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In This Issue

Reports Highlight MSHA's Failures at Crandall Canyon Mine

Two recent reports highlight the failures of the Mine Safety and Health Administration (MSHA) in approving the retreat mining plans at Crandall Canyon mine in Utah that resulted in nine deaths after a mine collapse in August 2007. A third report criticizes MSHA's approval and implementation of emergency response plans required by legislation passed by Congress in the wake of mining disasters across the country in 2006.

The Aug. 6, 2007, mine collapse at the Crandall Canyon coal mine trapped six coal miners and led to the deaths of three rescue workers. The mine operators were working under a plan approved by MSHA in June 2007, just months after serious structural problems forced the operators to abandon a work area only 900 feet from where the miners were killed. The miners were engaged in "retreat mining" — cutting out the pillars of coal supporting the mountain above the main tunnel and allowing the roof to collapse — to extract the last significant coal

deposits before abandoning the mine.

On March 6, the Senate Health, Education, Labor and Pensions (HELP) Committee released a report that addresses MSHA's approval of the plan to conduct retreat mining and its monitoring of the safety conditions during mining operations. The committee's investigation is detailed in its *Report on the August 6, 2007 Disaster At Crandall Canyon Mine*. The report concludes that MSHA and the mine operator, Murray Energy Corporation, did not exercise "appropriate care in formulating and reviewing the plans" for mining the pillars. Furthermore, MSHA entered into a tacit agreement with Murray Energy to excuse the company from some reporting requirements that should have led MSHA to conduct an investigation, a failure the report calls "an abdication of MSHA's regulatory responsibilities."

Specifically, MSHA either missed or dismissed critical technical flaws in the plan assembled by Murray's consultant, approved the plans with only minor changes, and ignored signals that should have made the agency cautiously review or investigate the mining operations. As a result of these "failures of diligence, care and oversight," the report concludes that the Secretary of Labor should refer the case to the Department of Justice for prosecution.

A report released March 31 by the Department of Labor's Office of Inspector General (OIG) was even more scathing than the HELP Committee report. The OIG was asked by HELP to conduct an audit of MSHA's performance of its plan review and implementation activities in the mine accident. Among the conclusions the report draws is that

> MSHA was negligent in carrying out its responsibility to protect the safety of miners. Specifically, MSHA could not show that it made the right decision in approving the Crandall Canyon roof control plan. Similarly, the lack of documentation to support the review and approval of the plan prevented MSHA from showing that the process was free from undue influence by the mine operator.

MSHA's district offices are required to develop standard operating procedures that contain 20 minimum controls necessary for a plan approval process. MSHA's Washington, DC, headquarters is not required to review these operating procedures. The District 9 standard operating procedure, which regulates mining operations in most of the West, including Utah where the Crandall Canyon mine is located, did not address 12 of these 20 controls, which is the highest number of unaddressed controls among MSHA's district offices. In addition, each district office is required to develop its own procedure for reviewing roof control plans. According to the report, District 9 staff told the OIG that the plans are rarely if ever used except for training purposes.

The report offers nine specific recommendations to MSHA concerning rigorous processes and oversight, explicit criteria and guidance for assessing plans, and reevaluating districts' roof control plans. MSHA concurred with all the OIG recommendations but challenged the conclusion of negligence as "misleading." OIG investigators did not change their report in light of this objection. Instead, the report defends the conclusion: "MSHA's actions and inactions,

taken as a whole, lead us to conclude that MSHA lacked care and attention in fulfilling its responsibilities to protect miners...These deficiencies evidence MSHA's serious and systemic lack of diligence in protecting miners, and we do not believe it is misleading to use the term 'negligent.'"

Emergency Response Plans

In the wake of 47 deaths in 2006 from mining accidents, Congress enacted the Mine Improvement and New Emergency Response Act of 2006 (MINER Act) in an effort to improve the safety of coal mines. The MINER Act required coal mine operators to develop by August 2006 emergency response plans designed to improve accident preparedness and response. The mandates include providing oxygen sources to miners trapped underground and wireless communications systems.

The House Committee on Education and Labor asked the Government Accountability Office (GAO) to review "1) the effectiveness of MSHA's process for approving mines' emergency response plans, 2) the status of implementation of underground coal mines' emergency response plans, and 3) the efforts MSHA has made to enforce implementation of the plans and oversee enforcement and plan quality." GAO released its report April 8, which concluded that MSHA's directions to the industry were unclear, requiring MSHA to revise its guidance several times, resulting in widely varying plans across MSHA's districts.

Although most aspects of these emergency response plans had been implemented by January 2008, the requirements to have air refuges and capacity underground for trapped miners and to have wireless communications systems were not implemented. In the first instance, the manufacturers have not produced enough of the necessary equipment. Fully wireless technology does not yet exist, and MSHA has not determined what technology mining companies will be allowed to use to meet the law's requirements. The dangerous conditions exposed by the mine accidents in 2006 and by the Crandall Canyon mine incidents may not to be resolved by the law's June 2009 deadline.

District offices have been diligent in inspecting mines and issuing violations related to the parts of the emergency response plans companies have in place. However, GAO noted that a November 2007 OIG report indicated that there were too few resources to conduct all the inspections required. This finding was supported by GAO's interviews with district officials. In addition, officials at MSHA headquarters have not evaluated the citation data to determine if implementation and enforcement problems exist among the districts, so there may be very different standards applied to mines across the country. "As a result, all mines may not be prepared to adequately protect their miners in the event of an accident."

White House Gains Influence in Toxic Chemical Assessments

The U.S. Environmental Protection Agency (EPA) has announced changes to its process for assessing the human health effects of common chemical substances. The revised process will

allow the White House Office of Management and Budget (OMB) to play a larger role in the evaluation of the substances.

EPA's Integrated Risk Information System (IRIS) serves as a publicly searchable database for studies and information on the human health effects of chemical substances. EPA scientists and policymakers use the information in the database to make determinations about the risk of various substances. EPA studies both the carcinogenic and noncarcinogenic effects of substances and determines safe or tolerable exposure thresholds when possible.

IRIS assessments can inform regulatory action intended to protect humans from the harmful effects of certain substances. "Through IRIS, EPA provides the highest quality, science-based, human-health assessments to support EPA's policymaking activities," according to the agency. Researchers and regulatory bodies in other nations also use IRIS assessments to inform decision making, according to EPA.

On April 10, EPA announced policy changes to its process for determining risk under IRIS. EPA will now involve OMB at every stage of the IRIS assessment process. Previously, OMB reviewed a final version of the draft assessment before EPA subjected it to external peer review. OMB already reviews — and often edits — agencies' proposed and final regulations. The office will now have several opportunities to review and alter the scientific findings that serve as the basis for chemical exposure standards.

Before EPA assesses a substance under IRIS, the agency asks the public and other federal agencies or interested parties for nominations. Under the new IRIS process, EPA will now consult with other federal agencies and OMB after receiving nominations to determine which substances EPA will evaluate.

After EPA, OMB, and other agencies select a chemical for assessment, EPA will conduct a literature search assessing available studies and information on the chemical in question. Under the old process, after conducting a literature search, EPA would perform a quantitative toxicological review. Now, EPA will have to put the process on hold and ask the public, other agencies, and OMB for additional studies or information on the chemical being assessed.

After reviewing all relevant information, EPA will prepare a qualitative assessment of the chemical. The qualitative assessment is to include potential health risks, susceptible populations, and potential uncertainties, among other things. EPA will then solicit comments on the qualitative assessment from the public, other agencies, and OMB — another new requirement.

EPA will then draft a quantitative toxicological assessment based on the qualitative assessment and relevant comments. EPA also prepares questions to pose to the external peer review panel that will eventually review the toxicological assessment. EPA will submit both the draft toxicological assessment and the peer review questions to OMB for review by the White House and other federal agencies. In the revised process, EPA explicitly states that the OMB/interagency review is deliberative and therefore is not subject to public disclosure

requirements.

EPA will then make public the toxicological assessment and convene a public meeting of external peer reviewers. The old IRIS process contained a similar requirement.

After the external peer review, EPA will revise the assessment. Then, EPA will send the assessment to OMB for one final review. Under the old IRIS process, OMB did not have the opportunity to alter the assessment after it underwent a rigorous external peer review. Now, OMB can pressure EPA to make last minute changes before finalizing and publishing the assessment.

The revised IRIS process will also allow EPA to abdicate to another federal agency its power to study a substance, so long as that agency can prove the substance is critical to its mission. The provision raises the possibility of a conflict of interest within the federal government if an agency is assessing a substance it frequently uses.

For example, a Natural Resources Defense Council (NRDC) investigation showed the Department of Defense, with the support of the White House, pressured the National Academies of Science to downplay the adverse health effects of perchlorate. Perchlorate is an ingredient in rocket fuel. The Pentagon and defense contractors use rocket fuel for a variety of purposes.

Perchlorate has been shown to cause brain damage in fetuses and infants, according to NRDC. Nonetheless, the federal government passed up numerous opportunities to regulate perchlorate, citing the need for more research.

Under EPA's revised IRIS process, federal agencies such as the Department of Defense will have new opportunities to exert pressure on EPA to suppress or cast doubt on public health science.

Sen. Barbara Boxer☼ (D-CA), chair of the Environment and Public Works Committee, criticized EPA's decision to revise the IRIS process. In a statement, Boxer says the changes "put politics before science by letting the White House and federal polluters derail EPA's scientific assessment of toxic chemicals." The statement also says the process will now "take place behind closed doors due to the administration's refusal to make federal agency comments public."

EPA's revised IRIS process may reflect changes to the regulatory process President Bush announced in January 2007. Those changes imposed new requirements on federal agencies' "significant guidance documents" — documents which are not rules or regulations but rather statements of policy that may impact the economy or other parts of society. The new requirements include an expanded OMB review period and mandatory public comment periods.

EPA does not mention the new guidance document policy in its revised IRIS process, nor does

it indicate whether it considers IRIS assessments to be guidance documents at all. OMB Watch criticized Bush for attempting to increase the White House's role in agency activity and for failing to adequately define guidance documents, fearing scientific assessments such as those conducted under IRIS would be swept in.

States Failing to Implement Critical Voting Rights Laws

On April 1, the House Committee on Administration's Subcommittee on Elections held a hearing on state-level implementation of the National Voter Registration Act (NVRA), in particular a provision that was designed to enable low-income Americans to register to vote more readily. According to testimony by witnesses at the hearing, many states are not offering voter registration at public assistance agencies and are failing to live up to the promise of the NVRA to provide more equal access to the opportunity to vote.

In 1993, the U.S. Congress passed the NVRA — also known as the "Motor Voter Act" — in order "to enhance voting opportunities for every American." The law is well known for mandating that voter registration be made available when people apply for or renew their drivers' licenses. Section 7 of the act requires that voter registration applications be made available at all state agencies offering public assistance programs including Food Stamps, Temporary Assistance for Needy Families (TANF), and Medicaid, and at state offices providing services to persons with disabilities.

Michael Slater, Deputy Director of Project Vote, a nonprofit organization that promotes voter registration and voting to Americans historically underrepresented in the electorate, testified at the hearing on Project Vote's recent evaluation of Section 7 implementation. According to Project Vote's extensive analysis, Slater testified,

> Voter registration at public assistance agencies has plummeted from 2.6 million in 1995-1996 to just 550,000 in 2005-2006, a 79 percent decrease. This decline cannot be explained by a decline in public assistance caseloads, the rate of citizenship among applicants, or registration rates of low-income individuals....the evidence points overwhelmingly to chronic and pervasive non-compliance by states.

Lisa J. Danetz of Demos, a nonpartisan public policy center focused on expanding democratic participation, affirmed Slater's testimony that registration is not being offered at public agencies in many states. In her testimony, Danetz reflected on the possible causes of the breakdown at the state agencies, saying, "This is not necessarily because of a deliberate effort to defy the law; it may just be that a lack of consistent oversight and training combined with high level of staff turnover at agencies has caused the issue to fall off the radar screen in many places."

According to the law, the Justice Department (DOJ) is responsible for enforcing the NVRA. Despite evidence of widespread noncompliance, however, the DOJ has only brought one

lawsuit against a state for failure to implement Section 7 of the NVRA. In 2002, DOJ sued the state of Tennessee for not offering registrations as required by law. Danetz testified that as a result of the court order that followed, Tennessee implemented changes that led to a significant increase in voter registration at public agencies. The number of registrations at these locations nearly quadrupled. At the hearing, Subcommittee Chair Zoe Lofgren (D-CA) noted that the committee planned to send an inquiry to DOJ on the matter of Section 7 enforcement.

Two witnesses at the April 1 hearing testified on the challenges and benefits of implementing Section 7 at the state level. Their statements supported the claim by voting rights advocates that better state enforcement of Section 7 could have enormous impact on the number of citizens registered to vote. North Carolina's Chief Deputy Director of the State Board of Elections, Johnnie McLean, outlined North Carolina's efforts to improve voter registration at public assistance agencies. North Carolina instituted a program to reform its Section 7 implementation efforts after discovering that registrations at these locations had fallen by nearly 75 percent, despite increases in welfare rolls during that time.

McLean was asked by Rep. Susan Davis☼ (D-CA) why she believes state agencies are neglecting their Section 7 duties. McLean responded, "Many state employees probably do not realize that it's a federal mandate."

The Civic Engagement Project Manager for the Michigan Department of Human Services, Catherine Truss, also testified on Michigan's efforts to comply with Section 7. Truss testified that the state of Michigan sees real value in ensuring that public agencies offer voter registrations, saying,

> We believe that feeling as if your vote does not count or that your opinion does not matter is a significant barrier to self-sufficiency... Compliance with the National Voter Registration Act is not just another federal mandate; it is a key component for families to act on their own behalf and become part of the public debate.

A senior policy analyst from the Heritage Foundation, David B. Muhlhausen, countered the assertions by the other witnesses that states are neglecting to implement Section 7. Referencing forthcoming data, Muhlhausen argued that two explanations better account for the decline in Section 7 registrations: one, that "voter registration drives by community mobilization organizations replaced the need for welfare recipients to register at public assistances offices," and two, "that welfare reform caused the decline in registrations."

Recent research by Project Vote and Demos — documented in their report *Unequal Access: Neglecting the National Voter Registration Act* — contradicts Muhlhausen's explanations. In regard to Muhlhausen's claim that demand for voter registration by low-income Americans has been met by mobilization organizations, the report finds that millions of low-income Americans remain unregistered in spite of the registration efforts of nonprofits and other organizations. In 2006, 13 million, or 40 percent, of voting-age citizens earning under $25,000

were unregistered. The *Unequal Access* report also addresses Muhlhausen's second argument that declines in state welfare caseloads led to the decrease in Section 7 registrations. The report asserts that although figures vary by state, the trend of decreasing caseloads generally reversed itself in the first years of this decade. For example, more adults are receiving assistance under the Food Stamps Program than in the 1990s.

Robocall Regulation Debate Heats Up

Controversy over S. 2624, the Robocall Privacy Act of 2008, has increased in recent weeks following a February Senate committee hearing. Labeled as an affront to First Amendment speech rights, an unwelcome infringement upon citizen-to-citizen communication, and unconstitutionally vague and overly broad, this bill has forced political pundits, consultants, and politicians to debate what constitutes "core political speech" and how best to utilize robocalls. Some consultants in the automated call industry are seeking donations for the Legal Defense Fund of the American Association of Political Consultants (AAPC), and others are partnering with the National Political Do-Not-Contact Registry.

According to a press release from Sen. Dianne Feinstein☼ (D-CA) and Sen. Arlen Specter☼ (R-PA), the bill's sponsors, the main objective of the legislation is to create a reasonable framework that protects Americans from being inundated by computer automated calls in the days leading up to an election. This framework would include:

- Limits on the hours phone calls are made
- Limits on the number of phone calls made
- Caller identification and civil fines for violators

During the Senate hearing, Feinstein announced that she intends to amend the bill to make candidates and consultants abide by the commercial do-not-call-list. This would remove nearly 150 million phone numbers from the reach of robocallers.

In response to S. 2624, more than 20 bipartisan political consultants have joined forces and spent more than $20,000 to fight legislative proposals which "violate" protected speech. A recent fundraising letter sent to thousands of consultants seeks support for what could be a long legal fight against a slate of federal and state bills banning robocalls. At present, more than 20 states are considering banning robocalls, while at least ten states have already begun enacting restrictions on the practice.

One Denver-based robocall firm has proposed an alternative to legislation and partnered with the National Political Do-Not-Call Registry. Rick Gilmore, president of the robocall firm Democratic Dialing, said, "It does my clients no good to call people who are only annoyed by the calls." Gilmore went on to say, "...we think it's good policy for us and a good direction for the industry in terms of policing itself." According to the registry's CEO and founder, Shaun Daskin, this type of "voluntary solution" seems to be the only viable option.

Whether the Robocall Privacy Act of 2008 will pass constitutional muster remains to be seen. A recent Senate hearing attests to the underlying difficulty of pragmatically yet legally addressing the privacy concerns of those receiving robocalls. At the hearing, North Carolina Attorney General Roy Cooper recounted the impetus behind pending legislation that would make both political parties abide by the Do-Not-Call Registry. Cooper stated, "At best these calls interrupt home life and family life, and, at worst, the calls can cut access to emergency help and medical assistance." In North Carolina, Cooper said robocallers to over 400 patients in county hospitals were stopped and fined. In the end, Cooper argued that "policymakers must find a way to control or eliminate unwanted political robocalls just like we did with unwanted telemarketing calls."

Attorney James Bopp opposed Cooper's contention that robocalls should be regulated. According to Bopp, the First Amendment protects a person's right to not only advocate for a cause but also select the appropriate means for doing so. Since S. 2624 applies to any computer-generated call which "promotes, supports, attacks, or opposes a candidate for federal office," Bopp labeled the bill unconstitutional. According to Bopp, such language would include robocalls for issue advocacy and would be difficult to enforce since the line between criticism of public officials and electioneering can often be debatable.

The hearing ended with exchanges between all panelists on the political feasibility of providing the opportunity to voluntarily opt out of political communications upon registering for the Do-Not-Call Registry. There was also some discussion about the actual cost-effectiveness of robocalls. In the weeks and months ahead, legislative bodies across the country may be charged with finding ways to address the concerns of those advocating for regulation without infringing upon the constitutional rights of those opposing regulatory efforts.

USAID Tells NGOs It Will Proceed with Plan to Use Secret Watch List

On April 11, the U.S. Agency for International Development (USAID) told an overflow crowd of nongovernmental organizations (NGOs) in Washington, DC, that the agency is moving forward with the widely criticized Partner Vetting System (PVS) it proposed in 2007. PVS will require USAID grantees to submit highly personal information about key personnel and leaders to be checked against a secret government watchlist. Although USAID representatives said some changes have been made based on public comments, details are not available, and there will be no further public comment period before the final rule is announced.

The stated purpose of the public meeting was "gathering feedback prior to the issuance of a final rule and initial implementation of the system." USAID representatives answered questions from over eighty skeptical NGO representatives who are likely to be directly impacted by the program. Acting Deputy Administrator Jim Kunder explained how PVS will be phased in, with the intention that it will eventually be enforced globally. Organizations likely to receive a grant will have to complete a Partner Information Form, including identifying information on "key individuals," including dates and places of birth, citizenship, phone

numbers, and passport numbers. The information will be entered into USAID's database and will then be checked by USAID Office of Security (SEC) against non-public U.S. government databases. If there is a "match," USAID will conduct further analysis to determine whether it is a false positive and make a recommendation on moving forward with the grant.

According to USAID, the PVS is required by law because of the existence of the government database, although no legal authorities were cited. Kunder said the public comments were useful but did not change the need for PVS.

This argument is likely to be challenged as PVS is implemented.

USAID detailed changes that will be made to the program since the July 2007 *Federal Register* announcement. One significant change is that applicants that are denied a grant can present additional information and proceed with an administrative appeal within USAID. However, there will be no description of this appeal process or any other change before the program becomes mandatory.

At the meeting, Jim Bishop, Vice President of InterAction, a coalition of U.S.-based foreign aid groups, addressed numerous concerns, saying, "Our members spend billions of dollars every year in funds received from the public and from the U.S. government. Imposing the PVS described in last summer's Federal Register notices on NGOs because of unsubstantiated media allegations that some USAID funds may have gone to suspect organizations is using a flame thrower to kill an ant. And more than ants may be killed if the PVS is implemented." Participants broke into applause after Bishop's remarks, a sign of the strong opposition to the current program design.

InterAction issued a press release on April 11, which stated, "USAID is currently describing the PVS in terms different from those used in the Federal Register Notices last July. Even so, as it is currently envisioned, it will still compromise the civil rights of American citizens, undercut the effectiveness of NGO programs, and endanger the staff members of these organizations and their local partners. As USAID has made changes to the proposed PVS, it must reintroduce the PVS, following the applicable rulemaking processes, and provide: accurate descriptions of the appeal and correction process; a concise definition of those individuals in each applicant organization that will need to provide personal information; and a description of the processes for emergency vetting in appropriate circumstances."

Other NGO representatives present at the meeting reiterated concerns made in written comments to USAID in 2007. For example:

- PVS will undermine aid programs by damaging the groups' trust and relationships with local partners in other countries
- The program will be seen as a means of intelligence gathering for the U.S. government, which could create a security risk for staff on the ground
- The PVS proposal ignores the tremendous amount of due diligence already being

performed by grantmaking organizations

Participants in the meeting said their work to alleviate poverty with humanitarian assistance is a means of fighting global terrorism, but humanitarian work suffers when groups are asked to perform intelligence-gathering activities. Kunder's response was that if assistance groups do not recognize that foreign policy and foreign aid depend on each other, "we'll eventually be having this conversation in the Pentagon."

Similar Program in West Bank/Gaza Illustrates Problems to Come

A program similar to PVS currently operating in the West Bank/Gaza (WB/Gaza) is already causing problems for NGOs. USAID claimed its experience with WB/Gaza shows improved timing for the vetting process. However, one representative at the meeting described a five-month delay for purchasing a fax machine.

Many meeting participants voiced concern that PVS would be overly burdensome for groups that have to report more detailed information on "key individuals." USAID tried to alleviate those concerns by reporting that in the WB/Gaza program, about 3.2 individuals were vetted per organization in a ten-month study period. "Key individuals" include senior management, officers within the organization, such as Executive Director, and those with responsibility over the funds' allocation. This vague standard leaves it up to the organization to figure out which key individuals to report. As one NGO representative said, this is problematic for a sector that takes compliance very seriously. Some groups in the WB/Gaza region have chosen not to receive USAID funding, and there will likely be more withdrawals if PVS is introduced on a large scale.

Oversight of Terrorist Financing Ignores Problems for Nonprofits

An April 1 Senate Finance Committee hearing continued an unfortunate pattern of insufficient congressional oversight of anti-terrorist financing programs, neglecting to address the unnecessarily harsh impacts the programs have on U.S. charities and philanthropy. Despite an OMB Watch request that the committee hear from additional witnesses, members only heard from Under Secretary for Terrorism and Financial Intelligence Stuart Levey. Both Committee Chair Max Baucus (D-MT) and Levey raised issues relating to charities that left important questions unasked and unanswered. However, committee staff has agreed to meet with nonprofit representatives.

In his opening statement, Baucus referred to failed criminal prosecutions of charities suspected of having ties to terrorism, asking if the prosecutions "were off base" or if the government should "do a better job of monitoring these organizations?" Levey did not address this issue in his testimony. Another witness could have explained the problem raised in the trial of the Holy Land Foundation, where prosecutors admitted all funds were spent for charity but argued it was illegal to provide aid through organizations that are not on the terrorist

watchlists because the group "should have known" of ties to Hamas. That case ended in a mistrial.

Baucus also said he is not satisfied the Internal Revenue Service (IRS) "is being aggressive enough in establishing links between nonprofits and terrorism financing." This was a reference to a problematic 2007 Treasury Inspector General for Tax Administration (TIGTA) recommendation that the IRS check nonprofit filings against the FBI's enormous and inaccurate Terrorist Screening Center watchlist. Nonprofits wrote a letter to Treasury Secretary Henry Paulsen in 2007 objecting to the plan and to the TIGTA claim that charities are a significant source of terrorist financing. This information was provided to the Senate Finance Committee but not mentioned at the April 1 hearing.

Ranking member Charles Grassley's (R-IA) statement focused on the need for better coordination between federal agencies but did not address the contradiction between Treasury's treatment of nonprofits and the Department of State's Guiding Principles on Nongovernmental Organizations, which indicate action by government "should be based on tenets of due process and equality before the law." Grassley also said he will update S. 473, the Combating Money Laundering and Terrorist Financing Act of 2007, which addresses loopholes in the law.

The hearing was the first time Levey had testified before the committee since he was confirmed four years ago. His testimony primarily focused on large-scale problems relating to anti-terrorist financing, including use of pre-paid credit and debit cards and smuggling. He outlined a general shift from broad sanctions to a more strategic approach of "targeted financial measures" and following investigative leads to disrupt terrorist networks, in line with recommendations from the 9/11 Commission.

In the short portion of his testimony devoted to charities, Levey failed to include crucial information the committee needs to fulfill its obligations to both prevent terrorist financing and protect and encourage the charitable mission of U.S. nonprofits. For example:

- Levey noted that Treasury has "designated approximately 50 charities worldwide as supporters of terrorism, including several in the United States, putting a strain on al Qaida's financing efforts." This fails to note that U.S. organizations account for only seven of 47 designated organizations among 479 Specially Designated Global Terrorists. In addition, not all are accused of funding al Qaida. Some of the U.S. organizations are accused of funding Hamas, the Tamil Tigers, and Hezbollah.
- Levey claimed "active engagement with the charitable sector" and "a comprehensive outreach campaign to the charitable sector" as successes, without disclosing criticisms of Treasury's shut-down of charities. This also mistakes civility from nonprofits for support of Treasury's policy, without recognizing the way its power to shut down charities inhibits honest dialog.
- The testimony noted Treasury has "issued guidance to assist charities in mitigating the risk of exploitation by terrorist groups" without acknowledging repeated calls for withdrawal of the guidelines from a diverse group of nonprofits that say the guidelines

are counterproductive and harmful to charities' operations.
- Levey said Treasury's engagement with the nonprofit sector "is particularly important because we want humanitarian assistance to reach those who are truly in need through channels safe from terrorist exploitation" without mentioning the department's refusal to release frozen charitable funds to reputable nonprofits so that the dollars can reach those in need.

After the hearing, OMB Watch issued a press statement and said, in part, "Anti-terrorist financing programs have had a widespread and negative impact on the U.S. nonprofit sector, including program cutbacks, decreased international giving, and increased fear of speaking out on important public issues. Witnesses from charities and foundations could have provided the committee with a full picture of the real damage the financial war on terror is causing charities, foundations, and the people we serve. Instead, the public record is left incomplete, which will likely lead to continuation of flawed programs that do little or nothing to stop terrorism."

The limited witness list also meant the committee has not heard from experts on money laundering, who are critical of Treasury's overall current approach to terrorist financing. These include:

- Ibrahim Warde, author of the book *The Price of Fear*, summarized in a Power Point presentation
- Professor Nikos Passas, author of Setting Global CFT Standards: A Critique and Suggestions

The hearing is one more in a series of one-sided, limited hearings in Congress. Other examples are detailed in an *International Journal of Not for Profit Law* article.

Housing Crisis Legislation: A Tale of Two Houses

By fits and starts, Congress is moving toward a legislative response to the housing sector crisis — the biggest sectoral crisis to afflict the U.S. economy since the technology stock bubble burst earlier this decade. In what might turn out to be a case of the tortoise and the hare, the Senate has jumped out front with a housing bill that enjoys little if any support in the House or the Bush administration, while the House has embarked on a schedule of hearings and mark-ups of a much-praised bill of a wholly different nature. There is a widely shared consensus that, with elections approaching, Congress must and will act to address the crisis, but thus far, the two houses are proceeding along on separate, if not perpendicular, tracks.

On April 10, the Senate adopted a package of tax breaks and assistance by a vote of 84-12 that was aimed more at easing the housing credit crunch by restoring liquidity to the sector than at addressing foreclosures. The day before, the House Financial Services Committee opened hearings on the Housing Stabilization and Homeownership Retention Act, a plan by Committee Chair Barney Frank (D-MA) to provide $300 billion in federal loan guarantees in an effort to stem the growing national tide of foreclosures. The committee will formally

consider the Frank plan April 23 and 24.

Despite being considered the same week, these two measures have almost no similarities. The Senate bill, the inaptly named Foreclosure Prevention Act, consists mostly of a set of tax cuts for corporations and potential homebuyers costing $16.9 billion over five years ($10.8 billion over ten) without any offsets. The House plan, on the other hand, has $11 billion in tax cuts, all targeted at the housing sector and fully offset.

The Senate had sprinted forward the prior week with a rapidly-forged compromise by Banking, Housing, and Urban Affairs Committee Chair Sen. Christopher Dodd☼ (D-CT) and ranking member Sen. Richard Shelby☼ (R-AL) on a bill that had originally included a $400 billion Federal Housing Administration (FHA) loan guarantee provision similar to the Frank plan. Within days, that bill was raced to the Senate floor, and the mostly unrelated tax cuts crafted by Finance Committee Chair and ranking member Sens. Max Baucus (D-MT) and Charles Grassley (R-IA), respectively, were quickly appended. Shortly before the final vote, Dodd withdrew his $400 billion loan guarantee provision.

The Senate tax provision drew criticism in progressive and fiscal watchdog circles for having precious little to do with the housing sector crisis, let alone with preventing foreclosures. Those foreclosures are expected to increase in the U.S. by over a million in the next 18 months. One particular criticism from the Center on Budget and Policy Priorities (CBPP) declared the "Senate Housing Legislation Highly Disappointing" in a paper released April 8.

Some aspects of the tax provisions are so disconnected from the housing sector, they could make an ultimate House-Senate conference protracted and contentious. In particular, the biggest piece, a $6.1 billion provision to extend the net operating loss (NOL) carry-back period, would benefit corporations without regard to sector. This would allow a company that paid taxes in past years to write off those profits with current year losses, thereby creating a potential for getting money back from the government for the tax payments made in past years. In fact, this provision could end up making the problems worse. For example, the NOL provision could promote fire sales within the housing sector as companies holding mortgages rush to take immediate tax write-offs.

Another provision, a tax credit worth up to $7,000 toward purchases of foreclosed homes, will only benefit those with sufficient equity and credit to purchase a new home. This might actually promote foreclosures by bankers and other lenders and is not likely to do much to help communities hard-hit by foreclosures. Additionally, the tax deduction for state and local property tax payments is not targeted to the most distressed homeowners, few of whom itemize deductions on their tax returns. As CBPP points out, of the Senate proposal's $10.8 billion in tax cuts, only $1.7 billion is devoted to alleviating the foreclosure crisis. None of these provisions is in the Ways & Means Housing Assistance Tax Act.

The rest of the Senate bill does offer some effective assistance to those who have suffered or are at risk of foreclosure, providing $150 million worth of credit counseling. Yet this sum of money means that only a small fraction of the afflicted will be reached. In addition, $4 billion in

Community Development Block Grants is included for local governments to buy or redevelop homes that have already been foreclosed.

Perhaps the most contentious feature of the Senate package is that it provides no offsets at all, thus violating Congress' pay-as-you-go (PAYGO) rule. This is not the first time the House and Senate have disagreed about following the PAYGO rule. It was at the center of a months-long delay in 2007 over patching the Alternative Minimum Tax (AMT).

Meanwhile, there has been growing support over the last two months for the Frank plan from House leadership, the Bush administration, and a broad range of outside analysts and experts. Under the plan, participating borrowers and lenders would pay a premium to the government in return for loan guarantees. These payments would bring the aggregate cost of the program down to negligible amounts — $10 billion over five years in the worst case, a profit for the government in the best.

Because the premiums and penalties will come close to covering government costs, the plan is expected to be practically PAYGO compliant without need for more than minimal offset provisions. For this reason, but more so because government spending would be negligible, the plan has found initial favor with the administration.

In the Senate, Dodd is reportedly preparing to re-introduce his initial proposal that would provide closer to $400 billion in loan guarantees, but it is unclear if that proposal would receive consideration now as the full Senate has already passed its proposal. But with growing support for the House proposal both from inside the Bush administration and out, the final version of housing legislation might look significantly different from the Senate-passed version.

House Cancels Private Tax Collection Program

On April 15, the House passed the Taxpayer Assistance and Simplification Act of 2008 (H.R. 5719). The bill, approved by a 238-179 vote, is a collection of provisions aimed at facilitating income tax compliance — especially among elderly and low-income taxpayers. Most significantly, the bill would end the Internal Revenue Service's (IRS) highly controversial private debt collection (PDC) program.

This bill represents a successful attempt by the House to cancel authorization for the IRS to contract out tax collection services. It would bar the IRS from entering into contracts with private collection agencies (PCAs) and prevent the agency from renewing contracts with the two PCAs with which it currently does business.

Prior attempts to end the PDC initiative met with strong Republican opposition in both the House and Senate and were ultimately defeated. Similarly strong opposition to H.R. 5719 came from supporters of the IRS's private debt collection program this time around. Indeed,

President Bush registered his opposition to repeal of the program in a veto threat on April 14.

One of the many arguments over the program concerns its ability to close the "tax gap," which is difference between what taxpayers owe and the amount the IRS collects. According to the IRS, the program generated $32 million in gross collections in FY 2007, $12 million of which was paid to the collection agencies, netting the government $20 million. During that period, the IRS spent $71 million in start-up and maintenance costs for the program. All told, the program has lost over $50 million for the government and is expected to continue to lose money for another three years. These figures do not include opportunity costs of not investing the $71 million in traditional, more productive IRS collection programs. National Taxpayer Advocate Nina Olson has recently testified these opportunity costs are upwards of $100 million per year, and she estimates the PDC program would lose almost $500 million over the next six years when these costs are factored in.

Yet because the debt collection program generates revenue, the Congressional Budget Office (CBO) scores the cancellation of the program as a $578 million revenue loss over ten years. That means that under pay-as-you-go (PAYGO) requirements, those revenue losses need to be offset with either additional revenue or entitlement spending cuts. The discretionary resources the IRS has spent on administering the program are not included in PAYGO calculations.

In addition to the PDC program cancellation, the bill contains three other provisions that would result in additional revenue losses. One of these would drop a requirement that businesses list individual calls in order to deduct mobile phone expenses. This widely supported measure would, over ten years, result in a $237 million revenue loss. Another provision would delay for one year the onset of a requirement that three percent of the cost of goods and services purchased by the government be withheld. This provision would cost $316 million over ten years. The third revenue loser is a modification of the rules regarding penalties applied to tax preparers for underreporting income, costing the Treasury some $22 million over ten years.

Despite these revenue losers, the CBO scored the legislation as PAYGO-compliant, as it generates $288 million for the federal government over the next ten years. Of the two provisions in the bill that would offset these losses, only one drew emphatic opposition when the bill was in committee — a proposal to require Health Saving Account (HSA) account holders to document that they use funds withdrawn from the account for approved purchases. This provision touched off a contentious exchange between Ways and Means Committee members during the mark-up on April 9.

Currently, HSA account holders are not required to provide proof that withdrawals from their accounts are applied only to approved uses; such unauthorized payments are subject to a 10 percent penalty. H.R. 5719 would require that when disbursements from HSAs are made, account users submit documents (e.g., receipts) proving the withdrawal was for an approved use. The measure would provide $308 million in offsetting revenues.

The most vocal opponent to the new HSA requirements in the mark-up session was Rep. Paul

Ryan☼ (R-WI). Ryan suggested that such a change was substantial enough that it warranted further hearings to ascertain the effects of such a move. Citing concerns the provision would place an inordinate burden on account users, thus causing fewer contributions to be made to such plans, Ryan offered an amendment striking the measure from the bill. The vote failed along party lines during the committee mark-up.

The bill's largest offset is an $860 million provision based on a stand-alone bill, H.R. 5602, the Fair Share Act of 2008. Introduced at the end of March in both the House and Senate, the Fair Share Act would require U.S. firms that employ American citizens overseas through foreign subsidiaries to pay Social Security and Medicare taxes when contracting with the federal government. A *Boston Globe* story in March reported that Kellogg Brown & Root, a former subsidiary of Halliburton, avoided about $100 million in payroll taxes by using foreign shell companies to employ U.S. workers in Iraq.

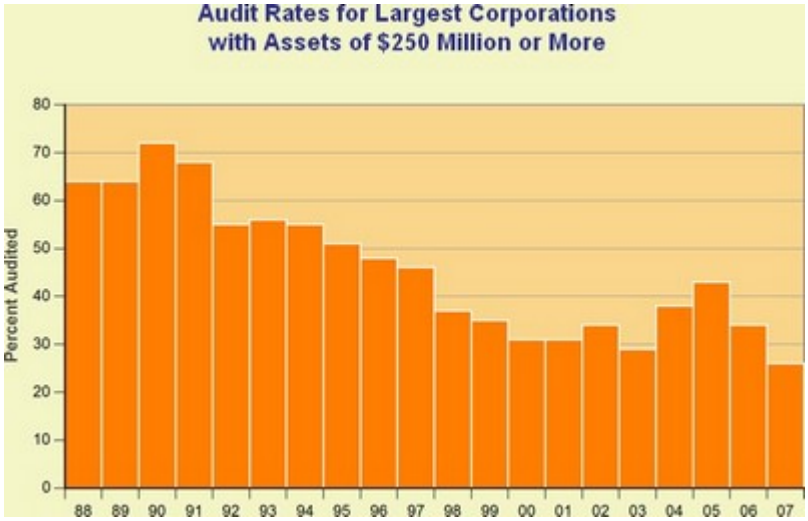
In addition to these important changes, the Taxpayer Assistance and Simplification Act would also:

- Prevent employment tax liability for elderly and disabled individuals receiving in-home care under certain government programs
- Allow IRS employees to refer taxpayers needing assistance with tax cases to qualified low-income taxpayer clinics
- Authorize an annual $10 million grant for Volunteer Income Tax Assistance ("VITA") programs
- Require the IRS to notify taxpayers of their potential Earned Income Tax Credit (EITC) qualification
- Prohibit the IRS from providing debt indicators to private parties if it is determined that the resulting refund anticipation loan plus related fees are predatory
- Require the IRS, to the extent permitted by law, to notify taxpayers if it determines that there may have been an unauthorized use of the identity of a taxpayer or the taxpayer's dependent
- Allow the IRS to disclose taxpayer identity information for unclaimed refund notification purposes

The abrogation of the IRS private debt collection program is probably the bill's most significant and controversial measure. In addition to Olson, good government groups and consumer rights organizations have been openly critical of the program, claiming it is fiscally wasteful, puts sensitive taxpayer data at risk, opens citizens to abusive collection practices, and lacks the transparency necessary to conduct proper oversight. OMB Watch has also called for repeal of the program and for strengthening the IRS capacity to close the tax gap.

New Report Shows "Historic Collapse" in Audit Rates of Largest Corporations

A report released by Transactional Records Access Clearinghouse (TRAC) at Syracuse University highlights a disturbing trend in Internal Revenue Service (IRS) audit rates of large corporations. Audit rates for corporations with $250 million or more in assets (large corporations) are at a historic low at 26 percent. Analyzing IRS data — portions of which had to be obtained through Freedom of Information Act (FOIA) requests — TRAC also found that the decline in audit rates has been accompanied by declines in audit quality.



The new data released by TRAC underscore a disturbing trend in tax enforcement. The number of hours per audit spent on the largest corporations has declined 20 percent, while the numbers of both field audits and revenue agent hours spent on such audits have declined by 30 percent. That audit rates and audit quality have fallen is especially troubling given that audits of large firms return an average of $7,498 per hour. This is significantly higher than the next-highest dollar-per-hour audit rate, which is $1,559 for firms with assets between $100 million and $250 million.

This decline in large-company audit rates, however, is masked in part by an increase in the overall audit rate. These trends have allowed the IRS to testify before Congress and the public that it is robustly enforcing the law and to offer increased overall audit rates as evidence, yet that data is not telling the whole story. The TRAC report indicates that:

Table 2. Audits of Largest Corporations

Measure	Fiscal Year			Change 2007 vs 2005
	2005	2006	2007	
Number of Field Audits	4,693	4,146	3,308	-30%
Revenue Agent Hours	4,576,398	3,900,164	3,219,336	-30%
Recommended Additional Tax	$30,123,008	$25,505,415	$24,139,907	-20%

> [M]oving the focus of the corporate auditors away from the large corporations and towards the smaller ones has been quite effective when it came to increasing

the overall number of these kinds of audits but actually was counter productive in financial terms.

Table 3. Corporate Audit Results

IRS Division and Corporate Asset Size	FY 2007 Dollars per Hour	FY 2007 Hours per Audit	Audits per 100 Returns	
			FY 2007 Rate	Change 2007 vs 2005
SBSE Division				
<5M	$682	41.9	0.9	41%
5M<10M	$840	65.4	2.9	24%
LMSB Division				
10M<50M	$474	168.5	14.7	29%
50M<100M	$586	189.4	10.9	-30%
100M<250M	$1,559	224.2	11.5	-31%
250M+	$7,498	973.2	26.3	-38%

Indeed, the TRAC report's findings are similar to a trend in individual audit quality that OMB Watch described in *Bridging the Tax Gap: The Case for Increasing the IRS Budget* in January.

> [C]orrespondence audits — not face-to-face audits — have accounted for 74 percent of the recent increase in audits among high-income individuals. . . . This trend is problematic because correspondence audits are less effective than face-to-face audits, partly because this type of audit can only spot problems that are evident from information submitted by the taxpayer or from information reported by third parties (employers, banks, and other sources). . . . The IRS has decided, perhaps because of limited resources, to shift to less efficient and effective processes for auditing.

Both the House and the Senate have hearings scheduled the week of April 14 to explore the IRS budget request and enforcement policies — an opportunity for Congress to get more information on why this recent data shows a decrease in the IRS's most effective type of audit.

EPA Submits Plan for Re-Opening Libraries

Responding to congressional demands, the U.S. Environmental Protection Agency (EPA) is re-opening libraries that the agency closed over the past several years. However, it appears that the content of the libraries will be more limited, and the facilities will be subject to stricter central supervision, raising concerns from critics about the role politics will play.

Beginning in 2004, the agency dismantled a significant portion of its library network in response to anticipated budget cuts. Ultimately, six libraries were closed, and four others had their hours reduced. Parts of the collections from the closed libraries were scattered across the network or converted into digital formats, though many records were simply thrown away. Outcry among public interest groups, public employees, librarians, scientists, and others prompted Congress to halt the closings and force EPA to reconsider its network plan. Congress then provided $1 million in the FY 2008 omnibus appropriations bill to re-open the libraries and instructed EPA to submit a plan on how it will proceed. The agency submitted the EPA National Library Network Report to Congress on March 26.

EPA's new network plan re-opens regional libraries in Chicago, Dallas, and Kansas City. The central Headquarters Repository and Chemical Library will also be re-opened as a single facility in Washington, DC, co-managed by two EPA offices, the Office of Environmental

Information (OEI) and the Office of Prevention, Pesticides and Toxic Substances (OPPTS). Network procedures and core reference materials are being standardized, and OEI Chief Officer Molly O'Neill will direct a library-wide "strategic planning effort."

The EPA library network plan also establishes basic standards for library resources and collections. Each library must:

- Staff at least one library professional
- Be open at least four days a week for either walk-ins or appointments
- Provide workstations with computers for patrons
- Maintain "core reference materials" and additional materials tailored for regional use

Public Employees for Environmental Responsibility (PEER) finds much room for improvement in the plan. "EPA is approaching the task for restoring its libraries grudgingly and appears to be trying to get by doing the bare minimum," said Associate Director Carol Goldberg. Much of the libraries' original spaces have been leased or converted for other uses, and collections for the Chicago and Dallas regional libraries need to be almost entirely re-created. The lack of stakeholder participation is also troubling to advocates: the March report contains no formal input from unions or librarians.

Most disturbing to PEER, however, is that the new library organizational structure places greater control of the system in the hands of a political appointee. The new standard operating procedures, developed by the appointee, require any new acquisitions and materials to "meet Network standards." PEER questions the clear "tension between rhetoric about the need for access and a stated desire to 'streamline operations and eliminate redundancies.'"

Public interest groups claim continued congressional oversight will be needed to ensure that such attempts at efficiency do not come at the cost of valuable research materials and reference services upon which the public and EPA staff rely.

According to EPA's plan, all of the libraries should be re-opened by Sept. 30.

Problems Disclosed on Classification Procedures at Intelligence Agencies

A recent report by the Office of the Director of National Intelligence (ODNI) reviews the classification procedures at eight agencies and finds significant problems, which unnecessarily complicate classification procedures and inhibit the free flow of information.

Secrecy News obtained the *Intelligence Community Classification Guidance Findings and Recommendations Report* (January 2008) and released it the week of April 7.

The ODNI report stresses the importance of information sharing within government and the need to foster an environment where analysts and employees have an incentive to share

information as opposed to operating with a default presumption of nondisclosure. Yet, the report notes, information sharing is slowed down due to "[i]nconsistent or contradictory classification rules." To facilitate information sharing, the report calls for classification standards that are common to all members of the intelligence community.

In particular, the report's review of agency guidelines found that there was:

- No definition of "national security" or "intelligence"
- No requirement to describe why a document is classified, beyond a reference to the Executive Order describing the three levels of classification
- Little clarity in determining precedence of classification guides when working inter-organizationally
- No standard lexicon across the different classification guides
- No consistent definitions as to what constitutes "damage," "serious damage," or "exceptionally grave damage" to national security, the three definitions used to classify information as confidential, secret, and top secret, respectively
- Duration of classification varies, without rationale, from agency to agency
- Inconsistent standards on declassification
- Absence of universal requirements to mark the date that a document is originally classified

ODNI recommends a number of simple reforms to alleviate many of these difficulties. "These [agency classification] guides present agency-unique and contradictory instructions that do not promote information sharing and collaboration among the Community's agencies and mission partners," states the report.

Steven Aftergood at the Federation of American Scientists criticized the report for not examining the need to narrow the scope of intelligence sources and methods that are in need of protection. "Almost anything can serve as an intelligence source or method, including a subscription to the daily newspaper," stated Aftergood. "But not every intelligence source or method requires or deserves classification or other protection from disclosure."

The difficulties in sharing information because of inconsistent and inchoate classification procedures are similar to problems agencies face in sharing sensitive but unclassified (SBU) information. The growing and unorganized use of SBU categories has also been recognized by the administration as severely hindering efforts to share information across government agencies and with state and local governments, and the ODNI is leading an effort to reform the hundreds of SBU categories that have proliferated since 9/11.

In a letter, public interest groups called on the administration to play a role in the formulation of recommendations to correct the SBU system by creating greater public access and accountability.

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