

## In This Issue

### Federal Budget

No Budget Resolution

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

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

Who Pays What Taxes?

### Information & Access

The Bush Administration's Openness Policy Serves Self Interests

### Nonprofit Issues

FEC Gets Record Number of Comments in Rulemaking

Effort to Revive CARE Act Fails

New Round of Funding for Compassion Capital Fund

More Complaints Filed Against Congressman DeLay

Welfare Re-Authorization Fails in the Senate

### Regulatory Matters

Republican Leadership Threatens More Regulatory Rollbacks

Weakening of Overtime Rules Imminent as Controversy Rages

### Information & Access

Court Orders Release of Additional Energy Task Force Documents

Government Web Secrecy Doesn't Provide Security

White House Denies Meddling with Science

---

## No Budget Resolution

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

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

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

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

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

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

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

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

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

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

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

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

### Background

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

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

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

### PART

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

### PAR

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

### In Conclusion

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

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

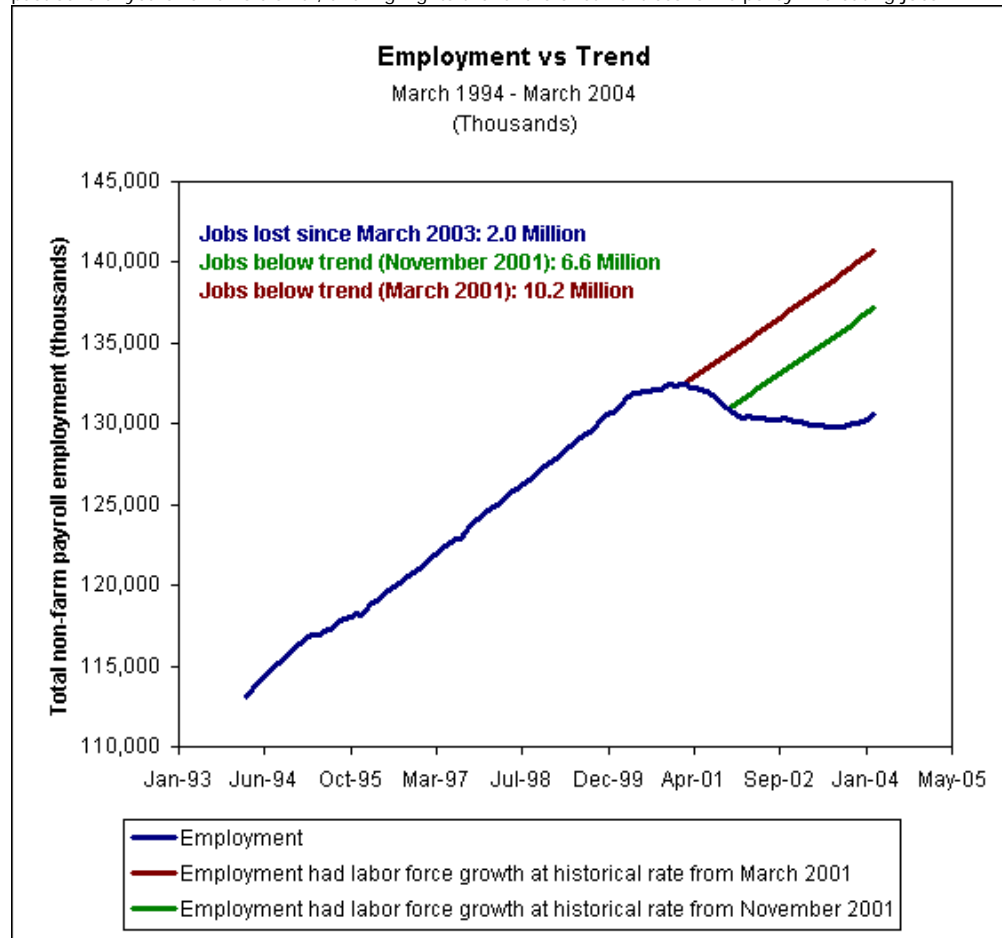
The economy added 308,000 new jobs in March, announced the Labor Department on Friday. The strong jobs number came largely due to the service sector which added 230,000 new jobs, while the manufacturing sector continues to struggle with no net new jobs in March.

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

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

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

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



## Who Pays What Taxes?

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

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

## The Bush Administration's Openness Policy Serves Self Interests

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

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

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

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

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

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

## FEC Gets Record Number of Comments in Rulemaking

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

To download OMB Watch's comments click [here](#). More information is available at [www.nonprofitadvocacy.org](http://www.nonprofitadvocacy.org) and at [www.ombwatch.org](http://www.ombwatch.org). To send your own comments to the FEC see OMB Watch's [Action Alert](#).

## Effort to Revive CARE Act Fails

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

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

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

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

## New Round of Funding for Compassion Capital Fund

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

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

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

## More Complaints Filed Against Congressman DeLay

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

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

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

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

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

## Welfare Re-Authorization Fails in the Senate

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

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

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

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

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

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

## Republican Leadership Threatens More Regulatory Rollbacks

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

DeLay revealed that work is already underway on a universal regulatory reform package, according to a recent report in *National Journal's CongressDaily*, but no specific details of DeLay's plan were available.

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

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

- *Submerging cross-cutting regulatory attacks into the federal budget.* At a [recent hearing](#) and in a [follow-up letter](#), Rep. Doug Ose (R-CA) has raised the possibility of having OIRA's annual report on the costs and benefits of regulation integrated with the White House's budget papers. The rhetorical sleight-of-hand that bridges the gap between regulation and budget is a reframing of public safeguards as off-budget costs. Such a strategy could effectively deflect public attention from attacks on widely-favored protections of the public health and environment by hiding them under the arcana of complicated budget issues.
- *Forcing agencies into a regulatory budget's straightjacket.* Despite mounting criticism of the valuelessness of [cost-benefit accounting](#) for public safeguards, including evidence that the fundamental studies cited in favor of the enterprise [lack academic integrity](#), Republican leaders still express an interest in building from cost-benefit measurement to a system of regulatory budgeting. In such a system, agencies would be allotted a fictional budget account for regulations, and all efforts to protect the public health and safety would be measured for their costs, which would be deducted from the finite budget until the fund is exhausted.
- *Re-framing the assault on public health and safety as pro-jobs.* The usual shibboleth for anti-regulatory advocates is that regulation is a drain on the economy. Proponents of DeLay's threatened rollback package are likely to exploit current anxieties about unemployment by re-framing regulations not as protections but instead as cost burdens that weigh down regulated industry. Most notably, they will try to exclude the role of global trade agreements from the discussion by [shifting the blame](#) solely to regulatory safeguards, even as they continue to bolster those same agreements. (The [draft of OIRA's next report](#) to Congress on costs and benefits of regulation, for example, invites nominations for rollbacks to benefit the manufacturing sector, citing recent concerns about the health of manufacturing, but all such nominations must give due consideration to fair and open trade policy objectives.)

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

## Weakening of Overtime Rules Imminent as Controversy Rages

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

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

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



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

## Court Orders Release of Additional Energy Task Force Documents

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

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

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

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

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

## Government Web Secrecy Doesn't Provide Security

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

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

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

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

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

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

## White House Denies Meddling with Science

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

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

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

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

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

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

---

[Press Room](#) | [Site Map](#) | [Give Feedback on the Website](#)

© 2004 OMB Watch

1742 Connecticut Avenue, N.W., Washington, D.C. 20009

202-234-8494 (phone)

202-234-8584 (fax)

[ombwatch@ombwatch.org](mailto:ombwatch@ombwatch.org)