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Assessing the Fiscal Stimulus Package

President Bush signed a two-year, $168 billion fiscal stimulus package on Feb. 13 — the largest legislative initiative ever designed to ease an economic slowdown. Although it was passed by overwhelming margins in the House (385-35) and Senate (81-16), there was considerable debate on how to structure the package so as to maximize its efficacy and stimulative impact on the economy.

According to the Congressional Budget Office (CBO), the goal of a fiscal stimulus is to boost economic activity by increasing short-term aggregate demand. The purpose is to generate sufficient demand to engage more of the economy's existing productive capacity. This requires the plan be implemented quickly, that its benefits go to those hurt most by the economy's problems, and that these benefits not damage longer-term fiscal conditions.

A study by Economy.com's Mark Zandi, "Washington Throws the Economy a Rope," evaluates

the stimulative value of most elements of the plan just signed. Zandi assigns a "bang for the buck" value for the major aspects of the package, rating them according to which generates the most immediate and stimulative spending — consumer purchases:

Fiscal Economic Bank for the Buck *One year $ change in real GDP for a given $ reduction in federal tax revenue or increase in spending*	
Tax Cuts	
Non-refundable lump-sum tax rebate	1.02
Refundable lump-sum tax rebate	1.26
Temporary tax cuts	
Payroll tax holiday	1.29
Across the board tax cut	1.03
Accelerated depreciation	0.27
Permanent tax cuts	
Extend alternative minimum tax patch	0.48
Make Bush Income Tax Cuts Permanent	0.29
Make Dividend and Capital Gains Tax Cuts Permanent	0.37
Cut in Corporate Tax Rate	0.30
Spending Increases	
Extending UI Benefits	1.64
Temporary Increase in Food Stamps	1.73
General Aid to State Governments	1.36
Increased Infrastructure Spending	1.59
Source: Moody's Economy.com	

One of highest impact parts of the package is the individual tax rebate, returning $1.26 of increased economic activity for every $1 spent, according to Zandi. This impact is due to the structure of the rebate (it has a low income eligibility requirement; a relatively high phase-out at $75,000 for individuals; $150,000 for couples) and the likelihood the rebate will be spent quickly by most recipients. Since the majority of American households save little, have modest if any net worth, and probably have very short-term financial needs, they are likely to spend any tax benefit they receive quickly.

The business tax cuts included in the stimulus package, however, offer less stimulative value. A 2006 paper published by the Federal Reserve Board shows that the economic bang for the buck of "bonus depreciation" for businesses is very modest. Per Zandi: "... of all the tax and spending policies considered, it provides the least amount of stimulus. Such incentives offer a limited boost because many businesses have difficulty quickly adjusting long-planned capital budgets."

Weighting the stimulative, or "Zandi," value of each of the major elements of the just-passed stimulus plan according to its share of the $168 billion in spending, we can come up with an overall (rough) measure of the effectiveness of the plan as a stimulus tool.

Rebates for Individuals:
$116.7 billion — 69.5 percent of package, $1.26/Zandi value, or $147 billion

50 Percent Bonus Depreciation:
$49.5 billion — 29.4 percent of package, $0.27/Zandi value, or $13.4 billion

The all-in weighted Zandi value of the package comes out to $160.4 billion, or $7.6 billion less

yield slightly less in short-term consumer purchases than it removes from the economy in the long-run in terms of additional debt, and considerably less when interest expense is factored in.

An aspect of the plan much less discussed — perhaps because it came without a price tag — was the provision raising the maximum size of mortgages that government-sponsored mortgage companies Fannie Mae and Freddie Mac can purchase and market as securities, from $417,000 to as high as $729,750 in expensive parts of the country such as New York and California. CBO estimated that the agency could back $10 billion in additional loan guarantees through 2008 with higher limits — a tiny fraction of the more than $2 trillion in new mortgage loans made last year. According to the *Long Beach* (CA) *Press-Telegram*, "the biggest winners in the economic rescue plan President Bush signed last week are likely to be Americans with more expensive homes who will be able to refinance their home loans at cheaper rates." While it costs taxpayers nothing, this aspect cannot be expected to stimulate any additional short-term consumer spending, either.

Also not included in the plan were some standard, high-leverage stimulus provisions, such as extension of federal unemployment insurance for jobless workers ($1.64 to the dollar) and an increase in food stamps ($1.73).

While it does contain some well-crafted provisions, the overall stimulus package is not optimally structured to provide the economy with a targeted short-term fiscal boost. But what it may lack in qualitative value, it may make up for in terms of sheer size. A February report in the Stanford Institute for Economic Policy Research concludes:

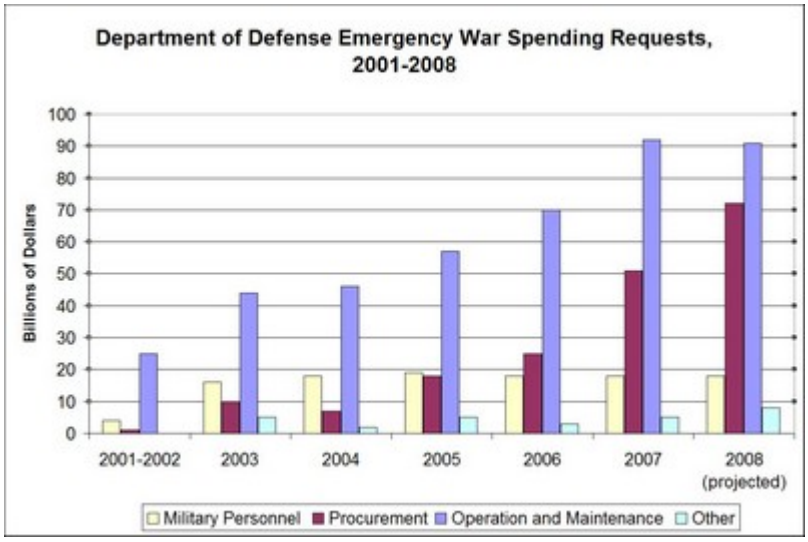
> Without success in targeting funds to those consumers that are not able to save and need to spend all their income on consumption, the effect of tax relief will dissipate quickly... Real GDP would then increase by 0.15 percent in the first quarter and return to its original level over the following three quarters.

Emergency War Spending Lacks Transparency, Increasingly Used for Non-Emergency Items

The Bush administration's emergency supplemental spending requests for the wars in Afghanistan and Iraq have lacked the transparency that normally accompanies the appropriations process, according to a new report from the Congressional Budget Office (CBO). In addition, the CBO war spending report, however constrained by available data, revealed the composition of the war funding requests has been evolving into broader Defense Department spending initiatives, such as acquiring next-generation aircraft and replacing aging aircraft.

If Congress fully funds the Bush administration's FY 2008 emergency war spending request, supplemental Defense Department spending on the wars in Iraq and Afghanistan since 2001 will exceed $750 billion. The CBO report examined requests submitted before 2007 — requests

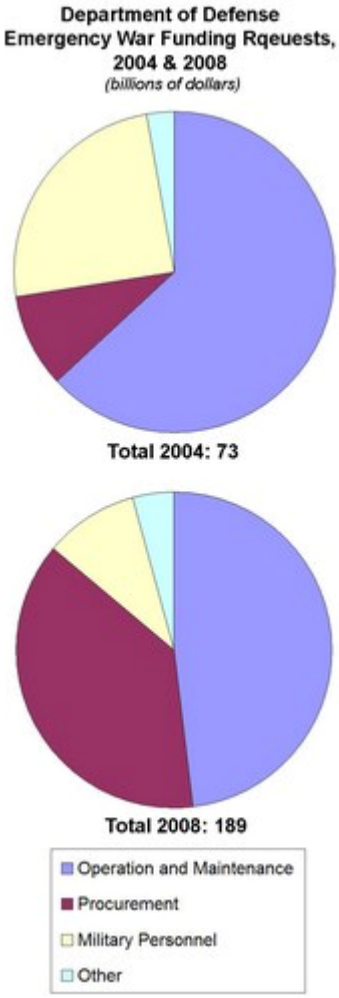
totaling some $384 billion — and found they "contained little detailed information on war expenses," which made "a detailed analysis of the changing patterns of spending impossible." The report also found that a rapidly growing portion of this funding has expanded from ongoing war costs to long-term military expenditures unrelated to the war effort. This has caused a shift in the way supplemental funds are being spent from replacing equipment damaged or destroyed in combat toward acquiring new weapon systems, replacing aging aircraft, and facilitating longer-term military projects.



The overuse of the supplemental funding mechanism has obscured important details about how war funding is spent. During the regular appropriations process, agencies submit detailed documents, known as "budget justification materials," and budget committees openly debate the appropriateness of the requests. While budget justification materials provide Congress with substantial details explaining how a given agency plans to spend its appropriation request, CBO found that:

> The Administration's requests for supplemental appropriations have generally lacked the detail and consistent format necessary to undertake a comprehensive analysis of the changes in [Operations and Maintenance] costs. In addition, significant portions of the funding provided to pay for the operating support costs associated with the war have been provided as emergency appropriations in the regular defense appropriation bills, with little detailed information documenting the intended use of such funds.

For its analysis, CBO disaggregated supplemental defense spending into several categories, with the vast majority of spending falling into three main ones: Operations and Maintenance (O&M), Procurement, and Military Personnel.



O&M: This category includes, among other items, spending on operating, maintaining, and repairing military equipment; running and maintaining base infrastructure; and health care for military members and their dependents. These expenses have increased from $46 billion in 2004 to $92 billion in 2007 and account for over half of all war funding since 2001. Yet, because of the lack of transparency in how these funds were spent prior to 2007, CBO could not explain how large portions of this account were expended. An excerpt from the CBO report:

About 75 percent of the Army O&M request is identified as "operating forces, additional activities," a classification lacking enough explanation to be helpful in this analysis. Also, certain detailed documents that accompany the regular budget request — which would contain information on fuel costs, travel expenses, and civilian personnel costs, for example — are not provided with the request for war-related appropriations.

Procurement: Procurement expenditures are those used to acquire equipment and weapon systems. Since 2003, procurement funding levels have increased from $10 billion to a requested $72 billion for 2008. The CBO report found that this five-fold growth has been the result of "loosened ... criteria for the type of programs whose funding could be requested in supplemental budget submissions."

After 2005, supplemental requests included not only replacing equipment damaged or destroyed in combat and acquiring equipment that would be immediately deployed to combat theaters, but also increasing equipment inventories that were lacking prior to the wars, upgrading weapon systems to newer versions, and accelerating the retirement of older equipment. In FY 2008, the Bush administration has requested funding for 45 aircraft and over 80 helicopters, only half of which are to replace equipment damaged or destroyed during the war. CBO found the remaining funds would be used to speed up the acquisition of new equipment to replace systems that were obsolete even before the war began.

In addition to replacing aging aircraft, the military is also expending emergency funds to reorganize and increase its size. As part of an effort to "improve their capabilities and to make [Army and Marine Corps units] easier to deploy," the Defense Department included $5 billion its FY 2005 and FY 2006 emergency supplemental requests. Of this $10 billion, about $8 billion was used to acquire new equipment. In 2007, the Army and Marine Corps requested $7 billion to increase the size of their forces by 65,000 and 27,000, respectively.

In fact, emergency funding is now a significant source of military procurement. According to

the CBO report, about 40 percent of Defense Department procurement budgeting in 2007 was through emergency appropriations. Additionally, the FY 2007 emergency supplemental funds:

- More than 50 percent of the Army's total procurement budget;
- About 75 of the Army's ground equipment purchases; and
- Almost 90 percent of the Marine Corps' ground equipment procurement

Under the regular annual appropriations process, Congress not only holds spending to pre-determined limits — limits established with much input and debate — but it demands a thorough justification from the requesting agencies. Emergency supplemental funding, on the other hand, dispenses with these transparency and accountability safeguards. When Congress is pliant and generous with its spending authority, one would expect any administration to seize as much budgetary authority for its priorities as it desires — priorities that will not receive a proper vetting before the public.

This is exactly what CBO's report found — unjustified and extraneous appropriations for the Department of Defense that have escaped congressional and public scrutiny until after the funds have been spent. Continued funding of the wars in Afghanistan and Iraq through emergency appropriations will only push a larger proportion of federal appropriations into a budgetary no-man's land in which spending decisions are opaque and consequences are ignored.

Coal Mine Safety Shortchanged by Years of Budget Cuts

Congress created the Mine Safety and Health Administration (MSHA) in 1977, placing a new federal focus on miner safety and health. However, the agency's budget and staffing levels have been cut over the past three decades. The budget for MSHA's coal mine safety and health program has been particularly abused. In the past two years, a spike in coal mine fatalities and high-profile coal mine disasters have prompted many Americans and Congress to look to MSHA to improve miner safety, but years of budget cuts and the loss of qualified employees have left the agency struggling to fulfill its mission.

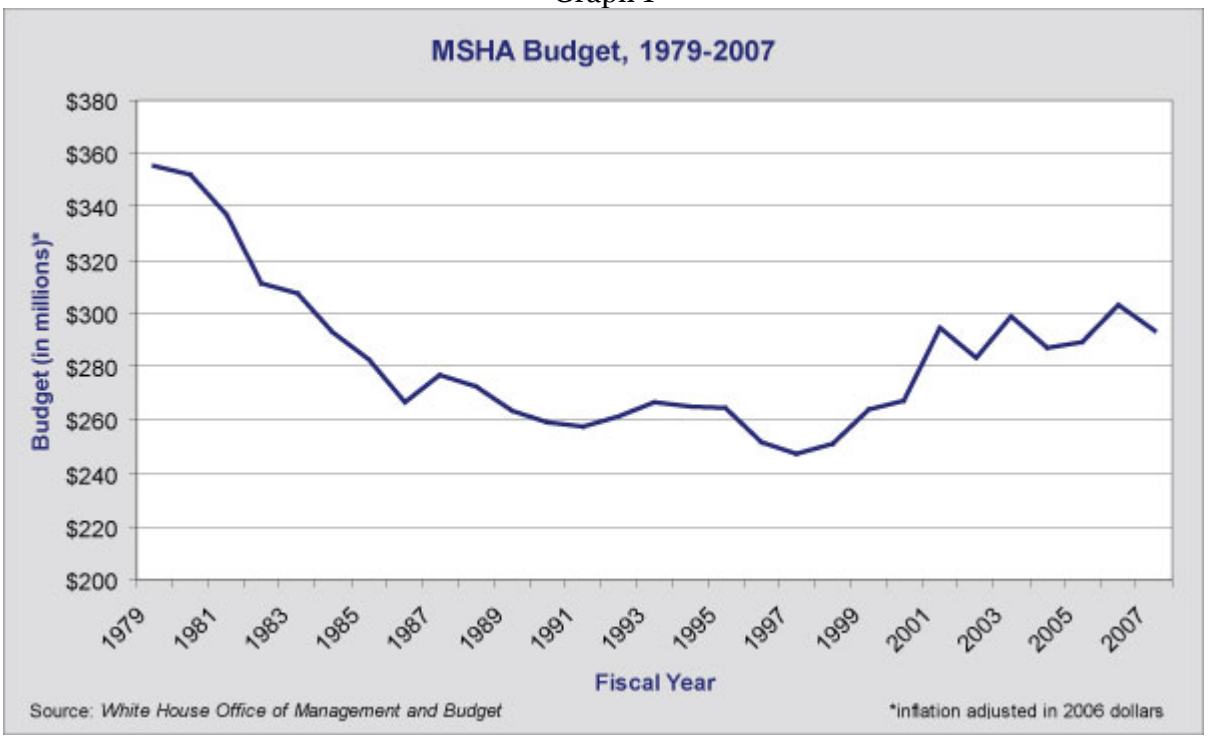
In 1977, Congress passed the Federal Mine Safety and Health Act (Mine Act), which created MSHA. MSHA is responsible for setting and enforcing regulations to protect workers in thousands of surface and underground mines across America.

In 1979, two years after the formation of the mine regulation agency, MSHA's budget peaked at an inflation-adjusted $355 million, when it became a fully operational agency. By 2007, despite recent increases in spending, the budget had dropped 15 percent to $294 million after adjusting for inflation.

After 1979, there was a steady decline in spending for MSHA. By 1986, spending had dropped 25 percent to $267 million, after adjusting for inflation. By 1997, when only $247 million after adjusting for inflation was appropriated, funding had dropped 30 percent. Starting in 1998,

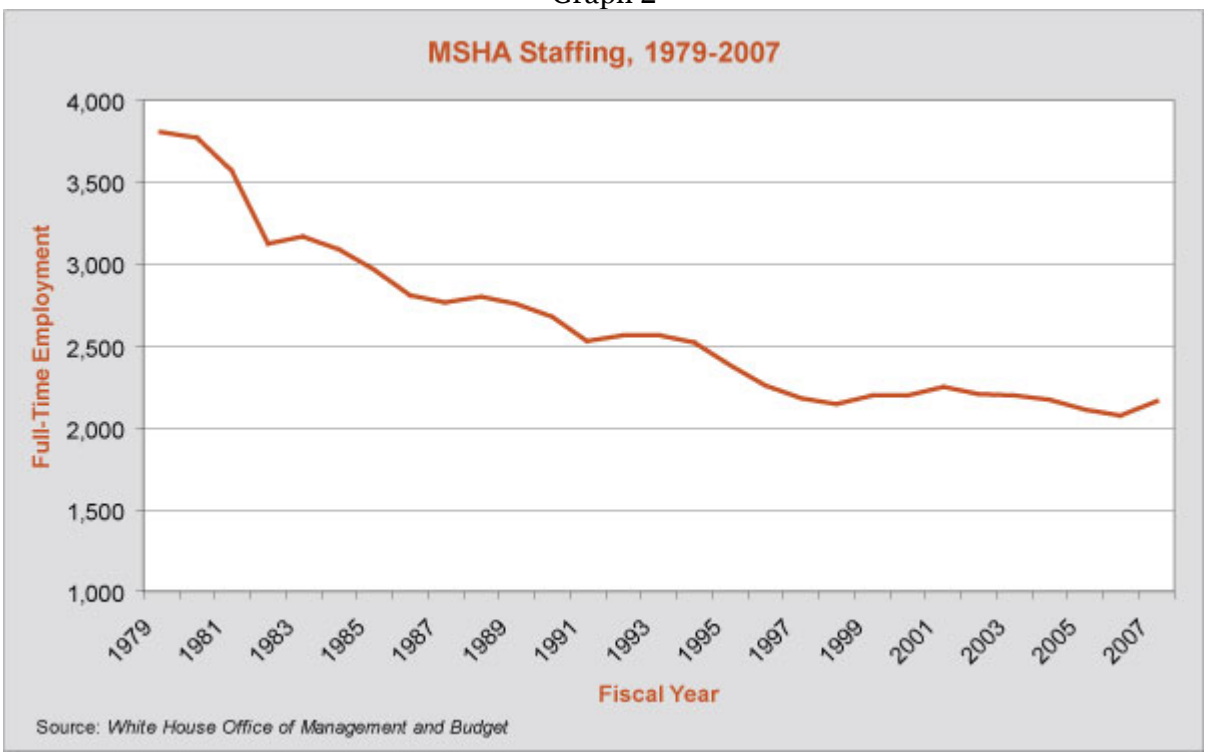
there were increases in spending for the agency, but not nearly enough to offset the massive drop in spending when compared to 1979. In fact, spending today is on par with 1984 levels. (See Graph 1.)

Graph 1



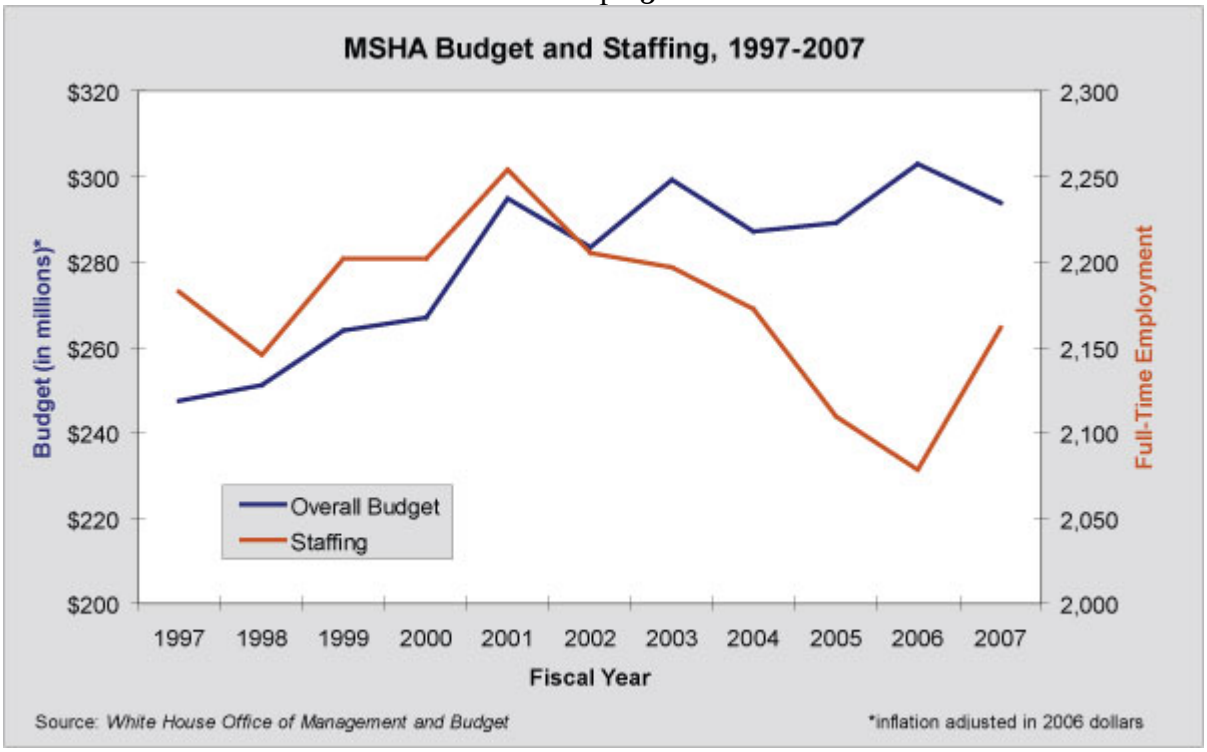
Unlike MSHA's budget, which has increased over the past several years, the number of MSHA employees (also known as "full-time equivalents," or FTEs) has experienced a virtually uninterrupted decline during the agency's existence. From its 1979 peak of 3,811 FTEs, the number of workers carrying out mine regulation and oversight declined by 45 percent to 2,161 FTEs in 2007. (See Graph 2.)

Graph 2



Even though MSHA's budget increased in the late 1990s and in the early 2000s, employment levels struggled to grow, and since FY 2001, have dropped. From FY 1997, when the agency's budget reached its historical nadir, to FY 2007, the agency's budget grew almost 19 percent when adjusted for inflation. However, staffing levels did not follow a similar trend. In FY 2006, MSHA's staffing level reached an all-time low of 2,078. From FY 2001 — the first of the Bush administration — to FY 2006, MSHA's staffing level fell eight percent. (See Graph 3.)

Graph 3



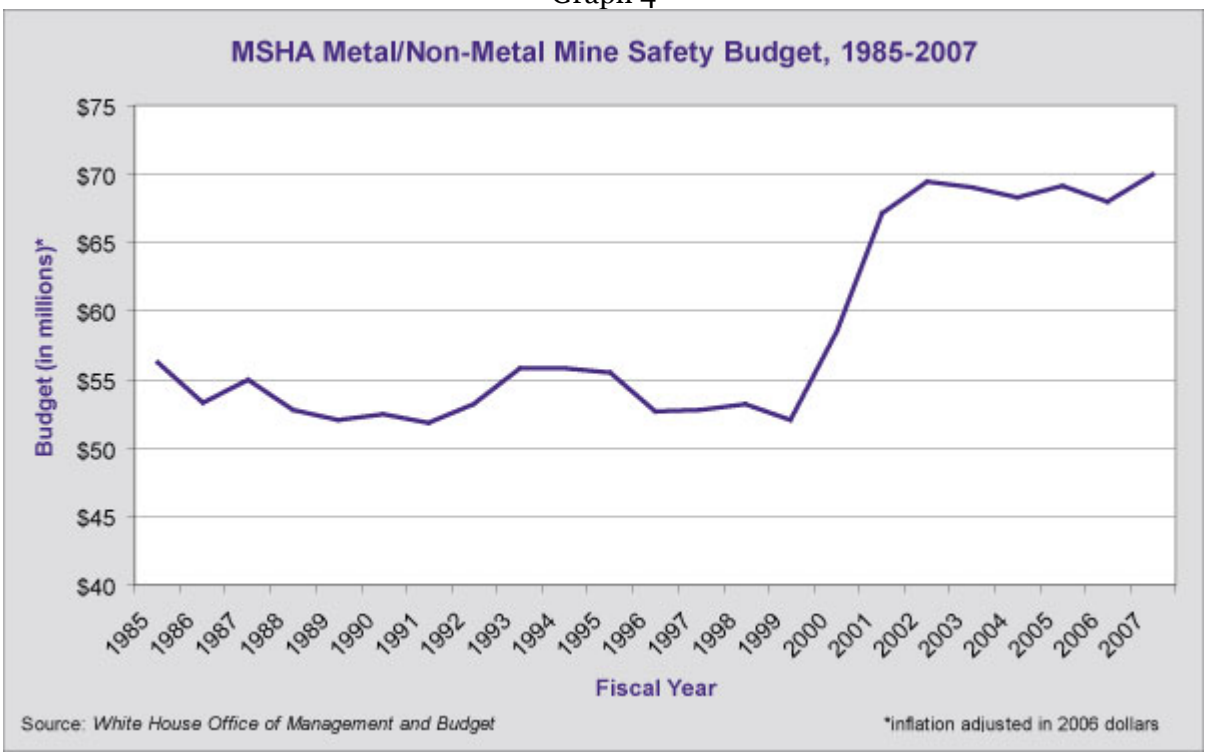
Coal vs. Non-coal: Fatalities and Budgets

Since MSHA's creation, the fatality rate for mine workers, both coal and non-coal, has improved dramatically. However, in recent years, the safety of America's coal mines has come into question as a downward trend in the coal miner fatality rate has reversed and numerous coal mine disasters have drawn national attention. A more in-depth look at MSHA's budget shows the federal government has neglected to provide adequate funds to MSHA for its coal mine safety program.

MSHA divides its mine safety enforcement program into two components: coal mine safety and health and metal and nonmetal mine safety and health. Both programs are statutorily required to inspect all underground mines under their jurisdiction at least four times per year and all surface mines under their jurisdiction at least twice per year. Both programs conduct additional inspections at their discretion.

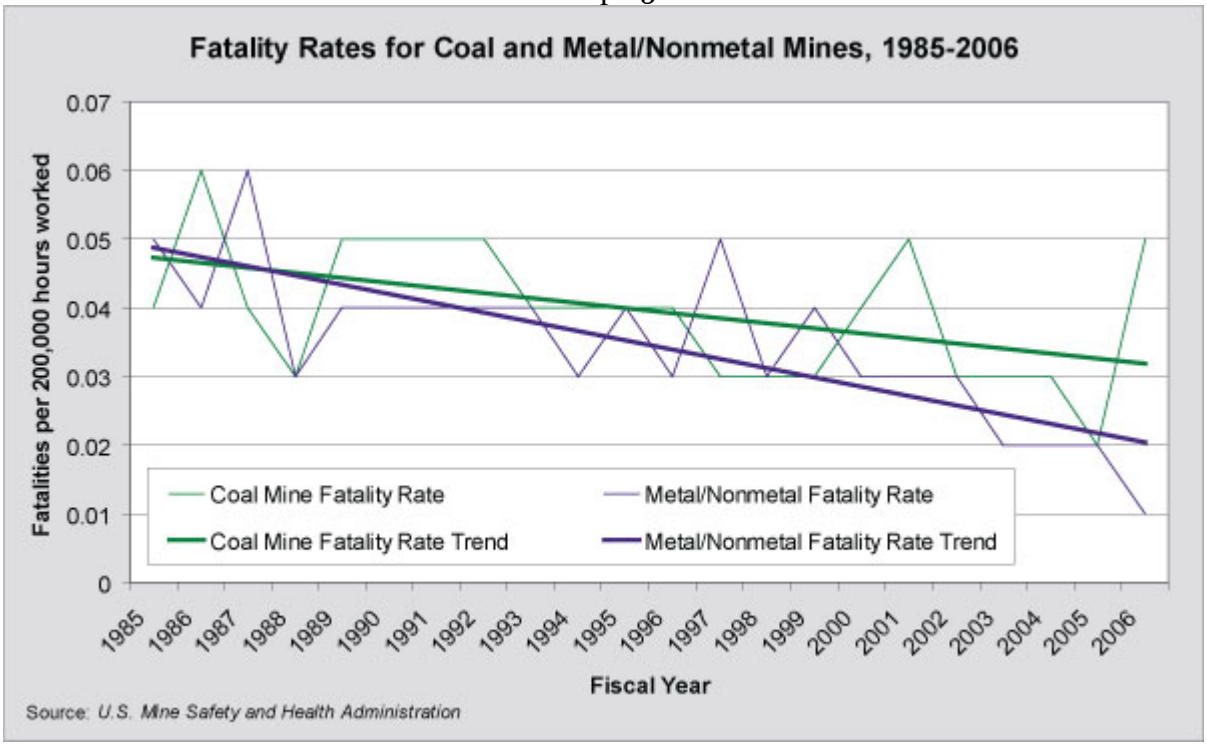
Since FY 1985, the budget for MSHA's metal and nonmetal mine program has increased significantly — nearly 25 percent through FY 2007. (See Graph 4.) As a result, the program has increased the number of metal and nonmetal mine operations inspected each year as the number of those mines has increased. Meanwhile, the fatality rate for workers in metal and nonmetal mine operations has dropped significantly.

Graph 4



The fatality rate for coal miners has declined since MSHA was created, but the progress has been marginal when compared to the rate for metal and nonmetal miners. Since 1985, the fatality rate for coal miners has improved little more than half as much as the rate for metal and nonmetal miners. (See Graph 5.)

Graph 5

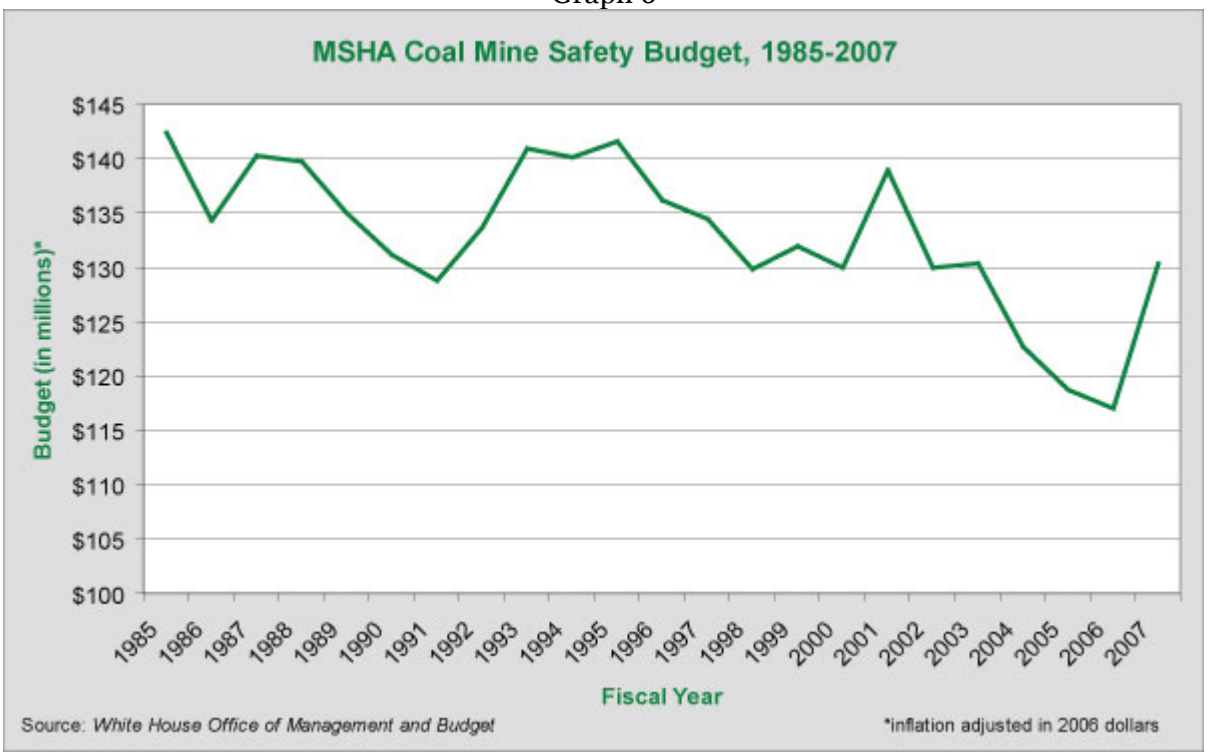


In 2006 and 2007, the number of coal mine fatalities rose abruptly. From 2002-2005, the number of coal mine fatalities was at or below 30. The number of coal miner fatalities reached an all-time low in 2005 (22). But in 2006, the number of coal mine fatalities spiked to 47 — the highest number since 1995. In 2007, 33 coal mine workers died on the job.

Several high-profile coal mine disasters contributed to the rising fatality rate and thrust coal mine safety into the national spotlight. In January 2006, an explosion at the Sago mine in West Virginia killed 12 miners. Later that year, explosions at the Aracoma Alma mine in West Virginia and the Darby mine in Kentucky killed two and five miners, respectively. In August 2007, the Crandall Canyon mine in Utah collapsed , trapping and killing six miners. Three rescue workers were killed days later during a second collapse.

Despite the slowed progress in coal miner safety, past administrations and congressional appropriators have not made coal mine safety a high priority. From FY 1985 to FY 2006, MSHA's coal safety program budget was cut 18 percent when adjusted for inflation. (See Graph 6.) The consistent decline in coal program funding has reversed only recently. With national attention focused on high-profile mine disasters, Congress and President Bush have made efforts to bolster the program's budget. However, it is still lower than it was throughout the 1980s.

Graph 6



Resource Constraints Hinder Performance

A direct correlation between MSHA's budget and coal mine safety may not exist, but recent evidence indicates resource constraints are making it more difficult for MSHA to conduct oversight and enforcement activity and to write the rules that protect miners.

While the number of coal mines under MSHA's jurisdiction has declined, the number of inspections conducted by the coal safety and health program has declined even faster. In 1985, MSHA conducted 88,182 inspections at 5,024 mines, more than 17 inspections per mine. In 2007, MSHA conducted only 15,566 inspections at 2,120 coal mines, approximately 7.34 inspections per mine.

A recent report by the Department of Labor's Inspector General underscores this growing problem. The IG's report looked at inspections required by the Mine Act (and not those MSHA chooses to do at its discretion) and found MSHA's rate of inspection for coal mines to be dropping. According to the report, MSHA's coal program inspectors missed 147 required inspections at 107 underground coal mines — about 15 percent of the mines within the program's purview — in FY 2006. The IG report noted resource constraints as one reason for the drop in inspections. The report states, "Decreasing inspection resources during a period of increasing mining activity made it more difficult to complete the required inspections."

In addition to the deficiencies in MSHA's coal mine inspection program, MSHA's rulemaking division is struggling to keep up with its responsibilities to set standards that ensure the health and safety of coal miners. In the wake of the Sago, Aracoma Alma, and Darby mine disasters,

Congress passed the Mine Improvement and New Emergency Response Act of 2006 (MINER Act) which requires MSHA to set several new coal miner protection standards and sets deadlines for MSHA to finalize those regulations.

MSHA has missed at least two of those deadlines. One rule would "provide for certification, composition, and training requirements for mine rescue teams in underground coal mines." The rule would also set standards for the speed with which rescue teams respond to mine accidents. The rule is expected in February. Another rule to tighten federal standards for sealing abandoned areas in underground coal mines in order to prevent explosions is currently under review at the White House and is expected in the coming months. The MINER Act had required MSHA to finalize both rules by December 15, 2007.

Staffing cuts are at least partially to blame for MSHA's rulemaking woes. In January, the administrator of the Department of Labor's Occupational Safety and Health Administration (OSHA) asked his rulemaking staff to volunteer to be shifted to MSHA. OSHA's administrator said MSHA is "in need of experienced standards writers who can help them meet the challenges before them," according to BNA news service, which obtained an intra-departmental memo.

Outlook

Congress is currently considering the Supplemental Mine Improvement and New Emergency Response Act, which would further amend the MINER Act. The bill does not address resource issues at MSHA. The Bush administration is opposed to the new bill.

Endnotes:

All budget and staffing data for fiscal years 1979-2007 are from the Budget of the U.S. Government appendices, fiscal years 1981-2009. These volumes are the president's request to Congress and contain final budget numbers and program data from two fiscal years prior.

* All inflation-adjusted figures are expressed in 2006 dollars. Inflation adjusting is based on the Bureau of Labor Statistics Consumer Price Index, available at: ftp.bls.gov/pub/special.requests/cpi/cpiai.txt

OMB Reports $508 Million in E-Gov Savings; Congress Remains Doubtful

The Office of Management and Budget (OMB) released a report to Congress Feb. 14 that calculates the benefits of President Bush's 24 E-Government (E-Gov) Initiatives at approximately $508 million in Fiscal Year 2007, based on agencies' estimates. Congressional skepticism of the Initiatives, and subsequent reluctance to fund them, led OMB to develop a questionable funding mechanism using agency contributions from their annual budgets.

OMB released the report, *Report to Congress on the Benefits of the President's E-Government Initiatives*, as required by a section of the Consolidated Appropriations Act of 2008 (Pub. L.

No. 110-161). OMB created the E-Gov Initiatives in 2001 to "provide high-quality, common solutions such as citizen tax filing, Federal rulemaking, and electronic training" across agencies, according to the report's executive summary.

The E-Government Act of 2002 authorized approximately $345 million for FY 2003-2007 for the 24 programs intended to move the federal government away from paper-based information systems and to provide more transparency and information sharing. Congress has appropriated no more than $5 million in any year, according to a Feb. 15 BNA (subscription) article. The FY 2008 appropriation is $2.97 million, although the administration requested $5 million.

Congress has not been enthusiastic about the E-Gov Initiatives regardless of the party in control. It balked at reducing agency discretion in addressing the best means for communicating and serving the diverse groups agencies serve. The major criticism leveled at OMB, however, is the way in which the office funded the programs when Congress refused to appropriate funding. To get around limited funding from Congress, OMB requires agencies and departments to make transfers from their annual budget appropriations.

Although the amount contributed by agencies and their departments varies widely, in FY 2007, agencies contributed more than $161 million to the E-Gov Initiatives, according the BNA article. Congress has increased its E-Gov reporting requirements on OMB as a result of this end-run around the congressional appropriations process. An example of Congress's concern is expressed in the legislative report accompanying the Consolidated Appropriations Act of 2008:

> *'E-Government' initiative*.--The Committee notes that it continues a government-wide general provision that precludes the use of funds for the 'e-Government' initiative prior to consultation with and approval by the Committee on Appropriations. The Committee continues to be concerned about OMB using this initiative to force its management priorities on agencies that would otherwise choose different approaches to serving the public and other government agencies that are better tailored to meet the needs of their customers and meet their statutory requirements.

The E-Rulemaking Initiative

The E-Rulemaking Initiative is intended to allow greater participation in agency rulemaking, improve the quality of regulations, and save administrative costs. The website, Regulations.gov, is the Internet portal where the public can learn about and comment on proposed rules. All agencies' proposed and final rules are to be posted to the site. According to OMB's report to Congress, twenty-nine departments and independent agencies representing almost 90 percent of all federal rulemaking activity are fully using the site.

Several problems plague the implementation of this initiative, the most important of which is the uneven funding through agency contributions, according to an October 2007 report by the Congressional Research Service (CRS). The funding mechanism includes a formula by which agencies' required contributions vary according to several factors, including how many

comments their rules normally receive. CRS reports this mechanism has resulted in budget shortfalls that have delayed implementation. For example, the e-rulemaking initiative only received about 51 percent of its expected funding in FY 2004.

The Regulations.gov site has been criticized for being difficult to use. A simple search on the site will often return hundreds or thousands of results, because the site does not give high-demand documents (such as proposed and final rules) priority over less significant documents (such as supporting evidence or public submissions). Many documents have vague or nondescript titles and can be virtually impossible to find if the user does not know the Regulation Identifier Number. Professor Richard Parker, a professor at the University of Connecticut School of Law and an expert in regulatory issues, said of the site, "Too much information — badly disorganized — is not much better than too little."

New modifications to the site, unveiled late last year, have improved the usability of Regulations.gov by allowing users to easily filter out extraneous results after searching, but numerous problems remain.

The larger standoff between Congress and OMB, however, appears to be the questionable legality of requiring agency contributions to be transferred to the agency managing each initiative. For example, the e-rulemaking initiative is funded through agency "contributions" to the U.S. Environmental Protection Agency. CRS points to the Government Accountability Office's (GAO) *Principles of Federal Appropriations Law* that defines these transfers as requiring "statutory authority." OMB believes the funding mechanism is more appropriately described as a fee for service payment. GAO's Office of General Counsel told CRS it had not rendered an opinion on the legality of these transfers and would not do so unless it receives "a congressional request or a request from an agency."

House Forces Expiration of Protect America Act

During the week of Feb. 11, the White House and Democrats in Congress exchanged blows over whether and how to extend the surveillance powers of the Protect America Act of 2007 (PAA). The Senate's approach, the FISA Amendments Act (S. 2248), included a provision granting immunity for telecommunications companies that helped the government monitor citizens through its warrantless wiretapping program. The House leadership, opposed to immunity for telecommunications companies, refused to consider the bill. Instead, House leaders wanted to pass a three-week extension of PAA powers to give themselves time to resolve differences with the Senate, but House Republicans blocked the move. As a result, the PAA expired at midnight Eastern time on Feb. 16. Despite the expiration, the government still has numerous surveillance tools available as debate continues.

On Aug. 6, 2007, President Bush signed the Protect America Act of 2007, granting the government the authority to wiretap anyone, including U.S. citizens, without any court approval as long as the "target" of the surveillance is located outside the U.S. The bill included

a six-month sunset.

On Feb. 12, the Senate passed the FISA Amendments Act (S. 2248) by a vote of 68 to 29. Various amendments to strike telecommunications industry immunity, limit bulk collection, limit use of illegally obtained information, and prohibit targeting foreigners with the purpose of collecting information on American citizens were voted down. As a result, the Senate voted to grant immunity for telecommunications companies that may have participated in the administration's illegal warrantless wiretapping program and granted the administration wide warrantless surveillance powers. Under the Senate-approved bill, the administration could target foreign surveillance involving communications of American citizens without judicial approval.

Late last year, on Nov. 15, 2007, the House passed the RESTORE Act (H.R. 3773) to address these FISA issues. Importantly, the RESTORE Act did not include a telecommunications immunity provision. Moreover, it scaled back the expansive authority granted under PAA, requiring a finding of probable cause for surveillance targeting American citizens, including Americans located overseas, but permitting blanket orders in which multiple people could be targeted.

Given the important differences between the Senate and House bills, the House leadership rejected consideration of S. 2248 and instead moved to extend the PAA for another three weeks to permit further negotiations between the House and Senate bills. The White House, however, opposed the extension, as did House Republicans and a few Democrats. This was enough to block passage of the extension.

Despite the fact that the government still has multiple surveillance tools at the ready, President Bush responded to the expiration of the PAA by saying, "American citizens understand, clearly understand that there's still a threat on the homeland. There's still an enemy which would like to do us harm." He added, "By blocking this piece of legislation, our country is more in danger of an attack." In his comments about blocking legislation, Bush was referring to House leadership's refusal to consider S. 2248, not the move to block the extension of PAA powers for three weeks.

"If our nation is left vulnerable in the coming months, it will not be because we don't have enough domestic spying powers. It will be because your Administration has not done enough to defeat terrorist organizations—including al Qaeda—that have gained in strength since 9/11," retorted Rep. Silvestre Reyes☼ (D-TX), chairman of the House Permanent Select Committee on Intelligence, in a letter to Bush on Feb. 14.

Reyes went on to state, "It is an insult to the intelligence of the American people to say that we will be vulnerable unless we grant [telecom] immunity for actions that happened years ago."

Despite the expiration of PAA, the warrants received under its authority are active for a full year. Moreover, if new targets arise, the government still has the authority to receive FISA

orders from the Foreign Intelligence Surveillance Court, as it has done for the past thirty years.

As House Speaker Nancy Pelosi (D-CA) explained, the FISC no longer has a backlog, and a new order can be received in a matter of minutes. Pelosi stated that the president "refused to support an extension, which can only mean he knows our intelligence agencies will be able to do all the wiretapping they need to do to protect the nation. That surveillance can be undertaken under broad orders authorized under the PAA or under orders that can be obtained through the FISA court."

Director of National Intelligence Mike McConnell, however, argued that the FISA procedures are overly burdensome, slowing down intelligence gathering practices, and that without retroactive liability protections, telecommunications companies are unwilling to cooperate with the administration.

McConnell urged Congress to "ensure that we do not again have gaps or lapses in gathering intelligence necessary to protect the nation because of an outdated law or a failure to shield private parties from liability for helping to protect the nation."

This debate is not expected to go away anytime soon. The PAA will be at the center of the House's attention when it returns from a one-week Presidents Day recess on Feb. 25.

EPA Bucks White House and Plans for Registry on Greenhouse Gases

The U.S. Environmental Protection Agency (EPA) has started work on a draft rule creating mandatory greenhouse gas reporting requirements, even though President Bush's proposed FY 2009 budget does not provide funding for the rulemaking.

Last year's omnibus spending bill for FY 2008 (H.R. 2764), passed at the tail end of 2007, included a provision to create a greenhouse gas registry. The provision required a draft rule within nine months and a final regulation within 18 months of the bill's enactment. Despite signing the omnibus spending bill that contained the greenhouse gas registry provision for FY 2008, President Bush's recently proposed budget for FY 2009, released on Feb. 4, failed to continue funding for the rulemaking or implementation of the registry. While EPA can move forward with the rulemaking using the money allocated in the FY 2008 omnibus bill, without additional funds in FY 2009, the program would come to a halt. Perhaps that is the point of the president's proposal to zero out spending for the registry.

Sens. Dianne Feinstein (D-CA) and Barbara Boxer (D-CA) sponsored the measure, seeing reliable and accurate baseline greenhouse gas emissions data as the first step to any policies aimed at their reduction, particularly for cap-and-trade legislation. The provision specifically directed $3.5 million to EPA for establishing an emissions registry but provided little implementation direction beyond having the registry cover all sectors. Therefore, EPA has

wide discretion in establishing the registry and determining reporting threshold levels.

Sarah Dunham, director of EPA's Office of Transportation and Air Quality's Transportation and Climate Division, reported that EPA would be moving forward on a greenhouse gas registry. Dunham also explained that avoiding overlapping reporting requirements is a priority, using carbon dioxide emissions by cars and light trucks under corporate average fuel economy (CAFE) standards as an example.

Creating a national greenhouse gas registry has been the focus of other legislation. Rep. Eliot Engel☼ (D-NY) introduced the Greenhouse Gas Accountability Act of 2007 (H.R. 2651), requiring all publicly traded companies to report their emissions to both EPA and in financial reports to the Securities and Exchange Commission. Sens. Amy Klobuchar (D-MN) and Olympia Snowe (R-ME) sponsored the National Greenhouse Gas Registry Act of 2007 (S. 1387), which adds greenhouse gases to the list of chemicals tracked by the Toxics Release Inventory. Neither the House nor the Senate were able to move these bills during the 2007 session and instead opted for the omnibus provision.

As Congress reacts to the president's budget request, it is unclear whether it will insert dedicated funding for the greenhouse gas registry program during the FY 09 appropriations process to build on the $3.5 million allocated in the FY 08 omnibus bill. If Bush's proposed elimination of funding for the emissions registry remains, a greenhouse gas registry may require Congress to take action on one of the greenhouse gas bills introduced last year. Until told otherwise, however, EPA appears to be trying to stay on target.

CDC Watering Down Great Lakes Report on Toxics

After significantly delaying the release of a report that identifies alarming toxic health risks for the Great Lakes region, the Centers for Disease Control and Prevention (CDC) is now reportedly planning to release a substantially modified document.

Originally, *Public Health Implications of Hazardous Substances in Twenty-Six U.S. Great Lakes Areas of Concern* was slated for release in July 2007, but Agency for Toxic Substances and Disease Registry (ATSDR) Director Dr. Howard Frumkin objected to the report and stopped its release. Additionally, shortly after lead author Christopher De Rosa demanded the report be published on time, Frumkin had him removed from his position, raising questions about retaliatory employment actions. The report is the conclusion of a multi-year research project by CDC and the International Joint Commission (IJC). The IJC, an independent organization that negotiates boundary water issues between the U.S. and Canada, has also called for the report's immediate publication.

While the CDC has not yet officially released the report, the Center for Public Integrity (CPI) obtained a copy of the 400-page document. The original report linked toxic chemical exposure to increased infant mortality and cancer rates, raising serious concerns for the nine million people living in the eight Great Lakes states. Environmental data isolating "areas of concern,"

or toxic hot spots, was crossed with regional health data to identify any significant correlations.

Frumkin's main complaint is that the report implies that pollutants are the cause of elevated health risks, but the data do not support such conclusions. However, Dr. Peter Orris, who independently reviewed the report, contends that the report did not indicate causality, but was clear that the role of the pollutants was an area for future research. In a December 2007 letter to ATSDR, Orris reportedly described the report as "the most extensively critiqued report, internally and externally, that I have heard of." Under review since 2004, the report has been scrutinized by dozens of experts across government agencies, state governments, and academic institutions.

De Rosa, who was demoted from his position as ATSDR chief of toxicology, a position he held for 15 years, to an assistant position, claims that Frumkin illegally retaliated against him and is seeking to be reinstated as chief.

This is not the first time De Rosa has spoken up for people's right to health and safety information. With thousands of families living in emergency trailers in the Gulf Coast, De Rosa was adamant that residents must be appropriately warned about the long-term health risks associated with formaldehyde gases present in the substandard trailers. The CDC testing results of occupied trailers confirmed his concerns, with average levels of formaldehyde at least three times higher than the recommended level.

De Rosa sees the Great Lakes report's publication delay as another incidence of the political manipulation of science and withholding information from the public — to its detriment. As he wrote in an e-mail to Frumkin, the delay gave the "appearance of censorship of science and distribution of factual information regarding the health status of vulnerable communities."

The House Committee on Science and Technology has called on CDC Director Julie Gerberding to protect both De Rosa and the people of the Great Lakes region. Reps. Bart Gordon (D-TN), Brad Miller (D-NC), and Nick Lampson (D-TX) demanded CDC provide related records for a committee oversight investigation and assurances that no retaliatory action will be taken against De Rosa.

Congressional oversight will be imperative in determining whether or not the final report was inappropriately edited. As Canadian biologist and peer reviewer Michael Gilbertson postulated to CPI, the potential legal ramifications and the close ties of the chemical industry with both the U.S. and Canadian governments provide strong incentives to tamp down any evidence of harm caused by toxins. However, it is the federal government's role to ensure that communities are safe and are informed when there is cause for concern.

CDC said the report will be released in four to five weeks.

Senate Bill Would Regulate Robocalls during Election Campaigns

On Feb. 12, Senate Rules Committee Chair Dianne Feinstein (D-CA) and Sen. Arlen Specter☼ (R-PA) introduced S. 2624, the Robocall Privacy Act of 2008. The bill would place restrictions on how and when prerecorded messages, known as robocalls, can be made 30 days before a primary and 60 days before a general election. The bill would only affect prerecorded calls, not calls made by volunteers at phone banks.

Robocalls are an inexpensive way to send prerecorded messages to a vast number of people. The messages can be an effective advocacy tool for groups to promote issues, solicit donations, or campaign for or against any political candidate. Commercial robocalls are limited by the Federal Trade Commission's "Do Not Call" list, and many states have their own no-call lists. Organizations engaged in political, charitable, or survey work are exempt from these lists, but lawmakers are responding to complaints about abuses of this practice, which include calls late at night and robo-messages that may intentionally mislead voters.

A press release from Feinstein and Specter said the bill would not ban robocalls but place "sensible restrictions" on them, including:

- Limiting the hours the calls can be made (no calls between 9 p.m. and 8 a.m.)
- Limiting the number of calls that can be made to each household (no more than two calls per organization to the same telephone number per day)
- Requiring callers to identify themselves at the beginning of the call
- Prohibiting the calling organization from blocking their caller identification number

The Federal Election Commission (FEC) would be able to impose civil fines against violators, and individuals could sue to stop abusive calls.

According to a December 2006 survey by the Pew Internet and American Life Project, 64 percent of voters received recorded telephone messages right before the 2006 mid-term election, and they were the second-most popular way for campaigns and political activists to reach voters.

In the House, four bills have been introduced addressing this issue, and the House Administration Subcommittee on Elections held a hearing on Dec. 6, 2007, to examine the use of robocalls in federal campaigns. Subcommittee Chair Zoe Lofgren (D-CA) introduced H.R. 1383, the Quelling of Unwanted Intrusive and Excessive Telephone Calls Act, which would impose similar limits as the Feinstein-Specter bill. During her opening statement, Lofgren said, "Used responsibly, robocalls can be an efficient, low-cost means for candidates and advocacy groups to reach out to their supporters or the public at large. Used irresponsibly or maliciously, however, robocalls can harass, confuse, or deceive the public about elections or other matters of pressing importance . . . many voters responded to the deluge of robocalls by disengaging from the election entirely. With the airwaves already saturated with political advertising, robocalls drove voters away from meaningful participation in the democratic

process." Lofgren may add a provision to her bill that would require groups running robocalls to adhere to the same do-not-call list as commercial telemarketers.

Two House bills would direct the Federal Trade Commission to prohibit political prerecorded calls to telephone numbers listed on the federal do-not-call registry. One is sponsored by Rep. Jason Altmire☼ (D-PA) (H.R. 372) and another by Rep. Virginia Foxx☼ (R-NC) (H.R. 248). Foxx has pledged not to conduct robocalls to voters in her district if their phone number is registered with the National Political Do Not Contact (NPDNC) registry at StopPoliticalCalls.org, established by the nonprofit group Citizens for Civil Discourse. Foxx became the first member of Congress to sign the Do Not Robocall Pledge.

On June 25, 2007, the House passed a more expansive bill, sponsored by Rep. Rahm Emanuel☼ (D-IL), H.R. 1281, the Deceptive Practices and Voter Intimidation Prevention Act of 2007. It would punish anyone who attempts to deceive or intimidate voters, including telephone calls that attempt to mislead voters. Sen. Barack Obama☼ (D-IL) introduced a similar bill in the Senate, S. 453.

Many states are also taking action to regulate political use of robocalls. The Associated Press reports that "At least 12 states — Arkansas, California, New Hampshire, Indiana, Kansas, Minnesota, Montana, North Carolina, North Dakota, Oregon, South Carolina and Wyoming — restrict or ban political robo-calls. Some states require a human being to ask permission to connect a recorded message before giving a political pitch. Others require the caller be identified and provide contact information about the group making the calls. Some states just prohibit the calls." More than a half dozen additional states are considering their own restrictions.

Robocalls are not always intrusive or annoying. If used correctly, they can be effective advocacy tools, and an easy way for nonprofits to get their message to the public. The First Amendment limits restrictions on such messages, which may explain why proposals to require the call recipient to press a specific button in order to play the recorded message do not appear in any of the congressional proposals.

SpeechNow Challenges FEC Contribution Limits for Independent Political Groups

SpeechNow.org, an independent organization whose stated mission is to advocate for the election of federal candidates who favor free political speech, has filed a lawsuit challenging federal campaign finance laws that prohibit contributions of more than $5,000 per year to political committees as an unconstitutional violation of free speech and association rights.

In November 2007, a newly formed organization, SpeechNow.org, submitted an Advisory Opinion request to the Federal Election Commission (FEC) seeking approval of its plan to collect unlimited contributions from individuals to conduct "express advocacy" for or against federal candidates. The group is organized under Section 527 of the Internal Revenue Code

and wants to support or oppose candidates based on their positions on free political speech. According to its website, "SpeechNow.org is a nonpartisan independent speech group that supports free speech and associational rights. It plans to speak out in support of candidates who favor free political speech and oppose those who back so-called campaign finance 'reform' legislation that restricts the rights to speech and association."

On Jan. 24, the FEC counsel's office released a draft Advisory Opinion that said SpeechNow.org cannot accept unlimited contributions from individual donors if it wants to advocate for or against candidates for federal office. The draft said the group would be required to register as a political committee under FEC rules, which limit contributions from individuals to $5,000 a year and prohibit corporate contributions. The FEC contends that the group would be considered a political committee, since its main objective will be federal campaign activity. Under the Bipartisan Campaign Reform Act (BCRA) and FEC regulations, a political committee is defined as any "group of persons which receives contributions aggregating in excess of $1,000 during a calendar year or which makes expenditures aggregating in excess of $1,000 during a calendar year."

SpeechNow.org argues that because individuals are allowed to spend unlimited amounts on independent efforts to influence federal elections, it is unconstitutional to impose restrictions when two or more individuals form a group to spend money on elections. If its speech is independent of any candidate or party, funded only by individuals, SpeechNow argues that the anti-corruption justification for regulation does not hold up. In addition, they argue that any restrictions on the ability of individuals to associate violate the First Amendment, and the group would be silenced if the draft Advisory Opinion is adopted.

The FEC's only two sitting commissioners disagreed over the draft opinion. Democratic Commissioner Ellen Weintraub voted in favor of it, but Republican Commissioner David Mason voted against it. Mason said in a written dissenting opinion, "The distinction between candidate coordinated speech and independent speech is of constitutional significance. . . . Limiting the contribution limits given to an organization like SpeechNow would impose an intolerable, and constitutionally unjustifiable, burden on the independent spending of this organization." However, the FEC currently does not have a quorum of six commissioners, because a dispute over confirmation of nominees in the Senate allowed four positions to lapse at the end of 2007. Without a quorum, the commissioners can neither officially adopt the opinion nor approve SpeechNow.org's request. However, now that a lawsuit has been filed, FEC lawyers will defend the draft opinion in court.

SpeechNow.org, its president David Keating, and four potential contributors are represented by attorneys from the Center for Competitive Politics and the Institute for Justice. The complaint was filed on Feb. 14 in the U.S. District Court for the District of Columbia, asking the court for an injunction blocking the FEC from enforcing limits on contributions to the group (*SpeechNow.org v. FEC*). It states, "Recognizing that elections are an ideal time to bring attention to important issues and to affect policy, SpeechNow.org wishes to finance television advertisements that call for the election of candidates who support rights to free speech and

association and the defeat of candidates who do not support these rights."

It is unclear how quickly the case will move forward, but it could be considered by a federal appeals court by spring or summer. The plaintiffs have requested a preliminary injunction and asked that an expedited hearing on that request be scheduled within 20 days. The lawsuit could have broad implications for spending by independent organizations during federal elections. A *Los Angeles Times* editorial said that the case "will reopen the question of how much freedom of speech must be curtailed in the name of legitimate campaign finance reform."

Ohio Restrictions on Voter Registration Drives Overturned

On Feb. 11, a federal judge in Ohio issued a permanent injunction blocking enforcement of a state law restricting voter registration activities. The Ohio law in question in *Project Vote v. Blackwell* limited the ability of third parties such as nonprofits to register citizens to vote in the state. Voting rights advocates hailed the decision as a victory for minority, disabled, and low-income voters who often rely on nonprofits to help with registration.

The voter registration rules at issue were passed by the Ohio legislature in June 2006 as part of House Bill 3. In July 2006, six nonprofit organizations filed suit against Ohio Secretary of State J. Kenneth Blackwell, challenging portions of the new law. In her decision last week, District Court Judge Kathleen M. O'Malley wrote that the challenged provisions not only violated the First and Fourteenth Amendments, but also the 1993 National Voter Registration Act.

The most burdensome provision of the now-vacated regulations required voter registration workers to personally deliver new registrations to the board of elections or Secretary of State. Previously, registration workers were allowed to hand over completed registration forms to a supervisor, who would then approve and collectively submit all new registrations. Failure to comply with the new requirement was considered a felony.

Passage of the new rules in 2006 immediately impacted Ohio nonprofits' voter engagement activities. In their original July 2006 complaint, the plaintiffs argued, "These onerous and vague new laws and regulations chill core political speech and association and have forced all of the plaintiffs to seriously curtail or halt their voter registration and related core political speech and association activities."

In its motion to dismiss, the state argued that Ohio offered citizens numerous alternatives to third-party registration and that the regulations were a means of protecting citizens from fraud. In their response, the plaintiffs replied that the new regulations actually made registration fraud more, not less, likely because the regulations forbid a supervisor from reviewing registrations before submission. The plaintiffs wrote, "Requiring individual workers and volunteers to personally deliver forms to the state severely constrains Plaintiffs' voter registration drives by limiting their ability to implement quality control measures and by

imposing inefficient, unnecessary, and taxing burdens on their employees and volunteers."

Wendy Weiser, the Deputy Director of the Democracy Program at the Brennan Center for Justice, applauded O'Malley's decision last week, saying, "We are very pleased the Court recognized how laws restricting voter registration drives unlawfully stand in the way of core democratic activity. The original law hindered efforts by non-partisan groups to help low-income, minority and disabled citizens to register to vote."

In recent years, several states have passed laws restricting third-party voter registration. New Mexico imposed a strict deadline on registration, requiring new applications be turned in no later than 48 hours after completion. In Florida, nonprofits are challenging a new law which imposes fines on charities for each voter registration not submitted within ten days of its completion. Similar restrictions for third-party registration were declared unconstitutional by a federal court in Florida last year in *League of Women Voters v. Cobb*. Other states that have passed restrictions on voter registration include California, Colorado, Georgia, Maryland, Missouri, and Washington.

The nonprofit plaintiffs in the case included Project Vote, American Association of People with Disabilities, ACORN, People for the American Way Foundation, Common Cause, and Community of Faith Assemblies Church.

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