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Estate Tax Could See Senate Floor, Despite No Concrete Compromise

Although Senate Republicans still lack the 60 votes needed for estate tax repeal, they may schedule a procedural vote, in order to assess where each Senator stands on the issue, according to media reports late last week. The vote would come after weeks of Senate negotiations on possible reform specifics that have yielded little in the way of a compromise.

If a vote does occur this week, it would likely serve to increase pressure on Democrats to reach a compromise, and also, according to a July 22 *Wall Street Journal* article, to "smoke out reluctant senators" just before the August recess.

Despite the possibility of an estate tax vote, the thus-far unsuccessful efforts of Senate Finance Committee Chair Jon Kyl (R-AZ) to reach a compromise with Finance Committee Ranking Member Max Baucus (D-MT) seem to have created a rift within the anti-estate tax faction. While many Republicans are fighting for estate tax "reform" to greatly increase the exemption level and reduce its top rate, others are becoming more vocal in criticizing this effort and arguing that Kyl should fight only for full repeal. This fissure was demonstrated in a July 20 letter to Majority Leader Bill Frist (R-TN), from a number of Washington's most powerful business groups and anti-tax leaders. The letter urges Frist to "take the fight for full repeal to the Senate floor. We believe it would be a serious mistake, and exceptionally difficult to again explain to small business, if a compromise is advanced without first giving the small business community the opportunity to actively put their resources to the task of delivering the votes for full repeal."

Also thwarting efforts for repeal were comments made by Federal Reserve Chairman Alan Greenspan in testimony given July 21 before the Senate Committee on Banking, Housing, and Urban Affairs. Greenspan reiterated his opposition to tax-cut proposals that would increase the deficit and, when

questioned by Sen. Charles Schumer (D-NY), agreed that now would not be a good time to move forward with estate tax repeal, if it did not include PAYGO offsets. According to the conservative estimates of the Joint Tax Committee, full repeal of the estate tax would cost $290 billion from 2006 - 2015.

Further undermining anti-estate tax arguments was the release this month of a Congressional Budget Office (CBO) report on the number of farms and small businesses actually affected by the estate tax. The report, put together at Baucus' request, effectively lays to rest the myth that the estate tax poses a significant threat to America's farms and small businesses by levying too large a tax on families who can not afford to pay it. This has been a main claim made by anti-estate tax proponents, including President Bush recently, making the CBO report all the more timely and significant.

The report finds that very few farms are affected by the estate tax with 2005 exemption levels (and thus even fewer would be affected by exemption levels through 2009). In fact, if the current exemption level of $1.5 million were to have been in place in 2000, only 300 farms would have owed any estate tax. Raising the exemption to $3.5 million, the 2009 level, drops the number of farms affected to 65.

Notably, the CBO found that of the few farms that would owe taxes, most of them had sufficient liquid assets, so that heirs could pay the tax without needing to consider selling any portion of the farm. Using farm data for the year 2000, the CBO found that if a $3.5 million exemption had been in place, only 13 farms in the entire nation would lack funds to fully pay the tax, and for these farms, other payment options are available to spread out the estate tax payment over as much as 14 years.

While some lawmakers with the power to vote on repeal (or reform) of the estate tax are still under the impression that a vote to preserve the estate tax is a vote against family farms and small businesses, the CBO report makes clear that this is not the case. It states that exemption levels of "$1.5 million, $2 million, or $3.5 million… along with a 48 percent tax rate and a large Qualified Family-Owned Business Interest (QFOBI) deduction, would substantially reduce the number of small businesses and farmers affected by the estate tax."

As lawmakers ponder the future of the estate tax this week, they should take into consideration the findings of the CBO report, as well as Greenspan's testimony. Eliminating yet another revenue source at a time when deficit spending is out of control will only further throw off the nation's fiscal balance, all while giving more kickbacks to the wealthiest members of society. You can take action on this issue by contacting your Senators and telling them to vote no on repeal or irresponsible reform, and by writing a letter to the editor of your local paper using this US Action web tool.

Updated Status of FY 2006 Appropriations Bills

For more information on appropriations bills:
Click here.

Bill	House	Senate
Agriculture	Roll Call Vote, 6/08/05, passed 408-18	Committee Markup, 6/23/05
Science, State, Justice, Commerce (House only)	Roll Call Vote, 6/16/05, passed 418-7	
Commerce, Justice, Science (Senate only)		Committee Markup, 6/23/05
Defense	Roll Call Vote, 6/20/05, passed 398-19	
District of Columbia	Now part of the House Transportation-Treasury bill	Committee Markup, 7/21/05

Energy & Water	**Roll Call Vote, 5/24/05, passed 416-13**	**Roll Call Vote, 6/30/05, passed 92-3**
Foreign Operations (House only)	**Roll Call Vote, 6/28/05, passed 393-32**	
State, Foreign Operations (Senate only)		**Roll Call Vote, 7/20/05, passed 98-1**
Homeland Security	**Roll Call Vote, 5/17/05, passed 424-1**	**Roll Call Vote, 7/14/05, passed 96-1**
Interior & Environment (House only)	**Roll Call Vote, 5/19/05, passed 329-89**	
Interior (Senate only)		**Roll Call Vote, 6/22/05, passed 94-0**
Labor, HHS, Education	**Roll Call Vote, 6/24/05, passed 250-151**	**Committee Markup, 7/14/05**
Legislative Branch	**Roll Call Vote, 6/22/05, passed 330-82**	**Passed by Unanimous Consent, 6/30/05**
Military Quality of Life, Veterans Affairs (House only)	**Roll Call Vote, 5/26/05, passed 425-1**	
Military Construction, Veterans Affairs (Senate only)		**Committee Markup, 7/21/05**
Transportation, Treasury, HUD, Judiciary, D.C. (House only)	**Roll Call Vote, 6/30/05, passed 405-18**	
Transportation, Treasury, Judiciary, HUD (Senate only)		**Committee Markup, 7/21/05**

Tax Panel Recommends Alternative Minimum Tax Repeal

Although they are not scheduled to submit recommendations to the Treasury for two more months, the nine experts serving on the President's Advisory Panel on Tax Reform publicly announced their first suggestion on reforming the tax code to make it simpler, fairer, and more pro-growth. Following a public meeting last Wednesday, during which reform options were discussed rather than testimony being given by tax experts (as was the case at all previous meetings), the panel announced their recommendation to repeal the alternative minimum tax (AMT). How the federal government will replace the $1.2 trillion the Treasury expects to collect from the tax over the next ten years was not indicated by the panel.

Congress enacted the alternative minimum tax in 1969 to snare affluent tax dodgers; however, in recent years, the tax has affected an increasing number of taxpayers, many of whom are not affluent by today's standards. The AMT currently affects approximately 4 million families; however it is expected that as many as 21 million families will pay the tax next year, and as many 51 million families in the coming decade. A number of lawmakers, such as Sen. Charles Grassley (R-IA), have outspokenly opposed the AMT for this reason; however, many tax experts believe that reform, not repeal, is the fiscally responsible solution.

Repeal of the AMT would be a significant hit to federal revenue sources, especially if combined with possible extension of Bush's 2001 and 2003 tax cuts, and repeal of the estate tax, which could reach the Senate floor as early as next week. Tax Policy Center analysts note that repeal of the AMT would be more costly by the end of the decade than repeal of the regular income tax.

Those in favor of preserving the AMT argue that reform is needed instead of repeal, in order to preserve this valuable source of revenue, keep the tax code progressive, and ensure that wealthy taxpayers are not able to avoid paying taxes completely. Panel member Elizabeth Garrett, a public policy professor at the University of Southern California, voiced her disapproval with the panel's recommendation, calling the decision to recommend repeal "not fair," and noting that taxpayers lose confidence in a system that allows people to escape taxation -- a situation the AMT was created to

prevent.

Options other than repeal include indexing the AMT for inflation, which would reduce the number of taxpayers subject to the AMT in 2010 by 82.5 percent overall and would allow 98 percent of the middle-class to avoid the tax all together. Implementing provisions such as dependent personal exemptions and nonrefundable credits would also help ease the burden on middle-class taxpayers who might otherwise currently pay the AMT.

In recent years, Congress has chosen to address the AMT problem with temporary fixes to prevent the number of taxpayers it affects from growing as fast as experts have anticipated. It is likely that another temporary fix will be passed this year, despite bipartisan efforts in the Senate to do away with the tax altogether. Sen. Max Baucus (D-MT) and 20 cosponsors introduced legislation (S. 1103) on May 23 that would permanently repeal the tax but does not include any provisions to offset the huge cost of the bill.

Gov't Biomonitoring Study Highlights Public Exposure to Harmful Chemicals

The Center for Disease Control and Prevention (CDC) released its *Third National Report on Human Exposure to Environmental Chemicals*, the most extensive assessment ever made of the US population's exposure to chemicals in the environment. The July 21 study found troubling levels of toxics, including metals, carcinogens and organic toxics like insecticides, are being absorbed by people around the country.

The CDC report details 2,500 peoples' exposure levels to 148 chemicals using a technique called biomonitoring. Biomonitoring, the latest and increasingly common tool in environment and health research, enables researchers to detect how much of the chemicals present in the environment and consumer products actually cross over into our bodies.

Nearly six percent of women of childbearing age had mercury levels near what the CDC considers the 'danger level," according to the report. The CDC also discovered widespread exposure among participants to phthalates, a potential reproductive toxin found in everyday items such plastic containers for left-over food and cosmetics.

Biomonitoring studies, such as the CDC report, can help improve public health policy by indicating trends in chemical exposures, identifying disproportionately affected and particularly vulnerable communities, assessing the effectiveness of current regulations and setting priorities for legislative and regulatory action. After years of progress in pollution prevention and reduction of toxic releases, these biomonitoring studies clearly indicate that more needs to be done to protect public health.

The Environmental Working Group (EWG) released its own biomonitoring study, *Body Burden, The Pollution in Newborns*, on a July 14 that analyzed umbilical-cord blood samples. The 10 samples contained 217 toxic chemicals and 180 carcinogens. Mercury, fire retardants, pesticides and the Teflon chemical PFOA were among the chemicals EWG discovered in the samples. From the study results, EWG called on the government to ensure children are protected from chemical exposures, and that exposure to industrial chemicals before birth be eliminated entirely.

Many note that the CDC's biomonitoring study could be more useful if it examined a much larger population or focused on a smaller area, as most toxic exposures occur locally. Such examinations could result in the ability to draw stronger connections between sources of toxics, at-risk populations, and pollution prevention measures industries should take.

California is currently considering such a localized biomonitoring study. A bill before the California state legislature would create the first statewide, community-based biomonitoring program. The bill (SB 600), was introduced in February and passed out of the California Assembly Health Committee June 28, despite heavy pressure from industry. Supporters say that the bill will help scientists, medical professionals, decision-makers and community members better understand the effects of environmental contaminants on human health. They are hopeful the bill will clear its next hurdle in the Assembly Appropriations Committee.

Stakeholders Weight In At First-Ever Congressional Hearings on Data Quality Act

The Government Reform Subcommittee on Regulatory Affairs held Congression's first hearing on the Information Quality Act, also known as the Data Quality Act (DQA) on July 20. The hearing reviewed implementation of the DQA at three federal agencies, the Environmental Protection Agency (EPA), the US Fish & Wildlife Service (FWS), and the Department of Health & Human Services (HHS). The subcommittee also heard from interested stakeholders, including industry associations that have filed data quality challenges and public interest groups seeking the policy's repeal.

The legislation has received a great deal of attention and generated controversy since the Office of Management and Budget (OMB) produced DQA guidelines for agencies in 2002. Supporters of the legislation, primarily industry groups, claim the law simply helps prevent the government from using bad data, while opponents, which include environmental and citizens groups, assert that the law is actually an attempt to expand industrial influence over the regulatory process, cloaking challenges by industry behind a good government veneer. However, neither before its passage, as a last minute rider on an appropriations bill, nor in the years since its passage, has any Congressional committee held a hearing on this contentious program -- until now.

Agencies appeared supportive of the DQA, reporting that they believe in the importance of and principles behind the law, in order to maximize the quality of data used by agencies. However, agencies did acknowledge that DQA efforts have diverted resources and that requests have been more difficult to respond to in a timely manner. None of the agencies had requests or suggestions for changes to the DQA, holding it was too soon to pass judgment on its effectiveness. As of June 2005, HHS had received a total of 22 requests, FWS had received 11, and the EPA had received 33.

The stakeholder panel offered a richer and more diverse set of viewpoints. Opposing the DQA, Sidney Shapiro of the Center for Progressive Reform (CPR) told the subcommittee that analysis of the challenges filed thus far indicate that the DQA is being misused by industry to challenge and delay policy decisions by agencies. Shapiro reported that very little correction of information was taking place under the DQA, primarily because there is no need for such a law, as agencies have long had effective data quality programs in place. CPR detailed eight different methods industry groups have employed to misuse the DQA, in order to oppose or weaken federal regulations.

Jeff Ruch of Public Employees for Environment Responsibility reported that his organization had used the DQA but found that it insufficiently addressed the more fundamental problem of open scientific dialogue, free from political interference. Ruch reported that currently government-employed scientists are not free to express their scientific opinions, if those opinions differ from the administration's political agenda, for fear of being fired.

Industry associations, including the U.S. Chamber of Commerce and the Coalition for Effective Environmental Information, told the subcommittee that there were no problems with the DQA, other than agencies were not enforcing it strictly enough in their opinion. The judicial reviewability of DQA was a major issue raised by the regulated community during the hearing. There have been several court rulings that agency decisions on the DQA challenges are not reviewable by the court. It is clear that industry groups would prefer to have the option of taking the question of data use to the courts and away from agencies. During questioning Rep. Candice Miller (R-MI), chair of the subcommittee, focused on the issue of judicial reviewability, which may indicate her intention to pursue congressional action to add this feature to the law.

Oregon Industries Escape Public Accountability for 'Toxic Use Reduction'

Last month, Oregon lawmakers eliminated a provision in the state's Toxics Use and Hazardous Waste Reduction law that required industries to produce annual reports on 'toxics use reduction.' The annual reporting requirement was replaced with a one-time report on pollution prevention plans, in a move that has shocked and angered state environmental leaders, who pushed to expand, not reduce, reporting on and public access to pollution prevention information.

Since 1989, Oregon state law has required industries to file annual Toxics Use Reduction (TUR) plans, which encouraged companies to cut their use of toxic chemicals by requiring them to examine practices, inventory toxics chemicals, and investigate alternative products and processes. However, the reports were never submitted to the state's Department of Environmental Quality (DEQ), nor did the law grant citizens access to them. The Oregon Toxics Alliance and other environmental groups lobbied the state legislature last month to require industries to submit their TUR reports to the state's DEQ, in order to gain public access to the reports, and thereby increase corporate accountability on toxics reduction.

Unfortunately, the legislature took the opportunity to pass Senate Bill 43, which grants public access to the reports but eliminates the annual reporting. Under the legislation, signed into law by Governor Ted Kulongoski on June 9, companies must submit a one-time summary, which be made available on the Internet, detailing reductions or plans to reduce chemical use. Many question the usefulness of these public reports as a replacement for annual reporting that would have enabled concerned citizens to evaluate companies' progress on toxic reduction plans.

Only Oregon and Massachusetts use TUR to monitor and reduce toxics. However, unlike Oregon, Massachusetts requires TUR reports to be publicly available. This availability enables the public, government regulators, technical experts and scientists to collaborate on determining the best ways to reduce toxics. The more open approach has reduced the amount of hazardous waste generated in Massachusetts by 67 percent over the last 10 years, according to the Massachusetts Toxics Use Reduction Institute UMASS Lowell.

The federal Toxics Release Inventory (TRI) also demonstrates the importance of both public disclosure and regular reporting. Under TRI industries publicly disclose their toxic pollution each year. Public disclosure under the TRI program has helped reduce pollution.

FEC Loses Campaign Finance Appeal Regarding Non-Profit Election Communication

On July 15 the U.S. Court of Appeals for the D.C. Circuit rejected a Federal Election Commission's (FEC) appeal, upholding a lower court decision that invalidated many FEC regulations that were implemented under the Bipartisan Campaign Reform Act of 2002 (BCRA). The FEC must now decide whether to appeal the ruling or write new rules in line with the court's decision. Among the regulations invalidated in the suit are exemptions to the ban on "electioneering communications" for unpaid broadcasts and for 501(c)(3) organizations. The 501(c)(3) exemption is on the FEC's rulemaking calendar for consideration, but no date has been set. In the meantime, the exemptions remain in effect as the result of a stay.

The district court invalidated fifteen FEC regulations implementing BCRA in September 2004, finding some inconsistent with BCRA and others arbitrary and capricious. The FEC appealed the district court decision with regard to five of the rules: standards for "coordinated communication," definitions of the terms "solicit" and "direct," the interpretation of "electioneering communication," allocation rules for state party employee salaries, and a de minimis exemption from allocation rules governing the mix of regulated and unregulated funding for get-out-the-vote, voter identification, and voter registration that does not mention a Federal candidate.

The appeals court found that the electioneering communications exemption for unpaid broadcasts was unwarranted under BCRA, as the legislation does not require electioneering communications to be purchased. In addition, the court found that the exemption falls outside the FEC's power to create exemptions, since an unpaid broadcast could promote, support, attack or oppose a federal candidate. This means that all electioneering communications 30 days before a primary and 60 days before an

election could be restricted, except announcements of candidate debates and forums.

The FEC could request review by the entire Circuit Court panel or appeal directly to the Supreme Court. If it decides not to appeal, it must re-write the rule to conform to the court's opinion.

Extent, But Not Details, of FBI Spying on Nonprofit Groups Revealed

Recent filings in a lawsuit against the Federal Bureau of Investigation (FBI) by the American Civil Liberties Union (ACLU) and other nonprofits expose FBI use of counterterrorism task forces to monitor and investigate the activities of groups that have vocally opposed Bush administration policies. The suit, brought under the Freedom of Information Act (FOIA), seeks expedited processing of the ACLU's request for records on surveillance of nonprofit groups and information about the structure and funding of the FBI's Joint Terrorism Task Force program. The Justice Department, representing the FBI, says it needs up to a year to process the FOIA request.

The ACLU suit seeks FBI files on itself, peace groups Code Pink and United for Peace and Justice (UFPJ), Greenpeace, People for the Ethical Treatment of Animals, the American-Arab Anti-Discrimination Committee and the Muslim Public Affairs Council. The ACLU has also filed FOIA requests for FBI records on over 100 organizations from around the country. A preliminary response from Justice indicates that the FBI has 1,173 pages of documents on the ACLU and 2,303 pages on Greenpeace. The ACLU is asking the court to order the FBI to speed up processing the request. Files released so far show the types of activities the FBI has seen fit to monitor:

- A memo was sent from counterterrorism personnel in the FBI's Los Angeles office to similar offices in New York, Boston and Washington about UFPJ plans for demonstrations during the political conventions in 2004. The memo notes alleged anarchist connections of some individuals in the group, and reveals monitoring of their website, quoting extensively from it.
- Seven pages of documents focus on the American Indian Movement of Colorado's plans for a Columbus Day demonstration in 2002.

The ACLU said the suit was filed after it received complaints from a number of activists, who were questioned by FBI agents in the months before the 2004 political conventions. Executive Director Anthony Romero said, "I'm still somewhat shocked by the size of the file on us. Why would the FBI collect almost 1,200 pages on a civil rights organization engaged in lawful activity? What justification could there be, other than political surveillance of lawful First Amendment activities?"

Greenpeace's U.S. Director John Passacantando went further, saying, "If the F.B.I. has taken the time to gather 2,400 pages of information on an organization that has a prefect record of peaceful activity for 34 years, it suggests they're just attempting to stifle the voices of their critics."

The Justice Department said its activities are aimed at preventing crime, not suppressing dissent. However, there is growing concern among protest groups and others in the nonprofit sector that legitimate civil disobedience is being equated with terrorist violence.

IRS, FEC Dismiss Complaints Against Falwell Groups

Nonprofits associated with the influential fundamentalist preacher, the Rev. Jerry Falwell, accused of violating both Internal Revenue Service (IRS) and Federal Election Commission (FEC) rules have been cleared of wrongdoing. The first complaints, filed by the Campaign Legal Center, claimed an endorsement of President Bush in a newsletter on the Falwell Ministries website during the 2004 campaign violated both tax and election laws. The second, filed by Americans United for Separation for Church and State (AU), alleged a seminary violated an IRS prohibition on partisan activity when Falwell endorsed Bush during a pre-election speech there. AU also filed a complaint with the IRS over the *Falwell Confidential* endorsement. Neither agency has made its findings public, and details of the agencies' decision-making remain sketchy.

News of the FEC and IRS investigations was recently released by Matthew D. Staver, an attorney for Liberty Counsel, who represented Falwell. The first set of complaints involved a July 2004 web posting

of a newsletter, *Falwell Confidential* that contained an endorsement by Falwell of President George W. Bush in his re-election bid. The newsletter was also widely circulated in an email that included a solicitation of donations for and link to a conservative political action committee, the Campaign for Working Families.

Americans United for Separation of Church and State filed a complaint with the IRS requesting an investigation. The Campaign Legal Center also filed a complaint with the IRS alleging violation of the prohibition on intervention in elections by 501(c)(3) organizations, as well as a complaint with the FEC alleging illegal general public endorsement and solicitation of contributions by a corporate entity.

Falwell responded that the communications were paid for by a 501(c)(4) entity, the Liberty Alliance, and that he was speaking as an individual and publisher and was thus legally entitled to express his views. The communications were made using corporate facilities, including the groups' shared website, which does not clearly distinguish between the 501(c)(3) and 501(c)(4) entities. It bears the name of the Jerry Falwell Ministries, the 501(c)(3), but in the About Us section says it is a project of the Liberty Alliance, the 501(c)(4). The FEC's reasons for dismissing the complaint were not given, but it appears the 6-0 vote was based on the media exemption to FEC rules regarding endorsements. Staver asserts Falwell should not lose his editorial free speech rights simply because he is also a preacher.

The second complaint involved a speech by Falwell at the Southwestern Baptist Theological Seminary in Fort Worth, Texas in August 2004. Falwell gave Bush his personal endorsement in the speech, which was reported in the press. In dismissing the complaint, the IRS seems to have given wide latitude for speakers at organizational events to express personal, partisan opinions. Stavers expressed concerned that the complaint was filed based on a newspaper report.

The IRS complaints and the decisions clearing Falwell's organizations reflect growing legal confusion about the difference between statements by individuals and statements attributed to organizations, and what constitutes genuine issue advocacy, as opposed to partisan electioneering. In 2004 the IRS initiated a new process to review cases of potential violations on the ban on partisan activity by 501(c)(3) organizations, the Political Intervention Program. The process came under fire when the National Association for the Advancement of Colored People was audited because its chair criticized President Bush during a July 2004 convention speech. The IRS program examined 80 cases involving alleged prohibited intervention in the 2004 election. IRS privacy rules prohibit it from publishing details about these cases, so little is known about the kinds of activities that are considered violations of the ban.

Feingold Introduces Changes to Lobbying Disclosure Bill, but Passage Unlikely This Year

On July 14, Sen. Russ Feingold (D-WI), introduced the "Lobbying and Ethics Reform Act of 2005" (S. 1398), a bill that amends the Lobbying Disclosure Act (LDA) to require more extensive reporting for lobbying firms and nonprofits. The bill would increase grassroots and coalition lobbying disclosure requirements, curb privately funded travel by members of Congress, and strengthen enforcement and oversight of ethics and lobbying disclosure rules by the Senate Clerk's office.

The bill is substantially similar to the Special Interest Lobbying and Ethics Accountability Act (H.R. 2412), introduced in the House on May 14 by Reps. Marty Meehan (D-MA) and Rahm Emanuel (D-IL). Both bills would require registered lobbyists to disclose amounts spent on grassroots lobbying, although communications with members would not be considered grassroots lobbying. In addition both bills seek to provide transparency of anonymous lobbying coalitions by requiring members to report their involvement. There is a total exception for all 501(c)(3) organizations from the coalition provision. Other 501(c) organizations, such as social welfare organizations, unions and trade associations, are also exempt if they have "substantial exempt activities other than lobbying with respect to a specific issue for which it engaged the person filing the registration statement." The term "substantial" is undefined. An additional provision added by Feingold would increase the penalty for failure to comply with lobbying disclosure requirements, raised from $50,000 to $100,000. A summary of Meehan's bill can be found here.

Neither bill would change the current provision that allows 501(c)(3)s using the expenditure test to measure their lobbying limit to continue filing Form 990 in lieu of LDA forms. Form 990 already

includes information about grassroots lobbying costs, but has a narrower definition of direct lobbying than the LDA. For example, while the LDA includes reporting on influencing executive branch policies, the Form 990 does not.

The legislation faces tough opposition, both in the House and the Senate. Meehan's bill currently has 72 Democratic cosponsors, but no Republican has signed on in the House. Feingold has already publicly predicted that the Senate will not take up legislation to overhaul lobbying regulation this year, and his bill currently has no cosponsors.

Both the Meehan and Feingold bills respond to recent scandals involving Congressional travel paid for by a nonprofit serving as a conduit for a registered lobbyist. Lobbyists Jack Abramoff and Michael Scanlon pocketed millions of dollars in donations to nonprofit groups they controlled or on whose board they sat, prompting hearings in the Senate. This and other recent reports of professional lobbyists using nonprofits to avoid ethics and disclosure rules have raised calls for greater transparency and oversight of the identity of donors and of financial transactions between groups. However, neither bill may move, as each adds new restrictions on the ability of Congressional members to become paid lobbyists after leaving public office, something many current members are unlikely to support.

Legislative Update: Bills to Watch

The following is an update on bills introduced so far in the 109th Congress that could affect regulatory policy in the public interest.

By Bill Number | By Subject

Bills to Watch

H.R. 185 — Program Assessment and Results Act

This bill would essentially codify the Program Assessment Rating Tool, a highly political assessment scheme the White House uses to justify its decisions to slash agency budgets and to distort agency priorities. More information at www.ombwatch.org/regs/incongress/para. Although it has been reported favorably out of committee, the bill has not proceeded to the floor because, reportedly, it has been held up by the Appropriations Committee.

H.R. 576 — Joint Committee on Agency Rule Review Act

This bill would amend the Congressional Review Act (CRA) by creating a joint congressional committee devoted to agency rule review. Resolutions of disapproval under the CRA would no longer be referred to the committee of jurisdiction in each chamber but would instead be referred to the new joint committee. Agency rules being challenged under the CRA would thus be scrutinized not by the members of Congress with the most expertise in the relevant subject matter but, instead, by a new joint committee that not only would lack expertise but also could more easily be targeted by corporate lobbyists.

H.R. 682 — Regulatory Flexibility Improvements Act

This bill would extend the section 610 reviews of the Regulatory Flexibility Act to all rules on the books which the agency determines have a significant economic impact on a significant number of small entities. By requiring agencies to review all such rules every ten years, this bill would drain agency resources by diverting them away from protecting the public and into navel-gazing analyses. Even proven protections such as the ban on lead in gasoline and safeguards protecting workers against black lung would be subject to these reassessments. These analyses would be even more burdensome than under current law, because the bill would force agencies to calculate reasonably foreseeable *indirect* economic effects, which agency representatives at a recent Senate roundtable suggested would be so speculative as to be useless for policymakers.

Additional sections would do the following:

- Further expand the scope of rules subject to the Regulatory Flexibility Act by including amendments to land management plans, rules affecting Indian tribes, IRS recordkeeping requirements, and regulations governing grants to state and local governments.
- Extend Reg Flex analytical burdens to a whole new universe of public protections — human services rules, such as those protecting abused and neglected children in federally-funded child welfare programs — by including nonprofits in the definition of small entities and expanding the scope of Reg Flex to regulations governing grants to state and local governments.
- Give corporate interests an even greater advantage in the regulatory process by giving the head of the Small Business Administration's Office of Advocacy (a taxpayer-funded office that lobbies for corporate special interests) a preview of proposed rules before they are published in the Federal Register and increased opportunities to intervene in the process.

An additional section would actually give SBA's Office of Advocacy the power to write regulations governing all agencies' compliance with the Regulatory Flexibility Act. Given that Advocacy is a taxpayer-funded voice for business interests, this provision is particularly troubling.

H.R. 725 — Paperwork and Regulatory Improvements Act

Resurrected from the 108th Congress, this bill would authorize a pilot study of "regulatory budgeting." In this kind of bizarre rationing of our public protections, agencies would be given a fictional budget of total costs that can be imposed on corporate special interests through regulations; then, when agencies hit that cap, they would be prohibited from issuing any new protections of the public interest, no matter how urgent the need. Another provision duplicates H.R. 1167.

H.R. 931 — Congressional Responsibility Act

This dangerous bill would essentially revive the Nondelegation Doctrine by statute. The bill would require Congress to act before any final regulation could actually take effect. Upon issuing a new final regulation, an agency would be required to send a report to Congress with the text of the regulation and explanatory material. A member of Congress would then have to introduce a bill specifically allowing that regulation to take effect, and the bill would be subject to a fast-track process with limits on debate and no opportunity for amendment.

A garbled judicial review clause may clarify that the regulation but not the bill itself constitutes final agency action, but it could possibly mean that the congressionally endorsed final rule escapes Administrative Procedure Act review.

H.R. 973 — Program Reform Commission Act

This bill would create a purely legislative commission charged with reviewing agency recommendations for programs to be eliminated and then suggesting, based on those recommendations or on its own initiative, plans to reorganize government programs. The coda to the bill is a sense-of-Congress provision that supports swift review of commission plans without actually imposing a fast-track process.

H.R. 1167 — Amending Truth in Regulating Act

This bill would amend the Truth in Regulating Act by making permanent a pilot project in which the Government Accountability Office is to prepare, upon request of a member of Congress, an independent cost-benefit evaluation of new economically significant regulations. These new analyses could overwhelm GAO and divert it from its investigative and reporting functions.

H.R. 1229 — Federal Consent Decree Fairness Act

This bill is the companion in the House to S. 489.

H.R. 3143 — Major Regulation Cost Review Act

This bill, like H.R. 682 and S. 1388, would make the Regulatory Flexibility Act even more burdensome

by requiring section 610 reviews of most important rules on the books. Whereas the other two bills would require these reviews every 10 years of rules determined to have a significant economic impact on a significant number of small businesses, this bill would require reviews every *five* years of all major rules as defined by the Congressional Review Act. Moreover, this bill would demand that agencies conduct cost-benefit analyses (observing the strictures of OMB Circular A-4) during the section 610 reviews, and OMB would be expected to use those analyses in its annual regulatory accounting report. Expecting agencies to conduct cost-benefit analyses — which are time-intensive and expensive to conduct — of every major rule on the books every five years would be a crushing burden that would leave government agencies little if any time left for actually protecting the public.

H.R. 3148 — Joint Administrative Procedures Committee Act

This bill essentially duplicates H.R. 576 but adds some disturbing additional features: it would charge the new joint congressional committee with reviewing the agencies' semiannual regulatory agendas and examining, at its leisure, any existing regulatory protections.

H.R. 3276 — Government Reorganization and Improvement of Performance Act

This bill officially introduces the White House's proposal for fast-track government reorganization authority and a sunset commission before which agencies would be forced to plead for their lives every 10 years. Click here for analysis, and here for a statement from OMB Watch on the proposal.

H.R. 3277 — Federal Agency Performance Review and Sunset Act

This bill basically introduces a standalone sunset commission proposal without the accompanying fast-track reorganization authority of H.R. 3276 and S. 1399.

S. 489 — Federal Consent Decree Fairness Act

This bill attacks consent decrees (the agreements that resolve cases so that they don't have to go all the way to trial) in federal court cases against state and local governments for violating federal law and ignoring people's rights. It would require these agreements to expire any time there is a change in administration or every four years. It would introduce a new degree of uncertainty in most civil rights litigation against state and local governments, and it would discourage litigants in the strongest civil rights cases from settling in an early stage of the case. The bill could thus discourage public interest groups from bringing some legitimate civil rights grievances to court, while increasing the cost both to individuals and government of those cases that are litigated.

S. 1388 — Regulatory Flexibility Reform Act

This bill basically duplicates the core feature of H.R. 682: applying the Regulatory Flexibility Act retroactively and inducing paralysis by analysis.

S. 1399 — Government Reorganization and Program Performance Improvement Act

Like H.R. 3276, this bill officially introduces the White House's recent proposal for fast-track government reorganization authority and a sunset commission before which agencies would be forced to plead for their lives every 10 years. Click here for analysis, and here for a statement from OMB Watch on the proposal. The Senate version of the bill adds another anti-regulatory twist: while the White House proposal and the House bill would exclude programs that enforce public interest regulations from automatic sunsets, the Senate bill lacks that exclusion.

S. 1411 — National Small Business Regulatory Assistance Act

This bill is the only one on this list that would improve regulatory policy. This bill would be the first step to strengthening Small Business Development Centers (SBDCs) around the country by launching a pilot in which SBDCs would provide compliance assistance to small businesses. This bill would help level the playing field for small businesses by giving them specialized assistance with understanding and complying with federal regulations. This bill is the only one on this list that would not compromise

the public's protections, directly or indirectly; instead, it would actually help some businesses to comply with the regulations that are in place to protect the public.

By Bill Number | By Subject

Bills by Subject

Eliminating Government Accountability

The House already forced out a measure giving the Department of Homeland Security the power to waive all law in the course of securing the borders. Two bills, H.R. 1229 and S. 489, would further eliminate government accountability by limiting the public's ability to hold state and local governments accountable for their violations of federal law.

Paralysis by Analysis

The PAR Act, which would endorse the administration's burdensome PART assessments, is currently held up. Three bills, H.R. 682, H.R. 3143, and S. 1388, would force agencies to review their most significant rules on the books — even proven protections such as the ban on lead in gasoline, and safeguards that protect workers from black lung, brown lung, silicosis, and asbestosis — so frequently that agency resources would be drained and diverted from their missions to protect the public. H.R. 1167 would divert the GAO from its important investigative work by requiring it to conduct yet more cost-benefit analyses of economically significant regulations.

Regulatory Rationing

See H.R. 725 above. Many of the other bills discussed above would accomplish the same goal as regulatory budgeting by imposing so many new requirements on the agencies that they could run out of resources to devote to protecting the public.

Stripping Out Protective Standards

No one disputes that agencies must periodically reassess the level of protection they are providing the public. The problem of H.R. 682, H.R. 3143, and S. 1388 is in part that they would force agencies to reassess their existing regulations with an eye toward deleting them. These bills would distort regulatory policy by pressuring agencies only to eliminate existing protections and ignoring the possibility that existing rules should be strengthened or that unmet needs cry out for new protective standards.

Reorganizing Government into Irrelevance

H.R. 3276 and S. 1399 would give the White House fast-track government reorganization authority. Reorganization is not, in general, intrinsically anti-regulatory, but the prospect of giving fast-track reorganization authority to this administration, given its proven hostility to protections of the public interest, is nightmarish. Restructuring could become the tool for weakening many government programs. Given the importance of decisions about the structure and function of government programs, Congress should be allowed to give any restructuring proposals a full and fair debate — which Congress would not be able to do under these bills.

Government Shut-Downs

H.R. 3276, H.R. 3277, and S. 1399 would establish a standing commission before which agencies would be forced to plead for their lives every 10 years. Even if the commission concluded that a program should be allowed to live another 10 years, it would automatically die unless Congress affirmatively acts to save it. In a time of shrinking budgets, it is inefficient and wasteful to force government programs to re-justify their very existence. Congress has enough resources at its disposal — ranging from the GAO to its own power to hold hearings — that it can ferret out programs in need of elimination without such an extraordinary waste of agency time.

Administration Withholds Rationales Behind Anti-Regulatory Hit List

The Bush administration is refusing to inform the public about the justifications for deciding which regulatory protections were added to its hit list of safeguards to be weakened or eliminated.

The White House invited industry last February to nominate regulatory protections to be added to a hit list, and industry groups responded with 189 discrete calls for regulatory rollbacks. The White House reported those nominations in December and announced that it would submit the industry nominations to the relevant agencies for their review. The White House released the final version of its 2004-05 anti-regulatory hit list on March 9, with a report detailing 76 out of 189 items from the industry-nominated list that received the endorsement of the administration as "regulatory reform priorities."

The White House declined, however, to provide any justification for the administration's choices in narrowing down the 189 items to the 76 that will ultimately receive agency attention. Instead, the White House's report simply summarized industry's reasons for wanting rules on the hit list.

A series of Freedom of Information Act (FOIA) requests by OMB Watch has uncovered evidence that agencies did provide the White House Office of Management and Budget (OMB) with justifications for the rules that appeared on the final hit list -- justifications that OMB is refusing to share with the public.

OMB Watch filed FOIA requests with OMB and every agency that was required to review industry's hit-list nominations. Most agencies are refusing to disclose their correspondence with OMB about the hit list. Two agencies, the National Oceanic and Atmospheric Administration (NOAA) and the Equal Employment Opportunity Commission (EEOC), did respond with partial disclosures. From the documents these agencies provided, it is clear that OMB instructed agencies to assign a priority status to each reform nomination and to provide a justification for that status. Regulations the agency thought were high priorities to reform received a "1," while those the agency did not wish to pursue received a "3."

OMB presumably has the justifications for each reform nomination in a chart. OMB failed to release this document with the announcement of the final hit list and declined to reveal it when OMB Watch filed its FOIA request.

An example of the information that the administration is suppressing appears below:

Manufacturing Reform Nominations

Ref. Number	Rule/Guidance	Priority Status	Priority Status Justification	Timeline and Milestones
4	Coastal Zone Management Act Federal Consistency Regulations	[redacted]	NOAA published a proposed rule to revise the Coastal Zone Management Act (CZMA) federal consistency regulations on June 11, 2003. The comments provided to OMB by the National Association of Manufacturers (NAM) on NOAA's proposed rule are the same as some comments submitted to NOAA on NOAA's proposed rule. NOAA has yet to issue a final rule, thus, there is a limitation on NOAA's current ability to respond to NAM's comments. The measures contained in NOAA's proposed rule contain a strong package of improvements to the CZMA regulations that would continue to balance state-federal-industry interests embodied in the CZMA, while providing for more efficient approval of energy and other projects by providing greater clarity, transparency and predictability in the regulatory process [redacted] NOAA's proposed changes would, however, significantly reduce the time period for the processing of CZMA appeals by the Secretary of Commerce [redacted] NOAA will consider carefully the public comment received in issuing any final rule.	[redacted]

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