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## Needs UP, Services DOWN

Today, more Americans are looking to the government for help, yet the budgets of government-funded social service programs are dwindling.

In spite of better news on the economic front, the government budget crisis is far from over. The legacy of the Bush tax cuts, which decreased federal revenue and negatively impacted state finances, lead to a greater need for services that cannot be met by strapped cities, states and nonprofit service providers. These cuts are especially hard for low-income working families, the unemployed, and the poor. Some examples follow:

According to the annual survey by the U.S. Conference of Mayors:

- Requests for emergency food assistance during the past year was **UP** by an average of 17 percent in the twenty-five cities surveyed. Meanwhile, services were **DOWN** leading to an estimated 14 percent of those requests unmet.
- The overall requests for emergency shelter during the past year was **UP** by an average of 13 percent and requests by families was **UP** by 15 percent. However, services were **DOWN** causing an estimated 30 percent of the overall requests and 33 percent of the requests by families going unmet.
- Requests for assisted housing during the past year was **UP** by an average of 83 percent. But with services

**DOWN**, only 33 percent of all low-income households were eligible for assisted housing, and the average wait to receive services increased to two years.

Other indicators:

- According to reports by the Center on Budget and Policy Priorities, **UP** to 1.6 million low-income individuals, including a half a million children, are losing health care coverage due to budget cuts. Yet again, services are **DOWN**: Six states -- Alabama, Colorado, Florida, Maryland, Montana, and Utah -- have simply stopped enrolling children who are eligible for the State Children's Health Insurance Program (SCHIP). Cuts in health care coverage put an increased burden on private and public hospitals and clinics. The number of uninsured Americans, **UP** by two million from 2001, was 43.6 million in 2002. This number is expected to increase because the expiration of the \$20 billion in federal assistance for state fiscal relief on July 1, 2004, which is unlikely to be renewed.
- According to The College Board, the annual costs of college tuition and fees for a four year public college is **UP** 14.1 percent to \$4,694. The annual cost for a two-year public college is **UP** 13.8 percent to \$1,905. (The annual cost of a private four-year college only increased 6% to \$19,710). Most states have cut funding for higher education.
- Last year, eleven states cut K-12 school funding. Included in the cuts were the elimination of reading specialists, all-day kindergarten and pre-school programs, summer school for 9th, 10th, and 11th grades, and transportation to and from school. Nine states from the previous year had to make same type of cuts.

While headlines might boast good economic news, unemployment remains high, the jobs that are being created are low-wage jobs,

**What are the causes of increased needs?  
The Mayors' report listed the causes of  
hunger in order by frequency:**

- **unemployment**
- **low-paying jobs**
- **high housing costs**
- **medical or health care costs**
- **homelessness**
- **poverty or lack of income**
- **substance abuse and mental health problems**
- **reduced public benefits**
- **child care costs**
- **limited life skills**
- **downturn and weakening of the economy**
- **transportation expenses or the lack of transportation**
- **lack of information about Food Stamps**
- **lack of nutritional education**
- **increase in the senior population.**

**The reported causes of homelessness were:**

- **lack of affordable housing**
- **mental illness and lack of needed services**
- **low-paying jobs**
- **substance abuse and lack of**

and many families are struggling for basic food and shelter needs. Adding to the plight of many Americans is the strong indication that a new round of budget cuts will take place at the state level during the coming fiscal year. At the same time, the size of federal budget deficits and a growing national debt will have a chilling effect on increases in spending for programs and services that weave the safety net, provide the means for people to escape poverty, and ensure the government services that we all depend upon. Both middle-class and low-income Americans are feeling the pinch. Many of the things that people worry about -- wages, jobs, health care, credit card debt, retirement security, etc. -- are becoming more of a problem according to a report by the Campaign for America's Future.

#### **needed services**

- **unemployment**
- **domestic violence**
- **poverty**
- **prison release.**

The list of social needs above makes a strong case for more, not less, investment in the services needed to lift people out of poverty. The list includes long-term challenges, such as the aging population and the flux of prisoners being released due the expiration of their mandatory minimum sentences. Unfortunately, these important issues remain on the back burner of the nation's political agenda.

The President is expected to introduce more tax cuts in his forthcoming State of the Union address and FY 2005 budget proposal. Most presidential candidates are calling for their own tax cuts as well. Tax cuts, which are ultimately cuts in revenue, will result in a government that is less and less able to provide the services that most Americans want and need. At the same time, the President is proposing a massive increase in spending for space exploration. While this maybe a worthy cause, it is essential to get priorities sorted. This means the federal government needs the revenue base to address these types of domestic needs.

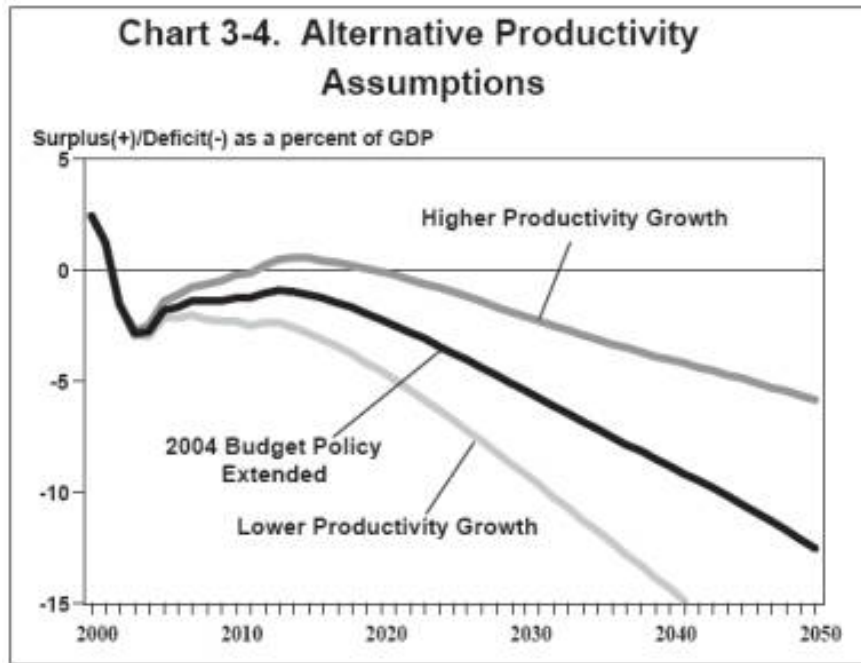
## **Economy and Jobs Watch: Long-term Budget Choices**

Several new reports have pointed to the weakness of the long-run U.S. fiscal situation. A wide range of observers - - from independent analysts to conservative think-tanks, from international aid organizations to congressional analysts, and even from the administration itself -- are all pointing to the fact that current tax and budget policy is not sustainable. (See links below).

All long-range projections point to increasing pressures on the budget. The proper response ought to be to secure the revenue base of the federal government now in order to avoid both costly adjustments down the road and passing large debts to future generations. Yet there are indications that the Bush administration will continue to avoid this problem and even try to drive revenues below their already record-low levels -- at 16.5 percent of gross domestic product, federal revenue for 2003 was at its lowest level since 1959.

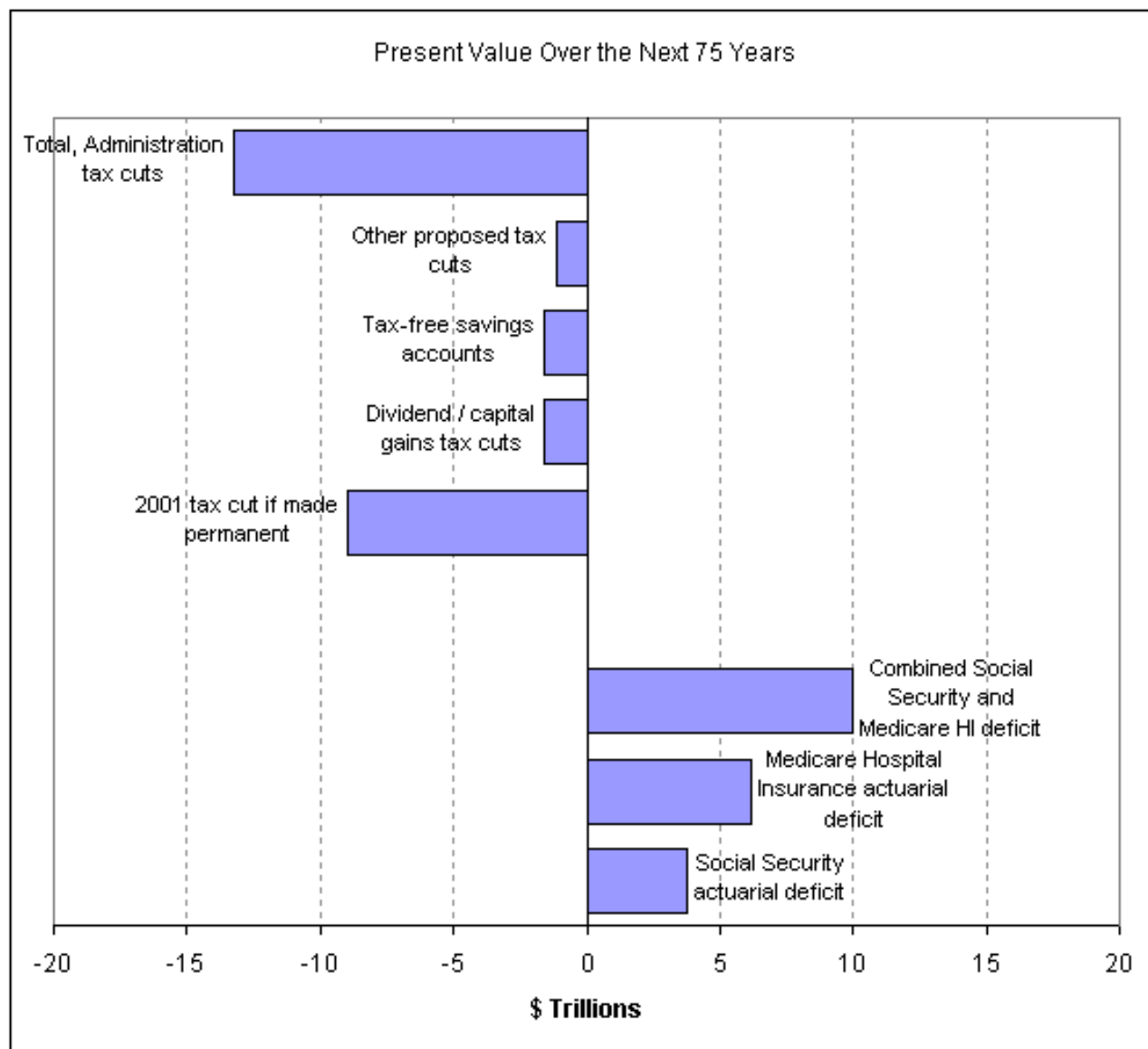
This dismal long-run situation was avoidable. Changes to tax laws in 2001 and 2003 represented huge windfalls to wealthy Americans, and only minor savings to the majority of taxpayers; and transformed record surpluses into record deficits. Over the next 10 years, forecasters are putting the 10-year deficit at between \$5 and \$5.5 trillion. (See Brookings Report, Table 1.)

The situation is even worse when you look forward to the next 50 to 75 years. The Bush administration's own projections show deficits as a percent of GDP more than tripling by 2050.



Source: Office of Management and Budget

As we go forward, our values must guide the choice of tax and budget policy. According to an analysis from the Brookings Institution, the 75-year cost of the Administration's tax changes is more than the combined 75-year Social Security and Medicare shortfall. In other words, we had a choice between tax cuts primarily for the wealthy, or to make Social Security and Medicare financially secure for the next 75 years. (See Chart) Was this the proper choice? In light of the fact that polls continue to show that a majority of Americans strongly support Social Security and Medicare, this choice seems particularly misguided and irresponsible.



Source: Brookings

The Brookings Report concludes that "[f]ailing to address the nation's long-term budget gap seems especially misguided since sustained and substantial budget deficits may induce fiscal and financial disarray, with potential costs far larger than those presented in conventional economic analyses, and since such deficits reduce flexibility to respond to unforeseen events in the future. Yet many policy-makers appear to be insensitive to the longer-run risks to U.S. economic performance from sustained, large budget deficits. Indeed, the "hole" of long-term deficits appears to be deepening."

What others are saying:

**Brookings Institution**

Sustained Budget Deficits: Longer-Run U.S. Economic Performance and the Risk of Financial and Fiscal Disarray

Robert E. Rubin, Peter Orszag, and Allen Sinai

"The U.S. federal budget is on an unsustainable path. In the absence of significant policy changes, federal government deficits are expected to total around \$5 trillion over the next decade. Such deficits will cause U.S. government debt, relative to GDP, to rise significantly. Thereafter, as the baby boomers increasingly reach retirement age and claim Social Security and Medicare benefits, government deficits and debt are likely to grow even more sharply.

The scale of the nation's projected budgetary imbalances is now so large that the risk of severe adverse consequences must be taken very seriously, although it is impossible to predict when such consequences may occur."

**International Monetary Fund (IMF)**

U.S. Fiscal Policies and Priorities for Long-Run Sustainability

Martin Muhleisen and Christopher Towe, Editors

"Although fiscal policies have undoubtedly provided valuable support to the recovery so far, the return to large deficits raises two interrelated concerns. First, with budget projections showing large federal fiscal deficits over the next decade, the recent emphasis on cutting taxes, boosting defense and security outlays, and spurring an economic recovery may come at the eventual cost of upward pressure on interest rates, a crowding out of private investment, and an erosion of longer-term U.S. productivity growth.

Second, the evaporation of fiscal surpluses has left the budget even less well prepared to cope with the retirement



of the baby boom generation, which will begin later this decade and place massive pressure on the Social Security and Medicare systems. Without the cushion provided by earlier surpluses, there is less time to address these programs' underlying insolvency before government deficits and debt begin to increase unsustainably, making more urgent the need for meaningful reform."

**Congressional Budget Office**  
The Long-Term Budget Outlook

"Unless taxation reaches levels that are unprecedented in the United States, current spending policies will probably be financially unsustainable over the next 50 years. An ever-growing burden of federal debt held by the public would have a corrosive and potentially concretionary effect on the economy.

..."If taxation is restricted to the levels that prevailed in the past, the growth of entitlement spending will have to be substantially reduced. Restricting the growth of outlays for defense, education, transportation, and other discretionary programs would not be enough to ensure fiscal sustainability.

"Likewise, economic growth alone is unlikely to bring the nation's long-term fiscal position into balance. Moreover, issuing ever-larger amounts of debt or dramatically raising tax rates could significantly reduce growth."

**White House's OMB**  
Budget of the United States Government: Analytical Perspectives

"These long-run budget projections show clearly that the budget is on an unsustainable path, although the rise in the deficit unfolds gradually. As the baby boomers reach retirement age in large numbers, the deficit is projected to rise steadily as a share of GDP. Under most scenarios, well before the end of the projection period for this chapter rising deficits would drive debt to levels several times the size of GDP."

... the Analytical Perspectives continue...

"With pessimistic assumptions, the fiscal picture deteriorates even sooner than in the base projection. More optimistic assumptions imply a longer period before the inexorable pressures of rising entitlement spending overwhelm the budget. But despite unavoidable uncertainty, these projections show that under a wide range of reasonable forecasting assumptions resources will be insufficient to cover the long-run shortfalls in Social Security and Medicare."

**American Enterprise Institute**  
Fiscal and Generational Imbalances

"Combining outstanding debt with future revenue shortfalls, they calculate the United States' "Fiscal Imbalance"--the amount of money that the federal government must have in hand today to sustain current tax and spending policies indefinitely--at a heart-stopping \$44.2 trillion, considerably outstripping debt currently held by the public. Although policymakers prefer to ignore it, they do so at our peril: Because the government does not have an extra \$44.2 trillion, it must raise an equivalent sum by dramatically increasing taxes or drastically reducing spending."

## **Economy and Jobs Watch: Unemployment Down, No New Jobs**

With a strong quarter of economic growth in the July-September period, many observers were expecting to see employment strengthen in the last part of 2003. However, as recent economic data shows, the labor market remains very weak, as employment was "flat" last month.

In December, the unemployment rate dipped from 5.9 percent to 5.7 percent; however, this was purely a result of people leaving the labor market, and not due to increased employment (see table below).

Category	Monthly data			Nov. - Dec. change
	2003			
	Oct.	Nov.	Dec.	
HOUSEHOLD DATA	Labor force status			
Civilian labor force.....	146,892	147,187	146,878	-309
Employment.....	138,095	138,533	138,479	-54
Unemployment.....	8,797	8,653	8,398	-255
Not in labor force.....	75,147	75,093	75,631	538

Source: Bureau of Labor Statistics

According to the more accurate payroll survey, the total (non-farm) employment increased by a paltry 1,000 jobs. The data continues to reflect a failure of current policy to address the needs of the slumping labor market.

In addition, just before Christmas, the Bush administration allowed emergency federal unemployment benefits to expire, even though labor market conditions have not improved. Apparently, extending benefits would erode the often-repeated message that the economy is booming. As the data show, for millions of Americans, there is no recovery.

## **FBI Marks Almanacs as Terrorist Tools**

Almanacs may assist potential terrorists in selecting targets and planning attacks, according to the Federal Bureau of Investigation (FBI). The agency sent a message to roughly 18,000 law enforcement agencies on Dec. 24, 2003 urging police to keep alert of anyone carrying almanacs, especially if they contain notations. The alert did acknowledge almanacs could be used for legitimate reasons.

Almanacs like the Farmers' and World Almanacs contain information like weather forecasts, fishing calendars and information about landmarks. Many almanacs have long histories and are widely read and circulated. Almanac staff expressed objections to the FBI's categorization of the publications. Peter Geiger, editor of the Farmers' Almanac stated, "Our almanac is about as far away as you can get from terrorism and about as close as you can get to what you would think of as American." Echoing this thought, the senior editor of the World Almanac acknowledged that terrorists "certainly didn't need the almanac to locate the twin towers."

Civil liberty advocates also expressed concern, as this type of warning could prompt police harassment of individuals based on their reading habits.

Click [here](#) to read a related Dec. 29, 2003 Washington Post article.

## Government Web Pages Altered to Hide Information

The recent takedown of a U.S. Agency for International Development (USAID) web page and a new Department of Defense (DoD) memo provide two more examples of the Bush administration's penchant for altering information to fit its interests.

According to a Dec. 18, 2003 Washington Post article, USAID recently removed a speech by its administrator, Andrew Natsios, claiming that taxpayers would not have to spend more than \$1.7 billion on Iraq reconstruction efforts. The figures apparently angered White House staff, especially when the cost rose much higher. The speech, previously posted on the USAID website, disappeared last fall. When questioned about the web takedown, a USAID spokesperson claimed the agency was going to be charged to access the transcript by ABC; the network aired the Natsios interview during "Nightline." ABC news stated there is never a charge or a problem with the government linking to interview transcripts.

Although the USAID web deletion is just one incident, DoD is instituting policies that will have a greater effect on its site. The (DoD) Inspector General issued a memorandum Dec. 5, 2003 that severely restricts how public information is posted by the IG to the DoD website. In addition to the usual classified information and information marked OFFICIAL USE ONLY being withheld, three new restrictions appear – information of questionable value to the general public, information that would pose risks to the armed forces, and information not specifically approved for public release.

This type of policy statement is at odds with the government classification system and Freedom of Information Act (FOIA) provisions that grant exemptions to restrict truly sensitive information from public dissemination. It is certainly not within the DoD's scope to determine if the general public will find value in certain information – the public has a right to the information regardless.

In a Jan. 5 letter to Defense Secretary Donald Rumsfeld, the National Press Club voices some of these concerns while urging a reconsideration of the policy. The letter points out that a policy such as this "threatens public access to information vital to the proper functioning of our democracy."

Numerous other government web sites have also changed or removed information. President Bush's May 1, 2003 speech on the White House web site entitled "President Bush Announces Combat Operations in Iraq Have Ended" was later changed so it read "**Major** Combat Operations." The administration's political views altered other websites including a CDC fact sheet on condoms and the removal of the climate change section of last year's EPA

## **Comments on Peer Review Bulletin Reveal Strong Opposition**

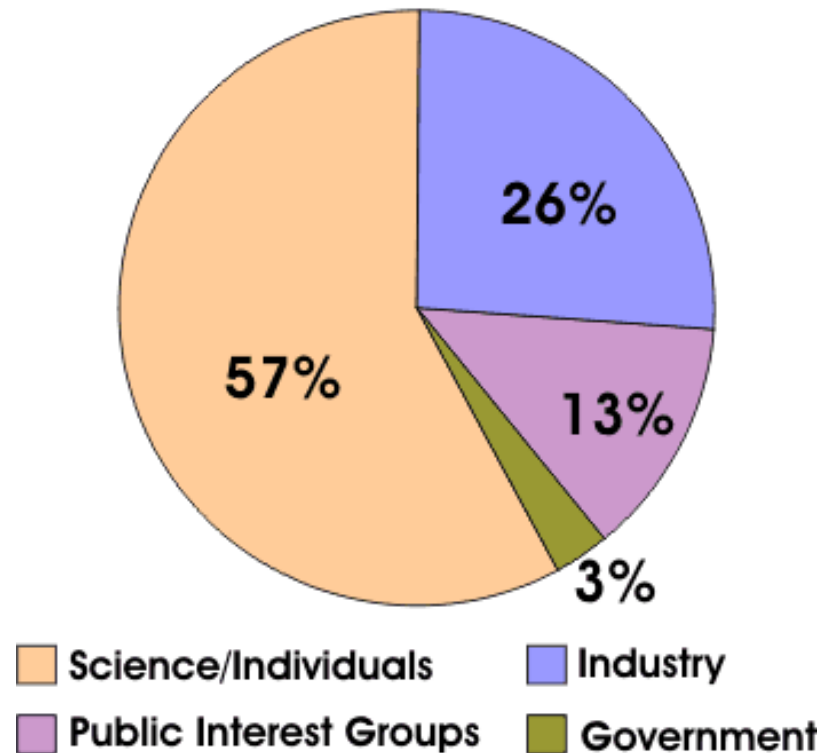
A majority of the near 200 comments received by the Office of Management and Budget (OMB) on its Draft Peer Review Bulletin opposed the proposal, calling for its complete withdrawal.

OMB's Aug. 29, 2003 draft bulletin on peer review proposed a more uniform standard of peer review for all federal agencies. The bulletin would establish a variety of strict requirements for agencies conducting peer review including that all "significant regulatory information" be peer reviewed, that a public comment period be added to all peer reviews and that agencies obtain input and approval of their peer review policies from OMB's Office of Information and Regulatory Affairs (OIRA) and the White House Office of Science and Technology Policy (OSTP).

### **Who Commented**

Scientists, academics and individuals submitted 107 out of the 187 comments listed in OMB's docket, comprising the majority of comments OMB received on the bulletin. Industry, including companies, industry associations and corporate law firms, was the second largest segment of submissions with 49 comments. The docket contained 25 comments from the public interest sector with submissions from non-profit organizations, scientific societies, and academic associations. OMB also received 6 comments from government sources including state agencies and congressional offices.

## Who Commented



### Opposition

The majority (108) of the comments opposed OMB's draft bulletin, according to OMB Watch's tally. Most of these objections came from the academic scientists and public interest groups. These comments ranged from opposing the entire bulletin to voicing intense criticism to some of the bulletin's fundamental aspects. Among the specific criticisms raised were assertions that OMB did not claim the legal authority to develop government wide peer review policies, that the draft bulletin would not accomplish its goal, and that the proposed policies would result in delay of regulatory action and manipulation of science for political and corporate interests.

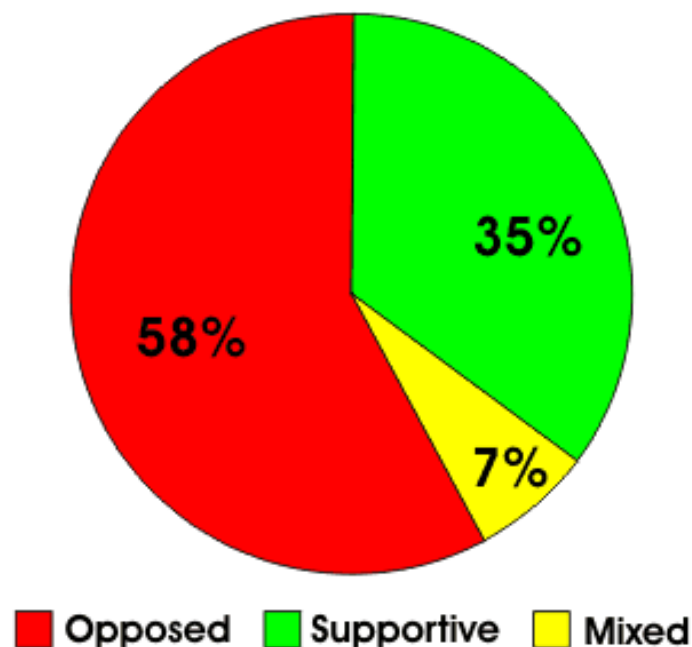
A large number of these comments requested that OMB eliminate the bulletin. For example David Michaels, a George Washington University Professor and ex-regulator for the Department of Energy, stated that "OMB's

proposed bulletin is fundamentally flawed; implementation will not appreciably improve the quality of science used in regulation. I strongly recommend it be withdrawn.”

Sheila Jasinoff, a Professor at Harvard’s Kennedy School of Government, agreed by commenting, “These criticisms suggest that the proposal in its present form will not achieve the goals of the Information Quality Act and may undermine the goals and purposes of public health and environmental legislation. The proposal should be withdrawn or else radically revised so as to leave much greater discretion within the expert regulatory agencies to tailor their review practices consistently with their legal mandates and policy missions.”

Many also advised OMB to start engaging scientists and government agencies in a more open and participatory process if it wished to improve government peer review through policy development. For instance, Physics Professor Steven Federman from the University of Toledo, a former panelist for NASA peer review noted: “Recognizing that peer review of science in the regulatory context is an important process, the scientific community should be engaged in this discussion. ... The OMB should withdraw the proposed Bulletin and engage the scientific community in an open, transparent process.”

## Opinions of Peer Review Bulletin



### Supporters

OMB received 66 comments that strongly supported the agency's draft bulletin. The majority of supportive comments came from industry submissions and ranged from approval to minor criticisms and recommendations. These submitters supported OMB's authority to design such broad peer review policies and claimed that the proposed policies would greatly enhance the reliability of government regulations.

The Styrene Information and Research Center recommended OMB "finalize this Bulletin expeditiously, after review of submitted comments." The American Petroleum Institute stated that it "agrees with the need for peer review guidance, and expresses its strong support for OMB's development of the Peer Review Bulletin."

Many of the more detailed supportive comments dismissed the negative consequences warned of in comments submitted by those opposing the draft bulletin. In several of these comments, the main criticisms were that the proposed policies should be more stringent or used more broadly. The Chlorine Chemistry Council supported the



bulletin, but recommended going an additional step and removing management of peer review from the agencies entirely.

The American Chemistry Council recommended expanding the scope of the bulletin to “require external peer review, not only for especially significant information, but also for all influential/significant regulatory information that is either; precedential or novel, particularly controversial, or highly complex.”

### **Mixed/Neutral**

OMB also received mixed or neutral comments from a small handful of submitters. Only 13 comments appeared to take no position on the overall draft bulletin. Most of these comments came from individuals whom submitted specific minor criticisms or general support of improving peer review without explaining their position on the overall draft bulletin.

## **Shays-Meehan Lawsuit Challenging FEC Rules for Unpaid Broadcasts and Charities Proceeds**

The recent Supreme Court decision upholding the Bipartisan Campaign Reform Act of 2002 (BCRA) has the potential to dramatically expand the scope of regulation of federal election activity. The decision did not, however, address the act's applicability to 501(c)(3) charity organizations, which the Federal Elections Commission has already exempted from all BCRA requirements. A suit filed by BCRA co-sponsors Reps. Chris Shays and Marty Meehan to overturn the FEC exemption will now quickly move forward.

For more information see our [analysis](#) of the Supreme Court decision's impact on nonprofit advocacy, and issues created by Shays v. FEC.

BCRA prohibits corporations (including nonprofits) and labor unions from paying for broadcasts that refer to a federal candidate (e.g., an image of the federal candidate) within 60 days of a general election or 30 days of a primary. These broadcasts, dubbed “electioneering communication,” impose criminal penalties for rule violators. BCRA provides exemptions for news broadcasts as well as candidate debates and forums. The act also allows the FEC to create further exemptions for broadcasts that refer to federal candidates if they are wholly unrelated to an election.

In October 2002, the FEC published final rules implementing the electioneering communications provisions of the law, incorporating two provisions advocated by OMB Watch. First, that the rules applied only to paid broadcast advertising. Second, that 501(c)(3) organizations-- already prohibited by IRS rules from engaging in electioneering-- would be exempt from the rules.

BCRA co-sponsors Shays and Meehan filed suit in the federal district court in the District of Columbia to overturn the FEC rules. The judge delayed action until the Supreme Court issued its decision in *McConnell v. FEC*. On January 7 the Court ordered that briefs be filed by February 27, and responses no later than March 31. A quick decision is expected.

If the Shays-Meehan lawsuit is successful in its efforts to overturn the exemption for 501(c)(3) organizations and unpaid broadcasts, charities would have to immediately change the way grassroots lobbying and public education campaigns are conducted during a federal election season. A lobby campaign that has a paid broadcast ad that refers to a federal candidate during the restricted period (30 days before a primary and 60 days before a general election) would face criminal penalties.

If Shays-Meehan won the lawsuit it would:

- Further complicate rules for grassroots lobbying and public education;
- Chill nonprofit lobbying for fear of criminal penalties;
- Require nonprofits to raise funds for separate segregated funds (SSF) to pay for grassroots lobbying broadcasts to avoid the penalties;
- Increase administrative burden from disclosure requirements; and
- Open up the door to donor disclosure for 501(c)(3)s since contributors to the SSF would be disclosed.

Nonprofits need to be aware that some reformers are calling for an extension of the electioneering communications rule to non-broadcast communications, which could conceivably include email correspondence, web site announcements, phone banking, direct mailings and canvassing.

The Shays-Meehan suit raises fundamental questions about advocacy rights for charities. Will criticism of a member of Congress or the President broadcasted 60 days before a general election or 30 days before a primary be a felony? Will charities be able to broadcast an incumbent candidate's stance on an issue during the restricted time period? If not, then will there be less accountability in the legislature?

## **IRS Releases Guidance on Genuine Issue Advocacy vs. Electioneering**

In late December the IRS released an announcement reminding tax exempt organizations that they must comply with both campaign finance and tax rules during an election year. The guidance, in Revenue Ruling 2004-6, focuses on those nonprofits permitted to take sides in an election and lists the facts and circumstances the IRS believes distinguish genuine issue advocacy from partisan electioneering. Six specific examples are provided. The IRS asks for comments and suggestions on questions for future guidance in this area.

Charities, which are prohibited from taking sides in elections under Section 501(c)(3) of the tax code, are not discussed in the ruling. The announcement applies to social welfare groups (501(c)(4)), unions and trade associations that are permitted to “engage in only limited political campaign activity” that relates to their overall advocacy work. These groups need to distinguish between their genuine issue advocacy and communications meant to influence the outcome of elections. These specified groups must pay tax on expenses used to influence the outcome of an election that is not paid for out of a separate segregated fund (SSF).

In the ruling, guidance is given to define electioneering communications as those that are:

- made during a time that coincides with an election
- identify a candidate
- target voters in a particular election
- identify a candidate’s position on an issue
- distinguish the candidate’s position from others (in the communication or in the overall campaign)
- not part of an ongoing series of substantially similar advocacy on the same issue.

The guidance given also identifies communications that are genuine issue advocacy as ones that:

- identify specific legislation or a specific event outside the control of the organization
- are timed to coincide with the specific event
- identify the candidate solely as a government official in a position to act on the policy or specific event
- mention the candidate solely as the a key sponsor of legislation.

The six examples in the ruling show how these factors apply in specific situations. They also illustrate application of tax rules to all electioneering, whether at the national, state or local level. (Federal campaign finance laws only apply to federal elections.)

The text of Rev. Rule 2004-6 is on the IRS website. CAUTION: Reading the ruling may be confusing. It refers to

partisan electioneering as an “exempt function under Section 527(e)(2)”, which governs political action committees. Their exempt purpose is to influence elections.

Comments on situations or factors that need further guidance should be sent to the IRS c/o Judy Kindell, T:EO:RA:G, 1111 Constitution Ave. NW, Washington, DC 20224.

## **Complicated and Expensive Reporting for Labor Unions is Put on Hold**

A United States Judge issued an injunction this month blocking enforcement of a Department of Labor’s (DOL) final rule on financial reporting by labor unions. The court found unions would suffer “irreparable harm if forced to start complying with new reporting requirements by Jan. 1.”

Upset by the scope of DOL’s new requirements, The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) filed action for judicial review of the final rule under the Administrative Procedure Act late last year. The rule, announced in the Federal Register on Oct. 9, 2003, expands the financial reporting requirements of all labor unions with annual receipts of \$250,000 or more. Judge Gladys Kessler agreed with the AFL-CIO that the new reporting requirements were burdensome and unions did not have enough time to make the extensive and sophisticated accounting changes necessary for compliance.

This could cost as much as \$1 billion and would affect more than 5,000 mostly local unions -- which are already subjected to far stricter reporting requirements than corporations -- requiring vast amounts of time and money to be reallocated from contract negotiations, grievance handling, organizing and other core union activities.

In a letter to the administration just before the rule was finalized, 22 House Republicans expressed their dismay at the plan. “These unions will have less than two months to purchase new computers, revamp their existing systems, train personnel and perform related compliance tasks before January in order to track their finances under the new rule,” they wrote.

The final rule requires each labor union with annual receipts of \$250,000 or more to file Form LM-2 electronically and to itemize receipts and disbursements by categories (such as lobbying or contract negotiation) of \$5,000 or more. Receipts or disbursements to a single entity that will eventually add up to \$5,000 or more by the end of the year must also be reported. The revised LM-2 will also require unions to report investments and to report the

number of members by category. Lastly, the Form LM-2 will ask for a breakdown on each officer and employee's time and percentage of salary spent on each functional category.

In addition to the newly revised Form LM-2, labor unions will also be required to file Form T-1 for any trust in which the labor organization is interested, if the trust has \$250,000 or more in receipts and the labor organization contributed \$10,000 or more to the trust during the year.

John Sweeney, president of the AFL-CIO, said the true motivation was political: “While unions support reasonable financial disclosure requirements for all types of organizations, the Bush administration’s rules are craftily designed to weaken unions -- the strongest advocates for American workers -- as our nation prepares for the 2004 elections. The rules target unions and go far beyond what is required of corporations or other not-for-profit organizations.”

While Judge Kessler did order a year injunction from the rule, she has not yet ruled on whether the new rule will stand.

## **Court Upholds Postal Service Ban**

A recent ruling by a United States District Court Judge will contribute to the scarcity of places to collect signatures for ballot measures and candidates. The ruling upheld the U.S. Postal Service’s (USPS) 1998 policy change prohibiting solicitation of signatures on petitions, polls, or surveys on any USPS property.

Regardless of the fact that USPS property is not a private business and is still part of the United States government, the court deemed its sidewalks and parking lots not a public forum. Judge Roberts of the U.S. District Court for the District of Columbia, said “The USPS must compete with the private sector for business...in part, by making attractive to costumers its postal locations where services are provided. Because the government, as much as any other property owner, is allowed to manage its property in such a way as to best carry its business, the significance of USPS' interest in controlling activity on their exterior property must be assessed in light of its business nature and function.”

The suit was brought against USPS by a wide range of organizations and citizens from across the political spectrum. The leading Plaintiff in the case, the Initiative and Referendum Institute, argued that the ban is an attack on citizens’ rights to free speech, petition government and work to change policy. This ban could seriously

hamper organizations and candidates that must collect signatures for petitions. Signature collection is mandatory for some candidates to be able to run for office, and for organizations to create policy by referendum.

While collecting signatures is now prohibited, USPS agreed to allow distribution of leaflets. USPS' change from its original position rendered a favorable opinion by the Judge. In his opinion Roberts wrote, "Because the record now establishes that this content-neutral regulation promotes a significant governmental interest and will leave open ample alternative channels of communication, the defendant's motion will be granted."

## **Administration Moves to Allow Dumping of Mining Waste Into Streams**

The Bush administration unveiled a proposal Jan. 7 that would gut a prohibition against the dumping of mining waste within 100 feet of streams, easing the way for new mountaintop mining, which generates large amounts of dirt and rock waste.

Sold as a "clarification," this proposal would create new waivers for the so-called "buffer zone" rule, which was adopted during the Reagan administration. Specifically, companies could receive permits to conduct surface mining activities near streams provided that they, "to the extent possible," "prevent additional contributions of suspended solids" and "minimize disturbances and adverse impacts on fish, wildlife, and other related environmental values of the stream."

Put another way, this means that mining companies could be permitted to dump directly into streams and cause environmental damage, so long as they have made a satisfactory effort, as judged by government permitting officials, to minimize that damage "to the extent possible."

The current standard allows for a waiver of the buffer-zone rule only if mining activities "will not cause or contribute to the violation" of water quality standards, "and will not adversely affect the water quantity and quality or other environmental resources of the stream." Unlike the administration's "clarification," this is clear, simple, and objective.

"Only the Bush administration, which calls more air pollution 'Clear Skies' and clear cutting trees 'Healthy Forests,' would call this decision to allow coal companies to destroy more streams a 'clarification,'" said Joan Mulhern, senior legislative counsel for Earthjustice. "It is a lie and it is an insult to the people of Appalachia and anyone who

cares about the fate of America's environment."

Previously, the administration adopted another rule in May 2002 to clear the way for mountaintop mining. This action changed the definition of allowable "fill material," eliminating the "waste exclusion" that barred dumping for the sole purpose of disposing waste. The Army Corps of Engineers now has authority to approve such dumping when issuing operating permits under the Clean Water Act.

## **Administration Opens Tongass Forest to Logging**

Two days before Christmas, the Bush administration finalized plans to open 300,000 acres in Alaska's Tongass National Forest for logging and development, removing protection provided by the Clinton-era "roadless rule," which banned road construction in 58.5 million acres of national forests.

"The Bush administration has turned its back on the public, good science, and the law in its effort to clearcut the Tongass," said Tom Waldo, an Earthjustice attorney. "This is obviously a Christmas present from the Bush administration to the timber industry which wants the right to clearcut in America's greatest temperate rainforest."

Upon taking office, the Bush administration immediately delayed the effective date of the Clinton roadless rule and refused to defend it against legal challenges, reaching a settlement to change the policy despite public sentiment. Of more than 250,000 public comments submitted on the issue, fewer than 2,000 favored removing protection from the Tongass.

On top of opening the Tongass, the administration previously announced in June 2003 that it would grant state exemptions to the roadless rule to allow logging in other protected wilderness areas.

## **Court Blocks Bush Rollback of Power-Plant Emissions Standards**

A day before Christmas, a federal appeals court temporarily blocked the Bush administration from implementing a major rollback of clean air standards, which would have allowed the nation's oldest and dirtiest power plants to upgrade their facilities without installing the latest anti-pollution controls (as they were previously required to do under EPA's New Source Review program) -- even if it results in substantial new emissions.

Twelve attorneys general from mostly northeastern states, along with a number of cities and environmental groups, filed suit against the Bush rollback, contending that it violated the Clean Air Act. In staying the action pending the litigation's outcome, a three-judge panel of the U.S. Court of Appeals for the D.C. Circuit concluded that the plaintiffs had "demonstrated the irreparable harm [of the action] and likelihood of success on the merits" of their case.

"This is enormous," New York Attorney General Eliot Spitzer said. "The courts have agreed with us that the Bush administration cannot by administrative fiat eviscerate a statute that is critically important to protecting the quality of the air that we breathe... The regs were taking us down a path of dirty air, more asthma and more death."

The court is expected to give its final ruling toward the end of the year.



## **Judge Rejects Bush Plan to Allow Snowmobiles in Yellowstone**

A federal judge strongly rebuked the Bush administration on Dec. 16 for rescinding a Clinton-era plan to phase out snowmobile use in Yellowstone and Grand Teton National Parks.

U.S. District Judge Emmet Sullivan called the administration's action "completely politically driven and result oriented" -- pointing out that it ran counter to scientific evidence -- and reinstated the phase-out just hours before the start of the snowmobile season. Sullivan noted one study that found Yellowstone at times had carbon monoxide levels as high as Los Angeles.

The phase-out, which was supported by a 99-1 margin in public comments to the National Park Service, requires a 50 percent reduction in snowmobiles this winter -- allowing for 490 snowmobiles per day in Yellowstone and 50 per day in Grand Teton -- and a total ban for the 2004-05 season. The Bush administration had sought to allow nearly 1,000 snowmobiles per day in Yellowstone.

The administration contended that new standards for cleaner and quieter engines would negate the vehicles' adverse health and environmental impacts. However, Sullivan cited scientific analysis by the National Park Service that concluded there would still be significant harm to the health of park wildlife, visitors, and employees. Compared to an outright snowmobile ban, the Bush plan would have allowed twice as much carbon monoxide pollution and five times the nitrogen oxide emissions.

"Our duty is to take care of our national parks as fully as possible so that we pass them in good health to our grandchildren," said Denis Galvin, who served as deputy director of the Park Service under Presidents Reagan and Clinton and during the first year of the current Bush administration. "Had we let that principle slip in Yellowstone to the benefit of the snowmobile industry, it would have set a terrible precedent in all our national parks."

A week after his ruling, Sullivan denied a request by the International Snowmobile Manufacturers Association and the State of Wyoming to stay implementation of the phase-out.

## **Administration Abandons Plan to Lift Wetlands Protections**

The Bush administration recently abandoned a proposal, sought by developers, to remove federal protection for as much as 20 million acres of wetlands after receiving more than 133,000 comments in opposition from environmentalists, sportsmen, state officials, and others.

In offering the proposal last January, EPA claimed to be responding to a contentious 5-4 decision by the Supreme Court, which determined that the Clean Water Act covers only “navigable waters,” and cannot be applied to isolated intra-state ponds and wetlands that have been protected only because of the presence of migratory birds. Notably, however, the court’s ruling was narrow and did not direct the wholesale policy changes pursued by EPA. The administration’s change of heart recognizes this.

Nonetheless, the administration has not repealed internal guidance -- issued at the same time as the proposal -- to staff at EPA and the Army Corps of Engineers that if fully implemented would have the same effect as the proposed rule change.

“In order to fully enforce the Clean Water Act and protect all waters, the Bush administration must not only stop the proposed rulemaking, but must rescind the guidance policy,” said Joan Mulhern, senior legislative counsel for Earthjustice. Without federal protection, isolated wetlands -- which make up nearly one-fifth of the nation’s wetlands -- are highly vulnerable because most states do not have programs in place to defend them.

## **Groups Asks High Court to Open Unusually Secret Case**

Public interest and media organizations this week appealed to the Supreme Court to stop the near-total secrecy surrounding the five-month detention of a Florida waiter as part of what the federal government claims to be a terrorism-related investigation. They did this through a friend of the court or an amicus brief.

The case has been handled with unusual secrecy (see Watcher, Nov. 17). The existence of the case is known outside the court system only because documents identifying the case were inadvertently and temporarily filed in the public docket and a reporter discovered the case.

This amicus brief follows an earlier brief filed by the Reporters Committee for Freedom of the Press. The groups argue that the high court should force the federal government to make more records in the case available to the public. Mr. Bellahouel, the Florida waiter, who has not been charged with a terrorism-related crime, is currently free after posting a \$10,000 bond. He may be deported for living in the United States with an expired student visa.

Whether the government's actions are justified will remain unclear if the government is able to continue to file their arguments in secret.

See [http://www.rcfp.org/news/releases/view.cgi?2004\\_01\\_02\\_mkbvward.txt](http://www.rcfp.org/news/releases/view.cgi?2004_01_02_mkbvward.txt)

## **EPA Plans Early Release of Some TRI Data**

EPA recently held a meeting with interested stakeholders to explain its intention to release 2002 Toxic Release Inventory (TRI) data much earlier than in recent years. Under EPA's current plans the 2002 TRI would be available on the agency's website in February or March, several months ahead of the recent release times of May or June.

However, EPA has given preliminary indication it will not provide the underlying data to the public. Thus, it would not be available to other databases that usually house TRI – EPA's TRI Explorer, Environmental Defense's Scorecard, and OMB Watch's RTK NET. Moreover, EPA's early release will only have limited search ability and cannot be downloaded. The system they are proposing will make it very difficult to aggregate data to describe local, state, or national conditions. The early release will allow users to search copies of the Form R through EPA's Envirofacts data warehouse. However, the accompanying analysis, which is often the most useful part, would not be available until the full release, probably in June.

Currently, a facility must submit Form R by July 1 for the previous calendar year. EPA then proceeds through a number of data quality mechanisms and analyses of the data, taking nearly a year to release the data without compromising data quality. OMB Watch along with other public interest groups has pushed for an earlier release date. While EPA's new effort to release the Form R early is a step in the right direction, it is unclear whether the long-term plan is to move the full data release up.

