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## Regulatory Matters



## Federal Budget



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# Sunset Legislation Faces Vote on the Floor, Advocates Speak Out

The House will vote this week on two "sunset commission" bills, under which unelected commissions would be given the authority to recommend sweeping changes in the federal government and force those changes through Congress.

### Committee Mark-Up Makes a Bad Bill Worse

The two bills were rushed through a July 19 hearing and then marked up the next day by the House Government Reform Committee.

The Brady bill, H.R. 3282, was voted out of committee on largely party line votes with Rep. Todd Platts (R-PA) crossing the aisle to oppose the legislation.

Committee Chairman Rep. Tom Davis (R-Va) offered a manager's amendment to the Tiahrt bill, H.R. 5766, expanding the scope of the commission's reviews to include rules and regulations. The amendment also requires the commission to review the constitutional basis of all programs and agencies. This amendment vastly increases the scope of the commission's power and puts individual regulations, not just programs, on the chopping block.

H.R. 5766 is scheduled for a vote on the floor this Thursday, July 27. While the Brady bill is not currently scheduled for a floor vote, there are rumors that the Brady bill could be combined with the Tiahrt bill before reaching the floor.

## Growing Legions Oppose Sunsets

Over 350 organizations and thousands of concerned constituents have sent letters to Congress opposing sunset commissions. A broad coalition of both national and state groups joined together to send a letter to Congress opposing sunsets. Environmental, labor, education, healthcare and veterans groups have also sent individual letters opposing sunset commission legislation. (Click here for the latest batch of letters, and check with www.OMBWatch.org/sunset for up-to-the-minute info.)

"The innocent intent of cleaning up some frivolous government agencies/departments could have possible far-reaching unintended consequences," said the American Legion in a letter sent to House Speaker Dennis Hastert (R-IL) opposing sunset commission legislation. "Quite frankly, the idea of growing government (creation of sunset commissions) to reduce government seems like poor public policy. How is a decision made as to whether a sunset commission is accountable, efficient and effective? Is that decision made by yet another sunset commission?"

## Next Steps

The current schedule is for the House Rules committee to take up only the Tiahrt bill on July 26 and propose a rule for considering the legislation on the floor on July 27. According to one rumor, the Brady bill text could be put up as an amendment to be voted on when the Tiahrt bill goes the floor. The end result would be the two separate approaches becoming title I and title II of a combined bill.

The Brady bill would require all government programs and agencies to be subject to a commission review at least once every 12 years. If Congress did not expeditiously deal with the commission recommendations, the program or agency would be automatically terminated. Under the Tiahrt bill, every program, agency or regulation would be subject to the possibility of a sunset review. If a review were desired, a commission would be formed. Its recommendations would be fast-tracked through Congress, limiting debate and

opportunities to amend the recommendations.

Bipartisan opposition to sunset commission legislation is growing. Along with champions emerging from all corners of the Democratic caucus, several Republican members are now raising concerns, among them Rep. Sherwood Boehlert (R-NY), who issued a statement today opposing the bills.

## Last-Minute Attempt to Add Estate Tax to Pension Reforms Fails

Over the last week, Capitol Hill has been abuzz with speculation that House and Senate GOP leaders were engaging in a last-ditch effort to attach a provision gutting the estate tax to a sensitive and complicated pension reform conference report. The sneaky move failed, however, as Senate Majority Leader Bill First (R-TN) announced today he could not convince a number of key Republicans, particularly Sen. Olympia Snowe (R-ME), to support it. With little time left and far too much to do, it is highly unlikely that the Senate will return to the issue this year. In related news, President Bush has moved to gut IRS estate tax enforcement.

Early this week, Senate and House leaders and conferees to the pensions bill were still trying to negotiate a compromise that would include estate tax "reform," no easy task as all seven Democratic members of the conference committee openly expressed opposition estate tax language being included in the bill. In addition, three Republican members of the conference committee - Snowe, Charles Grassley (R-IA) and Michael Enzi (R-WY) - expressed strong reservations about including an unrelated estate tax provision costing almost $300 billion.

Frist led the desperate effort to pass any reduction in the estate tax. Earlier this year, he convinced House Chairman of the House Ways and Means Committee Bill Thomas (R-CA) to pass a stand-alone "compromise bill" on the estate tax. When Frist could not secure the votes to bring the House bill up on its own, he began to look elsewhere. Realizing the pensions bill will almost certainly be the last tax bill of the 109th Congress, Frist pushed hard to enact one last enormous tax giveaway to the richest Americans.

The move was rejected, however, for the very reason Frist sought to attach it to the pension reform bill: the bill was too important to risk losing consensus., The House and Senate have been negotiating for months to iron out differences in a broad overhaul of laws regulating the way private companies fund their employee pension plans. Even without adding the estate tax issue, the compromise remains tenuous at best. This fragile balance appears to have been a contributing factor to resistance from Republicans on the conference

committee.

If the estate tax language had been inserted and the seven Democrats withheld their signatures from the conference report as expected, all nine Republicans would have needed to endorse the report, in order for it to move to the floor for consideration and final passage. With three Republican Senators repeatedly expressing their reservations, including anything related to the estate tax would have almost certainly proven too difficult.

Many observers saw Snowe as holding the key to the GOP votes on the conference committee. Over the years, Snowe, the senior senator from Maine, has often found herself at the center of resistance to radical tax cut plans, particularly the recently passed capital gains and dividend tax cuts, as well as the total size of the 2003 tax cuts. Once again, she has been able to exert considerable influence against additional tax cuts for the very wealthiest Americans at the expense of working families.

With little time left and far too much to do, it is unlikely that the Senate will return to the issue this year. Yet even as this latest attempt to gut the estate tax failed, some in Congress are vowing to hold a popular package of tax cuts that was supposed to be included in the pensions bill over until September in order to attach the estate tax reform to it and take one more shot before the elections.

## Administration Pulls Out All the Stops to Render Estate Tax Meaningless

While it appears that Congress has failed to repeal or slash the estate tax, the Bush administration is shifting tactics and moving to eliminate the need for wealthy citizens to comply with the estate tax. The *New York Times* reported over the weekend that the IRS is planning to eliminate 157 attorneys working in the estate and gift tax division - nearly half of the staff at the IRS who audit tax returns of the country's richest citizens. According to six estate tax attorneys who leaked the plans to the *Times*, the reductions are part of a continuing effort to "shield people with political connections and complex tax-avoidance devices from thorough audits."

The White House decision seems particularly suspect as both the IRS and the Treasury Department have recently reported to Congress that tax cheating and avoidance by high-income Americans is a significant and growing problem. The country had an annual tax gap - which is the difference between the taxes owed by Americans and the taxes collected by the government - for 2005 in excess of $350 billion.

## Household Debt: A Growing Challenge for American Families and Federal Policy

Mirroring the federal government's penchant for spending more money than it collects, the American public now has a negative net savings rate. Home prices, medical care, and college tuition are all growing faster than wages, and debt has become increasingly pervasive among American households.

These are facts that have not escaped the attention of American consumers, 82 percent of whom now recognize household debt as a serious problem, according to a recent survey sponsored by the Center for American Progress.

What is perhaps most remarkable about personal debt in America is that, while a large majority of Americans recognize it as a problem, the issue is nowhere near the top of the agenda of national policymakers. This is particularly striking in light of the fact that many proposed solutions enjoy significant bi-partisan support. For instance, the Center for American Progress survey found that both Republicans and Democrats (by more than 80 percent margins) agree that:

- there should be more incentives for people to save money,
- lending companies should provide simple and uncomplicated language that explains their charges and fees,
- more education and counseling should be provided to customers, and
- there should be caps on the rates of interest that credit card companies charge.

The Center for American Progress has launched an effort to draw broader attention, especially among lawmakers, to the issue of household debt. At a one-day conference, *Debt Matters: Raising The Profile Of Household Debt In America*, panel discussions were held to describe the current state of American debt: public attitudes toward it, how payday lenders are harming low-income workers and members of the armed services, and trends and possible solutions to credit card debt.

The range of topics covered by the conference underscores just how far-reaching are the effects of household debt on Americans. Debt hurts low- to moderate-income earners in ways that block their mobility into higher income levels. Debt hurts all (low-, moderate- and even high-income earners) by making it difficult to send children to college and fund retirement accounts. In the case of the former, having fewer college-educated people drags down the economy by limiting productivity and the creation of a highly trained workforce, and, in the case of the latter, a widespread lack of retirement savings could push Social Security into a precarious situation as a larger percentage of retiring Baby Boomers rely on

it as a primary source of income.

For many workers at the bottom of the income scale, payday lending often serves as a necessary bridge between the rising cost of living and stagnant wage growth. Payday lenders recognize this fact and, relying on an uninformed customer base, often take advantage of their clients, charging average annual interest rates upwards of *400 percent*.

Extraordinarily high interest rates are only part of the perniciousness of payday lending. Many payday borrowers become trapped in a cycle of debt as loans from previous weeks roll over into new loans when they cannot payback the original money borrowed. The Center for Responsible Lending has found that 99 percent of payday loans go to repeat borrowers and 91 percent of payday lenders' business comes from borrowers who borrowed more than five times in a year.

Without access to low-cost lending, many low-income workers have little choice but to continuing paying exorbitant fees and interest rates to lenders praying on poor credit histories and limited knowledge of loan terms. For many low-income families, lack of access to low-cost credit has become a major impediment to accumulating wealth and has severely hindered their chances for economic mobility.

But debt is not just a problem for those at the bottom of the economic ladder. For Americans in the middle three quintiles of the income scale, credit card debt has begun affecting more and more families. In recent years, credit card issuers have been enjoying a surge in revenues. Center for American Progress Senior Fellow Robert Gordon and Associate Director for Economic Policy Derek Douglas, in a recent issue of Washington Monthly, wrote: "From 1996 to 2003, the money credit-card companies make from fees has more than quadrupled, to $7.7 billion."

The authors also assert that fine print and complicated language obfuscate the terms of credit agreements, and as a result many Americans are hit with unexpected fees and increased interest rates on loans and credit.

It's not just the cagey practices of credit card companies that are putting the bite on the middle class. Median household income has failed to keep pace with steadily increasing everyday living expenses like housing, health care, energy, and college tuition. Even those holding four-year college degrees are beginning to feel the pinch. *The Los Angeles Times* recently reported that workers with four-year college degrees have seen their wages fail to keep pace with inflation for the first time in over 30 years. In fact, these workers have seen their earnings fall 5.2 percent after adjusting for inflation between 2000 and 2004, according to White House estimates.

Unfortunately, taking out larger loans and going deeper into debt is one strategy that

Americans have used to deal with this dire situation, and the marketplace has responded accordingly. Lenders have in recent years created more ways to lend money (like interest-only mortgages), increased fees charged to consumers, and insistently advertising their products.

Interestingly, household debt and the national debt have some of the same implications, because their repercussions will extend beyond our current fiscal situation into future generations. While fixing one mitigates the other, fixing both would be a gift to the children and grandchildren of Baby Boomers, the post-World War II babies who are set to retire in a few short years. Without adequate retirement savings, this cohort will rely on Social Security as its primary source of income.

Yet it has been Social Security that has been propping up the federal government coffers by paying for current services with its large surpluses. When the extra revenues from Social Security run out and the program begins to call in loans from the federal government to continue funding benefits, cuts elsewhere in the government will be increasingly hard to avoid - particularly to discretionary programs. Having fewer services and supports for the public in the future will force more families to turn to loans and lending establishments, continuing a destructive cycle of debt.

Obviously, change is in order. Lawmakers and other government officials need to begin paying more attention to the staggering levels of debt American families are being forced to endure. This, perhaps even more so than the national debt crisis, is creating challenges for future generations, but it is a problem that is fixable. The first step toward a solution is a commitment to a national conversation about how and why we came to owe so much money to creditors. Only then can we begin to craft comprehensive policy solutions to this growing problem.

## Religious Groups Ask IRS to Revisit Audit Procedures

On July 17, 2006 an attorney representing several religious organizations wrote to the IRS requesting that the agency revise its new procedures for initiating audits of religious groups. According to the letter, the process is inconsistent with First Amendment protections codified by Congress in 1984, and was implemented without pubic notice or comment. The letter is the latest in a series of public criticisms of the IRS approach to oversight of religious and charitable organizations, including a recent OMB Watch report.

The letter to the IRS, written by Marcus Owens of Caplin and Drysdale in Washington, D.C., characterized the new procedures as a "clear violation" of Section 7611 of the Internal Revenue Code (IRC), which Congress passed "in order to protect churches' First

Amendment rights."

Section 7611, enacted in 1984, expanded protections for religious organizations from unnecessary IRS audits by strengthening IRS procedural requirements. Section 7611 requires that all determinations to proceed with IRS inquiries into religious organizations be made by appropriate high-level Treasury officials, such as the Secretary of the Treasury or a delegate "no lower than that of a principal Internal Revenue officer for an internal revenue region." According to the conference report from the 1984 legislation, an audit is allowed to proceed only if this high-level official believes the organization may no longer qualify for its tax exemption based on "facts and circumstances recorded in writing."

Owens' letter notes, however, that the IRS has recently informally delegated this authority to a lower level within the agency, maintaining that "the IRS has become overly casual in its interpretation of the statute, setting the stage for exactly the sort of invasive governmental action that Congress feared, and contributing to a recent apparent dramatic increase in the number of church audits." The changes cited by Owens that reflect the failure to ensure the required "appropriate high level official" determination are:

- On May 9, 2006, the IRS formalized the new delegation of authority to lower-level officials in the Internal Revenue Manual (see ILM 200623061 and IRM Sec. 4.76.7.4), stating that determinations regarding audits of religious organizations are to be made by the Director of Exempt Organization Examinations (EO Exams). Owens believes this position is not senior enough, since the Director reports to a position several levels below the IRS Commissioner and has narrow responsibilities, as opposed to the broad policy perspective held by a high-level official.
- In a May 2005 internal memo the Director of EO Exams delegated authority downward by authorizing an "EO Referral Committee" comprised of career civil service employees to make determinations on whether to examine religious and charitable organizations for impermissible partisan activity.
- In October 2004, Rosie Johnson, Director of EO Exams, designated LaPaula Davis, an IRS employee at the manager level, to act as Director of EO Exams solely for the purpose of initiating inquires into religious organizations. Owens notes that "[g]iven the unsystematic and sporadic way the preceding documents were released, there may well have been other delegations that have not been made public."

The letter points out that since 1984 the IRS has changed its internal structure and there are no longer Regional Commissioners. According to Owen, the IRS is thus left with two choices: ensure that a high-level official makes the determination on whether to audit a religious group, or provide for public notice and comment on any proposed change.

The issue is important, he maintains, because the procedures provided for in Section 7611

"ensured that officials in a position to consider the broad policy implications of their actions would make the decision to initiate the inquiry and this requirement is a key component of the set of statutory safeguards that Congress enacted to ensure that churches are protected from overly intrusive IRS review."

The letter concludes by asking the IRS to revisit its policy and ensure that appropriate high-level officials are making determinations regarding inquiries into religious organizations and "reconsider whether a church tax inquiry is warranted in any of the ongoing inquiries and audits."

## OPM Drops Problematic CFC Certification on Lobbying Expenses

Under pressure from nonprofit groups, the Office of Personnel Management, the independent federal agency that manages civil service government employment, proposed last month to drop an unclear certification requirement discouraging nonprofits from conducting legally-permissible issue advocacy.

On May 24, the Office of Personnel Management (OPM) issued a proposed rule that would significantly change the "eligibility requirements and public accountability standards" for charities participating in the Combined Federal Campaign (CFC), a fundraising drive conducted every Sept. through Dec. that allows federal employees to donate directly to participating organizations of their choice.

Currently, organizations applying to participate in the CFC are required to certify that "the organization has no expenses connected with lobbying and attempts to influence voting or legislation at the local, State, or Federal level or alternatively, that those expenses would classify the organization as a tax-exempt organization under U.S.C. 501(h)." (5 CFR 950.202(c))

The proposed rule would remove the certification requirement completely. The rule states, "OPM proposes to remove this standard because it is already a requirement for charitable organizations to qualify as a tax-exempt entity under section 501(c)(3) of the Internal Revenue Code and to maintain that status with the IRS. In addition, some applicant organizations have misinterpreted the standard to mean no lobbying is permitted, when in fact, lobbying is permissible if consistent with Internal Revenue Code requirements."

Some nonprofit groups applying to receive donations through the CFC have read the certification requirement as prohibiting nonprofits from engaging in legally permissible lobbying. Many have also misconstrued the requirement as a prohibition on lobbying for

any 501(c)(3) that is not a 501(h) elector. Clarifying this requirement was especially important due to the large number of organizations (22,000 in 2005) participating in the CFC. According to Liz Towne, Director of Advocacy Programs at Alliance for Justice:

*In March 2003, we raised our concern that the application language was inaccurate and discouraged advocacy organizations from participating in the CFC Combined Federal Campaign. It is great to see that the CFC has followed through and dropped the confusing, redundant question altogether and we hope this results in more advocacy organizations participating in the program.*

Alliance for Justice worked with OPM for over three years to remove the certification requirement.

OPM will accept comments on the proposed rule until Aug. 14

## Report Examines Political Coordination of Tax-Exempt Organizations

A new study by the Campaign Finance Institute (CFI) examines the electoral and advocacy roles played by different types of nonprofit organizations, and suggests possible reforms.

In a report released July 19, CFI found that nonprofit organizations often use 501(c)(4), 501(c)(5), and 501(c)(6) entities, as well as 527 organizations and federal political action committees (PAC)s, in an integrated fashion to advance political agendas. CFI conceded that nonprofits are not circumventing the law but noted that these "networks" are wielding a large amount of influence over elected officials. The study also calls for more clarity and enforcement of the "electioneering communications rule" established by the Bipartisan Campaign Reform Act and the Internal Revenue Service's "facts and circumstances" test.

### 527 Organizations

The report addressed recent proposals to regulate 527 organizations and concerns over the "electioneering communications rule" established by BCRA. Language regulating 527 organizations is currently in H.R. 4975, the House-passed lobby reform bill that is awaiting conference with S. 2349, the Senate version of the bill that does not contain language regulating 527s. The study deals specifically with the question of whether the regulation of 527 organizations would force those activities to be carried out by 501(c)(4-6) organizations. CFI suggests that "most of the groups...had financially strong advocacy organizations that could potentially take over 527 activities without jeopardizing their primary advocacy missions."

In the face of the potential flow of funds from 527 organizations to 501(c)(4-6) organizations, CFI calls for improved disclosure to the IRS, including:

- clarification of the "facts and circumstances test" that the IRS utilizes to determine whether a 501(c)(3) organization has engaged in political advocacy, and
- clarification on the definition of the "political expenditure" disclosure requirement on Form 990, the annual return nonprofits submit to the IRS. The study indicated that the 2002 requirement for 501(c) groups to disclose political spending has been largely ignored by 501(c)(4-6) organizations.

### Electioneering Communications Rule

While calling for increased regulation and enforcement, CFI reported positive findings regarding compliance with the electioneering communications rule. According to CFI, "almost all of the 501(c)s we looked at were, in their public statements, able to clearly identify a range of non-express advocacy communications (labeled "voter education", "voter guides", "get-out-the-vote", "issue discussion") including ads as part of their overall election programs". The findings illustrates that, while clearer guidance from the IRS on what distinguishes election advocacy from issue advocacy may be helpful to nonprofit organizations, those that expend large amounts of money are clearly already educated on the regulations.

Some critics have taken issue with the reforms suggested in the report. According to BNA, Fred Wertheimer of Democracy 21, a nonprofit group focused on campaign finance, argued that proposals to rein in 527 organizations are adequate because current law limits the political activities of 501(c)(4-6) groups.

In recent elections, both 501(c)(4-6) entities and 527 organizations have played a role in electoral politics, although neither 501(c)(4-6) nor 527 organizations can engage in express advocacy, such as encouraging voters to vote for or against a particular candidate.

The report examined 12 interest groups that use multiple tax-exempt structures.

## Support Grows for Contracts and Grants Disclosure

The financial and information management subcommittee of the Senate Committee on Homeland Security and Governmental Affairs held a July 18 hearing on the Federal Funding Accountability and Transparency Act (S. 2590). Support in the Senate for the bill that would create a free, searchable public database of government contracts and grants has surged in recent weeks, helping propel the issue forward.

Senators from both parties, along with a wide array of conservative and progressive groups, voiced strong support for the bill, which is co-sponsored by Sens. Tom Coburn (R-OK), Barack Obama (D-IL), John McCain (R-AZ), and Tom Carper (D-DE).

"In my view, the reason for such broad support in simple," explained McCain. "People are beginning to realize that the only way to control spending and ensure accountability is to let the American people see exactly how their money is being spent."

Speakers stressed the difficulties of finding current data on federal contracts and grants.

"There are several different databases of federal spending information, but they all work differently, they are all incomplete, and there is no way to see the full picture of government spending," stated Obama. "And if we as Senators can't get this information, you can be sure that the American people know even less."

Cobert said the bill, that moves beyond the minimal requirements under the Freedom of Information Act, would create a "Google for Government Spending." Lauding the bill, he told the hearing that requiring the government to provide information on where taxpayers money is going will reduce government waste and promote accountability and efficiency.

Gary Bass, executive director of OMB Watch, while praising the bill, asserted that "such legislation should be perceived as a first step in a much larger effort to enhance transparency in federal spending."

Bass suggested revisions to the bill that OMB Watch believes would strengthen its ability to inform the public, while stressing that these concerns should not hold up passage of this important bipartisan effort. Bass's recommendations included measures to increase usability for novice users and opportunities for public feedback, and improve the quality of contract data (which is often incomplete and uninformative).

Possibly OMB Watch's most important suggestion was that the bill's requirement to disclose sub-grants be delayed and implemented initially as a smaller pilot project. Because federal grants are so often combined with state resources and then re-granted, the requirement would be next to impossible for grant recipients, and state and local governments to comply with unless new ways of handling intergovernmental fund transfers are developed. Moreover, according to Bass, the federal government should not be passing an unfunded mandate to state and local governments or to smaller nonprofit organizations that receive federal grants.

Eric Brenner, the director of the Maryland Governor's Grants Office, was also troubled by the sub-recipient reporting requirement. Coburn announced several changes to the bill at the hearing, including a delay in implementation of the sub-recipient reporting and

including a study and a pilot project to develop models for implementation. Brenner and Bass both indicated that these changes moved the sub-recipient provisions in the right direction.

Additional support for the bill came from Mark Tapscott, editorial page editor of the Washington Examiner, who testified that the government database would be a valuable source of information to journalists, who would in turn help foster a more participatory democracy.

"I have no doubt there will be many, perhaps hundreds of blogs created specifically to analyze and track federal spending within specific issue areas and industries," stated Tapscott. "The result will be a vastly more well-informed citizenry, a public policy debate informed by more accurate and extensive knowledge of government policies and programs and a more effective targeting of our society's resources."

The Senate Homeland Security and Government Affairs Committee is expected to mark up the Federal Funding Accountability and Transparency Act (S. 2590) later this week, and Committee Chair Susan Collins (R-ME) has agreed to co-sponsor the bill. In fact, new co-sponsors are being added almost daily. The bill has found support in a number of senators rumored to be presidential contenders beyond McCain and Obama. For example, Sens. Hillary Clinton (D-NY), Bill Frist (R-TN) Evan Bayh (D-IN), and George Allen (R-VA) are now among the growing roster of co-sponsors.

The House has already passed a bill (H.R. 5060) co-sponsored by Reps. Roy Blunt (R-MO) and Tom Davis (R-VA), that would provide public access to information about federal financial assistance (loans and grants) but none about federal contracts. Each of the witnesses in last week's Senate hearing, including Coburn, in turn, criticized this approach. Meanwhile, OMB Watch is constructing a database that will provide federal contracts and grants data in a publicly searchable format. The online resource will be available for public use beginning in October of this year.

## Specter's Bill Remains a Threat to Civil Liberties

Legislation introduced by Sen. Arlen Specter's (R-PA) that would retroactively legalize the president's NSA wiretapping program will be the focus of a Senate Judiciary Committee hearing scheduled for July 26. The National Security Surveillance Act (S. 2543) would also create a legal framework for future surveillance of American citizens.

With the recent announcement that Specter and the White had reached an agreement on the bill, pundits have charged that the legislation is little more than a thinly veiled

acquiescence to the president's claims of authority to conduct such a program without oversight. Specter spoke out in a July 27 opinion piece in the *Washington Post*, seeking to justify his position on presidential authority and oversight. He begins by declaring:

*President Bush's electronic surveillance program has been a festering sore on our body politic since it was publicly disclosed last December. Civil libertarians, myself included, have insisted that the program must be subject to judicial review to ensure compliance with the Fourth Amendment.*

In the same piece, however, Specter reverses course, stating that the president's position--that his program is justified by his Article II powers granted by the U.S. Constitution--may be legally defensible. Specter touts his bill as a solution to the legality problem that would "permit a determination of the program's legality" by submitting the program to the Foreign Intelligence Surveillance Court for review and approval.

OMB Watch, as pointed out previously in *The Watcher*, finds the Specter bill to be a disastrous solution to a dangerous problem. According to Specter, "the bill does not accede to the president's claims of inherent presidential power; that is for the courts either to affirm or reject. It merely acknowledges them, to whatever extent they may exist."

By retroactively acknowledging that the president has "the constitutional authority of the executive," however, the bill allows the federal government to wiretap anyone's phone calls or read anyone's emails without judicial approval or oversight. No longer would the government have to obtain a court's approval to eavesdrop on communications.

Moreover, the bill destroys any attempt to challenge surveillance through the federal court system. Not only would the bill retroactively justify the legality of Bush's wiretapping program,, it would immediately shift all pending legal challenges (approximately 20 or so currently winding their way through the system) to the jurisdiction of the Foreign Intelligence Surveillance Act (FISA) court. This would place the cases before a court that is highly deferential to the president's authority, rejecting only 4 of the 20,810 requests for surveillance since its inception in 1979.

## EPA's Science Advisory Board Opposes TRI Proposals

The U.S. Environmental Protection Agency's Science Advisory Board (SAB) recently sent a letter to the agency expressing concerns over its plans to reduce information collected under the Toxics Release Inventory (TRI). The SAB maintains that the proposed cuts would "hinder the advances of environmental research used to protect public health and the environment." SBA sent the letter detailing its concerns to EPA Administrator Stephen

Johnson on July 12.

The SAB's Environmental Economics Advisory Committee (EEAC) drafted the letter to protest the cuts because of the importance it believes maintaining comparability and validity in TRI data holds. The EEAC rated "the maintenance of the integrity of TRI data as a high priority for EPA and the research community at large." The letter was co-signed by the chair of the SAB and the chair of the EEAC.

The letter cites several of the proposals' harmful outcomes for the research community, including:

- Making toxic release data incomparable over time and across facilities;
- Impairing researchers' ability to use TRI data to assess spatial health impacts of toxic chemical releases;
- Hindering the identification of epidemiological relationships between releases and health; and
- Limiting the national picture of the effect of toxic chemicals in the environment.

Congress established the SAB in 1978 to advise EPA on technical matters. The SAB, composed of roughly 50 scientists from across the country, among other things, reviews the quality and relevance of the scientific and technical information being used for regulations, and advises the agency on broad scientific matters in science, technology, social and economic issues.

The SAB letter is the latest in a series of protests from lawmakers and government officials. On May 18, the House of Representatives passed an amendment to the FY 2007 Interior appropriations bill that prohibits EPA from spending any money to finalize its proposals. On July 10, two senators placed a hold on Molly O'Neill, the administration's nominee to direct EPA's Office of Environmental Information, which runs the TRI program, in protest of EPA's proposed cuts to the TRI.

In addition, EPA has received more that 122,000 public comments expressing strong opposition to the proposals. Officials and agencies from 23 states have also weighed in with the agency claiming that the TRI proposals would damage the ability of states to track pollution, set environmental priorities, and protect public health and the environment.

## Chemical Security Debate Continues in House

The House Homeland Security Committee is scheduled to mark up chemical security legislation later this week. The Chemical Facility Anti-Terrorism Act of 2006 (H.R. 5695), introduced by Rep. Daniel Lungren (R-CA) last month, currently has ten cosponsors.

Critics of the bill, including a number of environmental and public interest groups, charge that it would actually lead to less security for our nation's chemical plants.

According to a letter from 36 environmental, labor and public interest organizations sent to committee members on July 18, H.R. 5695 is deficient because it:

- Does not require the use of safer technologies to eliminate preventable disasters;
- Preempts states and localities from establishing more protective programs;
- Contains no meaningful role for workers in developing security plans;
- Does not cover drinking water facilities that use hazardous chlorine gas; and
- Requires only the high risk plants selected by Department of Homeland Security (DHS) to submit security plans for approval.

The Senate Homeland Security and Governmental Affairs Committee passed chemical security legislation (S. 2145) on July 14. Critics contend that while S. 2145 is far better than the House bill, it also lacks key provisions to ensure that safer technologies are implemented when feasible and some level of public accountability.

Environmentalists and safety advocates have pressed Congress for several years to establish a uniform chemical security program that encourages industrial facilities to move away from using and storing large volumes of hazardous chemicals. Research indicates that in many cases, where safer production methods exist, use of hazardous chemicals pose a wholly unnecessary risk to workers and surrounding neighbors. The EPA estimates more than 100 chemical plants are close enough to major urban centers to each put more than a million people at risk in the event of an accidental or terrorist-related 'worst-case' chemical release.

Sens. Frank Lautenberg (D-NJ) and Barack Obama (D-IL) have proposed The Chemical Security and Safety Act (S. 2486), which would require chemical plants to consider inherently safer technologies to reduce or remove the potential danger to the community. So far, however, the Senate has largely ignored the proposal. The House will have an opportunity to vote on requiring the use of inherently safer technologies in a provision similar to the Lautenberg-Obama bill, which is expected to be offered as an amendment to H.R. 5695.