's own projections show deficits as a percent of GDP more than tripling by 2050.



Source: Office of Management and Budget

As we go forward, our values must guide the choice of tax and budget policy. According to an analysis from the Brookings Institution, the 75-year cost of the Administration's tax changes is more than the combined 75-year Social Security and Medicare shortfall. In other words, we had a choice between tax cuts primarily for the wealthy, or to make Social Security and Medicare financially secure for the next 75 years. (See Chart) Was this the proper choice? In light of the fact that polls continue to show that a majority of Americans strongly support Social Security and Medicare, this choice seems particularly misguided and irresponsible.



Source: Brookings

The Brookings Report concludes that "[f]ailing to address the nation's long-term budget gap seems especially misguided since sustained and substantial budget deficits may induce fiscal and financial disarray, with potential costs far larger than those presented in conventional economic analyses, and since such deficits reduce flexibility to respond to unforeseen events in the future. Yet many policy-makers appear to be insensitive to the longer-run risks to U.S. economic performance from sustained, large budget deficits. Indeed, the "hole" of long-term deficits appears to be deepening."

What others are saying:

Brookings Institution
Sustained Budget Deficits: Longer-Run U.S. Economic Performance and the Risk of Financial and Fiscal Disarray
Robert E. Rubin, Peter Orszag, and Allen Sinai

"The U.S. federal budget is on an unsustainable path. In the absence of significant policy changes, federal government deficits are expected to total around $5 trillion over the next decade. Such deficits will cause U.S. government debt, relative to GDP, to rise significantly. Thereafter, as the baby boomers increasingly reach retirement age and claim Social Security and Medicare benefits, government deficits and debt are likely to grow even more sharply.

The scale of the nation's projected budgetary imbalances is now so large that the risk of severe adverse consequences must be taken very seriously, although it is impossible to predict when such consequences may occur."

International Monetary Fund (IMF)
U.S. Fiscal Policies and Priorities for Long-Run Sustainability
Martin Muhleisen and Christopher Towe, Editors

"Although fiscal policies have undoubtedly provided valuable support to the recovery so far, the return to large deficits raises two interrelated concerns. First, with budget projections showing large federal fiscal deficits over the next decade, the recent emphasis on cutting taxes, boosting defense and security outlays, and spurring an economic recovery may come at the eventual cost of upward pressure on interest rates, a crowding out of private investment, and an erosion of longer-term U.S. productivity growth.

Second, the evaporation of fiscal surpluses has left the budget even less well prepared to cope with the retirement

of the baby boom generation, which will begin later this decade and place massive pressure on the Social Security and Medicare systems. Without the cushion provided by earlier surpluses, there is less time to address these programs' underlying insolvency before government deficits and debt begin to increase unsustainably, making more urgent the need for meaningful reform."

Congressional Budget Office
The Long-Term Budget Outlook

"Unless taxation reaches levels that are unprecedented in the United States, current spending policies will probably be financially unsustainable over the next 50 years. An ever-growing burden of federal debt held by the public would have a corrosive and potentially concretionary effect on the economy.

..."If taxation is restricted to the levels that prevailed in the past, the growth of entitlement spending will have to be substantially reduced. Restricting the growth of outlays for defense, education, transportation, and other discretionary programs would not be enough to ensure fiscal sustainability.

"Likewise, economic growth alone is unlikely to bring the nation's long-term fiscal position into balance. Moreover, issuing ever-larger amounts of debt or dramatically raising tax rates could significantly reduce growth."

White House's OMB
Budget of the United States Government: Analytical Perspectives

"These long-run budget projections show clearly that the budget is on an unsustainable path, although the rise in the deficit unfolds gradually. As the baby boomers reach retirement age in large numbers, the deficit is projected to rise steadily as a share of GDP. Under most scenarios, well before the end of the projection period for this chapter rising deficits would drive debt to levels several times the size of GDP."

... the Analytical Perspectives continue...

"With pessimistic assumptions, the fiscal picture deteriorates even sooner than in the base projection. More optimistic assumptions imply a longer period before the inexorable pressures of rising entitlement spending overwhelm the budget. But despite unavoidable uncertainty, these projections show that under a wide range of reasonable forecasting assumptions resources will be insufficient to cover the long-run shortfalls in Social Security and Medicare."

American Enterprise Institute
Fiscal and Generational Imbalances

"Combining outstanding debt with future revenue shortfalls, they calculate the United States' "Fiscal Imbalance"--the amount of money that the federal government must have in hand today to sustain current tax and spending policies indefinitely--at a heart-stopping $44.2 trillion, considerably outstripping debt currently held by the public. Although policymakers prefer to ignore it, they do so at our peril: Because the government does not have an extra $44.2 trillion, it must raise an equivalent sum by dramatically increasing taxes or drastically reducing spending."

Economy and Jobs Watch: Unemployment Down, No New Jobs

With a strong quarter of economic growth in the July-September period, many observers were expecting to see employment strengthen in the last part of 2003. However, as recent economic data shows, the labor market remains very weak, as employment was “flat” last month.

In December, the unemployment rate dipped from 5.9 percent to 5.7 precent; however, this was purely a result of people leaving the labor market, and not due to increased employment (see table below).

Category	Monthly data 2003 Oct.	Nov.	Dec.	Nov.-Dec. change
HOUSEHOLD DATA	Labor force status			
Civilian labor force.....	146,892	147,187	146,878	-309
Employment.....	138,095	138,533	138,479	-54
Unemployment.....	8,797	8,653	8,398	-255
Not in labor force.....	75,147	75,093	75,631	538

Source: Bureau of Labor Statistics

According to the more accurate payroll survey, the total (non-farm) employment increased by a paltry 1,000 jobs. The data continues to reflect a failure of current policy to address the needs of the slumping labor market.

In addition, just before Christmas, the Bush administration allowed emergency federal unemployment benefits to expire, even though labor market conditions have not improved. Apparently, extending benefits would erode the often-repeated message that the economy is booming. As the data show, for millions of Americans, there is no recovery.

FBI Marks Almanacs as Terrorist Tools

Almanacs may assist potential terrorists in selecting targets and planning attacks, according to the Federal Bureau of Investigation (FBI). The agency sent a message to roughly 18,000 law enforcement agencies on Dec. 24, 2003 urging police to keep alert of anyone carrying almanacs, especially if they contain notations. The alert did acknowledge almanacs could be used for legitimate reasons.

Almanacs like the Farmers' and World Almanacs contain information like weather forecasts, fishing calendars and information about landmarks. Many almanacs have long histories and are widely read and circulated. Almanac staff expressed objections to the FBI's categorization of the publications. Peter Geiger, editor of the Farmers' Almanac stated, "Our almanac is about as far away as you can get from terrorism and about as close as you can get to what you would think of as American." Echoing this thought, the senior editor of the World Almanac acknowledged that terrorists "certainly didn't need the almanac to locate the twin towers."

Civil liberty advocates also expressed concern, as this type of warning could prompt police harassment of individuals based on their reading habits.

Click here to read a related Dec. 29, 2003 Washington Post article.

Government Web Pages Altered to Hide Information

The recent takedown of a U.S. Agency for International Development (USAID) web page and a new Department of Defense (DoD) memo provide two more examples of the Bush administration's penchant for altering information to fit its interests.

According to a Dec. 18, 2003 Washington Post article, USAID recently removed a speech by its administrator, Andrew Natsios, claiming that taxpayers would not have to spend more than $1.7 billion on Iraq reconstruction efforts. The figures apparently angered White House staff, especially when the cost rose much higher. The speech, previously posted on the USAID website, disappeared last fall. When questioned about the web takedown, a USAID spokesperson claimed the agency was going to be charged to access the transcript by ABC; the network aired the Natsios interview during "Nightline." ABC news stated there is never a charge or a problem with the government linking to interview transcripts.

Although the USAID web deletion is just one incident, DoD is instituting policies that will have a greater effect on its site. The (DoD) Inspector General issued a memorandum Dec. 5, 2003 that severely restricts how public information is posted by the IG to the DoD website. In addition to the usual classified information and information marked OFFICIAL USE ONLY being withheld, three new restrictions appear – information of questionable value to the general public, information that would pose risks to the armed forces, and information not specifically approved for public release.

This type of policy statement is at odds with the government classification system and Freedom of Information Act (FOIA) provisions that grant exemptions to restrict truly sensitive information from public dissemination. It is certainly not within the DoD's scope to determine if the general public will find value in certain information – the public has a right to the information regardless.

In a Jan. 5 letter to Defense Secretary Donald Rumsfeld, the National Press Club voices some of these concerns while urging a reconsideration of the policy. The letter points out that a policy such as this "threatens public access to information vital to the proper functioning of our democracy."

Numerous other government web sites have also changed or removed information. President Bush's May 1, 2003 speech on the White House web site entitled "President Bush Announces Combat Operations in Iraq Have Ended" was later changed so it read "**Major** Combat Operations." The administration's political views altered other websites including a CDC fact sheet on condoms and the removal of the climate change section of last year's EPA

Report on the Environment.

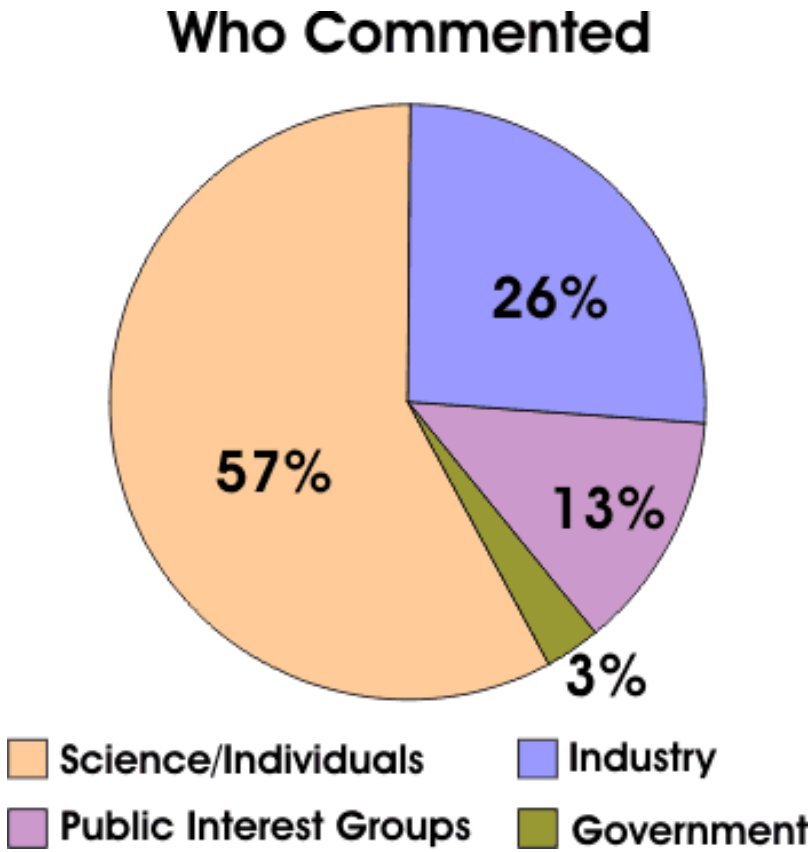
Comments on Peer Review Bulletin Reveal Strong Opposition

A majority of the near 200 comments received by the Office of Management and Budget (OMB) on its Draft Peer Review Bulletin opposed the proposal, calling for its complete withdrawal.

OMB's Aug. 29, 2003 draft bulletin on peer review proposed a more uniform standard of peer review for all federal agencies. The bulletin would establish a variety of strict requirements for agencies conducting peer review including that all "significant regulatory information" be peer reviewed, that a public comment period be added to all peer reviews and that agencies obtain input and approval of their peer review policies from OMB's Office of Information and Regulatory Affairs (OIRA) and the White House Office of Science and Technology Policy (OSTP).

Who Commented

Scientists, academics and individuals submitted 107 out of the 187 comments listed in OMB's docket, comprising the majority of comments OMB received on the bulletin. Industry, including companies, industry associations and corporate law firms, was the second largest segment of submissions with 49 comments. The docket contained 25 comments from the public interest sector with submissions from non-profit organizations, scientific societies, and academic associations. OMB also received 6 comments from government sources including state agencies and congressional offices.



Opposition

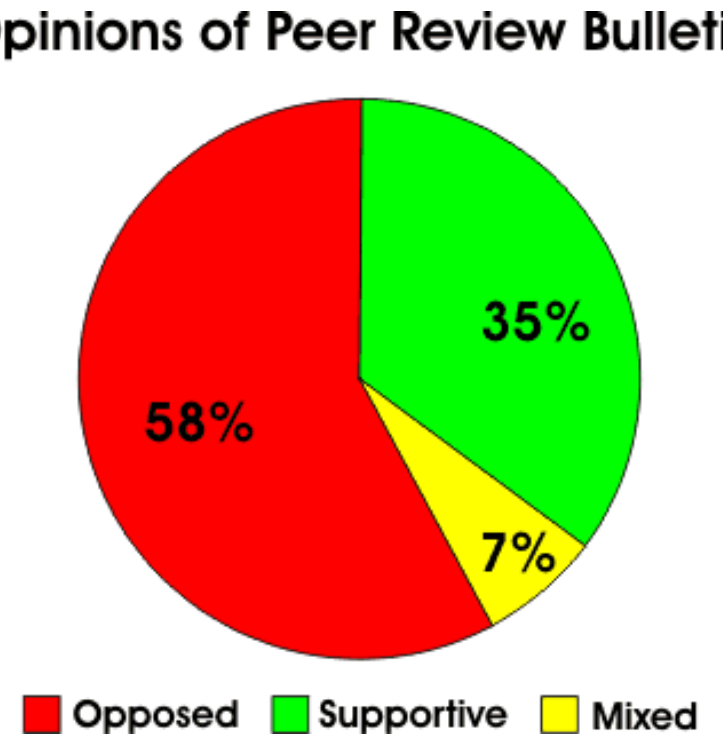
The majority (108) of the comments opposed OMB's draft bulletin, according to OMB Watch's tally. Most of these objections came from the academic scientists and public interest groups. These comments ranged from opposing the entire bulletin to voicing intense criticism to some of the bulletin's fundamental aspects. Among the specific criticisms raised were assertions that OMB did not claim the legal authority to develop government wide peer review policies, that the draft bulletin would not accomplish its goal, and that the proposed policies would result in delay of regulatory action and manipulation of science for political and corporate interests.

A large number of these comments requested that OMB eliminate the bulletin. For example David Michaels, a George Washington University Professor and ex-regulator for the Department of Energy, stated that "OMB's

proposed bulletin is fundamentally flawed; implementation will not appreciably improve the quality of science used in regulation. I strongly recommend it be withdrawn."

Sheila Jasinoff, a Professor at Harvard's Kennedy School of Government, agreed by commenting, "These criticisms suggest that the proposal in its present form will not achieve the goals of the Information Quality Act and may undermine the goals and purposes of public health and environmental legislation. The proposal should be withdrawn or else radically revised so as to leave much greater discretion within the expert regulatory agencies to tailor their review practices consistently with their legal mandates and policy missions."

Many also advised OMB to start engaging scientists and government agencies in a more open and participatory process if it wished to improve government peer review through policy development. For instance, Physics Professor Steven Federman from the University of Toledo, a former panelist for NASA peer review noted: "Recognizing that peer review of science in the regulatory context is an important process, the scientific community should be engaged in this discussion. ... The OMB should withdraw the proposed Bulletin and engage the scientific community in an open, transparent process."



Supporters

OMB received 66 comments that strongly supported the agency's draft bulletin. The majority of supportive comments came from industry submissions and ranged from approval to minor criticisms and recommendations. These submitters supported OMB's authority to design such broad peer review policies and claimed that the proposed policies would greatly enhance the reliability of government regulations.

The Styrene Information and Research Center recommended OMB "finalize this Bulletin expeditiously, after review of submitted comments." The American Petroleum Institute stated that it "agrees with the need for peer review guidance, and expresses its strong support for OMB's development of the Peer Review Bulletin."

Many of the more detailed supportive comments dismissed the negative consequences warned of in comments submitted by those opposing the draft bulletin. In several of these comments, the main criticisms were that the proposed policies should be more stringent or used more broadly. The Chlorine Chemistry Council supported the

bulletin, but recommended going an additional step and removing management of peer review from the agencies entirely.

The American Chemistry Council recommended expanding the scope of the bulletin to "require external peer review, not only for especially significant information, but also for all influential/significant regulatory information that is either; precedential or novel, particularly controversial, or highly complex."

Mixed/Neutral

OMB also received mixed or neutral comments from a small handful of submitters. Only 13 comments appeared to take no position on the overall draft bulletin. Most of these comments came from individuals whom submitted specific minor criticisms or general support of improving peer review without explaining their position on the overall draft bulletin.

Shays-Meehan Lawsuit Challenging FEC Rules for Unpaid Broadcasts and Charities Proceeds

The recent Supreme Court decision upholding the Bipartisan Campaign Reform Act of 2002 (BCRA) has the potential to dramatically expand the scope of regulation of federal election activity. The decision did not, however, address the act's applicability to 501(c)(3) charity organizations, which the Federal Elections Commission has already exempted from all BCRA requirements. A suit filed by BCRA co-sponsors Reps. Chris Shays and Marty Meehan to overturn the FEC exemption will now quickly move forward.

For more information see our analysis of the Supreme Court decision's impact on nonprofit advocacy, and issues created by Shays v. FEC.

BCRA prohibits corporations (including nonprofits) and labor unions from paying for broadcasts that refer to a federal candidate (e.g., an image of the federal candidate) within 60 days of a general election or 30 days of a primary. These broadcasts, dubbed "electioneering communication," impose criminal penalties for rule violators. BCRA provides exemptions for news broadcasts as well as candidate debates and forums. The act also allows the FEC to create further exemptions for broadcasts that refer to federal candidates if they are wholly unrelated to an election.

In October 2002, the FEC published final rules implementing the electioneering communications provisions of the law, incorporating two provisions advocated by OMB Watch. First, that the rules applied only to paid broadcast advertising. Second, that 501(c)(3) organizations-- already prohibited by IRS rules from engaging in electioneering-- would be exempt from the rules.

BCRA co-sponsors Shays and Meehan filed suit in the federal district court in the District of Columbia to overturn the FEC rules. The judge delayed action until the Supreme Court issued its decision in McConnell v. FEC. On January 7 the Court ordered that briefs be filed by February 27, and responses no later than March 31. A quick decision in expected.

If the Shays-Meehan lawsuit is successful in its efforts to overturn the exemption for 501(c)(3) organizations and unpaid broadcasts, charities would have to immediately change the way grassroots lobbying and public education campaigns are conducted during a federal election season. A lobby campaign that has a paid broadcast ad that refers to a federal candidate during the restricted period (30 days before a primary and 60 days before a general election) would face criminal penalties.

If Shays-Meehan won the lawsuit it would:

- Further complicate rules for grassroots lobbying and public education;
- Chill nonprofit lobbying for fear of criminal penalties;
- Require nonprofits to raise funds for separate segregated funds (SSF) to pay for grassroots lobbying broadcasts to avoid the penalties;
- Increase administrative burden from disclosure requirements; and
- Open up the door to donor disclosure for 501(c)(3)s since contributors to the SSF would be disclosed.

Nonprofits need to be aware that some reformers are calling for an extension of the electioneering communications rule to non-broadcast communications, which could conceivably include email correspondence, web site announcements, phone banking, direct mailings and canvassing.

The Shays-Meehan suit raises fundamental questions about advocacy rights for charities. Will criticism of a member of Congress or the President broadcasted 60 days before a general election or 30 days before a primary be a felony? Will charities be able to broadcast an incumbent candidate's stance on an issue during the restricted time period? If not, then will be there be less accountability in the legislature?

IRS Releases Guidance on Genuine Issue Advocacy vs. Electioneering

In late December the IRS released an announcement reminding tax exempt organizations that they must comply with both campaign finance and tax rules during an election year. The guidance, in Revenue Ruling 2004-6, focuses on those nonprofits permitted to take sides in an election and lists the facts and circumstances the IRS believes distinguish genuine issue advocacy from partisan electioneering. Six specific examples are provided. The IRS asks for comments and suggestions on questions for future guidance in this area.

Charities, which are prohibited from taking sides in elections under Section 501(c)(3) of the tax code, are not discussed in the ruling. The announcement applies to social welfare groups (501(c)(4)), unions and trade associations that are permitted to "engage in only limited political campaign activity" that relates to their overall advocacy work. These groups need to distinguish between their genuine issue advocacy and communications meant to influence the outcome of elections. These specified groups must pay tax on expenses used to influence the outcome of an election that is not paid for out of a separate segregated fund (SSF).
In the ruling, guidance is given to define electioneering communications as those that are:
· made during a time that coincides with an election
· identify a candidate
· target voters in a particular election
· identify a candidate's position on an issue
· distinguish the candidate's position from others (in the communication or in the overall campaign)
· not part of an ongoing series of substantially similar advocacy on the same issue.

The guidance given also identifies communications that are genuine issue advocacy as ones that:
· identify specific legislation or a specific event outside the control of the organization
· are timed to coincide with the specific event
· identify the candidate solely as a government official in a position to act on the policy or specific event
· mention the candidate solely as the a key sponsor of legislation.

The six examples in the ruling show how these factors apply in specific situations. They also illustrate application of tax rules to all electioneering, whether at the national, state or local level. (Federal campaign finance laws only apply to federal elections.)

The text of Rev. Rule 2004-6 is on the IRS website. CAUTION: Reading the ruling may be confusing. It refers to

partisan electioneering as an “exempt function under Section 527(e)(2)”, which governs political action committees. Their exempt purpose is to influence elections.

Comments on situations or factors that need further guidance should be sent to the IRS c/o Judy Kindell, T:EO:RA:G, 1111 Constitution Ave. NW, Washington, DC 20224.

Complicated and Expensive Reporting for Labor Unions is Put on Hold

A United States Judge issued an injunction this month blocking enforcement of a Department of Labor’s (DOL) final rule on financial reporting by labor unions. The court found unions would suffer “irreparable harm if forced to start complying with new reporting requirements by Jan. 1.”

Upset by the scope of DOL’s new requirements,The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) filed action for judicial review of the final rule under the Administrative Procedure Act late last year. The rule, announced in the Federal Register on Oct. 9, 2003, expands the financial reporting requirements of all labor unions with annual receipts of $250,000 or more. Judge Gladys Kessler agreed with the AFL-CIO that the new reporting requirements were burdensome and unions did not have enough time to make the extensive and sophisticated accounting changes necessary for compliance.

This could cost as much as $1 billion and would affect more than 5,000 mostly local unions -- which are already subjected to far stricter reporting requirements than corporations -- requiring vast amounts of time and money to be reallocated from contract negotiations, grievance handling, organizing and other core union activities.

In a letter to the administration just before the rule was finalized, 22 House Republicans expressed their dismay at the plan. “These unions will have less than two months to purchase new computers, revamp their existing systems, train personnel and perform related compliance tasks before January in order to track their finances under the new rule,” they wrote.

The final rule requires each labor union with annual receipts of $250,000 or more to file Form LM-2 electronically and to itemize receipts and disbursements by categories (such as lobbying or contract negotiation) of $5,000 or more. Receipts or disbursements to a single entity that will eventually add up to $5,000 or more by the end of the year must also be reported. The revised LM-2 will also require unions to report investments and to report the

number of members by category. Lastly, the Form LM-2 will ask for a breakdown on each officer and employee's time and percentage of salary spent on each functional category.

In addition to the newly revised Form LM-2, labor unions will also be required to file Form T-1 for any trust in which the labor organization is interested, if the trust has $250,000 or more in receipts and the labor organization contributed $10,000 or more to the trust during the year.

John Sweeney, president of the AFL-CIO, said the true motivation was political: "While unions support reasonable financial disclosure requirements for all types of organizations, the Bush administration's rules are craftily designed to weaken unions -- the strongest advocates for American workers -- as our nation prepares for the 2004 elections. The rules target unions and go far beyond what is required of corporations or other not-for-profit organizations."

While Judge Kessler did order a year injunction from the rule, she has not yet ruled on whether the new rule will stand.

Court Upholds Postal Service Ban

A recent ruling by a United States District Court Judge will contribute to the scarcity of places to collect signatures for ballot measures and candidates. The ruling upheld the U.S. Postal Service's (USPS) 1998 policy change prohibiting solicitation of signatures on petitions, polls, or surveys on any USPS property.

Regardless of the fact that USPS property is not a private business and is still part of the United States government, the court deemed its sidewalks and parking lots not a public forum. Judge Roberts of the U.S. District Court for the District of Columbia, said "The USPS must compete with the private sector for business...in part, by making attractive to costumers its postal locations where services are provided. Because the government, as much as any other property owner, is allowed to manage its property in such a way as to best carry its business, the significance of USPS' interest in controlling activity on their exterior property must be assessed in light of its business nature and function."

The suit was brought against USPS by a wide range of organizations and citizens from across the political spectrum. The leading Plaintiff in the case, the Initiative and Referendum Institute, argued that the ban is an attack on citizens' rights to free speech, petition government and work to change policy. This ban could seriously

hamper organizations and candidates that must collect signatures for petitions. Signature collection is mandatory for some candidates to be able to run for office, and for organizations to create policy by referendum.

While collecting signatures is now prohibited, USPS agreed to allow distribution of leaflets. USPS' change from its original position rendered a favorable opinion by the Judge. In his opinion Roberts wrote, “Because the record now establishes that this content-neutral regulation promotes a significant governmental interest and will leave open ample alternative channels of communication, the defendant’s motion will be granted.”

Administration Moves to Allow Dumping of Mining Waste Into Streams

The Bush administration unveiled a proposal Jan. 7 that would gut a prohibition against the dumping of mining waste within 100 feet of streams, easing the way for new mountaintop mining, which generates large amounts of dirt and rock waste.

Sold as a “clarification,” this proposal would create new waivers for the so-called “buffer zone” rule, which was adopted during the Reagan administration. Specifically, companies could receive permits to conduct surface mining activities near streams provided that they, “to the extent possible,” “prevent additional contributions of suspended solids” and “minimize disturbances and adverse impacts on fish, wildlife, and other related environmental values of the stream.”

Put another way, this means that mining companies could be permitted to dump directly into streams and cause environmental damage, so long as they have made a satisfactory effort, as judged by government permitting officials, to minimize that damage “to the extent possible.”

The current standard allows for a waiver of the buffer-zone rule only if mining activities “will not cause or contribute to the violation” of water quality standards, “and will not adversely affect the water quantity and quality or other environmental resources of the stream.” Unlike the administration’s “clarification,” this is clear, simple, and objective.

“Only the Bush administration, which calls more air pollution ‘Clear Skies’ and clear cutting trees ‘Healthy Forests,’ would call this decision to allow coal companies to destroy more streams a ‘clarification,’” said Joan Mulhern, senior legislative counsel for Earthjustice. “It is a lie and it is an insult to the people of Appalachia and anyone who

cares about the fate of America's environment."

Previously, the administration adopted another rule in May 2002 to clear the way for mountaintop mining. This action changed the definition of allowable "fill material," eliminating the "waste exclusion" that barred dumping for the sole purpose of disposing waste. The Army Corps of Engineers now has authority to approve such dumping when issuing operating permits under the Clean Water Act.

Administration Opens Tongass Forest to Logging

Two days before Christmas, the Bush administration finalized plans to open 300,000 acres in Alaska's Tongass National Forest for logging and development, removing protection provided by the Clinton-era "roadless rule," which banned road construction in 58.5 million acres of national forests.

"The Bush administration has turned its back on the public, good science, and the law in its effort to clearcut the Tongass," said Tom Waldo, an Earthjustice attorney. "This is obviously a Christmas present from the Bush administration to the timber industry which wants the right to clearcut in America's greatest temperate rainforest."

Upon taking office, the Bush administration immediately delayed the effective date of the Clinton roadless rule and refused to defend it against legal challenges, reaching a settlement to change the policy despite public sentiment. Of more than 250,000 public comments submitted on the issue, fewer than 2,000 favored removing protection from the Tongass.

On top of opening the Tongass, the administration previously announced in June 2003 that it would grant state exemptions to the roadless rule to allow logging in other protected wilderness areas.

Court Blocks Bush Rollback of Power-Plant Emissions Standards

A day before Christmas, a federal appeals court temporarily blocked the Bush administration from implementing a major rollback of clean air standards, which would have allowed the nation's oldest and dirtiest power plants to upgrade their facilities without installing the latest anti-pollution controls (as they were previously required to do under EPA's New Source Review program) -- even if it results in substantial new emissions.

Twelve attorneys general from mostly northeastern states, along with a number of cities and environmental groups, filed suit against the Bush rollback, contending that it violated the Clean Air Act. In staying the action pending the litigation's outcome, a three-judge panel of the U.S. Court of Appeals for the D.C. Circuit concluded that the plaintiffs had "demonstrated the irreparable harm [of the action] and likelihood of success on the merits" of their case.

"This is enormous," New York Attorney General Eliot Spitzer said. "The courts have agreed with us that the Bush administration cannot by administrative fiat eviscerate a statute that is critically important to protecting the quality of the air that we breathe... The regs were taking us down a path of dirty air, more asthma and more death."

The court is expected to give its final ruling toward the end of the year.

Judge Rejects Bush Plan to Allow Snowmobiles in Yellowstone

A federal judge strongly rebuked the Bush administration on Dec. 16 for rescinding a Clinton-era plan to phase out snowmobile use in Yellowstone and Grand Teton National Parks.

U.S. District Judge Emmet Sullivan called the administration's action "completely politically driven and result oriented" -- pointing out that it ran counter to scientific evidence -- and reinstated the phase-out just hours before the start of the snowmobile season. Sullivan noted one study that found Yellowstone at times had carbon monoxide levels as high as Los Angeles.

The phase-out, which was supported by a 99-1 margin in public comments to the National Park Service, requires a 50 percent reduction in snowmobiles this winter -- allowing for 490 snowmobiles per day in Yellowstone and 50 per day in Grand Teton -- and a total ban for the 2004-05 season. The Bush administration had sought to allow nearly 1,000 snowmobiles per day in Yellowstone.

The administration contended that new standards for cleaner and quieter engines would negate the vehicles' adverse health and environmental impacts. However, Sullivan cited scientific analysis by the National Park Service that concluded there would still be significant harm to the health of park wildlife, visitors, and employees. Compared to an outright snowmobile ban, the Bush plan would have allowed twice as much carbon monoxide pollution and five times the nitrogen oxide emissions.

"Our duty is to take care of our national parks as fully as possible so that we pass them in good health to our grandchildren," said Denis Galvin, who served as deputy director of the Park Service under Presidents Reagan and Clinton and during the first year of the current Bush administration. "Had we let that principle slip in Yellowstone to the benefit of the snowmobile industry, it would have set a terrible precedent in all our national parks."

A week after his ruling, Sullivan denied a request by the International Snowmobile Manufacturers Association and the State of Wyoming to stay implementation of the phase-out.

Administration Abandons Plan to Lift Wetlands Protections

The Bush administration recently abandoned a proposal, sought by developers, to remove federal protection for as much as 20 million acres of wetlands after receiving more than 133,000 comments in opposition from environmentalists, sportsmen, state officials, and others.

In offering the proposal last January, EPA claimed to be responding to a contentious 5-4 decision by the Supreme Court, which determined that the Clean Water Act covers only "navigable waters," and cannot be applied to isolated intra-state ponds and wetlands that have been protected only because of the presence of migratory birds. Notably, however, the court's ruling was narrow and did not direct the wholesale policy changes pursued by EPA. The administration's change of heart recognizes this.

Nonetheless, the administration has not repealed internal guidance -- issued at the same time as the proposal -- to staff at EPA and the Army Corps of Engineers that if fully implemented would have the same effect as the proposed rule change.

"In order to fully enforce the Clean Water Act and protect all waters, the Bush administration must not only stop the proposed rulemaking, but must rescind the guidance policy," said Joan Mulhern, senior legislative counsel for Earthjustice. Without federal protection, isolated wetlands -- which make up nearly one-fifth of the nation's wetlands -- are highly vulnerable because most states do not have programs in place to defend them.

Groups Asks High Court to Open Unusually Secret Case

Public interest and media organizations this week appealed to the Supreme Court to stop the near-total secrecy surrounding the five-month detention of a Florida waiter as part of what the federal government claims to be a terrorism-related investigation. They did this through a friend of the court or an amicus brief.

The case has been handled with unusual secrecy (see Watcher, Nov. 17). The existence of the case is known outside the court system only because documents identifying the case were inadvertently and temporarily filed in the public docket and a reporter discovered the case.

This amicus brief follows an earlier brief filed by the Reporters Committee for Freedom of the Press. The groups argue that the high court should force the federal government to make more records in the case available to the public. Mr. Bellahouel, the Florida waiter, who has not been charged with a terrorism-related crime, is currently free after posting a $10,000 bond. He may be deported for living in the United States with an expired student visa.

Whether the government's actions are justified will remain unclear if the government is able to continue to file their arguments in secret.

See http://www.rcfp.org/news/releases/view.cgi?2004_01_02_mkbvward.txt

EPA Plans Early Release of Some TRI Data

EPA recently held a meeting with interested stakeholders to explain its intention to release 2002 Toxic Release Inventory (TRI) data much earlier than in recent years. Under EPA's current plans the 2002 TRI would be available on the agency's website in February or March, several months ahead of the recent release times of May or June.

However, EPA has given preliminary indication it will not provide the underlying data to the public. Thus, it would not be available to other databases that usually house TRI – EPA's TRI Explorer, Environmental Defense's Scorecard, and OMB Watch's RTK NET. Moreover, EPA's early release will only have limited search ability and cannot be downloaded. The system they are proposing will make it very difficult to aggregate data to describe local, state, or national conditions. The early release will allow users to search copies of the Form R through EPA's Envirofacts data warehouse. However, the accompanying analysis, which is often the most useful part, would not be available until the full release, probably in June.

Currently, a facility must submit Form R by July 1 for the previous calendar year. EPA then proceeds through a number of data quality mechanisms and analyses of the data, taking nearly a year to release the data without compromising data quality. OMB Watch along with other public interest groups has pushed for an earlier release date. While EPA's new effort to release the Form R early is a step in the right direction, it is unclear whether the long-term plan is to move the full data release up.

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In This Issue

TAKE THE TAX AND BUDGET SURVEY AND TELL YOUR FRIENDS AND COLLEAGUES ABOUT IT!!

We are conducting an exciting new Internet survey that explores tax and budget issues and will be used in an offensive strategic campaign. Respondents have until Feb. 4 to complete the survey.

Over the past months, nonprofits from across the country have been telling us about the adverse consequences of federal and state budget cuts. OMB Watch is issuing a call to action to nonprofit organizations for a long-term campaign to take the offensive on tax and budget issues -- a campaign about what we are for, not just what we are against. Three main elements of this campaign might include: 1) fair tax policies that provide adequate revenue, 2) support for vital government services and investments, and 3) a re-examination of the positive role

of the federal government.

Now we want to hear from you (we've already heard from almost 800 people!). The Internet survey is open until Feb. 4. Please take a few minutes to complete the survey and redistribute it if you can.

The Budget for 2004 is Finally Done

Just in time for the start of the Year of the Monkey, on Thursday, Jan. 22, the Senate passed the omnibus conference report (HR 2673) which was approved by the House a month ago.

The omnibus bill includes funding for the 7 appropriations that were not passed for fiscal year 2004, and up to $11 billion in "pork" projects (according to Sen. John McCain (R-AZ)) and a number of controversial provisions. The vote was 65-28. Passage came after Tuesday's successful filibuster by Democrats and several Republicans to block a vote on the bill by 48-45. The vote to consider the bill with no further delay (cloture vote) on Thursday barely passed on a 61-32 vote - just one vote more than needed for a three-fifths majority. Passage came after Republicans threatened to push through a continuing resolution (CR) for the remainder of fiscal year 2004. A CR would fund departments and agencies at last year's level, which would mean billions of cuts no funding for special interest projects. The bill amounts to a total of $820 billion, including $373 billion for appropriations. President Bush signed it into law on Friday, Jan. 23.

Besides the fact that the appropriations process for 2004 is finished, there is not much else to be said in favor of the omnibus bill. It represents a huge victory for the administration, which largely shaped the final form of the bill including a number of non-appropriation related legislative provisions that run contrary to previous actions by the House and/or Senate.

The bill:

- Fails to block Department of Labor plans to weaken overtime pay rules which will deny overtime pay to 8 million American workers, according to the Economic Policy Institute;
- Delays "country-of-origin" labeling of supermarket meat and produce for two years - from September 30, 2004 to September 30, 2006;
- Fails to include protections for the 400,000 federal workers whose jobs are targeted for privatization
- Requires the destruction within 24 hours of background check records for gun purchase applications, eliminating the previous requirement that those records be kept for 90 days;
- Fails to block FCC media ownership rules allowing an increase in the number of television stations that one network can own from 36 percent to 39 percent of the nation's audience, which will allow media conglomerates to own more television stations. This 39 percent coincidentally mirrors current ownership levels of Viacom’s CBS and News Corporation’s Fox;
- Includes $18 million for a school voucher program in DC, allowing public funds to be used for private school tuition; and
- Continues the ban on Americans traveling to Cuba.

Democrats vowed to take action on some of the objectionable provisions in amendments to other upcoming bills, or, in the case of the overtime provision, through efforts to rescind the Department of Labor regulation after it is finalized.

And Onward to the Budget Battles Ahead

President Bush's FY 2005 budget will be released on Monday, Feb. 2 with the promise of a difficult budget process ahead.

According to the President's State of the Union address, his budget for FY 2005 will limit overall discretionary spending to 4 percent. According to Senate Majority Leader Frist (R-TN), because of increases in military spending and homeland security, domestic discretionary spending (funding for most of what government does outside of defense) would be limited to 1 percent. This is about half the rate of inflation, and represents a tiny increase from $399 billion in 2004 to only $403 billion in 2005.

Spending cuts, made necessary by the Bush administration's huge tax cuts targeted to the wealthy, are being slated to fall on domestic programs that serve middle-class Americans, as well as low-income families and children. The cuts will be compounded by the fiscal troubles of the states. President Bush is requesting that all tax cuts enacted in 2001, 2002, and 2003 be permanent (all provisions sunset by the end of 2010); at a cost estimated by the nonpartisan Tax Policy Center to be a cool $2 trillion through 2014 ($1.7 trillion in revenue reduction and $.3 trillion in increased interest payments on the national debt).

One small example of the President's disregard for domestic needs is the initiative he unveiled during his State of the Union address to help released prisoners be incorporated back into society.
"Tonight I ask you to consider another group of Americans in need of help. This year, some 600,000 inmates will be released from prison back into society. We know from long experience that if they can't find work, or a home, or help, they are much more likely to commit more crimes and return to prison. So tonight, I propose a four-year, $300 million Prisoner Re-Entry Initiative to expand job training and placement services, to provide transitional housing, and to help newly released prisoners get mentoring, including from faith-based groups. America is the land of the second chance, and when the gates of the prison open, the path ahead should lead to a better life."

Sounds good, but do the math -- that's exactly $500 for each released prisoner, hardly enough for one month's rent.

"A budget that funds the war, protects the homeland, and meets important domestic needs, while limiting the growth in discretionary spending to less than 4 percent," cuts "the deficit in half over the next five years," and makes permanent the huge revenue-reducing tax cuts is certainly the most rosy scenario, and is about as likely as flying pigs. We can look forward to another difficult budget year.

Economy and Jobs Watch: CBO Projecting Large Deficits

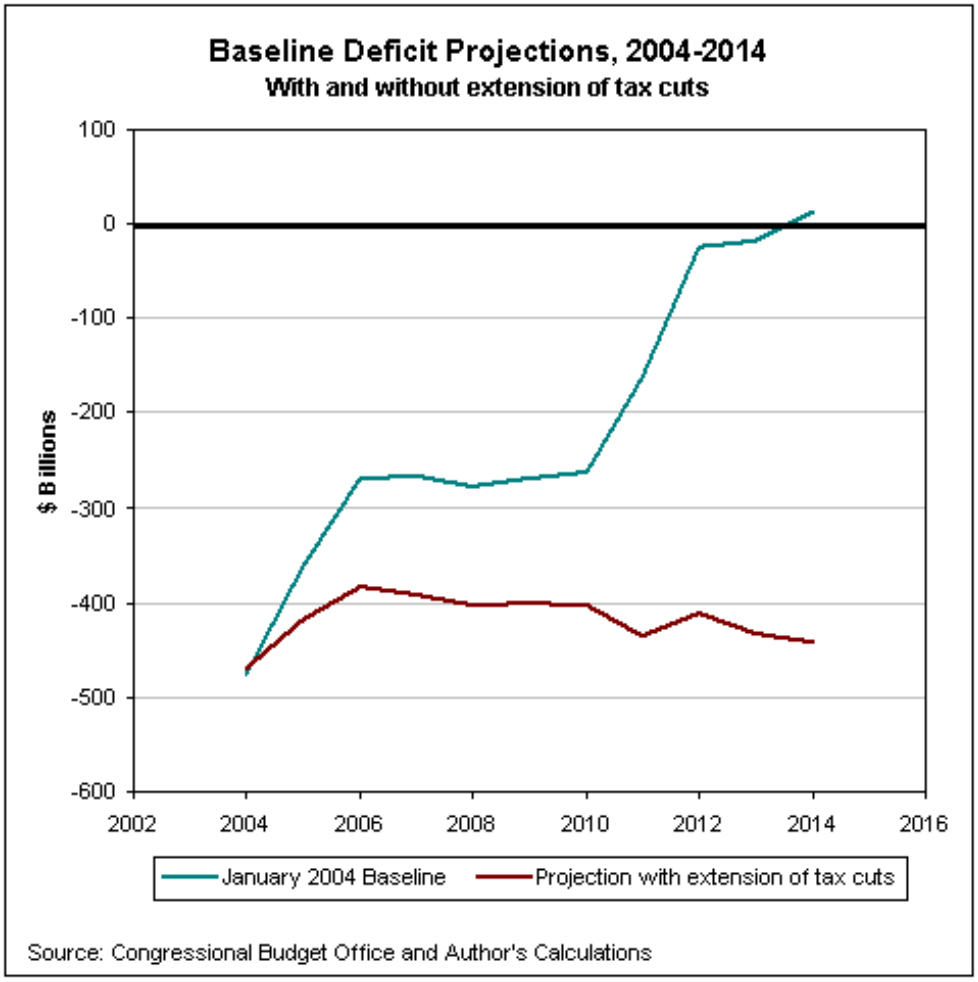
The Congressional Budget Office (CBO) today released their baseline budget estimates for 2005-2014. The analysis shows that in 2004 deficits will likely reach $477 billion - which is 4.2% of GDP - and that deficits will continue over the next decade, reaching a cumulative $1.9 trillion baseline over the next 10 years.

The CBO “baseline,” however, is not a forecast, but rather an estimate of revenue and spending under current law. Current legislative proposals, including extending past tax cuts, any new tax cuts, or greater than legislated increases in spending on defense, homeland security, and other areas, would increase the deficit beyond the

CBO's baseline.

For example, the figure below shows the baseline deficit over the 1004-2014 period as well as the deficit adjusted to include the effect of making various tax cuts permanent. (Data is from Table 1-3 of the CBO report).

If the tax cuts are extended, the deficit will remain near $400 billion for the rest of the next decade.



In addition, the current estimated deficits represents a $1 trillion deterioration in the 10-year budget situation since just last August. About 70 percent of the change was due to new legislation, and the rest from economic factors and technical revisions.

This data continues to show continuing irresponsbility on the part of federal budgeters and the administration.

Economy and Jobs Watch: Lowering the Deficit Bar

According to the president's State of the Union address, the administration claims it will "cut the deficit in half over the next five years."

This is a shift from just 6 months ago when the administration was claiming that "the budget deficit is expected to be cut by more than half by 2006."

In addition, it appears that there is no prospect whatsoever of a balanced budget anytime in the near (or distant) future under current policy. The president has claimed that there was plenty of money for both tax cuts and current priorities. He has claimed that he would not pass on the tax burden to future generations. With the

current fixation on tax cuts to the exclusion of all other priorities, the administration has apparently abandoned all legitimate claims of fiscal responsibility, and has squandered an opportunity to shore up the long-term health of Social Security, Medicare, and other vital priorities.

For a comprehensive explanation of the fiscal situation, and options for how to return the budget to balance, see Restoring Fiscal Sanity: How to Balance the Budget, from the Brookings Institution.

Pressure Continues to Mount Against OMB's Peer Review Plan

Many recent news stories and editorial pieces from around the country are critical of the Office of Management and Budget's (OMB) draft bulletin on peer review, thereby maintaining pressure on the agency to either drastically alter the policy proposal or withdraw it entirely.

OMB's Data Quality Guidelines, the information policies that the peer review bulletin builds upon, received little media criticism or even attention during development. However, the peer review bulletin seems to be garnering much more interest, in part because so many scientists are rejecting this "scientific" policy.

Recent negative articles include "Peer Review Plan Draws Criticism" in the Washington Post, "Politics, science like oil, water" an editorial in The Atlanta Journal-Constitution, "White House seeks control on health, safety" in the St. Louis Post-Dispatch, and "The White House vs. Science" in The Philadelphia Inquirer.

These articles reflect objections and concerns voiced in the numerous public comments that OMB received on the peer review bulletin. As OMB Watch previously reported, the majority of those comments strongly opposed the peer review proposal.

The separate deadlines for comments on the bulletin from the public and from federal agencies have closed. OMB's next step will be to review the comments it received and decide how to respond and revise the bulletin. Many have called upon the agency to withdraw the bulletin, which while uncommon is well within OMB's power. The increased media coverage makes it more difficult for the agency to dismiss the concerns and complaints raised as unfounded.

The period for comments from the public and non-governmental organizations ended in mid-December and in a refreshing display of transparency OMB has provided all of those comments in an online docket. Comments on the peer review bulletin from federal agencies were collected in a separate process that ended Jan. 16. Unfortunately, it has been reported to OMB Watch from outside sources that OMB will not be allowing any access to the comments from government agencies. It appears OMB is claiming that these agency comments are protected from disclosure as inter-agency communications. Hopefully the media attention on this controversial and important issue will also help convince OMB to relent in its secrecy surrounding agency comments.

U.N. Report Compares Freedom of Information Laws

A new report by the United Nations Educational, Scientific and Cultural Organization (UNESCO) examines freedom of information policies across several governments and non-governmental organizations.

Over the past 10 years, the importance of freedom of information has been acknowledged throughout the world, and the report stresses the importance of free flowing information to democratic governments, human rights, and other issues. An overview of the international base for freedom of information is given.

Additionally, comparative analyses of freedom of information policies are presented through case studies of 10 countries – Bulgaria, India, Japan, Mexico, Pakistan, South Africa, Sweden, Thailand, the United Kingdom and the United States. It also examines two organizations – the United Nations Development Programme and the World Bank.

Read the entire report here.

Avoiding Shame Through Secrecy Puts Lives At Risk

No one wants to be embarrassed, especially the folks working on the taxpayer's dime under the harsh lights of public scrutiny. But when people in high places in government try to keep embarrassing information out of the public eye, the results can be high-profile scandal. Just ask Richard Nixon and Bill Clinton. Most government efforts to keep unnecessary secrets, however, never reach the front pages of the New York Times but still put lives in danger and waste taxpayer dollars. Two recent news stories make this point. One deals with the question of whether the Sept. 11 attacks could have been prevented, the other with problems in California's prison system.

The National Security Agency intercepted two cryptic messages on Sept. 10 but failed to translate them until Sept. 12, 2001. Unclear is whether these messages, had they been translated and moved through the chain of command, would have allowed our government to prevent 9/11. This series of events only came to public light because CNN learned of these events from two anonymous sources and reported them. Now a grand jury investigation is underway to go after the leaker.

The second example involves an altogether different subject -- prison reform. A prison guard tried to suppress evidence that he failed to prevent a prison riot that injured 24 inmates, left one guard paralyzed, and ultimately lead to the suicide of a second guard who blamed himself for the violence. In a recent editorial, the Los Angeles Times blamed, in part, a pattern of secrecy in California's prison system for the system's failures. "It's past time to halt the secrecy, lack of accountability, tax waste and danger in the state's prisons," the Times wrote.

There are legitimate needs to keep secrets to protect sources and methods of intelligence gathering, but secrecy is not warranted merely to avoid embarrassment. The government should restore the public's trust through a transparent and open investigation into any failures, missed opportunities and lessons from the attacks of 9/11 in order to make our country safer and better protected. Then, as part of the democratic process, the public can push government officials to direct resources toward needed improvements. To close the delay between intelligence collection and its translation, perhaps we should hire more translators or encourage foreign language programs in our universities. These gaps in our homeland security system cannot be filled if we, the public, do not know about them and therefore cannot pressure our leaders to fill them.

Human mistakes are inevitable and forgivable; efforts to cover them up are neither. Whatever the policy recommendations that ultimately emerge from the riot and tragic suicide of a guilt-ridden guard and delay in translating cryptic intercepted comments, covering up the events that led to great tragedy only perpetuates the problems. Secrecy is a convenient solution for the self-interested but primarily perpetuates problems and does not serve the public interest.

Is CBS Squelching Free Speech?

CBS refuses to air MoveOn's 30-second issue ad during the Super Bowl, claiming the ad is too "controversial."

MoveOn's ad pictures children working in grocery stores as clerks, in factories as bottle manufacturers, and in auto shops as mechanics. The only line, "Guess who's going to pay off President Bush's one trillion dollar deficit?" concludes the spot. In a letter to its members MoveOn writes, "This is not a partisan issue. It's critical that our media institutions be fair and open to all speakers. CBS is setting a dangerous precedent, and unless we speak up, the pattern may continue."

CBS has agreed to air other issue ads during the Super Bowl, including an American Legacy Foundation's 30-second anti-smoking ad and an anti-marijuana ad sponsored by the White House Office of National Drug Control Policy (ONDCP).

Critics claim that CBS does not have a clean track record when it comes to fairness in broadcasting and ethics.

The National Organization for the Reform of Marijuana Laws (NORML) says that CBS is being hypocritical by airing the president's ad on marijuana policy, and refusing to air MoveOn's ad despite a recent CNN/Time poll indicating that marijuana decriminalization currently enjoys 72% support among the American public.

In March 2003, Gateway Inc. was also refused airtime from Viacom, which owns CBS. CBS has taken a clear stance on easing the digital piracy laws. In fact, Viacom has been among the most vocal media companies lobbying Congress for tougher rules regarding digital piracy. CBS claimed that Gateway's ad went against their "no controversial ad" policy because they were offering a digital music package as part of the purchase of any new PC, including 50 free songs from an Internet music provider. The ad also mentioned a new Gateway Web site, www.ripburnrespect.com. On the site, Gateway urges visitors to contact Congress if they think anti-piracy proposals by the record labels have gone too far.

Robert McChesney, founder of Free Press, a national nonpartisan organization working to increase informed public participation in crucial media policy debates, states that, "CBS is playing politics with the right to free speech: another example of media monopoly's chilling effect on democratic debate." He adds that the problem of censorship may get worse as media companies gain more control over the airwaves.

A provision within the omnibus-spending bill gives media companies, such as CBS, more control over the market. Sen. John McCain, R-AZ, spent nearly an hour on the Senate floor last Wednesday arguing against the provision saying, "the new ownership cap is a prize to CBS and Fox, which would have to sell television stations if the original 35 percent limit was enacted." Free Press reports that CBS/Viacom spent over four million dollars in the past four years lobbying Congress to raise the media ownership cap to 39 percent.

It is interesting that in an election year and during the single most visible annual event CBS will shut out one voice while allowing another to be heard. Is this an example of viewpoint discrimination? Or is CBS simply trying to abide by its policies? We would like to hear from you. Please let us know if you think that this is an important issue, what other concerns does this raise for nonprofit organizations, and any other knowledge you might have in light of these circumstances. You can voice your ideas, opinions, and/or knowledge on NPAction.org's forum. NPAction.org is our web site designed to stregthen the capacity of nonprofits to participate in public policy.

Definition of Regulated Federal PAC To Be Considered by FEC

The Supreme Court's Dec. 2003 decision upholding the Bipartisan Campaign Reform Act (BCRA) has raised new questions about what kinds of political action committees are subject to federal campaign finance laws. On Jan. 15 the Federal Election Commission (FEC) voted to consider new regulations defining what kinds of political action committees would be subject to contribution and expenditure limits for federal election activity. FEC plans to have a proposed rule published on March 4. There will be a comment period followed by a public hearing in mid-April. The final rule is expected to be published on May 13.

Prior to the Supreme Court's decision in *McConnell v. FEC* regulated "federal" election activity was limited to electioneering that used "magic words" that expressly advocated for or against a federal candidate, such as "vote for" or "vote against." FEC regulations had been written and interpreted using this standard. Since the *McConnell* case held that Congress is not limited to regulating federal activity to express advocacy, the traditional boundary line between regulated and unregulated political committees has been erased. Nothing clearly replaces the old standard, and the FEC rulemaking process is meant to resolve the issue.

In the meantime, three campaign finance reform groups filed an enforcement complaint against political action committees that are conducting voter mobilization campaigns with donations from individuals. The complaint says the groups should be subject to the FEC rules, including limits on contributions and expenditures, because they are focusing their efforts on this year's federal election. The complaint was filed by the Campaign Legal Center, the Center for Responsive Politics and Democracy 21 against America Coming Together (ACT), The Media Fund and the Leadership Forum.

BCRA bans "soft money" contributions to political parties, but does not directly address the question of soft money contributions to political action committees. Up until now "soft money" has been unregulated by the FEC. (IRS rules require disclosure of these groups' finances.)

Similar issues have been raised in two Advisory Committee requests pending at the FEC. One has been filed by

Americans for a Better Country, a Republican leaning group, asking about the legality of activities similar to the Democratic leaning ACT's agenda. ACT has also filed a request for clarification of the legality of its program.

Muslim Charities Scream As Government Probes Them Again

Congressional scrutiny around the link between charities and terrorist organizations continues to grow. As first reported in the Washington Post on Jan. 14, Senate Finance Committee Chairman Charles Grassley (R-IA) and ranking member Sen. Max Baucus (D-MT) requested the Internal Revenue Service (IRS) to produce the confidential financial records and tax documents of several Muslim charities and Islamic philanthropic organizations. The Dec. 22, 2003 letter was sent in order to increase government oversight over groups that "finance terrorism and perpetuate violence."

Federal law protects the privacy of tax and financial information, but a special exception allows the chairs of the Senate Finance and House Ways and Means Committees access for oversight purposes.

This action comes on the heels of a Dec. 2003 General Accounting Office (GAO) report concerning the proliferation of alternative terrorist financing mechanisms, including the misuse of charities. The GAO report called for the Federal Bureau of Investigation (FBI), Treasury Department, and other relevant agencies to collect and analyze information, and for the IRS to establish procedures, in consultation with state charity officials, to share information about charities.

For two years, the federal government has investigated Muslim charities suspected of supporting groups classified as or alleged to be terrorist organizations. Muslim leaders are concerned that the freezing of over $136 million in assets and closing the operations of major organizations based in the U.S. has lead to a climate of misinformation and distrust regarding legitimate charity work undertaken by tax-exempt organizations that have followed the rules. More information on the similar chilling effect on legitimate charity activity is available in the September 2003 OMB Watch Executive Report.

Faith-based Initiative Gets a Push with Set Aside Funds

Evidence emerges that faith-based charities are not discriminated against, but instead they are being favored.

Last Tuesday during his State of the Union address, President Bush urged Congress to open up billions of dollars in grant money to competition that includes faith-based charities. In doing so he states, "Tonight I ask you codify this into law, so people of faith can know that the law will never discriminate against them again."

In Massachusetts, John F. Downing runs a homeless shelter and substance abuse program for veterans. According to reports by The Roundtable on Religion and Social Welfare Policy, last year Downing's shelter was denied a $415,000 grant renewal from the Department of Veteran Affairs (VA) because preference was given to faith-based providers. However, this year Downing decided to register his charity as a faith-based organization with the White House Office of Faith-Based and Community Initiatives, which made him eligible for technical assistance and information about grants opportunities. After registering, Downing contacted his representatives in Congress, whose staff helped with the preparation for grant applications. He also testified before Congress to explain the level of veteran homelessness in his community and his organization's loss of funds. A year later, Downing and his newly registered faith-based organization, United Veterans of America Inc.(UVA), had a influx of federal funds. UVA received grants and loans from the VA, the U.S. Department of Housing and Urban Development (HUD), and the Federal Home Loan Bank.

UVA never changed its name, nor changed the programs offered at the shelter. Yet after registering as a faith-based group they received almost $2 million in federal funds one year after it was denied $415,000. Both the VA and HUD claim that UVA's faith-based status had nothing to do with their decisions.

In Oklahoma City, State Rep. Debbie Blackburn (D-Oklahoma City) became concerned over whether their state Office of Faith-Based and Community Initiatives (OFBCI) is showing favoritism toward evangelical Christian

groups in awarding state contracts for social services. The problem was brought to Blackburn's attention by other faith-based organizations in her district who claim that an annual $45,000 contract given by the Department of Human Services, which funds and houses the OFBCI, was specifically designed for an evangelical Christian group. The contract, which was awarded to Cornerstone Tulsa, is an intermediary and provides technical assistance to faith-based organizations. Norman Transcript reports that OFBCI director Bradley Yarbrough was aware that Cornerstone Tulsa had some "isolated problems" with fulfilling the terms of the contract after receiving the funding, but those have since "cleared-up." Blackburn and Yarbrough have met over this issue.

Designated Zones Continue to be Drawn for Protesters

The Secret Service has created restricted areas to keep those actively opposing President Bush's policies from being seen during his public appearances. People have been arrested for stepping outside the designated free speech area, and one man was prosecuted in federal court.

In South Carolina a long-time political activist was fined $500 for entering a restricted area during a presidential visit. Much like two people who were arrested for stepping onto the street in Atlanta, Brett Bursey, 55, was peacefully protesting.

Originally Bursey was arrested for trespassing and faced up to six months in prison and a $5,000 fine. However, five months after his arrest, he was charged with an obscure federal statute and the trespassing charge was later dropped. Assistant U.S. Attorney John Barton said that Bursey was charged under the federal statute because the incident took place at the Columbia Metropolitan Airport and South Carolina law does not allow local authorities to prosecute incidents there. Prosecutors claim that Bursey was in an area that had been closed to the public except for through traffic and ticket-holders. Conversely, Bursey explains that he had no idea that area he was in was off limits. He believes that he was picked out of the crowd because he was holding a sign that read "No War for Oil," while people with signs favoring Bush were not arrested and remained in the area.

On Jan. 19, an estimated 800 protestors gathered in Atlanta awaiting the arrival of President George W. Bush where he came to visit Rev. Dr. Martin Luther King Jr.'s grave. Protestors organized across the street from the King Center for Nonviolent Social Change, where the president was paying his tribute to Dr. King's legacy. Immediately in front of the protestors stood a long line of Metropolitan Atlanta Rapid Transit Authority buses. The buses were not there for transportation; instead they were used to block the President's view of the protestors. Standing alert on top of the buses where city police in riot gear. At least two people were arrested for stepping into the street beyond the buses.

For more information on "protest zones" see OMB Watch's article Suit Challenges Secret Service "Protest Zones."

Supreme Court Decides EPA Can Overrule State Air Permits

In a 5-4 decision, the Supreme Court ruled Jan. 21 that EPA has authority to overrule a state construction permit that, as judged by the agency, violates air quality standards.

In doing so, the court rejected the Alaska Department of Environmental Conservation's claim that EPA lacked the authority to block construction of a power plant at Teck Cominco Alaska Inc.'s Red Dog Mine, the world's largest zinc mine, located in northwest Alaska. (Cominco sought more generating capacity to expand zinc production by 40 percent.)

The state of Alaska approved construction of the plant without insisting that Cominco install the most effective technology for controlling air emissions, as required by the Clean Air Act. EPA intervened at the urging of the National Park Service, which was concerned about air pollution in nearby Cape Krusenstern National Monument and Noatack National Preserve.

"Only when a state agency's [Best Available Control Technology] determination is 'not based on a reasoned analysis' … may EPA step in to ensure the statutory requirements are honored," Ruth Bader Ginsburg wrote for

the majority. “EPA adhered to that limited role here.” Ginsberg argued that without such federal oversight, states might be tempted to compete for business by undercutting federal environmental standards.

The ruling upheld a 2002 decision by the U.S. Court of Appeals for the Ninth Circuit.

Administration Says It Will Prosecute Clean Air Violations, For Now

The Bush administration will reverse course and bring new court cases against violators of power-plant emissions standards, according to EPA Administrator Mike Leavitt.

Just three months ago, it was revealed that the administration had decided to stop investigating 70 power plants suspected of violating clean air standards, and would consider dropping 13 other cases that were referred to the Justice Department.

This decision followed EPA’s action weakening its New Source Review (NSR) program, which governs power-plant emissions. Past violations, the administration concluded, would be judged by the new, weaker standard -- even though it was not the law at the time.

Then, a day before Christmas, a federal appeals court temporarily blocked the administration from implementing the NSR rollback. As a result, Leavitt said, EPA would aggressively enforce the existing rule until the case is resolved.

Court Overturns Bush Rollback of Air Conditioner Efficiency Standards

A federal appeals court overturned a Bush rollback of air conditioner efficiency standards, finding that it violated the National Appliance Energy Conservation Act, which prohibits such backsliding.

The Clinton administration, in its final weeks, required that most new air conditioners and heat pumps be made 30 percent more energy efficient by 2006. But the Bush administration immediately lowered this requirement to 20 percent, which would have created substantially more demand for power.

“Under the Bush rollback, from 2006 -- the year the standard should go into effect -- through 2030, U.S. households would have used an additional 253 billion kilowatt-hours of electricity, equivalent to the amount of power used by about 25 million households in one year,” according to the Natural Resources Defense Council, which was part of the lawsuit to reinstate the Clinton standards. This would have meant an additional 51 million metric tons of carbon emissions (equivalent to that of 34 million cars), $21 billion extra spent by consumers on utility bills, and an increased risk of summer blackouts.

“In rejecting the Bush administration’s attempt to turn back the clock on energy efficiency, the court has boosted efforts to reduce consumers’ energy bills and protect California from future power shortages,” California Attorney General Bill Lockyer said in a statement.

Administration Limits Objections to Forest Thinning

The Bush administration issued an interim final rule Jan. 9 that limits the public's ability to challenge forest-thinning projects under the recently enacted Healthy Forests Restoration Act, which allows increased logging purportedly to reduce the danger of wildfire.

Under the rule:

- You can only launch an administrative appeal to stop a project if you submitted comments during the formal public comment period;
- Federal agencies are not allowed to file objections;
- Appeals must be brought within 30 days after the issuance of an environmental impact statement or assessment;
- A single Forest Service "reviewing officer" decides on an appeal, and can potentially do so without meeting with the objectors;
- No further administrative challenges are allowed if the reviewing officer rejects the appeal; and
- Exceptions for legal challenges should be "read together, narrowly construed and invoked only in rare instances such as where information becomes available only after the conclusion of the administrative process."

"This is not about protecting homes or communities from forest fires," Amy Mall, senior forest specialist with the Natural Resources Defense Council, told BNA. "This is about trying to cut the public out from having a say in the management of their public lands. It will make it harder for people to challenge projects that would damage the environment and do nothing to protect homes or communities."

This action follows a rule issued in December that limited consultations under the Endangered Species Act for forest-thinning projects.

Commerce Dept. Calls for More Regulatory Rollbacks

The Commerce Department released a report Jan. 16 on U.S. manufacturing that calls on the Office of Management and Budget (OMB) to review existing regulations and implement reforms "on a priority basis" to reduce costs on manufacturers.

Curiously, the report does not mention that OMB actually did this during the first two years of the Bush administration, using its annual report to Congress on federal regulation to identify and weaken a host of significant standards, such as controls on power-plant emissions.

In this past year's report, OMB did not solicit new recommendations on specific rules, as the administration was still evaluating the whopping 267 recommendations submitted the previous year. Instead, OMB issued new guidance on regulatory analysis that raises the bar for promulgating new health, safety and environmental standards. The Commerce Department urges OMB to "rigorously apply" this guidance "to any proposed rules that would influence the costs imposed on the manufacturing sector, particularly as they affect small and medium-sized businesses."

In making these recommendations, Commerce cites a study commissioned by the Small Business Administration's Office of Advocacy that misleadingly suggested small businesses are being strangled in a sea of regulation without providing any corresponding review of the benefits of health, safety and environmental protection. (OMB's latest report by contrast found that the benefits of environmental regulation swamp the costs.) Indeed, going by Commerce's report, the primary objective should be to reduce regulatory costs no matter the consequences.

Time Remains to Comment on EPA's Burden Reduction Plans for TRI

OMB Watch encourages interested individuals to take part in the Environmental Protection Agency's (EPA) Stakeholder Dialogue Phase II that focuses on burden reduction options for the Toxics Release Inventory (TRI) program. The TRI is a flagship database that contains information about releases and transfers of toxic chemicals from manufacturing facilities. Since the establishment of TRI, the simple act of publicizing the amount toxic chemicals that facilities release has pressured companies to reduce these releases by more than half.

Each of the options being considered by EPA would create loopholes significantly reducing the amount of information available to the public. Allowing industry to hide data about toxic releases eliminates the incentive for facilities to lower their emissions. This burden reduction initiative could threaten the very usefulness of TRI.

Please see OMB Watch's action alert to send your comments to EPA.

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In This Issue

The Misleading 2005 Budget

It's hard to know how much emphasis should be put on the president's 2005 Budget. On one hand, it lays out the president's main policy objectives – mainly tax cuts for upper income individuals, increases in defense spending, and real cuts for many domestic services. On the other hand, the cost estimates, deficit forecasts, and other analyses are fundamentally misleading.

There is no example more revealing of the president's use of spin tactics to cover up his shortfalls than his 2005 budget proposal. Overall, the budget attempts to minimize the size of the deficit without appearing to cut popular and important services.

As budget analysts, we are deeply disappointed and concerned with the frequency and magnitude of these tactics. Honest budgeting and accounting is a fundamental prerequisite for sound decision making in a

democracy.

Here are just some of the most blatant examples:

- The budget only provides revenue and spending numbers for 2005-2009, even while – according to the Budget's own numbers – 87 percent of the 10-year revenue costs of the proposals occur *after 2009*. Congress must look at the 10-year costs when passing legislation, so only presenting 5 years worth of budget numbers is inadequate.
- Programmatic detail normally published in the budget was omitted, leaving Congress, journalists, and independent analysts leafing through a 999 page computer printout by the OMB.
- The costs of rebuilding Iraq and Afghanistan after Sept. 30 of this year are not included, nor are there any ongoing funds included "for the Defense Department's participation on the global war on terrorism."
- Another huge cost is that the president dodges a long-term problem with the Alternative Minimum Tax (AMT) by proposing a fix for 2004 and 2005 only. The budget states, "long-term change is needed" (page 263, 2005 Budget, Analytical Perspectives.) A real fix to the problem would require adding billions to the deficit, which, presumably, is why a real fix is not included in the final totals.
- There is a table on the cost of the president's proposals, which only looks at the revenue costs, even though footnotes cite tens of billions in outlay costs as well (Table, S-9) Why not include all costs of proposed programs?
- There are proposed changes to the budget "baseline" and Pay-As-You-Go (Pay-Go) rules that would enable tax cuts to be made permanent without properly accounting for their costs, and would allow additional corporate tax cuts to be passed at a lower threshold than spending for education, national parks, child nutrition, scientific research, Medicare benefits, or any other services. See [article on budget rules] for more details.

2005 Federal Budget Continues Fiscal Decline

OMB Watch has released a new report providing an analysis of the president's budget that describes the fiscal chaos created by the president's proposals. The report is entitled "2005 Federal Budget Continues Fiscal Decline."

The report finds that even if we take the numbers in the budget at face value, there is considerable fiscal decline in the federal budget, including:

- A deficit of $521 billion for 2004;
- Revenue at 15.7 percent of GDP - the lowest in over 50 years;
- Massive structural deficits totaling $1.3 trillion over the years 2005-2009;
- Long-term deficits over the next 50 years, tripling current deficits as a percentage of GDP; and
- Over the next 10 years, the president is proposing a net $1.1 trillion in revenue reductions - most of which (87 percent) will occur after the 2005-2009 window included in the budget.

The final section offers some of the implications of this recent fiscal decline.

See OMB Watch - 2005 Federal Budget Continues Fiscal Decline for full details.

Budget Process in the Service of Tax Cuts

It is important to remember the magnitude of the federal budget process on the outcome of community results. While budget process issues are often arcane and sometimes difficult to determine the affects on results, in the case of several of the president's proposals, the purpose is very clear—to make tax cuts easier to pass and expansion of government services more difficult.

One mechanism that has been used in the past to reduce budget deficits and move towards budget surpluses is called "pay-as-you-go" or "pay-go." This is a requirement that legislation that will increase entitlement (non-discretionary) spending or reduce revenues must be offset by cuts in other entitlement spending or by tax increases, to insure that the deficit does not rise. The statutory pay-go rules expired after 2002, although modified pay-go rules in the Senate were created through the FY 2004 budget resolution.

The president proposes to reinstate the "pay-go" rules, with some very big differences. Rather than "pay-go" rules that apply to entitlement spending **and** revenue reductions (tax cuts), the President wants to apply the "pay-go" rules only to increases in entitlement spending or refundable tax credits. Any legislation that reduces revenue through tax cuts (other than refundable tax credits) does not have to be offset. Additionally, under the usual "pay-go" rules, the offset for increases in spending or reductions in revenue can come either from reducing other program spending or by increasing revenue through tax changes. Under the President's proposal, increases in entitlement spending could only be offset by program cuts, not through savings on the tax side.

Under the President's proposal, legislators could not expand a program like prescription drug benefits under Medicare, for instance, and pay for it by eliminating a corporate tax loophole—rather, it would have to be paid for by cutting something from the entitlement side.

Entitlement programs, like Social Security, Medicare, and Medicaid, and refundable tax credits, like the Earned Income Tax Credit (EITC) or the child care tax credit, are most important to low- and middle-income families. On the other hand, high-income people receive most of their government benefits from tax cuts (or tax "entitlements.") Once again the bias of this administration is made clear. Tax cuts are "free," even though they increase deficits just as much as spending, and in fact, are more dangerous, since once taxes are cut, it is politically difficult to raise taxes.

The President has yet another way to make tax cuts look free of cost. Another of his budget process "reform" proposals is to have the Congressional Budget Office essentially "pretend" that all of the 2001 and some of the 2003 tax cuts (all of which are scheduled to expire by 2010) are already permanent. The official budget "baseline" is supposed to reflect current law and be a reference point from which to measure the impact of new legislation or tax cuts. If the huge cost of making expiring tax cut provisions permanent is already incorporated into the baseline, proposals to make the tax cuts permanent will have zero cost when compared to the baseline.

The administration justifies these skewed and gimmicky proposals because they will put pressure on keeping spending down so deficits can be cut. As OMB Budget Director Josh Bolton stated, "We want to keep the focus on spending and that's where we think the [deficit] problem is." Actually, the deficit problem is really on the side of revenue. Federal revenue for FY 2004 – at just 15.7 percent of gross domestic product – is projected to be at its lowest level since 1950; and federal income tax receipts for FY 2004, at 8.0 percent, will be at their lowest level since 1942. The President's proposals are designed to continue the nosedive of federal revenue and the defunding of government.

Besides these budget process changes, the President has proposed to:

- Extend the discretionary budget "caps" for 2005 through 2009. The caps set annual limits on the overall amount of discretionary spending. The President proposes that the amounts be based on his 2005 budget (which limits the increase in discretionary spending outside of defense and homeland security to less than .5 percent increase for 2005) with only small increases. This is another way to keep spending down.
- Make the requirements for "emergency" spending (which is not counted under the budget caps) stricter. "Emergency" spending must be necessary, sudden, urgent, unforeseen and not permanent.
- Change from a concurrent budget resolution (passed by House and Senate, but not signed by the President) to a joint budget resolution (agreed upon jointly by the House and Senate, signed by the President, and having the force of law).
- Change from an annual appropriations process to a biennial appropriations process (taking place every two years).
- Allow a Presidential line-item veto, giving the President the authority to veto new appropriations,

mandatory spending, or "limited grants of tax assistance" whenever he determines that the spending is not an "essential government priority." The savings would go to deficit reduction.
- Make a "continuing resolution" automatic when appropriations are not enacted by the start of a new fiscal year, by funding at the level of the President's budget or the prior fiscal year – whichever is lower.

Some of these changes, like the "emergency" spending provision, may be worthwhile. Even budget "caps," if they are set at adequate levels, have been useful in the past. However, under this Administration, the caps are far too low to fund the programs and services that most Americans want. Most of the budget "reform" provisions that the President has proposed either give him more power over the spending process – the line-item veto, the joint budget resolution – or, like the budget "caps" or automatic continuing resolution are ways to reduce government while preserving tax cuts for the wealthy.

State-by-State Effects of the Bush Budget

The National Priorities Project has released a state-by-state analysis of the effect of the President's budget.

A Government Rollback

It is no secret that, after contributing to the deficit by huge tax cuts, a primary focus of this Administration now is decreasing the deficit by cutting spending, while continuing to reduce revenue by way of tax cuts. This will require massive cuts and eliminations of programs and services. It augurs a historically significant rollback in federal spending that if unchecked will fulfill conservative promises to reduce government to the barest of minimums.

Sixty-five programs have been slated for elimination in fiscal year 2005 at a "savings" of $4.9 billion according to Office of Management and Budget Director Bolton. Major cuts are proposed for another 63 programs. A list published by the *Washington Post* of "major reductions and terminations in the 2005 budget" is just the tip of the iceberg. The *Post* also reported the existence of a 999-page OMB computer printout that "suggests" even more cuts and freezes through 2009. (The Center on Budget and Policy Priorities obtained the OMB document and OMB Watch has put it on out web site.) You can find a wealth of information about the budget, and even a link to a *Washington Post* article, on the OMB site. For more about cuts in domestic discretionary programs, see the Center on Budget and Policy Priorities analysis.

Some of the program eliminations are being justified by the "grade" they received under the "Program Assessment Rating Tool" (PART) being used by the administration to evaluate the effectiveness of programs. The PART was implemented during the FY 2004 budget cycle, and used to evaluate 20 percent, or 234 government programs. During FY 2005, 40 percent, or about 400 programs, were evaluated under the PART. Another 20 percent will be added in FY 2006, bringing the total up to 60 percent.

Of the 65 programs slated for elimination, 13 were zeroed out based on the PART evaluation. Of those 13, eight received a grade of "failed to demonstrate results," as did a total of 40 percent of programs this year (and over 50 percent last year). Those programs are:

- Small Business Innovation Research Program, Commerce
- Tech-Prep Education State Grants, Education
- Nuclear Energy Research Initiative, Energy
- Metropolitan Medical Response System, Homeland Security
- State Criminal Alien Assistance Program, Justice
- Environmental Education, Environmental Protection Agency
- Business Information Centers, Small Business Administration

Five of the 13 programs slated for elimination were deemed "ineffective:"

- Even Start, Education
- Federal Perkins Loans, Education
- HOPE VI, Housing and Urban Development
- Juvenile Accountability Block Grants, Justice
- Migrant and Seasonal Farm workers, Justice

Two programs that were eliminated were rated as "adequate:"

- Advanced Technology Program, Commerce
- Comprehensive School Reform, Education

About 25 percent of all programs evaluated under the PART received an "adequate" or "ineffective" grade. Another 40 percent of the programs rated under PART for the 2005 budget cycle received "effective" or "moderately effective" grades. An OMB summary of the PART evaluations for FY 2005 can be found on its website or in the CD Rom included with the Analytical Perspectives volume of the Budget.

It is clear that the PART evaluations are being used as a way of justifying program cuts and elimination. We have previously reported on problems with the PART assessment, as evidenced by our comments on the process. Information about the PART, including the programs evaluated, and being proposed for evaluation (forthcoming), and the ratings, can be found on OMB's website.

Economy and Jobs Watch: GDP, Employment, and the Federal Reserve

Release of two new pieces of economic data showed that the economy, while growing, is still below expectations.

Gross Domestic Product

Gross domestic product (GDP) grew at an annual rate of 4 percent in the final quarter of 2003. This was less than half the 8.2 percent growth rate in the third quarter, and below economists' expectations (CNN reported an expected rate of 5 percent). For 2003 as a whole, the economy grew at a 3.1 percent rate, which is less than the 3.3 percent average growth rate over the past 10 years. In the recovery from a recession and during a period of extraordinarily stimulative monetary policy, we would normally expect much stronger economic performance.

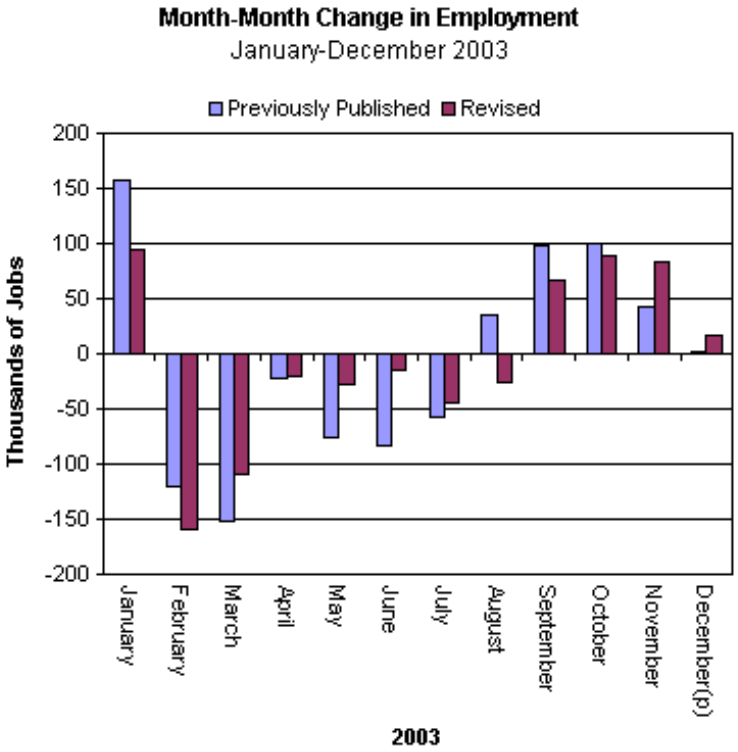
Employment

Employment data for January showed an increase of 112,000 jobs, and a small dip in the unemployment rate to 5.6 percent. While positive, size of the job growth is below the level needed to keep up with population growth, below the level needed to create a healthy labor market, and below the predictions put forth by the administration.

JobWatch.org shows that job growth from June to January was 1.8 million jobs short of the administration's predicted effect of the tax cut.

The weaker than expected job numbers, together with the mild GDP report paints a picture of an economy that continues to muddle along without a clear direction.

In addition to their regular release, the Bureau of Labor Statistics also published a revision to their jobs numbers for the past year. The revisions incorporated new data as well as updated methods for estimating the "births" and "deaths" of firms. The following figure shows the employment picture remains essentially unchanged in 2003, with a revised total 147,000 jobs lost from January to December 2003.



The Fed

The economy has greatly benefited over the last year from an accommodative Federal Reserve (Fed), which has generated a strong housing market and pumped large amounts of money into the economy through loan refinancing.

However, the Fed cannot hold interest rates down forever, especially given pressures from the exploding budget deficit and the falling value of the dollar, and will likely begin to slowly raise rates by the end of the year.

After a two-day meeting of the Fed's decision-making group, the Federal Open Market Committee (FOMC) released their usual policy statement. While they chose to again keep rates unchanged, they removed a line from previous statements that said "policy accommodation can be maintained for a considerable period." This omission signaled to observers that the monetary policymakers are closer to taking their foot off the gas.

With the Federal Reserve backing away from the stimulus table, the current direction of fiscal policy – which is providing little effective stimulus in the short-run – continues to put at risk the health of the economy. This is especially true in the long run as surpluses have given way to massive structural deficits.

OMB's Revised Cost of Medicare Prescription Drug Benefits Raises Questions

During last year's debate on the Prescription Drug and Medicare Improvement Act of 2003, Congress used an outlay cost estimate of $395 billion for the new program. However, in the president's 2005 budget, the 10-year outlay cost was estimated to be $534 billion – 35 percent greater than the initial estimate. See Table S-13, Page 387, 2005 budget..

The final bill was passed on Nov. 25, 2003 and the president signed the bill into law on the Dec. 8 – the $139

billion revision was thus published less than 2 months after the bill was signed. According to the administration's budget, "The largest portion of the difference in these cost estimates is attributable to assumptions regarding beneficiary participation, market behavior, and cost growth rates." (Note to Table S-13, Page 387).

It is not unusual for cost estimates to change over time, however a revision this large coming so soon after the initial estimate raises important questions about what and when the administration and the Office of Management and Budget (OMB) knew about the revised estimates. Did the OMB withhold new cost estimates during the congressional debate? Did the president know about the new cost estimates when he signed the bill in December? Are the costs inflated to make it easier to "cut the deficit in half" by 2009?

Manipulation or selective withholding of budget estimates for political reasons is not a good way to start a budget process. The administration and OMB need to make it clear when these new estimates were made, and exactly how and why they differ from the previous estimates.

Tax Freedom or Telecommunications Windfall?

There is considerable confusion about the debate on Internet taxes. One issue is whether items sold over the Internet should be taxed. Another issue is whether there should be a tax on access to the Internet; similar to the tax we pay for use of telephones. This second issue – charges a user pays to an Internet Service Provider to connect to the Internet, as well as taxes that would discriminatorily apply only to Internet technology and use – is now being debated in Congress.

The "Internet Tax Freedom Act" was a temporary "moratorium" banning state and local taxation of Internet access and prohibiting "discriminatory" taxes that single out the Internet for special taxation. It was enacted in 1998 and subsequently renewed through November 1, 2003. The purpose of this temporary moratorium was to encourage the growth of the Internet.

Given the expiration of the moratorium, Congress is moving to **permanently** ban taxation of Internet access. During the last congressional session, the House passed "The Internet Tax Non-discrimination Act" (H.R. 49). A vote on a companion bill in the Senate (S.150) was postponed. It is likely to be brought to the floor this session.

Besides making the moratorium permanent, the bills include two other provisions that significantly expand the scope of the original moratorium:

- One would eliminate a "grandfather" clause included in the original legislation that allowed state and local taxes on Internet access if the taxes had been in effect prior to October 1, 1998. (State and local governments in 11 states would be affected.) The House bill would immediately eliminate the grandfather clause. The Senate bill would eliminate it after three years.
- Another would expand the definition of "Internet access" to prevent states and localities from any taxing of telecommunications services "used to provide Internet access." This provision could (depending on interpretation) prohibit states and localities from taxing: 1. telecommunications services purchased by Internet access providers; 2. DSL telephone service (27 states and D.C. currently get sales or excise taxes on DSL); and, 3. telephone service itself as it shifts to the Internet (e.g., VOIP), a process that has already begun.

Rather than a simple continuation of the original moratorium on the taxation of Internet access, the proposed legislation would provide a huge tax break to the telecommunications industry, while dramatically reducing sources of state and local revenue, at a time when many states are experiencing severe fiscal imbalances.

The full impact on state and local government revenue is not even known because the interpretation of "telecommunications services used to provide Internet access" is so broad and ill defined. The telecommunications industry will certainly argue for the widest possible interpretation. The elimination of the grandfather clause would cost the 11 states and local governments from between $80 million and $120 million annually. The loss of the ability to tax DSL would cost those states and localities about $70 million annually. Even more technical issues could arise due to the broad definitions in the legislation that could unintentionally cost state and local government much more. For a more complete examination of this issue from which the cost

estimates were drawn, see the Center on Budget and Policy Priorities analysis.

Supporters of the legislation argue that taxes on Internet access exacerbate the so-called "digital divide." Cloaking the financial self-interest of the telecommunications industry in concern for low-income people's ability to access the Internet is a disingenuous argument. It is far more likely that cuts in the services that state and local government provide due to inadequate state and local revenue, like Internet access or training at libraries and schools, would make it more difficult for people to access the Internet.

The underlying question is "Why should telephone service be taxed, and Internet service not?" In contrast to the prohibition of taxes on Internet service, the charges a user pays to a company for telephone service are taxed, and have been since the federal tax was first imposed as an "excise" or "luxury" tax during the Spanish-American War. That tax on telecommunications services has also become an important source of revenue for state and local governments, amounting to more than $20 billion a year in revenues. While a moratorium on Internet taxation might have been a good idea to allow its growth, it is probably time to reexamine its purpose now.

Even without addressing that question, since Internet access has become more complicated than the original "dial-up" connection, and the technology for Internet and telephone access is rapidly changing, a permanent ban on taxation of Internet access, without more careful study and consideration, is a bad idea. The possibility of depriving states and localities of long-standing telecommunications revenue by broadening the definition of Internet access, especially given the fiscal crises in most states, is difficult to justify. In the absence of a compromise to proceed with taxation of Internet access, Congress should not permanently prohibit such taxes. One solution is to provide an extension of the original moratorium on taxation in order to allow more time to develop a well-considered policy.

Sens. Lamar Alexander (R-TN) and Thomas Carper (D-DE) are working with a number of groups who are concerned about this issue, and intend to introduce a compromise bill sometime this week. The bill would extend the moratorium for two years and also exempt DSL Internet access from taxation.

Tax and Budget Survey News

The OMB Watch Tax and Budget Survey is now closed. We had a tremendous response of over 700 completions. We extend our sincere thanks to all of you who completed the survey. We will be reporting the results soon!

Budget Increases Funds for OSHA Whistleblowers

The myriad of numbers in the recent proposed federal budget included a surprising change in the Occupational Safety and Health Administration (OSHA)—an increase of funds to investigate whistleblower claims.

President Bush's 2005 budget request for OSHA includes a $5 million increase in enforcement funding, with $2 million specifically earmarked to strengthen the agency's whistleblower protection efforts. The increase in whistleblower funds is significant considering that while OSHA's overall proposed budget approached half a billion dollars, the agency only received a total increase of $4.1 million.

OSHA Administrator John Henshaw cited an increase of responsibilities and workload under whistleblower protections legislation. Henshaw specifically noted the Corporate and Criminal Fraud Act (Sarbanes-Oxley), which increased whistleblower provisions in an effort to avoid future Enron and Anderson Consulting scandals. Sarbanes-Oxley established an administrative remedy for corporate whistleblowers within the U.S. Department of Labor (DOL). The law also permits corporate whistleblowers to seek federal court relief if the DOL does not resolve their case within 180 days.

The Sabanes-Oxley legislation modeled its protections after other legislation noted by the OSHA Administrator, the Wendell H. Ford Aviation Investment and Reform Act for the 21 Century. The law, signed by President Clinton in 2000, protects the rights of airline employees to report safety violations and other wrongdoing.

This increase in whistleblower funding runs contrary to numerous previous actions under the Bush administration to reduce protections for whistleblowers and discourage federal employees from speaking out. The Homeland Security Act of 2002 made whistle blowing illegal for critical infrastructure information submitted by corporations. Any violation would be punishable by up to a year in jail and a huge fine. Recent legislative efforts to reinforce whistleblower protections have not received the support of the Bush administration. Additionally, Congress recently discovered that an Environmental Protection Agency headquarters' official instructed regional staff not to cooperate with congressional staff investigating the status of contaminated sites around the country (see this week's Watcher article.)

Court Rules Portion of Patriot Act Illegal

A federal judge has ruled that at least one provision of the USA Patriot Act is unconstitutional.

A U.S. District Judge in California ruled that the U.S. Patriot Act's ban on providing "expert advice or assistance" to foreign terrorist groups is unconstitutionally vague, in violation of the First and Fifth Amendments. This is the first federal court decision finding any portion of the Patriot Act illegal. The judge's decision did not include a nationwide injunction on the provision as sought by the plaintiffs.

The California case involves five groups and two U.S. citizens who are trying to provide support for lawful, nonviolent activities on behalf of Kurdish refugees in Turkey. These groups aim to help find a peaceful resolution of the Kurds' campaign for self-determination in Turkey, but under the anti–terrorism law have been threatened with 15 years imprisonment.

Numerous groups have criticized the law as overreaching legislation that infringes on the rights and civil liberties of citizens. The court decision lends credence to the numerous cities and towns that have passed laws opposing the U.S. Patriot Act. New York City is the most recent city to pass such a resolution. On Feb. 4 the New York City Council approved a resolution condemning the law as unpatriotic for infringing on privacy rights.

Another case challenging the Patriot Act is currently pending in Detroit. The plaintiff, the American Civil Liberties Union, argues that the Patriot Act grants the federal government unconstitutional authority to secretly seize library reading lists and other personal records.

The California ruling could be the first of many in which the judicial branch of government acts as a check and balance against the excessive law passed by an overly zealous legislature.

Draft FEC Advisory Opinion Generates Comments from Nonprofits

The Federal Election Commission (FEC) staff has drafted an Advisory Opinion (AO) that could have far reaching impact on nonprofit advocacy. Draft AO 2003-37 was written in response to a request from Americans for a Better Country, a political organization under Section 527 of the tax code, but it could impact all issue advocacy, not just partisan campaign activity.

The draft AO broadens the definition of expenditures that "promote, support, attacks or oppose" a candidate for federal office that are regulated by the FEC to include any criticism or support of a public official who happens to be running for federal office, even if the election is not mentioned or the official is not identified as a candidate.

This approach would sharply restrict the ability of many 527 groups to speak out on public policy matters, even if the election or a federal candidate is not mentioned. The Commissioners will consider the draft opinion by Feb. 19. If approved, it will apply immediately to 527 groups. However, many are concerned about a slippery slope where the FEC language may eventually reach to 501(c)(3) and 501(c)(4) organizations and force them to comply with FEC regulations. If that were to happen, it would greatly undermine free speech rights of charities and other 501(c) groups, such as social welfare organizations and labor unions.

The draft AO generated broad response from the nonprofit community between its release on Jan. 19 and the

Feb. 5 meeting of the FEC. Most of the written comments on the draft indicated concern about potential over-reaching effect the draft AO could have. For example, one letter was signed by 324 organizations, including OMB Watch, stating, “Making it unlawful to criticize the policies and action of a sitting President or Members of Congress except under the auspices of a registered political committee is one of the most fundamental attacks on the freedom of speech and freedom of association of American citizens ever contemplated by a governmental agency.”

Other comments were submitted by the AFL-CIO, the American Lung Association, Independent Sector, the Michigan Nonprofit Association, the National Council of Nonprofit Associations and the Service Employees International Union. The Republican National Committee submitted comments in support of the draft AO, as did campaign finance reform groups Democracy 21, the Campaign Legal Center and the Center for Responsive Politics. However, another strong reform supporter, Public Citizen, filed comments opposing the draft.

At the Feb. 5 FEC meeting the Commission decided to delay their decision until Feb. 19 (the legal deadline), to allow time for the Commissioners to review public comments. The FEC is made up of six commissioners, three Republicans and three Democrats. Four votes are required to approve action, including this draft AO. Democratic FEC Commissioner Scott Thomas told reporters that he is “leaning toward the line of analysis” in the draft AO, but said the final AO should clearly states it only addresses regulated political committees.

Republicans founded Americans for a Better Country, but their request for an Advisory Opinion listed many of the activities being undertaken by Americans Coming Together, a Democratic leaning 527 political committee. The AO request has been viewed as a partisan attempt to limit voter mobilization efforts that would favor Democrats.

IRS Attorney Says Nonprofits Can Lobby During Election Seasons

The District of Columbia Bar Association Exempt Organizations Committee held a meeting recently that focused on legal issues in an election year. IRS attorney Judith Kindell explained to those attending the meeting that, “Organizations don’t have to stop lobbying campaigns simply because of an election.”

Referring to groups exempt under Section 501(c) or the tax code, including charities, social welfare organizations, unions and trade associations, Kindell cited recent IRS Revenue Ruling 2004-6, which explains factors the IRS uses to distinguish between genuine issue advocacy and advocacy meant to influence elections. Nonprofits that lobbying public officials on specific issues do not have to stop their efforts when those officials are up for re-election, as long as their efforts do not imply support for or opposition to the official as a candidate.

James Joseph, an attorney with Arnold and Porter who spoke about the rules regarding sponsorship of nonpartisan candidate debates and forums, said the ruling is “one of the best rules written for Section 527 organizations,” whose primary exempt purpose is to influence elections. The examples detailed when the IRS will consider public communications to be “exempt” for 527 purposes, which means they are intended to influence elections and, therefore, are not condoned activities for 501(c)(3) organizations.

In the ruling, guidance is given to define electioneering communications as those that are:

- made during a time that coincides with an election
- identify a candidate
- target voters in a particular election
- identify a candidate’s position on an issue
- distinguish the candidate’s position from others (in the communication or in the overall campaign)
- not part of an ongoing series of substantially similar advocacy on the same issue.

The guidance given also identifies communications that are genuine issue advocacy as ones that:

- identify specific legislation or a specific event outside the control of the organization
- are timed to coincide with the specific event
- identify the candidate solely as a government official in a position to act on the policy or specific event
- mention the candidate solely as the a key sponsor of legislation.

Joseph also told the audience that candidate briefings held by 501(c) organizations, including charities, should be impartial. This means all legally qualified candidates should be invited to participate, the moderator should be impartial and present questions relating to a wide variety of issues. Each candidate must have an equal opportunity to respond.

“Voter registration drives,” said Joseph, “should not refer to specific candidates or parties, unless all are mentioned. They should also address a wide variety of issues.”

Attorney Beth Kingsley of Harmon, Curran, Speilberg and Eisenberg said additional rules apply to federal elections under the Federal Election Campaign Act. This includes restrictions on paid broadcast advertising 60 days before a general election or 30 days before a primary election or nominating conventions.

Groups Ask Congress to Initiate Ethics Investigation of Delay Charity

Common Cause and the National Committee for Responsive Philanthropy have called on members of the House to “urge the Ethics Committee to formally rule on the legality of a plan closely associated with Rep. Tom DeLay (R-TX) to establish a children’s charity as a fundraising vehicle to subsidize donor events at the Republican National Convention.”

In a Feb. 5 letter to House members the two groups noted that the charity, Celebrations for Children, is linking donations to access to Rep. DeLay and others at the Republican National Convention in New York this summer. The letter also notes that only members of the House can ask the Ethics Committee to initiate an investigation, and urges each member to contact Chairman Joel Hefley (R-CO) and ranking member Alan Mollohan (D-WV) to urge them to take action.

In Dec. the *Washington Post* reported that a brochure published by the group offers donors of $500,000 or more benefits including sponsorship of a dinner with DeLay, and tickets to “the Members reception before/during/after Presidential acceptance speech,” and a private yacht cruise with DeLay. Smaller donors are offered similar, but less substantial, benefits. If the IRS approves Celebrations for Children’s application for recognition of exempt status as a charity these donations will be deductible.

Common Cause, Democracy 21, the Campaign Legal Center and the National Committee on Responsive Philanthropy have filed complaints against Celebrations for Children with the IRS, asking that it be denied exempt status as a charity under Section 501(c)(3). The Common Cause/NCRP letter says, “We believe the overt partisanship of these activities is inappropriate for a charitable non-profit 501(c)(3) organization.”

The House Supports Religious Discrimination Bill

On Wednesday, Feb. 4, Rep. Lynn Woolsey (D-CA) offered a substitute amendment during House to strip out language that gave faith-based organizations permission to infuse their federally funded programs with religion and to discriminate on the basis of religion when hiring. Woolsey’s substitute amendment failed to be adopted by a 50-vote margin (183-232).

The Woolsey amendment contained two important legal points: (1) that all federal programs must be carried out in a lawful secular manner, and (2) that no federal grantee carrying out a federal program can use the funds to “discriminate on the basis of religion.” The Supreme Court in Bowen v. Kendrick, 487 U.S. 589 (1988) raised both points. Writing for the majority, Chief Justice Rehnquist wrote the Bowen decision to be consistent with at least 104 years of constitutional prohibitions on using government funds to support inherently religious activity. The Woolsey amendment was aimed at adding the language from Chief Rehnquist’s decision, and removing existing bill language that was snuck into the last reauthorization very late at night.

Before the vote in the full House, the Committee on Education and the Workforce considered H.R. 3030 in legislative session on Oct. 1, 2003 during which two amendments were considered and adopted by voice vote. In the committee the bill was amended to strip out other bad language that was adopted during the last re-authorization process. Chairman Boehner (R-OH) offered an amendment to codify previous regulatory practice ensuring that program beneficiaries and potential program beneficiaries are not discriminated against on the basis of religion.

The CSBG is a multi-million dollar fund used to address the causes and conditions of poverty and to assist people in achieving economic self-sufficiency. Because CSBG passed without the Woolsey language, the bill allows faith-based federal grantees to use tax dollars to fund inherently religious programs that enroll some of America's most vulnerable citizens. From homeless shelters, to substance abuse counseling, your tax dollars could be working to convert vulnerable citizens at a time of crisis.

Because there are no laws clearly regulating what faith-based organizations can do with their government funds, many problems have been recently reported in the news.

In Michigan, the state had to pull a contract with a faith-based organization based in Marlette for allegedly forcing teen program beneficiaries to attend church services. Teen Ranch Inc, doesn't deny using religion in its programs, but does deny forcing anyone to attend religious services. Teen Ranch is sent teens by court order and gets paid $130 per day by the state for each teen. Click here to read more.

The Salvation Army has begun an effort to reassert its evangelical roots. The Salvation Army of Greater New York has stressed the importance of spreading the Gospel in their work. In fact, the division has ordered that job descriptions now clearly state the organization's religious mission. The Salvation Army is also asking employees to fill out forms that state their religious affiliation and to sign a contract that they will follow the organization's religious mission when carrying out their job function. The division has $70 million in state and city funding for its programs. Click here to read more.

And finally, the House Committee on Government Reform's subcommittee on Criminal Justice, Drug Policy and Human Resources held a hearing on "Faith-based Perspectives on the Provision of Community Services" in Colorado Springs on Friday, Jan. 23. Five out the ten witnesses who testified at the hearing were representatives from Focus on the Family. Focus on the Family states on their website that there mission is, "To cooperate with the Holy Spirit in disseminating the Gospel of Jesus Christ to as many people as possible, and, specifically, to accomplish that objective by helping to preserve traditional values and the institution of the family." One group has claimed that Focus on the Family promotes "reparative" therapy for gay men and lesbians. Meaning, the organization uses intense therapy and religious piety as a means of "changing" homosexuals into heterosexuals. One witness at the Jan. 23 hearing is a gender specialist who may have spoke about the program.

Charitable Giving in Bush's 2005 Budget Proposal

President Bush's FY 2005 budget proposal includes several tax incentives to encourage charitable giving accompanied by several requirements that will limit taxpayer deductions.

While the CARE Act is still waiting action in a legislative conference committee, the president recently proposed many of its major tax incentives for charitable giving in his FY 2005 budget. If the CARE Act does finally make it to the president, it is clear that he will sign the piece of legislation into law because much of it will duplicate his intentions as expressed in his FY 2005 budget. Some of these incentives include:

- Non-itemizer Deduction: To allow nonitemizers to deduct contributions of $250 for single filers and $500 for joint filers, with a ceiling of $250 on the amount deducted ($500 for married couples filing jointly. The White House has estimated the cost spread out over ten years at $12 billion. The same provision is found in the House's version of CARE (H.R.7), but has been argued as an expensive provision that yields little in the way of giving.
- IRA Rollover: Donors age 65 and over could donate directly from their individual retirement accounts (IRA) without paying income taxes on the donated amounts. This provision is estimated by the White House to cost $3.5 billion over ten years. The IRA rollover idea can be found in both the House and Senate version of CARE. The House version sets the donor age at 70 1/2, while the Senate version (S.476) sets the age at 59 1/2.

- Excise Tax: Foundations would see a flat rate excise tax on their business investment income of one percent. Today, foundations pay up to two percent excise tax on their investment income. Foundations claim that this reduction to a flat one percent rate would enable them to give more to charities. The White House has estimated the cost to be $1 billion over ten years.
- Food Contributions: All taxpayers engaged in trade or business will be included in the extension of the tax deduction for food inventory donations. Currently, only certain companies can deduct food inventory contributions and the deduction had to be assumed as less than fair market value. Bush's proposal would allow for more players to contribute food inventory and the deduction would be increased to fair market value or two times the typical costs in the inventory (which ever is less.) However, S corporations and non-corporate taxpayers would be limited to 10 percent of income from trade or business. Estimated cost submitted by the White House is $1.2 billion over ten years.
- Remainder Trusts: Instead of losing their federal income tax-exemption for the year they invested in unrelated business activity, charitable remainder trusts will have to pay 100 percent excise tax on their unrelated business earnings. The administration estimates that the change would cost $68 million over ten years.
- Appreciated Property: Shareholders of S corporations will be given a better rate on their deduction for contributions of appreciated property (stock shares). The deduction ultimately lowers their income tax liability. The White House has estimated the cost at $239 million over ten years.
- $150 Million Limitation: The $150 million limitation on 501(c)(3) bonds is proposed to be repealed entirely. The cost of the repeal has been estimated at $94 million over a ten-year period.
- Restrictions on Bonds: 501(c)(3) organizations use of tax-exempt financing to acquire existing residential rental property for charitable purpose would be condoned. Currently, an 501(c)(3) can use tax-exempt financing to acquire residential rental property for charitable purpose only if the property is rented to low-income tenants or is substantially rehabilitated. Bush's proposal lifts those limitations. The White House says the cost spread out over ten years is $299 million.

Conversely, Bush's budget proposal included some provisions that would burden non-cash donors with new requirements for proof of value and set limits on deductions. The IRS has already put out announcements stating that they are getting prepared to crackdown on some of these non-cash contributions to charities. Specifically, on Dec. 22, 2003 the IRS issued an Information Release announcing the tightening of rules regarding donations of intellectual property. The Information Release was coupled with a Revenue Notice in which the IRS spelled out in detail the abuses for which it is now watching. Adopting some of these concerns over tax deduction abuse, President Bush proposed the following provisions:

- Intellectual Property: Sets limit on deductions for gifts of patents and other intellectual property (other than certain copy-rights) to charity to the lesser of the property's fair market value or the amount it cost the donor to produce the property. Currently the gift values of intellectual property are estimated by the fair market value of the property at the time of donation, and are increased by the perceived revenue if property was marketed commercially. Under Bush's proposal, donors could only deduct income that was actually earned by the charity that receives it (including future deductions for up to ten years or the life of the patent in royalties.) The Treasury claims that this proposal could add $3.2 billion in tax payments over ten years.
- Car Donations: Requires donors to seek independent appraisals of any automobile donated. Currently, donors may deduct fair-market value as established by established used car pricing guides, as long as the car's value did not exceed $5,000. Bush proposal would only allow car donations to be deducted if the taxpayer obtains a qualified appraisal of the vehicle. If this change is adopted, the White House says it would bring the government $1.2 billion over ten years. Read IRS' News Release, "IRS Officials Urge Caution and Care for Those Making a Car Donation."
- Property Donations: Any items, other than stock or inventory, donated to charities by companies must be independently appraised if the deduction claimed exceeds $5,000. Donations claimed to be over $500,000 must have the appraisal attached to the return. This proposal would bring all companies in line with policy regulations already set for individuals. The White House expects this proposal to bring in $367 million over ten years.

The House and Senate will be debating the president's budget proposal and will be drafting their own version of the 2005-spending plan. The president's proposed budget is important because it sets the stage for the overall federal fiscal policy in three main categories – how much money the government should spend overall, how much should be taken in tax revenues, and how much deficit or surplus government should run. For more

background information on the federal government's budget process see the Center for Budget Policy Priorities' .

Paul O'Neill's Papers to be Posted Online

Documents forming the basis of Paul O'Neill's headline-grabbing charges that the Bush administration planned as early as Jan. 2001 for the fall of Saddam Hussein will be posted on the Internet as an "experiment in transparency."

Here's the story: Former Treasury Secretary Paul O'Neill made news recently when he charged in the release of his book *The Price of Loyalty* that President George W. Bush planned to invade Iraq in the first few weeks of his administration. The Bush administration initially charged O'Neill's evidence should not have been publicly disclosed. Days ago, current Treasury Secretary John Snow noted that the Treasury Department should never have released at least some of the documents, and vowed to review the department's procedures to ensure that such releases never happen again. Last week, the author of O'Neill's book, Ron Suskind, began posting the 19,000 documents cited in the book on the Internet.

But the real story is not whether O'Neill or the Treasury Department should have released the documents, is the fact that these documents, once poured over, may yield interesting insights into policy decision-making, and these insights may pressure this administration -- and future administrations -- to reveal more information in a more timely manner about their policy deliberations.

If nothing else, the posting of these documents on the Internet shows that government has the technical capability to make more documents available to the public than it does now. The Treasury Department electronically scanned every document that O'Neill saw into an image file and stored them. So duplicating these documents and posting them online is relatively easy.

So why are background administration documents such as these hidden from public view? Those who use the federal open-records law, the Freedom of Information Act (FOIA), often complain that "pre-decisional" agency records are exempt from disclosure under FOIA. In other words, agencies do not have to disclose memos and other documents that government employees write while working through policy alternatives. The logic is that government employees should be able to enjoy a free exchange of ideas while forming policies, and the threat of these early memos' disclosure to the public would constrain early policy deliberations. Proponents of this exemption argue the public interest in government creating good policy decisions after complete and candid deliberations outweigh the public interest in disclosure of these documents. But many who attempt to obtain information from government through FOIA charge the "deliberative process" exemption has been used excessively to withhold information unnecessarily.

If these documents yield new insight into the policy decisions this President has made, more Americans may find new benefits to disclosure and embrace such disclosure as necessary to understand their president's actions and hold their elected leaders to account.

Paul O'Neill's papers may be accessed online at http://thepriceofloyalty.ronsuskind.com/thebushfiles/

EPA Gags Regional Staff on Perchlorate

EPA has prevented regional offices from speaking to congressional staff about perchlorate contamination. Perchlorate is found in rocket fuel and has contaminated drinking water near Department of Defense (DoD) sites in at least 22 states.

Reps. John Dingell (D-MI) and Hilda Solis (D-CA) released a report Jan. 15 that found DoD has made little progress in cleaning up contaminated sites. In their investigations, staff contacted regional EPA offices to gather information about the sites. When calls were placed, EPA officials stated that they "had been instructed by an EPA headquarters official not to speak with committee staff."

Dingell and Solis sent a letter to EPA administrator Mike Leavitt Feb. 5 urging him to stop stonewalling Congress from its routine communications with EPA. The letter noted "[t]here is no need to interject another level of Headquarters bureaucracy into the process unless there is a decision on your part to delay and hamper EPA employees from providing information about the contamination of actual and potential drinking water supplies and the health impacts for the public." Additionally, the letter admonished EPA for its reluctance to use its statutory powers to investigate the scope of perchlorate contamination.

Regrettably, this is not EPA's first effort to block perchlorate information. In 2002, EPA previously prevented agency scientists from discussing two studies that show lettuce absorbs large amounts of perchlorate – high levels of the chemical have been found in water and lettuce supplies. The escalation of EPA's stonewalling activities for all matters dealing with perchlorate is troubling. Moreover, hiding information from Congress inhibits its ability to perform its duties of representing and protecting the public.

Nuclear Insecurity Under DOE

A new Department of Energy (DOE) regulation could threaten safety standards at nuclear weapons facilities nationwide. At the same time, findings by DOE's watchdog office reveal that nuclear facilities cheated during mock attacks.

New Safety Standards

Congress passed legislation in 2002 requiring fines for contractors that violate occupational, safety and health criterion at nuclear weapons facilities. The legislation's goal was to spur improved worker protection policies and greater consistency of protection. However, DOE proposed a rule in Dec. 2003 allowing contractors to ignore the established federal safety standards and instead develop site-specific safety plans. One of the legislation's authors, Sen. Jim Bunning (R-KY), accused DOE of altering Congress' intentions with a rule that will hurt worker protections.

Critics point out that under the DOE rule contactors would be inclined to relax worker protections. Often, the government provides incentives for early completion of projects and the new rule would allow contractors to lower safety standards, which often slow down work. Additionally, the site-specific safety plans would most likely use low standards to avoid fines from violations. Violations and fines also provide valuable information for evaluating the quality of worker protections at a facility. By allowing facilities to rig the system and avoid violations, DOE is hiding problems rather than solving them.

John Conway, chairman of the Defense Nuclear Facilities Safety Board at the Energy Department, stated 100,000 workers at these facilities would see risks from weakened standards. DOE defended the rule saying it will give contractors flexibility to create safety plans that address specific site hazards. Certain dangers covered under federal rules do not exist at every facility. DOE contends the rule will fully protect workers.

See the related New York Times article for more information.

Cheating Before Mock Attacks

A report issued by DOE's inspector general on Jan. 23 revealed a Tennessee nuclear weapons facility cheated in a test of its preparation and security system. The facility was tipped off about surprise-simulated attacks. The

mock attacks were intended to help facilities develop a safety plan. The plant was expected to pass only two of the four tests; when all were passed, DOE launched an investigation.

The investigation determined that guards were allowed to view computer simulations before the tests. Additionally, other incidents of cheating were found at nuclear facilities across the U.S. The allegations were based on interviews with former and current facility guards.

The National Nuclear Security Administration authored a letter in which the agency stated that if the attacks were compromised and information collected was subsequently skewed, then “the results could have extremely significant effects in a way that is entirely unacceptable.”

Information on simulations results is usually classified as national security materials.

Safety standards and security practices at nuclear facilities are alarming and seem contradictory to the administration’s guise of strengthening homeland security. Improvements in safety and security must begin with honest and open assessments of the problems rather than manipulative techniques to hide the problems. It is the administration’s responsibility to ensure the safety of those that work at or live near nuclear facilities.

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Join the OMB Watch Team!

OMB Watch is currently looking for three bright, talented, hardworking individuals to join our team. We are seeking a Communications Cooridinator to more effectively communicate our policy messages to key audiences and, to a lesser extent, raise the profile of the organization; our Federal Budget group is seeking a full or part time graduate or undergraduate intern to assist researchers with a wide range of activities including federal tax and budget analysis; and the Information Policy/Right-to-Know department is seeking an intern to work on freedom of information and right-to-know (RTK) issues.

Click here to go to our Jobs web page to get a full announcement.

U.S. Federal Debt Surpasses $7 Trillion

The U.S. Treasury recently announced that the federal debt subject to congressional limits has for the first time surpassed $7 trillion - approximately 62 percent of gross domestic product. In addition, in fiscal year 2003, over $300 billion was spent on paying interest on the debt.

Rising federal deficits will push the debt level even higher in coming months and years. With projected deficits near $500 billion for 2004, the congressionally mandated limit of $7.384 trillion will likely be reached sometime this fall. Without congressional action to raise the debt limit, the U.S. would not be able to meet its obligations and would potentially be in default on some loan payments. If the date for raising the debt limit occurs before the election, it could turn into a political hot potato.

Budget Battles Loom

As the 2005 budget resolutions process gets on its way, spending for domestic programs could actually come out lower than the already grim projections set by President Bush's budget proposal. Given that it is an election year both the president and Congress' use of "spin" and shenanigans to mislead the American public will proceed. A big election year issue is budget deficits and the skyrocketing national debt – peaking now at $7 trillion.

In his budget, Bush proposed cutting the deficit in half in five years by limiting all non-defense, non-domestic security discretionary spending (most of what government does outside of entitlements like Social Security) to a 0.5 percent increase (less than the cost of inflation) in fiscal year 2005. In addition, the Bush budget proposes to send 63 federal programs to the chopping block and make big cuts in another 65. Cuts to domestic discretionary spending, except for homeland security, are scheduled to continue throughout 2009 and beyond. Even with this radical proposal to shrink government, many experts think that the goal of cutting the deficit in half in five years is highly unlikely.

While Democrats have been busy pointing out the myriad of ways the Bush budget shortchanges ordinary Americans, conservative Republicans are searching for ways to further reduce spending. Some "deficit hawk" Republicans want to balance the budget in five years, by cutting all discretionary spending, including defense and homeland security, by 1 percent each year. This idea follows a plan developed by Stephen Moore, the President of the Club for Growth, a member based organization that "helps select candidates who support the Reagan vision of limited government and lower taxes." Others want to reduce domestic discretionary spending by 1 percent, but keep the exemptions for defense and homeland security.

The Bush budget was largely construed to hide the huge costs of his tax cuts by painting a rosy picture that favored making the cuts permanent after 5 years. It appears from recent news reports about the preliminary congressional leadership wheeling and dealing in preparation for the budget resolution that the resolution itself may also be limited to five years rather than the usual ten-year span. There is a good reason for this. As many of you will remember during the 2003 tax cut effort, tax cuts are much easier to pass when they are made a part of the "reconciliation" process in the budget resolution. Under Senate rules, tax cuts outside the budget resolution require 60 votes to pass if a point of order is raised. The tax cuts that do not expire until 2010 like the repeal of the estate tax, which only benefits multi-millionaires, or the higher marginal rate reductions, also benefiting wealthier Americans, will be outside of the 5-year window and would then require 60 votes and be unlikely to pass. If those cuts were included in a 10-year budget resolution, the massive 10-year deficits, estimated at $990 billion by the Treasury Department, would also be hard to cover up.

It appears that Congress is going to quietly ignore Bush's call to make all the expiring tax cuts permanent. Their five-year strategy may be to include the extension of tax cuts that expire December 31, 2003, like the marriage "penalty" relief, the child credit, and the expanded 10 percent tax bracket. These tax cuts are perceived to benefit low- and middle-income people. This will put Democrats in a difficult position. Democrats will either provide the 60 votes to make the tax cuts permanent or be the party that wants to raise taxes on low- and middle-income Americans. And, since the cost of making the tax cuts permanent will require cuts in spending, Democrats will be stuck with making cuts to domestic programs because of their vote for the tax cuts. This plan would also get Republicans off the sharp hook of passing a ten-year budget resolution that either extends the tax cuts that expire at the end of 2010 and therefore massively increase the deficit, or defies Bush by allowing the

tax cuts to sunset. One sour note for Republicans is what to do with the 2003 reductions in capital gains and dividends – hardly able to be spun as a "benefit to ordinary Americans" - that expire in 2008. They can perhaps be characterized as benefiting the economy, given a liberal dose of spin.

No one wants their federal income taxes raised, but many ordinary Americans will be paying more - through cuts in services, increases in fees, and higher state and local taxes made because of the effect on states and localities of federal tax and budget policy. These are the real increased costs for low- and middle-income Americans. The simple fact is that the radical efforts to shrink government by reducing federal revenue will have a far more negative effect on the lives of most of us than fair, simple, reasonable and progressive taxes ever could. As the budget battles unfold during the coming months, the price that must be paid to reduce government, by paying fewer taxes, should not be ignored.

Economy and Jobs Watch: Another Administration Projection Bites the Dust

Yet another economic projection by the administration is falling short – and in record time. Just a couple weeks after the publication of the Economic Report of the President, which forecasted 3.8 million* new jobs would be created in 2004, administration officials appears to be backing off the job estimates. The forecast was for 320,000 new jobs every month – a number most observers agree is exceptionally high. Job growth has not reached even half this level in any month over the past three years, according to data from the Bureau of Labor Statistics.

Unfortunately, this is part of a pattern of forecasts from the administration that appear to be wildly inaccurate. While there is always a degree of uncertainty in any economic forecast, the size of the errors and revisions seems to be exceptionally large, and the direction of the errors always appear to be in the favor of the political goals of the administration.

Some examples include:

- The projected impact of the tax cuts on job creation is failing miserably – the administration's estimate of new jobs is currently off by 1.8 million net jobs over the period from July 2003 through January 2004.
- In the president's budget for fiscal year 2004, released last February, the baseline deficit showed, optimistically, a deficit of $158 billion for 2004 (or a higher $307 billion with the president's proposals enacted). Just last summer, the administration had projected a $475 billion deficit for 2004 (OMB Mid-session review, Table 1.) And now, this month they are predicting a $527 billion deficit (FY205 budget, Table S-14) for 2004. The estimates always seem to show the same pattern – projections of lower, "improving," deficits in the future; but a growing deficit in reality.
- The estimated cost of the prescription drug bill was $400 billion when Congress debated and passed the bill by a narrow margin last fall, and just a couple months later, the Office of Management and Budget increased the cost estimate to $534 billion.

In addition to estimates that appear overly optimistic or politically convenient, there is also data that is not being released, such as full and complete distributional analyses of tax changes.

Accuracy and honesty in economic and budget projections is a necessity when formulating policy. By backing away from estimates produced by the president's top economic advisors, the administration is turning budgetary and economic projections into a guessing game for those citizens concerned with the financial health of the country.

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*Note that it was widely reported that the new jobs number was forecast to be 2.6 million in 2004. This, however, is incorrect. The 2.6 million number was calculated using the average yearly employment number. A correct calculation shows that the true projection in the Economic Report of the President is 3.8 million. See DeLong or CNN for details.

DHS Releases CII Rule

Months after receiving comments on the proposed rule, the Department of Homeland Security (DHS) finally published the interim final rule for Critical Infrastructure Information (CII) in the Feb. 20 Federal Register. Although an interim final rule with a public comment period open until May 20, the rule went into effect immediately.

DHS hopes that by providing exemptions for public disclosure, restrictions on regulatory activities, and civil immunity, companies will be encouraged enough to voluntarily share information on the vulnerabilities of critical infrastructure. The agency published the proposed rule April 15, 2003 and received 64 substantive comments during the two-month public comment period. It is unclear why DHS needed 8 months from the close of the public comment period to publish the final rule. While the foundation of the rule, which was dictated by a congressional statute, remains the same from the proposed rule, there were some notable changes. On several minor issues public interest groups seem to have made some progress.

- The program is limited to only direct submissions to DHS. The rule contains strengthened statements explaining that information required by any other agencies can not be CII.
- Submitters must provide a fairly strong express statement attesting that the submitted information meets the criteria and is not required by any federal agency.
- The rule allows for the protection status of information to change based upon the information becoming available through other legal means, that information is now customarily in the public domain, or that it is required to be submitted to DHS;
- Any disclosure that qualifies as whistleblowing under the Whistblowers Protection Act (WPA) is considered authorized and is exempt from penalties.

Unfortunately, these minor improvements do not affect many of the more serious and fundamental flaws in the CII program. In fact, several of the improvements noted above are either temporary or significantly limited.

- DHS plans to expand the program to allow submissions through other federal agencies in the final rule.
- The government still can not use submitted CII for any regulatory action (i.e. inspection, violation notice, fine, etc.)
- DHS still requires consent from the submitters (typically in writing) to share, disclose or basically use the information in any meaningful manner.
- Submissions are now automatically presumed to be made in good faith.
- The database tracking the submissions seems to be protected under the program.
- While the protected status can change, the rule does not include, nor do FOIA requests trigger, any standard procedures to provide for a secondary review of submissions.

Office of Special Counsel Scrubs Website

The new head of the Office of Special Counsel (OSC), Scott J. Bloch, recently scrubbed the agency's webpage removing references to protection from sexual orientation discrimination. The OSC is an independent agency with a primary mission to safeguard federal employees by protecting their workplace rights for activities such as whistleblowing.

The National Treasury Employees Union (NTEU) issued a press release Feb. 12 announcing the changes to OSC's website. Bloch, a Republican appointee, ordered the removal of reference to sexual orientation in a discrimination complaint form, training slides, and a federal employee rights brochure. Additionally, all references to a June 2003 OSC press release announcing the settlement of a sexual orientation discrimination case were removed.

Bloch defended his actions by stating the office is unclear on the interpretation of a civil service law provision that bans discrimination "on the basis of conduct which does not adversely affect the performance of the

employee or applicant." Therefore, he decided to remove the information pending a review.

Government policy declares that anti-gay job discrimination is illegal in the federal workplace; this policy has been in place since 1975 and has been enforced by every president since. The Office of Personnel Management (OPM) still maintains information on sexual orientation discrimination, but the primary agency that enforces non-discrimination policies based on sexual orientation is OSC.

Several members of the Senate Governmental Affairs Committee sent Bloch a letter Feb. 19 expressing concern that his actions seem inconsistent with statements from his confirmation hearing, according to the Washington Post. During the hearing, Bloch stated "sexual conduct can clearly fall within the definition of conduct that is not adverse to the on-the-job performance of an employee, applicant or performance of others." The letter was signed by Sens. Carl M. Levin (D-MI), Daniel K. Akaka (D-HI), Susan Collins (R-ME), and Joseph I. Lieberman (D-CT).

Gay rights groups have expressed outrage at the agency's actions, and characterized it as a political offering to the conservative right.

Before accepting the position at OSC, Bloch served as deputy director and counsel to the Task Force for Faith-Based and Community Initiatives at the Justice Department.

Fighting Secrecy -- And Winning

Government secrecy has undermined the public's ability to hold our leaders accountable for keeping our country secure and community safe. Yet the government's claims that providing citizens with information harms national security may be overblown.

Case One: The Project On Government Oversight (POGO), a critic of government and corporate misconduct in defense and military matters, recently was threatened with criminal prosecution for releasing sensitive information in a letter to the Nuclear Regulatory Commission (NCR) outlining shortcomings in tests of nuclear plant security. Government officials wanted POGO to rewrite the letter, but refused to explain their specific concerns. POGO agreed to pull the letter off its web site until it could resolve the government's concerns. According to POGO, after much back and forth between their lawyers and NRC lawyers, the NRC finally explained their concerns. The commission officials claimed they did not want to give terrorists any hints on how to research weaknesses at nuclear facilities and POGO's letter had clearly done so. POGO's letter documented interviews with security guards to identify the shortcomings in security testing. Thus, the letter disclosing POGOs research methods would help terrorists and should be amended.

So what did POGO write? After interviewing scores of nuclear plant guards, POGO worried that government officials were gaming tests of nuclear plant security. In these tests, teams stage a mock attack on a plant. The plant's security equipment and guards are tested on their ability to defend the plant and prevent a catastrophe. According to POGO, mock attacks were staged during daylight hours, plant officials knew in advance when the tests were going to occur, and other limits all but assured the nuclear facility would pass the test, without regard for the plant's actual ability to foil trained terrorists' plans.

Case Two: In a separate incident, a group of concerned neighbors had been working for years in what the group's lawyers said was a constructive relationship to track drinking water supplies contaminated with perchlorate, a rocket fuel that causes developmental problems in children. After 9/11, the Army refused to share critical information with the community groups, including maps of drinking water test wells. What confused community groups the most was the fact that these maps were already shared publicly -- but the Army refused to acknowledge them and claimed they were "sensitive" information not for public release. The community group refused to back down and is now suing the Army for information under an environmental law that gives community groups the right to be informed about toxic chemical threats.

These examples follow a growing trend in government to disclose information on a need-to-know basis, making it harder for the public to ensure safe drinking water and secured nuclear facilities. In denying the public information about such threats and keeping unnecessary secrets, government officials are cutting the public out of efforts to make our communities safer.

FEC Sets Stage for Showdown on Scope of Campaign Finance Regulation

On Feb. 18 the Federal Election Commission (FEC) approved Advisory Opinion 2003-37, which was requested by a Republican group Americans for a Better Country (ABC). It expands regulation of political committees registered with the FEC, but does not impact other groups, including 501(c)(3) organizations. However, the commissioners' deliberations indicated that further consideration of a "range of options" for setting new boundaries of regulation would be considered in a rulemaking proceeding beginning in March.

There was widespread interest in the outcome of the Advisory Opinion for ABC, since the draft submitted by staff two weeks earlier proposed a new theory of regulation that would have greatly expanded activities covered by the Federal Election Campaign Act. Hundreds of groups, including OMB Watch, signed on to comments objecting to the staff draft, saying it would extend campaign finance regulation to genuine issue advocacy and other non-partisan activities. The Republican National Committee submitted comments supporting the staff draft. Campaign finance reform groups were split on the issues, with Public Citizen, Common Cause and the Brennan Center for Justice opposing the draft because it "could chill the First Amendment rights of activists and non-profit organizations that seek to influence public policy." Public Campaign also opposed the staff draft. Democracy 21, the Center for Responsive Politics and the Campaign Legal Center supported the draft, saying it would only apply to political committees registered with the FEC. In the end the FEC compromised on a limited draft from FEC Vice-Chair Ellen Weintraub, agreeing that the big questions should be decided in a rulemaking proceeding.

Issues raised by the Advisory Opinion request, which will be considered in the upcoming rulemaking proceeding address the new legal framework created by the Bipartisan Campaign Reform Act of 2002 and the Supreme Court decision in *McConnell v. FEC* that upheld it. FEC regulation is limited to registered federal political committees, but the threshold for requiring registration is one of the questions left open by the Supreme Court decision. The ABC staff draft took the approach that registration should be required if a group says its "major purpose" is to influence federal elections. While this sounds simple at first, it leaves open many problematic details, such as how "major purpose" would be defined. Prior to the *McConnell* decision, the FEC limited its authority to "express advocacy" or specific calls for election or defeat of federal candidates.

The FEC's challenge in the rulemaking will be to find a standard that does not impact non-partisan advocacy, including grassroots lobbying and public criticism of the president or members of Congress. One standard proposed by the staff draft ABC Advisory Opinion failed to achieve this; it would have extended FEC regulation to any communication that "promotes, supports, attacks or opposes" a federal candidate, even if the election is not mentioned. Vice-Chair Weintraub said the rulemaking will give the FEC the opportunity to look at a broader range of options, including the IRS's recent Revenue Ruling 2004-6, which lays out factors that distinguish genuine issue advocacy from partisan electoral communications.

The scope of the FEC's authority to expand the reach of its regulatory authority will be hotly contested in the rulemaking. Some reform groups and the FEC's counsel have taken the position that the *McConnell* decision requires expansion of federal regulation to all political committees seeking to influence federal elections. This would bring current soft money activities under the FEC's restrictions on contributions and expenditures. Others argue that the FEC is limited to the authority Congress provides, and that BCRA only addressed soft money and political parities and political committees funded or controlled by parties.

The FEC has said it will begin the rulemaking process in early March, and after taking public comments, will issue final rules by the end of May in time for the general election. The stakes are high in a presidential election year, with Republicans hoping to limit the activities of soft money Democratic leaning groups like America Coming Together. However, in the deliberations on the ABC Advisory Opinion, FEC Chair Bradley Smith, a Republican appointee, warned that the party should not seek to win the election by silencing its opponents.

More information on this issue can be found at www.nonprofitadvocacy.org, which is hosted by Alliance for Justice, Charity Lobbying in the Public Interest, National Committee for Responsive Philanthropy, National Council of Nonprofit Associations, and OMB Watch.

Bill to Repeal Restrictions on Broadcasts During Election Season Introduced in House

On Feb. 11, Rep. Roscoe Bartlett (R-MD) introduced HR 3801, a bill to repeal "electioneering communications" restrictions in the Bipartisan Campaign Reform Act (BCRA) that ban broadcasts that refer to federal candidates 60 days before a general election or 30 days before a primary election or nominating convention.

House Majority Whip Roy Blunt (R-MO), one of the 12 cosponsors, may improve the bill's chance of getting serious consideration. The bill has been assigned to the Committee on House Administration. Titled the "First Amendment Restoration Act," the bill removes the ban on most payments by corporations, including nonprofits, and labor unions for radio, television, cable and satellite communications that refer to federal candidates in the period before elections. It also removes requirements for disclosure of expenditures for these communications for groups that are allowed to make them.

All the cosponsors opposed BCRA two years ago. Rep. Bartlett held a press conference to announce the bill and had the support of organizations including the American Civil Liberties Union, the American Conservative Union and the National Rifle Association. Rep. Bartlett said many members of Congress voted for BCRA believing the restrictions on "electioneering communications" would be held unconstitutional. However, the Supreme Court upheld the restrictions, and Bartlett said many of these members might now be willing to support his bill. He indicated a companion bill might be introduced in the Senate.

The Federal Election Commission's regulations on "electioneering communications" exempt 501(c)(3) organizations because of the ban on such groups to take sides in elections. The regulation also exempts unpaid broadcasts given that it was written to limit soft money contributions. BCRA's House sponsors, Reps. Chris Shays (R-CT) and Marty Meehan (D-MA), have challenged these exemptions in court.

Anti-War Conference Attendees Issued Subpoenas

A FBI Joint Terrorism Task Force subpoena was issued early this month to Drake University in Des Moines, Iowa. The subpoena asked the university to produce all records relating to its November antiwar conference.

The conference, 'Stop the Occupation! Bring the Iowa National Guard Home!' was sponsored by the Drake University chapter of the National Lawyers Guild (NLG). The conference included workshops on nonviolent philosophies, how to convey feelings about Iraq into acts of civil disobedience, and concluded with a peaceful demonstration outside the Iowa National Guard base. The subpoena asked for extensive information about the NLG chapter, including leadership lists, annual reports, office location, and about the conference itself. The Justice Department also subpoenaed at least four conference attendees to appear in front of a federal grand jury.

David D. Cole, a Georgetown law professor told the New York Times, "I've had heard of such a thing, but not since the 1950's, the McCarthy era. It [the subpoenas] sends a very troubling message about government officials' attitudes toward basic civil liberties."

In May 2002, Attorney General John Ashcroft announced elimination of the 1978 regulation that prevented the FBI from monitoring "open to the public" events held by domestic religious, political, and civic organizations unless it had a specific cause for doing so. "These regulations had been specifically developed to counter the COINTELPRO domestic spying program that has led to massive civil rights era abuses during the 1960s and 70s. Now, these regulations no longer exist – and such abuses may well be repeating themselves," Find Law commentator, Noah Leavitt explains.

Stephen Patrick O'Meara, the prosecutor for the United States attorney's office for the southern district of Iowa, told the New York Times, "the narrow purpose and scope of that inquiry has been narrowed to determine whether there were any violations of federal law, or prior agreements to violate federal law, regarding unlawful entry onto military property…" The attorney's office believed that a demonstrator attempted to jump the fence and enter the property of the Iowa National Guard base. However, demonstrators said they were unaware of such an action by any one of the 21 participants.

The subpoenas were withdrawn after public outcry drew attention to the case, but a few days later a new set of subpoenas was issued.

The administration's use of protest zones, retaliatory grant audits, and now federal subpoenas suggests a campaign to silence organizations and communities that disagree with its policies. It is important for nonprofit organizations not to be chilled by such tactics.

File Your Form 990 Electronically

The Internal Revenue Service (IRS) announces online filing for Form 990.

The IRS is set to accept online submissions of Form 990, the annual report filed by nonprofits, beginning in March. The IRS has made online filing of nonprofit financial reports a top priority because of the increased scrutiny by Congress, the media and others. The eventual goal is to have most 990s filed electronically, and the information made available to the public in a searchable database.

Benefits of filing Form 990 electronically for nonprofits include:

- reduction of the paperwork burden,
- the re-allocation of scarce government resources to real problem
- organizations, instead of intruding on tax abiding groups,
- data quality will increase because incorrect forms will not be able to be
- submitted,
- real-time verification that your organization's return has been filed, and
- greater efforts of collaboration between federal and state regulators to
- make registration and filing in multi-states easier.

Free software for preparing Form 990 for e filing is available through the National Center for Charitable Statistics. Other software providers with e filing compatible packages are listed on the IRS website.

For more information, see the web site of EDIN, the Electronic Data Initiative for Nonprofits, a partnership between the Council on Foundations, GuideStar, Indpendent Sector, the National Council of Nonprofit Associations and OMB Watch.

Leading Scientists Say Bush Administration Suppresses, Distorts Facts

More than 60 distinguished scientists, including 20 Nobel laureates, blasted the Bush administration last week for suppressing and distorting scientific information that does not support its predetermined agenda.

"When scientific knowledge has been found to be in conflict with its political goals, the administration has often manipulated the process through which science enters into its decisions," according to a statement signed by the scientists. "This has been done by placing people who are professionally unqualified or who have clear conflicts of interest in official posts and on scientific advisory committees; by disbanding existing advisory committees; by censoring and suppressing reports by the government's own scientists; and by simply not seeking independent scientific advice."

The statement accompanied the release of a comprehensive report by the Union of Concerned Scientists (UCS), which documents numerous cases of the administration putting politics over science. For example:

- The White House Council on Environmental Quality and the Office of Management and Budget forced EPA

to substantially alter findings on global warming for a draft "Report on the Environment." For instance, EPA deleted a temperature record covering 1,000 years in order to emphasize, "a recent, limited analysis [which] supports the administration's favored message," according to an internal EPA memo obtained by UCS.

- OMB and the Office of Science and Technology Policy suppressed and sought to manipulate an EPA report on children's health, which concluded that 8 percent of women ages 16 to 49 have mercury levels in the blood that could lead to reduced IQ and motor-skills for their offspring. The report was released only after it was leaked to the press by frustrated EPA staff, as OMB Watch discussed in a previous article. In place of strong action on mercury emissions, most of which come from coal-fired power plants, the administration has instead put up a political smokescreen. As UCS notes, "In a more recent development, the new rules the EPA has finally proposed for regulating power plants' mercury emissions were discovered to have no fewer than 12 paragraphs lifted, sometimes verbatim, from a legal document prepared by industry lawyers."

- The administration blocked the Centers for Disease Control (CDC) from adequately assessing the effectiveness of abstinence-only sex education programs. Among other things, CDC was prevented from charting the birth rate of female program participants. "In place of such established measures, the Bush administration has required the CDC to track only participants' program attendance and attitudes, measures designed to obscure the lack of efficacy of abstinence-only programs," UCS reports. Along similar lines, the administration altered information on the CDC's web site to raise doubts about the efficacy of condoms to prevent the spread of HIV/AIDS and suggest a link between abortion and breast cancer.

- The administration has blocked a USDA microbiologist, James Zahn, from publishing research on the potential hazards of airborne bacteria from farm waste. Zahn had discovered significant levels of antibiotic-resistant bacteria near hog farms in Iowa and Missouri. In Feb. 2002, USDA instructed staff scientists that they need to seek prior approval before publishing research or speaking publicly on "sensitive issues," including "agriculture practices with negative health and environmental consequences, e.g., global climate change; contamination of water by hazardous materials (nutrients, pesticides, and pathogens); animal feeding operation or crop production practices that negatively impact soil, water, or air quality." Zahn told UCS this represents "a choke hold on objective research."

- Tommy Thompson, secretary of Health and Human Services, stacked a CDC advisory panel on childhood lead poisoning with scientists likely to oppose a tougher lead standard, at least two of which had financial ties to the lead industry. Likewise, numerous other scientific advisory bodies have been stacked to reach a predetermined conclusion. This includes committees on ergonomics, reproductive health, and nuclear weapons and arms control.

UCS contends that this manipulation of science is unprecedented, and provides testimonials from political appointees of past Republican and Democratic administrations. In the case of EPA, for example, Russell Train, former EPA administrator under President Nixon, commented, "The agency has had little or no independence. I think that is a very great mistake, and one for which the American people could pay over the long run in compromised health and reduced quality of life."

Administration Asks Manufacturers for Regulatory Hit List

OMB's Office of Information and Regulatory Affairs (OIRA), headed by John Graham, is soliciting recommendations for regulatory revisions that would reduce costs for the U.S. manufacturing sector, brazenly putting special interests over the public interest.

This request, which was made as part of a draft report to Congress on the costs and benefits of regulation, notes that the manufacturing sector bears higher regulatory costs than other sectors of the economy. However, it ignores the clear reason for this: The manufacturing sector accounts for much of the country's pollution as well as workplace deaths and injuries. The only way to significantly reduce the regulatory burden on manufacturers, which OIRA says is essential, is to scale back crucial health, safety and environmental protections.

Given the track record, this appears to be the direction the administration is headed. OIRA conducted similar exercises in 2001 and 2002, both of which were followed by a series of rollbacks. In fact, OIRA is still following through on the nearly 300 regulatory recommendations it received in 2002.

Nonetheless, this year's request stands apart for its audacity. Previously, OIRA sought recommendations on any regulation, for any purpose, including strengthening it (even if such recommendations were ultimately ignored). This year, following the advice of a recent Commerce Department report, OIRA makes no secret of its agenda. It is chiefly concerned with costs to industry, not the health and safety of the American public.

Lawmakers Accuse USDA of Misleading Public on Mad Cow

The U.S. Department of Agriculture (USDA) understated the risks of mad cow disease and misled the public, according to a bipartisan investigation by the House Government Reform Committee.

At issue is whether the cow that recently tested positive for the disease in Washington state was a "downer," meaning that it was unable to walk. Contrary to the USDA's contention, three eyewitnesses say that the cow was able to walk and did not appear to be sick at all.

This is of critical importance because the USDA bases its testing and surveillance program for mad cow by sampling only downer and other sick animals. USDA officials, including Secretary Ann Veneman, have argued that the discovery of the infected cow is proof that this program is working.

However, the House investigation found that this discovery was made only because USDA had an agreement with the plant where the cow was slaughtered to accept samples from nondowner cattle.

"If the information we have received is true, a key premise of the USDA [mad cow] testing program is subverted," wrote Reps. Tom Davis (R-VA), chairman of the Government Reform Committee, and Henry Waxman (D-CA), the ranking Democrat, in a letter to Veneman. "It is self-evident that if the only [infected] cow to be discovered in the United States was able to walk and had no symptoms of central nervous system disease, USDA should not assume that all infected cattle will be either downer cows or cows that exhibit symptoms of central nervous system disease."

This bolsters the case of importers of American beef, including Japan and South Korea, which have argued that USDA's testing program is insufficient, and should also sample seemingly healthy cows -- something strongly opposed by the beef industry.

A USDA advisory body, comprised of foreign experts who have dealt with mad cow, also released a report earlier in the month advising that USDA's surveillance program "must be significantly extended in order to measure the magnitude of the problem," and that the agency should strongly consider randomly sampling healthy cattle.

Unfortunately, USDA has shown no indication that it is willing to take this step. On the contrary, in the

Washington case, Veneman and other USDA officials seemingly ignored information that did not support their predetermined policy. On Jan. 6, 2004, one eyewitness -- the co-manager of the slaughterhouse where the infected cow was discovered -- wrote to USDA warning that the cow was not a downer; however, USDA continued to publicly insist that it was.

As a result, wrote Davis and Waxman, "Public confidence in USDA may suffer. Confidence in the food supply requires that the public be able to rely on statements of USDA officials."

The other eyewitnesses cited by Davis and Waxman include the hauler who took the cow to slaughter and the plant employee who killed the cow. The Government Accountability Project brought all three to the attention of the committee.

EPA Cancels Early TRI Release

The Environmental Protection Agency (EPA) has apparently abandoned plans to provide an early release of the 2001 Toxic Release Inventory, as OMB Watch reported in a previous Watcher article.

While EPA originally intended to release the preliminary data in February or March, organizational delays pushed the likely release back into April. Evidently, the agency determined that expending resources on an early release this year would be wasteful since the full public data release is scheduled for two months later in June. However, EPA appears to be considering utilizing the early release plan next year, with a possible release date as early as November. OMB Watch will continue to push for EPA to release the TRI data earlier so the public can gain access to valuable right-to-know information.

EPA Reviews TRI Burden Reduction Comments

The Environmental Protection Agency (EPA) continues to review the hundreds of comments it received on burden reduction proposals for the Toxic Release Inventory (TRI) program. EPA outlined the proposed changes in a 2003 white paper in Phase II of the TRI Stakeholder Dialogue.

EPA received over 650 comments from individuals, corporations, public interest groups and government agencies. It appears that various public interest groups were able to mobilize a significant number of individuals to submit comments on the TRI proposals. Public interest groups and citizens consistently raised concerns that the proposals would significantly weaken the TRI program. Not surprisingly, the industry comments appear to be supportive of all the burden reduction options put forth in the white paper with no concern for the integrity of the TRI program. OMB Watch, in its comments to EPA, strongly opposed the options proposed in EPA's White Paper. To look through all the comments EPA received click here and search for TRI-2003-0001.

The only burden reduction options that reportedly received fairly broad support is the option to allow facilities to simply report "no significant change" rather than calculating and reporting detailed figures on their toxic waste. The general reaction was that if properly defined, this option could reduce reporting burden for certain facilities without a serious loss of information.

OMB Watch disagrees with this assessment. A facility must complete all of the standard reporting calculations to determine if it could use this option. Therefore, the facility would only avoid a small amount of paper work. Additionally, if the option is implemented with a broad definition of "no significant change" to ease use, it would likely diminish the accuracy of the ranges reported and consequently the accuracy of the TRI program. To read all of OMB Watch's comments on the burden reduction options click here.

It is unclear how long it will take EPA to fully review all of the comments received or which, if any, of the burden reduction options it will develop further. OMB Watch will continue monitor EPA's activities on TRI.

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In This Issue

No Budget is Better than the Senate Budget

The budget resolution approved last week by the Senate Budget Committee has nothing good to recommend. It will hand more tax breaks to the extremely wealthy while slashing assistance to low-income working families and children. Funds for education, housing, the environment and a host of other services that benefit ordinary Americans will also be cut. Ironically, in spite of all these cuts, the committee's resolution will increase -- not reduce -- the deficit.

This budget resolution, which will be up for debate on the Senate floor this week, will:

- Slash domestic appropriations for almost everything government does outside of entitlements, homeland security and military funding. Only funds for space exploration and Homeland Security will be significantly increased. These cuts will really balloon in 2006, but appear to be less severe during the 2005 election year.
- Cut billions from "entitlement" spending targeting Medicaid and Earned Income Tax Credit (EITC) programs that primarily benefits low-income children and families.

- Accelerate the repeal of the estate tax for one year, a windfall for those who have estates valued at over $3.5 million, and extend for five years the temporary tax cuts for capital gains and dividend rates.

While the budget for fiscal year 2005 is bad, the next five years covered by the budget resolution will get much worse. If this five year budget is adopted, funding for domestic appropriations programs outside of homeland security would be cut a total of $113 billion over five years according to an estimate by the Center on Budget and Policy Priorities.

Some of the main provisions from the Senate Budget Committee's proposed budget resolution are:

- Budget caps for fiscal years 2005 and 2006. The $814 billion cap for 2005 is $9 billion lower than the president's request, and will cut or freeze most domestic appropriations at FY 2004 levels of spending. Since the caps will cover both domestic and military spending, increases in military spending will crunch domestic spending even more. Budget caps cannot be exceeded without 60 votes in the Senate.
- Required reductions in "mandatory" or "entitlement" spending. Proposed cuts include a $3 billion reduction in the EITC for low-income working families. Possibilities include eliminating the EITC for working families without children; raising taxes for 3.1 million low-income taxpayers; or delaying refunds to eligible families for up to a year. Other cuts that are on the table include an $11 billion reduction in Medicaid, paying no regard to the forty-three million Americans who are already without health insurance. These cuts will increase the number of the uninsured, and swell state fiscal crises because it will cause a decrease in the federal share of Medicaid costs.
- Tax cuts in the amount of $80.6 billion that are exempt from Senate filibuster or 60-vote requirements. These cuts are intended to extend for five years past their 2005 expiration date, and include: the marriage "penalty," the child credit, and the 10 percent tax bracket. Lest multimillionaires with over $3.5 million in assets feel left out of these "middle-income" tax cuts, the 2010 repeal of the estate tax will be accelerated to 2009. In actuality, the $80.6 billion worth of tax cuts only specifies the total amount of cuts that are protected from dissent, leaving the possibility of even more tax cuts for the wealthy.
- Tax cuts that are subject to Senate filibuster and a 60-vote requirement include another temporary one-year fix to the Alternative Minimum Tax, and a five-year extension of the cuts in capital gains and dividend rates. The total amount, including the protected $80.6 billion, set aside for taxes in the budget is $164 billion over 5 years, minus the$20 billion in offsets that the Senate must find.
- Continuation of the Senate pay-go rules that require an offset for entitlement spending increases or tax cuts. The catch is that these rules only apply to spending or tax cuts not included in this year's resolution. For example, the estate tax repeal acceleration does not have to be paid for by an offset.

The effort to balance the budget by cutting spending for the kind of priorities ordinary Americans value -- education for their kids, clean water and air, and the opportunities for every American to succeed -- while simultaneously insuring that the Bush tax cuts are made permanent (at a cost of $2 trillion over the next ten years) means that the deficit will continue to rise. The cuts that will negatively affect millions of middle-income and low-income Americans will only partially offset the cost of the tax cuts, not reduce the deficit. In anticipation of continued deficits, the budget also includes an increase in the national debt ceiling from $7.4 trillion to $8 trillion. Coincidently, this ensures a level debt limit for the year, with no significant raise, as we get closer to Election Day.

The budget will be debated on the Senate floor during the week of March 8. The House Budget Committee is expected to markup its budget on March 10, with floor debate during the week of March 15. The House budget is widely expected to have even more draconian cuts than the Senate budget. In order to have a binding budget, the Senate and House versions must be reconciled and the final version approved by both chambers.

OMB Watch Makes Available Detailed Budget Data

Over the past two weeks, OMB Watch has posted detailed breakdowns of budgetary data.

The 2005 Budget submitted by the president in February contained only partial information for spending over the next 5 years. The Center on Budget and Policy Priorities has obtained and provided to us more detailed, account level data from the Office of Management and Budget (2005-2009) and from the Congressional Budget Office (2005-2014). The OMB data has been on our site for weeks; the CBO data is new.

For more details or to download the data, see:

- CBO Account-level Data on Government Spending, 2005-2014
- OMB Account-level Data on Government Spending, 2005-2009

Bad Budget Rule Changes Could Still be Proposed

The Senate budget being debated this week includes only a two-year cap on appropriations, and continues Senate pay-go rules that apply to both entitlement increases and tax cuts. However, concern over other changes in budget rules remains.

Budget rules that could radically cut spending for years while making it easier to pass tax cuts may still be proposed as an amendment to the Senate budget. The rule could also be included in the House budget as an amendment to the conference report, or passed as separate piece of legislation all on its own. A particularly egregious example is (HR 3358) introduced by Rep. Hensarling (R-TX), titled "The Family Budget Protection Act of 2003" -- quite a misnomer.

Following are a few quick points about some potential budget process rule changes that could be harmful:

- Discretionary caps set limits on the yearly amount of discretionary (or appropriations) spending. Caps have been useful in the past in reducing the deficit, however, there are some important caveats. Discretionary spending did not cause the deficit, and it should not be the sole target of efforts to reduce it. Caps should only be included as one part of an over-all deficit reduction plan, which involves shared sacrifice, i.e., tax cuts for millionaires should also be on the cutting table. Second, caps should be set at reasonable levels that protect important appropriations and allow a rational appropriations process, rather than hidden gimmicks. Many experts also agree that there should be some protection of domestic appropriations from increases in military appropriations (especially when these costs are increasing so much), like a firewall that prohibits using domestic appropriations to make up for shortfalls in military spending. Finally, it is important not to set budget caps for too far ahead, since circumstances change rapidly.
- Pay-as-you-go rules require that spending increases in entitlement programs or the reduction of revenue through tax cuts must be offset by cutting entitlement spending or raising additional tax revenue. Pay-go has also been a useful way to reduce the deficit in the past, but any pay-go mechanism must apply equally to both taxes and entitlements. The administration proposed a modified pay-go, which would only require offsets for increases in entitlement spending while exempting tax cuts from the offset provision. The president's proposal would also not allow for increases in entitlement spending to be paid for by increases in tax revenue, for instance, closing corporate loopholes. This would make it harder to increase entitlement spending and easier to pass tax cuts.
- The president also proposed changes in the Congressional Budget Office "baseline." The baseline is a projection of the future costs based on current spending levels against which the cost of new programs or tax cuts is measured and "scored." The president proposed that CBO not adjust the baseline for inflation, and to include the 2001 and 2003 tax cuts as if they were permanent. These changes are primarily designed to hide reductions in spending and to make the cost of tax cuts appear to be zero.

A number of other changes have been proposed. Some of these include making the budget resolution an actual law (changing it from a concurrent to a joint resolution) signed by the president; who would be allow to use a

line-item veto. Both of these changes would vest more power in the executive branch. Another proposal is for an automatic continuing resolution, which would only go into effect when appropriations are not passed by the beginning of the new fiscal year. As we have seen in the past two years, Congress is required to pass continuing resolutions -- as many as it takes -- for uncompleted appropriations. Most continuing resolutions set the spending level at last year's spending. With an automatic continuing resolution, Congress would not be required to pass yearly appropriations and funding for appropriations would not grow past the prior year's level. Finally, there have been proposals to change from an annual budget to a biennial budget and to require stricter rules on emergency spending.

Concern over budget deficits and the rising national debt bring issues of the budget process to the forefront. Budget process rules can help to reduce the deficit, but they can also be used as tools to accomplish ideological goals, like facilitating more and more tax cuts to ensure the radical reduction of government. For more information about some of these proposed rules changes, see federal budget analyses by the Center on Budget and Policy Priorities.

Economy and Jobs Watch: Labor Market Still Struggling

The Bureau of Labor Statistics (BLS) announced last week that employment grew by only 21,000 jobs in February, and the unemployment rate remained unchanged at 5.6 percent.

The jobs data was well below most forecasts, and is well below the level needed to absorb a growing population, or to strengthen the labor market.

The report also shows that there were 21,000 net new jobs in federal, state and local government (Table B.1) – thus the private sector, on net, added no new jobs.

Of further concern is that the household survey is showing that the civilian labor force decreased for the third month in a row -- by 392,000 just in February. This is one possible indication that a greater number of people giving up on finding a job in this weak labor market.

Economic forecasts of the administration have continued to predict over 300,000 net new jobs per month; and yet again, the forecast have fallen well short of their mark.

DOJ Explains CII's Impact on FOIA

The Department of Justice (DOJ) released a memo explaining the impacts of a new Critical Infrastructure Information (CII) rule on the implementation of the Freedom of Information Act (FOIA) throughout the federal government. The rule DOJ refers to was an interim final rule published by the Department of Homeland Security (DHS), which restricts public disclosure and government action on voluntarily submitted information about infrastructure vulnerabilities and problems.

The memo informs FOIA officers in all federal agencies that the CII program establishes a new exemption category under FOIA for withholding the information. The memo also explains that the exemption only applies to information held by DHS since the interim final rule restricted the program to information submitted directly to DHS. The memo does note that the program may expand beyond direct submissions and that "such a development could be expected to have an impact upon the daily processes of FOIA administration at many agencies."

The memo also discusses the CII provisions that prevent industry submitters from hiding important safety information inside the security program. The Justice Department notes that when agencies independently obtain information that falls within the definition of CII as part of their everyday regulatory processes, the restrictions of the CII program do not apply. The memo also states that if a company were to submit information to DHS under the CII program that was identical to information required by another agency, the protection of the DHS

submission would in no way extend to the other submission. The department asserts, “that any information can be submitted to multiple federal agencies on entirely different tracks.”

Interestingly, the FOIA memo also briefly addresses another information policy being developed by DHS – Sensitive Homeland Security Information (SHSI). The memo noted that in a Feb. 20 DHS report to Congress on CII, the agency also discussed the ongoing development of a SHSI policy and procedures for handling the information. The Justice memo claims that the unfinalized policy “will not directly impact the government wide administration of the FOIA.” Justice asserts that the policy “will involve no additional authority for protecting information from public disclosure,” even though “it certainly holds the potential of significantly altering the landscape for the safeguarding of federal information.”

Regardless of Justice’s predictions within the FOIA memo, only the implementation of the CII and SHSI programs will reveal the impacts of these policies on the public’s right-to-know.

FERC Claims CEII Not A Problem for Public Access

The Federal Energy Regulatory Commission (FERC) quietly issued a Feb. 12 notice soliciting public comments on the functions and procedures of the agency’s new restrictive information rule, Critical Energy Infrastructure Information (CEII).

FERC issued two rules on CEII, a main rule and a short companion rule. The agency implemented the CEII policy shortly after the terrorist attacks in 2001; a rulemaking followed to formalize the program. While public interest groups raised numerous objections to the CEII policy during the rulemaking procedures, FERC made very few substantive changes in response. Instead, FERC claimed that the complaints “reflect a fundamental misunderstanding of this rulemaking.”

FERC asserts that the CEII rules represent the “Commission’s best efforts to achieve a delicate balance between the due process rights of interested persons to participate fully in its proceedings and its responsibility to protect public safety by ensuring that access to CEII does not facilitate acts of terrorism.” The agency makes no mention of trying to balance the public’s right-to-know against security concerns.

According to searches on FERC’s online records system, eLibrary, this “delicate balance” classifies over 91,000 documents as non-public under CEII. Among the documents classified are Environmental Assessments, Environmental Impact Statements, Emergency Action Plans, and Compliance Reports.

FERC asserts that all participants in the commission proceeding could get access to documents in order for them to participate meaningfully in the proceeding. However, the agency does not define “participate meaningfully,” nor does it claim that no participant was ever denied requested information. Similarly, FERC also makes a qualified assertion that no member of the public with a demonstrated need for a document containing CEII has complained. Therefore, FERC may have received complaints from the public that it writes off as having no need for the information just as they wrote off public interest group complaints on the rule as fundamental misunderstandings.

FERC claims that as of Jan. 23 the agency had received 126 official requests for CEII and had granted or otherwise closed out 119 of these requests. However, it is unclear how many parties unofficially inquired and then stopped searching when notified that the information was non-public. FERC does not even attempt to quantify how many might have attempted to access some of the 91,000 plus CEII documents listed online and declined to make a formal request.

FERC is accepting comments on the implementation and procedures associated with CEII through March 12.

FEC Begins Rulemaking on Scope of Regulation

On March 4, the Federal Election Commission (FEC) approved issuance of a proposal that would establish a new threshold for when an organization becomes a regulated political committee, subject to fundraising and spending rules under the Federal Election Campaign Act. Several Commissioners and the General Counsel made it clear that they do not necessarily recommend the proposal, but feel it represents important issues that need public comment. The effect of the rule would be to greatly expand the scope of regulation, possibly reaching groups that are exempt under 501(c)(3) and 501(c)(4) of the tax code. The proposal contains several alternatives and a host of questions for comment.

Under current law a group is considered a "political committee" subject to federal regulation if it has $1,000 or more in "contributions" and "expenditures" in a calendar year. The definitions of what constitutes "contributions" and "expenditures" are crucial in determining what groups must register with the FEC and operate under its regulations. Current rules define "expenditure" as direct donations to candidates, parties or campaigns, or communications that have "magic words" that directly urge voters to support or oppose candidates. This has been known as the "express advocacy" test. The Supreme Court's decision in McConnell v. FEC said the Constitution does not require that regulation of federal elections be limited to express advocacy communications. (For more on the decision see the December 15, 2003 OMB Watcher article. The FEC rulemaking is an attempt to clarify the law in this new legal environment, and determine if the definition of "expenditure" should be broadened accordingly. The general approach in the proposed rule is to extend regulation to any groups whose major purpose is to influence federal elections and spends more than $1,000 within 120 days of an election on voter registration, contacting voters to assist them in getting to the polls or voting absentee, and issue ads that promote, support, attack or oppose named federal candidates. No magic words would be required. Alternative definitions of "major purpose" would all apply to the current calendar year or any one of the four previous years. The alternatives are:

- a statement of purpose and spending more than $10,000 on get out the vote or candidate ads; or
- making more than half of annual disbursements for get out the vote activities or electioneering communications (broadcasts naming a federal candidate within 60 days of a general election or 30 days of a primary election); or
- making more than $50,000 in get-out-the-vote or electioneering communications.

The Commission asks for comment on whether it should use "a" major purpose or "the" major purpose as the measure for when a group becomes regulated. Although the explanation portion of the 108 page proposed rule says it is not intended to apply to organizations exempt under section 501(c) of the tax code, the language of the proposed rule itself does not have this limit. The rule also fails to define what constitutes "promoting, supporting, attacking or opposing" a federal candidate, leaving the door open to regulation of nonpartisan lobbying communications. Comments on the proposed rule are due at the FEC on April 5 for organizations that wish to testify at the public hearings, which will be held April 14 and 15. All other comments are due April 9.

In preparation for this rulemaking, the Alliance for Justice, Charity Lobbying in the Public Interest, the National Council of Nonprofit Associations, the National Committee for Responsive Philanthropy and OMB Watch developed four principles that we believe must be incorporated into any rule the FEC adopts. The principles are available at www.nonprofitadvocacy.org

You can also get more in depth information by calling into one of two conference call Question and Answer Sessions on the following dates:

1. Wednesday March 10- 2 p.m. EST, Call into OMB Watch at 1/888-827-4950 Passcode 337595
2. Thursday March 11- 11 a.m. EST , Call into NCNA at 1/800-930-9525 Passcode 618956

FEC Defends "Issue Ad" Regulations in Federal Lawsuit

Briefs were filed in federal district court on Feb. 27 by Reps. Chris Shays (R-CT) and Martin Meehan (D-MA) and the Federal Election Commission (FEC) in a case challenging regulations implementing the Bipartisan Campaign Reform Act of 2002 (BCRA). At issue are regulations on soft money, defining illegal coordination between campaigns and outside groups and exemptions to the prohibition on broadcasts that mention federal candidates in the period before elections (called "electioneering communications" in BCRA.) The regulations approved by the FEC exempt unpaid broadcasts and groups operating under Section 501(c)(3) of the tax code from the electioneering communications ban.

Issue Broadcasts

Shays and Meehan, House sponsors of BCRA, challenged the electioneering communications regulation for creating "two dramatically overbroad exemptions that invite circumvention." But the FEC said the regulation prevents BCRA's "electioneering communications provisions from inadvertently stifling the ability of the nation's 900,000 26 U.S.C. 501(c)(3) organizations – which federal law already strictly bars from any partisan political activity -- to carry out their core charitable functions by disrupting or chilling their educational communications."

Shays and Meehan argue that the exemption for 501(c)(3) activities goes against the intent of Congress because it is a *per se* exemption, which is actually contrary to a floor statement by Shays during debate on BCRA. Shays said that, in giving the FEC authority to create exemptions for communications unrelated to elections, it was not his intent to allow *per se* exemptions. The FEC argues that the exemption is not *per se*, but only applies to groups "operating under 501(c)(3)," so that any charity that violates the tax law bar on participation in elections will not be covered by the exemption. The FEC also cites case law holding that floor statements of individual members of Congress, even sponsors of bills, are not controlling on the courts. Instead, courts must follow a rule of law giving deference to agency rules unless they are arbitrary and capricious.

The FEC brief noted that in the public hearings and comments during its rulemaking process "there was no evidence presented to the commission that electioneering by Section 501(c)(3) charitable organizations is a problem." The FEC also noted evidence that research shows the "vast majority of charities are acutely aware of the tax code's bar to their involvement in partisan politics." (Citing Strengthening Nonprofit Advocacy Project research by Tufts University and OMB Watch.)

The Shays and Meehan brief also cite a Shays floor statement claiming, "Some charities have run ads…opposing federal candidates." The brief cites one example of a grassroots lobbying radio ad it claims attacks former Senator Spence Abraham. The ad, sponsored by the Federation for American Immigration Reform, a 501(c)(3) organization, criticized Abraham's past position on immigration issues and urged the public to call him and ask him to change his position on pending legislation.

It is notable that nothing in the above example refers to an election, compares Abraham to his opponent, or otherwise implies a position on him as a candidate. Shays and Meehan's failure to distinguish between criticism of office holders for policies or actions taken in their official capacity, and attacks on them as candidates indicates an intent to bar legitimate lobbying activity during the election season. The brief goes on to cite recent IRS Revenue Ruling 2004-6, which lists factors to be used to distinguish lobbying activity from electioneering, as evidence that the IRS allows charities to engage in "sham" issue advocacy.

This lack of respect for the constitutional rights of nonprofits is deeply disturbing and indicates the extreme and draconian measures Shays and Meehan are willing to impose in an area where there is no evidence of wrongdoing.

Unpaid Broadcasts

The FEC's regulations define "electioneering communications" as those that are publicly distributed "for a fee." The regulation was adopted because BCRA sought to address the infusion of large amounts of soft money into attack ads during the period leading up to an election. The FEC found no justification for limiting broadcasts where no soft money is being spent. Their brief says, "To our knowledge, however, not one unpaid communication played any significant role in the legislative history leading up to BCRA's enactment, in the McConnell litigation, or in the FEC rulemaking regarding "electioneering communications." Rather…the evidence is overwhelming that the problem Congress identified involved paid advertisements."

Shays and Meehan assert that unpaid broadcasts, such as public service announcements, could be used to promote candidates. Their brief also asserts that soft money could be used to produce ads that are then aired for free by sympathetic broadcasters. The FEC's brief said it is unlikely broadcasters would forego significant revenue during the election season to air unpaid candidate ads.

What's Next
Reply briefs are due at the end of March, and several groups, including OMB Watch, are filing amicus briefs.

Faith-based Roundup

From federal suits to administrative action, Bush's faith-based initiative remains in the public spotlight.

Action Taken by the Supreme Court on Government Funded Religion

The Supreme Court, on Feb. 25, 2004, ruled in favor of the state of Washington in a major challenge to limits on government-funded religion. In the case of *Locke v. Davey*, the Court held that Washington's exclusion of a devotional theology degree from its Promise Scholarship program does not violate the First Amendment's Free Exercise Clause.

Davey, a student that was awarded the state funded Promise Scholarship, chose to attend a private, church-affiliated institution, Northwest College. Northwest College is an eligible school under the Promise Scholarship, but Davey's choice of major was not. Davey chose a double major in pastoral ministries and business management/administration. Both parties in the suit agreed that the pastoral ministries degree is devotional in nature. Davey brought the action under the belief that the denial of his scholarship violated, among other things, the First Amendment's Free Exercise Clause.

Chief Justice Rehnquist's opinion for the 7-2 majority of the Court explains that this case involves the "play in the joints" between the Establishment and Free Exercise Clauses. Rehnquist writes, "since this country's founding, there has been popular uprising against procuring taxpayer funds to support church leaders, which is the hallmarks of an 'established' religion." 37 states have similar laws. After the Court's decision legal analysts are uncertain whether the narrow opinion could extend to school voucher programs that include religious study in their programs, or other elements of charitable choice and the faith-based initiative.

Federal Suits and Faith-based Organizations

Two high profile religious discrimination suits were filed last month. A Michigan based Christian juvenile rehabilitation program, Teen Ranch, filed suit against the state's Family Independence Agency (FIA). Teen Ranch claims discrimination by the state agency because of their religious nature. This action came after the FIA had placed a moratorium on placing kids at Teen Ranch because of complaints made by children stating they were being forced to take part in religious activities.

The FIA has lifted the freeze after being served with the federal suit notice. The Alliance Defense Fund, representing Teen Ranch, argues that the FIA's moratorium was illegal and violated the First Amendment of the Constitution. The suit was filed in the U.S. District Court in Grand Rapids. The FIA will appear at a March 24 hearing to explain why it imposed the ban.

In New York, current and former employees are suing The Salvation Army in federal court. Workers in the social services and child welfare programs are accusing the organization of creating a hostile work environment by preaching religion and sexual intolerance. The plaintiffs fear they will lose their job due to reluctance to reveal their religious practices and profess adherence to The Salvation Army's new religious policies and principles. (The Salvation Army recently amended its mission to include a religious message.)

According to the complaint filed by New York Civil Liberties Union (NYCLU) on behalf of the plaintiffs, The Salvation Army currently receives $50 million in government funds to run social service and child welfare programs for the city, county, and state governments. These government-funded programs currently serve about 2,300 clients a day and include foster care and adoption services, group homes, boarding homes, a non-secure detention facility for juvenile delinquents, services for children with developmental disabilities, HIV services, and group day care. The complaint also states that nearly 90 percent of the beneficiaries that The Salvation Army's social service and child welfare program provides government mandated services to are in custody of, and/or referred by, governmental agencies. The NYCLU argues that these government-funded

programs must provide the government mandated social services without regard to religion. NYCLU's executive director, Donna Liberman, notes that this lawsuit is "the first major challenge to the coming wave faith-based initiatives" of the Bush administration.

Administration Continues to Push for Agency Action

Two federal agencies are moving forward with rules that would allow religious institutions to partner with government to provide social services. Both Departments of Housing and Urban Development (HUD) and Agriculture have proposed rules on the participation of religious organization in their programs. Both proposed rules carry out Bush's Executive Order 13279, a controversial order that allows religious discrimination in hiring with federal funds.

HUD has already published a rule for religious organizations in its programs. Its new proposed rule extends the provisions to the State Community Development Block Grant (CDBG), the Supportive Housing for Elderly Program and Supportive Housing for Persons with Disabilities. The latter two programs had specific conditions that prohibited project owners from having a religious purpose in its articles of incorporation. The proposed rule would eliminate such conditions. The public has been asked to submit comments regarding HUD's proposed rule by May 3, 2004

Department of Agriculture's March 5 proposed rule is the department's first step toward the implementation of Bush's faith-based initiative. The rule extends to all direct beneficiaries and contractors and mirrors the proposals set forth by other federal agencies. The public may comment on this proposed ruling. All comments must be submitted to the department by May 4, 2004.

For more information on the development these administrative rules read the Roundtable on Religion and Social Policy's (an independent research project funded by the Rockefeller Institute of Government supported by the Pew Charitable Trust) Developments in the Faith-based and Community Initiative: Comments on Notices of Proposed Rulemakings and Guidance Documents.

The Misrepresentation of Funding Facts

The greatest myth of the faith-based initiative is that before federal agencies approved new rules allowing faith-based organizations to compete for government funding there were no religious groups partnering with government. The reality is that religious organizations such as Catholic Charities, The Salvation Army and others have been partnering with government for years.

These new regulations, publicity and government funded workshops on how to apply for grants have been giving small faith-based organizations hopes of receiving federal funds. Government officials are giving the impression that there is more money out there for them. Yet the reality is otherwise. There is not more money for social service providers -- instead there are more competitors for the same amount of funds.

One of the most egregious examples of a misleading statement came from Jim Towey, head of the White House Office on Faith-based and Community Initiatives. In a Talk Radio News interview on March 4 Towey states, "The results will show that there's been a dramatic increase in funds going to faith-based organizations. Two agencies where there is comparison data available, HHS and HUD, you will see over $144 million -- new dollars going to faith-based groups from 2002 -- fiscal year 2002 to fiscal year 2003. You'll see an increase of 41 percent in one year in HHS grants to faith-based groups. You'll see at HUD now that over half of the money that goes to Section 202, elderly housing, which is a program of about $750 million, with about half of that money is going to faith-based organizations."

But the money going to faith-based organizations from HHS and HUD is not "new money." (See this week's OMB Watcher article on the Senate Budget Proposal) Tax cuts have resulted in less funding for domestic social service programs, not more. Federal agencies cannot set aside money for faith-based programs because doing so would be unconstitutional preference for religious groups over secular groups.

Possible House Hearings on Exempt Status for 501(c) Groups

In a March 2 speech to the Federation of American Hospitals, House Ways and Means Committee Chair Bill Thomas (R-CA) said he wants the committee to investigate the benefits tax exempt groups give taxpayers, and consider whether more specific requirements should be imposed in exchange for exempt status. A committee spokesman said nothing has been scheduled.

Thomas' speech raised the issue of similar activities by nonprofit and for-profit entities, such as credit unions and banks, saying, "Frankly there's been a lot of activity over the last decade in the tax-preferred area -- the 501(c)(3)s, (c)(4)s, (c)(6)s -- that requires a broader examination of just what is it the taxpayers are getting for their money." He said the issue was raised recently in a dispute between the American Hospital Association and the Department of Health and Human Services over hospital charges to uninsured patients.

A committee spokesman said the scope of any inquiry would be broad, and not confined to credit unions and hospitals.

Study on Grants by Conservative Foundations Published by NCRP

The National Committee for Responsive Philanthropy has published *Axis of Ideology: Conservative Foundations and Public Policy*, a follow up to its 1997 report on conservative philanthropy. The research showed that conservative foundations continue to be more likely to provide flexible core operating and long-term support to their grantees than other foundations. In a March 3 press release, NCRP deputy director Jeff Krehely said these foundations "focus their grantmaking on a small number of grantees with an eye toward investing in and sustaining existing politically conservative policy centers, and they fearlessly support and promote organizations that lobby their conservative ideas aggressively in state capitals and in Washington."

The report looked at 79 conservative foundations that made more than $252 million in grants between 1999 and 2001. The largest segment of grants went to multi-issue policy centers (46 percent), while legal advocacy and education oriented groups each received 10 percent of the funds. The ten largest recipients of these grants were the Heritage Foundation; the Intercollegiate Studies Institute; George Mason University (the Mercatus Center); the American Enterprise Institute for Public Policy Research; Hillsdale College; Citizens for a Sound Economy Foundation; Judicial Watch; the Free Congress Research and Education Foundation; the Hoover Institution on War, Revolution and Peace; and the Manhattan Institute for Policy Research.

A copy of the study can be requested from NCRP by contacting Elly Kugler at elly@ncrp.org or calling 202/387-9177 x 18.

IRS Seeks comments on Form 8453 for Exempt Organizations

The Internal Revenue Service (IRS) is soliciting comments from the public concerning Form 8453-EO, Exempt Organization Declaration and Signature for Electronic Filing.

The March 5 Federal Register announcement request for comments noted that comments should address:

- Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;
- the accuracy of the agency's estimate of burden of the collection of information;
- ways to enhance the quality, utility, and clarity of the information to be collected;
- ways to minimize the burden of the collection of information on the respondents, including through the use of automated collection techniques or other forms of information technology; and
- estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Comments are due on or before May 4, 2004.

President Bush Stacks Council on Bioethics

On Feb. 27, President Bush dismissed two handpicked members of his Council on Bioethics who had publicly supported human embryonic stem cell research -- which the president opposes -- and replaced them with three members who can be counted on to fall in line.

The two dismissed members include Elizabeth Blackburn, a renowned biologist at the University of California at San Francisco, and William May, a highly respected emeritus professor of ethics at Southern Methodist University. In their place, the president appointed:

- Diana Schaub, a political scientist at Loyola College who has opposed embryonic stem cell research, referring to it as "the evil of the willful destruction of human life," according to the Washington Post;
- Benjamin Carson, director of pediatric neurosurgery at Johns Hopkins University, who has called for more religion in public life; and
- Peter Lawler, a professor of government at Berry College in Georgia, who has written against abortion and the "threats of biotechnology."

The council -- formed by Bush shortly after taking office -- has produced reports on human cloning, stem cell research and the use of biotechnology to enhance human beings. However, it frequently had problems reaching consensus as scientific facts took a backseat.

Describing her experience in a Washington Post op-ed, Blackburn wrote, "I consistently sensed resistance to presenting human embryonic stem cell research in a way that would acknowledge the scientific, experimentally verified realities. The capabilities of embryonic versus adult stem cells, and their relative promise for medicine, were obfuscated."

Of course, consensus will now be easier to achieve, but debate is stifled in the process. "I am convinced that enlightened societies can only make good policy when that policy is based on the broadest possible information and on reasoned, open discussion," Blackburn continued. "Narrowness of views on a federal commission is not conducive to the nation getting the best possible advice. My experience with the debate on embryonic stem cell research, however, suggests to me that a hardening and narrowing of views is exactly what is happening on the President's Council on Bioethics."

Report Details Bush Donors, Industry Paybacks

The Bush-Cheney re-election effort has received $58.1 million from "Rangers" and "Pioneers" (those able to bundle contributions of at least $200,000 or $100,000) who overwhelmingly represent corporate special interests, according to a new report by Public Citizen.

These special interests have been rewarded for past support with a slew of regulatory rollbacks. In 2000, for example, the oil and gas industry produced 41 rainmakers, including former Enron CEO Ken Lay, and contributed a total of $13.4 million. The administration in turn moved to open many of the nation's scenic treasures to oil and gas exploration.

This year, there are only a dozen Rangers and Pioneers from the oil and gas industry, perhaps because they are waiting to see if the energy bill makes it through Congress. However, other industries have stepped up to the plate. For example, Rangers and Pioneers from finance, insurance and real estate contributed a whopping $18.5

million from Jan. 1, 2003, to Jan. 31, 2004; construction-industry rainmakers accounted for $3.4 million; and those from the health care industry contributed $3.3 million.

For all the details, see the Public Citizen report.

U.S. Wearing Blinders on Global Warming

Ironically, just months after the business-friendly Bush administration squelched the climate change section of the Environmental Protection Agency's report on the environment, the world's second largest insurer released a report revealing how climate change is rising on the corporate agenda.

Swiss Re's report warns that global warming could aggravate the costs of natural disasters causing them to spiral out of control and forcing the world into a catastrophe of its own making. The report estimates that the costs of such disasters could double to $150 billion a year in 10 years, hitting insurers with $30 billion to $40 billion in claims, or the equivalent of one World Trade Center attack annually. "The human race can lead itself into this climatic catastrophe -- or it can avert it.''

Regardless of the importance and magnitude of the global warming problem as revealed by this report, the Bush administration refuses to allow the nation's top environmental agency to address the problem openly and honestly.

Interestingly, the U.S. does not appear to be alone in its denial of the global warming issue. The U.K. Minister's Office attempted to gag its top scientific advisor, Sir David King, after he wrote a scathing article in the Jan. 9 issue of *Science* denouncing U.S. policy on climate change or lack thereof. Sir David stated, "In my view, climate change is the most severe problem we are facing today, more serious even than the threat of terrorism." A leaked memo from the Prime Minister's principal private secretary, Mr. Rogers, reveals Sir David was ordered to decline any interview requests after the article's release. The memo claims, "This sort of discussion does not help us achieve our wider policy aims."

Support for Sir David King's position came from Hans Blix, the former United Nations chief weapons inspector. Blix also agreed that security concerns might be unwisely eclipsing safety issues. Blix stated on BBC1's Breakfast with Frost, "I think we still overestimate the danger of terror. There are other things that are of equal, if not greater, magnitude, like the environmental global risks."

However, the U.S. also appears as unwilling to address global warming as a potential security issue as it is to view it as genuine environmental problem. A report commissioned by a Pentagon think tank urging that climate change be elevated to and U.S. security concern will not be forwarded on to the Department of Defense. The report, "An Abrupt Climate Change Scenario and Its Implications for United States National Security," examined the security implications of a worst-case global warming scenario. The report noted "that because of the potentially dire consequences, the risk of abrupt climate change — although uncertain and quite possibly small — should be elevated beyond a scientific debate to a U.S. national security concern."

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In This Issue

Comparison of House and Senate Budget Plans

The budget resolution plan passed by the House Budget Committee is far worse than the Senate plan. Nevertheless, the "fiscal discipline" of both plans is based on huge cuts in domestic spending for programs and services that most Americans value in order to extend tax cuts to wealthier Americans.

On March 12, the full Senate passed its budget resolution, S. Con. Res. 95, for fiscal year 2005 (beginning October 1, 2004) by a 51-45 vote. On March 17, the House Budget Committee approved its budget resolution by a 24-19 vote. House floor debate is scheduled to begin on March 24. Following full House approval, a House-Senate conference will take place to arrive at one version of the resolution, which must be voted on in both the House and Senate to become a concurrent budget resolution for the new fiscal year.

Budget enforcement rules are one of the most important parts of these budget resolutions. While the Senate included some enforcement rules in its resolution, the House has drafted a separate "budget enforcement" bill (H.R. 3973). Still unknown, is when the vote on the budget enforcement bill will take place -- it may go before, or after, or on the same day as the vote on the actual budget resolution. The timing may be very important, given that some members of the House may not vote for the resolution without having the enforcement procedures in place. Below is a comparison of the main provisions taken from the House and Senate budget resolutions (included in the House version are the enforcement rules contained in H.R. 3973.)

HOUSE BUDGET COMMITTEE RESOLUTION AND H.R. 3973 PROVISIONS	SENATE BUDGET RESOLUTION PROVISIONS
Binding five-year caps, or limits, on discretionary spending.	Binding two-year caps on discretionary spending.
Pay-as-you-go (Pay-go) through 2009 that applies to mandatory increases, but not to enacted or new tax cuts, so that extending or making permanent the 2001 and 2003 tax cuts is exempt from budget discipline. Pay-go is enforced by "sequesters," or automatic across-the-board cuts.	A "clean" pay-as-you-go extension that applies to mandatory spending increases and to enacted or new tax cuts.
$818.7 billion limit to discretionary spending for FY 2005. Caps are enforced by "sequesters," or automatic across the board spending cuts.	$821 billion in discretionary spending for FY 2005.
$137.6 billion in "reconciled" tax cuts that are exempt from filibuster and a 60-vote requirement in the Senate, a proposed extension of the child tax credit, standard deduction for married taxpayers, a 10 percent bracket expansion, the dividend and capital gains tax cuts, the research and development credit, and a one-year fix of the alternative minimum tax.	$80.6 billion in reconciled tax cuts proposed for a five-year extension of the child tax credit, standard deduction for married taxpayers, 10 percent bracket expansion, and a one-year acceleration of estate tax repeal.
$15 billion in other tax cuts.	$63 billion (using a $20 billion offset) in other tax cuts proposed for a five-year extension of the dividend and capital gains tax cuts, permanent repeal of the estate tax, a one-year “fix (?)” of the alternative minimum tax (AMT), and tax relief in the energy bill.
$13 billion in reconciled program cuts, (Ways and Means - $8.2; Energy and Commerce - $2.1; Gov't Reform - 2.3; Ag Committee - $371 million; Ed and Workforce - $43 million.) with the likelihood of a $2.1 billion cut from Medicaid.	

Two of the most damaging provisions from the Senate Budget Committee's resolution were stripped out of the final version: (1) the pay-go rules were extended to tax cuts as well as mandatory spending, and (2) the cuts to EITC and Medicaid were eliminated. However, the increase in discretionary spending -- from $814 billion to $821 billion -- was primarily to accommodate higher military, not domestic, spending. This budget plan still will require big cuts in domestic discretionary (appropriated) spending at the same time that it reduces revenue by accelerating the repeal of the estate tax, a tax break for multimillionaires, for one year.

As expected, the House Budget Committee budget plan is even worse. The exemption of tax cuts from the pay-go rules means that the 2001 and 2003 tax cuts can ultimately be made permanent, at the huge cost of $1.2 trillion over the next ten years, without requiring any offset. Unfortunately, cuts in government services that most ordinary Americans value have been the preferred means for Congress to "discipline" the budget, while tax cuts to the wealthy require no restraint. The House plan only allows $386 billion for all domestic appropriated spending (excluding military and homeland security.) Additionally, Congress is requiring $13 billion be cut from entitlement spending, of which, $2.2 billion is likely to come from the Medicaid program. According to a Center on Budget and Policy Priorities' analysis, domestic discretionary programs outside of Homeland Security would be cut by a total of $120 billion over five years under this plan.

The notion of Congress reducing budget deficits by extending tax cuts (such as the estate tax repeal and the capital gains and dividend tax cuts) that primarily benefit wealthier Americans, while putting government programs and services that benefit low- and middle-income American families on the chopping block is unbalanced and ineffective. What makes this notion even more inequitable is the fact that tax cuts along with the economic downturn, and not growth in spending, are actually the primary cause of the deficit. The Center on Budget and Policy Priorities recently put out an analysis that disproves the assertion that tax-cuts pay for themselves. Last week, House Budget Committee Chair Nussle (R-IA) explained that while certain cuts, such as those for entitlements, need to be apart of the offset providing pay-as-you-go program, other cuts, such as tax-cuts for certain economic classes, do not need offsets because they will pay for themselves. Center for Budget and Policy Priority's analysis takes the crux of Nussle's argument and illustrates how "no reputable economist — liberal or conservative — has ever shown that tax cuts pay for themselves."

OMNIBUS APPROPRIATION BILL AS FIRST CHOICE, NOT LAST RESORT?

Usually, an omnibus appropriations bill is a last resort. This year it may be the first choice.

The Bureau of National Affairs reported on Friday, March 19, that House Appropriations Committee Chairman Young (R-FL) is floating the idea of drafting an omnibus appropriations bill for fiscal year 2005, without even trying to pass the thirteen individual appropriations bills lawmakers are supposed to. Omnibus bills have been used for the past several years as last-ditch efforts to finish the appropriations process. Those appropriations bills that could not be passed singly were combined into one large bill.

Passing the bills individually could prove even more difficult this year. Limits on appropriated funds for domestic programs (domestic discretionary) outside of homeland security are extremely tight, requiring big and unpopular cuts that are likely to be contentious. In addition, the legislative year is short, what with lots of recesses, the conventions and the Presidential election.

Appropriations for FY 2005 may be a very short process. Stay tuned.

Bush Administration Surpressing Documents in Classification Frenzy

The Bush administration is classifying documents at nearly twice the rate of the Clinton administration, according to statistics compiled by the Information Security Oversight Office, an arm of the National Archives and Records Administration. The current administration has classified 44.5 million records and documents in two years, roughly the same number of records classified during the final four years of Clinton's administration.

In addition to the staggering number of documents classified, President Bush extended classification authority to several federal agencies that previously lacked such authority. New classification powers were granted to the Department of Agriculture, the Department of Health and Human Services, and the Environmental Protection Agency. Historically, this power has been reserved for federal agencies involved with national security, such as the Departments of Defense, State, and Justice.

Government officials explain away the increased classification information and authority merely as the result of the war on terrorism, the war in Iraq, and an increase in electronic records kept by the government.

However, the Bush administration seems to raise the specter of terrorism to deflect any discussion of information policy details. Even prior to Sept. 11, the Bush administration had displayed a strong penchant for secrecy and a belief that previous administrations were too open to the public.

Environmental Protection Agency Fast-Tracking Review of Website Link Policy

The Environmental Protection Agency (EPA) is expediting a review of its policy concerning links from the agency's website to external sites. EPA had originally scheduled the review for January 2005, but moved it up in response to a letter from Reps. Cubin (R-WY) and Gibbons (R-NV). The letter accused EPA of inappropriately linking to extremist groups. OMB Watch and Environmental Defense are among the specific groups the congressmen were referring to.

OMB Watch operates www.rtknet.org, the Right-To-Know network, which provides free public access to various EPA databases. Environmental Defense's www.scorecard.org also provides the public with programs that enable the public to search and understand EPA data such as the Toxic Release Inventory. Currently, EPA links to both sites from its Program Fact Sheet. Both links have a disclaimer explaining that you are leaving EPA's website.

The EPA's current policy for external links lauds the use of links as an efficient way to use other resources and foster an electronic environmental community. It is unclear if the letter from Cubin and Gibbons will influence how EPA views links to such pages as RTK NET or Scorecard.

OMB Watch encourages EPA to make this policy review an open process complete with a comment period for the public. Please visit OMB Watch's Take Action page to send an Action Alert to EPA.

Alabama Considers FOIA Exemption for Security

The Alabama legislature recently introduced Senate Bill 205, which would exempt security information from public disclosure currently mandated under four laws. Alabama State Sen. Steve French (R-Birmingham) sponsored the bill.

Alabama's four information disclosure laws are a Sunshine Law, Open Records Law, Competitive Bid Law, and Public Works Law. These laws require records, meetings of state, county and municipal boards, state or local contracts and bids for contracts to be open for public scrutiny. While security concerns are legitimate reasons for protecting some information, many worry that legislators will use the law to hide other non-security information.

Alabama joins a growing number of states that have considered altering their access to information laws due to security concerns. Fortunately, as we move further away from Sept. 11, these proposals are becoming less frequent.

FEC Urged to Narrow Rulemaking on Scope of Regulation

Three campaign finance groups have written the Federal Election Commission (FEC) urging them to narrow the scope of their proposed rule on what groups must register as "political committees." The three groups are hoping that the FEC can resolve what they deem the most pressing issues for this election cycle. The FEC has not yet responded to their request.

The letter was sent by Democracy 21, the Campaign Legal Center and the Center for Responsive Politics on March 16. It says the proposed rule "is so lengthy, addresses so many issues, raises so many questions and proposes so many new rules that the Commission is unlikely to be able to conclude this matter by its mid-May deadline and promulgate new rules for the 2004 general elections."

The three groups propose that the FEC focus on two issues they say are crucial to prevent circumvention of campaign finance laws. These are:

- Problems with rules governing how regulated and unregulated funds are allocated for partisan voter mobilization efforts.
- When groups exempt under Section 527 of the tax code should have to register as political committees with the FEC and become subject to spending and fundraising limits in its regulations.

The proposed rule could impact a wide variety of organizations, including nonpartisan groups that advocate on issues or work to get out the vote. The groups say the FEC does not have authority to regulate groups under section 501(c) of the tax code without action by Congress.

Even if the FEC limits its new rules to 527 groups, the legal principles being invoked to justify the proposed rule could easily spill over to 501(c) organizations in the future. Democracy 21 has supported bans on nonpartisan issue advocacy in other contexts. For example, they represent Reps. Shays and Meehan in a suit challenging FEC regulations that exempt 501(c)(3) organizations from the "electioneering communications" provisions of the Bipartisan Campaign Reform Act of 2002 (BCRA). Without the exemption nonpartisan groups advocating on issues could not refer to federal candidates in broadcasts 60 days before a general election or 30 days before a primary election.

In their brief to the United States Court for the District of Columbia, Democracy 21 stated, "...the Commission uncritically accepted the argument that the tax code's prohibition on Section 501(c)(3) groups participating in political campaigns." (See p. 78.) They go on to describe communications criticizing a member of Congress for actions taken in his official capacity as an illegal attack on the member, who was also running for re-election. The FEC's proposed rules would extend regulation to any communications that "promote, support, attack or oppose" federal candidates, but do not attempt to differentiate between genuine issue advocacy, such as grassroots lobbying on upcoming votes in Congress, and "sham" issue ads meant to influence elections.

Following Democracy 21's reasoning, genuine issue advocacy can be regulated simply because it coincides with the timing of a federal election. If this principle is accepted by the FEC, calls for regulation of 501(c) groups will most likely be heard as soon as a group antagonizes a member of Congress by criticizing his or her position on an issue. This "slippery slope" would present a danger for any group that communicates with the public on issues.

Wisconsin Considering Copying Federal Rule on Issue Ads

A recent move by the Wisconsin State Elections Board may foreshadow a coming trend that bodes ill for issue advocacy—namely, attempts to regulate such activity. On March 10, the board decided to proceed with drafting a new rule that would regulate so-called "issue ads." The state board's rule borrows elements of the new definition of "electioneering communications" under federal campaign finance law. Unlike the federal law, however, the Wisconsin rule does not ban corporations, labor unions or nonprofits from paying for these communications. Also unlike the federal version—which covers only radio, television, cable or satellite communications—the state version covers all forms of communications are covered. This is a dramatic expansion from the federal rule. A final draft of the Wisconsin rule is expected to be considered at the board's May meeting.

The initial draft rule is explained in a Memo to Wisconsin Elections Board from Counsel George A. Dunst. The draft rule would apply state disclosure requirements and contribution limits for any communication that "refers to a clearly identified candidate for state or local office" and appears within 30 days of a primary election and 60 days of a general election.

So far three parties have submitted comments:

The Co-Chairs of the Joint Committee for Review of Administrative Rules within the Wisconsin Assembly told the Election's Board it does not have the authority to regulate issue advocacy without enabling legislation. However, a bill proposed in the Wisconsin Senate (Senate Bill 12) addresses the same subject.

The Wisconsin Democracy Campaign comments commended the board for moving forward but suggested the rule be limited to broadcast and mass mail communications. WDC also recommends an exemption for charities (501(c)(3)) and civic and social welfare (501(c)(4)) groups, newscasts, and announcements of candidate forums in order "to avoid constitutional challenges." They noted that the Illinois State Board of Elections has a similar rule, but exempts 501(c)(3) groups.

(The federal Bipartisan Campaign Reform Act of 2002, or BCRA, also has exemptions for newscasts and candidate forums. In its regulations implementing BCRA, the Federal Elections Commission (FEC) has exempted free broadcasts and communications made pursuant to 501(c)(3) of the tax code. However, United States Reps. Chris Shays (R-CT) and Marty Meehan (D-MA), House sponsors of BCRA, are challenging those exemptions in federal court.)

The third set of comments, by Wisconsin Education Association Council opposed the rule, saying the board lacks statutory authority to proceed The council also say the rule goes beyond broadcast advertising, which is all that was addressed by the United States Supreme Court in *McConnell v. FEC*.

The new rulemaking began in January, after the Supreme Court held that it is constitutional to regulate campaign activity that does not use "magic words," such as "vote for" or "vote against," if clear definitions of what is and is not regulated are provided. The court also said the government's interest in preventing corruption must be compelling enough to outweigh the burdens and restrictions election laws impose.

Efforts to regulate "sham" issue ads in Wisconsin go back to 1996 when the Wisconsin Manufacturers & Commerce Issues Mobilization Council targeted state legislators in the election. The candidates filed complaints with the Elections Board, which found the ads contained "express advocacy," subjecting them to board rules. However, the courts dismissed the case, since the ads did not contain the "magic words" noted above. Now that the Supreme Court has approved a broader definition of what can be constitutionally regulated (by upholding the electioneering communications definitions), the state is using this broader definition as the basis for its rule.

The Corporation for National and Community Service to Address Program and Policy Issues

Both Congress and the President have asked the Corporation for National and Community Service (CNCS) to undertake formal rulemaking to address significant program and policy issues.

President Bush has instructed CNCS to improve accountability and efficiency in administrating its programs. In an Executive Order, the president asks that the Corporation adhere to four "fundamental principles" when making these changes. The four include expanding opportunities for faith-based and community organizations and raising more money from the private sector and state and local governments.

Meanwhile, through H.R.2673, Consolidated Appropriations Act of 2004, Congress is also requiring CNCS to adopt policy changes to the extent feasible. For example, Congress wants the Corporation to have a peer review panel oversee fund distribution to ensure that priority is given to programs demonstrating quality, innovation, reliability, and sustainability. Like the president, Congress has directed CNCS to significantly increase the level of matching funds and in-kind contributions provided by the private sector, and reduce the total federal costs per participant in all programs.

In addition to exploring the many issues laid out by the president and Congress, CNCS may also suggest setting time limits on how long an organization can qualify for AmeriCorps funding. In order to implement these directives CNCS will conduct a formal rulemaking, the process by which CNCS will establish new regulations that will define (possibly for the next decade) what is expected of AmeriCorps grantees.

Fortunately, CNCS is providing the community with many opportunities to submit comments, suggestions and concerns. CNCS is taking an extra step in the rulemaking process by soliciting comments before it drafts the proposed rule, which again will have an open public comment period. CNCS is holding five regional meetings and four conference calls. The times and dates of the regional meetings and conference calls are on CNCS's website, at http://www.americorps.org/rulemaking/rulemaking_heard.htm.

Save AmeriCorps, a coalition made up of CNCS grantees, has posted their own recommendations for the CNCS to adopt when going through regulatory and policy changes. You can view their recommendations on SaveAmericorps.org.

"Voluntary" Guidelines to Prevent Terrorist Financing Called Poorly Designed

The Treasury Department's "Voluntary Best Practices for U.S. Based Charities," are poorly designed for their stated purpose of helping prevent diversion of funds to terrorists. Several speakers made that assessment at a recent Philanthropy and Security forum, hosted by Georgetown University's Center for Democracy and the Third Sector , which focused on the merits of the Treasury Department guidelines.

Attorney David Aufhauser, General Counsel for the Treasury Department when the Office of Foreign Assets Control (OFAC) released the guidelines in November 2002, explained the background of events and concerns that lead to drafting the guidelines. Although he recognized a possible chill on international charities as a result of the guidelines, he said they are needed to address the use of charities as vehicles for training and recruiting terrorists. Aufhauser said overwhelming evidence pointed to nongovernmental organizations (NGOs) being used for such purposes. However, he noted that only three charities have been shut down under powers granted through Executive Orders, and the guidelines have never been cited as authority.

Jean AbiNader, Executive Director of the National Association of Arab Americans (NAAA), and an expert on international trade and economic development, said the guidelines are not informed by experience, and are more than voluntary, since the executive branch has vastly broadened its powers. The result has been a climate of intimidation and uneven impact. He also noted that the guidelines are being put into grant agreements for federal contracts with the U.S. Agency for International Development. The contracts require NGOs to certify that no funds will be diverted to terrorists, but the lack of NGO infrastructure and a deficit in regulatory oversight stands in the way of any real achievement. The information that United States agencies seek for compliance with OFAC guidelines is practically impossible to obtain.

OMB Watch has called for withdrawal of the guidelines because "they do not reduce the risk of diversion of charitable assets to terrorists, are inconsistent with federal and state laws and place charities in a governmental role of collecting information and assessing potential for terrorist activities."

The Office of Foreign Assets Control has become part of a new agency in Treasury, the Office of Terrorism and Financial Intelligence. This agency also includes the former Executive Office of Terrorist Financing and Financial Crimes and the Financial Crimes Enforcement Network.

Choose the Ten Most Wanted Government Documents for 2004

What information would you most want government to show the public that the public cannot currently see? The 28 secret pages of Congress' joint inquiry into intelligence failures leading up to 9/11? The threats to community safety posed by chemical plants? How the government has used Patriot Act powers? How about a mailing address for the nation's "spy court?"

OMB Watch and the Center for Democracy and Technology are looking for a few good documents, the Ten Most Wanted government documents for 2004, to be precise. And we're inviting the public to help.

We've talked with experts and compiled a list of documents that government could make readily available to the public. Now we're asking the public to rank the experts' choices and suggest other documents for the list. So please go to OMB Watch's Ten Most Wanted survey, to tell us which documents you most want. Encourage your friends and colleagues to take the survey as well. The deadline is March 31, 2004.

The survey consists of two short parts. First, you'll have the chance to rate documents suggested by experts and tell us which documents you would most like government to show the public. (Our list has 19 items. You can nominate the 20th.) Second, we're asking the public to identify the biggest problems they face when trying to get information from government.

What will we do with your vote? We'll announce the results in April as part of the unveiling of OpenTheGovernment.org, a new coalition that will push for more democracy and less secrecy. Then we'll push the government to release the 10 documents voted Most Wanted.

So please, take a few minutes to take the survey.

Please redistribute this announcement to lists you think may be appropriate. It's easy, it's quick, and it'll help open the government. Thanks for doing your part.

Who We Are and Why We're Doing This

The Ten Most Wanted Project 2004 is being conducted by OMB Watch and the Center for Democracy and Technology for OpenTheGovernment.org. OpenTheGovernment.org is a new, unprecedented coalition of over 30 organizations created to fight increased secrecy and promote open government. The Center for Democracy and Technology works to promote democratic values and civil liberties in the digital age. OMB Watch advances social justice, government accountability and citizen participation in federal policy decisions.

If the Ten Most Wanted Project 2004 sounds familiar to you, it should. When the Center for Democracy and Technology and OMB Watch conducted the 10 Most Wanted survey a few years ago (in 1999), we came up with good results. At that time, the Supreme Court did not have a web site (but Mongolia's Supreme Court did). By the 2000 election, the new U.S. Supreme Court Web site was ready to handle the heavy demand to download the Bush v. Gore decision, allowing thousands of people from around the world to read the decisions for themselves at the time that it was published. In another victory, the 10 Most Wanted survey pushed the government to move more quickly in putting online its plans to recover endangered species.

Today, the problems are bigger, and our response will be bigger as well. We have broadened the range of information the Ten Most Wanted Project will cover. We expect the results will have an even greater impact.

Environmental Protection Agency's Egregious Error Misled Public on Drinking Water

A March 5 Environmental Protection Agency (EPA) Inspector General's report revealed that EPA consistently misstated information on the quality of the nations drinking water over the years 1999 to 2002. EPA claimed in several documents during that time that that 91 percent of citizens had access to safe drinking water. According to other EPA documents reviewed by the Inspector General and interviews with state officials, however, only about 81 percent of the country had access to safe drinking water in 2002 much less than the published 94 percent estimate for that year. This is a difference of 30 million people at risk from contaminated water. This erroneous assertion has left millions of people unknowingly at risk.

Individual states did not report all violations to EPA; therefore, the agency presented a flawed and incomplete national picture, according to the Inspector General's report. EPA's acting assistant administrator, Benjamin H. Grumbles, conceded that the agency's data is incomplete but it was not trying to deceive the public, it was simply reporting the information from the national reporting system. Utilities, which test drinking water for nearly 100 pollutants, provide the data to the states. There are 54,000 water systems nationwide, and EPA has no way to determine how many unreported violations occur in these systems.

The District of Columbia's recent discovery of lead contamination in a number of homes has caused greater scrutiny over the quality of drinking water. Since the D.C. Water and Sewer Authority discovered the contamination two years ago, many contend that EPA should have taken quicker action and alerted the city's residents.

A troubling number of recent cases indicate that EPA has not been fully honest in reporting information to the public. The Report on the Environment released last June was heavily edited before its release. EPA deleted an entire section on climate change due to political pressure from the White House. In the past two years, EPA also issued gag orders restricting discussion about perchlorate contamination of drinking water. EPA recommended extensive testing for the chemical after its detection in drinking water and lettuce supplies. The Pentagon and defense contractors disagreed with EPA's risk-assessment of perchlorate, which is used in rocket fuel. EPA later restricted its employees from talking to the public and lawmakers about any danger.

EPA Chided by Senate Environment Committee

A letter from the Senate Environment and Public Works Committee to Environmental Protection Agency (EPA) Administrator Mike Leavitt has urged the agency to respond to requests for information from both Democrats and Republicans on the committee.

Apparently, EPA has been very unresponsive to numerous requests made by ranking minority member James Jeffords (I-VT) since 2001 asking for documents related to the agency's revisions to new source review regulations for power plants and refineries. Many of the requests, as far back as December 2001, remain outstanding. Jeffords threatened to subpoena EPA for the documents in 2002 when he was chairman of the committee.

The March 4 letter was signed by the committee chairman James Inhofe (R-OK) and Jeffords. The two senators also sent Leavitt a letter on March 3 requesting a list of all discretionary grant recipients for 2003 and of details on the awarding of these grants.

In the area of access to government information, there are few warning flags bigger than the inability of a U.S. Senator to get information from an agency. If the agency is willing to stonewall a senator for more than two years, there is little hope the agency will be fully open and responsive to a concerned citizen.

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In This Issue

No Budget Resolution

Whether or not tax cuts must be offset - that is the question.

On April Fool's Day, congressional attempts to negotiate a final version of the budget resolution for fiscal year 2005 failed, leaving no chance that there will be a resolution until, at least, late in April. Congress returns April 19, after the Passover and Easter break. While the statutory deadline for a budget resolution is April 15, there is no penalty for failure to meet it, and this will certainly not be the first time the deadline has been missed.

The primary sticking point in the Senate budget resolution is the requirement that the cost of both tax cuts and entitlement spending increases must be subject to a "pay-go" requirement that requires a 60-vote majority to pass unless the costs are offset through an increase in taxes or other spending reductions. The House and the administration are absolutely determined to "protect" future tax cuts from the pay-go requirement. The House version of the budget resolution requires pay-go offsets for entitlement spending increases, but exempts tax cuts from this budget discipline.

As an example of how determined the House is to protect tax cuts, on March 30, Democrats put forth a "motion to instruct" the budget resolution conferees to reinstate pay-go budget rules on all tax cuts or entitlement spending increases. While the motion would have had no force or effect, House Republican leadership held the voting period open long enough to strong arm nineteen of their members who supported the motion to vote against it. The motion was tied at 209 to 209, one vote short of the majority needed by Democrats to succeed.

Given the deficit situation and the need for increased spending both domestically and in Iraq, this insistence on making it easy to pass costly tax cuts is irrational. According to the National Journal's Congress Daily, the nonpartisan Committee for Economic Development sent a letter to budget conferees supporting the inclusion of pay-go rules requiring offsets for new entitlement spending or tax cuts, noting that "[w]e are in danger of placing the country on a path of ever-expanding deficits and declining growth in our national output and living standards." Apparently, party discipline makes an impossible proposition for voting on the best long-term tax plan for the country.

Compromises may include exempting the three tax cuts that expire in 2005 from pay-go: the marriage "penalty" adjustment, the child tax credit, and the extension of the 10 percent bracket. All these tax cuts were included in "reconciliation" instructions for $82.6 billion in tax cuts that are exempt from the 60-vote majority requirement and filibuster. In addition to these three tax cuts, the Senate also included acceleration of full repeal of the estate tax moving it from 2010 to 2009, but it is not yet sorted out whether estate tax repeal - a benefit only to multimillionaires - will be included in the pay-go exempt tax cuts. Another area of compromise might be the length of time the pay-go requirements will apply. The Senate version extends pay-go requirements on taxes and entitlement spending for five years.

Additional points of contention include determining the length of time that discretionary "caps" or limits that will require large cuts in domestic discretionary spending will be imposed. The House resolution sets caps for five years while the Senate only sets caps for two years. Required cuts in entitlements are also still on the table, although a Senate provision targeting Medicaid and the Earned Income Tax Credit program has been dropped.

The budget resolution is for approximately $821 billion in discretionary spending for FY 2005, along with a $50 billion supplemental for Iraq. The discretionary spending will be divided up among the 13 appropriations bills, with the

appropriation mark-ups beginning May 15. According to an April 2 National Journal's Congress Daily report, House Appropriations Committee Chairman Young (R-FL) sent a letter to House Budget Committee Chairman Nussle (R-IA) contending that the budget resolution should allow funds to be shifted as necessary, rather than setting aside reserve funds. Chairman Young noted that the $821 billion in discretionary spending is $2 billion below the President's request, and includes $2 billion in user fees and $1 billion in offsets that probably won't be enacted, resulting in a $3 billion budget shortfall that will have to be made up by cutting programs. The appropriations committees have their work cut out for them.

Office of Management and Budget May Be the Only Government Programs' Evaluator

First, GPRA, then PART, and now PAR - government performance measures continue to multiply. More alarming is their morphing from bipartisan efforts that had a role for both the executive and legislative branches; to performance measures dictated by the executive branch in order to control spending to support political objectives.

Under the Government Performance and Results Act (“GPRA”) agencies have been setting performance goals and gauging their success at meeting those goals for nearly a decade. The Bush administration came up with its own tool for executive branch budget preparation and review, the Program Assessment Rating Tool (or "PART") that is used by the Office of Management and Budget (OMB) to evaluate selected federal programs. On March 4, Rep. Todd Platts (R-PA), Chairperson of the House Government Reform Efficiency and Financial Management Subcommittee, introduced H.R. 3826 the Program Assessment and Results Act (the "PAR" Act), that would require, by law, that OMB and OMB alone assess the performance of all federal programs at least every five years. There are serious problems with creating a law that gives a White House office a license to determine the usefulness and performance of all government programs and use those evaluations as justifications for determining funding levels. PART, as a presidential initiative, is potentially damaging. PAR, as a law, could be much worse.

Background

The Government Performance and Results Act ("GPRA") passed into law in 1993, and is a little over ten years old. This bipartisan effort to improve government performance, as well as to improve the public perception of government performance, requires federal agencies working with OMB and Congress to create strategic plans with long-term goals, develop annual indicators to determine whether goals were being reached, and provide annual performance reports on the results achieved. GPRA has primarily focused on agency-wide evaluations, although actual programs are included.

In reality, GPRA has done very little to improve the public perception of government performance, since public awareness of GPRA is almost non-existent, there is almost no media coverage and very few policy types are engaged. In most agencies GPRA appears to have become primarily a compliance activity and nothing more. Although agencies are required by GPRA to seek and consider stakeholder comments as they prepare their strategic plans, few citizens or nonprofit organizations have even heard of GRPA, let alone provide input. Congress also has shown limited interest in GPRA, even though it is designed to ultimately lead to "performance budgeting," with performance assessments being used as a basis for authorization and appropriation funding levels.

In spite of the lack of public or congressional attention to GPRA, or indeed any obvious sign of its usefulness other than voluminous reports, the General Accounting Office (GAO) continues to evaluate the progress of GPRA in generally favorable terms. In March 2004, the GAO published a ten-year anniversary report finding that GPRA has established "a solid foundation for achieving even greater results." Whatever its faults, GPRA includes both the executive branch and Congress as players, and even allows for some input from stakeholders.

PART

The Program Assessment Rating Tool (PART) introduced by the current administration is aimed at determining specific program performance, and is a purely executive branch initiative. The president's 2003 budget contained an entire volume showing ratings of the first 20 percent of government programs that had been evaluated under PART. Within five years, the administration intends to rate 100 percent of all government programs using PART. Since PART is a presidential initiative administered through OMB, it has the potential to be a means of justifying program funding in terms of the administration’s particular ideological slant, without the checks of congressional or public oversight for balance. The GAO noted in a report highlighting testimony before the Subcommittee on Government Efficiency and Financial Management that "PART clearly serves OMB's needs but questions remain about whether it serves the various needs of other key stakeholders." PART, however, will likely disappear with this administration.

PAR

Platts' bill, on the other hand, would make evaluation by OMB of all government programs at least every five years a legal requirement. OMB would determine the criteria for what programs should be evaluated in any given year and what programs should be more frequently reviewed. OMB would "evaluate the purpose, design, strategic plan, management, and results of the program, and such other matters as the Director [of OMB] considers appropriate." Just as there has been concern that President Bush's PART evaluation is a way of using program evaluation as a justification for cutting funding from government, PAR evaluation also suffers from a seriously lopsided balance of powers. The executive branch basically gets to decide what government should or should not be doing and how each program should best accomplish its goals. Both PART and PAR lack transparency and any opportunity for public input. OMB lacks the internal staff capacity to do these evaluations, and it is not clear whether OMB would need to expand or whether these evaluations would be contracted out. Finally, there is no good reason to make PART or PAR a law. Every incoming president will likely have ideas on how to better manage government.

In Conclusion

"Outcome" based performance measurement is one of a long line of initiatives to quantify, measure, and attempt to "improve" the performance of government. Even when the intent is good, care must also be taken to insure that efforts to reform government protect equity and social justice and incorporate the recognition that government is not just a business, with profit as the goal, and that citizens are more than consumers. In linking government "performance" with budgeting, it is essential that there be a balance of power between the president and his or her vision of government and Congress, and that citizens as the primary stakeholders of a good government are included in the process. The PAR Act has a worthwhile goal - to improve government - but it fails these tests.

Economy and Jobs Watch: Jobs finally rebound, but remain 6.6 million below trend; unemployment rise

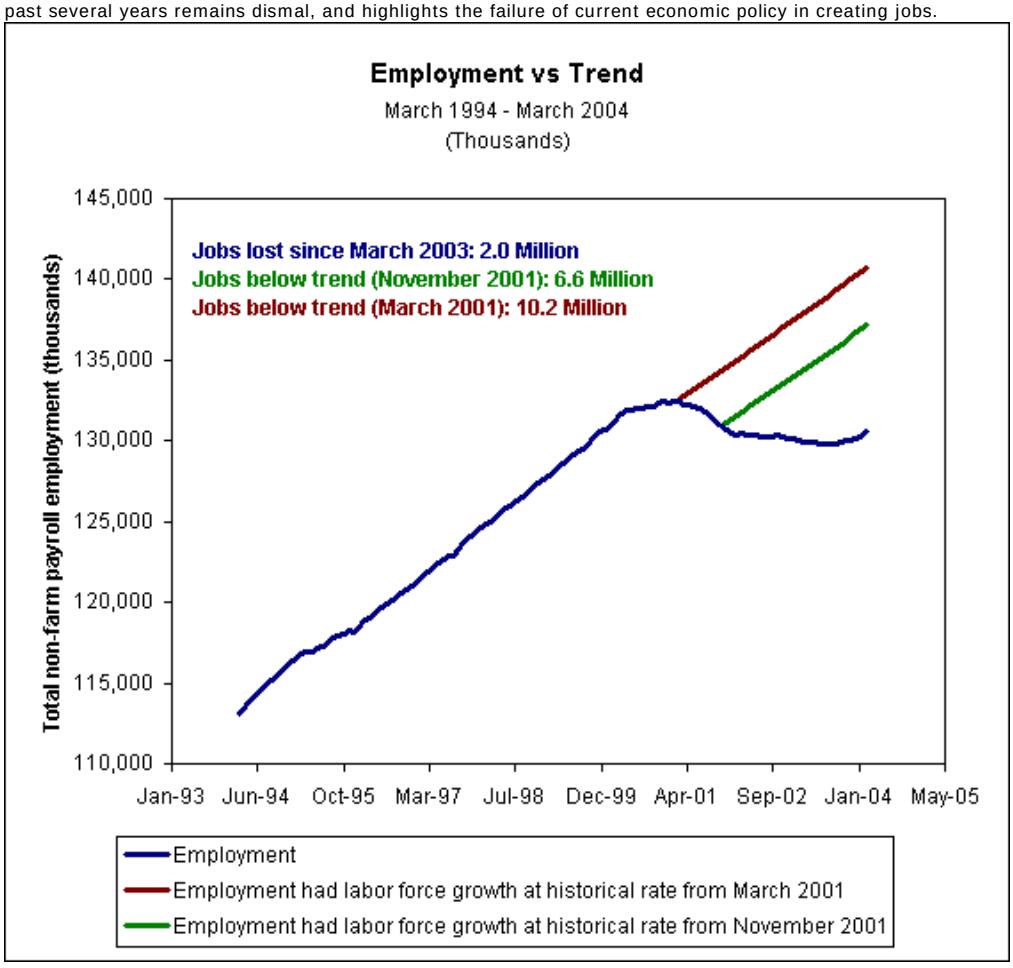
The economy added 308,000 new jobs in March, announced the Labor Department on Friday. The strong jobs number came largely due to the service sector which added 230,000 new jobs, while the manufacturing sector continues to struggle with no net new jobs in March.

This is the first time that job growth numbers have come anywhere close to the Bush administration's July 2003 prediction of 306,000 new jobs per month – the prediction has failed miserably 8 out of the past 9 months. (See Economic Policy Institute's JobWatch for more details on the Bush administration's predictions.)

While these numbers are encouraging, it must be noted that employment is still about 2 million jobs below the peak in March 2001, and even more behind the levels needed to simply keep up with population growth. The figure below shows that employment is 6.6 million short of where the economy would have been if employment had grown at the trend rate starting from the end of the recession in November of 2001. (The trend is computed from the 10 years prior to the 2001 recession.) If we start the trend from the start of the recession in March of 2001, the economy would be short 10.2 million jobs.

Despite somewhat stronger employment numbers, the unemployment rate rose one tenth of a point to 5.7 percent. More people, however, actually started looking for jobs in March – a break in the recent trend of people leaving the job market – thus contributing to the increase in the unemployment rate.

We hope that employment and the economy will improve in the coming months and years, however, the record of the past several years remains dismal, and highlights the failure of current economic policy in creating jobs.



Who Pays What Taxes?

Two new reports highlight just who is paying taxes. One report shows 61 percent of U.S. controlled corporations paid no taxes between 1996 and 2000.

The Congressional Budget Office has updated a report showing effective tax rates for the four largest sources of federal revenues --individual income taxes, corporate income taxes, payroll taxes, and excise taxes -- as well as the total effective rate for the four taxes combined for 1979 through 2001. Additionally, the General Accounting Office also released a report on April 2, showing that more than half of U.S. corporations paid no federal income tax between 1996 and 2000.

The Bush Administration's Openness Policy Serves Self Interests

The Bush administration is using classification selectively for political purposes evidenced by its inconsistent decisions on declassifying documents, according to a recent Washington Post article. In the article, critics outline a pattern of document classification that supports the administration's positions and the inappropriate classification of information that contradicts the President's positions.

The most recent example of this behavior came just last week when the White House requested that the Central Intelligence Agency (CIA) review a 2003 testimony by former counterterrorism expert Richard Clarke for possible declassification. The request came after the former White House official made serious political waves for the Bush administration by telling the commission investigating the 9-11 attacks that President Bush had ignored terrorism for the attacks and inappropriately focused on Iraq after the attacks.

Another example of the administration's uneven treatment of classification is the release of intercepted conversations between Iraqi military officers, typically highly guarded information, in an effort to convince the United Nations to support the White House's plan to invade Iraq.

William Leonard, director of the government's Information Security Oversight Office troublingly dismissed the issue of declassifying documents for political gain claiming that "is not unheard of, but it's not routine."

Critics cited a truncated version of the National Intelligence Estimate on Iraq's weapons of mass destruction as a political document. The document, released before the war with Iraq, made clear and definitive statements that Iraq was pursuing nuclear, biological and chemical weapons capabilities. However, a fuller version released after the war contained detailed and specific disagreements by some intelligence agencies.

The Bush administration has regularly been charged with having an unprecedented penchant for secrecy. However, these new charges are even more troubling, that the White House would misuse declassification and selectively allow openness for the purpose of misleading decision-makers and the general public.

FEC Gets Record Number of Comments in Rulemaking

Last week the Federal Election Commission announced that it has received 30,000 comments on its proposed rule to redefine what is a regulated political committee. With more than a week to go before the comment period ends, the controversy on the expansive proposed rule will set a FEC record for most public input on an issue. The proposed rule could expand FEC regulation in ways that would limit genuine issue advocacy by nonprofits.

To download OMB Watch's comments click here. More information is available at www.nonprofit advocacy.org and at www.ombwatch.org. To send your own comments to the FEC see OMB Watch's Action Alert.

Effort to Revive CARE Act Fails

Lack of offsets to pay for the costs of new charitable tax deductions and disputes over the rules for a conference committee have appeared to doom an effort by Sens. Rick Santorum (R-PA) and Joseph Lieberman (D-CT) to attach the CARE Act to S. 1637, the Jumpstart Our Business Strength Act (JOBS), which deals with extraterritorial income.

On March 23, Santorum sought unanimous consent to move the JOBS bill, citing the support of Minority Leader Tom Daschle (D-SD). But Daschle withdrew his support because House Republicans have excluded Democrats from conference negotiations with the House.

The offset issue is adding to CARE's problems. At a March 12 Non-Profit Legal & Tax Conference in Washington, a Senate staffer said, "The revenue raisers that were used for the CARE Act have already been poached and used for the JOBS bill, which puts CARE in an awkward position in that it would be an unpaid-for bill."

It is possible that a crackdown on deduction abuses could provide some of the revenue needed to cover the cost of CARE. There is ongoing interest in tightening rules on valuation of vehicle and intellectual property donations. Senate Finance Committee Chair Charles Grassley (R-IA) and Ranking Member Max Baucus (D-MT) sent a letter to the Internal Revenue Service on March 22 asking for a report on action they are taking to end abuses in this area. The report is due April 21.

New Round of Funding for Compassion Capital Fund

The Department of Health and Human Services (HHS) has announced a new round of competition for $7 million in grants to intermediary organizations to provide technical assistance and sub-awards for capacity building to faith-based and community organizations.

The goal of the grants is to help community and faith-based organizations increase the effectiveness of their social service programs. In addition, 25 percent of the funds awarded must be passed through as grants to selected sub-grantees for general capacity building. Applicants must provide 20 percent matching funds. The deadline for applications is May 18, 2004.

The Office of Community Services will administer the grants for the Administration of Children and Families. They are authorized as Social Services Research and Demonstration activities under the Social Security Act and appropriations for the Departments of Labor, HHS and Education.

More Complaints Filed Against Congressman DeLay

Democracy 21 joins Common Cause and the National Committee for Responsive Philanthropy in their efforts to get House members to file a complaint to the ethics committee against House Majority Leader Tom DeLay (R-TX). Democracy 21, like the two organizations before it, wrote a letter to all House members asking for their help in getting the House ethics committee to investigate charges that DeLay's charity Celebrations for Children Inc., was created as a "scheme…to misuse a tax-exempt charitable organization…for his own purposes and to finance his political operations at the Republican national convention this summer."

House members might be reluctant to file a complaint to the ethics committee because there are 56 current members of Congress linked to 70 foundations similar to DeLay's charity, explains Kent Cooper, operator of PoliticalMoneyLine.com, an online database that tracks the flow of money in campaigns. Democracy 21 and others complain that DeLay's charity goes "far beyond reasonable bounds." "The record in this case demonstrates that Celebrations for Children Inc. proposed activities will benefit interests…, namely the political interests of Rep. DeLay, his Republican House colleagues, and big donors," said Fred Wertheimer president of political reform group Democracy 21 in his letter to House members.

All three groups have also filed complaints to the IRS stating that DeLay's charity violated tax rules for 501(c)(3) organizations because it does not operate for a charitable "exempt purpose" and instead operates for the benefit of DeLay. IRS rules state that in order for organizations to be tax-exempt under 501(c)(3) of the tax code it must be organized and operated exclusively for one or more of the following exempt purposes: charitable, educational, religious, scientific, literary, fostering national or international sports competitions, preventing cruelty to children and animals, and testing for public safety.

Wertheimer also believes that DeLay is breaking House rules requiring members to conduct themselves "at all times in a manner which shall reflect creditably on the House of Representatives" because of his alleged tax law violations. Currently, there is no indication that any House member has filed a complaint against DeLay to the ethics committee or that the IRS is looking into the allegations made by the three organizations.

On the other hand, active pursuit to investigate DeLay is ongoing in Texas. Travis County District Attorney Ronnie Earle has been looking into whether DeLay has violated state campaign finance laws. The charge against DeLay and other state Republicans is for using a political action committee (PAC) for illegally raising corporate money for political campaigns. Earle contends that DeLay and fellow Republicans funneled illegal corporate donations through the Texans for a Republican Majority PAC to elect a bigger Republican majority in the Texas House.

Welfare Re-Authorization Fails in the Senate

The Senate failed to pass the reauthorization of the 1996 Welfare Reform bill last week. Regardless of the bill's noted importance, members of the Senate could not agree on many issues within the bill.

The Senate began debating the House version of the welfare reform bill (H.R.4) last Monday and gave it a final vote on Thursday. During the debates, Sen. Rick Santorum (R-PA) floated the idea of expanding the 1996 charitable choice provision to the Social Services Block Grant (SSBG.) The Welfare Reform bill of 1996 was the first to enact "charitable choice" provisions, the basic authority regarding government support to faith-based social service providers. The provision was inserted by then-Senator John Ashcroft and cleared without any real debate. Both congressional chambers have kept the charitable choice language in their respective reauthorization bills. However the expansion of charitable choice into SSBG, the largest federal social service program and addresses the needs of children and families, the elderly, and vulnerable adults, would be new. To date, no obstacles exist for religious organizations to get involved in SSBG programs. In fact, religious organizations are among the main providers of services with federal SSBG dollars.

So why would Santorum draft an amendment to expand charitable choice provisions into a program that has a clear track record of partnering with faith-based organizations? Santorum's amendment (SA 2997, Page S3492), if adopted, would implement a provision from President Bush's faith-based initiative. President Bush has not been able to get his faith-based initiative through either chamber of government and therefore, has been slowly implementing it with his executive powers (executive order and agency rulemaking.) However, in his 2004 State of the Union address, Bush expressed his desire for Congress to legislatively pass the faith-based initiative. Working to incorporate some of Bush's initiative, the Santorum amendment would allow religious organizations receiving federal funds through the SSBG program to use those monies to discriminate on the basis of religion when hiring.

A coalition of religious, civil rights, labor, education, health, and advocacy groups quickly responded to the threat of Santorum's amendment by sending letters to Senate members and organizing a briefing for Senate staff to learn more about the issue. In both forums, the coalition asked Senators to please vote no on the amendment if it should ever come to a vote. The coalition argued that the amendment would not provide more or new federal dollars for the care of the poorest in the nation being served by the SSBG program. Instead, Santorum's amendment would for the first time ever

allow federally funded service providers to discriminate against their employees on the basis of religion with federal funds. Santorum did not introduce his amendment on the Senate floor during the debate.

The 1996 welfare bill expired on Sept. 30, 2003 and has been running on continuing budget resolutions since. A continuing budget resolution is a temporary fix that provides the program with the same amount of funds from its previous fiscal year. The reauthorization bill has been stalled because of many issues that could not get consensus. Some of these issues include: work requirements placed on recipients of aid; rules garnering the amount of work-related activities, such as job searched, and community work activities; amount of time that can be devoted to training, education, and family needs; the amount of child-care funds that should be provided as part of this law; and the raising the federal minimum wage. It was this last issue that many felt killed the Senate consideration recently. The Republicans did not want a vote on an amendment from Sen. Ted Kennedy (D-MA) to raise the minimum wage.

Republican Leadership Threatens More Regulatory Rollbacks

Continuing the rollbacks of environmental, health, and safety protections will be foremost on the congressional agenda if President Bush and congressional Republicans are re-elected in November, vows House Majority Leader Tom DeLay (R-TX).

DeLay revealed that work is already underway on a ï¿½universal regulatory reformï¿½ package, according to a recent report in *National Journalï¿½s CongressDaily*, but no specific details of DeLayï¿½s plan were available.

DeLayï¿½s threat comes at a time when other House Republicans have criticized the Bush administration for not going far enough in rolling back regulatory safeguards in favor of corporate and industrial interests. Rep. Ernest Istook (R-OK) recently criticized the Office of Management and Budget (OMB) for not eliminating any major regulations in the Bush years to date. At the same time, Rep. Todd Tiahrt (R-KS) insisted that the OMBï¿½s estimates of the costs of regulation should be vastly increased above even the inflated estimates produced by regulated industry itself.

Although no details of DeLayï¿½s threatened anti-regulatory package have yet emerged, there are recurring themes in these exchanges that could portend the next wave of attacks on public safeguards:

- *Submerging cross-cutting regulatory attacks into the federal budget.* At a recent hearing and in a follow-up letter, Rep. Doug Ose (R-CA) has raised the possibility of having OIRAï¿½s annual report on the costs and benefits of regulation integrated with the White Houseï¿½s budget papers. The rhetorical sleight-of-hand that bridges the gap between regulation and budget is a reframing of public safeguards as ï¿½off-budget costs.ï¿½ Such a strategy could effectively deflect public attention from attacks on widely-favored protections of the public health and environment by hiding them under the arcana of complicated budget issues.

- *Forcing agencies into a ï¿½regulatory budgetï¿½ straightjacket.* Despite mounting criticism of the valuelessness of cost-benefit accounting for public safeguards, including evidence that the fundamental studies cited in favor of the enterprise lack academic integrity, Republican leaders still express an interest in building from cost-benefit measurement to a system of regulatory ï¿½budgeting.ï¿½ In such a system, agencies would be allotted a fictional budget account for regulations, and all efforts to protect the public health and safety would be measured for their ï¿½costs,ï¿½ which would be deducted from the finite ï¿½budgetï¿½ until the ï¿½fundï¿½ is exhausted.

- *Re-framing the assault on public health and safety as pro-jobs.* The usual shibboleth for anti-regulatory advocates is that regulation is a drain on the economy. Proponents of DeLayï¿½s threatened rollback package are likely to exploit current anxieties about unemployment by re-framing regulations not as protections but instead as cost burdens that weigh down regulated industry. Most notably, they will try to exclude the role of global trade agreements from the discussion by shifting the blame solely to regulatory safeguards, even as they continue to bolster those same agreements. (The draft of OIRAï¿½s next report to Congress on costs and benefits of regulation, for example, invites nominations for rollbacks to benefit the manufacturing sector, citing ï¿½recent concerns about the health of manufacturing,ï¿½ but all such nominations must give ï¿½due consideration to fair and open trade policy objectives.ï¿½)

Any new anti-regulation package will likely also attempt to resurrect elements of the failed anti-safeguard bill from the 1990s that was defeated in part by the efforts of Citizens for Sensible Safeguards.

Weakening of Overtime Rules Imminent as Controversy Rages

The Bush administration's controversial effort to change the rules governing overtime pay, which could eliminate overtime rights for many workers, could be realized soon, although congressional Democrats and labor groups continue to try to stop the new rules before they can be issued.

The Department of Labor has sent its final rule to OMB for its review, which can hold the rule for up to 90 days -- or can just as easily approve it within a matter of days.

The latest effort by congressional Democrats to halt the new rule is an amendment to a bill that would repeal export tax breaks ruled illegal by the World Trade Organization. That bill has stalled, however, as Senate Republicans seek to avoid an embarrassing wrangle on the overtime issue. Senator Bill Frist (R-Tenn.) publicly claims that the bill has frozen because of the sheer number of Democratic amendments, which cover other issues such as a refundable child credit that would be funded by the repeal of the export tax breaks. Meanwhile, Frist now seems to be willing to let Sen. Tom Harkin (D-IA) offer the amendment to stop the overtime rule if the Democrats agree to cut back on other amendments.

Labor groups, meanwhile, continue to press the issue, having established a website dedicated to fighting the overtime rollback, launching rallies, and circulating petitions.

Court Orders Release of Additional Energy Task Force Documents

U.S. District Judge Paul L. Friedman ordered several federal agencies to release documents related to Vice President Cheney's energy task force April 1. The administration previously withheld the documents under the guise that agency employees could claim special confidentially privileges while working for the task force. The court order represents another victory for right to know and government accountability.

The judge ruled that employees from the Department of Interior (DOI) and Department of Energy (DOE) were not part of a deliberative process and were not temporarily employees of the White House. Therefore, they were public employees and the public has a right to know about their actions. The judge ordered that the agencies turn over the documents by June 1, including those of the task force's director, Andrew Lundquist. Lundquist is an employee of the DOE.

The Natural Resources Defense Council and Judicial Watch filed the lawsuit against the government to obtain records from the task force. The White House has consistently resisted releasing records. Vice President Cheney has claimed that executive privilege extends to the energy task force documents. The Justice Department has appealed each court ruling for the release of task force records.

In spite of this resistance, thousands of task force records were released in 2002 under a previous court order. However, the agency employees' records were not included in that disclosure.

For more information on the ongoing court cases, see OMB Watcher articles on the 2002 ruling, a second 2002 ruling, a 2003 court ruling, a GAO report on the task force, and the GAO lawsuit.

Government Web Secrecy Doesn't Provide Security

A recent report by the RAND Corporation reveals that information scrubbed from government websites after the Sept. 11 attacks were unnecessary and unproductive in protecting against terrorism. Many government agencies have removed extensive amounts of information from their websites on the remote chance it could be misused by terrorists. The RAND report establishes that the agencies' approach of viewing information only as a threat and not considering the benefits is erroneous.

The RAND report, Mapping the Risks: Assessing the Homeland Security Implications of Publicly Available Geospatial Information, focused on the removal of maps and imagery information. Proponents of restricting access to data often highlighted these types of data as the most dangerous because of their potential usefulness to terrorists in selecting targets and planning attacks.

The report found that although such information could potentially aid terrorists, the data available was simply not detailed or current enough to be significantly useful to their purposes. The report also concluded that terrorists could acquire better information from direct observation or other public sources including textbooks, trade journals, street maps and non-governmental websites. Therefore the removal of the information from government websites was pointless.

The report also noted that while the removed information did not pose a significant threat it did provide vast benefits to the general public. Specific uses for the information noted in the report included assisting law enforcement, advancing scientific knowledge, informing people about environmental risks, and helping communities prepare and respond to disasters and emergencies.

In order to preserve such benefits, RAND called for a reasoned analytical process, rather than a hasty unguided response. The report recommended systematically evaluating the risks associated with particular information prior to removal. The study suggested as a useful first step evaluating three key factors: the usefulness of information to an attacker, the uniqueness of the information, and the societal benefits and costs of restricting public access to information.

While the report focused solely on geospatial data, the observations and conclusions of the report could easily be applied more broadly. After the 9-11 attacks agencies removed much more than just geospatial data from government websites. It seems reasonable to assume that these restrictions also significantly reduce benefits to citizens without providing any substantial increase in security from terrorists. Additionally, access to government information would benefit if agencies applied the recommended evaluation criteria to all information being considered for removal or restriction.

White House Denies Meddling with Science

John H. Marburger III, director of the White House Office of Science and Technology Policy (OSTP) released a detailed rebuttal to a report by the Union of Concerned Scientists (UCS) that accuses the administration of manipulating scientific information for political purposes.

Marburger asserts that the accusations contained in the UCS report are “inaccurate” and that the response is an effort to correct the report’s “errors, distortions and misunderstandings.” The rebuttal attempts to refute each complaint made by UCS with a hodgepodge of detailed and footnoted responses and simple assertions and speech quotes. Marburger does acknowledge a few minor errors and mistakes but claimed that they did not stem from any lack of scientific integrity.

The UCS report, Scientific Integrity in Policymaking: An Investigation into the Bush Administration's Misuse of Science, charges the White House of suppressing and distorting the scientific analyses of federal agencies support with the administration’s political positions. The report presents 22 examples of inappropriate interference with agencies’ activities that it asserts establishes a pattern of suppression and distortion of scientific findings.

The detailed nature of the Marburger’s response would seem to indicate that the UCS report struck a nerve within the

Bush administration. Perhaps it is because a supporting letter signed by more than 60 scientists, including 20 Nobel laureates accompanied the report.

The White House reportedly sent the Marburger response to several members of Congress.

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In This Issue

The Estate Tax: By the Numbers

The Tax Policy Center has recently posted tables displaying the impact of the estate tax. The analysis shows just how few people would benefit from a repeal of the estate tax:

- In 2004, an estimated 18,800 estates will pay an estimated total $17.6 billion in estate taxes.
  - That's just 1 out of every 15,587 people in the US who will pay an estate tax this year.
- In 2004, only an estimated 440 estates with significant farm or business assets will pay even a dime in estate taxes.
  - That's about 2 percent of those who pay the estate tax, and just 1 out of every 665,989 people in the U.S..
- From 2002 to 2003, changes in the estate tax law have cost the federal government $13 billion.
- Over the next 10 years, the estate tax will raise $271 billion from only the wealthiest decedents.

Last Thursday, President Bush said that "the death tax is bad for rural America." However, the numbers show that the president is using a very, very, very small number of people to sell a tax break that would benefit only a very, very small number of very wealth individuals; and the rest of us will have to pick up the tab - the president is projecting a deficit of more than $500 billion for this year alone.

The real issues are not about rural America, and not about family farms or businesses; but rather about who would really benefit -- the wealthiest Americans, some of which continue to pressure the administration with armies of lobbyists using “family business” as a misleading argument. (Although a large number of the wealthiest Americans do support the estate tax, see Responsible Wealth.)

Meanwhile in the House of Representatives, 20 of the 29 wealthiest members rich enough to qualify for the estate tax voted last year to cut the tax at the expense of the rest of us (see compilation by TechPolitics.)

- For a handy tool of how much people have to pay, see our Estate Tax Calculator

Bush Tax Shifts

Two recent analyses show that the so-called "Bush tax cuts" are as much about shifting the burden away from wealthy Americans as they are about lower taxes for all.

The Center on Budget and Policy Priorities has released a comprehensive report on the impact of recent changes to tax law entitled Tax Returns: A Comprehensive Assessment of the Bush Administration's Record on Cutting Taxes. The report's main conclusions are that:

- "The Bush tax cuts have contributed to revenues dropping in 2004 to the lowest level as a share of the economy since 1950, and have been a major contributor to the dramatic shift from large projected budget surpluses to even larger projected deficits, which are as far as the eye can see.
- The tax cuts have conferred the most benefits, by far, on the highest-income households — those least in need of additional resources — at a time when income already is exceptionally concentrated at the top of the income pyramid.
- The design of these tax cuts was ill-conceived, resulting in significantly less economic stimulus than could have been accomplished for the same budgetary cost. In part because the tax cuts were not as effective as alternative measures would have been, job creation during this recovery has been notably worse than in any other recovery since the end of World War II."

A separate report by the Citizens for Tax Justice, Overall Tax Rates Have Flattened Sharply Under Bush, shows that the tax structure has become significantly more "flat" in recent years, with higher income individuals seeing a greater reduction in their tax rates.

Understanding the AMT (Alternative Minimum Tax)

The cost of "fixing" the Alternative Minimum Tax (AMT) is often mentioned as one of the "hidden" tax expenditures that must be addressed.

A primer about the AMT by OMB Watch explains what it is and why it was created. In a nutshell, the AMT was created to keep taxpayers with very high incomes from paying little or no income tax by taking advantage of all the tax preferences that those with high incomes can claim. The AMT applied to less than one percent of all taxpayers before 2000, but since it is not linked to inflation, it is beginning to affect more and more taxpayers. According to a new report by the Congressional Budget Office (CBO), in 2010, if nothing is changed, one in five taxpayers will have AMT liability.

The tax cut bills in 2001 and 2003 temporarily raised the AMT exemptions, but the higher exemptions will run out after 2004. CBO finds that extending the AMT for just FY 2005 would cost $18 billion. Indexing the AMT to inflation would cost $370 billion over ten years. Eliminating the AMT would reduce revenues by nearly $600 billion over the next ten years. The cost of fixing the AMT is high, but it would be politically unpopular to ignore the increasing numbers of taxpayers who will be affected by it. Yet as the administration and Congress continue

to promote a permanent extension of the expiring tax cuts, regardless of its huge cost, the additional -- and hardly insignificant -- cost of fixing the AMT is not being included.

Moving Towards A Long-Term Proactive Tax and Budget Initiative

As a community, nonprofit service providers, issue advocates, and policy wonks alike spend most of their time fighting against "bad" policies like program cuts or tax giveaways to the wealthy. Rather than remaining on the defensive, the sector should begin laying the groundwork for a positive vision of what it considers to be sound tax and budget policy.

In December 2003, OMB Watch released a "call-to-action" paper that led to a number of conversations and discussions which overwhelmingly indicated positive support, energy, and enthusiasm for the idea of a long-term, proactive federal tax and budget strategy. Many people in the nonprofit community understand the importance of this kind of effort and the urgent need to begin it.

Since the release of the paper, with support from the Open Society Institute and the Marguerite Casey Foundation, we have:

Conducted an Internet survey of nonprofits
We have developed, conducted, and analyzed preliminary results from an Internet survey. The survey had 709 respondents most of which were representatives from nonprofit organizations encompassing every state except Nebraska. The survey was to determine 1) in what activities nonprofit organizations are actively engaged on tax and budget issues, 2) how important people think it is to engage in long-term planning and action on tax and budget issues, 3) on what issues should a campaign focus, 4) what are the challenges to making such a long-term campaign successful, and what are the needs of groups who might participate. More information and results from the survey is available at the OMB Watch website.

Held regional strategy sessions
In collaboration with state co-hosts, four state/regional strategy sessions were held in Columbia, South Carolina; Chicago, Illinois; Seattle, Washington; and Phoenix, Arizona. In each location, lively, rich and very helpful discussions were initiated with a presentation about the short and long-term federal budget situation and the preliminary results from the Internet survey. A state tax and budget expert (or experts from several states) presented the state budget situation.

From the very sobering picture of "where we are now" in terms of the current and future tax and budget crisis, the groups moved into envisioning where we want to be in ten years, the key outcomes and objectives, the challenges and opportunities, the strategies for achieving the desired outcomes, and the next steps. Summaries of each group are being completed and sent to participants to determine if we correctly captured and interpreted the content, and will eventually be posted on the web site.

Begun development of a tax and budget website
We are developing a prototype of a tax and budget Internet resource center designed to make it easy to access all the extremely useful existing federal tax and budget information, analyses, news, budget games, projects, campaigns, etc. The Internet survey identified this type of tool as a high priority. This resource may ultimately include sources of state tax and budget information as well. We hope that it will add to the creation of a network consisting of state, local and national issue-based advocacy groups, service providers, and other organizations, as well as tax and budget groups.

Planned a larger strategy meeting
With assistance from the Center for Responsible Funding, we have scheduled a larger meeting for Philadelphia-area nonprofits on April 28. In order to more fully flesh out five of the main themes that were consistently brought up in the regional strategy meetings, this meeting will be organized around breakout groups. The five main themes include: What would a vision statement look like? How do we address the attacks on the role of government? How do we strengthen civic responsibility? What infrastructure, leadership and resource issues need to be addressed to make a long-term initiative a success? What do we need to do differently with our strategies and tactics to make us more effective on the federal tax and budget front?

Started to plan a national retreat
We are in the midst of planning a two-day retreat in the DC/Baltimore area to bring together local, state, and

national nonprofit leaders. Using the results of the Internet survey, the regional meetings, and our many discussions with other national groups, we intend for this meeting to be the vehicle that actually develops a proactive tax and budget strategy over the long-term. The retreat will be the starting point for making this initiative a reality. A planning committee is currently working on the details for this event.

OMB Watch does not intend to be "in charge" of this proactive initiative, though we hope to be a part of it. Our role now is that of "provocateur." We have already learned that there is widespread support for initiating a long-term campaign that will build a visionary tax and budget policy, which is full of viable alternatives to policies that are always being fought against.

After evaluating the energy and sentiments expressed in the survey and regional meetings we have learned that, despite the many challenges, our crafted goals -- better values-based framing and messaging, broadening and re-energizing the base, developing a leadership structure and improved coordination, and generally determining what we need to do differently to have a real impact on the long-term debate about tax and budget policy in this country -- are actually achievable.

We have heard a wealth of creative ideas and strategies over the past few months, and are looking forward to being part of the developing process. We welcome the opportunity to talk with you more about this project and get your thoughts and suggestions. Please see the project's website for more information.

Where Do Your Tax Dollars Go?

Learn how the federal government spends your income tax dollars, how the tax dollars of the average household are spent in your state (and selected cities and counties), and how your taxes might be spent differently (with trade-offs and the like) by reading the National Priorities Project's tax day release "Where do your tax dollars go?"

9/11 Tops Ten Most Wanted Documents Report by New Anti-Secrecy Coalition

The federal government too often uses terrorism and national security as an excuse to keep unnecessary secrets. There is a great need for more information from government to make our families and communities safer, and this need has been clearly articulated in the results of a survey released last week by OpenTheGovernment.org, a new coalition aimed at fighting secrecy and strengthening democracy.

The new coalition is run by a steering committee co-chaired by OMB Watch and the National Security Archive and has released results of an Internet survey identifying the Ten Most Wanted government documents, a report prepared by OMB Watch and Center for Democracy and Technology. Topping the "Ten Most Wanted" list was a section of Congress' joint inquiry into 9/11 that dealt with foreign governments' support of al Qaeda. The entire list of documents and the report can be downloaded at OpenTheGovernment.org.

Survey respondents most wanted government to release documents that could help the public make their communities safer and nation more secure. Roughly 500 people took the online survey, which asked the public to rank documents spanning a wide array of issues, from women's rights and animal welfare to 9/11.

OMB's Peer Review Proposal Improved But Still Flawed

After receiving strong opposition for its peer review proposal from scientists, environmentalists, and public interest groups, the Office of Management and Budget (OMB) released a massively revised version of the guidance – and is seeking public comment on the new version. While many of the changes are significant improvements over OMB's initial policy, the new proposal fails to address some of the most fundamental complaints.

OMB's goal is to establish government-wide minimum requirements for when and how federal agencies use scientific peer review. The initial proposal, published September 15, 2003, drew sharp and consistent criticism from various sectors for being overly strict and prescriptive for an activity, peer review, that is highly varied and often tailored to the specific needs of each case. This new OMB proposal, released on April 15, is an attempt to address the sharpest criticism leveled at the original proposal.

OMB places a high priority on ensuring the "peer review process is transparent by making available to the public a written charge to the peer reviewers, the peer reviewers' report, and the agency's response to the peer reviewers' report." It also tells agencies, "While it will not always be easy for agencies to quantify the benefits and costs of peer review, we encourage agencies to approach peer review from a benefit-cost perspective."

The major shift reflected throughout the revised proposal is increased flexibility and control for the individual agencies engaging in scientific peer review of "influential scientific information." For instance, while OMB's revised policy still contains strict requirements for some peer reviews, it reduces the amount of information that would qualify for this stricter review. The new proposal also allows individual agencies to choose, on a case-by-case basis, among a wider range of peer review types.

The new proposal has a stricter, more prescriptive approach to peer reviews for "highly influential scientific assessments." OMB will get to decide what is considered "highly influential," including if "the dissemination could have a clear and substantial impact on important public policies (including regulatory actions) or private sector decisions with a potential effect of more than $500 million in any one year or that the dissemination involves precedent setting, novel and complex approaches, or significant interagency interest." In other words, OMB will sit in the driver seat on determining whether an agency must go through a more rigorous peer review process than generally prescribed.

OMB also removed restrictions that would have made scientists employed, associated or funded by federal agencies ineligible for selection as peer reviewers for influential information. "[W]hen a scientist is awarded a government research grant through an investigator-initiated, peer-reviewed competition, there generally should be no question as to that scientist's ability to offer independent scientific advice to the agency on other projects," according to OMB. However, OMB encourages agencies to think twice about a scientist who has a consulting or contractual arrangement with the agency conducting a peer review. Agency employees may be peer reviewers, for the more basic peer reviews, as long as they do not possess a conflict of interest and comply with applicable federal ethics requirements. However, OMB's stricter peer review requirements for "highly influential scientific information" continue to bar federal employees from serving as peer reviewers. The selection of peer reviewers was perceived as a highly controversial provision in the original proposal, raising concerns that it would tilt peer review in favor of business interests. In general, OMB "encourages agencies to consider using the panel selection criteria employed by the NAS [National Academy of Sciences]."

Additionally, the new proposal permits agencies to decide on the level of public involvement called for in each peer review. While OMB gives agencies enormous leeway, the proposal warns agencies to "avoid open-ended comment periods, which may delay completion of peer reviews and complicate the completion of the final work product."

In another change from the original proposal, OMB allows agencies to automatically exempt "time-sensitive medical, health, and safety determinations" from the peer review requirements. In the original proposal agencies had to request a waiver from OMB for such important health information. The change likely stemmed from the scientific community's strong objections to a political office inserting itself within critical health decisions.

The new proposal does not address the concerns raised by many that a government-wide peer review requirement is unnecessary and that OMB lacks the legal authority to establish such requirements. The new proposal contains a section that attempts to establish the need for the proposed government-wide peer review requirements. OMB claims "various authorities have argued that peer review practices at federal agencies need to be strengthened." However, OMB still fails to make a case that a fundamental or overarching problem exists throughout the federal agencies' peer review. Improvements in peer review policies and implementation can

almost certainly be accomplished. However, considering that generally agencies were implementing peer reviews effectively it seems likely those improvements would best be achieved by incremental and targeted policies.

OMB continues to assert that its legal authority is implied in a series of laws and executive orders including the Information Quality Act, which amends the Paperwork Reduction Act, and Executive Order 12866, Regulatory Planning and Review. Yet, it seems more reasonable that OMB should seek specific and explicit approval for such a precedent setting proposal with government wide impacts rather than cobbling together implied authority from a variety of sources. In fact, Congress has considered government-wide peer review requirements in the past -- either as part of larger regulatory reform measures or as stand-alone proposals -- and failed to enact such legislation. The current OMB action would appear to circumvent legislative prerogatives.

An additional complaint raised against the original proposal was that OMB proposed placing itself in an oversight role for federal peer review, a role that the office has never played and is poorly qualified for assuming. The proposal is unclear on the degree of oversight that OMB wishes to assume. The new proposal no longer contains certain oversight provisions outlined in the original, including agencies getting OMB's approval of peer review plans. An interesting new provision proposes that OMB and the Office of Science and Technology Policy (OSTP) establish an interagency panel to foster learning about peer review techniques. However, OMB continues to place itself in a clear oversight role including allowing OMB to approve alternative peer review plans and exemptions from the strictest peer review requirements.

Many of the changes reflect concerns raised in the nearly 200 public comments that OMB received and made public. However, it is unclear how many of the changes were called for by federal agencies. In addition to the public comment process OMB collected feedback on its initial peer review proposal from federal agencies in an interagency review process. However, these comments have not been made public. Considering that many of these agencies have significant experience performing peer review, their assessment of OMB's proposal could be extremely informative to the public and should therefore be disclosed.

OMB is accepting public comments on the new proposal for 30 days, until May 15. Several public interest groups plan to request a 60 day extension of the public comment period in order to allow fuller consideration of the changes made.

FEC Holds Hearings on Proposed Rule After Receiving Record Number of Comments

After two days of public hearings with testimony from thirty witnesses and over 200,000 public comments received, the Federal Election Commission (FEC) was no closer to resolving the complicated issue of re-defining the reach of its regulation than it was when it published its proposed rule in March. The FEC is scheduled to make a final decision on the proposed rules in mid-May; however, some Commissioners have publicly commented that they may take additional time to consider the volume of comments they received before taking any further action. A group of nonprofits, including OMB Watch, held a Congressional briefing on the issue the day before the hearings began.

A host of parties weighed in during the public comment period. Sens. John McCain (R-AZ) and Russell Feingold (D-WI), sponsors of the Bipartisan Campaign Act of 2002, supported extending FEC regulation to all political committees, including those independent of campaigns and parties. However, 120 House members signed a letter to the FEC opposing the proposed rule, noting that neither the Bipartisan Campaign Reform Act of 2002 nor the Supreme Court's decision upholding it imposes new restrictions on independent groups. The letter stated, "There has been absolutely no case made to Congress, or record established by the commission, to support any notion that tax-exempt organizations and other political groups threaten the legitimacy of our government when criticizing its policies…. We believe instead, that more, not less political activity by ordinary citizens and the associations they form is needed in our country." The House members also said the rules should not be changed in the middle of this year's election cycle.

These differences were echoed in the comments and testimony from nonprofit organizations, political committees, labor unions and legal experts. After two days of detailed testimony, including witnesses Kay Guinane of OMB Watch and Nan Aron of the Alliance for Justice, there was no emerging consensus among the six FEC Commissioners. Four votes are needed for action to be taken. Several Commissioners said more time was needed to examine the issues. The only Commissioner to express support for the rule was Republican Michael

Toner.

The FEC reported that it received 140,000 comments by email and 60,000 by fax or regular mail, breaking the record for comments submitted to FEC on any previous rule. The surge began a few weeks ago after MoveOn.org issued an alert to its members asking them to contact the FEC. In the last week before the comment period ended the Republican National Committee also issued an alert. The Bureau of National Affairs, a trade publication, reported that a random sample of comments it reviewed was opposed to the proposed rule.

On April 13, NonprofitAdvocacy.org held a congressional briefing where leaders from the nonprofit community informed congressional staffers of the potential harms the Federal Elections Commission's (FEC) proposed rulemaking on political committee status could have on legitimate activities conducted by 501(c)(3) organizations.

Rick Cohen, executive director of National Committee for Responsive Philanthropy, warned, "The potential FEC regulations will fall prey to the 'law of unintended effects.'" The briefing focused on just that, the chilling effects the proposed rule would have on nonprofit organizations and their fundraising ability, regardless of the final rule's regulatory language.

Lisa Ransom Brown of the Washington Council of Agencies cited numerous examples of policy education and voter registration activities that most of her member organizations are currently involved in. These communications are now threatened with FEC regulation, which would treat them like political parties or campaigns, banning corporate contributions (including private foundations) and limiting individual contributions.

"When ideally realized, democracy provides the space for voices in the minority to be heard, recognized, and addressed. We have much to lose if this balance is off or if the sector is hindered in effectively playing out its role. The proposed FEC rules would severely hinder our ability to do our jobs," explained Sheri Brady, public policy director at the National Council of Nonprofit Associations and moderator of the briefing.

NonprofitAdvocacy.org coalition urged congressional staffers to talk to their bosses about sending a message to the FEC stating that it was never Congress' intention to muzzle the speech of charities when passing the Bipartisan Campaign Reform Act of 2002.

National Head Start Association Calls for Bureau Chief's Resignation

The National Head Start Association called for the resignation of U.S. Head Start Bureau chief, Windy Hill on April 13 after it unveiled findings from an unreleased Health and Human Services (HHS) review that revealed Hill was engaged in serious mishandling of federal grant money. The allegations were supported by an outside audit of the Head Start program in Texas Hill managed.

HHS' independent review listed 29 major concerns that were later confirmed by an outside audit. The Texas Head Start program, Cen-Tex Family Services (Cen-Tex), among other things, was found to be in violation of a host of standard agency policies. These are listed at the end of this article. In May of 2003, Hill took the highly unusual step of sending a letter to Head Start programs warning that advocacy on issues relating to the controversial reauthorization of the program may be a violation of federal law. After being sued by the National Head Start Association (NHSA), an organization representing parents, teachers and Head Start programs, the court ordered Hill to send a correction letter explaining her inaccuracies over information about grantees' right to lobby on Head Start issues. "Windy Hill has been at war with Head Start grantees from the day she stepped into her current office. She has dragged out into headlines every possible problem – real or imagined, substantiated or simply alleged – and trashed programs across the country. To think that she was, at the same time, benefiting from a cover-up of her own misconduct during her tenure as head of a Head Start agency is simply astonishing," says NHSA President, Sarah Greene.

Under Hill's tenure, the U.S. Head Start Bureau has been prominent in state and local media attacking Head Start program directors by name with little to no factual information. The Bureau went as far as surveying all 2,700 Head Start grantees in the country about salaries and benefits of their employees after publicly denouncing an Austin-based program for paying its director what was later found to be a fair compensation.

Hill's agency was found to violate the following standards:

- giving the executive director, Windy Hill, three large bonuses that were not reported to the IRS as income. Additionally, there was no documentation indicating the basis of the bonuses or that it was available to all employees.
- paying some employees as much as 634 hours of vacation time when there is a 40 hour cap,
- not having an adequate accounting software system in place with appropriate internal controls, which makes it difficult to ensure all expenditures are accounted for. Cen-Tex's system allowed for more than one check with the same number to be issued (to different payees and for different amounts),
- not reporting on the federal funds that remained unspent at the end of the year,
- having four different active bank accounts, when only one is needed for a single-purpose agency (HHS demanded that they close three accounts),
- drawing grant fund advances in excess of the amounts needed to pay for actual expenditures,
- corrupting federal financial forms by not using accounting records as a source of information,
- giving unauthorized staff access to blank checks who issued checks without the required approval or supporting documents;
- making duplicate payments,
- making payments without any supporting invoice or documentation of why the payment was made,
- not following procedures for procurement and contracting regarding fair bidding and price quotes; open and free competition; documentation on why a particular vendor was selected; assurance of reasonable costs being paid; and nepotism in purchasing and contracting, and
- selling equipment and not reporting on money earned.

Open Debates Calls for the Revocation of the Commission on Presidential Debates' Tax-Exempt Status

Open Debates, a coalition of reform groups, filed a complaint at the IRS last week asking that it revoke the tax-exempt status of the 501(c)(3) organization in charge of general election presidential debates.

The complaint states that the Commission on Presidential Debates (CPD) violates Section 501(c)(3) of the tax Code, which prohibits intervening in support or in opposition to any candidate or party in a political campaign. Open Debates believes that by not letting non-majority party candidates participate in presidential debates, CPD is intervening in support of the two majority political parties. By promoting a bipartisan agenda, CPD is also shielding the presidential candidates from criticism.

501(c)(3) organizations that host candidate debates and forums must do so in a nonpartisan manner. All viable candidates must be asked to participate in the debate. A nonpartisan coalition comprised of national civic leaders committed to maximizing voter education hopes to replace the Commission on Presidential Debates in sponsoring the presidential debates. Open Debates is among the many organizations involved in The Citizens' Debate Commission coalition, some of the other organizations include: The American Cause, Youth Vote Coalition, Friends of the Earth, Judicial Watch, Brennan Center for Justice at NYU School of Law, Rock the Vote, ReclaimDemocracy.org, Center for Responsive Politics, Family Research Council, Common Cause, TransAfrica Forum, Federation for American Immigration Reform, Center for Economic and Policy Research, and Free Congress Foundation.

Administration Calls Cost-Benefit Analysis 'Unreliable'

The Bush administration altered a study of the economics of saving a threatened species by deleting 55 pages on the benefits of saving the species and leaving only discussion about the costs to industry.

Although the administration explains the deletion as a concession to the inadequacy of economic discourse in making policy decisions for threatened and endangered species, the cost-benefit analysis will still be used to reduce the amount of threatened habitat to be protected.

According to the *Washington Post*, the report by a Montana consulting firm hired by the Fish and Wildlife Service calculated costs of protecting the bull trout and its habitat in four states at $230 million to $300 million over 10 years and benefits of about $215 million, primarily from sports fishing, lower drinking water costs, and increases in the water available to irrigation farmers.

The administration is adopting the criticism of cost-benefit analysis in order to co-opt it. The Fish and Wildlife Service explains that it has opted to take a qualitative approach to assessing the benefits of protecting the bull trout because the main methods of monetizing the noncommercial consequences, contingent valuation and benefits transfer, are both “unreliable.” Advocates of strong safeguards for the public health, safety, and the environment have long argued the same. Now, the Fish and Wildlife Service’s decision is forcing locally based environmental advocates to adopt the alternative argument, that benefits can indeed be measured. While adopting the criticism of cost-benefit analysis to proffer only monetized costs and qualitative benefits, the administration will simultaneously use cost-benefit analysis in determining just how much of the bull trout habitat should be protected.

Buried in the administration’s strategically incoherent position is that there are two types of benefits to protecting the bull trout and its habitat. On the one hand, there are the commercial benefits to sports fishing and irrigation farming, which can properly be measured in monetary terms, and on the other there are the larger ecological consequences that are beyond monetary equivalence. Advocates of public health and environmental safeguards can maintain consistency in their opposition to the use of cost-benefit analysis in the elimination of those safeguards by rejecting the administration’s false either/or instead of cleaving automatically to a position in favor of benefits calculations.

Although the Fish and Wildlife Service explains that the benefits considerations failed the OMB’s requirements for cost-benefit methodology, the *Post* reminds readers that the White House apparently approved similar benefits analysis for its own Clear Skies program, which touts benefits of $113 billion.

UPDATE: Overtime Cutback Imminent

The Bush administration's reduction of overtime rights may be finalized as soon as this Tuesday, sources on the Hill report.

The new regulations governing overtime pay could eliminate overtime rights for many workers.

Although the Department of Labor only recently sent its final rule to the Office of Management and Budget (OMB) for its review, which could hold the rule for up to 90 days, Hill sources say that the OMB review is complete and that the final rule will be published as early as Tuesday, April 20.

Senate Democrats are attempting to halt the administration's overtime regulation in an amendment to a bill that would repeal export tax breaks ruled illegal by the World Trade Organization. That bill has stalled yet again, as Republicans have unsuccessfully attempted to force an end to debate. The GOP's new strategy is to refer to the overtime corrective and other Democratic amendments as mere "message amendments" needlessly stalling deliberation of the export tax bill.

The same bill has stalled in the House as well, as House Democrats accuse the replacement tax breaks for firms

working abroad as abetting the off-shoring of American jobs.

White House Changes Experts' Report on Health Effects of Mercury

The White House and the Office of Management and Budget (OMB) made changes to a report from the National Academy of Sciences on the toxicology of mercury, a powerful neurotoxin that is especially dangerous to pregnant women and young children.

According to documents obtained by the New York Times, White House staff made editorial interventions in the report, which was commissioned by Congress to establish the science on the risks associated with mercury. The White House's alterations downplayed the risks of mercury, replaced specific enumerations of mercury-related harms with bland, general references, and introduced additional emphasis on uncertainty.

The examples speak for themselves:

This language from the National Academy of Science experts on exposure to high levels of Hg and Ni--	Exposure . . . has been demonstrated to cause adverse health effects on the reproductive and central nervous systems; kidney damage; and cancer.	--was replaced with this far blander version:	Exposure . . . has been demonstrated to cause a variety of adverse health effects.
And this clear reference to additional studies--	Recent published studies have shown an association between methylmercury exposure and an increased risk of heart attacks and coronary disease in adult men.	--was muddied up by the White House revision:	[I]t has been hypothesized that there is an association between methylmercury exposure and an increased risk of coronary disease in adults; however, this hypothesis warrants further study as the few studies currently available present conflicting results.

The White House's revision of the experts' report coincided with the EPA's design of new regulations that make it easier for power companies to release mercury into the air.

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Will There Be a Budget Resolution?

"Paygo" rules, once a little-known budget technicality, are now proving to be the main impediment in reaching a budget resolution for FY 2005, which begins on October 1, 2004.

Previously, paygo rules were a requirement that applied equally to increases in mandatory (mostly entitlement) spending or tax cuts. Increases in spending or decreases in revenue could not be passed unless they were offset or paid for by decreases in other spending, increases in other revenue, or with a 60-vote "super" majority in the Senate. The purpose of the paygo rule requirements was to enforce budget discipline, which provided that in order to increase spending (whether in programs or through tax expenditures) the increases had to be paid for.

In order to easily extend previously passed tax cuts, legislators and the administration are insisting that paygo rules apply only to mandatory spending and not to tax cuts. Some of the tax cuts looking to be extended include, the "marriage penalty," the child tax credit, and the expansion of the 10 percent tax bracket (seen as benefiting the middle-class.) Republicans have made no secret of their desire to pass even more tax cuts (including cuts to the wealthiest Americans) without having to offset the cost. This administration's efforts have been concentrated on making sure that paygo rules only apply to mandatory spending and not to tax cuts because it is really committed to cutting more and more taxes. Unfortunately, when the administration cuts taxes they are really cutting off the flow of federal money to social service programs.

Advocates of tax cuts favor paygo rules only apply to spending programs, not to tax cuts. But others are concerned about the size of projected deficits, uncertainty about the cost of the war in Iraq, spending needs that

will increase exponentially during the next few decades for Social Security retirement benefits and health care, and the costs of tax cuts already passed by this administration in 2001, 2002, and 2003. Even for members of Congress who are not concerned about the service cuts made necessary by the tax cuts (or who celebrate the goal of shrinking government to the size it can be "drowned in the bathtub"), growing budget deficits are an incentive to extend budget discipline of offsetting both mandatory spending and tax expenditures.

A variety of compromises are being considered -- applying paygo to tax cuts for three years; exempting the three middle income tax cuts that expire this year; and/or, exempting any tax cuts included in the protected reconciliation amount. Nevertheless, there has been no final agreement. While discussions will continue this week, it is likely that Congress may proceed to the appropriations process without a budget resolution (which they may do after May 15). The failure to pass a resolution is seen by some as an improvement over any budget resolution likely to pass. (For more on this point of view, see the Center on Budget and Policy Priorities analysis.) However, it should be noted that the discretionary spending limit might be only $814 billion set in the FY 2004 resolution, and not the proposed budget resolution limit of $821 billion, unless a new limit is agreed upon. The failure to pass a budget resolution, into which language raising the debt ceiling could be quietly included, will also force a politically embarrassing debate on raising the debt limit, currently at $7.384 trillion. That limit is likely to be exceeded sometime this summer, and must be extended in order not to push the government into default on its debt. Many experts think that if a budget resolution is not achieved by May 15, there will be no budget resolution -- the first time in thirty years that a Congress controlled by the majority has failed to pass a resolution.

In the meantime, On April 28, the House passed H.R. 4181 making the expiring "marriage penalty" benefit permanent. In a small victory for low-income families, the tax cuts were extended to families who file for the Earned Income Tax Credit. However, the bill has no offset for its $105 billion cost over ten years, as estimated by the Joint Committee on Taxation. Families with incomes below $40,000 will only receive only 8 percent of the marriage penalty benefit when it is fully in place in 2010. This week, the House is also expected to consider permanent extension of the child tax credit and expansion of the 10 percent income tax bracket -- again without offsetting the cost.

Senate Votes to Continue Internet Tax Ban

On April 29, under heavy pressure by the telecommunications industry, the Senate voted 93-3 on S. 150 a bill that extends the moratorium on Internet access taxes for four years from its expiration date of November 1, 2003.

While extension of the ban was heralded as a victory for Internet users, this bill benefits the telecom industry, not consumers. For more about the Internet tax ban and efforts to make it permanent, see a previous OMB Watch analysis.

Under this compromise bill, states that had begun taxing Internet access services prior to 1998 can continue to do so through the end of the four-year moratorium, and states that taxed Digital Subscriber Line transactions even after 1998 would be allowed to continue taxation for two years. The bill also includes language that allows states to continue to tax telephone service even as it moves over to the Internet (VoIP), however, the definition of Internet access remains troublingly broad.

The good news is that the Senate did not vote to make the ban on Internet taxation permanent. The bad news is that the continuation of the ban will deprive states of much-needed revenue and primarily benefits industry, not consumers.

It is still uncertain whether the bill will go to conference with the House.

Economy and Jobs Watch: GDP Up, But Risks Remain

Gross domestic product (GDP) rose by a 4.2 percent annual rate in the first quarter, according to the Bureau of Economic Analysis. This is about the same as the 4.1 percent rate from the last quarter of 2003, and shows the economy growing at a steady, if not exceptionally strong, rate. However, forecasters had expected growth to come in at a stronger 5 percent rate.

Excluding spending on national defense, the economy grew at an annual rate of just 3.5 percent. In addition, cutbacks at the state and local level are providing a drag on the economy -- lowering GDP growth by 0.3 percentage points. Declines in state and local expenditures -- largely due to funding crises at the state level -- have contributed to a lower growth four of the last 5 quarters. Federal tax policy has contributed to the weak financial situation of the states, and we can expect additional harm to growth in the future.

An increase in the rate of inflation as measured by the GDP deflator is of additional concern. The price index rose at an annual rate of 2.5 percent compared with 1.5 percent from the previous quarter. Prices rose across the board, but were most prevalent in non-durable consumer goods, and imports.

The overall economy has begun to stabilize, but significant risks remain. Employment continues to be a concern, especially in the manufacturing sector, with the economy failing to provide enough jobs. An acceleration of the inflation rate will put pressure on the Federal Reserve to raise interest rates. Indeed, market rates have already begun to rise, thus threatening the housing market, which has been exceptionally strong throughout the past few years. Fewer home sales, and less mortgage refinancing will lead to less consumer consumption. In addition, higher rates will mean a greater interest burden for borrowers -- a problem with potentially huge consequences given high levels of private debt.

Failure to address economic weakness -- in particular for those most in need -- continues to be a hallmark of current fiscal policy.

DHS Receives Few CII Submissions

Only two companies and two associations have submitted information to the Department of Homeland Security (DHS) that will be kept secret under the Critical Infrastructure Information (CII) program, according to an April 21 testimony. At the time of the testimony, DHS had been operating the program for two months.

The DHS Assistant Secretary for Infrastructure Protection, Robert Liscouski, revealed the low number of submissions while testifying before a joint session of the House Select Committee on Homeland Security's Subcommittee on Cybersecurity, Science and Research & Development and the Subcommittee on Infrastructure and Border Protection. Liscouski expressed gratitude that the agency has not been inundated with submissions in its beginning stages.

As evidenced in comments to DHS during the proposed rule comment period, the private sector worried that the CII program did not provide adequate protections and information would still become public. These fears might account for the lack of submissions.

It was previously unknown what resources would be allocated to the program; Liscouski stated in his testimony that the program has 32 people on staff. It is unclear what tasks the staff is working on and why they are grateful for a slow start given the high number of staffing resources.

Public interest groups expressed concern throughout the development of the CII program that the guidelines would open the door to abuse because companies, not DHS, decide what information qualifies as CII. After submission, the government is prohibited from publicly disclosing the information. Moreover, any submitted information may not be used for any regulatory action to correct problems with a facility's infrastructure. Additionally, the CII program provides liability immunity for companies that submit, protecting them if an accident were to occur.

The low level of initial participation by industry in the CII program does not solve the issues raised by the public interest groups. The four submissions thus far may represent serious safety problems that the government can

now neither forces the companies to correct nor inform the public about.

DHS published the interim final rule for CII Feb. 20. See OMB Watch's Homeland Security page for more background on CII.

Administration Removes Web Information on Women's Issues

The current administration is removing information pertaining to women's issues from government websites, according to a new report by the National Council for Research on Women (NCRW). The report, "Missing: Information About Women's Lives" cites a number of examples from the Department of Labor (DOL), the Centers for Disease Control (CDC), the Department of Health and Human Services (HHS), and other agencies as it catalogs how the Bush administration is removing or distorting information.

The report documents how agencies such as the Women's Bureau within the DOL have changed under the new administration. A number of publications that women across the country use to protect themselves in the workplace have been removed from websites, including a report entitled *Don't Work in the Dark – Know Your Rights*, easily available online in 1999. Even the mission statement of the agency has changed, revealing a new modus operandi to provide less information. The former mission statement described the bureau's mandate "to advocate and inform women directly and the public as well, of women's rights and employment issues" and "to ensure that the voices of working women are heard, and their priorities represent in the public policy arena." The new 2002 statement reads, "We will empower women to enhance their potential for securing more satisfying employment as they seek to balance their work-life needs." There is no mention of informing women of their rights or advocating on their behalf.

The Census Bureau also twisted data to give a rosier impression of how women are faring in the workplace. In 2000, the website acknowledged, "Women have almost achieved parity in education attainment…but no earnings equality." In 2003, the "Facts and Features" page stated the earnings gap between women and men, 76 cents compared to a dollar respectively, showed that women's salaries were pegged "at an all-time high."

Other examples include CDC's unwillingness to provide information on how condom use can protect women from HIV and other sexually transmitted diseases on its website. This information was found online in a fact sheet before it was revised in December 2002. Moreover, HHS released a report documenting the racial and ethnic disparities in health care. The executive summary was altered to appear more positive than the evidence concluded, as was admitted by HHS Secretary Tommy Thompson.

The NCRW report outlines a number of other examples in which the current administration is twisting information to fit its ideology. An extensive list is being posted and updated on NCRW's website under the MisInformation Exchange. This ongoing problem of government secrecy and hiding information from the public is manifesting itself in almost every government agency. For other examples, read a few of OMB Watch's previous articles -- "Government Web Pages Altered to Hide Information", "Office of Special Counsel Scrubs Website", and "White House Stamps Out EPA Findings on Climate Change".

2 FEC Commissioners Propose Revised Rule on Political Committees

Two of the six Federal Election Commission's (FEC) six Commissioners have proposed a scaled-down version of the controversial proposed rule extending federal campaign finance rules to independent organizations. The proposal, drafted by Commissioners Michael Toner (R) and Scott Thomas (D), excludes organizations exempt under Section 501(c) of the Internal Revenue Code and some Section 527 groups from regulation. However, it incorporates thresholds that are vague and leave exempted organizations open to similar regulatory restrictions in the future. There is no proposed effective date, but Toner has been an advocate of quick action. The FEC will consider the proposed rule at its May 13 meeting.

The Toner-Thomas proposal would impose hard money limits on 527 organizations that receive contributions or spend more than $1,000 in a calendar year and whose major purpose is "the nomination or election of one or more Federal or non-Federal candidates". The only 527s exempted are:

- Candidate campaigns,
- Groups working solely on ballot initiatives,
- Committees formed solely to work on non-federal elections,
- Elections where no federal candidate appears on the ballot, or
- Groups whose only purpose is to influence non-elective offices or leadership positions in political parties.

When an organization meets FEC criteria for "political committee" status it must adhere to contribution limits, including a ban on funding from corporations (including private foundations) and a $5,000 limit on individual donations.

The expenses of any 527's communication that "promotes, supports, attacks or opposes a clearly identified candidate for federal office" or promotes or opposes any political party would count as an "expenditure" toward the $1,000 threshold. Expenses of partisan voter mobilization activities would also count. Nonpartisan voter mobilization expenses would not count if there is no effort to determine how someone would vote and the messages do not include language that "promotes, supports, attacks or opposes a clearly identified candidate for federal office."

Related Developments

The Supreme Court, in *Leake v. North Carolina Right to Life, Inc.* (U. S. No. 03-910, 4/26/04), has ordered reconsideration of a case involving regulation of independent political committees. Last September, the U.S. Court of Appeals for the Fourth Circuit struck down a North Carolina law subjecting "issue advocacy" groups to the state's $4,000 contribution limit, holding the state did not have sufficient evidence that independent political committees pose a threat of corruption.

The North Carolina Attorney General petitioned the Supreme Court after its decision upholding the Bipartisan Campaign Reform Act of 2002, asking that the *Leake* case be reconsidered.

Like the original proposed rule, this narrower draft fails to define what is meant by "promotes, supports, attacks or opposes," and whether it applies when referring to a public official and actions in their official capacity, without reference to an election. As a result, the Toner-Thomas proposal could have a negative impact on issue advocacy and grassroots lobbying when carried out by a 527 organization. Toner told the Bureau of National Affairs, a trade publication, he sees this as a "valid concern," but that these groups can operate through a 501(c) organization. This position fails to consider the negative tax consequences that could result. More importantly, it invites future regulation of 501(c) groups under these same vague standards.

The Toner-Thomas proposal includes new rules on how regulated independent political committees must allocate their hard (regulated) and soft (unregulated) funds. Costs of administration, voter drives and communications that promote parties but do not mention federal candidates would have to be paid for with 50 percent hard money. All communications that "promotes, supports, attacks or oppose" a federal candidate would have to be paid for with 100 percent hard dollars. This is much stricter than the proposed rule, which would require between 15-36 percent of costs be paid with hard money. Current allocation rules do not have minimum thresholds, and there have been complaints that some independent 527organizations have only allocated token portion of their budgets to be paid for with hard dollars, while publicly stating a major purpose of influencing the federal election.

Election law attorney Bob Bauer has posted an example of how use of the "promote, support, oppose or attack" approach would favor incumbents on his "More Soft Money Hard Law" website. The example illustrates how $12.6 million in federal funding was spent on ads and other publications that promote the new Medicare drug program, and credit the president and Congress with "some of the most significant improvements to the program since its inception in 1965." If a group opposed to the drug bill wanted to counter this information and criticize the ad or policy, they would have to refer to the president, who is a clearly identified federal candidate. This is turn could trigger "political committee" status at the FEC, limiting their ability to raise funds for their issue campaign.

IRS Warns Charities Against Engaging in Political Campaign Activities

Last week the Internal Revenue Service (IRS) issued a news release reminding charity groups to stay out of partisan political activities during this election year. This year's notice was very early in the political season, providing another indication that the presidential sweepstakes are already underway. Organizations tax-exempt under 501(c)(3) of the Tax Code are prohibited from participating or intervening in any political campaign on behalf of, or in opposition to, any candidate for public office.

The IRS notice explains that it uses a facts and circumstances test to decide whether an organization is engaging in prohibited political activity. Using an example of a sponsored debate or forum, the IRS said if the debate or forum shows a preference for or against a certain candidate it becomes a prohibited activity. Debate or forum sponsors can be seen as providing preferential treatment by giving the candidates spun questions, not giving each candidate the same opportunity to answer, and not asking a broad set of questions that covers many issue areas.

It is important to note, however, that charities can engage in a number of nonpartisan election related activities and should not shy away from doing so. Using the same example of a candidate debate or forum, the IRS said a charity could legally host such an activity provided that it ensures:

- All viable candidates are invited;
- The location is free of political considerations;
- A broad range of important voter issues are addressed;
- Questions are impartial in nature and presentation;
- All candidates are given an equal opportunity to respond;
- The moderator and/or questioner panel is impartial, and informs the audience that candidate positions do not reflect the positions of the sponsoring organization;
- The results are only reported, without editorial comment, through the sponsor's regular channels of communication.

Other allowable activities include voter guides, candidate questionnaires, candidate briefings, and get-out-the-vote and voter registration drives. To learn more about these permissible election year activities visit the Voter Activity and Electoral Advocacy section of NPAction.

HHS Bows to Political Pressure, Pulls Funding from Conference

After an intensive campaign by conservative groups, Heath and Human Services (HHS) pulled partial funding for the Global Health Council's 31st annual conference. Conservatives objected to some of the topics and speakers that were part of the April 26 conference and claimed that federal dollars given to fund the event was actually being used to lobby. To ensure the government and others that federal dollars were not being used for lobbying, the conference sponsors segregated its lobbying component in a separate "pre-conference" day. The fact that HHS would give in to political pressure is disturbing, especially since the accusations made were based on inaccurate and incomplete facts.

The Global Health Council's response said the $1 million, four day conference, which attracts about 2,000 health experts and advocates from around the world, will go on as planned in early June, despite withdrawal of $360,000 in federal funds. The political convictions of HHS' action is highlighted by the weak facts supporting its stated reason for withdrawing funding, which was that the conference would use federal funds for lobbying. But the conference "Advocacy Day," which includes visits to Capitol Hill, takes place the day before the conference officially opens. The conference agenda does not include any further activity that could be viewed as lobbying. Bill Pierce of HHS told the press that the Council was "unable to delineate for us, breaking it out, how our money was going to be spent and not commingled with lobbying activity." However, it appears at least a portion of the funds were to be spent to cover travel costs of 50 public health professionals from developing countries that are scheduled to present papers at the conference.

Global Health Council's president Nils Daulaire said they do not use federal funds for restricted activities, and are

careful to have balance in viewpoints presented. The conservative groups objecting to federal assistance for the conference had noted that the agenda includes speakers from Planned Parenthood, but Daulaire said there are also speakers that support abstinence only and a representative from the President's Advisory Committee on HIV/AIDS. Daulaire said, "There are many things that the professional community has divergent views on, and we believe the best way to deal with this is to have a free and open exchange."

This free and open discussion of issues was enough to cause House Republican aides Sheila Maloney and John Casey to send an email alert to pro-life groups. The result was a campaign by the Traditional Values Coalition and others asking HHS to withhold the money. 12 members of Congress also wrote HHS objecting to the conference funding.

An aide to Senator Patrick Leahy (D-VT), who will be presenting an award at the conference, said, "this was a manufactured issue, handled opportunistically by the White House to satisfy some of their political base."

Treasury Dept. Hosts Dialog on Terrorist Financing and Charities

On April 28, representatives of nonprofits and foundations met with Department of Treasury (Treasury) officials to voice their concern over the anti-terrorist funding guidelines. The representatives questioned the guidelines usefulness and spoke on its potential negative impact on legitimate charitable activities. Treasury Secretary John Snow told the group his department would listen carefully and try to incorporate nonprofit comments into the final guidelines.

Participants in the meeting were groups, including OMB Watch, that responded to the Treasury's request for public comments (IRS Announcement 2003-29) on the guidelines last August. OMB Watch's comments called for Treasury to withdraw the guidelines because they are overbroad, place unnecessary burdens on charities, and are inconsistent with federal and state laws. Treasury noted several ways terrorists divert funds to finance their operations, including diversion of charitable assets, sale of untaxed cigarettes and transportation of bulk cash, but no real information was given on which methods are the biggest problems.

Concerns raised at the meeting included lack of information about the number of cases where charities are used as conduits for terrorist financing, whether the guidelines are truly voluntary, the negative impact on international grantmaking and failure to distinguish between public charities and private foundations, and the witting and unwitting use of charities to funnel money for terrorist purposes. Participants also pointed out that corporate philanthropy, which is subject to less transparency than private foundations, needs more attention in this area.

Treasury officials reviewed the nature of the problem from their perspective: charities are being unwittingly used to funnel money to terrorists, that some charities are being created for this purposes or used to raise funds, and individuals within charities misdirect aid. They are interested in revisions to the guidelines that will prevent or minimize the risk of these things occurring.

Related Developments

Senate Finance Committee leadership has written Treasury Secretary John Snow asking for details on their efforts to shut down sources of terrorist financing. Senators Charles Grassley (R-IA) and Max Baucus (D-MT) asked for a response by May 17.

A federal court in California has ruled that the portion of the PATRIOT Act defining "expert advice or assistance" as a form of material support for terrorism is unconstitutionally overbroad. In *Humanitarian Law Project v. Ashcroft*, C.D. CA, No. 03-6107 (ABC), 3/17/04, the court granted an injunction against enforcement of the provision. The Humanitarian Law Project (HLP) works for peaceful resolution of conflicts, and wished to provide assistance to the Kurdistan Workers Party in Turkey and the Liberation Tigers of Tamil Eelam in Sri Lanka, but both groups are on the government's list of terrorist organizations. HLP can now provide advice on international law, the art of peacekeeping and negotiation and United Nations procedures.

Several "red flag" factors were cited as indicators that charitable funds might be diverted to terrorists. These included:

- Small charities, especially if there is only one staff person that signs checks
- Grants made primarily to third world charities or other causes overseas
- Money given to families of suicide bombers

- Lack of documentation to show a charity is actively fundraising
- Few or no small donors
- No fundraising events
- Charitable objectives and expenditures do not match
- Overlapping corporate officers and bank signatory
- Multiple corporations located at the same address
- Use of multiple corporations to collect funds and funnel to foreign beneficiaries
- Account transactions that are inconsistent with past transactions or withdrawals
- Charity with offices overseas or affiliated with overseas charities that make significant donations to.

Treasury officials described four cases of charities accused of diverting assets to terrorists that were shut down by the federal government, and noted “one bad apple spoils the barrel.” One international nonprofit participating in the meeting said the red flag factors are what international grantmaking looks like, and should be refined to better distinguish between legitimate activities and charities that abuse their status and divert funds. There was a suggestion that more consultation with nonprofits would produce better red flags.

Treasury officials were clear that the guidelines would be revised after receiving more nonprofit input. They have revised the Introduction to the Guidelines to stress that they are voluntary, and agreed to follow up meetings with the nonprofits.

In the Name of Charity or Political Gain?

Sen. Blanche Lincoln (D-AK) cordially invites you to meet with your Senators, provided you can pay $2,500 to $100,000.

According to a brochure obtained by TIME, Lincoln will be the host of a late-night concert party called Rockin' on the Dock of the Bay during the weekend of the Democratic convention, with proceeds going to CureSearch. $100,000 donors will get 100 free tickets, backstage passes to meet the rock band, a "premium bar" and the chance to groove with Democratic Senators. Lincoln and other Democrats say that the fundraiser is a great opportunity to raise a substantial amount of money for cancer research. CureSearch is a program of the National Childhood Cancer Foundation and the Children’s Oncology Group.

Watchdog groups Democracy 21, Common Cause, and the National Committee for Responsive Philanthropy have filed complaints against Sen. Tom DeLay (R-TX) for hosting similar charity events during the weekend of the Republican convention (previously reported by OMB Watch.) However, Lincoln and DeLay’s charity events have notable differences. For example, Lincoln’s event is one night only and is tied to a long-standing, well-known national charity. Conversely, DeLay’s is hosting several events throughout the week with proceeds going to benefit a charity, Celebrations for Children, Inc., which was created for the sole purpose of raising money during the week of the convention and is strongly tied to DeLay himself.

During the week of the Republican convention, another charity event will take place in addition to DeLay’s events. Republicans are hosting a “Rock the Apple…Georgia Style” in Manhattan. The concert is set up the same way as the one hosted by Lincoln. In fact, Aflac, a Georgia insurance company, is sponsoring both the Democrat and Republican concert events.

Seat Belts Fail in Rollover Crashes, New Report Shows

Seat belts are not the last word on personal safety when vehicles roll over, according to a new Public Citizen report that reveals the inadequacy of current seat belt technology in preventing death and serious injury from rollover crashes.

When confronted with rollover deaths and injuries, industry and the Bush administration routinely shift the blame from unsafe vehicle design to the drivers and occupants themselves. The administration has insisted that increasing belt use is "the single most effective way to reduce traffic fatalities and serious injuries." When Congress raised the issue of sport utility vehicles' susceptibility to rollovers, the industry responded by deflecting the blame from vehicle design to SUV occupants' seat belt use. "If every SUV driver wore their seat belts, we'd save 1,000 lives a year," said one industry spokesperson. "We can make the vehicles safer, which we do, but we need the public to meet us halfway."

As Public Citizen's report shows, however, seat belt usage is not the answer that industry and the administration insist that it is. From 1992 to 2002, 22,000 people who died in rollovers were wearing their seat belts. Approximately 400 people die every year because they were ejected from their vehicles during rollovers despite wearing seat belts. Over 50 percent of those who were partially ejected during rollovers were belted, and the government itself estimates that 55 percent of those who died or were injured because the vehicle roof was crushed in a rollover were in fact wearing their safety belts.

The report, "Rolling Over on Safety: The Hidden Failures of Belts in Rollover Crashes," identifies several significant weaknesses in current belt technology that prevent them from working effectively during rollovers, among them the following:

- Some safety belt systems simply fail to remain latched at all during rollover crashes.
- Most belt straps are anchored to the frame of the vehicle rather than the seat itself. When vehicle frames are crushed and distorted during rollovers, these belts can release dangerous amounts of slack or be rendered inoperable altogether.
- Most belts lack a technology that pull back the slack in a belt strap when crash sensors are alerted. This technology, called rollover pretensioners, would help keep an occupant in the seat itself and not bouncing upward into the roof.

Because of these failures, Public Citizen calls for improved safety belt standards. With safety belts not the panacea promised by industry and the administration, the report also calls for passage of new protective standards that would make vehicles less prone to rollover and less dangerous during rollover crashes.

EPA Delays but Refuses to Withdraw Mercury Rule

In the new timetable, the EPA will continue to accept comments on its proposed rules on emissions of mercury by power plants until March 15, 2005, and the rules will not be finally adopted until May 2005.

The proposed rule would limit power plants' emissions of mercury not by requiring the use of the most effective pollution reduction technology but, rather, by using a market-styled "cap-and-trade" program. In cap-and-trade programs, polluters are allotted credits, which are essentially limited rights to pollute that can in turn be traded with other polluters. Total emissions are in theory reduced by limits on the total number of available credits.

Unlike the alternative, an across-the-board requirement of the implementation of the maximum achievable control technology (MACT), cap and trade programs can result in pollution hot spots created by polluters who have purchased more pollution credits than their initial allotments. Even if a cap-and-trade program for mercury will achieve the same total reduction in mercury emissions as a MACT alternative, the cap-and-trade model does

not address the concerns of equity, or environmental justice, that some localities will be exposed to more intense amounts of mercury than others.

Opposition to the administration's proposed rule has been intense. Ten state attorneys general and environmental protection officers have called for more protective rules, and 45 senators urged Leavitt to withdraw the proposal altogether.

Further information on the rules and a template for voicing opposition to the rules can be found at the National Resources Defense Council's website.

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Proposed Budget Process Changes Are Too Risky

With the budget resolution appearing to be stalled in the Congress, attention may soon turn to changing the overall budget process.

Some conservative members have proposed a bill (H.R. 3800, "Family Budget Protection Act of 2004") that would fundamentally alter the playing field for crafting a budget in the Congress. Other budget process bills (such as H. R. 3973, "Spending Control Act of 2004) include some of the components of the broader bill.

Each of these bills forsakes budget responsibility by abandoning the process that led to surpluses in the 1990s, and instead twists the system in order to peruse a conservative agenda. The proposed changes would have the effect of biasing the system towards corporate and individual tax cuts, towards military spending, and away from domestic programs. To take two examples of proposed changes, the reforms would exempt tax cuts from offset requirements while requiring new entitlements to be paid for only with program cuts; and they would allow funds to be shifted from domestic programs to military spending, but not the reverse.

With a budget deficit forecast to be in the range of a half trillion dollars this year alone, now is not the time to experiment with risky, untested and undisciplined budget rules.

For more details on the effects of proposed changes to the process, including changes to PayGo rules, see:

- Proposed Changes Would Create Unbalanced, Flawed Budget Process (OMB Watch)
- House Budget Committee Process Proposal Would Not Restrain Those Areas of the Budget that Have Contributed Most to the Deficits (CBPP)

A Tax Cut a Week in the House

In spite of the "PayGo" logjam over whether or not tax cuts ought to be offset, which continues to prevent passage of a budget resolution, the House persists with its "a tax cut a week" schedule.

In recent weeks, the House has passed tax cuts at a cost of over $500 billion over the next ten years - none of which is offset. They include:

- H.R. 4181 to make permanent expanded tax breaks for married couples.
- H.R. 4227 for a one-year adjustment of the Alternative Minimum Tax.
- H.R. 4275 (AMT) to make permanent the expanded 10percent tax bracket.

This week, the House is scheduled to consider H.R. 4359, which would make the $1,000-per-child tax credit permanent.

These tax cuts were originally part of the first Bush tax cut (The Economic Growth and Tax Relief Reconcilation Act passed in 2001 at a 10-year cost of $1.3 to $1.6 trillion) and are scheduled to "sunset," or return to previous law, in 2005. All of the 2001 tax cuts were passed with complicated phase-in and sunset provisions through 2010. Permanent extension of all of the 2001 tax cuts — including those, such as the estate tax repeal, that benefit only the wealthiest — is high on the President's priorities. "Fixing" the AMT, which has not risen with inflation and threatens middle-class taxpayers with higher taxes, is also a high, but costly, priority. For more on the AMT, see an OMB Watch analysis.

While there is broad support for these three "middle-class" tax breaks, and for fixing the AMT, there is concern over the pricetag. However, efforts in the House to offset the costs, or make permanency contingent on balancing the budget, have failed.

What is rarely part of the discussion is the reality that the small monetary benefits to individual taxpayers **will** be offset by reductions in the services that we all depend upon. The money to pay for the tax breaks has to come from somewhere.

Even beyond the costs of the tax cuts — radically decreasing federal revenue even while the costs of the Iraqi conflict grow - the federal tax code is increasingly skewed in favor of investors over workers. An analysis by the Institute on Taxation and Economic Policy, released by Citizens for Tax Justice, shows that personal taxes on earnings are now two and one-half times greater than taxes on investment income. Another analysis by William Gale and Peter Orszag, published in The *American Prospect*, also presents evidence that "tax cuts enacted during George W. Bush's presidency shift the burden of taxation away from upper-income, capital-owning households and toward the wage-earning households of the lower and middle classes."

Internet Tax Ban Going Nowhere

As reported in the last Watcher, on April 28 the Senate passed a four-year continuation of the now-expired Internet tax moratorium. Disagreements with the House make passage of the ban unlikely.

The continued prohibition of taxation on the charges a user pays to an ISP to connect to the Internet is strongly opposed by state groups, including the National Governors Association, the Multistate Tax Commission, and others, because of losses to state revenue. It is strongly supported by by the telecommunications industry — the primary beneficiaries of the ban. It appears that major differences between the House and Senate on the scope of the bill make it unlikely that it will move forward. The Senate bill, besides being only for four years, exempts VoIP (Voice over Internet Protocol) from the ban and also "grandfathers in" states with existing taxes. The House bill is much broader, does not include any grandfather clauses, and makes the ban on Internet taxes permanent.

Update on Long-term Proactive Initiative

We thought you would like to know about an exciting and promising new effort aimed at stimulating the development of a long-term, proactive initiative on federal tax and budget policy.

Expert analyses, and President Bush's own budget, indicate that the present federal course of revenue cuts and rising healthcare costs is unsustainable. The long-term picture makes the current budget crisis that has dominated many nonprofit meetings look like a walk in the park. Conservatives have described the strategy as "starve the beast." Grover Norquist, a leader in the conservative movement, was more direct: "Kill the taxes and you kill the government."

The routine is familiar: conservatives present an alarming proposal, the nonprofit community fights the proposal and a "compromise" emerges. The compromise is better than the original proposal, but still pretty dreadful. We spend most of our time defending against things we don't want, like spending cuts or tax giveaways, and very little pursuing a vision of what we do want.

OMB Watch believes it is time to break this cycle. This past December, after a series of interviews with nonprofit leaders, we released a "call-to-action" paper. Conversations stemming from the paper overwhelmingly indicated enthusiasm for development of a proactive vision of tax and budget policy, and a long-term plan for achieving that vision. With the support of the Open Society Institute, the Marguerite Casey Foundation, and the Annie E. Casey Foundation, we have since taken the following steps:

- **Conducted a broad survey of the nonprofit community**
  More than 700 groups nationwide responded to an online survey about their organizations' current tax and budget activities and interest in a longer-term campaign, issues it would focus on, challenges it would face, and the needs of groups who might participate. The survey found 90 percent of respondents supporting the launch such a long-term effort. (More details)
- **Held five regional strategy sessions in March and April**
  Local participants at state and regional strategy sessions in Columbia, S.C., Chicago, Seattle, Phoenix and Philadelphia engaged in lively, rich discussions about "where we are now," "where we want to be in ten years," strategies for getting there, challenges and opportunities along the way, and possible next steps. Major themes that emerged include the need to address attacks on the role of government, the importance of strengthening civic responsibility, possible elements of a 10-year vision, and resources needed to make a long-term initiative successful, including infrastructure and leadership. Crosscutting all of these was one question: What does the nonprofit community need to do differently to be more effective on the federal tax and budget front? Each session was co-hosted by an organization in that state. Summaries will be posted as they become available.
- **Begun planning a national retreat for June 13-14**
  A planning committee is currently organizing a two-day retreat in the Baltimore-D.C. area to bring together local, state and national nonprofit leaders. Using the survey results, the regional meetings, and our many discussions with other national groups, participants would develop a long-term proactive federal tax and budget strategy, and develop immediate next steps toward making this initiative a reality.

OMB Watch is fulfilling the role of "provocateur" and does not intend to be "in charge." There is widespread support for such a campaign and many challenges and needs to be met: better values-based framing and messaging, broadening and re-energizing the base, developing a leadership structure, improving coordination,

and determining how to best influence the debate.

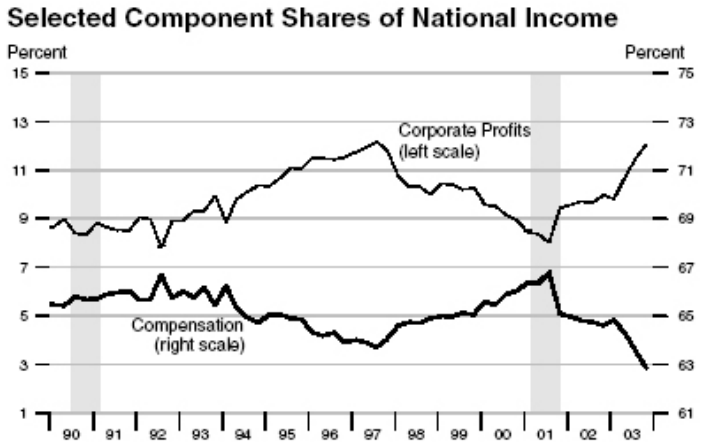
OMB Watch is proceeding with two high-priority items. First, we are developing a prototype of a tax-and-budget Internet resource center designed to provide easy access to the large volume of very useful, existing federal tax-and-budget information and tools. The resource center would also promote networking among state, local and national groups of all types. It should be available for preview later this summer. In addition, we are developing a "Face on the Numbers" database — a collection of true stories about how government services have aided real people and how gaps in services have hurt people. The database would help the news media, policymakers and others translate complex statistics into human terms. (To contribute stories, please contact Ellen Taylor at OMB Watch. For more on this, visit Face on the Numbers.)

Much more needs to be done to advance this initiative. Its success depends on all of us participating as a community in its development. As the "provocateur," we at OMB Watch also know we have much to learn in order to do this wisely. In particular, we are committed to building on existing activities at the local, state and federal levels, expanding resources for longer-term activities, and linking short-term actions with long-term objectives. John Irons, Ellen Taylor and Gary Bass — lead staff from OMB Watch — welcome your input, as well as the names of any colleagues this may interest. For updates on the project, you may subscribe to our "taxbudgetaction!" email listserv by using a convenient sign-up box.

Economy and Jobs Watch: Corporate Profits at Record Highs, While Labor Compensation at 38-year lows

Recent data show a major shift in the balance between corporate income and labor compensation. As a share of the economy labor compensation has not been this low in almost 40 years (since 1966), and after-tax corporate profits are at the highest levels ever recorded by the Bureau of Economic Analysis.

Since it's peak in 2001, as a share of gross domestic product (GDP), labor compensation has decreased by about 4 percent (from 67 to 63 percent) and corporate profits have increased by about 4 percent (from 8 to 12 percent) — see chart below. After taxes, corporate profits reached 9.6 percent of GDP — the highest level recorded dating back to 1947.



(Components are percent of GDP; source: graphic adopted from National Economic Trends, St. Louis Federal reserve.)

Over the past year, the overall economy, as measured by GDP, has grown consistently at a rate of about 5 percent, and is seen by many to be a sign that the economy has, at long last, come out of the 2001 recession. The conventional wisdom is that increased overall production will eventually make its way into the pocketbooks of ordinary Americans. However, this recovery appears to be different — in part because of the dismal performance of employment in the postrecession period — but also because it appears that a lower proportion of national income is going towards labor.

An economic recovery is not real unless there is widespread participation in the economy, and the economic

benefits accrue to a broad base of Americans. The current recovery appears to be failing that test.

Economy and Jobs Watch: Employment Struggling to Recover

Employment increased by a steady 288,000 jobs in April, the Department of Labor announced earlier this month. The unemployment rate remains steady at 5.6 percent as well.

Together with last month's employment numbers, the data show that the overall labor market is belatedly showing some signs of life — although the overall post-recession employment situation continues to significantly lag behind past economic recoveries. For the first time since WWII, the economy has not returned to pre-recession employment levels at this point in the recovery.

In addition, the labor market has weakened for some segments of the population. Teenage unemployment (16- to 19-year-olds) has increased over the past few months and is currently at 16.9 percent. Some are predicting a dismal employment situation for teens this summer.

Finally, the employment number was still below the Bush Administration's projection for the number of jobs that would be created due to tax law changes. Over the past 10 months, the total number of jobs is about 2 million below the administration's prediction, which was made just last summer. (See JobWatch.org for more details.)

OMB Fast-Tracks Revised Peer Review Policy

The Office of Management and Budget (OMB) appears unwilling to allow a sober and unhurried review of their revised proposal for government-wide peer review requirements. The revised proposal was published in the Federal Register April 28 with only a 30-day public comment period that is scheduled to end May 28. OMB rejected a request from various public interest groups for a 60-day extension to the public review period.

OMB proposes to establish a government-wide set of requirements for when and how federal agencies use scientific peer review. The policy includes very restrictive provisions for the most influential scientific information, restrictions that could delay and dilute the scientific studies most important to protecting public health and safety. After receiving strong opposition for its original peer review proposal from scientists, environmentalists, and public interest groups, OMB significantly revised the proposal.

Given the many substantive changes that have been made to the document, a longer period of time is necessary to enable the public, including interest groups and scientists, to fully review and consider the complex proposal. The original peer review proposal attracted a great deal of attention from scientists, academics and former regulators. For many, analyzing government policies is not their primary responsibility. They have research deadlines, classes to teach, businesses to run and a review period longer than one month seems essential to obtain their useful input, particularly since these guidelines may have significant policy impact. However, OMB claims that an extension is unnecessary because those persons interested in the proposal are already familiar with it from the first review.

OMB has also rejected a request signed by various public interest groups that the revised peer review proposal undergo a 120-day interagency review process. Federal agencies have extensive experience with scientific information, peer review and the regulatory process. It is essential that OMB consider these agencies' opinions during the development of a government-wide peer review policy. OMB recognized the importance of agencies' feedback during the review of the original draft *Peer Review Bulletin* and undertook a separate comment process specifically for federal agencies. Even though the revised proposal does not have an explicit process to elicit feedback from agencies, as the original proposal had, OMB claims that it "continues to engage the agencies."

Urge OMB to reverse their decisions and conduct a proper and full review of the proposed peer review policy, click here.

One Week Remains for Comments on Critical Infrastructure Information Rule

Only a single week remains to submit comments to the Department of Homeland Security (DHS) on the highly controversial Critical Infrastructure Information (CII) rule. DHS published an interim final rule in the *Federal Register* Feb. 20 with a 90-day public comment period that ends May 20.

Even though the agency continues to accept comments on the CII program, the rule went into effect upon publication. DHS has reported to Congress that it has already received several submissions for the CII program.

The stated objective of the CII program is to encourage corporations, which own a majority of the country's "critical infrastructure," to inform the government about any problems or vulnerabilities associated with the infrastructure. However, to encourage companies to participate in this voluntary reporting program the government promised to never publicly disclose the submitted information, nor use it for any regulatory actions including inspections, violations and fines. Additionally, the submitted information may not be used for any civil liability. In other words, the companies received liability immunity for any problems they reveal to the government under the CII program.

Many have criticized these provisions as giving away both the public's and the government's ability to apply pressure and ensure that any vulnerabilities are eliminated. The CII program may become a bureaucratic dead-end into which companies can dump their documents to receive secrecy and immunity.

Other complaints have been raised about the basic structure and implementation of the program. Currently the program is limited to direct submissions to DHS. However, DHS has expressed a desire to expand the rule to allow companies to submit information through any federal agency. Such a change could restrict agencies' ability to operate. Since CII information cannot be used for any regulatory action, allowing the information to flow through regulatory agencies would taint all of their actions. For instance, if a chemical facility submitted CII through the Environmental Protection Agency, when EPA next inspected the facility the company could claim that EPA unfairly targeted them because of their CII submission and thereby avoid responsibility for any problems discovered during the inspection.

OMB Watch will soon complete its detailed comments on the interim final CII rule. Citizens can tell DHS to limit this program and not to provide a safe haven for companies dragging their feet on fixing infrastructure problems click here.

Secret ACLU, NYCLU Lawsuit Tests Constitutionality of Patriot Act

While Congress remains reluctant to extend provisions of the Patriot Act set to expire in 2005, the American Civil Liberties Union (ACLU) and New York Civil Liberties Union revealed that they secretly filed a lawsuit last month challenging the constitutionality of a section of the Patriot Act that gives the government the authority to use "National Security Letters" to subpoena business records without judicial oversight.

This latest turn follows a familiar pattern in the Kafkaesque debate about the Patriot Act. Gag orders on people that the federal government targets under some sections of the Patriot Act prevent anyone from learning about the circumstances surrounding the government's use of those very same Patriot Act powers. For example, when the FBI uses its powers under section 505 of the Patriot Act, the part of the law targeted in the recently filed lawsuit, to demand that an Internet Service Provider or other business turn over email traffic and other customer information, the recipient of the letter cannot discuss the Letter with anyone. "It isn't even clear that a recipient can speak to a lawyer," Ann Beeson, an ACLU lawyer, told the New York Times.

The secrecy surrounding this case has created obstacles for the public interest plaintiffs. The groups kept the lawsuit a secret while they negotiated with the government what they could say publicly about the secret case. Once they came to agreement on those terms, the ACLU issued a press release that, in part, described the schedule of the case. The government claimed the release violated the judge's secrecy order. The ACLU removed two paragraphs from the version of the press release on its website while attempting to resolve the matter. The judge refused to lift the seal but outlined a process for redacting information from court documents before releasing them to the public. The judge kept under seal information relating to terrorism investigations that may come to light during the case.

Meanwhile, key Republicans are balking at extending provisions of the Patriot Act that expire in 2005. The White House has pressed Congress to extent the sunsetting provisions this year, but the current chairperson of the House Judiciary Committee, Rep. Jim Sensenbrenner (R-WI), has expressed no interest in doing so. In the

Senate, a key player is on the Judiciary Comittee, Sen. Arlen Specter (R-PA), a co-sponsor of legislation by Sen. Larry Craig to strengthen controls on the government's Patriot Act powers.

National Security Letters subpoenas can be served on any individual or business in connection with counterintelligence and terrorism investigations. Questions about the impact of the Patriot Act on civil liberties have persisted in part because of the secrecy surrounding how the government uses its Patriot Act powers, which undermines open, democratic debate about the Act's most controversial provisions.

FEC Delays Political Committee Rulemaking for 90 Days

At its May 13 meeting the Federal Election Commission approved a General Counsel recommendation to defer action on its political committee rulemaking for 90 days. The General Counsel said the FEC needed time to give the complex issues in the case more thorough consideration, saying "It is just as important not to drop the issue as to get it right." The move makes it unlikely any new rules will take effect this year. In response the House Administration Committee has scheduled a hearing for May 20.

The action followed rejection of a proposal from Commissioners Michael Toner and Scott Thomas, who advocated for quick action that would have subjected most 527 organizations (groups exempt from federal income tax whose primary purpose is to influence elections) to FEC rules. Everything from political parties and candidate campaigns to local ballot measure campaigns are included in this category. Although their proposal did not specifically exempt 501(c) organizations from regulation, they made it clear that they intended to do so and would be willing to amend their proposal accordingly. The Commission rejected this approach because two major elements of the Toner-Thomas proposal are undefined: what constitutes a "major purpose" to influence federal elections, and what communications "promote, support, attack or oppose" a federal candidate.

The FECâ€™s decision not to drop the rulemaking means that they will come back in mid-August likely to adopt one of three options outlined by the General Counsel — issue a final rule, make a new proposal and seek public comment, or defer action and seek guidance from Congress.

The ruling allows Democratic leaning political committees like Americans Coming Together and the Media Fund to continue their operations. Within days of the FEC meeting Republican leaning groups, such as the Club for Growth, said they would begin raising funds.

Shortly after the FEC meeting ended, Rep. Robert Ney (R-OH), chair of the House Administration Committee, announced an oversight hearing for May 20. In a press release Ney said he wants the FEC Commissioners to explain their action and expressed concern about the growing activity of 527 organizations. More details are at nonprofitadvocacy.org.

OMB Updates Guidance for Federal Grantees

As part of its effort to streamline the federal grants process, the Office of Management and Budget has published updated versions of its grants circulars that make definitions of key terms consistent for all types of grantees. The new Title 2 of the Code of Federal Regulations will centralize all policy guidance and rules for grants and cooperative agreements.

The Federal Financial Assistance Management Improvement Act (FFAMIA) requires the federal government to simplify the grants process. In August 2003 OMB proposed changes to its guidance on cost principles that would reduce confusion by making descriptions of similar cost items consistent in three of its Circulars: A-21 (Educational Institutions), A-87 (State, Local and Indian Tribal Governments) and A-122 (Non-Profit Organizations).

The OMB announcement includes a chart so that grantees can compare the old and new versions of the cost principles. There were no changes to the existing definition of lobbying in A-122, but a new section (d), Executive Lobbying Costs, was added. It disallows costs for "attempting to improperly influence, either directly or indirectly, an employee or officer of the Executive Branch of the Federal Government to give consideration or to act regarding a sponsored agreement or a regulatory matter. Improper influence means any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a federally-sponsored agreement or regulatory matter on a basis other than the merits of the matter."

The definition of "executive lobbying" is consistent with federal law prohibiting use of federal funds to lobby for a grant award or cooperative agreement. It allows advocacy on federal regulatory matters as long as it is based on the "merits of the matter".

The simplified cost principles will affect more than 600 programs administered by 26 federal agencies. Currently the federal government spends about $400 billion per year on these programs. The announcement acknowledged that many programs rely on more than one federal grant from more than one agency, adding to the complexity of grant administration. Some of the 184 comments OMB received suggested improvements to the circulars. However, OMB will consider such changes in the future.

On May 11 OMB announced that it has created a new Title 2 in the Code of Federal Regulations that will be a central point of reference for all government wide guidance on grants. The announcement said subtitle A will include all government wide guidance for grants and cooperative agreements, and subtitle B will c contain all specific agency regulations adopting OMB guidance. Subtitle A will be published in two phases. First, a Chapter II will include all guidance and circulars in their current form. As changes are made and finalized they will be published in Chapter I and the old version in Chapter 2 will be deleted. OMB Circulars will continue to be available on OMB's website.

The announcement said OMB is working with an interagency group to "consider ways to improve the OMB guidance and to develop an outline, to the extent possible, for agency regulations implementing the guidance." After final changes to the Circulars are completed, OMB will review agency regulations to ensure conformity. However, OMB said the diversity of programs "makes it inappropriate for the OMB guidance to prescribe all of the agency-specific and program-specific requirements that may be needed." Agencies are required to provide OMB with justification for any alternative or additional provisions in their regulations.

Democratic Senator Cancels Criticized Fundraiser

Sen. Blanche Lincoln (D-AK) has decided to cancel his July 28 fundraiser that was to be held during the weekend of Democratic National Convention in Boston. Worried about both potential criticism and comparisons with the fundraiser hosted by Rep. Tom DeLay's (R-TX), Lincoln decided to pull the plug. For more on this see last week's *Watcher* story entitled, In the Name of Charity or Political Gain?

Lawsuits Challenge Viewpoint Discrimination Against Nonprofit Public Communications

The American Civil Liberties Union (ACLU) filed two federal lawsuits aimed at protecting nonprofit speech.

Organizations advocating for changes in federal drug policy, represented by the ACLU, filed suit in federal district court challenging the constitutionality of an amendment in the FY2004 appropriations bill. The amendment, sponsored by Rep. Ernest Istook (R-OK), prohibits federally funded transit authorities from accepting advertisements promoting the decriminalization of any Schedule I substance, including marijuana, for medical or other purposes. Istook introduced the amendment after seeing an advertisement on the District of Columbia's Metrorail system that showed a picture of a man holding a woman in his arms with a tag line, "Enjoy better sex! Legalize and Tax Marijuana." After the FY2004 appropriations became law, the ACLU along with the Drug Policy Alliance, Change the Climate (authors of the Metrorail advertisement), and the Marijuana Policy Project submitted an advertisement to the Washington Metropolitan Area Transit Authority (WMATA) showing a group of ordinary people standing behind prison bars under the headline, "Marijuana Laws Waste Billions of Taxpayer Dollars to Lock Up Non-Violent Americans." The ad was rejected. The groups are asking the court to declare the Istook Amendment unconstitutional and to order WMATA to accept the paid advertisement. Arguments in the case were heard April 28.

For more background information on the Istook Amendment see our Dec. 15 *Watcher* article, Istook Strikes Back - Another Attack on Nonprofit Speech.

For more information on the ACLU et al. suit against the Washington Metropolitan Area Transit Authority see the ACLU's press release.

In another case of viewpoint discrimination, the 3 Rivers Music Festival in South Carolina, refused the Midlands chapter of National Organization for the Reform of Marijuana Laws (NORML) the right to advocate and distribute

information at the festival. NORML was the only nonprofit organization to have their booth application turned down by the festival. The South Carolina Chapter of the ACLU immediately sent a letter to the 3 River Music Festival demanding that NORML be able to attend the festival and have a booth. In addition to the letter, the ACLU filed a federal suit against the festival. Festival then agreed to allow NORML to participate, but stated that it had a written policy that called for the removal of any activists that do not remain in their booth to distribute literature. Before the judge was able to rule on the case, the 3 Rivers Music Festival decided to allow nonprofits to hand out literature. In the end, NORML attended the festival, had a booth alongside nonprofit advocacy groups, and freely distributed literature.

Anti-regulatory Bill Pushes Through House

A bill making its way through the House threatens to advance the cause of "regulatory budgeting" policies that ration our protections of the public health, safety and environment based on phony cost and benefit numbers tailoredto serve industry interests.

Called the "Paperwork and Regulatory Improvements Act of 2004," H.R. 2432 moved from its subcommittee directly to markup by the full government reform committee May 13. The House as a whole has yet to take up the bill but could do so very soon now that it is being reported out of committee.

H.R. 2432 calls for the following:

- **Making the case for regulatory budgeting.** The bill would move us closer to "regulatory budgeting," a dangerous concept that treats the vital protections of public health, safety, and environment as though they were gratuitous expenses that must be rationed. The ultimate vision of regulatory budgeting is a world in which the economists have the final say on our public safeguards, as incalculable and literally priceless benefits, such as lives saved, irreplaceable natural resources conserved, and diseases prevented, are turned in cash-dollar figures and weighed against the costs to industry of complying with new protective rules. Our safeguards could then be "budgeted" and subjected to arbitrary caps. H.R. 2432 will bring us closer to this nightmare scenario by having the White House study the feasibility of regulatory budgeting, in the process using taxpayer dollars to create the data that will be used to make the case for turning the vision of regulatory budgeting into a frightening reality.

- **Hiding the anti-regulatory agenda.** The bill would also require the White House to incorporate its annual report on the costs and benefits of regulation into its annual budget papers. This annual report lays out an anti-regulatory agenda and has been the platform the White House uses to invite industry to nominate public safeguards to be added to a "hit list." Given its important role in anti-regulatory policy, this report should not be buried under the arcana of budget issues. This section of the bill would also advance the regulatory budgeting agenda by re-framing our public safeguards as "off-budget costs."

- **Slowing the process.** This bill would further slow down the regulatory process by increasing the analysis that proposed rules have to go through. One section would establish that yet another arm of the government, this time Congress' own General Accounting Office, will be required to conduct its own cost-benefit analysis of proposed regulations — even though the agency and, many times, OMB as well have already conducted their own analyses. Cost-benefit analysis takes a lot of time, demands a large investment of resources, and produces very little benefit except to industry, which such analyses typically favor.

The bill also taps into understandable frustrations with IRS paperwork to advance a larger agenda that could limit the collection of information needed to make sure our public safeguards are effective. No one loves "red tape," but the cause of cutting red tape has left us with the Paperwork Reduction Act, a seemingly benign law that calls for mandatory reductions of all federal information collections, including the gathering of data intended to serve the public interest. One section of H.R. 2432 would advance the "paperwork-reduction" effort by studying ways to reduce IRS paperwork "burdens" on small business. Definitions of "small business" would include, in some cases, multimillion dollar corporations that are leaders in their respective fields but have small numbers of employees.

OSHA Bills Protect Employers at Cost of Workers' Safety

The House may soon consider four bills amending the Occupational Safety and Health Act of 1970, which would effectively consolidate White House control over the Occupational Safety and Health Review Commission (OSHRC) and provide leniency to employers at the cost of the health and safety of workers.

The first, the Occupational Safety and Health Small Business Day in Court Act, would give greater leeway to businesses that fail to file a response to OSHA citations within the 15-day deadline. Under this amendment, an OSHA citation is not final if the employer failed to contest the citation within the given time due to "mistake, inadvertence, surprise, or excusable neglect." Though the bill may ensure all businesses get their day in court, it also allows employers to contest a ruling after it is finalized, potentially clogging the commission with appeals while workplace hazards go on unchecked.

The second of the proposed bills would, under the guise of efficiency, add two more board members to the Occupational Safety and Health Review Commission. The president would be able to appoint both new members, with one term to expire in 2006 and the other in 2008. The bill also gives the President the ability to increase the length of the term of a member of the board for up to a year. Struck down during markup was a clause that would have allowed a two-person majority for any subcommittee designated by the chairman. As the bill stands, Bush administration appointees will hold two-fifths of the vote in a commission that decides cases by a simple majority. In adding two additional positions both to be filled by the President, this bill gives substantial power to decide OSHA cases to the White House. In a commission that makes decisions through a majority vote, adding members seems an ineffective way to increase efficiency.

The bill also requires that those commissioners have *legal training*, rather than just *related training*. Thus, healthcare professionals or safety experts who may be able to evaluate the health and safety risks posed by a violation will not be able to hold a seat on the commission.

Not only could the White House tighten its grip on OSHRC through the addition of two positions, but a third bill states that OSHRC, and not the Secretary of Labor, should be give deference in interpreting OSHA standards, even though those standards are developed and implemented by the Secretary of Labor, not OSHRC. The legislation overturns a 1991 Supreme Court decision that determined that the Secretary of Labor should be given deference.

The fourth bill, the Occupational Safety and Health Small Employer Access to Justice Act, would award attorney's fees to small business employers who challenge OSHA citation and win, regardless of whether the citation was substantially justified. Previous legislation already grants attorney's fees in cases in which the citation is unjustified. Expanding the right to attorney's fees will have a serious chilling effect on OSHA's ability to give citations in borderline cases, leaving violators to go unpunished. Businesses that qualify under the act, those with assets of up to 7 million dollars and up to 100 employees, make up 97.7 percent of private sector businesses and have a substantially higher rate of employee injury than larger businesses.

Side-Impact Air Bag Rule Issued, but Advocates Raise Questions

The federal highway safety agency has issued a new rule requiring side-impact air bags. However, safety advocates argue that, while a significant step forward, the rule is neither innovative nor sufficient to address side-impact collisions.

The new rule governs the amount of impact a test dummy registers during crash testing. The consequences of the new performance standard will most likely be that automakers will make air bags that protect the head during side-impact collisions a standard feature of new vehicles. For vehicles with sensors that detect a rollover, these side-impact bags will provide additional protection for the head during rollover crashes.

Safety advocates, however, argue that the new rule is not so new: it embodies a safety standard that auto makers had already voluntarily set in an agreement with Canada. Further, NHTSA called for industry to install side- impact air bags back in 1999, but the public was excluded from a negotiation that resulted only in side-impact air bags being offered at a high mark-up as a luxury option rather than a standard safety feature.

Moreover, the side-impact standard does not completely address the issue of vehicle incompatibility. In a side-impact crash, a strike vehicle collides with a struck vehicle. If the striking vehicle is a pick-up truck or SUV and the struck car a sedan, the damage can be significant. As Public Citizen points out, the new side-impact standard only addresses the smaller struck vehicle and ignores the larger vehicle's aggressive design features that

contribute to the incompatibility problem.

For more comprehensive safety measures, Public Citizen urges the passage of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act, or SAFETEA. The SAFETEA bill, currently pending in Congress, would extend beyond the side-impact standard by minimizing incompatibility, reducing rollover crashes and injuries, and implementing new public disclosures of vehicle safety information.

FDA Ignores Experts, Rejects Plan B for Over-the-Counter Use

The Food and Drug Administration (FDA) rejected an application to make Plan B, the "morning-after pill," available without a prescription, despite the nearly unanimous advice of its own panel of experts that the drug was safe for over-the-counter use.

An FDA-appointed group of scientists, medical professionals, and consumer and industry representatives reviewed materials on the safety and effectiveness of Plan B. For a drug to be approved for over-the-counter use, a patient must be able to do three things without the intervention of a physician: diagnose the problem, treat the problem effectively, and understand the drug's label. Considering both product safety and the requirements for over-the-counter use, the advisory committee determined in a 23 to 4 vote that the drug was a safe and effective option for women.

The decision was lauded by healthcare professionals as well as FDA staff members. In December, more than 70 medical and advocacy organizations signed a letter supporting the committee's recommendation to make Plan B available over the counter. In January, the Association of Reproductive Health Professionals (ARHP), representing more than 11,000 reproductive healthcare professionals, wrote FDA commissioner, Mark McClellan, to voice their support for the over-the-counter status of Plan B.

Dr. Steven Galson, acting director of the FDA's center for drug evaluation, made an unprecedented move when he rejected the advice of the joint committee, the healthcare community, and FDA staff, and wrote Plan B makers Barr Pharmaceuticals that the drug was "not approvable" for OTC sale.

The FDA rejected the proposal on grounds that not enough research had been done on whether girls younger than sixteen would understand how to use the drug. According to The New York Times, Galson maintains that "the worst-case scenario" of the availability of Plan B without a prescription "is you've got a young couple and they would normally use a condom when they were having intercourse, but since they know they can run to the CVS to get Plan B, are they going to worry about that?"

Even if Plan B required further studies, Dr. Galson could have deemed the drug approvable and still required that more information be provided. Rather he chose took the stronger stance of deeming the drug "not approvable," which requires the company to reapply for over-the-counter status rather than simply produce the necessary information. As Dr. Galson told the New York Times, "We said that the shortcomings are so large that we are not able to go that intermediary step."

The drug company plans to meet the hurdle put in place by the FDA and to resubmit its request for over-the-counter status. The ruling appears to require that Barr Pharmaceuticals do additional clinical trials as well as reapply for over-the-counter status, possibly delaying the appearance of Plan B on the shelves for years. The original application for over-the-counter status was likewise delayed; after it was filed in April 2003, FDA slated its ruling for February 2004, but delayed its decision until May for undisclosed reasons.

Rather than allowing the easy access of a safe drug that could avoid 89 percent of unwanted pregnancies from occurring, the administration chose instead to play to the politics of its electoral base.

Transcript of Advisory Board Meeting

Briefing Information from Advisory Board Meeting, including findings from studies of Plan B's safety and effectiveness

FDA's information on Plan B, including the letter of not approvable status

eRulemaking Workshops

The School of Public Policy and Public Administration at the George Washington University will host a series of half-day workshops on the federal eRulemaking Initiative June 2 to 4. The purpose of the workshops is to solicit input from various end-user communities with a stake in eRulemaking.

Participants representing six broadly defined constituencies are being invited to attend including: 1) larger businesses, 2) smaller businesses, 3) labor & environmental advocacy groups, 4) good government and public participation groups, 5) state & local governments, and 6) the legal and lobbying professions. Organizers also welcome the participation of federal agency personnel and academics at any of the sessions.

The eRulemaking Initiative represents the government's first serious steps toward more effectively integrating new electronic technologies such as the Internet into the regulatory process. For years public access advocates have encouraged the government to make greater use of the Internet. Many hope that as a component of making it easier to participate, the eRulemaking Initiative will provide fast electronic access to vast amounts of information, studies and documents related to any rule.

Space is limited at the workshops so only those willing to attend and contribute to a serious dialogue should register. The workshops are free and include lunch. (Registration and Information.)

As U.S. Embraces Secrecy, Other Countries Embrace Openness

Countries around the world are embracing laws promoting openness in government, according to an updated global survey for freedominfo.org, a web site operated by the National Security Archive and other openness advocates.

Over fifty countries have adopted freedom-of-information laws similar to the United States' Freedom of Information Act, which guarantees the public's right to access documents held by most of the executive branch. More than half of these governments passed these laws within the last decade.

The May 2004 update of the report, The Freedominfo.org Global Survey: Freedom of Information and Access to Government Records Around the World, includes profiles of four new laws passed since the report was last updated in September 2003. Each profile links to the text of the law and briefly notes the law's effectiveness (or lack thereof).

Ironically, while this report documents that other countries are embracing open government and more democracy to keep government accountable, the federal government here in the United States is under fire for turning its back on this country's biggest competitive advantage, its openness, and vastly expanding government secrecy. While the White House scrubs information from government websites, suppresses or rewrites scientific conclusions to conform to ideological and policy positions, Congress and the Bush Administration have undermined FOIA in two direct ways: The Homeland Security Act, passed in 2002, allows businesses to tell the federal government behind closed doors about known public health and safety threats to our nation's "critical infrastructure" without facing requirements, timetables or other consequences to fix the problems. And, reversing the previous administration's presumption of openness, Attorney General John Ashcroft in October 2001 directed federal agencies to reject requests for documents under FOIA whenever possible.

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In This Issue

Economy and Jobs Watch: Major Cuts to Domestic Services are on the Horizon

The White House's Office of Management and Budget (OMB) has instructed government agencies to plan for cuts to a wide range of domestic programs. In a memo dated May 19, 2004, (download pdf), the White House told agencies to prepare their budgets for fiscal year (FY) 2006 consistent with the FY 2005 budget proposal -- specifically, to "[a]ssume accounts are funded at the 2006 level specified in the 2005 Budget database." The database refers to the OMB computer run that was circulated earlier this year.

These funding levels contain significant cuts and will impact a wide range of services.

This release, and the associated computer printout, detail the direct and significant attacks on valued and popular government programs. To take just one example, the Department of Veterans Affairs, is being instructed to cut back by over $900 million in FY 2006.

On May 26th, the *Washington Post* reported on the directive saying that "[t]he Education Department; a nutrition program for women, infants and children; Head Start; and homeownership, job-training, medical research and science programs all face cuts in 2006. ... Also slated for cuts are the Environmental Protection Agency, the National Science Foundation, the Small Business Administration, the Transportation Department, the

Social Security Administration, the Interior Department and the Army Corps of Engineers." These are just a few of the programs slated to be reduced. For a full analysis of the implications, see the Center on Budget and Policy Priorities' analysis of the OMB's 5-year budget blueprint. For details on the implications of the cuts on many specific program areas, including education, health programs, housing, nutrition and many others, see the Coalition on Human Needs' 2005 budget report.

These cuts to services appear to be the second phase of a plan by advocates of shrinking the government to alter the structure of government away from providing services that serve lower and middle income families, as well as the general public. It is further verification that their long-stated desire to dramatically slash programs is being diligently followed by the Bush administration. The first phase of the plan was to reduce federal revenues through changes to the tax law that benefit primarily upper income individuals -- which largely has been accomplished -- with tax receipts as a percent of gross domestic product at their lowest level in more than 50 years.

This reduction in government spending will also likely harm the economy. Reductions in job training, education, early childhood nutrition and many other areas will have a lasting impact on the skill levels of current and future workers. In addition, reductions in the Transportation Department, the National Science Foundation, the Army Corps of Engineers and other departments will have a lasting impact on our national infrastructure and our ability to grow the economy in the future.

Budget Resolution Update

As of June 1, there is still no budget resolution, even as the appropriations process is scheduled to begin.

The House narrowly passed the FY 2005 budget resolution conference report on May 19. In spite of wishful thinking that sheer momentum would ensure Senate passage, a vote in the Senate was postponed to avoid an embarrassing defeat. Four Republicans -- Senators McCain (AZ), Collins (ME), Snowe (ME), and Chafee (RI) -- continue to hold out against passing a budget that privileges tax cuts over everything else by requiring pay-as-you-go ("PayGo") for spending, but not for tax cuts. While a deal may still be reached, it is possible and even likely that there will be no resolution this year. This would be the first time that a single-party House and Senate failed to pass a budget

While the budget resolution is non-binding, it does set broad spending and tax policies and establishes budget process rules. During the past few years, it has been used to make it easier to pass tax cuts, through the "reconciliation" process. Without a budget resolution, certain tax cuts will not be protected and, like other legislation, will require 60 votes to pass in the Senate, rather than a simple majority. In the current climate where the President and congressional majority are determined to make expiring tax cuts permanent, as well as pass even more unbalanced tax changes, the lack of a budget resolution may be a blessing.

Nevertheless, it is very likely that the extension of the so-called "middle-class" tax cuts that expire in 2005 (marriage "penalty," the 10 percent tax bracket, and expansion of the child tax credit) will garner the 60 votes needed in the Senate. However, the question of offsetting the cost may, and should, arise. These "middle-class" tax cuts could be paid for by rolling back some of the many tax breaks for the super-wealthy or closing tax loopholes so that corporations and billionaires would pay their fair share. Over 60% of corporations donâ€™t pay any federal tax â€“- and at a time when corporate profits are reaching record highs, Congress should be able to offset the costs and to keep from digging a bigger deficit hole.

Fixing the Alternative Minimum Tax (AMT) is another tax cut that is considered a "must-pass." The House has already passed those four tax cuts bills over the past few weeks, with no offsets, at a cost of a half trillion dollars over the next ten years. The Senate will likely consider this matter soon as well.

The House is also planning to take up a stand-alone bill to make changes to the budget process. Again, this is primarily designed to make tax cuts easier to pass and to reduce spending. This effort to radically shrink the government by slashing government revenue will continue to threaten big cuts in the government services and initiatives upon which all Americans depend.

With or without a budget resolution, America cannot afford costly tax cuts now, and their accelerating costs over the next few decades would prove disastrous.

What are some of the other implications of Congress' failure to pass a budget resolution?

- With the vehicle of the budget resolution into which a provision increasing the debt ceiling could be quietly inserted, the House will still be faced with finding a way to raise the ceiling sometime this summer. Without this increase, the U.S. Government would go into default -- an untenable scenario. Yet this measure may be included in the bill approving the $25 billion request for supplemental funding for Iraq, making a "nay" vote look like a vote against supporting the troops, or in some other legislation. This would avoid the election-year impact of public attention to the fact that the policies of this Congress and Administration have created a structural deficit that increases the national debt by the hour.
- Appropriations will be enormously complicated, but this is primarily because the "302(b)" limits that divide up the total discretionary appropriations amount into the 13 appropriations bills will be impossibly low. Increases in military spending, homeland security, and other specific programs will mean that funding for other domestic spending will be severely squeezed. By passing the budget resolution, the House "deemed" the $821.4 billion in total discretionary spending as the final level, allowing the Appropriations Committee to begin working on the spending bills, even if the Senate does not pass the resolution. In fact, the House Appropriations Committee has signaled its intent to move forward with three subcommittee markups during the week of May 31. However, some experts think that the end result may be a long-term continuing resolution (CR) funding government at last year's levels until, at least, after the election.

Congress returns this week. We can expect a long and contentious budget season ahead.

TSA to Expand "Sensitive Security Information"

The Transportation Security Administration (TSA) plans to expand the amount of information it can withhold from the public disclosure, according to a May 18 Federal Register notice.

Shortly after the 9/11 attacks, TSA assumed authority to restrict information from the public if it is deemed "sensitive security information" (SSI). However, until this new notice, SSI was limited primarily to aviation information. The new rule expands this information category to include security plans submitted to TSA by maritime facilities and vessels. The policy will prevent the public from learning about security concerns for these entities and how they are being protected.

A Feb. 5 Congressional Research Service (CRS) report discussed the controversies over SSI information noting concerns over management of the information and lack of accountability. In addition to TSA's ability to hide any information under a claim of SSI, nondisclosure agreements will further hinder the public's right-to-know. Airport administrations, local police departments, and TSA officials must sign nondisclosure agreements prohibiting anyone from speaking about an incident occurring on airport property. This causes confusion among many regarding exactly what information can be revealed to the public about law enforcement activity and prevents healthy public debate of security issues.

ABA Task Force Calls on IRS to Protect 501(c)(4) Groups

The American Bar Association (ABA) sent a letter May 25 to the IRS calling for two regulatory changes that would protect social welfare organizations exempt under 501(c)(4) of the tax code from losing exempt status if they are involved in election related activity.

The task force wrote, "Without regulatory action now to clarify the standards for Section 501(c)(4) groups on the issues of political activity and gift tax, the constitutional defects of overbreadth and vagueness in a case of speech protected by the First Amendment, are likely to result in years of protracted litigation, uncertainty, and wide variations in tax compliance practices, giving the edge to the risk-tolerant over the risk-averse in the political arena."

The report says the current uncertainty in the law, which only says 501(c)(4)s cannot make election activity their primary purpose, has been made worse by the effects of the Bipartisan Campaign Reform Act of 2002 (BCRA) and recent efforts to expand regulation of independent political committees that work on federal elections. These groups "face two huge uncertainties," the report said. First, there is no clear standard defining how much election activity is enough to make it a groupâ€™s primary purpose. The task force recommended that a safe harbor be established, allowing 501(c)(4) groups to spend up to 40 percent of their funds for election-related activities.

The second uncertainty is whether gift tax rules apply to 501(c)(4)s. Gift taxes can be imposed on more than

half of all contributions over $10,000 to 501(c)(4)s, but political committees exempt under Section 527 do not have to pay gift taxes. The task force said the law is unclear on application of the tax to 501(c)(4)s. They encouraged the IRS to announce it will not impose the tax on these groups.

FEC Commissioners Explain Rule Delay to House Committee

On May 13, the Federal Election Commission (FEC) voted to delay for 90 days action on a proposed new rule extending federal regulation to independent political committees. House Administration Committee Chair Robert Ney (R-OH) immediately set and held a hearing May 20, to shed some light on what questions and issues Committee members have about the rule, and what action the FEC might take at the end of the 90-day period. All agreed that no action on the rule is likely to take effect this year.

Ney opened the hearing by noting that donors are likely to start giving to independent groups sympathetic to Republicans (see related article). Ney, who opposed the Bipartisan Campaign Reform Act of 2002 (BCRA), said the blame for the state of the law rests with its drafters, not the FEC. Rep. John Mica (R-FL) expressed disappointment with the FEC's decision, calling the amount of money likely to be spent on this year's election "obscene". Ranking Committee member John Larson (D-CT) expressed concern about the risk of corruption arising from independent political committees, and the role of 501(c) organizations because they do not disclose their donors.

During testimony by four FEC Commissioners, two commissioners, Michael Toner (R) and Scott Thomas (D), defended their proposal that was rejected by the Commission May 13. The Toner-Thomas proposal was more limited than the original proposed rule, but would still have significantly extended the FEC's regulatory authority to groups whose "major purpose" is influencing federal elections, and that "promote, support, attack or oppose" federal candidates. These thresholds are undefined, and such a rule could have proven to be too vague and overbroad.

Both Toner and Thomas argued that regulation of independent groups must go beyond the express advocacy standard, which required an explicit statement urging votes for or against federal candidates. Thomas said the current rules that allow groups to split their regulated and unregulated funds based on a ratio using the express advocacy standard must be changed.

FEC Vice-Chair Ellen Weintraub (D) defended the 90-day delay in the rulemaking, citing concerns about the impact the Toner-Thomas proposal would have on nonprofits, who have a right to criticize the government, even during an election season. She also expressed concern about the proposalâ€™s lack of definitions for the terms "major purpose" and "promote, support, attack or oppose."

FEC Chair Bradley Smith (R) also defended the delay, noting that BCRA did not change the definition of a regulated political committee and the Supreme Court did not address the question in its opinion upholding the law. He believes the FEC does not have the authority to go beyond the express advocacy standard for independent groups. However, he said the FEC could act on the allocation rules.

After the testimony Rep. Larson again raised the issue of 501(c) groups, asking if there is a corruption problem that needs to be addressed and whether political committees would change their tax-exempt status in order to avoid FEC regulation. Thomas said the "major purpose" and "promote, support, attack or oppose" tests would ultimately apply to 501(c) groups. Weintraub said the proposed rule fails because of the potential for loss of disclosure information if groups change their status from Section 527, which exempts political committees but requires disclosure of donors to the Internal Revenue Service (IRS), to 501(c)(4), which does not require donor disclosure.

Rep. Vernon Ehrlers (R-MI) and Rep. John Doolittle (R-CA) asked questions about the effectiveness of campaign finance laws. Smith said he thinks disclosure is the best approach, and Weintraub said BCRA was successful in breaking the link between soft money and federal officeholders. Thomas said campaign finance law helps reduce the influence of special interests.

Ney said it may become necessary to retain "an attorney, an accountant and a bail bondsman" to run for federal office. If the Toner-Thomas proposal were adopted, the same could be true for nonprofits that criticize federal officials.

Report Says IRS Site on 527 Groups Needs Improvement

A May 12 report by the Treasury Department's Inspector General for Tax Administration found that the Internal Revenue Service (IRS) has complied with a 2002 Congressional mandate to make its website disclosing finances of Section 527 political committees searchable. However, the report said improvements are needed.

In 2000 Congress passed what was known as the "Stealth PAC law" to require political committees that do not report to the Federal Election Commission to disclose their contributins, donors and expenditures to the IRS. In 2002 the law was amended to mandate electronic filing and require the IRS to make the information available on the web in a searchable format. It exempted committees that work on state or local elections and report to state authorities from filing requirements.

The report, *Improvements Are Needed to the Updated Web Site for Political Organizations to Increase the Accuracy and Consistency of Search Results for Filing Information* (No. 2004-10-097), found that some search results yielded incomplete or inaccurate information, but noted the IRS is moving to address the problem.

Republicans Jump on "527" Bandwagon

Within days of the Federal Election Commission's (FEC) May 13 decision to delay action on its proposed rule expanding regulation of independent political committees (often referred to as 527 groups), Republicans began calling for aggressive fundraising for groups sympathetic to them. By the end of May some Republican Members of Congress were stretching the limits of the Bipartisan Campaign Reform Act of 2002 (BCRA) by agreeing to appear at fundraisers for groups like the Leadership Forum.

Before the FEC action made it clear rules would not change in this election cycle, Republicans in Congress and the Bush administration strongly criticized 527s focused on defeating President Bush this November, saying they were violating campaign finance laws by accepting substantial donations of unregulated [soft] money. After the FEC decision, BCRA sponsor Rep. Chris Shays (R-CT) joined House Speaker Dennis Hastert (R-IL) and Republican Congressional Committee Chair Rep. Tom Reynolds (R-NY) in a statement accusing groups sympathetic to the Democrats of operating "with no regard for the law" and predicting that groups sympathetic to Republicans would emerge. This was seen as a signal to Republican donors, including corporations, who had been waiting to see what action the FEC would take, to give to groups like the Club for Growth and Progress for America.

Bush-Cheney campaign chair Marc Racicot and Republican National Committee (RNC) Chair Ed Gillespie issued a statement predicting "The 2004 elections will not be a free for all." The Hill newspaper reported that the Republican switch began before the FEC decision, when Ken Mehlman, manager of the Bush-Cheney campaign, met privately with lobbyists on May 11 and predicted an immediate fundraising push by 527 groups sympathetic to Republicans. One attendee joked, "On Friday, donâ€™t pick up your phone because theyâ€™re going to be asking for money."

Two major Republican leaning groups, the Leadership Forum and Progress for America, are stretching the limits of what is allowed under BCRA since the FEC decision. According to The Hill the Leadership Forum, run by the former chief of staff to House Majority Leader Tom Delay (R-TX), will feature House Speaker Hastert and Senator Rick Santorum (R-PA) at events this summer. BCRA prohibits federal officeholders from raising soft money, but FEC rules allow them to appear and speak generally without making a fundraising pitch.

Progress for America, a 501(c)(4) organization, announced plans to become a 527 group so that it can engage in more election-related activity. They plan on purchasing advertising praising Bush in 18 battleground states, and have hired a direct-mail specialist, Tom Synhorst, who is a partner in a firm that has done $1.8 million in business with the Bush-Cheney campaign. The firm, Feather, Larson & Synhorst, said Synhorst will work in "silo", and not participate in the firm's work for Bush or the RNC.

The Club for Growth was operating prior to the FEC decision, sponsoring ads praising President Bush in five battleground states. They have raised $9 million so far, and plan to spend $10 million on issue ads in the presidential race. Americans for Tax Reform President Grover Norquist announced plans to create a separate segregated fund with a goal of raising $6 million by election day. Americans for a Better Country also announced ambitious fundraising plans, but reportedly has not raised any money yet.

The overall impact of the Republican effort to promote 527 groups is unclear. The party has encouraged contributions of hard money to the RNC or Republican candidate committees, and has been very successful. By mid May Bush had raised $100 million more than the Kerry campaign, outspending it by a 3-1 margin. However,

the effect has been moderated by liberal 527 groups' spending of $86 million on anti-Bush ads.

Judge Acquits Greenpeace in Victory for Free Speech

On May 19, 2004, a federal court judge threw out the charges brought against Greenpeace by the United States Justice Department. Shortly after the prosecution rested their case, the judge decided that there was not enough evidence for the case to go to the jury and granted the motion for acquittal.

It was the first time in history that an entire organization was held liable for the actions of a couple of its supporters. Organizations including the American Civil Liberties Union and the Sierra Club opposed the Bush administrationâ€™s move as an attempt to use the heavy hand of government to silence its critics.

Greenpeace was charged under an 1872 law that was meant to keep brothel recruiters from boarding ships. The U.S. Justice Department under Attorney General John Ashcroft tried to use the obscure law to convict an entire national organization for the acts of two activists who had climbed aboard a ship carrying Amazon mahogany wood into the Port of Miami. The two hung a banner that said, "President Bush: Stop Illegal Logging."

Unfortunately, the unprecedented prosecution of Greenpeace drew more of attention than the issue â€“ American importation of illegal and endangered trees. *South Carolina Herald* reported that "the lucrative Brazilian wood was later unloaded in Charleston." A Brazilian lawmaker and former head of Brazil's environmental agency, who had signed the mahogany export moratorium in October 2001, said the acquittal will "help us fight in Brazil against such illegal activities."

IRS May Investigate Catholic Diocese Political Communications

A charity watchdog group has asked the Internal Revenue Service (IRS) to investigate and possibly revoke the tax-exempt status of the Roman Catholic Diocese of Colorado Springs.

Americans United for the Separation of Church and State (AU) sent a letter to the IRS stating that the diocese in Colorado Springs had crossed the partisan electioneering line. Organizations exempt from taxes under 501(c)(3) of the Internal Revenue Code are forbidden to support or oppose any candidate for office. Bishop Michael Sheridan wrote in a Catholic newspaper in May that Catholics should not receive communion if they vote for politicians who disagree with the church by backing abortion rights and other topics.

AU Executive Director Rev. Barry Lynn said, "By issuing this document in a church publication in his official capacity as head of a religious organization, Bishop Sheridan may have violated federal tax law and jeopardized the tax-exempt status of the Diocese." See *Denver Post* article.

Public Outcry Forces DeLay to Cancel Fundraiser

A charity associated with Rep. Tom DeLay (R-TX) has finally decided to pull the plug on its fundraiser that was to take place during the week of the Republican National Convention in New York. The cancellation came after numerous complaints were filed to the IRS and an outpouring of criticism was rehashed in most major U.S. newspapers.

Within weeks, two members of Congress have cancelled charity events in response to public outcry and perception that they were really covert political fundraisers. This demonstrates how powerfully media can influence the decisions of policymakers, especially during an election year.

To learn more about DeLay and his charity read More Complaints Filed Against Congressman DeLay.

For more information on the other criticized charity events that were cancelled read In the Name of Charity or Political Gain? and Democratic Senator Cancels Criticized Fundraiser.

New Bush Regulatory Report: Ex-Agency Workers Describe Anti-Regulatory Agenda

Citizens for Sensible Safeguards released a new report documenting a systematic attack on regulatory protections to a standing-room-only crowd at an event that featured former federal workers who have resigned in protest of that attack.

The report, *Special Interest Takeover: The Bush Administration and the Dismantling of Public Safeguards*, was produced on behalf of Citizens for Sensible Safeguards by OMB Watch and the Center for American Progress.

It was released last Tuesday at an event held at The Wilderness Society. After introductory remarks by Carol Browner, former EPA director under Clinton, OMB Watch Executive Director Gary Bass characterized the last four years as an attack on regulatory protections unparalleled in its breadth and depth.

"What is happening to the regulatory system is truly, truly alarming," said Browner.

Dr. Philip J. Landrigan, director of the Center for Children's Health and the Environment, spoke about the special threat a weak regulatory system poses for children. Children are more likely to be adversely impacted by pollutants and toxins in our food, air and water. Landrigan pointed to evidence of a direct link between air pollution and an increase in asthma in children. He also showed how a stronger regulatory system markedly improves the health and well-being of our children. Landrigan concluded by expressing the need for national prospective cohort study of American children. This comprehensive long-term study would provide invaluable date on the health and well-being of American children. However, the Bush administration refuses to adequately fund such a study.

The event also featured a panel of former federal agency workers who voiced their frustrations over the sweeping assaults on regulatory policy.

The panelists, who had served under both political parties, argued that the policies of the current administration have undercut agencies' ability to implement protections opposed by industry. The Bush administration has undermined the rulemaking process by cutting off funding, limiting staff and resources, limiting the power of existing staff, and swamping government workers with unnecessary and costly cost-benefit analysis. As a former EPA administrator, "I'm shocked and embarrassed," said Sylvia K. Lowrance, former EPA acting administrator for enforcement in 2001 and 2002. "Sound analysis is required for anything EPA wants to do unless it's a rollback."

The breadth of the assault on regulatory measures is evident in the number of regulations enacted in the past four years. Whereas the EPA set 21 regulations during the term of Bush I, only eight have been enacted under the current administration -- of those, seven were mandated by the courts and the last was actually a rollback.

The ex-civil servants believe that their ability to formulate and enact sensible safeguards has been severely limited by the administration's policies. Whereas in previous administrations the career workers were able to contribute their expertise, they found themselves in the last three and a half years almost entirely cut out of the rulemaking process.

"There's always a 60-40, 40-60 swing," stated Bruce Buckheit, former director of the air enforcement division in EPA's Office of Enforcement and Compliance Assurance, "but now it's more like 99-1." Buckheit, who started working full time for EPA during the Ford administration, said "I have never seen anything like this. It is broad and it is deep."

Anti-Regulatory, Anti-Worker Bills Pass House

The House advanced the regulatory rollback this month by passing five bills, one of which threatens safeguards across the board while the other four specifically target workplace health and safety protections.

The first of these bills, subtitled the " Paperwork and Regulatory Improvements Act of 2004," authorizes a pilot project for "regulatory budgeting" at three of five public health, safety, or environment agencies. Although modified somewhat from its first draft, in part because of pressure from the White House, the bill managed to leap from subcommittee and move through mark-up in the full House government reform committee with its essential character intact.

Among other things, the bill lays the groundwork for "regulatory budgeting," a dream of rationing protections of public health, safety, and environment by limiting the total amount of costs to industry from regulation. The bill would also require the Office of Management and Budget to submit its annual report on the costs and benefits of regulation as part of the White House's budget submissions, thus hiding the anti-regulatory projects launched each year through that report by burying it under the complexity of budget issues.

Democrats on the government reform committee attempted to weaken the bill through a series of amendments:

- One would have eliminated the regulatory budgeting study altogether.
- Another would have required OMB's Office of Information and Regulatory Affairs to make all stages of its interventions in the regulatory process open to the public. Although OIRA is now more open than it has been, it still insists on keeping secret its discussions with industry and other special interests in the early stages of regulatory activity.
- Two amendments would have fixed the factual preamble of the bill by noting the weaknesses in a study that purports to measure the burden of regulation and by pointing out the administration's record increase in paperwork.

Rep. Henry Waxman (D-CA) tried both in mark-up and before the full House to insert an amendment that would have established a panel to study the politicization of science, but it was defeated just before the House voted to pass the bill.

The House also passed four bills that seek to weaken protections of workers' health and safety. One bill would require taxpayers to pay the legal costs of small employers who prevail in any administrative or enforcement case brought by OSHA regardless of whether the action was substantially justified. Another would undermine the Secretary of Labor's authority to interpret and enforce the law by giving deference to the Occupational Safety and Health Review Commission -- the same commission that yet another of the bills would allow the administration to pack with two new members -- thus overturning a 1991 Supreme Court decision and effectively consolidating this administration's control over workplace safety issues for the long term.

The regulatory and OSHA bills have now been bundled as H.R. 2728, which is beginning to wend its way through the Senate.

Just as the League of Conservation Voters and a coalition of public interest groups that included OMB Watch worked to prevent House passage of the regulatory bill, now the Citizens for Sensible Safeguards coalition has set up an automated system so that people can alert their Senators to stop the combined bill from passing both houses.

Bill to Extend Patriot Act Is Quietly Introduced

Secrecy News reported the next salvo in the debate about the Patriot Act: On May 21, Sen. Jon Kyl (R-AZ) [and others] introduced a bill to make the Patriot Act permanent. S. 2476 would repeal sunset provisions of the most controversial sections of the Patriot Act, which are set to expire in 2005.

Speaking of *Secrecy News*, its editor, Steve Aftergood, was recently awarded a prize from the Playboy Foundation and the Creative Coalition for defending the first amendment with his unrelenting and undernoticed efforts to combat government secrecy.

Questionable Contracts Are Up and Information About Contracts Is Down

The House Committee on Government Reform's Minority Office recently released a report done for Rep. Henry A. Waxman (D-CA) examining current trends in the government's use of noncompetitive contracts. The report discovered that under the Bush administration the amount spent on these questionable contracts increased $40 billion compared to Clinton's final year. Equally troubling is the fact that under a new development at Government Services Administration (GSA) the public will soon find it much more difficult and potentially much more expensive to explore how the government spends our tax dollars.

The Waxman report, Noncompetitive Federal Contracts Increase Under the Bush Administration found that out of $300 billion spent on contracts in 2003, approximately $107 billion was decided without full and open competition. Competition for federal contracts ensures that the government gets the most fair and reasonable price and that taxpayers' money is not wasted. By law the government is required to use open bidding with a few exceptions. In rare instances contracts may be awarded without competition when the government only invites a single company to bid on the contract â€“- sole-source bidding.

The report found that the Bush administration uses these exceptions much more frequently. Without the pressures of competition forcing fair and equitable contracts the only remaining tool for accountability is information. Unfortunately, information on non-competitive contracts can be difficult to obtain. Recent changes in the management of the governmentâ€™s procurement data may make the task even more difficult.

Since 1979 the Federal Procurement Data System has provided for a nominal processing fee for access to information on federal contracts. The system has been used by journalists, investigators, academics and others to identify waste, questionable deals, and irresponsible spending. But now the Bush administration has contracted out management of the contracting data.

Under this contract, Global Computer Enterprises (GCE) receives $24 million to take over the collection and distribution of government contract information from the General Services Administration (GSA). This may have serious implications for public access because as the database passes outside the government it may also move beyond the Freedom of Information Act.

Even though taxpayer dollars pay to compile the data at each agency, if the public wants a copy of the information or to search data they will have to pay GCE an as yet undetermined fee. GCE said pricing will not be determined until July, but a recent *Mother Jones* article reported that full access could cost as much as $35,000 compared to the GSA's original $1,500 price tag.

The new financial hurdles will reduce the scrutiny federal contracts receive and further weaken the integrity of the federal contracting process, which has already begun with the rise in noncompetitive contracts.

Mistakes and Terrorism Fears Jail the Innocent, Miss Employee Misconduct

When authorities in Philadelphia found a motion sensor along some railroad tracks, they worried terrorists might be installing triggering devices to launch an attack against trains along the busy eastern rail corridor between Boston and Washington. But they soon found out terrorism concerns overshadowed the real problem of employee misconduct.

Days after public warnings were issued, an employee came forward to admit he had installed the device to wake him up when his supervisors were coming while he slept during the overnight shift. The story made national news and heightened fears of a terrorist attack on U.S. soil. Continued fears of terrorism attacks, echoed in recent days by announcements from the U.S. Department of Justice, continues to preclude efforts by the public to make themselves safer from other public health and environmental threats.

The need for accountability in terrorism investigations also arose in another case that earned national media attention. A Portland lawyer was freed after law enforcement authorities mistakenly tied him through fingerprints to the Madrid train bombings. News reports covered the arrest of Brandon Mayfield as a material witness to a terrorist attack, a charge which allowed the government to hold Mayfield indefinitely. His release after authorities found that his fingerprints did not match those found at the Madrid bombings highlighted the far-reaching material witness powers of the federal government.

Such problems highlight the need for disclosure about the government's use of these broad powers and adequate safeguards for their use.

Park Service Superintendents Gagged by Agency

National Park Service (NPS) superintendents now must adhere to agency-prescribed "talking points" when speaking with the media. According to a May 12 press release by the Public Employees for Environmental Responsibility (PEER), the talking points try masking budget cutbacks by painting a rosy picture of national parks under the Bush administration.

The talking points specifically refer to budget cuts as "service level adjustments." Sample sound bites read, "Clear Skies should do for visibility in the Great Smoky Mountain National Park what the Acid Rain Trading Program did for acid rain reductions in the Adirondacks," or the "Administration is very committed to preserving the resources of the National Park System." If a Park Service employee wants to divulge information beyond the prescribed points, then the information must be "blessed" by the regional or federal offices.

PEER executive director Jeff Ruch characterized the talking points as "nothing new" but said the gag order accompanying the script is a recent change. In PEER's press release he states, "The reason that feel-good institutions like national parks have turned into bad-news bears for the Bush Administration is solely because of misplaced attempts like this one to suppress facts, hide problems and spread disinformation."

Last December, NPS placed the U.S. Park Police Chief on administrative leave after she discussed the problem of low staffing levels in an interview with the *Washington Post*. She is currently not allowed to give media interviews without official clearance.

The budget cuts which the talking points are designed to glaze over received additional attention last week when the Coalition of Concerned National Park Service Retirees released a report revealing massive NPS budget cuts. The report was based on information leaked by insiders from 12 U.S. parks and refutes recent statements by NPS director Fran Mainella that parks would not face budget cuts this summer.

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In This Issue

Economy and Jobs Watch - Steady Job Growth Threatened by Higher Oil and Gas Prices

The number of new jobs created in May declined to a steady 248,000, according to the Department of Labor. The unemployment rate remained unchanged at 5.6 percent. This data reinforces the past two months' data and shows that the labor market continues to tread water - much higher jobs numbers will be necessary to bring the unemployment rate down.

However, recent developments in oil and gas prices are threatening the status quo. The price of oil has periodically broken the $40 dollar a barrel mark over the past several weeks. With consumers sending more money overseas to pay for oil, there will be less money for other domestic spending.

According to a recent Gallup poll, about half of those surveyed said recent gas price increases have caused them financial hardship and about one-third said they have reduced other spending significantly.

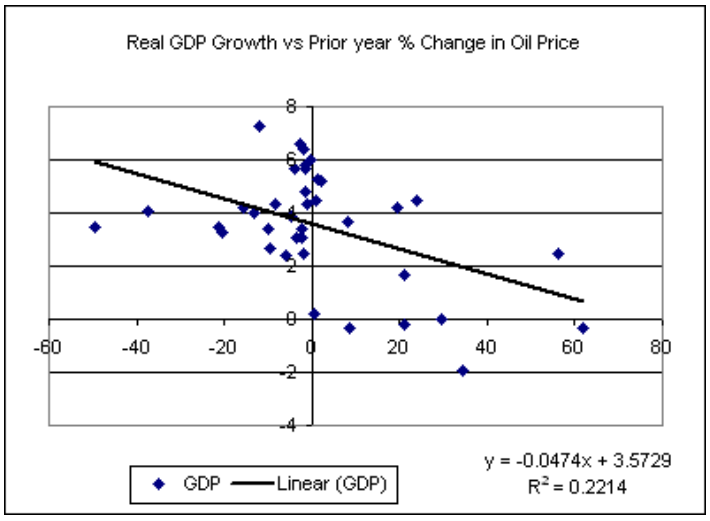
Importantly, and as one might expect, the number of people cutting back is dependent upon income levels -- while only 15 percent of those making $75,000 or more reported having to cut back, a much larger 55 percent of people earning less than $30,000 a year reported having to cut back on spending.

Oil prices will have less of an impact than they did 25 years ago, because oil now represents a smaller fraction of

the U.S. economy. However, there is still likely to be an impact on spending and the economy as a whole.

Reductions in consumer spending on non-gas related items will cause the economy to slow and eventually harm job growth. Just how much, and when the impact will be felt, remains to be seen.

As a side note: an illustrative (but not rigorous) analysis of the relation between change in oil prices and economic performance from 1960 to 2000 shows how changes in oil prices might impact the economy. According to the data, on average, a 10 percent increase in the price of oil precedes about one-half of a percentage point reduction in real GDP. So, an increase in the price of oil from $30 a barrel to $40 a barrel, we might expect real GDP growth to be lower by about a percent and a half. See graph below.



Beware of Bad Economic Policy - The Balanced Budget Amendment Set to Return

The long-ago defeated proposal for a balanced budget amendment is rearing its ugly head once again. Unable to pass a budget this year and desperate to create the appearance of being fiscally responsible, the Republican leaders in the House of Representatives are promising a vote on the measure.

A constitutionally mandated requirement to balance the budget every year would have terrible consequences. For starters, it would destabilize the economy and restrict the nation's ability to invest in projects that would yield significant benefits in the future. A good example of the various arguments made against the amendment is this Treasury Department memo by Brad DeLong, written 10 years ago.

In addition, more than 1,000 economists have publicly opposed the amendment, as have dozens of nonprofits comprising the Coalition for Budget Integrity.

It would be unfortunate if the return of this inherently misguided amendment distracts Congress when they have so many important issues to address.

No Budget - But Appropriations Are Moving Forward

In spite of the lack of a budget resolution, Congress is moving forward with the appropriations process.

The House, having passed a FY 2005 budget resolution back in May, is rapidly moving forward with appropriations bills, based on an overall discretionary spending cap of $821 billion, including both domestic and military. The House has also approved the division [302(b) allocations] between the 13 appropriations bills, defeating an amendment by Appropriations Committee ranking member David Obey (D-WI) to increase spending by $14.2 billion by rolling back tax cuts. Last week, Appropriations considered the Homeland Security and Interior bills, which are expected to reach the House floor this week. Next will be the Defense bill. The Energy and Water subcommittee was also working on appropriations last week, and subcommittees are expected to work on the Agriculture, Commerce-Justice-State, and Legislative Branch bills during this week.

In the Senate, efforts continue to find a compromise that will allow passage of the budget resolution. Republican Senators McCain (AZ), Chafee (RI), Collins (ME), and Snowe (ME) remain firm in their opposition to any resolution that does not include "Pay-Go" rules -- rules requiring offsets for both tax cuts and entitlement spending. A possible deal that is in the works would extend Pay-Go rules for taxes and spending for three years, but would still allow an exemption this year for three expiring tax cuts, at a cost of $27.5 billion. These would include: the $1,000 per child tax credit, the standard deduction for married couples, and the expanded 10 percent tax bracket. It is uncertain whether that deal will be closed. If there were no budget resolution, the Senate spending cap would remain at last year's level of $814 billion. Additionally, there would be no special protection for the three expiring tax cuts, which could lead to filibusters that require 60 votes for passage, and require offsets for the cost.

Senate Appropriations Committee Chair Ted Stevens (R-Alaska) has said he will move forward with appropriations, starting with Homeland Security or the Defense bill, if no budget resolution is passed by June 15. The Senate Appropriations Committee is preparing to divide up the $814 billion discretionary cap. BNA reported June 10 that the preliminary draft allots the same amount to 12 of the appropriations as the House version, cutting the defense appropriation by $7.2 billion.

After resuming work today, the House and Senate will both recess June 25 and return July 6.

Bush Administration Refuses Congress Again, Hides Memos

Last week, Attorney General John Ashcroft testified before the Senate Judiciary Committee and repeatedly refused several Senators' requests to produce a copy of the recently leaked Justice Department memo that explored the legal justifications for torture.

The 50-page memo [download links below], written for the CIA and addressed to White House Counsel Alberto Gonzales, argues that "necessity and self-defense could provide justifications that would eliminate any criminal liability" for torturing prisoners. Pentagon lawyers used that same memo in a March 2003 report assessing interrogation rules governing the Defense Department's detention center at Guantanamo Bay, Cuba.

Congress not only has a right to review this and other memos but a clear obligation. We are in the midst of a major Congressional investigation into prisoner abuse -- a Justice Department torture memo is extremely relevant. But the Attorney General refused to cooperate with Congress and provide a copy of the memo because he believes the president has the right to receive advice from his attorney general. However, the memo was not candid advice from Ashcroft alone; it is the product of extensive work by taxpayer-paid Justice Department lawyers.

There are only two legal reasons Ashcroft can refuse to provide the memo. The first would be if President Bush invoked executive privilege, claiming the memo was protected as presidential material. Ashcroft made it clear at the Senate hearing that the president had not yet invoked executive privilege. The second reason would be if an established law expressly protected the memo from disclosure to Congress. During questioning, Ashcroft never cited any law that would allow for protection of the memo, only his opinion that disclosure would be bad policy.

Unfortunately, this is not the first time this administration has been uncooperative with Congress' efforts to get to the truth. The White House was uncooperative with the Congressional commission investigating the 9/11 attacks, refusing to release information such as the president's daily briefings and almost barring National Security Advisory Condoleezza Rice from testifying under oath. When the Government Accounting Office, Congress' investigating office, probed Vice President Cheney's Energy Task Force, the White House resisted releasing information at every turn.

Hopefully, Congress will successfully break through the administration's stonewall to discover the truth and apply the checks and balances instituted to hold all aspects of our government accountable.

Download full DOJ Memo Part I (pp. 1-25)

Download full DOJ Memo Part II (pp. 26-5)

Politics, Not Science, Alters Air Quality Models

Government air quality modeling experts from around the country are opposing a new Bush administration policy, which they contend threatens air quality and public health. They are among a growing number of scientists and other critics, who charge the Bush administration with manipulating science to support predetermined political outcomes. Most significantly, this may be the first time such criticism has been leveled from scientists inside a federal agency.

The administration overrode regional EPA officials and altered air quality modeling for North Dakota's national parks and wilderness. The air quality modelers in all but one of the Environmental Protection Agency's 10 regions have publicly stated that the new policy represents "substantial changes from past air quality modeling guidance ... and accepted methods."

North Dakota wants to capitalize on its massive coal deposits by building additional power plants to export energy around the country. However, under the Clean Air Act, the air over national parks and wilderness areas receives special protection. Previous modeling revealed that pollution in North Dakota had significantly increased since 1977, the baseline year. Using that analysis, the state would have to take steps to reduce pollution before new power plants could be built.

The new policy permits the state to choose the baseline year, inviting manipulation of the modeling. Selecting a baseline year with higher pollution levels would allow more pollution in the future. An EPA analysis estimates that allowing flexibility in selecting the baseline year could more than double the pollution levels in the area. Another change that the modelers charge will permit higher pollution in the future is letting the state use average annual emissions, rather than periods of peak emissions.

Bush administration officials involved in the new policy denied the accusation that the science had been altered to meet political goals. They asserted that the regulations permit the new flexibilities offered to North Dakota.

Nonprofit News Briefs

*** June 22 hearing on nonprofits at the Senate Finance Committee**
*** House Bill on IRS Rollovers**
*** Emily's List asks the Federal Election Commission to reconsider its controversial Advisory Opinion 2003-37**

Senate Finance Committee Hearing

On June 1, Senate Finance Committee Chair Charles Grassley (R-IA) and Ranking Member Max Baucus (D-MT) announced a hearing on charitable giving problems and best practices. The announcement said the hearing, scheduled for the morning of June 22nd, will address governance and best practices of charities, charities accommodating tax shelters, donor gifts of tangible and intangible property and current problems and issues in the charitable community.

IRS Commissioner Mark Everson told the IRS's Advisory Committee on Tax-Exempt and Government Entities that he has "great concern" about abuse of the tax system, and discouraging abuse by charities is one of his four major priorities.

Charities that wish to submit statements for the record at the hearing can send them to:
Senate Committee on Finance
Attn: Editorial and Document Section Room SD-203
Dirksen Senate Office Building
Washington, DC 20510-6200

IRS Rollover Bill Introduced

A new bill to allow taxpayers age 59 1/2 or older to make tax-free charitable contributions from rollover of individual retirement accounts has been introduced by three members of the House Ways and Means Committee. Reps. Phil Crane (R-IL), Earl Pomeroy (D-ND) and Jim Ramstad (R-MN) introduced HR 4488 on June 2. A similar provision is included in the CARE Act, which has passed both houses of Congress but is stalled at the conference committee stage.

Emily's List Asks FEC to Reconsider Advisory Opinion

The political action committee Emily's List wrote the Federal Election Commission (FEC) on June 7 asking that it withdraw its controversial Advisory Opinion 2003-37, Americans for a Better Country. The request said the FEC's subsequent decision to delay action on a proposed regulation redefining political committees was a rejection of many of the legal positions in the Advisory Opinion.

Global Health Council Condemns HHS Funding Cut

Global Health Council president and CEO, Dr. Nils Daulaire, used his keynote address at the organization's conference June 2 to sharply condemn the Department of Health and Human Services' (HHS) April decision to cut funding for the event. Daulaire said that HHS "bowed to election-year political pressure." The Traditional Values coalition and other conservative groups had objected to the participation of two family-planning groups set to take part in the event. HHS claimed the funds were withdrawn because the Council was using them to lobby. However, the Council's conference followed the same practice commonly accepted to segregate federal funds from lobbying activity, holding an advocacy day separate from the rest of the agenda.

After HHS announced its decision in April, the Council reacted cautiously and attempted to resolve the issue. This was the Council's 31st annual conference, which brings together public health professionals from around the world. The federal government has subsidized the conference for decades, and federal officials often participate, including the Secretary of HHS in 2001, the Administrator of the Agency for International Development in 2002 and the Director of the Centers for Disease Control in 2003.

The trouble began when House Republican aides Sheila Maloney and John Casey e-mailed a message to alert pro-life (anti-abortion) groups that the International Planned Parenthood Federation and the United Nations Population Fund would take part in the conference. These groups have objected to the global gag rule that bars clinics, which receive federal funding, from discussing abortion with their clients. After the message was sent, the Traditional Values Coalition and other conservative groups asked HHS to withhold the funds. Twelve members of Congress also wrote HHS opposing the conference funding.

Although HHS told the press the Council was spending federal funds for lobbying, an HHS spokesperson told OMB Watch that the Council was unable to demonstrate that federal funds had not been used for lobbying. This approach puts the Council in the impossible position of having to prove a negative. Federal regulations do not require grantees to use a specific accounting method or keep federal funds in segregated accounts. HHS has used this broad latitude to make vague, politically motivated accusations about improper use of federal funds in other cases as well, including that of STOP AIDS of San Francisco last year.

HHS bowed to "a small group of right-wing extremists," Daulaire said. "Not one person in that clique has ever spent a day in a clinic in a developing country ... And they have clearly never spent a minute reflecting on the global cost in human lives that might result from acting out their Washington-centric games." He also said, "we have a responsibility to stand up and challenge those who hold positions of public trust when they are wrong -- and on this, they are wrong. And challenge them we will, not because of our one conference, but because of who might be next."

Politics-and-Religion Issue Surfaces in Congress, Campaign

Church Electioneering Provision Dropped from Jobs Bill

The House Ways and Means Committee has dropped a provision (Section 692) that would have allowed religious organizations to violate the tax code's ban on partisan election activity up to three times a year without losing their tax-exempt status. At a June 14 review of H.R. 4520, Rep. Nancy Johnson (R-CT) offered an amendment stripping Section 692 from the bill. She was supported by Reps. Amo Houghton (R-NY), John Lewis (D-GA), Charles Rangel (D-NY) and others. Her amendment was approved on a voice vote. Last minute technical changes to Section 692 failed to correct the fundamental problems with the proposal. Advocates of legislation (H.R. 235) proposed by Rep. Walter Jones (R-NC) that would legalize partisan activity for religious organizations objected to Section 692 because it did not go far enough. Opponents, including OMB Watch, objected to unequal treatment of religious and non-religious 501(c)(3) organizations, creation of a new soft money loophole and politicization of houses of worship. H.R. 235 is pending before the House Ways and Means Committee. THANKS to all of you that responded to our action alert on this issue. The public opposition to this proposal was forceful enough to stop it.

The provision inserted into the jobs bill by House Republican leadership would have allowed religious organizations to violate the ban on partisan election activity without losing their tax-exempt status. It was introduced shortly after the Bush campaign was criticized for e-mailing messages to supporters seeking help with re-election campaigns by recruiting "friendly congregations." That messages were sent the same day the President announced expansion of his faith-based initiative, including $1.1 billion in grant funds.
As a result of press attention to the pending legislation, the IRS took the unprecedented step of sending a letter to all political parties reminding them that current law prohibits partisan activity by charities, including religious organizations.

For background information on Section 692 and how it got into the jobs bill read Church Electioneering Provision Added to Jobs Bill.

Also, see the full text of the OMB Watch letter to the Ways and Means Committee opposing Section 692.

Bush Campaign Seeks "Friendly Congregations" To Aid Re-election Campaign

In early June, the Bush campaign sent 1600 emails to clergy and other individuals saying it is looking for "Friendly Congregations in Pennsylvania where voters friendly to President Bush might gather on a regular basis." It further states that the re-election campaign would like to distribute general information "to supporters." The campaign's email (see full text below) is part of a larger national effort.

The Interfaith Alliance and Americans United for Separation of Church and State (AU) strongly criticized the action as encouragement to congregations to violate the tax code's ban on partisan electioneering by 501(c)(3) organizations. In a press release, AU executive director Rev. Barry Lynn said "The last thing this country needs is a church-based political machine." Some conservative church leaders criticized the plan as well. Richard Land, president of the Ethics and Religious Liberty Commission of the Southern Baptist Convention, was quoted by the *New York Times* as saying, "If I were a pastor, I would not be comfortable doing that. I would say to my church members, 'We are going to talk about the issues, and we are going to take information from the platforms of the two parties about where they stand on the issues.' I would tell them to vote and to vote their conscience."

Here is the full text of the Bush campaign email:

"Subject: Lead Your Congregation for President Bush

Dear [recipient]:

The Bush-Cheney '04 national headquarters in Virginia has asked us to identify 1600 'Friendly Congregations' in Pennsylvania where voters friendly to President Bush might gather on a regular basis. In each of these friendly congregations, we would like to identify a volunteer coordinator who can help distribute general information to supporters. I'd like to ask if you would like to serve as a coordinator in your place of worship. We plan to undertake activities such as distributing general information/updates or voter registration materials in a place accessible to the congregation. If you are interested [contact info given]."

Bush Expands Faith-Based Initiative

On the same day the Bush campaign sent emails seeking support from "friendly congregations" in Pennsylvania,

the president announced expansion of his faith-based initiative. At the first White House National Conference on Faith-Based and Community Initiatives, he announced creation of new faith-based offices in the Departments of Commerce, Veterans Affairs and the Small Business Administration. He also noted funding for faith-based groups increased $144 million in programs funded by the Departments of Health and Human Services and Housing and Urban Development. A June 3rd Scripps-Howard News Service report said the administration also announced $1.1 billion in overall grants to faith-based organizations, with the president saying, "We've reached more than 10,000 faith-based and community groups with the message that we want your help, the federal government now welcomes your work."

The simultaneous expansion of federal funding to religious organizations and recruitment of "friendly congregations" for the president's re-election campaign creates, at best, an appearance of exchange of federal funding for political support. At worst, it creates pressure on religious organizations that depend on federal funding for social service programs to enter the partisan political fray, putting their tax-exempt status at risk.

IRS Letter To Political Parties Warns Against Involving Charities

Increasing public attention to the religion and politics issue and the pending action in Congress prompted the Internal Revenue Service (IRS) to take the unprecedented step of sending a letter to national political parties warning against involving 501(c)(3) organizations in campaigns. The letter provides details about what nonpartisan activities are allowed for charities and says the information is meant "to help you ensure that during this election season your committee and the candidates you support do not, inadvertently or otherwise, jeopardize the tax-exempt status of any charitable organization." The letter says the IRS has a duty to continue enforcing current law, even while Congress is considering changes.

In a press release, IRS Commissioner Mark Everson said the letter was sent "because we want to ensure that the political committees and the candidates they support understand the current rules." For example, the letter noted that candidates can be invited to speak at events sponsored by 501(c)(3) groups, as long as all candidates are given the same opportunity, no favoritism is shown and no fundraising takes place. The IRS enclosed a copy of its April 28 advisory (IR-2004-59) *Charities May Not Engage in Political Campaign Activities*.

Is Advocacy Charity or Not? Groups Denied Access to Annual Giving Drive

Minnesota's state employee relations commissioner has made a decision not to allow any advocacy oriented organizations to participate in the annual state employee deduction charity drive.

The annual drive, Minnesota State Employee Giving Campaign, gives state employees the opportunity to donate money to their favorite charity through the payroll system. The donation is then used as a tax deduction for employees. The giving campaign started in 1980. Only this year, Department of Employee Relations Commissioner Cal Ludeman has single-handedly made the decision to deny a United Way alternative, the Community Solutions Fund (CSF), from participating in this year's drive.

Removing the Community Solutions Fund -- which raises money for such groups as the Minnesota Senior Federation's Metro Region, the Minnesota Coalition for Battered Women, Missing Children Minnesota, the Greater Minneapolis Day Care Association, Jewish Community Action, and 42 other groups -- would cut its total annual fundraising efforts in half. CSF has filed an appeal seeking to reverse Ludeman's decision. "The decision by Commissioner Ludeman unfairly targets grassroots organizations. His actions threaten all nonprofits who do any form of advocacy or whose mission is at odds with the Commissioner's values," says Marsha Frey, executive director of CSF.

Ludeman explained his decision in a Opinion Editorial printed in the *Star Tribune* in order to combat the bad press that has surrounded his decision. In the editorial he writes, "Their [the Community Solutions Fund's] continued expansion of affiliated agencies that expressly engage in social change advocacy is in direct conflict with the laws governing the state employee charity campaign...The law provides a specific and narrow definition of "charity" as devoting a substantial amount of its activities to direct social services to individuals."

Conversely, Nina Rothchild, former Department of Employee Relations Commissioner, explains that a lawsuit and legislation got the CSF access to the drive in the early 1980s. The legislation that Ludeman is interpreting "was written specifically to allow them to be part of the payroll deduction system," Rothchild told the *Star Tribune*. "Our department strongly supported it," she said.

The Minnesota Attorney General, Mike Hatch, recalled approving registration for the Community Solutions Fund when he was state commerce commissioner in the 1980s. "I know when it was granted, advocacy was considered to be part of the service...One could ask what has changed to make it not be qualified," Hatch told the *Star Tribune*.

Judge Strikes Down Law Censoring Marijuana Ads

A U.S. District Court Judge issued a permanent injunction against Rep. Ernest Istook's (R-OK) amendment to the Consolidated Appropriations Act of 2004, saying that, "there is a clear public interest in preventing the chilling of speech on the basis of viewpoint." The permanent injunction prohibits the enforcement of the law.

Istook's amendment, which was signed into law with the rest of the omnibus appropriations bill by the president, prohibits any transit agency receiving federal funds from running advertisements from groups that want to decriminalize marijuana or other Schedule I substances for medical or other purposes. On February 18, 2004, a coalition of national drug policy reform groups -- including the American Civil Liberties Union, Change the Climate, Inc., the Drug Policy Alliance, and the Marijuana Policy Project -- brought suit against Secretary of Transportation Norman Mineta and the United States, because their free speech right to advocate on behalf of policy issues was being violated.

The coalition argued, and the Judge later supported, that the law:

1. "imposes impermissible content- and viewpoint-based restrictions on speech in a public forum in an effort to silence one side's message in a serious political debate;
2. imposes restrictions that are unconstitutionally vague and overbroad; and
3. is an unlawful exercise of Congress' spending power because it violates an independent constitutional prohibition on the conditional grant of federal funds."

Judge Paul L. Friedman of the U.S. District Court for the District of Columbia ruled that the government's attempt to censor the ads was "illegitimate and constitutionally impermissible." As a result, Change the Climate and other groups can again display their once rejected ads criticizing drug policies back on the subways and bus stop shelters.

Read the full opinion.

Senate May Soon Consider Anti-regulatory, Anti-worker Bill

Rumors are circulating on Capitol Hill that H.R. 2728, a bill that threatens protections of public health, safety and environment across the board and specifically weakens protections of workplace health and safety, may soon be taken up in the Senate.

Among the rumored scenarios are that the bill could be appended to a pending bill that would alter interstate class action lawsuits and that it could be offered as an amendment at any point in which a Democrat-sponsored minimum wage increase is offered.

Because of the particular threat posed by H.R. 2728 to public safeguards, in particular its advancement of the cause of regulatory budgeting, OMB Watch will continue to monitor this bill.

Related Reading

Fact Sheets About H.R. 2728

H.R. 2728 Summary: Bill Threatens Public Welfare & Weakens Worker Safety DOC PDF

H.R. 2728: First Steps to Regulatory Rationing DOC PDF

H.R. 2728: Fictions in the Findings of Fact DOC PDF

H.R. 2728: A Step Back for Worker Safety and Public Safeguards PDF
(courtesy of AFL-CIO)

From the OMB Watch Archives
Anti-worker, Anti-regulatory Bills Pass House

Mexican Trucks Allowed to Run Over Environmental Law

A unanimous Supreme Court has held that the Federal Motor Carrier Safety Administration (FMCSA) did not violate U.S. environmental law by failing to conduct an environmental impact statement (EIS) of increased pollution from allowing Mexican trucks to operate in the United States beyond limited border zones.

The Court's decision reversed the opinion of the Ninth Circuit Court of Appeals. That ruling required FMCSA to consider the pollution increase in a full EIS prior to issuing regulations governing applications and safety inspections for Mexican trucks to operate in the United States.

See full story and background.

OMB Role in Fuel Economy Change Exposed

White House staff prompted the development of a controversial proposed overhaul of the entire structure of automobile fuel economy regulation aimed at diminishing standards. Foremost among the architects of the change was John Graham, administrator of OMB's Office of Information and Regulatory Affairs (OIRA).

According to documents obtained by Public Citizen, high-ranking administration officials began working on changes to automobile fuel economy regulation as early as summer 2001. Leaders of powerful offices, ranging from the Office of the Vice President to the Council of Economic Advisors to top staff from a wide array of government agencies, began meeting in earnest and circulated numerous draft proposals and e-mail correspondence on the issue.

At the same time that substantial resources were being invested in the corporate average fuel economy program (CAFE), Jeffrey Runge, administrator of the National Highway Traffic Safety Administration (NHTSA), claimed that NHTSA was unable to develop safety standards to prevent SUV rollover, because the Ford-Firestone crisis had preoccupied too much of NHTSA's time.

CAFE regulates automotive fuel efficiency in a two-tiered system that divides the auto fleet into two classes, passenger vehicles and light trucks, and accords different fuel economy standards to each. Highway safety advocates argue that the current standard, which demands 27.5 miles per gallon for passenger vehicles and only 20.7 for light trucks, encourages the production of more vehicles designated as light trucks, and in turn increases the risk of death and serious injury in two-car collisions with passenger cars.

NHTSA announced, in an Advanced Notice of Proposed Rulemaking that the very structure of CAFE regulation could be overhauled, with one possibility being dividing the vehicle fleet based on vehicle weight. Public Citizen criticized that proposal in its formal comments, arguing that NHTSA's proposal is based on a study that is deeply flawed.

In these comments, Public Citizen appended summaries from documents it received under the Freedom of Information Act (FOIA). FOIA excludes from its disclosure requirements most interagency consultations conducted in advance of agency decisions, but Public Citizen was able to unearth details of the extent to which high-ranking officials were meeting on CAFE. It acquired calendar notes and other logs, which document that meetings had occurred.

Among the revelations is that OIRA's Graham was prominent in CAFE discussions, and the proposed structural change based on weight classifications mirrors Graham's overemphasis on vehicle weight in two articles he

worked on at the industry-funded Harvard Center for Risk Analysis.

Kentucky Reconsiders Homeland Security Exemption for Open Records Law

After unsuccessfully pushing a bill to create a homeland security exemption to Kentucky's Open Records Act, Democratic Representative Mike Weaver intends to re-propose the bill after the state's homeland security director requested such a provision.

In the years since the 9/11 attacks, many states have considered broad-scoped and vaguely worded exemptions to public records and open meeting laws. Often these laws already have exemptions for issues pertaining to national security and criminal investigations. As a result, important health and safety information is being withheld from the public based on the small possibility that it could be misused.

During the 2004 General Assembly, the Kentucky House unanimously passed Weaver's homeland security exemption, but the Senate altered it to include additional records. House leaders elected to forego enacting the measure rather than accept the altered version.

Recently, Erwin Roberts, executive director of Kentucky's Office of Homeland Security, reported to the Interim Committee on Seniors, Military Affairs and Public Safety, that various documents such as "vulnerability assessments" needed to be removed from public access.

Based on this report, Weaver has committed to preparing a new bill to introduce when the General Assembly reconvenes in January 2005.

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In This Issue

Education in the U.S. Leaves Many Children Behind

A number of reports have been issued recently revealing cuts for next year in federal spending for education, including Pell Grants for college students, adult and vocational education, and Head Start, and ongoing inadequate funding for the Bush "No Child Left Behind" Act and special education.

The National Priorities Project released *Federal Education Funding Falls Short* that provides information about education spending in each of the 50 states. The Center for American Progress released *Education: Many Children Left Behind* in April revealing that 7,000 school districts across the nation face significant cuts in federal funding for helping disadvantaged students.

Economy and Jobs Watch: Mid-year Update

Halfway through 2004 seems a good time to review where the United States is on the economy and jobs situation.

- Unemployment has remained at 5.6 or 5.7 percent since the beginning of the year. Over the past six months, employment growth has moved solidly into positive territory, but not enough to put a major dent into unemployment. The labor market continues to remain well below peak levels.
- Gross Domestic Product grew at a revised 3.9 percent annual rate in the first quarter of 2004, down from the original estimate of 4.5 percent. While growth in overall economic output appears to have largely recovered, risks remain to the overall economy -- especially due to increases in oil and gas prices, as well as an up-tick in inflation, now running at about 3 percent.
- The recent growth, however, has not been beneficial to many workers. As a share of total output corporate profits are at record highs, while labor compensation is at 38-year lows.
- The Federal Reserve Board of Governors' Federal Open Market Committee (FOMC) is meeting in the next few days to decide the course of monetary policy. While interest rates have remained at historic lows for a significant amount of time, it is widely expected that the FOMC will decide to raise interest rates by at least a quarter of a percentage point, and perhaps half a percentage point. This shift in policy will likely be the first in a series of moves to launch a preemptive attack on increasing inflation, which as noted has begun to tick upward in recent months.
- It appears that recent legislative attempts to graft expansion of the debt ceiling on the defense authorization bill have failed. Congress will have to revisit the debt ceiling issue, as total borrowing will cause the government to reach the statutory limit later in the summer or fall. In addition, recent remarks by Fed Governor Edward Gramlich cited the recent increase in the deficit -- now around $500 billion per year -- as a potential drag on the economy.

A final tidbit: As highlighted by Lewis Black on *The Daily Show* with Jon Stewart [Link -- click on Reagonomics video] -- The head of the Ronald Reagan Legacy Project and ubiquitous conservative Grover Norquist recently argued on CNN that Reagan ought to replace Hamilton on the $10 bill, in part since Hamilton is "of all the people on the currency, the only one who isn't a president." As Black delicately responded: "I'll bet you $100 that you're wrong."

Good Riddance to Bad Policy: Budget Enforcement Bill Dies

A conservative effort to severely limit domestic programs was soundly defeated in the House last week. The so-called "Spending Control Act of 2004" failed by a vote of 146-268.

The bill would have placed severe caps on discretionary programs. In addition, it would have reinstated a modified, unbalanced "PayGo" rule that would have required offsets for entitlement program expansion, but not for tax cuts.

For more information, see:

- OMB Watch Proposed Changes Would Create Unbalanced, Flawed Budget Process
- The Center on Budget and Policy Priorities' Issue in Depth: Proposed Changes in Budget Rules.

Tax and Spend?

In an effort to restore spending in ten critical areas and lower the deficit, Rep. David Obey (D-WI) offered a resolution (H. Res. 685) on Thursday, June 24, to invest $14.2 billion in key domestic priorities and $4.7 billion towards reducing the deficit. The total $18.9 billion would be fully offset by limiting tax breaks to those making over $1 million a year.

Republicans gleefully allowed consideration of Obey's amendment in order to bring out their worn "tax-and spend-Democrats" cry. As predicted, the bill was defeated, mostly along party lines, by a straight up-or-down vote of 184 to 230. Two Republicans supported the bill, and 17 Democrats voted against it.

A tight budget cap, with most of the increases flowing into military spending and homeland security, will require cuts in many of the other things that government does on the domestic front. In addition, the national debt will reach the statutory "debt ceiling" sometime this summer, forcing Congress to raise the debt limit yet again. In addition to reducing the deficit (thus keeping the national debt from growing), Obey's amendment would have provided additional spending for a number of the priorities that many Americans strongly support like education, health care for children and public health, veterans' benefits, homeland security, conservation and clean water, strengthening rural communities, and restoring cuts to the Community Services Block Grant. The tax increase on millionaires would have reduced the average tax break from $120,000 to $24,000, which, according to Obey, would still be 24 times larger than tax breaks for those making $50,000 a year.

Obey's amendment was about fairer taxes that will support important government services -- for veterans, for children's health, for education, and for assistance to low-income families and rural communities -- by allowing them to grow with inflation and population increases, and reducing the deficit. Hardly "tax-and-spend," though it might be termed "tax-millionaires-fairly-and-don't cut."

Appropriations Still Unknown

The appropriations process for FY 2005 doesn't lend itself well to periodic updates on which bills have been passed and who the winners and losers are. No one is even pretending that the House and Senate will debate and pass any of the 13 separate appropriations bills, or reconcile the two versions in conference -- the normal budget process. Rather, it has been clear from the start that an impossibly tight budget in an election year will dictate the process.

Appropriations for FY 2005 will be accomplished through either a huge omnibus bill with most of the appropriations (excluding defense) included, or several "mini-buses" each containing a few appropriations. Those appear to be the only kind of vehicles that can move this election year.

Does it matter? With everything else going on, is a broken budget process worth worrying about? Well, yes. The budget is how the nation's priorities get determined -- whether you are concerned about the arts, the environment, human needs, children, education, or anything else that receives federal funding. As is often the case, the process has a lot to do with the resulting substance. In past years, omnibus bills were the final resort at the last minute to avoid more continuing resolutions or a government shutdown -- this year they are the premise from which everyone is starting.

To say this year's budget process lacks transparency -- lumping a bunch of appropriations together and passing them on the basis of negotiations that occur mostly behind closed doors -- is an understatement. Many of us will have no idea what is in the bills until after they are passed (and many in Congress who are voting on them won't either). Bad provisions can more easily get stuck in at the last minute. There will be little opportunity to lobby for or against specific spending cuts before House or Senate votes, unless you are already on the inside. Even beyond that, a flawed budget process under too-tight constraints can actually lead to more -- rather than less -- spending, both because there is no transparency, and because the process becomes so irrational and unwieldy. The budget process becomes very closed, incoherent, and even, some would conclude, undemocratic, especially since it will tilt control to the president, who can shape the package.

Without reasonable levels for spending -- levels that take into account the cost of inflation and population growth and that adequately support the services that citizens want and deserve -- a rational budget based on short- and long-term needs and priorities becomes impossible. A good budget requires reasonable revenue from the taxes we pay to support the myriad things government does for each of us -- many of which we take so much for granted they have become invisible. Until then, we can look forward to less and less transparency in what may be the most important activity of government, and one in which its citizens and future generations have a huge stake -- passing a budget.

Congress Mulls Secrecy on Several Fronts

Those who care about American's right to know would do well to keep eyes peeled on recent congressional action. Proposals to amend the USA Patriot Act and spending bills are at the center of congressional debate over openness in government.

In that debate, which pits the doctrine of reauthorization of federalism against the government's penchant for secrecy, the Senate added a provision to a $350 billion transportation bill (H.R. 3550) that would preempt state and local sunshine laws in order to mandate secrecy about public safety problems in aviation, rail and other transportation systems.

The administration-sponsored secrecy provisions expand already broad powers granted to the Transportation Security Administration to define problems potentially harming public safety as "sensitive security information" that should be kept from the press and public. The preemption language is not included in the version of H.R. 3550 that the House passed. The differences will be negotiated in conference.

Congress also saw action on several bills that would amend the Patriot Act. Through the efforts of many including the Rights Working Group, an affiliation of public interest groups against the Patriot Act, the Civil Liberties Restoration Act 2004 (S. 2528) was introduced on June 16. The bill would end secret hearings, ensure due process for detained individuals, limit secret seizures of records, and limit the use of secret evidence.

In a closed session on June 16, the Senate Select Committee on Intelligence was scheduled to consider attaching a bill (H.R. 3179) to the intelligence authorization bill that would have expanded the use of secret evidence in court cases and strengthened penalties for violating Patriot Act gag orders. In what may be a modest and temporary win -- but a win nonetheless -- for civil liberties and open government advocates, the Intelligence Committee kept the controversial language out of the intelligence authorization bill, although proponents may try adding H.R. 3179 to the must-pass intelligence bill as a floor amendment in the Senate.

And several weeks ago, ten senators quietly introduced a bill, S. 2476, which would make permanent the controversial provisions of the Patriot Act scheduled to sunset next year. The bill is referred to the Committee on the Judiciary.

Finally, by a vote of 54 to 39 the Senate upheld a ban on media coverage of fallen soldiers' flag-draped coffins returning to the U.S.

More updates and links to more information about these events can be found at www.openthegovernment.org

State Department Releases New Terrorism Death Count, Corrects Flawed Data

The State Department released drastically higher numbers for terrorism-related deaths June 22, after the administration used the original April report to claim the war on terrorism is succeeding. Government officials cited outdated computers and personnel shortages as the reasons for the flawed data, according to the *Washington Post*.

The revised report identifies 625 deaths from terrorist attacks, more than double the original report's number of 307. The 1,593 injuries jumped to 3,646, "significant" incidents went up by five, and all incidents increased from 190 to 208.

Rep. Henry Waxman (D-CA) sent a letter May 17 to Secretary of State Colin Powell, pointing out the skewed data and questioning the report's integrity. The State Department acknowledged its inaccurate numbers June 10.

A spokesman for Sen. John Kerry (D-MA) claims the correction is "just the latest example of an administration playing fast and loose with the truth when it comes to the war on terror." The administration argues that the inaccurate report resulted from technical glitches and budget shortfalls. Once it knew of the errors, the administration corrected the report.

Before this year, the CIA compiled statistics on terrorist attacks. In 2003, President Bush transferred this duty to

the Terrorist Threat Integration Center in order to produce more efficient and comprehensive reports on terrorism. By producing such flawed data for the global terror report, the new center does not seem to be fulfilling expectations.

FBI Used Controversial Patriot Act Provision

The FBI applied to use a section of the USA Patriot Act less than a month after Attorney General John Ashcroft stated it had never been used, according to new documents. Section 215 allows the government to track the public's reading habits in bookstores and libraries and seize an organization's computers, files and "any material thing" as part of an ongoing investigation.

The American Civil Liberties Union (ACLU), the Electronic Privacy Information Center, the American Booksellers Foundation for Free Expression and the Freedom to Read Foundation submitted a Freedom of Information Act (FOIA) request last October, regarding the government's use of the Patriot Act. After the FBI refused to release the documents through administrative mechanisms, a U.S. District Court judge overturned the FBI's decision to withhold the documents. Additional documents will be released over the course of the next month.

Among the records released are:

- An October 15, 2003 FBI memorandum indicating that the FBI submitted an application for an order under Section 215.
- An e-mail message acknowledging that Section 215 can be used to obtain physical objects such as apartment keys, in addition to records. The Attorney General previously acknowledged that Section 215 can be used to obtain computer files and even genetic information.
- An internal FBI memo, dated October 29, 2003, stating that Section 215 of the Patriot Act can be used to obtain information about innocent people.

Additional Resources:
Patriot FOIA page by ACLU.
"Ashcroft Declassifies Use of a Patriot Act Power" by OMB Watch.
Patriot Act resource page by OpenTheGovernment.org.

DHS Seeks Exemptions From Public Disclosure Requirements

The Department of Homeland Security (DHS) is looking to hide Environmental Impact Statements (EIS), partially or in whole, from public disclosure. A June 14 directive published in the Federal Register would exempt the agency from a number of requirements under the National Environmental Policy Act (NEPA).

The directive applies to all agencies within DHS including the Transportation Security Administration, Energy Security and Assurance Program, Federal Emergency Management Agency, and the Coast Guard. DHS and its agencies deal with emergencies such a floods or oil spills, conduct research in science and technologies, and provide transportation services for hazardous waste.

Under NEPA, federal agencies must consider the environmental impacts of proposed actions through the development of an Environmental Impact Statement. The public, as an affected stakeholder, plays a vital role in the developments of EIS and related analyses for any actions occurring in their communities.

The DHS directive would hide information that is "classified, protected, proprietary, or other information that is exempted from disclosure by the Freedom of Information Act ..., critical infrastructure information ..., sensitive security information ..., and the DHS Management Directive 11042, 'Safeguarding Sensitive But Unclassified (For Official Use Only) Information'." This could include any EIS or its supporting analyses.

While it is understandable that classified and proprietary information, or information sincerely vital to national security should sometimes remain secret, a blanket exemption like this is prone to abuse and would hide vast amounts of environmental information. Many of the categories of information DHS cites are new and poorly defined. Information that industry or the government does not want publicly available can be easily categorized

under one of these exemptions.

DHS claims that it will move any protected information from documents to an appendix for decision makers only; the public could review all other parts of information generated under NEPA. However, "if segregation would leave essentially meaningless material, the DHS elements will withhold the entire NEPA analysis from the public." DHS might render analysis "meaningless", but the public could find the information extremely useful. There are no procedures contained in the directive for how DHS will determine which pieces of environmental analysis to remove if it falls within an exemption, or how it will determine if the public finds the information meaningful.

This directive is open for public comment until July 14.

Additional Resources:
SEJ WatchDog Tipsheet

Court Rejects Claim in First Decision on Data Quality Act

In the first ever court decision to address the Data Quality Act, a federal district court in Minnesota has held that the Act does not permit petitioners to seek judicial review.

The DQA issue was just one of many complaints targeting the plans of the Army Corps of Engineers and the Fish and Wildlife Service for management of the Missouri River. Several different causes of action were consolidated by the Judicial Panel on Multidistrict Litigation and referred to the U.S. District Court for the District of Montana. The resulting 51-page opinion disposed of the entirety of the case by granting the government's motions for summary judgment. Although the DQA issue received a scant page of discussion, it remains significant nonetheless as the first court decision to address the DQA.

See full story and DQA background

NPAction.org Announces A New Web Resource to Aid Nonprofits

Nonprofits Can Help America Vote! Announcing a new web resource dedicated to giving nonprofits the tools they need.

Congress passed the Help America Vote Act in response to voting problems in the 2000 election. With electronic voting provisions getting all the news coverage, the public is unaware of other new procedures mandated by the Help America Vote Act.

Nonprofits are the public's best source of nonpartisan information about candidates and voting procedures. You can help set the stage for greater civic participation - get ideas at www.npaction.org/helpUSvote!

For example, nonprofits can:

- help get their constituents registered
- educate them about the new laws (such a provisional balloting)
- assist at the polls or become a poll watcher
- sponsor candidate debates and forums.

Stop by www.npaction.org/helpUSvote and see how you can help with elections. While you're there learn about legal rules and how to continue your advocacy activities in an election season.

Add our web sticker to your site for easy access to the Nonprofits Can Help America Vote web resource. Get the code.

Report Says Economic Disparities Deny Many Americans a Political Voice

The American Political Science Association released a report this month, warning that democracy in the United States faces profound threats because "disparities of income, wealth and access to opportunity are growing more sharply in the United States than in many other nations, and gaps between races and ethnic groups persist."

The report, American Democracy in an Age of Rising Inequality, was brought together after nearly two years of research by the Association's Task Force on Inequality and American Democracy. The nonpartisan Task Force included scholars from around the country. Among the Task Force's findings based on analysis of the U.S. economy, voting and other forms of political participation, and government policy making:

- The United States has, in effect, 2 classes of citizenship: Wealthier Americans are far more active across the board -- from voting to contacting government officials and joining pressure groups in Washington -- than are those with lower incomes.
- Both major political parties target many of their resources on recruiting those who are already the most privileged and involved.
- The Internet, which offers opportunities for virtual political participation and communication among citizens, may actually be reinforcing existing inequalities because it is more accessible to affluent, non-Hispanic whites, and the highly educated.

Download the full report.

Senate Finance Committee Holds Hearing on Nonprofits

Three panels of witnesses testified before the Senate Finance Committee on June 22, addressing a wide range of issues on governance, accountability and enforcement of tax laws. Committee Chair Charles Grassley (R-IA) said he expects to introduce comprehensive legislation on these issues in the fall, but that some proposals may move separately and possibly sooner. He said the hearing was the beginning of a dialog with the nonprofit sector, and that more hearings may follow.

The Finance Committee held the hearing in response to scandals involving well-known charities like United Way and The Nature Conservancy, as well as abuse of charitable deductions by donors using tax shelters and other schemes. Internal Revenue Service (IRS) Commissioner Mark Everson's testimony described the growth in the nonprofit sector, the need for "enhanced governance" of tax-exempt organizations and various schemes by taxable individuals or corporations to avoid taxes through questionable donations.

Everson said there are about 3 million tax-exempt organizations, including nearly 1 million charities and 1 million employee plans, with the remainder including everything from local governments to business leagues. He urged the Committee to support the President's proposed 4.8 percent budget increase for the IRS, which would be "used to restore and reinvigorate our enforcement presence." He described current enforcement initiatives, including:

- Beginning this summer, a project to "explore the seemingly high compensation paid" to some nonprofit employees, contacting hundreds of organizations of different sizes to get "detailed information and supporting documents on their compensation practices and procedures." The goal is to help identify problem areas for the IRS examination program.
- A study of different categories of private foundations, focusing on about 400 foundations to "gauge its compliance with the tax laws."
- Greater coordination with state governments, the Federal Trade Commission and the U.S. Postal Service.
- Revising the application for tax-exempt status (Form 1023) by the end of the year, to include questions on compensation, governance, and conflict-of-interest policies. A sample conflict of interest policy is being developed in conjunction with this effort.
- Publish a plain-language brochure in the fall with sample best practices in good governance, ethics and internal oversight.

Much of Everson's testimony discussed donors claiming charitable deductions for "abusive" financial transactions, describing several schemes in detail. There were two anonymous witnesses, sitting behind a screen and talking through voice modification machines. One described how deductions for vehicle donations often exceed the sale price going to the charity. The other described how a low-income homeownership program diverted millions to its founders.

Sen. Charles Grassley (R-IA) said specific legislation dealing with donation abuses may be introduced in the fall, and could be used to offset the cost of other tax measures, such as extending the $1,000 child tax credit, elimination of the "marriage penalty" and expansion of the 10-percent tax bracket. For example, legislation-tightening rules of deductions of intellectual property have passed in the Senate and the House Ways and Means Committee and there are proposals to limit deductions for car donations.

Witnesses from the nonprofit sector -- Diana Aviv of Independent Sector, Rick Cohen of the National Committee for Responsive Philanthropy and Art Taylor of the Wise Giving alliance -- all urged greater disclosure. NCRP has released a statement calling for increased accountability, which includes issues addressing self-dealing and compensation of foundation trustees, imposing payout requirements, donor-advised funds, and more. funds and more.

The day before the hearing committee staff issued a report with proposals for reform in governance, conflicts of interest, grant-making, federal-state coordination, reporting and disclosure, boards of director responsibilities, best practices and funding for enforcement. (See summary for details.)

- Staff Discussion Draft: Tax Exempt Governance Proposals
- Hearing Panel and Grassley and Baucus statements
- Diana Aviv testimony
- Rick Cohen testimony

Implementing Electioneering Communications Gets Complicated

With the party conventions and fall election getting closer, the Federal Election Commission (FEC) has published a brochure that explains restrictions on paid broadcasts that mention federal candidates 30 days before a primary or party convention and 60 days before a general election. This is the first election implementing the "electioneering communications" rule, which passed as part of the Bipartisan Campaign Reform Act of 2002 (BCRA). FEC regulations exempt 501(c)(3) organizations and unpaid broadcasts. The rule has raised new questions for the FEC on how it must be applied, including public service announcements where federal candidate appear, the breadth of the news exemption and advertising for Michael Moore's new film *Fahrenheit 9/11*.

In Advisory Opinion 2004-14 the FEC ruled that Rep. Tom Davis (R-VA) *can* appear in a public service announcement broadcast within the blackout period, because the airtime for the announcement is free and the message is a permissible fundraising for a charitable organization. Davis is promoting the Kidney Foundation's Cadillac Invitational Golf Tournament, which will be held in his district.

The National Rifle Association (NRA) is testing the breadth of the media exemption to the electioneering communications rule by launching a radio program that includes attacks on Sen. John Kerry (D-MA) for his voting record on gun issues and disputes his fitness to be commander-in-chief. The NRA began broadcasting its three-hour news program June 17 on Sirius satellite radio. The show reaches 400,000 listeners, many in swing states, between 2 and 5 p.m. and repeats the following morning between 6 and 9 a.m. on Right Channel 142.

The NRA show raises questions about what types of communications qualify for the media exemption, and FEC definitions of what constitutes a "news story, commentary or editorial broadcast." The exemption does not apply if the broadcaster is controlled by a political party, candidate or political committee regulated by the FEC. In particular, there are factual questions about whether or not the NRA's control of the show takes it out of the media exemption, because the NRA has a federally regulated political committee. In addition, Sirius says it is broadcasting the show for free and the electioneering communications rule only applies to paid broadcasts. So far no enforcement complaints against the NRA have been filed with the FEC.

The FEC also faces questions about the media exemption relating to advertising for documentaries that mention federal candidates. On June 24 the FEC approved Advisory Opinion 2004-15, which held broadcast ads by the Bill of Rights Educational Foundation for a planned documentary featuring President Bush are electioneering communications and cannot be paid for with corporate funds during the 30/60 day blackout periods. The Bill of Rights Foundation did not claim the media exemption, but the issue immediately arose when Citizens United filed an enforcement complaint against Michael Moore for ads promoting the documentary *Fahrenheit 9/11*. Members of the Congressional Black Caucus joined Moore at a press conference the next day, calling the complaint a violation of first amendment rights. Moore vowed to fight the complaint.

New FEC Complaint Filed Against America Coming Together

Three campaign finance reform groups have filed a new complaint at the Federal Election Commission (FEC) against an independent political committee, America Coming Together (ACT), alleging violation of FEC rules on what activities must be paid for with hard money. Hard money refers to funds raised subject to the limitations of federal campaign finance regulations, which prohibit corporate donations and individual donations over $5,000. ACT has used soft money to pay for direct mailings urging voters to defeat President Bush and elect progressive candidates all across the country.

The complaint was filed by Democracy 21, the Center for Responsive Politics and the Campaign Legal Center. Their press release said the FEC's ruling in an Advisory Opinion earlier this year requires all communications that promote, support, attack or oppose a federal candidate to be paid for with hard money, and the ABC direct mailings clearly oppose re-election of President Bush.

Independent groups, unlike political parties, are allowed to raise and spend soft money. However, they must allocate expenses between hard and soft money funds based on FEC rules. ACT denied any wrongdoing, saying it is in compliance with the allocation rules.

For more details see our summary of the FEC's discussion of allocation rules at its May 13 meeting.

The Faith-Based Initiative: In the Courts, Congress, and by Presidential Order

- A Wisconsin-based group sues the federal government over the faith-based initiative
- The president creates three new Centers for Faith-Based and Community Initiatives by Executive Order and more agency regulations are announced
- Congress works to include religion in legislation

A Wisconsin-based Group Sues the Federal Government Over the Faith-Based Initiative

On June 17, the Freedom From Religion Foundation (FFRF) filed suit against the federal government in the U.S. District Court Western District of Wisconsin. Named in the suit as defendants are Jim Towey, director of White House Office of Faith-based and Community Initiatives, the Secretaries of the Departments of Justice, Labor, Health and Human Services, and Education, eight cabinet-level or federal "faith czars," and the head of the Centers for Disease Control.

FFRF alleges that the defendants are in clear violation of the Establishment Clause of the First Amendment by "using federal taxpayer appropriations to support activities that endorse religion and give faith-based organizations preferred positions as political insiders." The actions that FFRF cite as unconstitutional include: "the funded support of national and regional conferences, at which faith-based organizations are singled out as particularly worthy of federal funding because of their religious orientation, and the belief in God is extolled as distinguishing the claimed effectiveness of faith-based social services; give preferences for federal funding to faith-based organizations because such organizations are faith-based; act to promote capacity building of faith-based organizations, all of which activities give support to and the appearance of religious endorsement to reasonable observers and/or listeners ..."

"The [faith-based] initiative does not fund religion but rather makes it easier for religious groups to navigate cumbersome federal regulations to apply for grants," says White House spokesman Jim Morrell.

Robert Tuttle, a law professor at Georgetown University School of Law and co-director of legal research for the Roundtable on Religion and Social Welfare Policy explains that the suit brought forth by FFRF has some procedural problems. "You can't just launch wholesale challenges to a general structure rule. You have to allege specific things that went wrong with specific programs."

The President Creates Three New Centers for Faith-Based and Community Initiatives by Executive Order and More Agency Regulations are Announced

On June 1, President Bush signed an Executive Order creating three additional Centers for Faith-Based and Community Initiatives within the Departments of Veterans Affairs, Commerce, and the Small Business Administration. The new agency centers brings the total now to ten out of the possible 21 grant making agencies. The faith-based centers have been created to audit the agency's existing rules and regulations and to propose changes so that the agency can contract with religious and faith-based organizations for social services. The centers created in the past have all proposed new rules that explicitly state that organizations are eligible to participate in agency programs without regard to religious character or affiliation, and that such organizations may not be excluded from competition of agency assistance awards or sub-awards.

New regulatory reforms continue to come out of the faith-based centers created by past executive orders. These reforms are able to carry out the president's promise to enable faith-based charities to receive federal tax dollars for providing social services programs. One minor stipulation applies to the religious organizations that receive awards; government money cannot be used to finance "inherently religious activity." Inherently religious activity is described in the rules as "worship, religious instruction, or proselytization." While these activities can be carried out by tax-funded grantees, they should be done during a separate time or location from the allowable activities. Agencies that recently proposed new rules or announced a final rule include the Departments of Education and Veterans Affairs, Housing and Urban Development, and U.S. Agency for International Development.

Congress Works to Include Religion in Legislation

Regardless of their failed attempt to pass a compressive faith-based initiative, Congress has slipped a few provisions from the president's initiative into different pieces of legislation.

On June 8, the Senate Judiciary Committee held a hearing on "Beyond the Pledge of Allegiance: Hostility to Religious Expressions in the Public Square," which discussed the Constitution Restoration Act of 2004. A bill, which seeks to clarify that the Supreme Court shall not have jurisdiction over any element of Federal, State, or local government, or against an officer of Federal, State, or local government (whether or not acting in official personal capacity), who acknowledges "God as the sovereign source of law, liberty, or government."

Leaked EPA Memo Reveals Likely Delays from Economics Analysis

OMB requirements that agencies conduct economics-based analyses of the costs and benefits of regulatory decisions have delayed several major environmental protections and prompted the Environmental Protection Agency to install working groups of economists for every major rulemaking, according to an internal EPA memorandum.

The memo, from EPA Acting Deputy Administrator Steve Johnson, instructs agency officials to adopt new rules that subordinate environmental decisions to economic considerations:

- **A greater role for economists:** The memo requires EPA program offices to establish, for every rule with large costs to industry, "an economics subgroup of each action development workgroup," to consist of economists from the program office itself and from the EPA's Office of Policy, Economics and Innovation (OPEI).
- **Treating economics as a "science":** Although it will be news to many scientists who specialize in biology, ecology and other empirical sciences, the memo treats economics as though it were such a science instead of a social theory depending in large measure on controversial *a priori* assumptions of human and institutional behavior. In its very first paragraph, it notes, "Science, *including economics*, is continually improving" (emphasis added). This conflation of economics with empirical science is necessary to make sense of the memo's insistence that the working groups of economists will be charged with "developing a plan to conduct economic analyses using the best available science." These "best available" methods include using opinion polls to calculate the value of endangered species, and some of the "best available" examples have recently been shown to lack scholarly integrity.
- **Incorporating White House political values in the scientific process:** This memo also forces the program offices to "meet with the Office of Management and Budget to communicate their regulatory and policy agenda for the remainder of the year." In preparation for those meetings, the program offices "should be prepared to describe the key underlying analytic assumptions or models used" for every economically significant rule on the agenda.

Another requirement, according to *Inside EPA* sources but not in the memo itself, is a redundant follow-up

economics analysis. According to those sources, EPA is also requiring OPEI to review once again the rules that have already undergone economics analysis at the agency, been scrutinized (and perhaps reanalyzed) at OMB, received OMB approval, and been returned to the EPA for final sign-off.

The report identifies several major rules already being subjected to these extra layers of economics analysis, which include safe drinking water rules regulating by-products from disinfection. Sources report that the new reviews could also delay a waste rule to create an electronic tracking system for shipments of hazardous wastes.

Details Emerge on Data Rejected in Morning-after Pill Decision

Internal FDA memos reported by the *Washington Post* last week show senior scientists at the FDA disagreed sharply with the agency's decision last month to bar the Plan B morning-after pill from over-the-counter sales.

The scientists asserted that FDA officials applied a higher standard for determining Plan B's OTC status than has been applied to other drugs. Dr. John Jenkins, director of FDA's Office of New Drugs, wrote in an internal memo reported in the *Wall Street Journal* that Plan B is "fully consistent with the agency's usual standards for meeting the criteria" for OTC status.

The FDA decision appears to rest on political implications of the drug rather than actual science. Jonca Bull, director of the Office of Drug Evaluation at the FDA, called some of the issues raised against the approval of Plan B "speculative and unbalanced," according to the Washington Post. The decision is also inconsistent with the evaluation of other forms of contraception, many of which are available over the counter.

FDA scientists join a chorus of medical professionals and legislators in criticizing the decision. "The overwhelming data is that it is safe, effective and usable across age groups," said Vivian Dickerson, President of the American College of Obstetricians and Gynecologists."

Plan B is most effective if used in the first 72 hours after intercourse. Since most unintended intercourse takes place over the weekend when women do not necessarily have access to a physician, medical professionals have adamantly supported the availability of Plan B without a prescription. The American Medical Association passed a resolution last week denouncing the FDA's decision. They also encouraged doctors to write advanced prescriptions for their patients.

"This appears to be an unfortunate triumph of politics over science," said Senator Clinton (D-NY). She called the FDA decision "a sad example of the Administration pandering to its conservative base at the expense of women's health." A group of senators led by Sen. Clinton are seeking a Senate hearing and a General Accounting Office inquiry into the decision. "Through hearings and an investigation by the GAO we should be able to determine whether the FDA violated protocol and ignored scientific evidence to arrive at its decision. We also want to know if there was any intervention by the White House in this process," said Senator Clinton.

Read Senate Request for Inquiry

Court Rejects Claim in First Decision on Data Quality Act

In the first ever court decision to address the Data Quality Act, a federal district court in Minnesota has held that the Act does not permit petitioners to seek judicial review.

The DQA issue was just one of many complaints targeting the plans of the Army Corps of Engineers and the Fish and Wildlife Service for management of the Missouri River. Several different causes of action were consolidated by the Judicial Panel on Multidistrict Litigation and referred to the U.S. District Court for the District of Montana. The resulting 51-page opinion disposed of the entirety of the case by granting the government's motions for summary judgment. Although the DQA issue received a scant page of discussion, it remains significant nonetheless as the first court decision to address the DQA.

See full story and DQA background

Rise in Child Deaths Due to Power Windows Angers Safety Advocates

Seven children have been killed by power windows in the past three months, prompting safety advocates to demand government and industry action. The number of deaths is an increase from the two to four deaths per year reported in the past several years.

Most of these deaths are caused by strangulation when a child accidentally trips the power window button and is caught in the rising window. There are two known and fairly economical solutions for car manufacturers to make the windows safer. Auto-reverse windows, which are standard in 80% of cars in Europe, automatically reverse when they hit a barrier. Some American cars, such as the Ford Focus, come standard with auto-reverse windows in Europe but have no auto-reverse feature in the United States.

Even without auto-reverse windows, relatively simple changes can be made to increase the safety of power lock doors. Power windows in most American-manufactured cars are controlled by simple toggle buttons that can easily be triggered accidentally. By contrast, most foreign-manufactured cars control power windows with buttons that require a person to lift up on the button to raise the window, making it much more difficult to accidentally trigger the button. Safety advocates have used the recent rise in power window-related fatalities to call upon the industry and government to make these relatively inexpensive changes.

The Senate highway authorization bill does call on industry to make power windows safer and creates a government database to track power-window-related fatalities. The bill is now in conference with the House highway authorization bill, which does not contain such a provision.

According to Kids and Cars, the leading advocacy group tracking the power window issue, the legislative push is long overdue. The group has been petitioning the government since 1995 to require higher safety standards for car power windows, which are already regulated by many foreign governments. The National Highway Traffic and Safety Administration rule that would regulate power windows was based on a petition filed in 1996. Kids and Cars filed a second petition with NHTSA last year. Based on a poll of over 1,000 adults conducted by Harris Interactive, 84 percent of Americans believe automakers should take the known steps to install safer power windows.

Industry representatives say the auto industry is already working to phase out the toggle buttons. "But bear in mind," Eron Shosteck, spokesman for the Alliance of Automobile Manufacturers told the *Washington Post*, "there's always a phase-in. You're always going to see it take time to penetrate the entire fleet." Though automakers believe that parents are also responsible for children's deaths due to power windows, the Harris poll also showed that most Americans don't even realize the potential dangers of power windows.

Over one million vehicles with unsafe power windows will be put in the marketplace by the sales of these two vehicles this year.

Read the Kids and Cars Press Release.

EPA Releases 2002 Toxic Release Inventory: Right-to-Know Compromised

The Environmental Protection Agency's (EPA) 2002 data for the Toxic Release Inventory (TRI) shows a 5 percent increase in toxic releases to the environment. The agency's premier right-to-know program released the new data on June 23, one day after the Environmental Integrity Project published a report documenting levels of air toxins four to five times higher than previously reported.

Although EPA published the 2002 data online, it did not publish a full Public Data Release (PDR) as it has done in previous years. The lack of full analysis by EPA is putting the public's right to know at risk.

RTK NET, operated by OMB Watch, made the TRI data available on its site June 24.

Background

Congress passed the Emergency Planning and Community Right-to-Know Act (EPCRA) in 1986 shortly after the

Union Carbide chemical disaster in Bhopal, India killed thousands of people. The law aims to alert the public of any chemical facilities emitting toxins in their communities in order to avoid a disaster of the Bhopal magnitude.

The Toxic Release Inventory was created in 1987 under EPCRA, and mandates the collection of data on releases and transfers of certain toxic chemicals from industrial facilities for public disclosure. TRI has expanded over the years and is now EPA's premier database of environmental information. RTK NET developed a searchable online database for TRI and other environmental data in 1989.

Increase in Toxic Releases

Overall, toxic releases reported for 2002 fell 15 percent from 2001. However, this number is misleading due to massive underreporting by the mining sector. A 2003 court decision, *Barrick Goldstrike Mines, Inc. v. Whitman*, allows mining facilities to report far less toxic waste because they do not have to include waste rock. Barring the mining waste numbers that significantly skew the data, EPA reports that:

- Total disposal or releases of TRI chemicals increased by 5 percent (151 million pounds);
- On-site disposal increased by 7 percent (196 million pounds);
- Off-site disposal decreased by 8 percent (44 million pounds);
- Total production-related wastes managed decreased by 4 percent (1.05 billion pounds);
- Disposal or releases of persistent bio-accumulative and toxic chemicals increased 3 percent (11 million pounds);
- Lead releases increased 3 percent (14 million pounds);
- Dioxin releases decreased 5 percent (7,082 grams) from 2001, although these had increased by 43 percent from 2000 (42,188 grams); and
- Mercury releases or disposal increased by 10 percent (465,962 million pounds).

The primary metals and utilities sectors reported the largest increases in disposal or releases. Primary metals' waste increased 39 percent (209 million pounds) and electric utilities increased by 3.5 percent (37 million pounds).

Underreporting

The June 22 report by the Environmental Integrity Project and Galveston-Houston Association for Smog Prevention, indicates that EPA and state agencies are underreporting toxic air emissions by at least 16 percent, essentially hiding actual levels of emissions from the public. The study compares data from the Texas Commission on Environmental Quality and the EPA and then applies it nationwide.

The study examined 10 hydrocarbons covered by TRI that cause rapid ozone formation. Several of these chemicals, like benzene and butadiene, are known carcinogens. The report estimates at least 330 million pounds a year of these emitted toxins are not reported. Additionally, EPA's state pollution rankings change dramatically when the report's finding are applied nationwide.

The differences in reporting are largely attributed to the techniques regulated facilities use when reporting emissions -- most estimate releases instead of monitoring them. Furthermore, the estimated releases that facilities calculate can change drastically when different emission factors are used. EPA previously acknowledged that its emission factors are not accurate. Despite this, EPA completed a rulemaking earlier this year rolling back requirements for air monitoring by facilities.

The report contains a number of recommendations EPA should adopt, including more stringent regulations for air monitoring, a review of state-issued permits to ensure proper monitoring, and a re-examination of emission factors.

Public Data Release

While EPA posted the TRI data online, it no longer publishes a full Public Data Release (PDR), which includes easy-to-understand overviews of the data, detailed analysis, and supporting tables and information. Additionally, EPA no longer makes the companion State Fact Sheets report available in hard copy; this tool provides state-by-state data summaries, maps and other information.

The PDR serves as the official governmental figures on toxic releases. It is used by a large segment of the public through libraries and other avenues. It has been printed and widely disseminated each year since inception of the TRI program, in compliance with legal requirements to produce an annual report. For the first time ever in the TRI history, EPA is downsizing the PDR from the two-volume report, spanning hundreds of pages, to a six-page report.

EPA claims the public can access the same information previously available in PDRs from the online data. Not only is this a complicated and arduous task, but much of the information from the PDR cannot be obtained through the online services offered by EPA. Moreover, given there are updates to the TRI data throughout the year, there will be no "official" figures to use for comparative purposes. Thus, any future analyses will likely be criticized because numbers are unlikely to match in any two research efforts.

OMB Watch posted an action alert, urging EPA to continue publishing the full PDR in both online and paper formats.

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