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House Budget Committee Approves Budget Resolution

Last Wednesday, the House Budget Committee approved a stark budget resolution that would increase deficits by $254 billion over the next five years, setting the stage for contentious debate this week on the House floor. The resolution sets discretionary spending at meager levels, includes a large increase in defense spending, and assumes continuation of some tax cuts. Its final approval will be the first major test of the new House GOP leadership team, especially of new House Majority Leader John Boehner (R-OH).

Budget Committee Chairman Jim Nussle (R-IA) set the discretionary spending level at the president's request of $873 billion, a 3.6 percent increase from FY 2006 levels. The entirety of that increase will go to the defense department, however, which would receive a whopping 7 percent increase on top of funding approved for the war in Iraq. All other spending would be held flat, inflicting $10.3 billion in harsh cuts in FY 2007 on a wide range of programs and departments after adjusting for inflation. The resolution would cut $167 billion over five years for domestic discretionary spending outside of defense.

The resolution also includes very small cuts to entitlement programs - $6.8 billion spread across 8 different committees. The largest portion, $4 billion, was given to the Ways and Means committee, but very few details have been released about how those cuts would be made or which programs they would affect. It appears additional cuts to the major healthcare programs and student loans - a signature feature of last year's budget - were not included. Finally, the resolution assumes $226 billion in tax cuts over the five-year budget window, including $38.9

billion in FY 2007.

The Budget Committee approved the resolution by a 22 - 17 vote after dispatching a number of Democratic amendments. The senior Democrat on the Budget Committee, John Spratt (D-SC), also offered an amendment to re-instate traditional pay-as-you-go (PAYGO) rules - a sound budget enforcement mechanism that has been proven to force Congress to enact responsible budgets and significantly reduce deficits. Republicans on the committee again choose the path of fiscal recklessness by killing PAYGO rules .

Among the defeated amendments were proposals to increase discretionary spending in a variety of areas, such as port security, education, health care, job training, community services, environmental protection, first responders, and the National Guard.

The bill moves to the House floor this week in what is sure to be a grueling and divisive debate. A handful of moderate Republicans plan to offer a few similar amendments on the House floor this week to those offered by Democrats in committee, and they may find more success. Before the committee markup last week, 23 moderate Republicans sent a letter to Speaker Dennis Hastert (R-IL) meekly calling for more funding for education, health care, housing, and other key urban programs. Majority Leader John Boehner (R-OH) has stated he believes there are ways to address concerns from moderates in his caucus, but said he will not increase the discretionary spending limit.

The House leadership--particularly Boehner, who is presiding over his first budget--is under considerable pressure not only to find a way to convince caucus moderates to vote for the resolution - thereby ensuring its passage--but to do it this week before Congress breaks for a two-week recess. Complicating this situation are warnings from conservatives in the House not to take their support for granted. During debate over the emergency supplemental bill last week, 29 conservative Republicans voted against the GOP leadership in protest because they were upset at the lack of offsets to spending in the bill. The GOP had to rely on the Democrats to get the bill passed.

In attempts to appease those conservatives, the GOP leadership has held meetings with the conservative House Republican Study Committee and made public calls for budget process reforms, including the president's line-tem veto proposal, earmark reforms, and future consideration of more radical changes, such as biennial budgeting and sunset commissions. It is unclear, however, if such promises will be enough to hold conservatives in the face of increased discretionary spending.

Regardless of the success or failure of moderate Republicans (and Democrats) to improve the budget resolution approved by the Budget Committee last week, the end result will be a budget that sets the wrong priorities and further erodes what little fiscal security America has left. Because of this reality, it is more important than ever for Congress to hear calls to reject this budget. Take action today!

TAKE ACTION
Tell Congress to Reject An Irresponsible Budget
Send an email to your Representative and Senators telling them you disagree with the misplaced priorities in this budget. Tell them not to cut vital services and programs to make room for more tax cuts for the wealthy. Send an email today!

2005 Tax Reconciliation Conference Remains Stalled

More than four months after it was initially approved, the FY 2006 tax reconciliation bill remains in seemingly deadlocked negotiations. With conferees continuing to postpone a compromise package due to uncertainty over its final approval in both chambers, the pending

approval of the FY 2007 budget resolution - and an end to the tax bill's filibuster-proof status - looms large.

The tax reconciliation bill is protected from filibuster for up to $70 billion in tax cuts over the next five years, but neither chamber approved that much in their original versions. The Senate version contained a net of $60.2 billion in cuts, half of which was used by a one-year extension of a patch to the Alternative Minimum Tax (AMT).

The House passed $56 billion in cuts, with the major item being a two-year extension of capital gains and dividend cuts. The House bill does not include the AMT patch.

Despite holding conference committee meetings and extended negotiation sessions among the GOP conferees, there has been no breakthrough. House conferees still insist on including capital gains and dividend extensions, while their Senate counterparts seem unwilling to give up the AMT patch.

It even appears conferees and their staffs are getting desperate to find a solution amenable to all parties using misleading budget gimmicks. Conferees are rumored to be considering lifting the income limits on conversions of traditional Individual Retirement Accounts (IRAs) to Roth IRAs, in order to circumvent a Senate budget enforcement rule prohibiting increasing the deficit outside the budget window, a result of the two-year extension of capital gain and dividend tax cuts. This was quickly criticized by a number of budget watchdog groups.

Capital gains and dividend extension language was removed from the Senate version in the Finance Committee, because it was opposed by all Democrats, as well as Republican Sen. Olympia Snowe (R-ME). It's unclear whether sufficient votes can be garnered in the Senate to pass the tax cut bill with capital gains and dividends included, regardless of inclusion of the AMT patch.

With an upcoming two-week congressional recess, it is unlikely the tax cut bill will pass before May. If Congress cannot pass the bill before the FY 2007 budget resolution is approved, the tax bill will lose its filibuster protection, and any hope the GOP has of extending the capital gains and dividend tax cuts will be lost for this year.

Harmful Budget Process Plans Could Become Reality

As Congress's work crafting the FY 2007 budget moves forward, Capitol Hill has been abuzz with talk of significantly changing the annual budget process. In the aftermath of the lobbying and ethics scandals of 2005, this year may prove an opportune moment for conservatives to enact damaging budget process changes that would entrench poor policy development mechanisms and alter the balance of power in the federal government.

Enhanced Rescission Masquerades as Line-Item Veto

The proposal most likely to be tackled by Congress this year is the president's scheme to institute an "enhanced rescission" power in the executive branch. The Line-Item Veto Act of 2006 goes far beyond allowing the president to strike individual wasteful earmarks from appropriations bills, fundamentally shifting power over the revenues of the country from Congress to the president.

Under the president's proposal, the executive branch:
- could use the enhanced rescission power to make changes to funding or legislative language for any discretionary or mandatory program;
- would be able to package cuts to popular services and programs with controversial, high-profile pork spending, forcing difficult votes for Congress who would have to approve or reject the president's package without amendment; and

- could delay or cancel funding *even if Congress votes to overturn the president's vetoes*.

The legislation would give the president unprecedented power to manipulate Congress, allowing the White House to threaten or override many tenuous compromises, both for funding levels for, and policy changes to, federal programs. The president would also be able to use the threat of a line-item veto to pressure lawmakers to support administration priorities on specific and unrelated votes, putting members of Congress at the mercy of the whims of the executive branch.

Not only are these proposals dangerous, they're completely unnecessary. The president already has the power to delay or cancel funding under the Impoundment and Control Act of 1974 and can use the regular veto power of the president to rebuke an overspending Congress. Despite having these powers, President Bush has yet to veto a single piece of legislation and, even more incredibly, has yet to prepare and request of Congress **one, single rescission** as president. He is the first president since the law was enacted not to use this power of the office.

Biennial Budgeting

Also emerging from the depths of budget process reform lore is a proposal for biennial budgeting. The idea that Congress should approve a two-year budget every other year has been thrown around Washington for ages and has been reviewed, studied, debated, and largely rejected many times before.

Supporters believe there simply is not enough time in the year for Congress to construct, debate, and approve a budget, adhere to statutory and internal deadlines, and also conduct rigorous oversight of federal programs. They also believe, but do not advertise, that biennial budgeting will likely severely reduce funding in the second year of each budget with routine inflationary adjustments both underestimated and strongly opposed by fiscal conservatives.

While recent experience indicates Congress has been horrendously bad at enacting the budget on time each year (in 2002, in a result more common than not, not one appropriations bill was completed on time), there is no reason to believe having a budget every other year would expedite the process. More likely the outcome would be much more intense and divisive debate, making compromise and consensus and ultimately approval of a budget all the more difficult.

In addition, biennial budgeting would hamper Congress' flexibility to adapt to changing funding priorities and unexpected shifts in the country's spending needs. This would necessitate a tremendous increase in reliance on "emergency spending" bills that lack sufficient fiscal management mechanisms or accountability standards, making still more difficult Congress' work to manage the nation's finances.

Instead of this reckless budget process change, Congress should consider changing its schedule. The 2006 legislative calendar boasts the fewest working days for Congress in over twenty years, just 125 counting Mondays and Fridays when no votes are held. If members of Congress were in Washington and working anywhere near a typical work week, perhaps they would find it possible to complete the budget on time and conduct proper oversight of government resources.

Sunset Commissions

Another staple Bush administration proposal, sunset commissions, has recently crept its way into the budget process reform debate. Sunset commission proposals have been included annually in the president's budget request; the administration sent a legislative proposal last summer to Congress to institute the commissions; and several other bills in Congress would also implement them. But until this year the proposals had failed to gain even marginal attention.

These proposals would force federal programs to plead for their lives every 10 years before a standing body of officials appointed by the president. Such a system seriously threatens federal government programs of all stripes, particularly social safety net programs and public interest

projects across the government.

Read more about the perils and pitfalls of current sunset commissions proposals from the Regulatory Policy Program at OMB Watch.

Seeking Program Sunsets, GOP Sees Opportunity in Budget Process Reform

Press reports indicate that House conservatives are pushing for budget process reform changes as a condition of securing their votes on the upcoming House budget resolution, and their demands include a controversial proposal for a program sunset commission.

The House GOP leadership may give serious consideration to such a proposal in order to pass a budget resolution this year.

In attempts to appease conservatives concerned that the budget resolution that passed the House Budget Committee last Wednesday does not go far enough, the GOP leadership met with the conservative House Republican Study Committee (RSC) last week and made public calls for budget process reforms, including the president's line-tem veto proposal, earmark reforms, and consideration of more radical changes, such as biennial budgeting and sunset commissions. It is unclear if these promises will be enough to hold conservatives in the face of increased discretionary spending. The House plans to vote on the budget resolution at the end of this week.

The sunset commission idea, which in the past has cropped up as stand-alone legislation and as a proposal in the White House budget, would force government programs to plead for their lives every ten years or face elimination. Programs up for review would have to submit a report justifying their continued existence. Congress would then have to affirmatively vote to keep the program, or it would be automatically eliminated.

The RSC has named the sunset commission proposal as a top priority for budget process reform. According to *Congress Daily* (subscription-only), the RSC has asked House leadership for a "date certain" for debate of sunset commissions, though such a debate has yet to be scheduled and the prospects of budget process reform passing are still unknown.

If the sunset commission proposal were to go through, it could be devastating for public protections, by tying up ever-diminishing agency resources in defending their own existence rather than fulfilling congressional mandates to protect public health, safety, the environment and civil rights. Moreover, Congress already has the authority to restructure government programs and agencies when it determines the need to do so. Congress creates the agencies by statute in the first instance, and it revisits their effectiveness and continued existence each year through the budget process. The White House's proposal would usurp power from Congress by entrusting unelected commissions with important decisions about the structure and function of all government services.

Several bills to implement sunset commissions have been introduced in this Congress, but only one has so far been the subject of a hearing. No bill has been marked up or reported out of committee.

IRS Political Audit Program Heats Up

The fall campaigns may seem far away, but the Internal Revenue Service (IRS) program to enforce the ban on partisan activity by charities and religious organizations has already kicked

into overdrive, with big cases left over from 2004 and new complaints being filed. On March 22, a complaint filed against the Pennsylvania Pastors Network (PPN) alleged a recent get-out-the-vote training improperly featured Sen. Rick Santorum (R-PA), without inviting his opponent for re-election. The following week an attorney for two groups with audits still pending from 2004, the National Associations for the Advancement of Colored People (NAACP) and All Saints Episcopal Church of Pasadena, CA, took action to force resolution of their cases. Law bars the IRS from commenting on individual cases.

A recent *New York Times* report described a March 6 get-out-the-vote training held in Valley Forge, PA, sponsored by the PPN, a coalition of four conservative organizations. The group's purpose is "to help educate the church regarding the key social and cultural issues of the day." The training agenda included speakers on a variety of church issue advocacy efforts and Santorum, who is running in Pennsylvania for re-election to the U.S. Senate this year. Bob Casey, his Democratic opponent, was not present or listed as an invited speaker.

Santorum spoke to the 125 participants in a seven-minute video presentation, urging pastors to be vocal on a proposed constitutional ban on same-sex marriage. PPN then gave out copies of Santorum's new book, *It Takes a Family*, which master of ceremonies Colin Hanna praised. One of the speakers, Rev. Frank Pavone of Priests for Life, stressed that control of the Senate is important when Supreme Court vacancies occur, and "this particular president needs the kind of support that he has today but might not necessarily have after 2006." A few days later, PPN announced that it will hire 10 full-time organizers to help churches get out the vote this year.

PPN is comprised of two 501(c)(3) organizations (the Pennsylvania Family Institute and the Urban Family Council) and two 501(c)(4) organizations (Let Freedom Ring and the Pro-Life Federation). Groups exempt under Section 501(c)(3) of the tax code are prohibited from engaging in partisan activities, directly or indirectly. The 501(c)(4) groups can endorse candidates, but a joint effort that includes the 501(c)(3)s must be nonpartisan. The *Times* article noted that the event "could define the boundaries for churches and other groups." The situation is complicated, since work on ballot initiatives is considered lobbying and is permissible for 501(c)(3) organizations.

The training was recorded by a member of Americans United for Separation of Church and State (AU), which gave the tape to the *Times*. On March 21, AU issued a statement, calling the training an "under-the-radar" drive to support Santorum. On March 22, Citizens for Responsibility and Ethics in Washington (CREW) filed a complaint against PPN, asking the IRS for an investigation and saying PPN "may be engaged in prohibited electioneering by openly endorsing candidates for public office." The complaint noted that the IRS 2004 compliance program found that nine organizations gave "improperly preferential treatment to certain candidates by permitting them to speak at functions." A recent IRS Fact Sheet states that when public officials who are also running for office make appearances at organizational events, the group must "maintain[s] a nonpartisan atmosphere on the premises or at the event where the candidate is present." The IRS will have to determine if the facts and circumstances of the PPN training pass this test.

Colin Hanna, president of Let Freedom Ring, released a statement, March 23, calling CREW's complaint groundless and predicting that it will be dismissed. A 2004 complaint against Let Freedom Ring, filed by CREW, was dismissed. Hanna said PPN is a project of Let Freedom Ring, which is 501(c)(4) organization, but the invitation to the event listed all four coalition members as sponsors. He also said "all costs and expenses of putting on the Pastors Convocation were paid by Let Freedom Ring," and accused CREW of being a "partisan front group."

NAACP and All Saints Church Seek Resolution of 2004 Cases

In related news, the IRS still has cases pending from the 2004 election. On March 29, the NAACP issued a press release, announcing steps it has taken to force the case into court if the IRS does not close it favorably within six months. In January 2005, the IRS asked the NAACP

for documents as part of its examination of a 2004 speech by Chairman Julian Bond that criticized Bush administration policies on education, the economy and the war in Iraq. The NAACP refused to turn over the documents, because it said the timing of the audit (before the end of the tax year) was improper and the action was politically motivated.

At that point the case became a stalemate. In the release, NAACP General Counsel Dennis Hayes said, "Although the IRS has not contacted us in over a year, the agency recently released guidance confirming that the agency continues to believe that it can investigate charities for criticizing governmental policies. The chilling effect of the IRS actions is profound, and the NAACP cannot stand by and allow our constitutional freedoms to be eroded." NAACP President Bruce Gordon noted that the IRS is "dragging its feet" on Freedom of Information Act requests, and "it seems that the government's strategy is to delay and withhold information in the hope that we'll concede. Well, the NAACP doesn't give up so easily."

To force a resolution the NAACP has paid what it estimates it would owe if the IRS found it has violated the ban on partisan activity. The excise tax rate is 10 percent of the cost of a prohibited communication. In this case the NAACP estimated it spent $176.48 to disseminate Bond's speech, so it sent the IRS $17.65. Hayes said this in no way represents an admission of wrongdoing. Instead, the NAACP has filed for a refund of the $17.65. If they do not receive the refund within six months, they will go to court for a review of their claim.

All Saints Episcopal church, another group being audited for anti-war statements during the 2004 election, wrote the IRS on March 29 asking if it was still being investigated. All Souls received a letter from the IRS notifying it of the investigation in September 2005, and 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.

All Souls attorney Marcus Owens, of Caplan and Drysdale in Washington, D.C., told *BNA* that a memo from the IRS chief counsel indicates that the procedure used by the IRS to initiate the case was improper. Owens said, "The church is anxious to receive some indications from the IRS regarding the direction the case is taking." If the case does proceed, All Souls wants the IRS to reconsider the threshold for initiating investigations, which whether a "reasonable belief" that a violation has occurred.

FEC Opens Door To Rulemaking on Grassroots Lobbying

The Federal Election Commission (FEC) has announced it will take comments until April 17 on whether it should start a rulemaking to consider whether or not to provide an exemption to existing law for nonprofits. The exemption would allow nonprofits to conduct issue advocacy through broadcast ads within 30 days of a primary and 60 days of a general election. Advocates for the action encourage the FEC to act quickly so that nonprofits understand what they can do prior to the November elections.

The request for public comment was spurred by a Feb. 16 petition filed by OMB Watch, AFL-CIO, Alliance for Justice, National Education Association and U.S. Chamber of Commerce. The ban on pre-election broadcast "electioneering communications" has been mired by what many consider inconsistent regulation and thus confusion among nonprofits as to what they can and cannot do in this election season.

The Bipartisan Campaign Reform Act of 2002 (BCRA) bars any broadcast ad that references a federal candidate within 30 days of a primary election or within 60 days of a general election. The FEC had initially exempted organizations under Section 501(c)(3) of the tax code from this "electioneering communications rule" due to their nonpartisan nature. Ads sponsored by such groups cannot support or oppose a candidate for elected office without losing their 501(c)(3) status. Thus, such ads would have to be issue ads, supporting or opposing legislation or policy

options.

Two of BCRA's co-sponsors, Reps. Christopher Shays (R-CT) and Martin Meehan (D-MA), filed a lawsuit challenging the FEC's exemption for 501(c)(3) organizations. A District Court ruled that FEC needed to reconsider its decision and provide more evidence of why it wanted to exempt 501(c)(3) groups or alternatively drop the exemption. FEC ultimately decided to drop the exemption. Thus, 501(c)(3) groups can no longer make refer to federal candidates in broadcast ads during the banned periods, including incumbents who are running again, even when they are lobbying on legislation.

On a separate track, the Wisconsin Right to Life, a 501(c)(4) organization, decided to challenge the ban on broadcast ads as a restriction of First Amendment rights. A lower court ruled against the organization in *Wisconsin Right to Life, Inc. v. FEC*, saying there was no right to challenge the law. WRTL appealed to the Supreme Court, which ruled otherwise, sending the decision back to the lower court for consideration of the facts in the Wisconsin case. The Supreme Court's ruling noted that the FEC has the statutory authority to craft a rule to protect ads that do not "promote, attack, support or oppose" federal candidates. This means that the FEC can promulgate a rule that allows nonprofits to engage in issue advocacy through broadcast ads during the banned period.

It was as a result of this Supreme Court decision that the group of nonprofits filed their Feb. 16 petition to the FEC requesting that the FEC start a rulemaking.

For nonprofits, this is a particularly important and time-sensitive issue, with fall elections scheduled for Nov. 7. Without a new rule, broadcast ads referencing a federal candidate will be prohibited starting on Sept. 7, just as Congress considers a host of legislation, including annual appropriations bills. As a result nonprofits that wish to lobby on such legislation will be prohibited from using broadcast ads during this period. Similarly, nonprofits would need to know when a state primary is scheduled, in order not to run afoul of rules against running broadcast ads 30 days before a primary.

On the other hand, the FEC may feel that it need not engage in a rulemaking until the lower court reconsiders the WRTL case. Depending on the timing and outcome of that court's decision, nonprofits may be out of luck, particularly for this year.

Click here to send a message to the FEC. OMB Watch will also be collecting signatures for a sign-on letter for national organizations. Please email ombwatch@ombwatch.org if your organization is interested in reviewing the sign-on letter.

Groups Complain of FBI Intimidation

A Michigan forum on freedom of information and open government held during Sunshine Week last month provoked a call to the event's sponsor, the local League of Women Voters, from a Federal Bureau of Investigation (FBI) agent. The agent complained about one panelist's statements that criticized the USA PATRIOT Act and suggested the League should have had someone from the federal government on the panel. Within days Common Cause and the League wrote to FBI Director Robert Mueller to protest.

The March 14 panel on open government, held by the League of Women Voters of Berrien and Cass counties in Three Oaks, MI, featured a journalist, prosecutor, communications professor, and Common Cause president Chellie Pingree. Pingree noted that freedoms are being eroded in the name of national security, saying that concern about the Patriot Act is justified, and "Government wants to act in secrecy to invade your privacy."

A local newspaper covered the event and quoted Pingree. Within a few days, St. Joseph FBI

agent Al DiBrito had called Susan Gilbert, president of the local League, claiming that Pingree's comments were "way off base" and that the League should have had someone from the federal government on the panel. He went on to say that someone from the U.S. Attorney's office in Grand Rapids would be contacting her to set the record straight on the Patriot Act.

Gilbert believed the call to be a threat, telling the *Herald-Palladium* that the FBI "should not go around intimidating the League of Women Voters and Common Cause because they don't like the Patriot Act. There are many people who don't like the Patriot Act, including members of Congress. I'm just stupefied."

DiBrito told the press that the call was only meant to invite the League to debate what was reported. It is widely regarded to be wholly inappropriate, however, for a government agency to attempt to dictate who speaks at meetings of citizen organizations.

Such subtle intimidation is even more problematic when the agency in question is the FBI, with its history of unconstitutional surveillance and interference in organizations, including the COINTELPRO program. COINTELPRO is an acronym for an FBI counterintelligence program whose purpose was to neutralize political dissidents. It operated from 1956-1971 and conducted operations against civil rights, anti-war, and many other groups. The program ended in 1971 after it was publicly exposed.

The letter sent by Common Cause and the League to Mueller described what had transpired, explaining that "[w]hen the country has far more pressing security and terror concerns, we question the FBI using precious resources hounding leaders of two of the most distinguished citizen advocacy organizations in the country. Is this the kind of behavior citizen activists can expect from the FBI? To us, it smacks of intimidation." Pingree and Kay Maxwell, President of the League of Women Voters, in a joint statement averred that "[c]itizens can be intimidated when an FBI agent calls and questions their activities." The statement also raised the question, "Why should a citizen meeting on open government merit the attention of the FBI?"

Senate Overwhelmingly Approves Lobby Reform; House To Take Up 527s

Voting just hours after former lobbyist Jack Abramoff was sentenced, the Senate overwhelmingly passed what critics are calling a tepid effort at lobby and ethics reform. Now the pressure is on the House, where leaders have struggled to balance the need to pass reforms with a rebellious rank-and-file that wants business as usual.

On March 29, the Senate passed S. 2349, the Legislative Transparency and Accountability Act, by a roll call vote of 90-8. Senate Republican and Democratic leaders praised the final Senate bill as a bipartisan response to scandals that recently rocked Capitol Hill, involving Abramoff and former Rep. Randall "Duke" Cunningham (R-CA).

However, both good government groups and reform-minded lawmakers were disappointed with the final product, particularly because the bill offers little in the way of meaningful enforcement. Sen. John McCain (R-AZ), who introduced what became the framework for the bill at the end of last year, called S. 2349 "very weak" in its final form and voted against its final passage. Also voting against the bill were Russ Feingold (D-WI), Tom Coburn (R-OK), Barack Obama (D-IL), Lindsey Graham (R-SC), Jim DeMint (R-SC), James Inhofe (R-OK) and John Kerry (D-MA). Obama was the lead person for the Democrats on the reform measure, and like McCain, felt the final product was weak.

Highlights of the legislation

Increased Reporting: Registered lobbyists would have to file quarterly reports electronically on their activities, 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 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 Government Accountability Office would conduct an annual audit of compliance.

Grassroots Lobbying Disclosure: A provision requiring disclosure of grassroots lobbying expenses over a certain threshold was retained in the bill. While grassroots lobbying expenditures would not be used to calculate whether an organization is required to report, expenditures of $25,000 or more per quarter for grassroots lobbying would have to be disclosed for organizations already reporting under the LDA. The amendment excludes any grassroots lobbying communications to an organization's members. This is defined in accordance with the tax code definition - that is, anyone who contributes more than a nominal amount of time or money to the organization or is entitled to participate in the governance of the nonprofit. Reporting would also not include communications directed at less than 500 members of the general public. Voluntary or unpaid grassroots lobbying efforts also do not need to be reported. Additionally, 501(c)(3) organizations are allowed to use the tax code definitions of grassroots lobbying in place of the new definitions. The definition for other entities includes "voluntary efforts of members of the general public to communicate their own views on an issue to federal officials or to encourage other members of the general public to do the same."

Disclosure of Coalition Members: The Senate bill requires public disclosure (by the registrant) of organizations that contributes $10,000 or more to a coalition or association that registers under the LDA and substantially participates in the planning, supervising or controlling the management of lobbying activities. Such disclosure, however, would be waived for organizations that make the affiliation or funding of the coalition "publicly available knowledge."

Disclosure of Campaign Contributions: The Senate bill would require any person who registers as a lobbyist to report all political contributions they make over $200 on an annual form submitted to the Senate Secretary's office. An earlier version of the bill had such disclosure done through the LDA report that an organization submits, which would mean that an employer would see an employees campaign contributions.

Privately Funded Travel: : Privately funded travel (such as travel paid for by a nonprofit) would still be permitted, but subject to new requirements. For example, itineraries would have to be pre-approved by the Ethics Committee for certification that the trip is primarily for educational purposes, and lobbyists would be banned from such trips. A report on the trip would be required within 30 days of the lawmaker's return and would be posted on the Senate's website.

Earmarks and Other Items: Earmarks and other items added in conference to appropriations, authorization bills, tax or other legislation that were not part of either the House or Senate bills would be subject to points of order on the floor, and 60 votes would be needed to waive objections. If there are not 60 votes to override the point of order, the provision would be stripped, but the conference report would not be killed. Additionally, bills, amendments and conference reports would identify the lawmaker responsible for each earmark, including for revenue earmarks. However, there would be no specific method for challenging these earmarks. Finally, conference reports would be posted on the Internet at least 48 hours before a Senate vote.

Gifts, Meals, Drinks: Senators and aides could not accept meals or drinks from registered lobbyists, but could still accept meals valued at up to $50 from others. This must be disclosed on

their websites within 15 days.

Revolving Door: The one-year ban would be extended to two years before members could lobby former colleagues. Senior staff would be banned for one year before doing any congressional lobbying.

Other Items: Floor privileges for former members of Congress who are now lobbyists would be revoked. Immediate family of Senators who lobby would be prohibited from having official contacts with that Senator's staff. There would be mandatory training for Senators and their staff on ethics. Finally, there would be a five-year Commission to Strengthen Confidence in Congress that would make recommendations on further strengthening lobbying and ethics reforms, including enforcement of laws.

Amendments Offered

When the Senate returned from its March recess, whether it would be able to move forward on legislation was unclear. On March 27 Sen. Charles Schumer (D-NY), however, agreed to withdraw his Dubai Ports World amendment to allow discussion on lobby reform to continue. The Senate then voted on two amendments. The first would have created an Office of Public Integrity to investigate possible violations of Senate rules. Members of the Senate Ethics Committee campaigned hard against the amendment, saying it would have undermined and duplicated that panel's diligent and discreet work. The amendment, introduced by Sens. John McCain (R-AZ), Barack Obama (D-IL), Susan Collins (R-ME) and Joe Lieberman (D-CT), failed, 30-67. The second to receive a vote would have required public disclosure of the name of the Senator who placed a hold on a bill three session days after the hold is first placed in secret. Offered by Sens. Ron Wyden (D-OR) and Charles Grassley (R-IA), the amendment passed, 84-13.

With over 80 other amendments looming, Majority Leader Bill Frist (R-TN) worked hard behind the scenes to limit the number of amendments. On March 28 he called for a cloture vote to limit the number of non-germane amendments to the underlying legislation. The motion to invoke cloture passed, 81-16.

Several other potentially significant amendments were offered but dropped without a vote after one of the bill's managers, Sen. Trent Lott (R-MS), raised a point of order that they were non-germane. These included proposals by Sen. James Inhofe (R-OK) to require jail time for an officer of a nonprofit who uses federal funds to lobby. Also dropped was a proposal by Sen. Max Baucus (D-MT) to impose donor disclosure requirements on charitable organizations that are associated with a member of Congress. For more on the Inhofe and Baucus provisions, see our paper, Senate Lobby Reform: Specific Provisions Relating to Nonprofits.

The Senate bill contains both statutory provisions and changes in Senate rules and procedures, but even the rules changes will not go into effect immediately. The legislation still must pass in the House, go through a conference and be signed by the president before it takes effect.

527 Legislation Up Next for the House

The House is scheduled to take up H.R. 513, legislation that would restrict the expenditures of 527 organizations during the first week of April, abandoning an attempt to combine it with lobbying reform. Democrats oppose limiting 527 organizations, because Democratic party-aligned groups have spent nearly twice as much as their pro-Republican counterparts.

The House leadership package, H.R. 4975, which Rep. David Dreier (R-CA) introduced shortly before the March recess, has been sent to five different committees, although the only committee to hold hearings has been Dreier's own Rules Committee. The five committees of jurisdiction are expected to mark up their respective components in early April, with floor action

not likely until May, later than what the time frame called for by House Majority Leader John Boehner (R-OH). Dreier has said he was open to changing the underlying bill. "While I fully support the bill in its current form, I've been in Congress long enough to know that refinements will still be made," he said.

Dreier's third hearing on lobby reform, held March 30, gave members the chance to offer tweaks to the bill. Members who testified, requesting their proposals be included in the final package, indicated that House GOP leaders still face an uphill struggle to present a final bill that will garner strong support within the Republican Conference, or bipartisan support in the House. Member proposals included creation of an Office of Public Integrity; greater lobbyist disclosure; a blanket gift ban offered by Rep. Christopher Shays, (R-CT); increasing filing and disclosure requirement for foreign corporations and governments, offered by Rep. Jean Schmidt (R-OH); and at least doubling the so-called revolving door rule for members and aides who leave to lobby for two years, offered by Rep. Martin Meehan (D-MA).

Senate Calls for Investigation of TRI Changes

A bipartisan group of senators has called for an investigation into the U.S. Environmental Protection Agency's (EPA) proposals to relax chemical reporting requirements for large industrial facilities. On March 27, Sens. Frank Lautenberg (D-NJ), Jim Jeffords (I-VT), and Olympia Snowe (R-ME) sent a letter to the Government Accountability Office (GAO), requesting the office investigate whether EPA had adequately considered how reducing Toxics Release Inventory (TRI) information would impact communities and data users, including federal and state programs that rely on TRI data.

Among the specific issues GAO will investigate were the impacts of reduced toxics data on EPA enforcement efforts, environmental justice programs, and the ability to provide first responders with up-to-date information on toxic chemicals. The GAO was also requested to examine if the EPA's proposed changes conform to legal requirements, under the Emergency Planning and Community Right to Know Act, that any threshold changes maintain information on a substantial majority of releases for each chemical.

One EPA program that relies on TRI data is the Risk Screening for Environmental Indicators program, which combines TRI release data with hazard and potential exposure data. The hazardous air pollutant program also uses TRI data to help track sources and ambient air concentrations of toxic chemicals. The EPA's voluntary persistent, bioaccumulative toxics tracking program relies on chemical-specific TRI data not available through other EPA programs. While states have submitted comments to demonstrate how the proposals will harm their programs, some believe that those within EPA would be reluctant to comment against the proposals, even if the proposals would harm their programs. The GAO report should shed some light on the true impact of EPA's proposals.

Many states have made it clear, in comments to EPA, that the proposals will negatively impact their programs. For example, Maine's Department of Environmental Conservation sent comments to EPA expressing fear that the proposals would inflict significant harm on Maine's 'toxic reduction' program. According to Maine's comments, "Maine has a Toxics Reduction Program centered on public accountability, [and] this proposal would significantly curtail what the public can review." Maine, according to the comments, would lose almost 70 percent of its TRI inventory and the ability to track 70 percent of Toxic Release data in the state. An initial analysis of the comments shows that at least 20 other states have expressed similar concerns.

According to Snowe, "The Toxic Release Inventory provides invaluable data to the public about the release of toxic chemicals in our environment. It simply does not make sense for the EPA to alter the Toxic Release Inventory before we have an understanding of the impact these changes

will have on communities throughout Maine and the country."

On a related note, hundreds of organizations from around the country are also working to prevent EPA's efforts to reduce public right-to-know. Last week, each congressional office received a letter signed by 233 environmental, health, labor, public interest, socially responsible and research organizations, calling on Congress to stop EPA from reducing toxic chemical reporting.

"On behalf of the 233 undersigned organizations," the letter states, "we are writing to urge Congress to stop the [EPA] from moving forward with a set of proposed changes to the Toxics Release Inventory (TRI). The changes will make it more difficult for citizens to track toxic pollution in their neighborhoods and take steps to reduce the impact on their family's health."

There's a New Chemical Security Bill in Town

On March 30, Sens. Frank Lautenberg (D-NJ) and Barack Obama (D-IL) introduced a new bill on chemical plant security, The Chemical Security and Safety Act, with a major improvement over current chemical security proposals: it includes a requirement that chemical plants consider inherently safer technologies. The bill also establishes a more active role for the U.S. Environmental Protection Agency (EPA) in the implementation of chemical security requirements.

The Chemical Security and Safety Act would require that the Department of Homeland Security (DHS) work with EPA, as well as states, to identify "high-priority" facilities that would receive priority oversight. In coordination with EPA and state and local agencies, DHS would establish regulations requiring high-priority facilities to develop a prevention, preparedness and response plan after conducting a vulnerability assessment. The bill would also require companies to evaluate the possibility of using less dangerous chemicals and technologies as part of the vulnerability assessments and prevention plans. Under the Lautenberg-Obama bill, companies would be required to implement any feasible safer technologies in order to minimize damage done by a terrorist attack on a chemical plant.

Currently, the lead legislation in the Senate is The Chemical Facility Anti-Terrorism Act of 2005 co-sponsored by Sens. Susan Collins (R-ME) and Joseph Lieberman (D-CT), the Chair and ranking minority member respectively for the Homeland Security and Governmental Affairs Committee. While describing the Collins-Lieberman bill as a good first step, the Democrat senators explained that they introduced the new tougher legislation to raise the bar on chemical security legislation. Lautenberg and Obama hope to have some of their stronger provisions incorporated into the Collin-Lieberman bill.

In a March 21 speech to a chemical industry conference, DHS Secretary Michael Chertoff recently called for federal legislation. However, critics believe that Chertoff's approach would be overly lenient on the chemical industry. Lautenberg characterized the DHS proposal as "weak" and "tepid," stating that it was the "Trust the chemical industry; they will do the right thing" approach.

The new bill included Sens. John Kerry (D-MA), Joe Biden (D-DE), Richard Durbin (D-IL), and Robert Mendez (D-NJ) among its cosponsors.

No date has yet been scheduled for a markup of the Collins-Lieberman bill. Lieberman has stated his intention to offer an amendment on inherent safety when the bill is marked up.

Congress Pulls Chair Up to NSA Spying Table

The Senate has continued its efforts to establish some level of oversight of the National Security Administration (NSA) warrantless spying program. The Senate Judiciary Committee held another hearing on the program, while three Senate bills have been introduced to establish congressional control over the program.

The Senate Judiciary Committee's third hearing on the NSA program marked a historic occasion in which four former members of the secret Foreign Intelligence Surveillance (FISA) Court of Review testified. The March 28 hearing consisted of the judges dodging questions regarding the legality of the program, while encouraging the committee to give the FISA court a role in determining the constitutionality of the NSA program. The judges also endorsed Judiciary Committee Chair Arlen Specter's (R-PA) position that the FISA court should exercise oversight of the program.

In addition to the testimony, the committee received a March 23 letter from Judge James Robertson, who resigned from the FISA court over the NSA program's circumvention of FISA procedures. Robertson stated that the FISA court is "best situated to review the surveillance program" and suggested a few changes to strengthen Specter's bill, The National Security Surveillance Act of 2006.

Another bill, the Terrorist Surveillance Act, was introduced by Sens. Mike DeWine (R-OH), Lindsay Graham (R-SC), Chuck Hagel (R-NE) and Olympia Snow (R-MW). The bill would provide the judicial and legislative framework for the NSA spying program by, among other things, allowing the NSA to monitor emails and telephone conversations of suspected terrorists for 45 days without receiving judicial approval. After 45 days, the government would have to receive a court order from the FISA court. If the NSA had insufficient evidence to receive a FISA order, the agency would have to notify new House and Senate Terrorist Surveillance subcommittees of the surveillance.

Morton Halperin, senior fellow at the Center for American Progress, criticized the two bills in his testimony before the Judiciary Committee as "sweeping proposals" that should be "deferred unless and until a clear showing has been made to Congress as to why they are necessary." Others who did not testify also are critical of the two bills. For example, calling the bills "premature," the Center for Democracy and Technology offers detailed analysis of the shortcomings of the two bills.

Sen. Charles Schumer (D-NY) also introduced legislation to jettison court cases challenging the NSA program to the Supreme Court. Upon their appeal at the district court level, the cases would immediately move to the Supreme Court. Schumer stated that the "most logical place for this to be settled is in the U.S. Supreme Court" and argued that without the bill it could take three or four years for the cases to reach the Supreme Court for final resolution.

The cases currently making their way through the judicial system include a Michigan case brought by the American Civil Liberties Union (ACLU), which claims that the NSA program violates the First and Fourth Amendments and a case in Oregon that may offer concrete evidence of NSA's warrantless domestic spying.

In a more political news, Capitol Hill was abuzz with Sen. Russ Feingold's (D-WI) proposal to censure President Bush who, Feingold asserts, "so plainly broke the law and violated the trust of the American people." The Senate Judiciary Committee held a March 31 hearing to consider the possibility of a censure.

NASA Launches New Disclosure Policy

The National Aeronautical and Space Administration (NASA) released a new policy statement

governing public dissemination of information from the agency. Released on March 30, the policy is an apparent response to allegations that the agency attempted to suppress scientific research on climate change that contradicted Bush administration policy on the issue. While the new policy does begin to clarify and establish official guidelines for release of information, it remains too vague and contains too many loopholes to fully function as a vehicle for public disclosure.

While the new policy statement may have more style than substance, it at least sets the right tone. For instance, the first of five principles declares that NASA "is committed to a culture of openness" and assures the public that agency information "will be accurate and unfiltered." Further, the policy makes it clear that scientists are free to express their personal views, as long as they make clear that such views do not reflect the official position of the agency.

The five principles at the heart of NASA's new disclosure policy include commitments to:

- Maintain a "culture of openness with the media and public" and that information will be "accurate and unfiltered."
- Provide the widest practical and appropriate dissemination of prompt, factual and complete information.
- Ensure timely release of information.
- Allow employees to speak to the press or public about their work.
- Comply with other laws and regulations governing disclosure of information such the Freedom of Information Act or Executive Orders.

The new policy also lays out the responsibilities of NASA staff when releasing public information or giving interviews to the media, as well as procedures for coordinating information releases. Other sections explain restrictions in the disclosure policy for classified or “sensitive but unclassified” (SBU) information.

NASA enlisted a working group of staff with backgrounds in science, engineering, law, public affairs and management to develop the policy in response to claims from NASA climatologist James Hansen that a political appointee, ironically in the position of Public Information Officer, attempted to prevent Hansen from being interview by National Public Radio. The appointee, George Deutsch, has since left the agency, and NASA apparently would like to ensure that the tactics he used also leave. Under the new policy, Hansen would clearly be allowed to do an interview with NPR, as long as he made clear that his statements were his own opinions and not official positions of the agency.

However, the new policy has problems that will limit its effectiveness. First and foremost is the overall lack of detail throughout its provisions. Several guidelines and criteria have not even be written that will be important to understanding the impacts of this policy. For instance:

- "The Assistant Administrator will develop criteria to identify which news releases and other types of public information will be issued nationwide by NASA Headquarters.
- “All NASA employees involved in preparing and issuing NASA public information are responsible for proper coordination...to include review and clearance by appropriate officials prior to issuance...through procedures developed and published by the NASA Assistant Administrator for Public Affairs.
- “The Assistant Administrator for Public Affairs shall publish guidelines for the release of public information that may be issued by Centers without clearance from Headquarters’ offices.”

These missing policy provisions and procedures, along with details of key definitions and criteria, are vital in determining how well NASA's new disclosure policy will function. Without them, the policy remains incomplete and, thus, weak and vulnerable to manipulation.

For instance, the new policy is primarily directed at the release of information to the media, such press releases and events, and is not intended to apply to scientific reports or technical data. The scope of the policy is so vaguely defined, however, that the possibility exists that it could interfere with the release of scientific information. The information covered by the policy is defined as "information in any form in any form provided to news and information media, especially information that has the potential to generate significant media, or public interest or inquiry." Information that has the potential to generate public interest or inquiry could easily include scientific or technical reports on controversial issues, such as global warming.

Provisions establishing responsibilities and procedures for coordination also fall short of the mark. Several provisions establish, what appears to be an overly broad review and control process for disclosure of information. For instance, NASA requires that all materials being prepared for public release receive "review and clearance by appropriate officials." A provision for "Dispute Resolution" establishes that any dispute arising from a decision to issue a "news release or other type of public information will be addressed and resolved by the Assistant Administrator for Public Affairs." No explanation is given of what exactly constitutes a "dispute," who can raise one, or what the possible repercussions staff members face for being involved in a disclosure dispute. These provisions, coupled with the policy's vague scope, could easily result in discouraging releases and statements by NASA staff on scientific information.

These bureaucratic controls could be misused to allow political manipulation and spin-doctoring of scientific materials, particularly since the release of information must be approved by personnel without a background in science--precisely what the policy is supposed to prevent. A policy conducive to a "culture of openness," it seems, would require *notification* of the appropriate officials and public affairs specialists about the release of scientific information, rather than *approval* from non-scientists.

Another of the policy's major problems is the enormous loophole created by provisions restricting the disclosure of "sensitive but unclassified" (SBU) information. The policy's definition of SBU includes very specific information, such as:

- proprietary information under confidentiality or nondisclosure agreements;
- information on source selection, bids and proposals;
- information subject to export control;
- privacy information; and
- predecisional materials.

The definition also incorporates a catch-all clause that is broad and vague enough to apply to almost any information. The provision rounds out the SBU definition by including information that could indicate "U.S. government intentions, capabilities, operations, or activities or otherwise threaten operations security."

The sweeping definition provides no specific criteria to allow NASA staff to confidently distinguish between legitimate SBU information and other information about NASA operations. The provision also fails to establish procedures for the information to be properly reviewed. Without these clarifying policy details, and with employees facing possible prosecution or disciplinary action should SBU information be released without permission, these provisions will almost certainly lead to overuse of the SBU category and unnecessary withholding of information from the public.

Other agencies, including the Department of Homeland Security, have been widely criticized by information access and open government advocates for vague policies that overly restrict disclosure of information. It appears, unfortunately, that NASA has failed to learn from the pitfalls encountered by other agencies and to develop a robust, detailed disclosure policy.