In This Issue

House Conservatives Coopt DeLay into Pushing Dangerous Budget Process Reforms

After House Republican leadership avoided the derailment of the FY 2006 budget resolution by a small group of House conservatives over a standoff about budget process rules, the movement to change those rules in Congress has picked up steam once again. This time, however, the group of conservative House Republicans has enlisted the help of a powerful ally: Majority Leader Tom DeLay (R-TX).

The Hill newspaper reported last week that DeLay has been working behind the scenes with conservative Republicans seeking radical changes to the budget rules and leading members of the key committees in the hopes of implementing changes that would support DeLay's goals of defunding the federal government. This comes as a surprise since only a few months ago DeLay opposed an effort by a group of conservatives to make these same changes in the budget process.

Some aides on Capitol Hill believe DeLay's move to ally with House conservatives is a reaction to the embattled leader's recent trouble with charges about ethical violations as well as harsh attacks from liberal activist groups. Conservatives in the House have been some of DeLay's strongest supporters and make up his power base in the GOP caucus in the House.

DeLay claims he has always supported budget process reform - just not the piecemeal approach used by the Chair of the Republican Study Committee (RSC), Mike Pence (R-IN), and other conservatives during the beginning of the 109th Congress. Pence and other House Republicans pushed for individual budget rule changes during the Republican conference meeting after the 2004 elections as well as in amendments to the 109th Congress's rule package, both which DeLay opposed.

Specific proposals being discussed this year include annual spending caps and giving the budget resolution the force of law. These proposals were voted down on the House floor last year - some garnering less than 100 votes. But many House conservatives are optimistic that the support of someone like DeLay is all that is needed to gather the necessary votes to win approval on the floor. Rep. Mark Kirk (R-IL), chairman of the Tuesday Group, a caucus of about 40 Republican centrists, is much more confident about passing changes to the rules. Quoted in The Hill, Kirk stated, "This time I've got Tom DeLay." "He goes from someone not supportive of the rules package to someone who can make it happen."

The budget-reform "working group" created by DeLay includes himself, Pence, Kirk, Rules Committee Chairman David Dreier (R-CA), Budget Committee Chairman Jim Nussle (R-IA), Ways and Means Committee Chairman Bill Thomas (R-CA) and Rep. Jeb Hensarling (R-TX), who handles budget reform for the RSC. The group, except for Thomas, met for the first time during the week before the Memorial Day recess.

Pence said the ultimate purpose of the changes is to make it easier to pass tax cuts and more difficult to pass spending increases or create new programs. The working group will most likely consider some if not all of the following changes:

- Eliminating budgeting gimmicks often used by the White House.
- Moving up the date the president submits his budget to Congress.
- Postponing the start of the fiscal year.
- Reforming the reconciliation process.
- Creating sunsets (or time limits) for mandatory spending programs.
- Eliminating spending programs that have exceeded their authorization.

- Rewriting the Byrd rule, which limits changes in policy on appropriations bills.

These proposals will essentially make it much easier to cut spending and reduce federal investments in communities across the country and much more difficult for Congress to respond to future unknown needs.

There may still be one stumbling block in the process DeLay has set in motion. There appears to be resistance to these changes from members of the appropriations committee, including Chairman Jerry Lewis (R-CA) who attended one meeting of the working group, "just to listen," he said. Historically, appropriators have clashed with House conservatives about spending levels and budget rules.

There is no timetable set for future meetings at this point and despite DeLay's support and efforts, it is still unclear if any changes will be implemented this year.

Erosion of Retirement Security Continues in America

A recent wave of bankruptcies has caused the benefit pension plans of many large companies to be significantly under-funded or fold, leaving millions of workers dependent upon the government-sponsored insurance system: the Pension Benefit Guaranty Corporation (PBGC). These bankruptcies have put additional pressure on the PBGC to cover the payments to millions of Americans who were planning on their pensions for retirement. This wave of corporate bankruptcies that is burdening the PBGC makes it all the more important that the Social Security system remain a guaranteed benefit that is risk-free, especially for workers who have lost their pensions through no fault of their own. It is also a warning that the PBGC could become the equivalent of the savings and loan debacle of the 1980s.

The purpose of the PBGC is somewhat similar to that of Social Security. They both involve individual entities forming a collective agreement to help minimize future risk. The PBGC is an insurance system that guarantees pension plans to employees whose companies have gone bankrupt or have lost the means to pay their liabilities, while Social Security guarantees month-to-month benefits for anyone who contributed to the system while employed. The PBGC, first set up in 1974, is a federal corporation financed by fees from companies with defined-benefit pension plans. It provides retirees with monthly checks based on years of service and pay.

Normally, companies with pension plans maintain funds to cover their liabilities, but in recent years a number of businesses have under-funded their plans and thrown their obligations onto the PBGC. This trend has become more prevalent since 2000, and can be attributed to a mixture of low interest rates, stock market losses, lower overall corporate earnings, and an increase in the number of retirees guaranteed payments.

From 2000 to 2003, the agency went from a surplus of $9.7 billion to a deficit of $11.2 billion. Things have only gotten worse with a $23.3 billion deficit today and no sign of improvement in the future. Recently released data from the PBGC indicates the country's 1,108 weakest pension plans had an aggregate shortfall of $353.7 billion. These shortfalls mean probable benefits cuts for millions of people. While the program is able to make all payments owed to current retirees with failed benefits *right now*, the long-term solvency of the PBGC is questionable, and thus the pension plans of those who are working now. As United pilot Klaus Meyer, 47, of Bethlehem, PA, said, "I lost almost all my United stock value in the bankruptcy, and here's another part of the retirement I was promised that is gone. And now my Social Security is at risk. Where does it all end? You feel brutalized by the system."

Spotlight on Pension Issues

Under-funded pension plan troubles are currently in the spotlight because a number of large, high profile companies have been forced to declare bankruptcy over the past few years in part because of their pension liabilities. United Airlines recently defaulted on their pension plan and the PBGC made the decision to step in to rescue the company. While this decision will benefit the workers of United, PBGC does not always pay 100 percent of the amount promised to retirees by their employers. In the case of United Airlines, for example, PBGC will only guarantee $6.6 billion of the $9.8 billion promised to employees. If other companies default on their pension liabilities and PBGC covers the costs, other workers will no doubt experience the same loss.

Unless Congress acts to prevent under-funding of private pension plans, a number of the larger airlines in the U.S. with defined-benefit pension plans will be heading down the same path as United Airlines. PBGC Executive Director Bradley Belt has stated in an interview that United is only the latest and largest example of what ails the federal pension protection system. The system allows companies to drastically under-fund pensions, escalating defaults and driving the PBGC $450 billion in the hole. In three years, Belt says, it has gone from having a $7 billion surplus to a $23 billion deficit.

Delta Airlines is one company which may default soon, currently facing approximately $3 billion in pension shortfall payments over the next three years. The Congressional Budget Office estimates that a PBGC takeover of Delta's defined-benefit pension plan would add 40 percent to the corporation's pension coverage responsibilities. Airline and steel companies, in fact, account for 70 percent of total PBGC claims. General Motors is another large corporation showing signs of fiscal distress as well; on June 7 the company announced they would eliminate 25,000 jobs by 2008, partly due to the rising cost of their health care pension commitments.

Similarities to the Savings and Loan Crisis of the 1980s

Free market champions, who ruled the day in the late 1970s and early 1980s, argued that regulations would destroy the ability of banks to make money and generally argued that regulation was not good for the bank or the consumer. The result of this rather laissez faire approach was a period of deregulation in which government regulation was reduced or removed. Many savings and loan operations (S&Ls) took advantage of the lack of supervision and regulations to make highly speculative investments, in many cases loaning more money then they really should.

When the real estate market crashed in the 1980s, the S&Ls were crushed. They owned properties for which they had paid

enormous amounts of money but weren't worth a fraction of what they paid. Many went bankrupt, losing their depositors' money. This was known as the "S&L Crisis" as Congress stepped in to bailout the banks.

In 1980, there were 4,600 thrifts, by the mid-1990's less than 2,000 survived. The S&L crisis cost about $600 billion dollars in "bailouts," which is over $900 billion in today's dollars. As Cato Institute's Richard A. Ippolito points out, the PBGC situation is very similar to the S&L of the 1980s.

> "[T]he plans are permitted to hold assets that are mismatched to their liabilities (the main reason for the S&L crisis). Pension liabilities are like bonds and require a bond portfolio carefully matched for maturity to eliminate underfunding risks. But pensions hold large amounts of stock. Pension sponsors hope that stock investments will earn a higher return, reducing the need for contributions, but the PBGC holds the downside risks. In economic downturns, underfunding swells and bankruptcy rates increase, creating a potentially catastrophic rush on PBGC insurance."

Congress Adds Pensions to Other Retirement Security Work

The Senate Finance Committee held a hearing on this issue on June 7 in order to explore ways to prevent under-funding and pension collapse. Committee members heard from government officials, corporate executives, and union representatives. In the hearing, CBO Director Douglas Holtz-Eakin and PBGC Executive Director Bradley Belt told committee members pension laws need to be tightened so ailing companies cannot "smooth over" financial difficulties when making pension reports, or take steps to increase pension benefits while at the same time under-funding their plans.

A number of lawmakers have introduced bills addressing the pension issue. On June 9, Chairman of the House Education and the Workforce Committee Rep. John Boehner (R-OH) and Rep. Sam Johnson (R-TX) introduced a pension bill that would require companies with under-funded pension plans to fund them fully within seven years. Under the bill, companies would have less time to make up shortfalls in their pension funds. It would also require companies to disclose more information to employees about the financial status of their pensions.

The bill has draw criticism from Democrats on the committee, most notably the ranking member, Rep. George Miller (D-CA). Miller said the bill would discourage the use of defined-benefit pension plans rather than ensure their stability. "These actions would seriously undermine the use and attractiveness of defined-benefit plans for both employees and employers and would fail to provide the protection employees need for their hard-earned nest eggs," Miller commented. Boehner defended the bill saying the collapse at United called for fundamental changes to the current pension systems. While this may be true, the explosion of this issue also underscores the need for generally reliable and risk-adverse retirement benefits for all Americans.

With millions of people relying on shaky and at times unstable defined-benefit plans which may or may not pay out throughout retirement, the importance of the Social Security system grows exponentially. As Belt, head of the PBGC stated, "The defined benefit pension system is beset with structural flaws that undermine benefit society for workers and retirees and leave premium payers and taxpayers at risk of inheriting the unfunded pension promises of failed companies."

Given the risks we are currently seeing with corporate pension plans, it seems particularly poorly timed to be pushing for the addition of private accounts in the Social Security system. Proposals to institute such accounts have universally been criticized as adding inherent risk to retirement security. Not only would they provide risk for those who depend upon Social Security payments to stay above the poverty line, but they would also provide risk for the millions of families who depend upon a combination of pension plans and Social Security to live comfortably during retirement. As United pilot Klaus Meyer, 47, of Bethlehem, PA, said recently in the Washington Post, "I lost almost all my United stock value in the bankruptcy, and here's another part [his pension] of the retirement I was promised that is gone. And now my Social Security is at risk. Where does it all end? You feel brutalized by the system."

Yet it appears these two issues will be coming together in Congress. Rep. Bill Thomas (R-CA), chairman of the House Ways and Means Committee, which has jurisdiction over Social Security, has stated publicly he would like to combine Social Security reform with pension overhaul in a single piece of legislation. Given Thomas's strong support of private accounts, it is possible the combination of these two issues into a single piece of legislation could result in a dangerous bill that adds large amounts of risk in retirement for all American workers.

Horrific and Costly Legislation to Repeal the Alternative Minimum Tax Introduced

In a strange development in late May, a bipartisan group of Senators on the Finance Committee cosponsored legislation introduced by Sen. Max Baucus (D-MT) to permanently repeal the Alternative Minimum Tax. However, the legislation does not include provisions to offset the huge cost of the bill. While there is broad consensus that the AMT needs to be reformed as it continues to creep into the consciousness and tax returns of middle-class Americans, a full repeal would be horrible tax policy that would once again give a huge tax break to the super-wealthy and is the wrong choice when Congress is attempting to control federal deficits.

First introduced in 1969 and affecting only a few hundred people, the AMT was originally designed to prevent extremely wealthy individuals from avoiding paying any income tax with the excessive use of tax deductions and shelters. However, because two key aspects of the tax (the income exclusion and tax brackets) were not indexed for inflation, it has gradually begun to affect millions of upper-middle class Americans - something it was never intended to do. By 2010, approximately 30 million tax filers (about 26 percent of all filers) will be impacted by the AMT, according to the Tax Policy Center.

The Congressional Budget Office (CBO) has calculated full repeal of the AMT will cost $611 billion over the next ten years (2006 - 2015). According to the Center on Budget and Policy Priorities if the President's 2001 and 2003 tax cuts are extended, as they are likely to be, the cost would jump to $954 billion.

This is a tremendous cost to the federal government during a time of huge deficits and when future obligations, such as the wars in Iraq and Afghanistan, Social Security, and rising health care costs, will put tremendous strain on the federal budget. The CBO, Government Accountability Office (GAO), and many other analysts have repeatedly warned throughout this year that current fiscal policies are unsustainable over the long-term. These warnings have come without assuming repeal of the AMT, which will only exacerbate the long-term problems already facing the country.

The cosponsors of S. 1103 are throwing the baby out with the bathwater. The AMT needs to be reformed, but it would only take simple and small changes to ensure the tax would meet its original purpose of preventing a small number of extremely wealthy Americans from paying no income taxes. Full repeal of the tax is simply unacceptable.

While the bipartisan support for S. 1103 is disconcerting, its chances for becoming law are slim. The cost of full repeal alone would necessitate that it passes outside the reconciliation process this year, thus requiring 60 votes to pass. Charles Grassley (R-IA), chairman of the Senate Finance Committee, has stated his intention to include a one-year fix for the AMT in his committee's reconciliation bill at a cost of $30 billion. This would allow more time to implement a responsible reform option rather than full repeal.

Tax Cuts Often Slide Through Congress Undetected

It is one thing for Congress to cut taxes for major manufacturers such as those working in the wine, beer, and liquor industry, but it is another issue altogether to do so by burying the language in little-noticed sections of the highway reauthorization bill. Yet this is exactly what is happening right now and it is only one example of an increasingly opaque system Congress uses to make piecemeal changes to the tax code without debate.

Spending earmarks in federal legislation are not uncommon. They have long been a way for members of Congress to fund seemingly random pork projects hidden under the umbrella of otherwise needed legislation. With appropriations bills and other legislation often running thousands of pages in length, members of Congress can include line-items for projects in home districts or states that usually escape the scrutiny of the full Congress.

Recent cases of earmarks range from $1.5 million for a Henry Ford museum in Dearborn, Michigan, to $4.5 million to renovate a recreation center at St. Bonaventure University. Whether pork-barrel spending is done in an effort to please constituents, better communities and neighborhoods, serve political interests for lawmakers, or pay back a powerful special interest, the lack of transparency and debate surrounding such items is troublesome.

Even more dangerous than pork-barrel spending being hidden away in legislation is when tax provisions are tucked deep into bills, especially since these are often long-term, if not permanent changes. Take the afore-mentioned occupational tax on the alcohol industry for example. It is collected from thousands of producers and sellers of distilled spirits, wine and beer, and brought in over $100 million dollars in FY03 and FY04 for the federal government.

Last year when the Corporate Tax Bill was approved, it included a short-term tax provision which freed the alcohol industry of all "special occupational taxes," amounting to a tax cut of tens of millions of dollars for the so-called hospitality industry over the next three years. The language for this tax cut was included in a little-noticed section of the bill.

Today, the wine and beer lobby has convinced legislators to prioritize a permanent repeal of this tax. In order to expedite passage and reduce any possible criticism, the language was included in the highway reauthorization bill many view as a must-pass bill this year in Congress. As the House and Senate spend most of their time debating over the total level of funding for the bill (the House passed a $284 billion bill, while the Senate passed a $295 billion bill), the small tax provision continues to go mostly unnoticed.

This is not an isolated incident. The Senate version of the highway bill also contains a number of other tax cut provisions besides the alcohol occupational tax, including a cap on fishing rod taxes, a ticket tax exemption on sightseeing planes, and repeal of some custom gunsmith's taxes.

Regardless of the merits and practicality of these tax changes, tax laws should not be created or reformed under-cover in legislation focusing on other priorities. This is an insider tactic used to reduce dissent by often forcing lawmakers to vote for a bill containing small tax provisions with which they may not ideologically agree, but cannot vote against because of the legislative vehicle being used.

Changes to tax laws have a greater long-term impact on the government's ability to meet its obligations than the typical one-year pork-barrel spending project; to hide tax provisions in unrelated legislation only serves to remove transparency and healthy debate from the legislative process and eliminates any comprehensive attempts to federal budgeting.

Whistleblower Reveals Bush Administration Altered Climate Change Reports

A former oil industry lobbyist changed language in government climate change reports to undermine the science on climate change and present it as less problematic, according to a government whistleblower, in what is becoming a persistent problem of politics trumping science. Days after news outlets broke the story, Sen. John Kerry (D-MA) and Rep. Henry Waxman (D-CA) sent a letter to the Government Accountability Office asking for an investigation into the whistleblower's claims.

The whistleblower, Rick Piltz, accused Philip Cooney of changing several 2002 and 2003 reports, including *Out Changing Planet* and the *Strategic Plan for the United States Climate Change Science Program* that discussed climate change. He asserts Cooney made changes focused on creating an air of doubt around climate change science. One of the changes Cooney made was crossing out a section on ice and snowpack melting, noting that it strayed "from research strategy into speculative findings/musings."

Before joining the White House Council on Environmental Quality as chief of staff, Cooney was a lobbyist for the largest oil industry trade group -- the American Petroleum Institute. He is trained as a lawyer, not a scientist. Cooney's changes echo the beliefs of the institute, whose website states, "U.S. oil and natural gas companies believe that uncertainties about climate change make it hard to justify mandatory, severe, near-term emission reductions."

Piltz, a Senior Associate with the U.S. Climate Change Science Policy Office and former Associate Director of the U.S. Global Change Research Program, resigned from the Climate Change Science Program in March in protest of the politicization of his science program. He noted in a memorandum sent to climate change officials last week, "I have not seen a situation like the one that has developed under this administration during the past four years, in which politicization by the White House has fed back directly into the science program in such a way as to undermine the credibility and integrity of the program."

White House spokesman Scott McClellan defended Cooney in a press briefing, saying that many people within the federal agencies edit these reports, and since it was part of a broad review, "[e]verybody who is involved in these issues should have input in these reports, and that's all this is." However, on June 10, days after the accusations came to light Clooney abruptly resigned. The White House denies his departure had anything to do with the turmoil over the climate change report alterations.

Kerry and Waxman sent a letter to the Comptroller General David Walker at the Government Accountability Office (GAO) asking for an investigation into Cooney's influence on these reports. They broaden the request to also include other example of politics competing with science in government.

This is not the first time the White House has altered reports on climate change. The Bush administration has also repeatedly shown resistance to embracing the scientific community's consensus that global warming is occurring, and oppose mandatory regulations aimed at curbing the release of greenhouse gases. As previously reported by OMB Watch, administration officials cut out an entire chapter on climate change within EPA's 2003 Draft Report on the Environment. In this case, CEQ requested changes such as the removal of any reference to National Academy of Sciences (NAS) findings which confirmed the Intergovernmental Panel on Climate Change report asserting that climate change is happening, and humans are altering the atmosphere. This is particularly ironic, given that the White House requested the NAS report, but was unhappy with its findings. The administration also inserted a reference to a discredited study from the American Petroleum Institute.

FOIA Continues to Get Congressional Attention

Sens. John Cornyn (R-TX) and Patrick Leahy (D-VT) introduced another bipartisan Freedom of Information bill last week that would require any new bills that exempt information from the Freedom of Information Act (FOIA) to say so within the text. This bill joins several bills aimed at strengthening FOIA, while several others would chip away at the act.

Introduced on May 7, the new legislation (S. 1181) takes a section from another Cornyn and Leahy FOIA bill, the OPEN Government Act, and introduces it as a stand-alone bill. Section 8 of the OPEN Government Act requires that anytime Congress introduces legislation that would exempt information from disclosure under FOIA, it must explicitly say so within the bill text. Cornyn explained the need for the stand-alone bill, stating, "The justification for this provision is simple: Congress should not establish new secrecy provisions through secret means. If Congress is to establish a new exemption to FOIA, it should do so in the open and in the light of day."

The new bill already passed through the Committee on Judiciary June 9 and may have an easier time passing through Congress than the larger OPEN Government Act, which is expected to be a longer battle. The senators introduced the bill just days after a June 3 Cox News Service article pointed out 140 cases where FOIA exemptions were inserted into legislation.

One current example of one of these exemptions is language in the National Defense Authorization Act for Fiscal year 2006. As reported in a previous *Watcher*, the Defense Intelligence Agency within the Department of Defense is looking to obtain a FOIA exemption for its "operational files." This could hide a great deal of information that the public needs to hold the government accountable. The House stripped the measure from its version of the bill, H.R. 1815, however the Senate version (S. 1042) contains the exemption language in section 922. In fact, the Senate Committee on Armed Services recommended the exemption in its report. Congress rejected the same exemption for the agency in 2000.

Several other bills currently pending in Congress would chip away at FOIA.

- H.R. 1256 would consider information on animal identification "commercial information," therefore hiding information about the food supply.

- H.R. 1360 would label information about claims of asbestos-related disease and injury as a "confidential commercial or financial record."
- H.R.1513 would add an additional exemption to the FOIA statute to block the release of any photos of deceased individuals.

Nuclear Commission Allows Access to Classified Information, Maybe

The Nuclear Regulatory Commission (NRC) published a final rule June 2, allowing individuals or organizations access to classified information on agency licensing activities if they can demonstrate a "need to know." The agency originally published an identical final rule Dec. 15, 2004, but withdrew it after negative comments.

The rule amends NRC's regulations (10 CFR 25, 10 CFR 95) governing access to classified information and the procedures for getting the security clearance necessary to handle the information.

The changes to the rule broaden who could potentially access classified information regarding licensing activities. Previously, the only people allowed access to such information included licensees (holders of radioactive materials license), certificate holders, and others regulated by NRC. The new rule allows anyone not within the above categories to apply for a security clearance if they "need to know" classified information in connection with licensing activities. Need to know, as defined by 10 CFR Part 25, means "a determination by an authorized holder of classified information that a prospective recipient requires access to a specific classified information to perform or assist in a lawful and authorized governmental function under the cognizance of the Commission."

The impetus for the change was the upcoming license application that the Department of Energy will likely submit in order to operate a radioactive waste repository in Yucca Mountain, Nevada. Clearly, environmental and public interest groups would need to participate in these proceedings, and therefore the regulations needed to be altered to give them access. However, it is unclear if all interested parties will be able to get the access they need. It is not clear what the criteria are for determining the "need to know." NRC will also conduct background investigations on anyone applying to access them. Agency officials responsible for the information will then make any determination about the application.

NRC published the original final rule Dec. 15, 2004 along with a proposed rule the same day. The agency stated that if any adverse comments were submitted in reaction, it would withdraw the final rule. Seven environmental and public interest groups submitted a letter objecting over the rule's language. They asserted that the rule did not make it clear enough that public interest and environmental organizations, or other parties, could take part in licensing proceedings. They also questioned how the NRC will apply the "need to know" criterion.

In response to these comments, NRC withdrew the final rule Feb. 24. However, the agency did not take the comments into consideration for the new final rule. While it responded to the comments, it made no change, therefore the language still remains vague.

NRC states that this rulemaking only concerns access to classified information, and does not address safeguards information (SGI) or other sensitive but unclassified (SBU) information. The agency published a proposed rule Feb. 11 expanding the amount of information it can hide from the public as SGI. OMB Watch submitted detailed comments challenging many of the changes.

The June 2 final rule on classified documents is effective on July 5.

Biomonitoring Shows We Have Toxics in Our Bodies

Steve Lopez, a columnist for the Los Angeles Times, participated in biomonitoring tests with ten other people and writes about the troubling results in his June 8 column, "We've Got Really Bad Chemistry". As California considers a bill for a state-wide biomonitoring research program, this test case bolsters the claims that biomonitoring can become a useful tool for protecting human health.

Biomonitoring tests analyze blood and urine samples to determine levels of an individual's toxic exposure. Biomonitoring studies consistently find carcinogens, neurotoxins, reproductive toxins, developmental toxins, and endocrine disruptors in people, although in most cases below traditional levels of toxicological concern.

Lopez, a Points West resident in California, was troubled to learn that he had the second-highest level of mercury among the 11 people tested. However, he was even more surprised to learn that compared to his group, he had 40-times the median level of phthalates in his body. Phthalates are a group of synthetic chemicals that have been linked to reproductive damage. They are present in flexible polyvinyl chloride plastic (PVC), cosmetics, and other consumer items.

This small experiment demonstrates that biomonitoring tests can provide new and important information on toxic exposure and the health impact on individuals. Lawmakers could use such information to focus chemical testing efforts and improve regulatory protections. Current U.S. chemical regulations do not require companies to test the safety of tens of thousands of synthetic chemicals on the market. The public and decision-makers lack basic health and environmental information on the majority of chemicals in everyday items such as fabrics, toys, paints, and other consumer products. In fact, the U.S. Environmental Protection Agency lacks basic safety data on more than 85 percent of chemicals in commerce.

California currently has a bill before the state legislature that would establish a state-wide biomonitoring program. According to Nancy Evans, a Health Science Consultant for the Breast Cancer Fund, "The Healthy Californians Biomonitoring Program is close to passing in Sacramento. This legislation will establish first state-wide, community based biomonitoring program for the county. Each of us is a walking toxic waste site and it time to take action. We have a right

to know what is in our bodies so we know how to reduce risk and demand corporate accountability for cleaning up the community. Public opinion polls in California said eight out of 10 support the bill. Biomonitoring can provide communities with the evidence they need to argue for better regulations."

Open Records Act Helps Uncover Government Impropriety in Virginia

Two Virginia citizens' fight under the state's Freedom of Information Act (FOIA) helped to uncover an African safari that Virginia state officials took on the public's dime. The citizens ended up going to court and winning their case, which could have significance in other states.

Lee and Paulette Albright, who own a farm adjacent to the Montebello fish hatchery in Nelson County, inquired to Virginia Department of Game and Island Fisheries about the cancellation of tours of its facilities. The Department's initial answer that state budget cuts and layoffs prevented the hatchery from conducting tours did not convince the Albrights.

Lee Albright began filing requests for information under the state FOIA law to get more details about the Department's budget. One of the requests sought travel expense records of nine high-ranking members of the game department. The department charged Albright $3,000 for the records (which he paid), and then blacked out more than 100 pages of the requested information.

Albright took his case to court, arguing that the $3,000 was excessive. Nelson County Circuit Judge J. Michael Gamble agreed and lowered the fee to $989. After reviewing the materials, the judge also ordered the Department to turn over 65 of the 100 pages that the department had blacked out. The documents revealed that several department officials, many of whom have now resigned their posts, spent more than $10,000 of taxpayer money last fall to finance a personal African safari.

High FOIA fees have been used by government agencies, both at the national level and in states around the country to discourage requests and limit access to avoid public scrutiny and accountability. Just recently Kentucky attorney general capped what state agencies can charge for copying fees under FOIA charges. At the national level, Congress is considering the 'Faster FOIA' bill. Among other things, the bill would allow requestors to recoup their legal fees from the government if they take a FOIA case to court and win. The government would also be required to pay you back legal fees if it gives up its argument before the case goes to trial.

House Committee Repeals Parts of Campaign Finance Law

The House Administration Committee approved an amended version of the 527 Fairness Act (H.R. 1316) on June 8 in a straight party line vote. The bill would repeal some parts of the Bipartisan Campaign Reform Act of 2002 (BCRA) by increasing limits on individual and PAC contributions and removing restrictions on electioneering communications by some nonprofits. It would not put limits on contributions to independent 527 groups, but would require them to report to the Federal Election Commission (FEC) as well as the IRS. Internet communications would also be exempt from regulation. A competing bill that would restrict contributions to 527 groups was not considered.

H.R. 1316, sponsored by Reps. Mike Pence (R-IN) and Albert Wynn (D-MD), is intended to counter the influence of 527 groups by making it easier for parties and candidates to raise money and coordinate their activities with outside groups. Democrats opposed the measure, noting that the parties raised record amounts of money after BCRA passed. They also oppose efforts to limit independent 527s, saying they are constitutionally protected.

Committee chair Robert Ney (R-OH) proposed several amendments to the original bill. Nonprofits would be most impacted by repeal of the “Wellstone Amendment” to BCRA, which would remove restrictions on “grassroots” organizations making paid broadcasts that refer to federal candidates during the period before an election (electioneering communications). Although the Wellstone Amendment specifically refers to groups exempt under sections 501(c)(4), (5) and (6) of the tax code, charities, which are exempt under 501(c)(3), would still be prohibited from funding these “electioneering communications” unless the Federal Election Commission (FEC) exempts them by regulation. Current FEC rules do exempt 501(c)(3) groups, but that rule will be re-considered later this summer as a result of a legal challenge filed by BCRA sponsors Reps. Chris Shays (R-CT) and Marty Meehan (D-MA). The case challenged several FEC rules implementing BCRA, and a federal judge struck down a dozen rules in September 2004. (See the September 21, 2004 OMB Watcher for details.) The FEC has appealed that ruling.

One of Ney's amendments would require independent 527 groups to report to the FEC in the same manner as regulated federal political committees, even though contribution limits would not apply. These groups already report to the IRS, but the FEC requires more frequent reports. State and local political committees would be exempt from this requirement. The Ney amendment would result in duplicative reporting for many 527 organizations.

Another Ney amendment would exempt Internet communications from the definition of regulated public communications. This mirrors a provision in the 527 bill approved by the Senate Rules Committee in late April. (See a summary of the Senate bill.) The Shays-Meehan lawsuit overturned the FEC rule exempting Internet communications, and the agency is currently conducting a rulemaking process to re-write the rule. OMB Watch has submitted comments calling for a hands off approach.

The Senate 527 bill has provisions that conflict with H.R. 1316, since it would limit contributions to 527s. Since neither bill has been scheduled for floor consideration, it is unclear how they would be reconciled in conference if they pass their respective houses.

Update: Senate Finance Committee and Nonprofit Legislation

Senate Finance Committee activity on nonprofit regulation is picking up steam as the projected date for introduction of the long-awaited reform bill approaches. Conservative groups and Sen. Rick Santorum (R-PA) have expressed concern about the impact some proposals could have on small nonprofits and that there is inadequate resources to enforce existing laws. The committee's staff report on land donations was released June 7, and a June 8 hearing took an in-depth look at ways future abuse in this area can be avoided. However, the scope of the bill will likely be much broader, although details remain unknown. Meanwhile, the IRS has changed its selection process for audits, focusing on areas of high risk for abuse.

On May 20, a Senate Finance Committee staffer told the American Bar Association (ABA) Section on Taxation that a comprehensive bill addressing governance of tax exempt organizations is likely to be filed in June or July. Charles Grassely (R-IA), the Finance Committee chair and the staffer's boss, said it will be "comprehensive charitable governance reform." A staff draft paper released last year recommended changes in standards for exempt status eligibility, conflicts of interest, grantmaking, federal-state coordination, reporting and disclosure, boards of director responsibilities, best practices and funding for enforcement. (see a summary here.) But there are differing views on how comprehensive the legislation will be. Finance Committee ranking member Max Baucus (D-MT) said some changes in the law regulating nonprofits is necessary, but told reporters, "I don't know what yet."

In late April a letter signed by 72 conservative groups, including the Philanthropy Roundtable and Focus on the Family, wrote to Senate majority leader Bill Frist (R-TN) expressing concern over the impact staff proposals could have on small charities. The conservative groups' letter said these proposals would "substantially increase the regulatory burden on public charities. These proposals, if enacted, would severely reduce the ability of public charities to play their historic role of addressing public needs with private resources. Indeed, with regard to the large number of charities that are small institutions, it could put many of them out of business, while simultaneously discouraging the formation of new charitable organizations." The letter also argued that we do not now put adequate resources into enforcement of existing laws and suggested that creation of new laws without adequate enforcement is a mistake.

On May 31, Santorum and 20 other Republican senators wrote Grassley and Baucus expressing similar concerns. Santorum is the leading sponsor of the CARE Act, which focuses on incentives to increase charitable giving. That bill has been held up pending committee action on accountability, and both giving and reform issues are likely to be merged into one bill. The Santorum letter praised the committee's efforts to "root out wrongdoers in the charitable sector," but said, "we are very concerned that some of these proposals would have the unintended consequence of overburdening small organizations and/or creating disincentives to contribute to legitimate charitable activity at a time we are asking more of this community, not less." The senators asked Grassley and Baucus to take five factors into consideration as they draft their bill:

- The IRS should enforce existing law,
- Give more consideration to the impact on small organizations,
- The impact of contributions should be more fully vetted,
- One size fits all is not a workable approach, and
- Encourage philanthropy by families.

It is rumored that the reform bill will likely include provisions on private foundations, supporting organizations, land conservation easements as well as the charitable giving incentives pending in the CARE Act. The Finance Committee gave close scrutiny to conservation easements in the June 8 hearing, which capped a two year investigation into the Nature Conservancy and some land trusts. Staff findings were published the day before in a report that found some land conservation programs raised potential tax issues, including insider benefits.

The report, titled *The Tax Code and Land Conservation: Report on Investigations and Proposals for Reform*, recommends reform in the appraisal process that determines the size of the tax deduction donors of conservation easements may take. It also says insider transactions that benefit board members and poor record keeping were a problem at the Nature Conservancy. Both the Nature Conservancy and the Land Trust Alliance (LTA) have called for reforms in the appraisal process. LTA released a joint report with the American Society of Appraisers and the American Society of Farm Managers and Rural Appraisers calling for development of "uniform and clear professional guidelines" and a certification process for appraisers dealing with conservation easements.

At the June 8 hearing Senators heard from Republican and Democratic tax counsels, the Internal Revenue Service (IRS), land trusts, the Nature Conservancy and others. The testimony and statements by Grassley and Baucus are online. Grassely predicted that conservation easement reform would be part of the larger bill.

The IRS testified it currently has a team looking for patterns of abuse in this area. The result is audits of 240 donors and seven organizations. Four more organizations are in the pipeline for audits. These enforcement actions are consistent with a larger shift in the IRS' to greater enforcement targeting high risk areas. Martha Sullivan, the IRS Exempt Organizations Director, told the ABA meeting that their goal is to combat abuse practices, and four areas have been targeted: executive compensation, credit counseling agencies, donor-advised funds.

Host of Comments Filed on FEC Proposed Internet Regulation

Comments filed by a host of groups and individuals concerned with proposed regulation of Internet communications by the Federal Election Commission (FEC) reflect a general sense that the Internet should be largely unregulated, but disagreement over details. Over 1,000 groups, bloggers and others signed a Statement of Principles calling for protection of this "unique and powerful First Amendment forum." Comments from three reform groups opposed a *per se* exemption for organizations. OMB Watch comments recommended a hands-off approach.

The FEC proceeding is the result of an order from a federal court to reconsider its exemption of Internet communications from campaign finance regulations. A public hearing will be held in late June. No date for publication of a final rule has been set.

Many of the comments reflect agreement that individual activity on the Internet should be exempt, but the campaign finance reform groups suggest this apply only when personal or public computers are used. They suggest limiting individual use of office/corporate equipment to one hour a week. They say this is necessary to prevent corruption to they political system by "very large sums of money." The Center for Democracy and Technology comments called for exemptions for individuals and bloggers.

The eligibility of bloggers and online publications for the FEC's media exemption demonstrates the difficulties of applying pre-Internet area law to Internet communications. Several different proposals are made in the comments, but all suffer from difficulties presented by the blurry lines that separate the press from bloggers, advertisers and advocacy groups that publish on websites. The OMB Watch comments said, "Attempts to use the exemption from regulation for the press would only create confusion and arbitrary outcomes." The comments note, "To stretch the existing press exemption shoe to fit the big foot of Internet publishing will render the press exemption meaningless."

Application of disclaimer rules to bloggers that are paid by candidates or parties is another area of hot debate. While OMB Watch believes the public should be informed when candidates are paying for what appears to be independent speech, it also believes this issue is not unique to Internet communications. It would be better to address it in another forum, and not create more restrictive rules for Internet communications than off-line publications.

The comments filed by OMB Watch ask that the FEC "step back and allow the Internet to flourish as a public square where all are invited and all can be heard." The comments note that the Internet has empowered ordinary citizens, as seen in the 2004 election, and that key assumptions justifying regulation of campaign finance do not apply to most Internet communications. The comments propose that Internet postings and emails on one's own site be exempted from the definition of regulated contributions or expenditures. This would "allow people full use of the Internet to engage in politics without fear...", but "would leave unaffected payments made for banner ads or other forms of Internet advertising on other people's websites."

The increased interest in voter education and mobilization by nonpartisan nonprofits in 2004, much of it occurring on the Internet, was cited as a development that should be "applauded and nurtured," and not lost to regulation based on "speculative harms." A website operated by OMB Watch, NPAction.org, provided tools to assist nonprofits with these efforts and saw heavy traffic during the election season.

The comments demonstrate that "many of the underlying premises of campaign finance regulation do not hold on the Internet." For example:

- The link between money and influence is reduced, since "[o]pen access forecloses dominance by the well situated or by the wealthy."
- Campaign finance regulation assumes that "the source, the publisher and the audience are easily distinguished." This creates problems defining how the rule restricting republication of candidate materials would apply to common Internet tools, such as links, forums or audio/video communications. The comments argue against limiting these kinds of Internet communications.

Congress Grapples With Industry Influence at FDA

Efforts to free the Food and Drug Administration from the pharmaceutical industry's excessive influence seesawed between success and failure in the same week, as the House voted to ban drug company scientists from FDA advisory committees while an agency whistleblower revealed that a new drug safety board has been tilted in favor of the drug companies.

New Drug Safety Board Biased Towards Industry

David Graham, the FDA scientist who publicly revealed the agency's missteps in the Vioxx scandal, recently told the *Washington Post* that a new drug safety office created in the aftermath of the scandal is already "severely biased in favor of industry."

Reeling from disclosures of the agency's failure to address the safety of Vioxx and other drugs after they have been introduced to the market, FDA announced in February the creation of a new Drug Safety Oversight Board (DSB) charged with focusing on post-market drug safety issues. Although intended to provide independent oversight of the Center for Drug Evaluation and Research (CDER), the DSB has been located within CDER, and 11 of the 15 voting members are senior CDER management.

The new DSB has been compromised not just by its membership roster but also by its lack of authority to do the job it was created to do. Although it was created in the wake of FDA's inaction in the Vioxx case, the new DSB has been given no authority to pull drugs deemed dangerous off the market.

Sen. Chuck Grassley (R-IA) echoed Graham's criticism of the DSB, adding in a letter to acting FDA commissioner Lester Crawford that the board does not go far enough in ensuring drug safety and, in fact, amounts to "nothing more than the status quo."

Grassley also questioned FDA's decision to make the proceedings of DSB private. Unlike advisory committee meetings, which are required by law to be conducted in the open, DSB deliberations will be kept from the public. In his letter, Grassley expressed surprise "that the FDA has chosen to make DSB deliberations private at a time when the agency should be making every effort to improve transparency and accountability." Grassley asked Crawford to explain how FDA will ensure the independence and objectivity of the board.

House Works to Block Industry Bias on Advisory Panels

Meanwhile, the House appropriations committee voted on June 8 to limit conflicts of interest on FDA advisory committees. The House voted 218-210 to pass an amendment offered by Rep. Maurice Hinchey (D-NY) to the FDA/USDA appropriations bill, prohibiting any expenditure of funds for advisory committees that waive conflict-of-interest provisions.

FDA uses advisory committees of outside scientists to advise the agency on the safety and effectiveness of drugs and medical devices. Scientists on these panels have frequently been found to have ties to the makers of the drugs and medical devices under review by the advisory committees. For instance, 10 of the 32 scientists on FDA's COX-2 advisory panel had ties to manufacturers of the drugs.

Because the amendment is limited to advisory committees, it would not apply to the Drug Safety Oversight Board.

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