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Senate Finance Committee Pushes Alternative Minimum Tax Repeal

A bipartisan coalition of Senate Finance Committee members, including Chairman Charles Grassley (R-IA), Ranking Member Max Baucus (D-MT), Ron Wyden (D-OR) and Jon Kyl (R-AZ), introduced legislation last week to repeal the federal individual alternative minimum tax (AMT). The bipartisan "Individual Alternative Minimum Tax Repeal Act of 2005" would amend the Internal Revenue Code of 1986 to end the AMT beginning in the 2006 tax year. In contrast to the position taken by Bush administration officials, Senate Republican tax writers say they do not want to wait for a complete overhaul of the tax code to enact permanent changes to the AMT.

The legislation would result in a loss to the Treasury of $ 611 billion through 2015, according to the Congressional Budget Office -- almost 10 times the amount of tax cuts authorized by the fiscal year 2006 budget resolution. If the 2001 and 2003 tax cuts are extended past 2010, the price tag for AMT repeal would be significantly higher at $ 900 billion.

This bill sends a clear message that repeal of the AMT is a priority for tax writers in the Senate and will be addressed sooner rather than later. President Bush directed his tax panel to develop a solution to the AMT problem, after initially promising the Treasury Department would make recommendations to Congress at the beginning of this year. But Congress will not act on the tax panel's recommendations until early 2006 -- too long to wait for some Senators.

The AMT requires taxpayers to calculate their tax bills both with and without certain deductions, then to pay the higher amount. For Americans above a specific income range, the AMT eliminates certain tax benefits such as personal exemptions, itemized deductions for state and local taxes, and deductions for children. It was originally enacted in 1969 to ensure America's wealthiest taxpayers could not make excessive use of deductions and loopholes to avoid paying taxes they owed. However, the AMT has not been indexed for inflation and now forces millions of middle-income Americans to pay higher tax bills than they should have to. The Internal Revenue Service's own National Taxpayer Advocate, Nina E. Olsen, has called it the most serious problem facing individual taxpayers today.

The Senate Finance Subcommittee on Taxation and IRS Oversight, chaired by Kyl, held a hearing May 23 entitled "Blowing the Cover on the Stealth Tax: Exposing the Individual AMT." The panel heard testimony from Deputy Assistant Secretary for Tax Analysis Robert Carroll, Congressional Budget Office Director Douglas Hotlz-Eakin, National Taxpayer Advocate Nina E. Olsen, and Leonard Burman, co-director of the Urban-Brookings Tax Policy Center. Both Carroll and Hotlz-Eakin urged the subcommittee to consider a legislative fix for the AMT in context with the broader tax overhaul effort being undertaken by the President's Tax Reform Panel. Kyl said the Senate Finance panel would not consider recommendations from the tax panel before the first half of next year, and he wants to enact AMT changes before that. Finance Committee Chairman Grassley is also eager to act but acknowledged Congress might have to pass another one-year temporary fix to ensure that over 16 million new taxpayers do not get caught by the AMT in 2006. Grassley suggested the one-year fix would be included in the Senate's reconciliation tax bill at a cost of $ 30 billion.

The temporary fix currently in place increases the AMT income exemptions, a mechanism often used to keep the tax from affecting even more Americans. This fix is set to expire at the end of 2005. According to the Congressional Research Service, the end of those exemptions would increase the number of taxpayers paying the AMT to more than 19 million next year -- up from 2.3 million in 2003.

The AMT was never intended to tax such a broad segment of the population or to be relied upon as a revenue base. But full repeal of the tax now may once again have the unintended consequence of allowing a significant number of wealthy individuals to avoid paying any income tax at all. A more responsible approach would be a compromise somewhere between full repeal and one-year extensions. Senators on the Finance Committee have indicated they intend to work together to consider all possible meaningful solutions to the problems posed for middle-class taxpayers by the AMT.

House Appropriators Speed Through Spending Bills

While the Senate was bogged down last week debating judicial nominations and a possible vote to end the use of the filibuster when considering judicial nominees, the House has been hastily forging ahead on appropriations bills at a furious pace. Soon after the bicameral budget resolution was agreed to April 28, House Appropriations Committee Chairman Jerry Lewis (R-CA) laid out 302(b) allocations to the 11 appropriations subcommittees and markups immediately began. Seven of the bills remain to be completed.

Congress has until Sept. 30 -- the end of the fiscal year -- to pass all the appropriations measures. To date, the House has completed four of the bills: Energy and Water, Homeland Security, and Military Quality of Life/Veterans Affairs. House members hope to send all 11 appropriations bills to the Senate by the Fourth of July recess.

One notable development yet to reach the House floor occurred May 23 when the House Appropriations Subcommittee on Science, State, Justice and Commerce reported a $ 57.45 billion spending bill excluding funding that would support President Bush's proposal to consolidate several economic development programs. In the administration's budget plan, 18 community development programs -- including the Community Development Block Grant Program (CDBG) -- would be consolidated into a new "Strengthening America's Communities Grant Program" administered by the Commerce Department (CDBG is currently administered by the Department of Housing and Urban Development). In addition to undercutting the mission of these programs by placing them in the Commerce Department, the president's proposal would also cut funding for the consolidated programs by one-third.

The bill reported in this subcommittee excluded funding for this consolidation, as the president's proposal has received widespread bipartisan opposition. Sen. Norm Coleman (R-MN) commented on the president's proposal in February, saying, "The cuts and changes to the community development block grant program -- lifeblood of community development and revitalization -- are non-starters." The House Appropriations Subcommittee including HUD has not marked up their spending bill yet, but they will most likely include funding for CDBG in the mark.

Senate Appropriations Chairman Thad Cochran (R-MS) is expected to begin marking up the appropriations measures soon after the Memorial Day recess, but the Senate is already so far behind schedule it is unlikely to meet the Sept. 30 deadline. This means Congress will most likely be unable to complete all 2006 appropriations bills by the end of this fiscal year. It will necessitate once again using irresponsible continuing resolutions and complex omnibus appropriations bills to continue funding the government.

Thomas Pushes for Social Security Tax Cuts

The House Ways and Means Committee made Social Security the focus of its work over the past two weeks, holding a number of hearings and announcing the intention to write legislation this summer. Rep. James McCrery (R-LA), chairman of the Subcommittee on Social Security, stated House lawmakers will be ready to write Social Security legislation by July 1. However, this legislation could very well include a number of deleterious tax cuts -- masked as savings incentives -- that would primarily benefit the wealthy, not fix the problem of Social Security solvency, and would further add to the nation's budget deficits.

Ways and Means Chairman Bill Thomas (R-CA), held a press conference April 29 in which he both reasserted his dedication to reforming Social Security and proposed the idea of combining benefit reductions with additional tax cuts on savings and investments. Thomas and McCrery believe by coupling benefits cuts with tax cuts in their Social Security reform plan, they would compensate middle- and upper-income earners for the losses they would accrue under a privatization plan. In reality, these regressive proposals would primarily benefit upper income Americans and simply serve to drive the nation deeper into debt.

Thomas has indicated his proposed legislation may consider the following components:

- Expanded tax breaks for Individual Retirement Accounts (IRAs)
- Making permanent the capital gains and dividend tax cuts enacted in 2003
- Providing other tax cuts and tax incentives on investment income and pensions

Thomas has made no mention of a plan to pay for any of these tax cuts, each of which would come with large and long-term costs. These tax cuts would mostly benefit those people who have already received the majority of President Bush's first-term tax cuts. The Tax Policy Center, a joint project of the Urban Institute and Brookings Institution, has estimated people with annual incomes of over $ 1 million will receive tax cuts averaging $ 136,000 when the 2001 and 2003 cuts are fully in effect.

The proposals mentioned by Thomas would not only be costly, but they would hurt low- and middle- income workers. Benefit checks received by low-income earners represent a much larger percentage of their total retirement income as compared to other income brackets. Thus, low- and middle-income earners are more seriously affected by any cuts, big or small, to Social Security. The tax cuts, which Thomas claims would offset any reductions in benefit, will help the wealthy far more than anyone else, leaving low- and middle-income Americans with little support.

One of the specific proposals Thomas is pushing -- raising the amount workers can contribute to retirement plans such as 401(k)s and IRAs -- reflects a core component of the administration's proposal for private accounts. Individuals under 50 can currently contribute $ 14,000 per year to a 401(k) and $ 4,000 a year to an IRA. This proposed tax incentive would not add to retirement savings for the vast majority of Americans -- it would only help a very small percentage who already contribute the maximum amount allowed. Studies by the Congressional Budget Office and the Treasury Department show only about five percent of those eligible for IRAs and 401(k)s contribute the maximum amount. Allowing this small percentage of workers a greater opportunity to contribute to their retirement savings and save on taxes does nothing to help the low- and middle-income earners who would experience more debilitating benefit cuts under a privatization proposal.

These pension and investment tax cuts have a number of supporters who have been waiting for an opportunity such as Social Security reform to have a salient platform to push their priorities. These cuts benefiting the wealthiest Americans are deficit financed and thus will cause more harm over time. For legislators who claim they want to shore up budget and Social Security shortfalls, these proposals would irresponsibly add to long-term deficits and ignore the small but real problems of Social Security solvency. They should be rejected.

Court Waters Down Toxic Release Inventory

A federal appeals court ruled May 10 that the Environmental Protection Agency (EPA) can no longer require chemical facilities to report methyl ethyl ketone (MEK) releases under the Toxic Release Inventory (TRI). According to the 2003 TRI data, facilities released over 26 million pounds of MEK to the environment.

The American Chemistry Council (ACC) filed the petition to delist MEK from the TRI. TRI is a publicly available database that provides annual information on toxic chemical releases. It was created under the Emergency Planning and Community Right-to-Know Act of 1986. The industry association first submitted the petition to EPA in 1998, but EPA rejected the measure, arguing that because the chemical helped in the formation of ozone, which is harmful to people, the chemical qualified as toxic and therefore could be regulated under TRI.

ACC took the matter to court with a lawsuit against EPA's decision. In 2004, a judge ruled in EPA's favor, stating that because MEK contributed to the formation of a compound that causes adverse impacts to human health it could be regulated under TRI. The May 10 appeals court decision overturns that ruling. The judge ruled more narrowly that MEK does not fall under the definition of toxic because by itself the chemical does not cause harm upon exposure to the chemical.

The agency's tests have shown that exposure to MEK does cause irritation to eyes, nose and throat. The tests also confirm that the chemical does not cause any major health effect by itself. EPA's primary concern with the chemical is its contribution to ozone. EPA proposed a 2003 rule to remove MEK from the list of hazardous air pollutants regulated under the Clean Air Act.

MEK is used in lacquers and surface coatings, adhesives, printing inks, paint removers, and special lubricating oils. It is also used in drugs and cosmetics. According to a fact sheet on MEK produced by the state of New Jersey, repeated high exposure to the chemical can damage the nervous system and brain.

EPA has not decided if it would challenge the latest court ruling and try to keep MEK among the chemicals tracked in TRI.

CHEMICAL	Total On-site Disposal or Other Releases	Total Off-site Disposal or Other Releases	Total On- and Off-site Disposal or Other Releases
Methyl Ethyl Ketone	25,972,269 pounds	421,047 pounds	26,393,316 pounds

SOURCE: 2003 Toxic Release Inventory

Journalists Find Chemical Plants Insecure

The *New York Times* recently uncovered startling security flaws at chemical plants in Dallas and New Orleans after a writer "milled about" for some time around the fence line of plants before even being approached by facility security personnel. Reporters have regularly penetrated chemical plant security with great ease, notwithstanding claims by the chemical industry that it is voluntarily improving security.

A May 22 *New York Times* editorial reported on these gaping security holes surrounding chemical plants that use large quantities of the most hazardous substances.

Unfortunately, the example used by the *Times* is neither the first one nor an isolated case. The Working Group on Community Right-to-Know, an OMB Watch project, has compiled nearly 20 similar news stories from across the country detailing more than 60 instances of chemical plant security failing to keep out uninvited reporters, thieves and security test personnel.

Despite these examples, the chemical industry continues to oppose any federal legislation for chemical plant security and risk reduction, maintaining instead that companies can best ensure the public safety if left alone.

Thus far, the federal government has bowed to pressure from the chemical industry and refrained from passing any legislation. However, as evidence continues to mount, such as the breeches detailed in the *Times* editorial and recent congressional testimony from chemical industry safety and security experts, Congress may finally pass a law requiring

minimum standards. In a post-9/11 environment, it makes enormous sense to impose requirements on chemical plants to tighten security and to take steps to minimize the use of unsafe chemicals. Several bills have already been introduced and more are expected.

On April 12, Rep. Vito Fossella (R-NY) introduced the Chemical Facility Security Act of 2005 (H.R. 1562). The bill does not require priority facilities to consider safer chemicals or processes, nor does it require all facilities to submit their security reviews to the government for approval. Nonetheless, no other representatives have agreed to cosponsor the bill yet.

More recently, on May 10, Rep. Frank Pallone (D-NJ) introduced the Chemical Security Act of 2005 (H.R. 2237). Pallone's bill places more requirements on facilities to safeguard their plants from a terrorist attack, but still does not require facilities to use safer chemicals and processes where practical. The bill currently has two cosponsors -- Reps. Edward Markey (D-MA) and Rush Holt (D-NJ).

Recently, Sen. Susan Collins (R-ME), chairman of the Senate Committee on Homeland Security and Government Affairs, held a hearing on chemical security at which Sen. Jon Corzine (D-NJ) was lead witness. Corzine has introduced several bills on chemical security during previous sessions of Congress. His legislation was opposed by the chemical industry and Sen. James Inhofe (R-OK), chairman of the Environment and Public Works Committee, offered an industry-friendly bill that stalemated any movement on Corzine's bill over the past few years. Collins and Corzine are reportedly considering development of a bipartisan bill to be introduced this year. However, security advocates fear that any strong chemical security legislation will be watered down by industry opposition.

Iowa's 2005 Legislation a Mixed Bag for Open Government

The 2005 legislative session in Iowa closed with passage of two laws that improve the public's access to government information. While a third law did not pass, open government advocates still thought this was a good year for the public's right to know.

One open government victory for Iowa citizens was the passage of Senate File 403 (SF 403), which limits the costs that state and local government agencies can charge people for making copies of requested public records. Excessive copying fees are a common barrier that the public encounters at the national level and in states around the country. Gov. Tom Vilsack (D) signed SF 403 into law May 4. The new law limits duplication fees to the direct costs of making the copies and bars local governments from raising the copying fees to cover increased overhead costs, such as salary, benefits, depreciation, or electricity. SF 403 was introduced by the Iowa Senate Committee on Government Oversight.

Another positive open government measure that became law in Iowa was House File 772 (HF 772), which toughens the state's open meetings and open records law toward violators. The new law adds a "two strikes and you're out" provision that would permit the removal of any state or local government officials from office for two convicted violations of the open records law. Previously it took three strikes before officials were fired for such violations and no one had ever been removed under the provision. While advocates view the HF 772 as a step in the right direction, they acknowledge they do not know of any examples of state or local officials that received two strikes. The Iowa House Committee on State Government introduced HF 772 on March 15 and it became law on May 3.

The third beneficial open government bill proposed during the 2005 session was House File 372 (HF 372). The bill, which never received a vote, proposed to ban "walking quorums" which are used by public boards to avoid open meeting requirements by splitting up into small groups to hear testimony or debate issues instead of performing these actions as a full board. It would also have expanded the definition of a public meeting to include small groups of board members. Many cities, counties and school boards opposed it and put pressure on state legislators to keep it from even being debated.

Overall, Iowa proponents of open government deemed the 2005 legislative year a success. Kathleen Richardson, executive secretary of the Iowa Freedom of Information Council, said, "We're considering it a good year at the Legislature for open-government issues."

Lobby Disclosure Bill Filed

On May 17, Reps. Marty Meehan (D-MA) and Rahm Emanuel (D-IL) formally filed H.R. 2412, the Special Interest Lobbying and Ethics Accountability Act (SILEA). The bill would amend the Lobby Disclosure Act of 1995 (LDA), which requires organizations that engage in a certain amount of lobbying activity to register and file disclosure reports. Of particular concern to nonprofits are four provisions that would increase disclosure requirements.

H.R. 2412 includes no general exemption for nonprofit organizations except churches and their integrated auxiliaries. The bill focuses on four main areas of reform: enhancing lobby disclosure, slowing the revolving door between former members of Congress and lobbying firms, curbing excesses in privately funded travel, and strengthening enforcement and oversight of ethics and lobbying disclosure.

The provisions that increase disclosure would require more frequent filing of reports, disclosure of coalition membership and grassroots lobbying costs. It also would require electronic filing of LDA reports. For details of the bill's provisions see our summary

The bill currently has more than 60 Democratic cosponsors, but so far lacks any Republican support. Meehan is continuing to seek Republican cosponsors for the bill. However, House Republicans, whose ties to lobbyists have received intense media scrutiny, have been cool to the proposal. They are also reluctant to work with Emanuel, who chairs the Democratic Congressional Campaign Committee (DCCC). However, GOP leaders have not completely dismissed the calls for reform of

the lobbying rules. Rep. Bob Ney (R-OH), chairman of the House Administration Committee, has stated that he is interested in many provisions of the bill and would consider working with Meehan. Additionally, Sen. Russell Feingold (D-WI) is reportedly considering offering companion legislation in the Senate.

State Charity Regulation Proposals Listed

The National Council of Nonprofit Associations (NCNA) has published a list of 24 legislative proposals to regulate charities that are pending in 15 states. A list summarizing 2004 results in 19 states was also published. Both are available on the NCNA website.

The topics covered in the bills primarily include financial accountability, increased reporting and fundraising. Some states are responding to financial pressures caused by cutbacks in federal funds by putting limits on property tax exemptions for nonprofits. This is a double-whammy for nonprofits since they, too, face cutbacks in federal funds.

It is surprising that states would try to reap money from nonprofits. States continue to face long-term financial pressure from the soaring cost of Medicaid, with costs rising 8.1 percent to $ 119 billion in 2004, according to the Centers for Medicare and Medicaid Services. But according to a USA Today survey, seven of 15 states surveyed (accounting for 46 percent of the U.S. population) reported their tax collections have grown more than 10 percent so far in this budget year. The same states had reported 2004 tax collections 7.2 percent greater than in 2003, for a record combined total of $ 600 billion, the biggest increase since 2000. Revenue in 2005 appears to be even better based on early reports with many states reporting double-digit increases through April. Analysts at the National Conference of State Legislatures report state revenues are at or above what they expected this year.

NCNA released a statement May 23 that reported increased interest in regulation of charities by state governments "in the context of continuing pressure on state budgets, high-profile scandals captured by media across the country, federal attention to nonprofit regulation" and other factors. The lack of coordination between state and federal efforts raises the possibility of duplicative but inconsistent reporting requirements and governance standards. NCNA Executive Director Audrey Alvarado said, "this state activity is going largely unnoticed, even though it has far more serious consequences for the day-to-day operations of charities across the country."

The list for 2005 includes each state's bill provisions, status and last day of its legislative session. NCNA plans to update the 2005 list with bills passed or defeated. The 2004 list summarizes the provisions and notes whether the bill passed. In 2004, six bills primarily addressing financial reporting were signed by the governors of California, Hawaii, Iowa, Massachusetts, Maine and New Hampshire. While several bills have been approved by legislatures so far this year, none has yet been signed by the state's governor.

Group Asks Supreme Court to Consider Constitutionality of Electioneering Restrictions

The Wisconsin Right to Life Committee (WRTL) appealed to the Supreme Court May 24 asking it to overturn a provision of the Bipartisan Campaign Reform Act of 2002 (BCRA) that prohibits the broadcast of ads that mention federal candidates within 60 days of a general election or 30 days of a primary. WRTL ran ads in the summer of 2004 asking Sens. Russ Feingold (D-WI) and Herb Kohl (D-WI) to support President Bush's judicial nominees. It had to discontinue the ads on Aug. 15, 2004 because Feingold was running for re-election. The group says the ads were grassroots lobbying communications that should be protected by the First Amendment, not partisan electioneering.

In August 2004, WRTL filed a lawsuit challenging application of the electioneering communications rule prohibiting it from airing the ads about judicial nominees and similar ads it may want to run in the future. The suit asked a special three judge panel for the U.S. District Court for the District of Columbia for an injunction against application of the rule to these facts, even though the Supreme Court had upheld the general provisions of the law in *McConnell v. FEC* in December 2003.

The District Court dismissed the suit, saying the language of the *McConnell* decision does not allow challenges to specific applications of the law, called "as applied" challenges. WRTL argued that the Supreme Court had rejected a broad challenge claiming the electioneering communications provision of BCRA is unconstitutional on its face, but had not precluded the "as applied" challenge. It called the lower court's position "unprecedented" and at odds with "reason, reality and justice."

In its Jurisdictional Statement seeking Supreme Court review, WRTL emphasized factors that distinguish grassroots lobbying from partisan electioneering. These include:

- The ad refers to a specific pending legislative matter and not the election
- The federal candidate is mentioned as a federal officeholder, not as a candidate
- There is no reference to a political party, the officeholder's character or fitness for office or his or her record on an issue
- Contact information is provided so the public can make their views known to their elected representative
- The organization has a long-standing interest in the issue at hand, and
- The ads appeared both inside and outside the 30/60 day blackout period required by BCRA.

WRTL is a 501(c)(4) organization that has endorsed Republican candidates. The group could have used "hard" dollars, raised and spent subject to federal campaign finance regulations, to pay for the ads. However, they said this placed an unconstitutional burden on them.

OMB Watch Comments on Combined Federal Campaign Anti-Terrorist Certification

OMB Watch has filed comments on the Combined Federal Campaign's (CFC) proposed anti-terrorist financing certification for fiscal year 2006 (FY06) that support CFC's shift away from its FY05 requirement that participating charities check employee names against government terrorist watch lists. The CFC is the federal government's workplace charitable giving program. The comments suggest ways the proposed certification can be improved to provide clearer guidance and suggest that CFC develop procedures for organizations to cure any noncompliance discovered during the program year. OMB Watch is one of 12 nonprofit plaintiffs that have challenged the current certification in federal court

In 2004, CFC added language to its funding agreement that required participating organizations to certify that they do not "knowingly employ individuals or contribute funds to organizations" listed as terrorists on various U.S. government watch lists. CFC interpreted this to impose an affirmative obligation for charities to check their employees' names, as well as groups they give money to, against the lists. The proposed rule seeks public comment on a new approach for the FY06 program. It has three elements:

- A certification by the charity that it is in compliance with all laws, Executive Orders and regulations that bar transactions with groups or individuals subject to sanctions by the Treasury Department
- Acknowledgement of awareness of lists of blocked entities and individuals on Treasury's website
- A promise to notify CFC if the group "becomes noncompliant" after the certification. CFC would then "take such steps as it deems appropriate under the circumstances," including suspension from the program and recouping funds already disbursed.

OMB Watch's comments praised CFC's shift away from the express requirement for employee list checking, noting that the new approach recognizes the variety of ways different types of organizations can comply with anti-terrorist financing laws. The new approach also recognizes the many structural protections against diversion of funds for non-charitable purposes that are inherent in charitable operations, including Internal Revenue Service (IRS) regulations and other CFC certifications on financial accountability and governance. The comments cite the Principles of International Charity developed by the nonprofit sector as a resource for charities to ensure their funds are not diverted to terrorist organizations.

However, the comments suggest the language of the proposed certification be clarified to recognize that no entity can ensure absolute compliance. For instance, standards drawn from the certification used by the U.S. Agency for International Development (USAID) provide a clearer and more realistic statement. It requires that charities certify they do not "knowingly provide material support or resources to any individual or entity" involved in terrorist acts, "to the best of its current knowledge." It also clearly states that checking government watch lists for names of beneficiaries of service, vendors and the others is not required unless the organization "has reason to believe" the person or entity is involved in terrorist acts.

The importance of encouraging due diligence and providing due process to charities participating in CFC is cited in the comment's recommendation regarding discovery of noncompliance during a program year. OMB Watch suggests that CFC provide a process that allows charities an opportunity to cure the problem without interrupting their participation in the program. In addition, the comments say that, absent negligence in oversight, the CFC should not attempt to recoup donations already received when a charity comes forward to report and cure noncompliance. Any other approach is inherently unfair and discourages charities from coming forward to report and correct problems.

The background information CFC published to explain and justify the proposed rules notes a "pattern of abuse of U.S. and foreign charities" by terrorists to divert funds for illegal purposes. The OMB Watch comments argue that only a small number of U.S. charities have been shut down for alleged terrorist financing activity. Overall, other sources of money laundering, including trafficking in drugs and weapons, cigarette smuggling and misuse of informal banking systems, present a greater danger of diversion of funds to terrorism than charities. A 2004 research paper, *Terrorism and Money Laundering: Illegal Purposes and Activities* by attorneys Victoria Bjorklund, Jennifer Reynoso and Abbey Hazlett reviewed alleged links between charities and terrorist organizations, and found "few, if any, of these 'links' alleged that U.S. charities were unwittingly being used to support terrorist activities." CFC needs to substantiate its claim about abuses by charities.

GOP Seeks Power to Restructure Entire Federal Government

The Bush administration's systematic dismantling of the public's protections could soon accelerate as Republican lawmakers prepare legislation that would permit the unrestrained restructuring of the entire federal government through results commissions and fast-track reorganization authority.

As we reported earlier, House Government Reform chair Tom Davis has vowed that a top priority for this Congress will be giving the White House the power to fast-track through Congress recommendations for restructuring the federal government. Now *Inside EPA* is reporting that Davis's office is drafting legislation to grant the White House power to develop restructuring plans that would be fast-tracked through Congress without the possibility of amendment. A source has told *Inside EPA* that Davis is awaiting the White House's imminent proposals for results and sunset commissions, which may include some version of fast-track reorganization authority.

Meanwhile, other lawmakers are proceeding with their own versions of commissions to reorganize government. As we reported earlier this month, one senator, probably Sen. Sam Brownback (R-KS), slipped into the budget resolution a "sense of the Senate" provision endorsing the concept of a results commission. Brownback is reportedly coordinating with Rep. Kevin Brady (R-TX) to develop a new proposal that combines elements of each member's proposals in past

Congresses for results and sunset commissions respectively. Rep. Todd Tiahrt (R-KS) has jumped on the bandwagon by reintroducing the Commission on the Accountability and Review of Federal Agencies Act, a version of the results commission concept. The CARFA Act would link performance data, such as the simplistic reviews currently carried out in the Program Assessment Rating Tool (PART) assessments, with recommendations to consolidate or eliminate federal agencies. (See more about the CARFA Act.)

In addition to his bill for unconstrained authority to eliminate and restructure government agencies, Tiahrt has been busy in the last couple of weeks proposing several amendments to major appropriations bills for federal agencies to limit their ability to develop new protections of the public interest. His most recent effort was the appropriations bill for soldiers and veterans. Read more in our blog **REG•WATCH**.

These proposals are all supported by good government rhetoric and appear initially to be technical proposals about the structure rather than the substance of government. The problem is that structural overhauls can be a technical cover hiding major substantive changes that will adversely affect the public interest. The most recent structural change proposed by the White House -- the controversial proposal to eliminate the Community Development Block Grant as we know it and combine it with other community development programs -- is a case in point. When combined in the proposed new "Strengthening America's Communities Grant Program," the old programs would have lost not only their distinctive character but also much of their funding: a 34 percent reduction, without adjusting for inflation. Subtle clues in the fiscal year 2006 budget submission -- referring to "focuse[d] resources" and a "targeted, results-oriented approach" -- indicated the White House also intended to change the direction and purpose of the original community development programs.

Creating the possibility of wholesale reorganization of the federal government is a particularly troubling idea given this administration's hostility to protections of the public health, environment, safety and public welfare. As we have documented elsewhere, the defining characteristic of the Bush administration to date is a special interest takeover of the federal government that is systematically dismantling public protections. While dismantling existing protections, the administration has also been building a record of allowing unmet needs to fester, in a larger pattern of failure to serve the public. Wide-ranging powers to reorganize and eliminate government programs may prove disastrous for the public health, safety, civil rights, environment and other public interest concerns.

House Considers CDBG But Avoids Attacking PART

In the wake of the White House's attempt to put the Community Development Block Grant (CDBG) program on the chopping block, a House subcommittee held a hearing to determine whether a program as diverse and flexible as CDBG could be evaluated using OMB's one-size-fits-all performance measurements.

Factors Influencing the Hearing

The hearing focused on CDBG in isolation from other programs that fared poorly under OMB's performance measurement process, but the hearing did not address the systematic problems of that process. The popularity and importance of CDBG do not alone explain the form the hearing ultimately took. Instead, there are political factors at play that prevented the hearing from addressing these larger problems.

Political Context

Foremost among the many heated disputes inspired by the White House's fiscal year (FY06) budget submission was the proposal to eliminate CDBG in its current form and to combine it, at significantly reduced funding levels, with several other programs to be administered by the Department of Commerce rather than Housing and Urban Development (HUD). The White House justified its proposal by claiming that CDBG failed to produce results, as measured by the Program Assessment Rating Tool. Although Congress ultimately rejected that proposal, the problem remains that the White House failed CDBG in the FY 06 PART and could do so again in the future.

The consolidation proposal proved controversial for lawmakers on both sides of the aisle, because CDBG is an enormously popular program. Administered by HUD's Office of Community Planning and Development (CPD), CDBG gives federal money to state and local governments to support a variety of activities aimed to assist low- and moderate-income communities. State and local governments are given great flexibility in developing a program that best meets the needs of their given community. CDBG money has been used to enforce housing codes, build sidewalks and sewer systems, clean up and redevelop brownfields, and build affordable housing, among other activities.

The proposal to cut CDBG based on its supposed ineffectiveness put Republican lawmakers in a difficult bind. On the one hand, constituent pressures prevented them from agreeing with PART's assessment of CDBG. On the other hand, PART is a powerful tool that enables this administration to use the notional objectivity of quantified performance measurement to justify predetermined political outcomes; Republican lawmakers were thus constrained from attacking PART in its entirety. Moreover, a Republican member has sponsored a bill, recently reported out of committee, that would essentially codify the PART. When the House Government Reform Committee's Subcommittee on Federalism and the Census held its May 24 hearing, GOP members resolved this tension by seeking inputs on improvements to PART that could allow it to accommodate the special characteristics of CDBG, while ignoring the larger problems of PART.

CDBG and the Broader Context of PART

Although the House hearing focused entirely on CDBG, that program fared poorly in its PART assessment for the same reason that many other block grants -- and, for that matter, many programs important to the public interest--also fared poorly.

PART is, by design and in practice, a one-size-fits-all test focused less on meaningful assessments of actual effectiveness than on the political whims of the budget examiners conducting the assessment. The White House's Office of Management and Budget (OMB) has used PART since 2002. Under the guise of a neutral scientific tool, PART evaluates programs using questionable criteria, some of which conflict directly with programs' authorizing statutes. Although OMB purports to have specialized sets of questions for different types of programs (research and development, regulatory, block grants, and credit programs), in practice the questions for each type of program are essentially indistinguishable. Within each type of program, OMB does not even pretend to particularize its performance inquiry depending on the specific characteristics of a given program. After conducting these problem-ridden assessments, OMB then uses the PART scores to justify changes in program budgets.

PART is particularly ill-suited for all block grant programs, not just CDBG. The basic purpose of block grant programs is to send funds to the states with minimal strings attached. Imposing nationwide performance measurement requirements would force the states to gather uniform data, whether or not their specific programs were designed with those data end-points in mind. In contrast with the states' rights agenda that drove the development of many block grants, federal performance measurement (in particular a one-size-fits-all test like PART) aggressively trumps the states' own performance measurement processes and could have the effect of holding states accountable for consequences beyond compliance with basic legal requirements. Holding the block grant program itself accountable for failing to gather uniform performance data counters Congress's intent for the program.

In fact, the evidence indicates that the White House has used PART in a systematic attack on block grants, including CDBG. Grant programs rate significantly lower than in PART reviews than all other programs on average. For example, in the FY05 PART reviews, OMB scored no block grants as effective even though it gave that rating to 11% of all programs, and it rated only 5% of all programs as ineffective but gave that failing score to 43% of all block grants. This trend continued in the FY06 PARTs, in which only 27% of block grants were deemed effective while 47% of all other programs received the highest score.

The Hearing as a Balancing Act

Although CDBG was not alone in being slated for deep cuts justified by a failing PART score, the May 24 hearing focused on CDBG in isolation. The House has already rejected the controversial proposal in the White House's FY06 budget submission to combine CDBG with 17 other programs from five different agencies as the new Strengthening America's Communities Initiative, which would be relocated to the Department of Commerce and funded at $3.7 billion -- a 34 percent cut, without adjusting for inflation, from the programs' FY05 $5.6 billion budget. As to be expected from the political context, the hearing avoided the deeper systematic problems of PART and instead attempted to find a middle ground between saving CDBG from the ax while not rejecting PART altogether.

Disputing the CDBG PART Assessment

Instead of addressing the larger problems of PART, participants in the hearing disputed the basis for the program's rating of "ineffective." Critics within the agency and in the hundreds of communities served by CDBG have argued that the performance measures used by OMB do not adequately capture this flexible and dynamic program. Witnesses at the hearing focused in particular on OMB's decision to score CDBG a zero for clear programmatic purpose, based on the argument that "the program does not have a clear and unambiguous mission. Both the definition of 'community development' and the role CDBG plays in that field are not well defined."

HUD deputy secretary Roy Bernardi refuted OMB's PART rating and defended the performance of CDBG, saying the program has a purpose clearly outlined in the Housing and Community Development (HCD) Act of 1974, which established CDBG. Bernardi further asserted that HUD follows the intent of the law in its administration of the program. Congress intentionally designed the law governing CDBG to minimize HUD's role and allow communities to develop programs that meet their specific needs. In fact, in 1981, Congress specifically modified the act to reduce HUD's role from making qualitative assessments of grantee programs to simply assuring that grantees complied with the governing statute. In its hands-off approach to administering CDBG, HUD is following the directive from Congress.

Neither Bernardi nor the other witnesses used this occasion to emphasize that CDBG was not alone in being penalized under PART for following Congress's stated intent. For example, OMB penalized the Consumer Product Safety Commission, Occupational Safety and Health Administration, and Mine Safety and Health Administration for failing to use cost-benefit analysis in rulemakings, even though these agencies operated under statutory authority and, in the case of OSHA and MSHA, Supreme Court precedent forbidding the practice.

Also not discussed is an additional constraint on HUD's ability to collect performance information: the Paperwork Reduction Act. The PRA limits an agency's ability to collect any information from 10 or more people -- in other words, almost every occasion that an agency would be collecting information -- by requiring OMB approval. Agency information collections, no matter how important to the public interest, are collectively subject to a fictional budget of "burden hours," or the estimated time required to complete information collection. That budget in turn is subject to periodic reduction goals. The PRA mandates an annual reduction in burden hours, putting pressure on agencies to minimize the collection of information notwithstanding the need to gather more information about performance.

Saving Face for PART

All the participants in the hearing walked a political tightrope when the hearing shifted its focus to question of applying performance measures to CDBG. The performance measurement movement has been so successful in altering the mindset of many in government, the nonprofit sector, and elsewhere that there is little critical thinking about the underlying assumptions of performance measurement - namely, that it is possible to think of "performance" as a discrete set of activities susceptible of measurement in politically neutral, quantified data, and that these performance measures should be central rather than subsidiary to high-quality fiscal and management decisions. Moreover, the political context constrained any in-depth discussion of the problems of PART itself.

Accordingly, Bernardi and state and local groups at the hearing argued that performance measures can be established for CDBG and that PART simply used the wrong measures. For Bernardi and many of CDBG's proponents, the solution is that performance measures should be developed by the local communities rather than handed down by OMB. The "genius" of the program, as one state group called it, is its flexibility; it can cater to the specific needs of a given community. Since programs are developed by the community and tailored to community needs, that community knows best what the outcomes of the program should be and how they should be measured. As Bernardi stated in his testimony before the subcommittee, "because the CPD formula block grant programs promote maximum flexibility in program design and since the use of these funds is driven by local choices, HUD believed that performance based measurement systems should be developed at the state and local level."

In fact, HUD has been working with OMB and stakeholders since 2003 to develop better performance measures for the program. In September 2003, CPD issued a notice to all program grantees outlining its efforts to improve performance measures and encouraging grantees to develop their own local systems for measuring program outcomes. In response, 43 percent of grantees reported using performance measures or that they are working to develop such systems. Since that time, a working group of representatives from an array of national housing and community development associations came together to develop performance measures that reflected the objectives and outcomes of their programs. The resulting system allowed grantees to determine their own objectives "based on the intent of the project and activity. While program flexibility is maintained, the system offers a specific menu of objectives, outcomes and indicators so that reporting can be standardized and the achievements of these programs can be aggregated at the national level," according to Bernardi's testimony.

The witnesses sidestepped the systematic problem built into PART itself: namely, that the OMB budget examiners applying PART look only for a couple of measures applied across the board in a program. Despite HUD's work on developing performance measures that reflect the diverse objectives of the program, OMB still chose to evaluate CDBG using the one-size-fits-all PART measurements that not only failed to capture the intricacies of the program but also evaluated CDBG grantees on criteria that fell outside the scope of the authorizing statute. The one-size-fits-all reductiveness of PART cannot accommodate the multiple, project-specific outcome measures envisioned by the witnesses. Forcing PART to accommodate these program-specific concerns for CDBG alone, moreover, would do nothing for all the other programs suffering under the crudely mechanistic rigidities of PART.

The witnesses also danced around the problem of using such a flawed tool in making management and budget decisions. OMB budget examiners appear to launch PART assessments with predetermined political outcomes in mind, and the White House then uses the good government rhetoric of "results" to justify slashing the budgets of programs that fail the assessment. Though even CDBG's advocates noted problems with the programs, none of the witnesses suggested that cutting the budget was a solution. In fact, Sheila Crowley, president of the National Low Income Housing Coalition, argued that HUD is often crippled by lack of proper resources. Over the past decade, HUD has continued to administer the same public services with an ever-diminishing budget. PART is, naturally, oblivious to these resource constraints.

The witnesses argued for an alternative role for performance measurement: using performance measures as a management tool rather than a guide to budget decisions. Subcommittee Chair Michael Turner (R-OH) asked witnesses repeatedly if and how performance measures can be used not just to *prove* the effectiveness of a program but also to *improve* program effectiveness. Turner's questions prodded the witnesses to find a role for performance measurement as a vehicle for determining best practices and quality case examples to be circulated among CDBG grantees (but not imposed upon them). In Turner's alternative vision, HUD would gather project-specific performance information and then share the success stories of one grantee with others.

Currently, HUD gathers performance information only to ensure compliance with laws and regulations. In the mid-1990s, HUD introduced the Integrated Disbursement and Information (IDIS) reporting system, which allowed grantees to input data about program activities. While IDIS tracks the financial status of CDBG grantees, it does little to integrate that information with the various performance reports required of grantees. Turner seemed to see HUD's emphasis on compliance not as the result of the HCD Act and the 1981 follow-up minimizing HUD's role but, rather, as a missed opportunity for this kind of best practices consultation. HUD is currently working to improve the IDIS system in a way that will make aggregating data possible.

This interesting alternative approach is not possible in the current performance measurement climate. PART itself still demands an over-all assessment of the performance of CDBG and other programs in their entirety, without regard for the separate successes of individual projects or even the block-grant philosophy that the states themselves, as the fabled laboratories of democracy, should be experimenting on a state-by-state basis. The stated purpose of PART and the larger government performance movement is that budgetary and management decisions should both be determined by a shared universe of "performance" data; the alternative approach of performance measurement that determines neither but results only in nonbinding suggestions runs counter to that purpose. Finally, a bill pending in the House, the Program Assessment and Results Act, would give OMB a blank check to continue with its current approach and would do nothing to reshape performance measurement in the more palatable ways suggested by Turner and the witnesses at the hearing.

Despite the impossibility of Turner's alternative approach, the hearing concluded on that note. Several witnesses stated that, with better performance data, HUD could provide this kind of best practice information to grantees. Further representatives from state and local groups said that they would benefit from best practices guidelines and technical assistance from HUD.

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