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Regulatory Matters

Information & Access

Nonprofit Issues

Federal Budget

Sunset Commission Proposal Would Put Gov't Programs on Chopping Block

House conservatives have reportedly secured a floor vote for a radical sunset commission proposal that would ram program terminations through Congress.

A Brief Overview

To ensure passage of the House Fiscal Year 2007 budget resolution, House Majority Leader John Boehner (R-OH) reportedly struck a deal with Republican Study Committee (RSC) leaders for floor consideration of several proposals, including a presidential line-item veto and a proposal to institute sunset commissions.

Although the House leadership was unable to line up enough votes to complete work on the budget resolution, no reports have surfaced that suggest the promises to the RSC have been negated. Some reports place the floor vote on sunsets as early as June.

Though various versions of the sunset commission concept have floated through Congress, the

leading proposals in the House are two bills: one by Rep. Kevin Brady (R-TX), mirroring a White House proposal, and one introduced by Rep. Todd Tiahrt (R-KS). Both would create unelected commissions that would recommend which programs get to live or die. They would also create mechanisms to fast-track the recommendations through Congress and require straight up or down votes with no opportunity for amendments.

Usurping Congressional Authority

The White House budget routinely proposes cuts, elimination, or drastic changes to government programs. Popular and successful programs, such as the Community Development Block Grants, have faced cuts and overhauls in the President's budget repeatedly for the last several years. These programs survived because Congress has intervened and continued to authorize funding and provide annual appropriations. The sunset commission proposal, however, would undermine Congress's ability to save programs that the White House is bent on eliminating.

If a sunset commission were to go forward, these programs would likely be the first to face the ax. The Tiahrt bill specifically requires the White House to evaluate program effectiveness, making it likely that the White House's programs slated for termination will be the first to come before the sunset commission. At the same time, the fast track process will make it difficult for Congress to save the programs facing elimination.

Below are some examples of programs that have been suggested for termination by the White House and are likely to face the sunset commission early on, if such a commission were enacted.

- **Community Development Programs:** The Community Development Block Grant, which provides funds to state and local governments for a variety of development projects, is a common target both of the White House and of the RSC.
- **Education Programs:** Programs that help develop and retain quality teachers, such as the Teacher Quality Enhancement Program and the Perkins Loan Cancellation program, which forgives the 100 percent of Perkins loan debt for public school teachers in underserved communities, could be in jeopardy. Education programs targeting rural, low-income or at-risk youth are also often zeroed out in the President's budget. These programs include Upward Bound and Even Start.
- **Rural Community Programs:** In both 2006 and 2007, the White House has recommended the termination of a host of programs meant to serve rural communities, including the Rural Fire Assistance program, which provides grants to rural communities to bolster the capacity of volunteer fire departments through training, equipment purchases and fire prevention work, and the Community Connect Grant Program, which provides broadband to rural communities to support economic growth and enhance education, health care, and public safety services,
- **Healthcare**: Federal grants that underwrite the construction of healthcare centers and provide funding for a host of medical services are likely at risk. The 2006 and 2007 White House budgets have targeted for elimination the Center for Disease Control and Prevention's Preventative Health and Health Services Block Grant, the primary source of flexible preventative health funding for states.

While a far vaster universe of agency programs would be subjected to a sunset commission, the above examples have been targeted by both the White House and the RSC for termination. Congress has saved these programs in the past through the appropriations process, but the creation of a sunset commission might make this program hit list a reality, rather than a fantasy of the White House and hard-line conservative lawmakers.

EPA Forced to Turn Over Documents on Controversial Mercury Program

A federal judge ordered the U.S. Environmental Protection Agency (EPA) on April 13 to release documents related to an analysis of alternatives to its controversial power plant mercury 'cap and trade' program. After the agency rejected a July 2004 request for the documents under a Freedom of Information Act (FOIA), Massachusetts Attorney General Thomas F. Reilly filed a lawsuit in March 2005 against EPA to obtain the information.

Documents in question pertain to analyses comparing two different approaches for regulating mercury emissions. The first approach, favored by industry and adopted by EPA in May 2005, was the 'cap and trade' or 'emissions trading' approach. The second, favored by environmental groups and public health officials, was the 'maximum achievable control technology' or MACT approach.

EPA produced the detailed modeling and analysis to evaluate the ability of each approach to regulate mercury emissions from coal-fired power plants--the nation's largest source of mercury emissions. The Attorney General Reilly filed a formal FOIA request with EPA for the analyses in July 2004. EPA rejected the request claiming the documents were part of its 'deliberative process' and, therefore, exempt from disclosure under FOIA. After hearing the case, however, Federal Magistrate Judge Robert Collings ruled that EPA could not withhold the analysis documents, because they were from investigative tools that produced facts and not the agency deliberative process or opinions.

Critics of EPA's mercury program maintain the withheld documents represent a clear case of EPA preventing access to information in order to limit criticism and accountability. According to the Massachusetts Attorney General's office, "We will now be able to see the documents that the EPA has tried to keep hidden. By making the facts available, the public will now be able to understand the choices the EPA is making and whether the agency is meeting its important responsibility to protect the public health and welfare."

Open government advocates hope that the court decision will compel other agencies to be more forthcoming in response to FOIA request. Currently, agencies use exemptions of 'deliberative process' and 'pre-decisional' frequently to withhold information requested through the FOIA process. Judge Collings' opinion in the mercury case may establish a clearer limit on the types of information that can qualify as deliberative. Collings opinion that the results of investigative tools cannot be withheld as deliberative could have repercussions for disclosure within all federal agencies.

The mercury cap and trade scheme adopted by EPA has proved to be extremely controversial and has already received a legal challenge, the outcome of which may be influenced by the release of the analysis documents. The program sets an annual cap, or limit, on the amount of mercury power plants may emit. Facilities below the cap can then sell the 'right to pollute' to facilities above the cap. The goal is to keep the annual aggregate mercury releases from all power plants below a set level. However, as environmental groups and health agencies have pointed out, this approach fails to account for the local problems caused by high emissions of mercury, which is a dangerous neuron-toxin. Essentially, the cap and trade approach would do nothing to prevent the creation of toxic hot-spots where certain communities would be exposed to disproportionately high levels of mercury.

The documents that EPA has been ordered to release may shed new light on many of the issues

and controversies surrounding the rule.

Timeline of Events

- In February 2005, EPA's Inspector General accused EPA officials of deliberately skewing their analyses of the cap and trade approach to make it appear more effective than it really is.
- In March 2005, the Government Accountability Office (GAO) reported that EPA distorted the analysis to favor its cap and trade proposals and did not provide adequate documentation of the technology-based MACT option.
- In May 2005, when the rule was officially published, 13 states led by New Jersey, and many environmental groups sued the EPA in federal appeals court challenging the mercury trading program. The case is pending in the U.S. Court of Appeals for the D.C. Circuit.
- In Oct. 2005, EPA responded to petitions filed by several states, tribes, industry, and environmental groups by reopening the mercury rule for public comment which closed Dec. 19, 2005.

In Ethics Reform, Congress Proposes Ways to 'Follow the Money'

In response to the ongoing corruption scandals unfolding in our nation's capitol, Congress has taken up efforts to pass lobby and ethics reform. Among the provisions proposed for inclusion in lobby reform legislation was one that simply seeks to uncover where taxpayer dollars are going, specifically money spent on government contracts and grants. Unfortunately, at this point the provision appears unlikely to be included in final legislation.

Sens. Tom Coburn (R-OK) and Barack Obama (D-IL) cosponsored Amendment 3175 that would require the Office of Management and Budget to create a free online database, which the public could search for contracts and grants by company, agency, dollar amount, geographic region, and other criteria. Currently, data for government contracts is available through a General Services Administration contractor, but the searchable features are widely considered inadequate, and downloading the data is extremely difficult. Federal grants data is available from the Census Bureau; while easily downloadable, information is not searchable with the existing service.

The Coburn-Obama contracts and grants amendment was stripped from the Senate lobby reform bill, along with all other amendments, as being non-germane. Undeterred, Coburn and Obama along with Sens. Thomas Carper (D-DE) and John McCain (R-AZ) introduced the amendment on April 6 as the stand-alone bill, the Federal Funding Accountability and Transparency Act of 2006.

On the House side, Reps. Roy Blunt (R-MO) and Tom Davis (R-VA) introduced related legislation, H.R.5060, on March 30. Blunt and Davis' bill, however, would only establish online access to federal grants data, leaving contracts to remain largely hidden from public scrutiny. Critics charge that, without increased access to contracts data, neither Congress nor the public will be able to track where federal dollars are being spent. They also point out that spending on contracts is significantly greater than spending on grants. In general, nonprofits and state and local governments get grants; for-profit companies get contracts.

The Coburn-Obama legislation represents the more comprehensive and uniform approach to

shining sunlight on the spending habits of our government. However, the Blunt-Davis legislation may have greater opportunity for movement, since it could still be attached to the lobby reform bill being developed in the House--a vehicle unavailable to the Coburn-Obama legislation.

EPA Releases 2004 Toxic Release Inventory, Draws Questionable Conclusions

Last week the U.S. Environmental Protection Agency (EPA) publicly released 2004 data on releases and disposals of toxic pollution throughout the country. EPA stressed that overall the data shows a 4 percent reduction in total release and disposal of toxic chemicals. When examined more closely, however, the data reveals a number of troubling trends in the 2004 data. The data is available for searching on OMB Watch's Right to Know Network (RTK NET) as well as EPA's TRI Explorer.

While EPA touted the minor reduction in toxic pollution, the agency's own analysis noted that the reduction was primarily the result of changing reporting standards for the mining industry, resulting in a 14 percent drop in mining pollution reported. Without this reporting adjustment, the 2004 Toxics Release Inventory (TRI) actually shows a slight increase from 2003. EPA also noted an alarming 10 percent increase over the previous year of toxic chemical releases into water.

The agency has also heralded significant reductions in key chemicals such as dioxin and mercury, which are among a category of chemicals persistent bio-accumulative toxins (PBTs) that EPA tracks more closely due to the significant health risks associated with them. EPA noted that dioxin and mercury have dropped 58 percent and 16 percent respectively from their 2003 levels. However, these "reductions" are an illusion caused by a spike of releases and disposals that occurred for these chemicals in 2003. Overall, releases and disposals for both chemicals are up--dioxin has increased 13 percent since 2000 and mercury is up 29 percent since 2000.

Initial state-level analysis offers a glimpse into the enormous fluctuations and disparities that still occur in toxic pollution. Some states, such as Washington, Montana, Missouri and Arkansas showed increases in releases and disposals of toxic chemicals ranging between 45 percent and 22 percent. Other states showed equally large reductions. U.S. PIRG has detailed the varied performance that occurred in the states. This wide range of results across regions demonstrates the need for detailed and consistent reporting. Without such reporting, communities might not know whether their area is getting cleaner or dirtier when it comes to toxic pollution.

Unfortunately, EPA's 2004 TRI data may be one of the last complete reviews the public gets of toxic pollution. The agency is currently pursuing plans to significantly reduce the amount of information collected under the TRI program. The agency has proposed significantly raising the threshold for detailed reporting of releases, which could mean that thousands of communities around the country would no longer know exactly what nearby facilities were releasing into the air and water. The agency also wants to cut the program back from annual to every other year, giving polluters a free ride every other year. As noted above, there are still significant fluctuations occurring in the TRI data, especially when individual chemicals, communities, facilities or even states are examined. EPA's threshold changes and alternate year reporting would eliminate our ability to track many of these important trends.

This is only the second time in 10 years that the agency has gotten the data out within 16 months of the close of the data's calendar year. Companies have six months after the close of each

calendar year to report their TRI data to EPA. The agency has typically taken almost an entire additional year before releasing the data to the public. This year EPA had a number of false starts for releasing the data. The expected date for release was pushed back repeatedly, and, when the information was finally made public on April 13, EPA failed to fully notify public interest and environmental groups about the release. According to EPA, which hastily held a briefing the following day, the omission was accidental. EPA also releases an annual online analysis called the Public Data Release (PDR), which includes a review of overall TRI results. EPA's 2004 PDR contained significantly more tables and charts detailing the biggest polluters in different industries, an improvement over previous years.

Report, Legislation Drive Push to End Pseudo-Classification of Information

No government-wide policies or procedures currently exist to guide agencies through deciding what information should be withheld from the public due to its "sensitive but unclassified" nature. The federal agencies are also without uniform rules that govern who makes such designations and how such information is handled, according to a new report from the Government Accountability Office (GAO). Legislation introduced by Reps. Tom Davis (R-VA) and Henry Waxman (D-CA), unanimously approved by the House Committee on Government Reform, would remedy many of the problems identified in the GAO report.

The GAO report, Information Sharing, was released to the public on April 17. It finds that federal agencies have 56 different "sensitive but unclassified" (SBU) designations, 16 of which are at the Department of Energy. GAO found a conspicuous lack of internal controls for handling SBU information. No government-wide definitions for SBU are in place, despite responsibility for such definitions having been given to the Office of Management and Budget and then to the Department of Homeland Security.

Even within the agencies, a majority reported not having policies detailing the procedures or standards for applying a SBU designation. Most of the agencies also "have no policies for determining who and how many employees should have authority" to make SBU designation. Support systems are limited that train agency staff on making designations or on auditing practices to determine the utility and accuracy of such designations.

"More than 4 years after September 11, the nation still lacks government-wide policies and processes to... improve the sharing of terrorism-related information that is critical to protecting our homeland," according to the GAO. Not only do agencies have trouble sharing information with each other, but also there is a problem of the SBU designation being misapplied. "This could result in either unnecessarily restricting materials that could be shared or inadvertently releasing materials that should be restricted."

Most information-sharing challenges, according to the report, were caused by the unevenness of SBU practices between agencies and the concern that another agency would not appropriately handle an agency's sensitive information. Such problems often prevent critical information from reaching the local level and have led to the over-sharing of non-critical information that can often swamp smaller state and local agencies. First responders, for instance, "reported that the multiplicity of designations and definitions not only causes confusion but leads to an alternating feast or famine of information."

Hearings conducted by Rep. Christopher Shays (R-CT) and the House Subcommittee on National Security, Emerging Threats and International Relations reached a similar conclusion:

lack of clarification often leads to overclassification and a failure of government accountability.

In response to this growing problem, Davis and Waxman introduced the Executive Branch Reform Act earlier this month. The bill would increase disclosure in the executive branch with provisions requiring key executive branch employees to file quarterly lobby communication disclosure forms. The bill would also enforce a two-year cooling off period between government employment and working as a lobbyist, and would strengthen national security whistleblower protections. Moreover, the bill would reform federal SBU policies. Specifically, it would:

- Require federal agencies to submit a report to the National Archivist, regarding who can designate information as SBU, the financial costs associated with categorizing documents as SBU, and the extent to which SBU designations are used to restrict the release of information that is not authorized to be withheld;
- Require the National Archivist to issue a report on SBU agency practices and recommendations that "would improve public access to information"; and
- Ban the use of all SBU designations that are not defined by federal statute or executive order except in rare cases.

Such reforms would pave the way to a uniform federal government SBU policy that, as documented by the GAO report, is badly needed. Effective reform would mitigate the concern of public release of sensitive information, while enabling the sharing of critical information across local and federal agencies. Uniform policy should protect against over-classification and maximize open government and accountability.

The Executive Branch Reform Act passed out of committee 26-0 and is expected to be included in the House lobbying and ethics reform package later this month. A similar bill has not been introduced in the Senate.

Grassroots Lobbying Issue Hits the FEC and the Courts

OMB Watch was among a varied group of nonprofit organizations that filed comments at the Federal Election Commission (FEC) urging it to quickly begin the process of rulemaking that would exempt grassroots lobbying from federal election regulation. At issue is a ban under the Bipartisan Campaign Reform Act of 2002 (BCRA) on "electioneering communications," broadcasts that refer to federal candidates within 60 days of a general election or 30 days of a primary. At the same time, a constitutional challenge of the ban filed by Wisconsin Right to Life (WRTL) works its way through the courts, and a Maine group launched a similar suit on April 3. Nonprofits that want to use broadcasts for lobbying efforts are anxious for a decision before this year's election season.

On April 17, OMB Watch joined 17 organizations in urging the FEC to immediately initiate rulemaking to exempt grassroots lobbying communications from the election-law restrictions on broadcast advertising. A letter signed by the groups supports a petition filed in February by the Alliance for Justice, AFL-CIO, the Chamber of Commerce, National Education Association, and OMB Watch that asks the FEC to exempt legitimate grassroots communications from "electioneering communication" prohibitions. Scores of other nonprofits have also weighed in.

The petition lists six suggested criteria that distinguish genuine grassroots lobbying broadcasts from sham issue ads. According to the petition, genuine grassroots issue advocacy includes broadcasts that:

- identify the federal candidate only as an incumbent public officeholder
- only discuss specific current legislative or executive branch matters
- call on the official to take a particular position or action in his or her official capacity or asks the public to contact them and urge them to do so
- limits statements on the official's record to his or her public statements or official actions
- does not refer to the election, candidacy or political parties, and
- does not comment on the officeholder's character or fitness for office.

The nonprofit groups' letter stated these criteria are a "good standard that balances the concerns of all sides and provides a workable test. It would provide nonprofits with the ability to engage in genuine grassroots lobbying, and it would eliminate any realistic concerns about such grassroots lobbying being employed as the functional equivalent of express advocacy."

The letter also noted that the Supreme Court recently reminded the FEC "that it has the authority to enact rules to exempt this kind of advertising from the broadcast ban." (*Wisconsin Right to Life v. FEC*, see FEC Opens Door To Rulemaking on Grassroots Lobbying for more information.)

OMB Watch filed supplemental comments noting that in March 2004, in another FEC proceeding, 122 members of Congress indicated that BCRA was not intended to limit civic participation. A letter signed by these lawmakers 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 independent 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."*

Two Court Cases Address the Issue

If the rulemaking goes forward and the FEC approves the proposed exemption two pending lawsuits challenging the "electioneering communications" rule could become moot. In late March, Wisconsin Right to Life (WRTL) sent the FEC a letter offering to settle its constitutional challenge against the rule if the FEC approved a grassroots lobbying exemption along the lines suggested in the petition. The letter explained, "While we do not believe that this rule goes as far as the U.S. Constitution would extend protection to grassroots lobbying, we believe that the proposed rule is a very good rule that balances the concerns of all sides and provides a workable test." The FEC voted to reject the offer on April 4.

Currently the WRTL case is back in a special three-judge court, which is complying with a Supreme Court order to determine if the facts of the WRTL case warrant a finding that the rule is unconstitutional as applied to them. WRTL asked the court to expedite the case after the Supreme Court ruling in January, but the court denied that motion. Instead, it is considering a schedule for the FEC to conduct discovery of facts to be considered before a decision is made. The FEC has estimated it needs several months, possibly until September, for the process, but WRTL has asked for an abbreviated schedule so that it can continue its broadcasts after the Wisconsin blackout period for "electioneering communications," which begins 30 days before the September primary election.

Another group, the Christian Civic League of Maine (CCL), filed suit seeking an injunction against the rule so that the organization can broadcast radio ads supporting the federal Marriage Protection Amendment, which may come up for a vote in June. The ads ask the public to contact Sens. Olympia Snowe (R-ME) and Susan Collins (R-ME) to seek their support. Since Maine will

hold a primary election in June with Snowe running for re-election, the blackout period for these ads will begin on May 14. CCL attorney James Bopp, Jr. noted that Snowe is unopposed in the primary.

Under BCRA all constitutional challenges are considered by the special three-judge court that is considering the WRTL case. If the court denies CCL's request for an injunction the group can appeal to the Supreme Court. If the court accepts the case, it could be decided sooner than the WRTL case.

Ohio Church Complaint Raises Questions of Fairness in IRS Enforcement

In an unusual case, 31 religious leaders in Ohio have written to the IRS objecting to inaction on a complaint against two Ohio mega-churches and their affiliates. The complaint filed in January alleges violation of the tax law's prohibition on partisan electoral activity by 501(c)(3) groups, which include religious organizations. Fairfield Christian Church, World Harvest Church and their respective affiliates, according to the group of pastors, carried out activities intended to help Republican Secretary of State Kenneth Blackwell in his bid for Ohio's governorship.

On April 7 the *New York Times* reported that, according to World Harvest spokesman Giles Hudson, the IRS had not yet contacted the organization about the complaint. The lag time is inconsistent with standards set out in the new IRS 2006 Political Activities Compliance Initiative (PACI).

The controversy began on Jan. 16 when 31 pastors, lead by Rev. Eric Williams of the North Congregational Church of Christ in Columbus, sent a 13-page letter to IRS Commissioner Mark Everson alleging violations by World Harvest and its affiliates Reformation Ohio and the Center for Moral Clarity; and by Fairfield Christian and its affiliate the Ohio Restoration Project. All five groups are 501(c)(3) organizations. The letter asks for an IRS investigation into whether the groups' tax-exempt status should be revoked; it also requests that the IRS seek an injunction to stop further flagrant violations. Three categories of activity were cited:

- sponsoring events featuring Blackwell but no other candidates,
- partisan voter registration drives, and
- distribution of biased voter guides.

Rev. Rod Parsley of World Harvest and Rev. Russell Johnson of Fairfield Christian denied their actions are partisan, accusing the complaining pastors of an "unholy alliance" with the secular left. Williams countered, saying, "The law allows church involvement in issues. This goes beyond issue-involvement to partisan politics and we're simply asking the IRS to uphold the law."

The pastors filing the complaint acquired assistance from Marcus Owens, an attorney with Caplin and Drysdale in Washington, D.C. and a former director of the IRS-exempt organizations division. On Jan. 16 Owens told the *Columbus Dispatch* that the complaint was extensively documented, noting "You have a number of churches and charities involved with a number of road trips for Mr. Blackwell, all of which seem to be aimed at gaining him visibility for his political campaign."

The complaint cites nine events where Blackwell was a featured speaker but no other candidates were invited. (Democrat gubernatorial candidate Brain Flannery said he has never been invited to an event organized by the churches or their affiliates.) For example, at an October 2005 event

at the Ohio statehouse sponsored by Reformation Ohio, Rev. Parsley shared the dais with Blackwell and called for registration of 400,000 new voters statewide.

In addition, Fairfield Christian let the Fairfield County Republican Party Central Committee meet at its facility without charge, with Committee Chair Carl Tatman saying, "The church was nice enough to volunteer the space as a donation." A Republican fundraiser was held at the church a month later. The IRS requires 501(c)(3) organizations to charge market rates for political use of their space.

The day after the complaint was filed the *Columbus Dispatch* reported that Blackwell told the pastors to ignore it, calling the 31 religious leaders who signed it "bullies." The next day Blackwell was the only candidate invited to speak to 450 pastors at a luncheon in Canton sponsored by the Ohio Restoration Project.

On April 7 the 31 pastors again wrote to the IRS citing further incidents of partisan activity and inquiring as to why no action had been taken. The group suspects the IRS is not enforcing the law even-handedly, citing an audit of a liberal California church for a sermon criticizing the war in Iraq that was delivered before the 2004 election. In the California case, All Saints Episcopal church received a letter from the IRS notifying it of the investigation in September 2005 and received a follow-up letter the next month. Church officials have not heard from the IRS since that time, although the October IRS letter said a document information request would be coming.

Law prohibits the IRS from commenting on the status of such investigations. Nonetheless, the lack of action by the IRS would appear surprising in light of new procedures, called the Political Activities Compliance Initiative. Under PACI, the IRS has said it will expedite complaints about partisan political activity. Special procedures apply in church cases, but the PACI program outlines seven steps that should take no more than 54 days. Since the complaint was sent to the IRS on January 17, some action could be expected by mid-March.

The fact that World Harvest and Fairfield Christian have not been contacted by the IRS could mean no decision on whether or not to investigate has been made, indicating that the IRS is behind on its PACI deadlines. If it means a decision to take no action has been made, serious questions about equitable application of the threshold used in the PACI program--that a "reasonable belief" that a violation has occurred exists--need to be asked.

Lobby Reform: House Moves Toward Floor Vote

House Republican leaders are weighing options to bring lobby reform to the floor after five committees reported out provisions that both Democrats and watchdog groups are calling toothless and ineffective.

Five separate committees in the House marked up their respective portions of the House GOP Leadership's lobby and ethics reform bill, H.R. 4975, on April 4 and 5. Those reporting committees were Judiciary, Rules, Government Reform, Administration, and Standards of Official Conduct, commonly known as Ethics.

The Republican bill that has emerged has largely been dismissed by both Democrats and watchdog groups as inadequate. Much of the conversation during the markups reflected the Democrats' frustration with the inadequacy of the bill and the Republicans' reluctance to allow

amendments enhancing disclosure or enforcement capabilities.

What's Next?

With all pertinent committees having finished their portions of the legislation, it is now up to Republican leaders to decide how to bring the bill to the floor. Reportedly, they are debating whether to present the bill piecemeal under a House rule that would not allow for amendments or as a large bill open to alteration. Leaving the bill open to amendments would mean difficult votes for Republicans, who do not want to be seen voting against meaningful amendments on the House floor. The GOP leadership is even considering putting parts of the bill on the suspension calendar, typically limited to non-controversial measures. Bills on suspension cannot be amended on the floor and need a two-thirds majority to pass. The bills would then be protected from amendment, but face the possibility of not garnering the two-thirds vote needed for passage.

At the same time, the GOP leadership fears that Democrats will capitalize on any effort to limit debate on the bill, saying Republicans do not want genuine change. This could be damaging in an election year. But reformers on both sides of the aisle are reportedly crafting numerous amendments to strengthen the bill. If given the opportunity, Reps. Christopher Shays (R-CT) and Heather Wilson (D-PA) will offer an amendment to create an Office of Public Integrity, reportedly similar to the language that was defeated in the Senate.

Watchdog groups have also been putting pressure on the Republican leadership to allow amendments to the bill. In an April 13 letter to House Speaker J. Dennis Hastert (R-IL) and House Rules Committee Chairman David Dreier (R-CA), six reform groups criticized the lobbying reform bill, saying they would lobby to defeat any rule to bring the bill to the House floor unless the rule allows votes on key amendments to strengthen the legislation. The improvements they seek include:

- restrictions on privately financed travel;
- charter rates for travel on corporate aircraft;
- disclosure of lobbyists' campaign donations;
- disclosure of large sums spent by professional lobbying firms on "grass roots lobbying" campaigns to stimulate public interest in legislation; and
- the strengthening of "revolving-door" rules.

Summary of Committee Action

House Judiciary Committee

The April 4 Judiciary committee markup led to few changes to the Lobbying Disclosure Act. Items approved included electronic filing of quarterly reports by registered lobbyists, instead of the current semiannual reports. The reports would be available to the public online in a free "searchable, sortable, and downloadable" database. Filing would be electronic in order to keep the database up to date. (The House recently required electronic filing but has found implementing the requirement difficult.) The threshold for filing under the Lobbying Disclosure Act (LDA) would be $2,500 spent per quarter by a lobbying firm for a client or $10,000 spent per quarter by an organization on lobbying activities. The committee approved a manager's amendment offered by Judiciary Committee Chairman James Sensenbrenner (R-WI), which included criminal penalties--up to five years imprisonment--for lobbyists and members of Congress who fail to disclose gifts and meals.

The committee also approved amendments by Reps. Maxine Waters (D-CA) and Chris Van

Hollen (D-MD). Waters' amendment, adopted by voice vote, would require lobbyists to disclose names of staff members, in addition to members of Congress, with whom they have made official contact in their lobbying activities. The Van Hollen amendment, adopted 28-4, would require registered lobbyists to disclose information on any contributions they solicited and transferred to a candidate or political committee. It would exempt contributions made by lobbyists or authorized committees of a lobbyist running for a federal office. It would also require a registered lobbyist, who serves as treasurer of a federal candidate's election committee or as treasurer or chairman of a political committee, to identify his or her position and the candidate he or she works for in a report to the secretary of the Senate and the clerk of the House.

An amendment offered by Rep. Marty Meehan (D-MA) to include disclosure of grassroots lobbying expenditures was ruled non-germane and was not considered. Meehan's amendment was identical to the provision authored by Sens. Joe Lieberman (D-CT) and Carl Levin (D-MI) now included in the Senate's lobby reform bill. Meehan's office is reportedly considering offering it as a floor amendment, should rules allow it.

Some committee Democrats, originally voting for passage, switched their vote when Sensenbrenner informed them that they were voting on reporting out the entire bill--not just the provisions the Judiciary Committee has jurisdiction over. Although Judiciary Committee Democrats agreed with the changes to the specific provisions, they opposed approving the rest of the bill when they felt it was weak in other places.

House Rules Committee

By voice vote, the Rules Committee adopted provisions to change House rules regarding gifts and travel, as well as those governing the "revolving door" between Capitol Hill and K Street, and between federal agencies and industry.

Democrats failed to gain any Republican support for amendments that would have given the minority party more power to influence conference reports and raise points of order against majority party-authored legislation.

House Government Reform

On April 5, the Government Reform Committee took up its portion of the lobby reform bill. As introduced, a provision would prohibit a member of Congress convicted of a public corruption crime and sentenced to more than a year in prison from collecting retirement benefits accrued while a member of Congress. The committee adopted an amendment by Committee Chairman Tom Davis (R-VA) to extend that provision to congressional employees and political appointees in the executive branch. Since a similar provision was approved by the House Administration Committee, it will be up to the Rules Committee to sort out differences between the two provisions before the bill goes to the floor.

The committee also approved, 32-0, a companion bill sponsored by Davis and Ranking Member Henry Waxman (D-CA) that would tighten the rules governing executive branch lobbying. The bill contains provisions that protect whistleblowers and clamps down on the growth of "sensitive but unclassified" information withheld from the public. Reportedly, both Davis and Waxman are pushing to have the bill folded into the lobbying bill on the House floor.

House Administration Committee

In the House Administration markup, the committee rejected on a 2-5 vote an amendment offered by Rep. Juanita Millender-McDonald (D-CA) that would have made it illegal for any member of Congress, delegate, resident commissioner, officer or employee of the House to knowingly accept gifts from lobbyists or agents of foreign governments. It would have also restricted those officials and staffers from accepting travel reimbursement from nongovernmental organizations that retain or employ any registered lobbyist, or agents of foreign governments.

Another Millender-McDonald amendment that would have established an Office of Public Integrity (OPI) within the House of Representatives Inspector General's office to conduct audits and investigations of all filings made by lobbyists was rejected 2-5. The office would have the authority to refer violations of the 1995 Lobbying Disclosure Act to the ethics committee and the Justice Department.

House Committee on Standards of Official Conduct

The committee, commonly known as the ethics committee, was the fifth and final committee to approve the lobby reform bill. Meeting in closed session, the committee reported out the bill with no changes.

House Votes to Regulate Independent 527s Like Campaigns, Parties

The House of Representatives passed legislation that would subject independent political committees, exempt under Section 527 of the tax code, that work on federal elections to essentially the same contribution limits and reporting requirements as federal candidate campaigns and political parties. H.R. 513, the 527 Reform Act of 2005, passed the House on April 5 by a vote of 218-209.

If the bill becomes law, 527 groups would no longer be required to report donations and expenditures to the Internal Revenue Service and would report instead to the Federal Election Commission (FEC). The legislation will now move to the Senate where it faces an uncertain future.

The House version of the lobby reform bill also contains language regulating independent 527s as political committees under FEC rules. The lobby reform bill passed in the Senate lacks such a provision. Since 527 legislation is not currently on the Senate calendar, the fate of H.R. 513 is uncertain.

H.R. 513 calls for FEC regulation of all 527 groups except for those with annual receipts under $25,000 and those that are state or local political committees that only refer to non-federal candidates or referendums in voter mobilization activities. Once subject to FEC regulation, a 527 could not receive more than $25,000 per year from any one individual for efforts to mobilize voters around issues.

The bill does not directly cover 501(c) organizations. Groups that are allowed to have affiliated 527 political committees, such as social welfare organizations and labor unions, however, would have less flexibility with funds that are not subject to FEC advocacy rules around references to federal candidates. The bill's proponents claim it is necessary to rein in groups that collected unlimited soft money contributions during the 2004 election. Conversely, its opponents claim it will unnecessarily hamper citizen involvement in elections.

Gearing Up for a May Estate Tax Vote

As the May vote in the Senate to repeal the estate tax approaches, nonprofit advocacy groups around the country are stepping up their campaign to save the nation's most progressive tax and a vital source of revenue. OMB Watch urges individuals to **email Senators today** and let lawmakers know America favors preserving the estate tax and opposes repeal or back-door "reform" that would amount to repeal.

Earlier this year, Senate Majority Leader Bill Frist (R-TN) announced his intention to bring estate tax repeal legislation to the floor for a vote in May. While full repeal is favored by a number of conservative Senators, Frist still lacks the 60 votes needed in the Senate to pass such a measure. But a proposal being pushed by conservative Sen. Jon Kyl (R-AZ) as a "reform" option could be equally damaging to federal coffers and the charitable sector. The Kyl proposal would raise exemptions from their current level of $2 million ($4 million for a couple) to $8 or $10 million for individuals and double those amounts for couples.

What's worse, Kyl's "reform" would tie the estate tax rate to the current capital gains rate of 15 percent. In the future, should the capital gains rate be reduced down to zero, as conservatives hope will happen, the estate tax would disappear. Even if the rate remained at 15 percent, tying the estate tax to capital gains would cost upwards of 90 percent of full repeal.

The Kyl proposal amounts to nothing more than back-door repeal of the estate tax. But because many in the Senate are mindful of Republican efforts to mislead and distort the issue to win elections, political survival may trump sound policy for more than a few Senators. If enough swing Senators, particularly Democrats, are fearful of being labeled as obstructionist in the lead-up to elections in November, they may support even a bad proposal like Kyl's.

Yet public perceptions and opinions on the estate tax have shifted. According to a recent national poll conducted by Penn, Schoen & Berland Associates, only 23 percent of Americans favor repeal of the estate tax, while 57 percent want to retain the tax. The number of people who want to keep it rises to 68 percent when given more information about the estate tax. The poll also found estate tax repeal is at the bottom of the list of tax policy changes Americans most want to see enacted.

The poll was released by United for a Fair Economy and the Coalition for America's Priorities at an April 11 press conference.

The lack of votes to repeal in the Senate has begun to play into the strategies of the supporters who have been working toward an end of the estate tax for years. A few weeks ago, Secretary of Treasury John Snow let slip that he would hope the Senate tried to fully repeal the tax, but in the absence of that, "come to some second-best outcome that would also be more advantageous than where we are today." Snow's comments (which were quickly clarified the next day to express the Secretary's vigorous support of full repeal) came after a number of pro-repeal organizations (the American Farm Bureau among them) amended their positions on the estate tax to include their preferences for reform - should it be necessary. As May approaches, nonprofit groups around the country working in coalition with Americans for a Fair Estate Tax and the Emergency Campaign for America's Priorities will increase ongoing efforts to preserve the estate tax, including releases of new research, grassroots mobilization through national call-in days and email campaigns, and television ad campaigns in targeted states.

We need your help!

The estate tax not only pays for vital federal services and support, but also includes an important incentive for charitable giving - both critical issues for nonprofit organizations. Email your Senators today to let them know you favor preserving the estate tax and oppose any repeal or back-door reform options.

House Fails to Agree on Budget; Boehner Retreats

After proposing a sparse budget on March 29 and following a intense and divisive few weeks of behind-the-scenes negotiations, House GOP leaders ultimately pulled the plug on the $2.8 trillion FY 2007 budget resolution late on April 6. House Majority Leader John Boehner (R-OH), who admittedly spent the week "popping Advil" in preparation for difficult negotiations with his colleagues, failed time and again to emerge from these talks with enough votes to pass the resolution--a significant setback in what was his first real test as the new Majority Leader.

Boehner attempted the difficult task during negotiations of finding a compromise that balances moderates' calls for more discretionary spending with the demands of conservatives that spending be held down. Toward such an accord, Boehner courted conservatives with promises of legislation and floor consideration for radical budget process changes. While a budget deal wasn't reached, it remains uncertain if the promises made to conservatives on budget process changes will be kept.

The failed vote, coupled with the election-shortened legislative session, increases the likelihood that Congress will not have the time or the will to agree to the harmful FY 2007 budget this year. This uncertainty was reinforced by a belief among many members that the House and Senate would not be able to reach a compromise on the budget even if the House approves its version. While the Senate passed a budget bill on March 16 that added $9 billion in discretionary spending to the overall amount requested by President Bush, the House was expected to keep discretionary levels on par with those requested by the administration--at $873 billion.

Many members saw the vote, according to *The Hill*, "as an unnecessary test during what has become a difficult stretch for the Republican Party." Because this is an election year, many members thus were wary of casting politically difficult votes in favor of a bill that would cut funding for already-strapped federal programs, especially since these cuts would likely die in conference with the Senate. The failed budget vote highlights the difficulty lawmakers often face in confronting highly-charged spending issues during important election years, as well as the increasing troubled Republican party's ability to govern.

Three Factions Too Many To Overcome

What ultimately derailed the negotiations was not a breakdown between moderates and conservatives (although that rift was far from repaired), but Boehner's move to allow a specific proposal requiring that the Budget Committee approve all non-defense emergency spending over $4.3 billion. This proposal angered Appropriations Chairman Jerry Lewis (R-CA), who then publicly stated his opposition to the budget. Lewis was subsequently able to use his sway in the committee to get other Republicans to defect, leaving the party far short of the number of votes it would need in a caucus already divided between two factions--moderates who wanted more discretionary spending and conservatives who wanted less.

A memo released by the Appropriations committee, which is often at odds with the budget committee, calls the $4.3 billion emergency cap "a threshold number plucked out of the sky" that is at least $3 billion below the 10-year average for disaster aid.

These defections proved to be a huge blow to Boehner, who is struggling to prove himself as leader of a party that has been under increasing fire of late. While tension between radical conservatives in Congress and appropriators has been apparent throughout the period of Republican majority, it came rapidly to a boiling point last month, increasing divisiveness within the party.

In late March, 29 Republicans, led by Republican Study Committee chair Mike Pence (R-IN), voted against the rule for an emergency spending bill (to fund U.S. wars) after party leaders refused to remove money from budget legislation that would go towards hurricane cleanup. The fiscal hawks, often interested in offsetting congressional spending, were hoping the leaders would allow them to consider an amendment both separating and offsetting the war and the hurricane cleanup costs. When this request was refused by the Republican leadership, support for the leadership among radically conservative members of Congress wavered.

Even if factions within the House are able to hammer out a truce and pass a budget bill, a difficult conference with the Senate still lies ahead. The Senate completed its budget work March 16, passing an FY 2007 budget plan (S Con Res 83) complete with floor amendments adding $16 billion in discretionary spending to the budget committee's markup. The Senate budget bill also includes a large emergency spending measure with items the president did not request that will certainly prove difficult to reconcile with the House.