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The Watcher
March 18, 2008 Vol. 9, No. 6

In This Issue

White House Interferes with Smog Rule

The U.S. Environmental Protection Agency (EPA) announced March 12 its revision to the national air quality standard for ozone, or smog. While the new standard is an improvement, EPA did not go as far as its own scientists had recommended. Last-minute changes orchestrated by the White House have also mired the rule change in controversy. In addition to the new standard, EPA proposed legislative changes to the Clean Air Act, which environmentalists and lawmakers immediately criticized.

The Primary Standard

EPA regulates ozone under the Clean Air Act. Exposure to ground-level ozone is associated with a variety of adverse health effects including asthma attacks and premature death.

EPA announced its decision to tighten the primary standard for ozone to 0.075 parts per million (ppm) from the current level of 0.084 ppm. In July, EPA had announced its intent to tighten the standard and had proposed a range of 0.070-0.075 ppm. The Clean Air Act requires EPA to reevaluate the standard for ozone every five years, although the agency had not revised the standard since 1997. The current revision comes as a result of a lawsuit filed by environmentalists concerned about public health (*American Lung Association v. Whitman*).

EPA's primary standard for ozone is intended for the benefit of public health. EPA must base its decision on the latest scientific evidence and may not consider compliance costs. When EPA sets out the implementation plans for meeting ozone standards (the next phase in this process), it is allowed, and indeed required, to consider costs in order to create a situation in which communities and polluters can meet the standard but bear the lowest compliance costs possible.

Recommendations of EPA Experts

EPA's Clean Air Scientific Advisory Committee
Primary standard: 0.060 parts per million (ppm) - 0.070 ppm
Secondary standard: 7.5 ppm-hours - 15 ppm-hours

EPA Staff
Primary Standard: 0.060 ppm - "somewhat below" 0.080 ppm
Secondary Standard: 7.5 ppm-hours - 21 ppm-hours

EPA Administrator Stephen Johnson
Primary Standard: 0.075 ppm
Secondary Standard: 21 ppm-hours

Final standards announced March 12

Primary Standard: 0.075 ppm
Secondary Standard: identical to primary standard

EPA's decision has drawn criticism from many environmentalists and public health advocates who complain EPA did not go far enough in tightening the standard. The American Lung Association called the decision a "missed opportunity" and said, "Thousands will suffer more and die sooner than they should."

According to an EPA analysis, tightening the primary standard to 0.075 ppm will prevent at least 260 premature deaths, 890 heart attacks, and 200,000 missed school days every year starting in 2020. Had EPA adopted a standard of 0.070 ppm, the analysis shows the more protective standard could have prevented an additional 300 premature deaths, 610 heart attacks, and 440,000 missed school days each year.

The American Lung Association and others point out that EPA did not heed the advice of its own scientists. EPA's Clean Air Scientific Advisory Committee — an independent body of scientists charged with making recommendations on air pollution standards — recommended EPA adopt a primary standard of 0.060-0.070 ppm. EPA's staff scientists recommended a standard of 0.060 ppm — "somewhat below" the current standard. EPA's Children's Health Protection Advisory Committee called on EPA to adopt a standard of 0.060 ppm and cited the

vulnerability of children to ozone's harmful effects.

Industry groups and anti-regulatory lobbyists are unhappy with EPA's decision to tighten the standard at all. Groups like the National Association of Manufacturers (NAM) claim a tighter standard will cause economic hardship.

EPA and the White House Office of Management and Budget (OMB) frequently heard the complaints of industry as the agency prepared to announce its decision. In three closed-door meetings, representatives from EPA and OMB met with lobbyists from NAM, the Edison Electric Institute, the National Paint and Coatings Association, the American Petroleum Institute, and the National Taxpayers Union, among others. On one occasion, OMB and EPA met with representatives from the public interest community, including groups such as the American Lung Association, the American Academy of Pediatrics, and the Natural Resources Defense Council (NRDC).

The Secondary Standard

EPA also announced a new secondary standard for ozone. As it has in the past, EPA will set a secondary standard identical to the primary standard, in this case, 0.075 ppm.

Under the Clean Air Act, EPA may set a secondary standard for the protection of public welfare. This provision allows EPA to tailor a standard to meet special considerations, such as seasonal variance, with the goal of protecting things that do not directly impact public health but may impact our way of life, such as ecological health.

When EPA first proposed the revised standard for ozone in July 2007, it laid out two options for the secondary standard: 1) tighten the standard to the same level as the primary standard; or 2) set a separate seasonal standard that would afford additional protection to sensitive plant life harmed by ozone's deleterious effects during times of intense ozone exposure.

EPA intended to adopt the second option. However, last-minute pressure from the White House forced EPA into adopting a secondary standard identical to the primary standard.

On March 6, Susan Dudley, administrator of OMB's Office of Information and Regulatory Affairs (OIRA), wrote to EPA Administrator Stephen Johnson complaining about the agency's plans to set a seasonally adjusted secondary standard different from the primary standard. Dudley urged EPA to consider the potential economic impact of the separate secondary standard and questioned the agency's scientific justification.

Dudley has a history of opposing regulation. Before heading OIRA — the clearinghouse for executive branch regulations — Dudley worked at the Mercatus Center, an anti-regulatory, industry-funded think tank at George Mason University. Her nomination to head OIRA stalled in Congress, partially in response to public opposition organized by a coalition of good government, environmental, and labor groups, including OMB Watch. As a result, President Bush installed her by recess appointment in April 2007.

On March 7, Marcus Peacock, EPA's Deputy Administrator and Regulatory Policy Officer, replied to Dudley. Peacock said the Clean Air Act prohibits EPA from considering costs in setting the secondary standard and that the agency had provided ample scientific rationale for its decision.

EPA appeared ready to dismiss the White House's concerns. On March 11, just a day before announcing the ozone standards, the agency prepared a talking points memo indicating EPA Administrator Stephen Johnson intended to adopt the second option — the seasonally adjusted standard: "The seasonal form is the most scientifically defensible. Ozone decreases the ability of plants to produce and store food. The impact of repeated ozone exposure accumulates over the course of the growing season." According to NRDC, Johnson used these talking points in a meeting with Bush. (The talking points memo was marked confidential but is now available in the rulemaking record.)

In defense of Johnson's decision, the memo cited studies and comments by the National Academy of Sciences, the National Park Service, the U.S. Department of Agriculture, and EPA's own staff and independent science advisors. Johnson's decision to choose the "scientifically defensible" option is consistent with the Clean Air Act's requirements that the agency base its decision on the latest and best available science.

However, at the last minute, President Bush was brought in to settle the dispute between EPA and OIRA. Under Executive Order 12866, Regulatory Planning and Review, the director of OMB or an agency head may ask the president to resolve disputes that occur during the OIRA review process. It is unclear who asked Bush to settle the dispute over the secondary standard. Bush sided with OIRA and forced EPA to cancel its plans to adopt a separate secondary standard and instead keep the two standards identical. (A letter identifying Bush's involvement, as well as Dudley's March 6 letter and Peacock's March 7 letter, are collectively available in this document. Public disclosure in the rulemaking record of this type of divisive internal policy debate is unusual.)

An initial draft of the *Federal Register* notice EPA planned to publish to formally announce its decision also demonstrates the agency was preparing to adopt a new, seasonally adjusted secondary standard. A comparison of the initial draft with the draft now available reveals a host of edits that delete mentions of a seasonally adjusted secondary standard and erase evidence of the scientific justification in support of it.

In the initial draft, EPA discussed the available science in support of setting a new secondary standard and sided with public commenters, such as Environmental Defense and the National Park Service, who urged the agency to adopt a standard more protective of sensitive plant life. In the current iteration, EPA claims scientific uncertainty and sides with commenters such as Exxon-Mobil and the American Petroleum Institute.

EPA deletes a number of notable passages from the initial draft in the revised version. In the earlier draft, EPA stated a seasonally adjusted secondary standard "is clearly supported by the basic biological understanding of how most plants in the U.S. are most biologically active

during the warm season and are exposed to ambient [ozone] throughout this biologically active period." In addressing industry's complaints that not enough new science had emerged in support of a secondary standard since EPA's last revision, the agency stated, "EPA disagrees that these uncertainties have not been materially reduced."

In the current draft, EPA reverses course and legitimizes the industry groups' objections. For example, EPA states, "As reflected in the public comments, the Administrator also recognizes that there remain significant uncertainties in determining or quantifying the degree of risk attributable to varying levels of [ozone] exposure [and] the degree of protection that any specific cumulative, seasonal standard would produce."

Process Changes

In a surprise move, Johnson also announced his intent to seek legislative changes to the Clean Air Act. As discussed above, currently, EPA must base its standard-setting decisions for air pollution on the latest scientific evidence and can only consider compliance costs when developing implementation plans.

Johnson wants Congress to consider changes to the Clean Air Act that would allow EPA to consider costs in the standard-setting process. Legislative changes would be necessary because the Act is explicit in prohibiting the consideration of costs, a notion the U.S. Supreme Court upheld in 2001 (*Whitman v. American Trucking Association*).

A recent OMB Watch report found that economic analyses in environmental rulemaking often overstate compliance costs. Cost assessments do not, and cannot, account for technological improvements that may be developed to control pollution more efficiently, the report found.

Environmentalists and public health advocates immediately assailed Johnson's proposal. Frank O'Donnell, president of the nonprofit Clean Air Watch, said the changes "would be a radical attack on the Clean Air Act" and said Johnson's proposal "is taking a page directly from the playbook of polluters and their most ardent supporters in Congress."

In a statement, Sen. Barbara Boxer☼ (D-CA), chair of the Senate Environment and Public Works Committee, also criticized the proposal: "It is outrageous that the Bush Administration would call for changes that would gut the Clean Air Act, which has saved countless lives and protected the health of millions of Americans for more than 35 years."

A March 17 *New York Times* editorial predicted Congress would dismiss the proposal: "Since this would permanently devalue the role of science while strengthening the hand of industry, the proposal has no chance of success in a Democratic Congress."

The House Oversight and Government Reform Committee has scheduled an oversight hearing for April 10 about the revised ozone standards. The Committee has not yet announced a witness list.

EPA will now begin considering implementation policy for the revised standards. EPA determines compliance at the county level. Counties will have to come into compliance with the new standards sometime between 2013 and 2020.

Bipartisan Consensus Forming on CPSC Reform

Although differences between the House and Senate still exist, Congress is moving toward a bipartisan agreement on major reforms to the Consumer Product Safety Commission (CPSC). Bills from each chamber need to be reconciled, but if Congress can agree on a single proposal, it will set up a showdown with the Bush administration over new provisions intended to expand consumer protections by revitalizing the CPSC.

On March 6, the Senate passed the Consumer Product Safety Commission Reform Act (S. 2663) by a veto-proof margin of 79-13. Among the bill's ten cosponsors were two Republicans, Sens. Susan Collins (R-ME) and Ted Stevens (R-AK), marking a significant change from December 2007 when not one Republican cosponsored similar legislation.

The House passed its version of CPSC reform in December 2007 (H.R. 4040), but the Senate was unable to move its companion bill because of a lack of bipartisan agreement. These efforts came amidst a record year for recalls of toys, pet food, tires, and other products.

Both bills increase funding and staffing for CPSC and expand the number of commissioners from three to five. The House version expands the agency's budget to $80 million in FY 2009 and $100 million in FY 2011 but does not authorize funding beyond that year. The Senate bill calls for $88.5 million in FY 2009 and then increases the budget by ten percent per year through FY 2015.

S. 2663 is considerably stronger than the House bill in significant ways. For example:

- The cap on civil penalties for those violating the law increases to $20 million (from the current $1.8 million level), twice the level in the House bill
- All children's products have to pass third-party safety certification before they can be marketed. The House bill subjects only CPSC-approved products aimed at children 12 years and under to third-party testing
- The Senate bill establishes a public database to report on injuries, illnesses, and the risks associated with consumer products from consumers, government agencies, health care providers, and others. H.R 4040 calls for a CPSC study to plan for a database
- Employees of manufacturers and the CPSC who blow the whistle on supply chain problems or hazards receive protections to encourage the flow of information to the CPSC about harmful products. The House bill does not contain a whistleblower protection provision
- State attorneys general would be able to enforce CPSC's rules, standards, orders, recalls, and certifications when they determine there is potential harm from a product. Like the database, this provision allows additional information to be collected and

action taken, such as removing recalled products from store shelves. The House bill only allows state attorneys general to use injunctions to enforce any rule involving a mandatory recall; CPSC recalls are voluntary, however

In a March 3 Statement of Administration Policy (SAP), the White House strongly objected to the expanded powers for state attorneys general contained in the Senate bill. The statement argued enforcement should remain the province of the CPSC, which currently relies on input from state and federal agencies about product issues. In addition, the statement raised the specter of a "confusing patchwork of safety standards that will make it impossible to enforce uniform, national policies" if state attorneys general are allowed to interpret what constitutes violations of CPSC policies.

The administration's objections parallel those raised by industry groups, according to a March 14 BNA article (subscription). The major concern expressed by business representatives quoted in the article and in the White House's policy statement is that additional time and money will be spent on litigation if states have this expanded enforcement authority. According to the article, however, if the CPSC has initiated its own action for rules violations, a state attorney general cannot bring action while the CPSC's action is pending.

Consumer advocacy groups support the state level enforcement powers. They argue the stronger enforcement provisions could keep unsafe products off the market and thereby reduce litigation, and that having states actively supporting CPSC's regulatory authority helps a poorly staffed and funded agency perform its functions better by providing additional "cops on the beat."

The White House also objects to the whistleblower protections and the public database, among other provisions included in S. 2663. The SAP states preferences for some provisions of the House bill over parallel Senate provisions, but stops short of threatening a veto.

House Passes Compromise FISA Bill

The House recently rejected the president's request to pass and send to the White House a Senate bill to extend surveillance authority and grant telecommunications companies retroactive immunity for assisting in wiretapping. Instead, on March 14, the House passed the FISA Amendments Act of 2008 (H.R. 3773), which rejects immunity for telecommunications companies and imposes stronger civil liberties safeguards.

In summer of 2007, President Bush signed the Protect America Act of 2007 (PAA), which granted the government the authority to wiretap anyone, including U.S. citizens, without any court approval as long as the "target" of the surveillance is located outside the U.S. The bill included sunset provisions that would automatically eliminate the surveillance powers after six months if Congress did not act to extend the authorities. The provisions were scheduled to sunset in February.

In mid-February, the Senate passed the FISA Amendments Act (S. 2248) by a vote of 68 to 29. The bill included immunity for telecommunications companies that may have participated in the administration's illegal warrantless wiretapping program and granted the administration wide warrantless surveillance powers. Under the Senate-approved bill, the administration could target foreign surveillance involving communications of American citizens without judicial approval.

Shortly before Congress's February recess, the House leadership declined to consider S. 2248 and, after President Bush threatened to veto a short extension of PAA, the PAA powers expired. Last week, the House, going into secret session — a rare occasion, not performed since it was invoked to discuss America's involvement in Guatemala 25 years ago — introduced and passed a substitute H.R. 3773 to the previously passed RESTORE Act.

The bill includes a number of provisions to ensure protection of civil liberties while granting broad national security powers. H.R. 3773 includes provisions which:

- Require the government to target and receive warrants for non-U.S.-citizens without receiving individualized showing of probable cause
- Grant no immunity for telecommunications companies for their alleged involvement in illegal warrantless wiretapping programs, though it does allow for certain procedures to allow telecommunications companies to rely upon classified information
- Require approval of the Foreign Intelligence Surveillance Court for surveillance procedures
- Prohibit the government from doing an end-run around the Fourth Amendment by reverse targeting American citizens through surveillance that is targeting foreigners
- Require an audit of government warrantless surveillance practices after 9/11 by a congressional commission

The bill sunsets at the end of 2009, along with various provisions of the USA PATRIOT Act, thereby allowing a new administration to consider their expediency and utility.

The White House denounced the House bill as an affront to the government's efforts to provide national security. The president again vowed to veto the House bill, stating, "Congress should stop playing politics with the past and focus on helping us prevent terrorist attacks in the future. Members of the House should not be deceived into thinking that voting for this unacceptable legislation would somehow move the process along."

Attorney General Michael Mukasey and Director of National Intelligence Mike McConnell issued a joint statement saying that the House bill "would not provide the Intelligence Community the critical tools needed to protect the country." Mukasey and McConnell objected to the bill on three grounds. First, it does not provide what they see as the necessary protections to telecommunications companies and that those companies' cooperation is necessary to conduct the war on terrorism. Second, they argued that requiring court approval for surveillance will result in the loss of valuable intelligence. Finally, Mukasey and McConnell objected to the short sunset, which they argued would create instability of enforcement, and to

the creation of a congressional commission to investigate warrantless wiretapping.

On the House floor, Rep. John Conyers☼ (D-MI), chairman of the House Judiciary Committee, pointed to the continuing controversies surrounding the administration's conduct of the war on terrorism. "We learned just yesterday that the FBI was continuing to misuse the authorities we granted it under the Patriot Act six years ago to unlawfully obtain information about law abiding Americans. We learned just four days ago that the National Security Agency was using its massive powers to create a nationwide data base of American citizens," said Conyers.

"The U.S. House today passed responsible legislation that arms our intelligence community with powerful new tools to keep us safe and restores essential constitutional protections for Americans that were sharply eroded when the President signed the Protect America Act into law last August," said House Intelligence Committee Chairman Silvestre Reyes (D-TX). "We have put the security of Americans first and foremost. We will continue to work to move this forward in a manner that provides for both our nation's security and liberty."

The substantive differences between the House and Senate bills leave only two options open for moving forward. Either the differences between the bills will have to be worked out in a House-Senate conference, or the Senate will have to pass H.R. 3773. Given that the Senate has decided to provide immunity to the telecommunications industry and that the administration is openly opposing the House bill, it seems unlikely the Senate will pursue passage of the House bill in its current form. Debates on how to resolve the impasse are expected to continue into the weeks and possibly months ahead.

Sunshine Week Arrives

The week of March 17 marks the third annual national Sunshine Week, a nonpartisan campaign to promote openness in government and access to public records.

The core of Sunshine Week, led by the American Society of Newspaper Editors, is a massive coordinated media blitz around the country and across print, radio, and television to highlight the importance of government transparency and ongoing problems with the issue. As the annual event has become more established, many outside the journalism community have scheduled open government events to coincide with the week, including elected officials, public interest groups, schools, civic groups, and many others.

Sunshine Week is scheduled in March each year to coincide with James Madison's birthday, who is celebrated as a strong proponent of open government among the Founding Fathers. This year's Sunshine Week includes several prominent events and releases.

- Sunshine Week released a survey that found that 74 percent of those polled view the federal government as very or somewhat secretive, which is a significant increase from the 62 percent who responded that way in a similar survey two years ago. The survey

also revealed that nearly nine in ten say it's important to know presidential and congressional candidates' positions on open government when deciding who to vote for in the upcoming elections.

- The National Security Archive released a new survey of FOIA implementation throughout the federal government, which found that despite a 2005 Executive Order to improve FOIA performance, many agencies still have large backlogs of unanswered requests for information. The report titled *Mixed Signals, Mixed Results: How President Bush's Executive Order on FOIA Failed to Deliver* concluded that the lack of any enforcement mechanism or increased funding associated with President Bush's order directly resulted in the lack of significant progress on FOIA performance.

- In anticipation of Sunshine Week, Sens. Patrick Leahy (D-VT) and Jon Cornyn (R-TX) introduced new FOIA legislation on March 12 called the OPEN FOIA Act. The bill would require Congress to explicitly and clearly state its intention to provide for statutory exemptions to FOIA in new legislative proposals. The Senate unanimously passed similar legislation in the last Congress. Leahy and Cornyn are seeking to build on the passage of their OPEN Government Act, which the president signed into law in December 2007, making the first improvements to FOIA in more than a decade.

- The Associated Press (AP) began a two-part story reviewing laws that address open government and restrictions to public access in all 50 states. The first installment concluded that many states have been increasingly closing down public access to government information since the terrorist attacks of Sept. 11, 2001. The AP analysis of 1,023 new laws dealing with public access to government information found that more than 60 percent closed access, just over a quarter increased access, while the rest had a neutral effect.

- On March 17, the Collaboration on Government Secrecy, an educational project on the study of government secrecy at American University's Washington College of Law, held its first annual Freedom of Information Day Celebration with an all-day conference. The program consisted of a series of panels, with both public officials and public interest groups discussing important current issues in the freedom of information, international transparency, and government secrecy arenas, such as the use of state secrets and the explosion of Sensitive But Unclassified (SBU) information restrictions.

- OpenTheGovernment.org will be hosting a Sunshine Week webcast on March 19 consisting of two panels discussing government openness, executive branch secrecy, and places to get hard-to-find government information. The event, "Government Secrecy: Censoring Your Right to Know", will take place at the National Press Club and will be webcast online through participating host organizations.

- OMB Watch will be releasing a report on the results of a survey on the top open government questions people want presidential and congressional candidates to

answer before the elections. Over the course of several weeks, OMB Watch conducted an open survey on 12 government transparency questions covering a range of topics. The report will discuss the results from more than 2,000 respondents who participated. The report is a part of OMB Watch's 21st Century Right to Know Project, which is seeking to collaboratively develop recommendations for the next administration and Congress to improve government transparency and bring the government's policies and practices into the next century.

For a more complete tally of Sunshine Week events around the country, see the organization's running list.

EPA Blasted for Library Closings

The U.S. Environmental Protection Agency (EPA) was blasted in both judicial and congressional forums for closing seven of its libraries over the past several years. In a Feb. 15 ruling, a federal arbitrator found EPA guilty of unfair labor practices with respect to the closings. One month later, Congress heard testimony from several sources, including the Government Accountability Office (GAO), that EPA's library restructuring plan was poorly conceived, planned, and implemented.

Closed Libraries

Since 2004, six of the original 26 EPA libraries have been closed, one remains unstaffed, four others have reduced their hours, and one is scheduled to be consolidated in 2008. Looming budget cuts and apparent plans to digitize the agency's collections were catalysts for the reorganization. EPA began a series of studies in 2003 that evaluated the value of services and uses of the libraries, and in November 2005 created the Library Steering Committee, which was tasked with developing a plan for maintaining the quality of the library network on a restricted budget.

In anticipation of major Fiscal Year 2007 budget cuts, the committee's 2006 proposal included closing three libraries and reducing access to five others, in some cases by more than 50 percent. With no centralized management or plan for content preservation, libraries that were being closed or that were having their services reduced independently determined whether to digitize content, send it to other collections, or throw it away. Upon the request of Congress in 2007, EPA suspended further library closures, and the FY 2008 omnibus appropriations bill provided funding for the library system and directed the agency to come up with a concrete management and digitization plan that would restore library services. EPA's plan is expected toward the end March and may include reopening libraries.

GAO Report

The GAO, in its report *EPA Needs to Ensure That Best Practices and Procedures Are Followed When Making Further Changes to Its Library Network*, faults EPA with failing to follow

through with many of its own initial recommendations, most importantly a comprehensive cost-benefit analysis and user survey, before starting the library closures. The staff survey that EPA conducted had a 14 percent response rate, which GAO determined was hardly sufficient to accurately ascertain user needs. Significantly, EPA also failed to gather information on public use of the agency libraries which, by EPA's own estimates, accounted for 20 to 40 percent of all reference requests. Additionally, the GAO found fault with EPA's limited efforts to evaluate alternatives to actual closures, such as reducing journal duplications, revising the outdated policy framework, or soliciting ideas from staff who know the libraries best.

The GAO concluded that as a result of these early missteps, the libraries' "reorganization" lacked agency-wide oversight, specific goals, and timelines for providing service continuity. EPA did not adequately assess resources for less disruptive, and potentially more efficient, transformation. EPA expected that digitizing information would reduce costs while maintaining access to the information. However, only ten percent of EPA's holdings are eligible for digitization since only EPA-produced reports are allowed to be electronically reproduced by the agency.

The lack of coordination and staff guidance has resulted in content dispersal and chaotic organization. For instance, all of the Chemical Library materials appear to be located at a library that has been closed for a full year. Additionally, many of the closed locations failed to develop any plans for replacing services that had been provided to the public.

Upon close investigation, GAO also found the budget crunch excuse circumspect. EPA has full discretion in determining libraries' funding, mainly determined by the Office of Environmental Information. The funding cuts appear to have been initiated by the agency *before* Congress passed its FY 2007 budget. EPA's actions may have actually made the library system less efficient by eliminating monies being brought in by the libraries. EPA's initial study found that between $2 to almost $6 came back to the agency for every dollar spent on the library system, largely aided by librarians' expertise with research. The agency's plans to replace actual librarians with computers or online services would severely reduce this source of compensation.

The congressional hearing included testimony from several other experts including:

- Charles Orzehoskie, president of American Federation of Government Employees Council 238, who spoke about the impact of the library closings on employees and the public at large. The Council was the union that filed grievances before the Federal Labor Relations Board Arbitrator.
- Francesca Grifo, director of the Scientific Integrity Program at the Union of Concerned Scientists (UCS), who testified about concerns of scientists and accessing important research materials. A UCS survey of 555 EPA scientists indicated that researchers found the reorganized system "inadequate" and that the changes are "impairing" their ability to do their jobs.
- James Rettig of the American Library Association stated that EPA failed to base its library plan on end users' needs. Rettig also addressed the importance of "the

information specialist — the staff librarian — to ensure the most effective access to this information."

- Molly O'Neill, assistant administrator for the Office of Environmental Information (OEI) and the EPA's chief information officer, defended the agency, claiming that many positive steps had been taken, including the hiring of a chief librarian to provide strategic direction to the agency's plans. O'Neill also noted that EPA would soon be releasing a report to Congress to describe the agency's plans for the EPA library network.

EPA Guilty of Unfair Labor Practices

In a recent ruling, Federal Labor Relations Board Arbitrator George Larney sustained complaints by the American Federation of Government Employees Council 238 that EPA acted "unilaterally without the benefit of" employee input in regard to the library closures. Though the agency has claimed to prioritize EPA staff access to information (while virtually ignoring the public's), Larney heard the opposite from EPA scientists, enforcement agents, and other staff.

Larney ordered EPA "to engage the Union in impact and implementation bargaining in a timely manner" before taking any additional steps to reorganize the library network. The union had sought to have the closed libraries reopened, but the arbitrator declined such an order and noted that it would impossible for EPA to reopen those libraries that had been physically dismantled.

Pressure Flushes CDC Report Out of Hiding

In response to allegations of suppression of science, the Centers for Disease Control and Prevention (CDC) recently released a draft report that the agency will continue to modify due to CDC concerns that the report too closely links environmental pollution with adverse health effects in the Great Lakes region.

The draft, *Public Health Implications of Hazardous Substances in Twenty-Six U.S. Great Lakes Areas of Concern*, was posted on the CDC website on March 12 and is the latest version of the report. CDC also posted an earlier draft from 2004 and says it will release the report's final revisions later in March. The agency continues to hold reservations over the draft report's release and has submitted it to the Institute of Medicine for an independent review of study methodology.

Just a few weeks before the latest draft's release, the Center for Public Integrity (CPI) exposed the report's six-month release delay and the agency's plan to substantially rewrite the report. At that time, the planned modifications would have deemphasized findings that could be construed as implicating environmental toxins as being partially responsible for increased infant mortality and cancer rates in the region. The latest draft, which has been through a rigorous independent review already, currently emphasizes that the increase of health

problems and pollution should not be considered directly correlated but rather indicates important areas for future research. It is unclear whether the current wording of the draft report addresses the possible implication of cause and effect about which CDC has expressed concern.

Outcry from the scientific community about the report's delay and possible redrafting prompted Reps. John Dingell (D-MI) and Bart Stupak (D-MI) of the House Committee on Energy and Commerce to investigate possible suppression of the report and allegations of illegal retaliation against Christopher De Rosa, the outspoken lead author who was demoted after criticizing the report's publication delay. Dingell and Stupak sent the agency a Feb. 6 letter demanding the report's release.

As Stupak noted, "It is unfortunate that it took a congressional investigation and intense media coverage to prompt the release of a scientific report that has been five years in the making." Considering CDC's ongoing resistance to accept a report written by its own scientists, continued oversight may be crucial to ensuring that the agency does not undercut years of scientific research and analysis in the final version of the report.

After Long Delays, House Creates Independent Ethics Panel

On March 11, the House voted to create an Office of Congressional Ethics (OCE). The six-member independent panel will have the power to begin formal investigations into allegations of ethics violations of House members and either dismiss the claims or refer them to the House Ethics Committee. OCE members will be appointed jointly by the Speaker of the House and the Minority Leader. The debate over the panel was intense, and Democratic leaders were forced to pull the proposal from the floor twice before the vote. The vote ends a process that took more than a year to resolve.

When Democrats took control of the 110th Congress in January 2007, Speaker Nancy Pelosi (D-CA) announced a plan to create a bipartisan task force that would consider whether the House should create an outside ethics enforcement entity. The May 1, 2007, deadline stretched into December when the chair of the task force, Rep. Mike Capuano☼ (D-MA), released H. Res. 895, to create an independent ethics office that would conduct preliminary investigations.

All Republicans on the task force opposed the measure. In addition, some members did not want outsiders to review House ethics investigations. Rep. Lamar Smith☼ (R-TX) offered an alternative, H. Res. 1003, that would have expanded the current 10-member Ethics Committee by adding four former House members, two from each party. Many advocacy groups opposed the Capuano plan as well, arguing that lack of subpoena power and authority to put people under oath made it too weak. There were also fears that the panel would create more bureaucracy or give rise to partisan complaints.

The Democratic leadership planned to bring the proposal up for a floor vote on Feb. 28, but the vote was postponed because of considerable bipartisan criticism. In response to the criticism,

Capuano made three amendments. First, all appointments to the panel must be made jointly. The Speaker and Minority Leader both nominate three members, subject to the others' agreement. The second and third amendments revised the two-step review process. An investigation can only begin if one member of each party agrees that the case should move forward. The third amendment also clarified that a review could only proceed if at least three members of the OCE voted affirmatively. If a case makes it past the second phase, the board would then refer the case to the Committee on Standards of Official Conduct, the current House ethics committee. Upon introducing these changes, Capuano sent out a Dear Colleague letter that stated, "Taken together, these three amendments make it impossible to initiate a partisan witch hunt ... and impossible to use partisan stonewalling to thwart a reasonable review once it has begun. Members are protected, but so is the integrity of the process."

Despite remaining skepticism, with a vote of 229-182, the House passed the revised Capuano proposal on March 11. Republicans criticized the process that was used to get the resolution passed. Democrats kept the procedural vote on the issue open for 16 extra minutes. According to *Roll Call* (subscription), "During a procedural vote preceding final passage of the resolution, known as 'ordering the previous question,' Democrats appeared to lose, as nearly two dozen of their own Members voted against the proposal. But Democrats refused to gavel the vote closed for another 12 minutes beyond the normal 15-minute period, as leadership pressed four Members to change votes and provided the majority a narrow victory."

Highlights of the new Office of Congressional Ethics include:

- For the first time, individuals other than members of Congress will be able to initiate formal investigations into allegations of wrongdoing
- Members of the OCE cannot be current members of Congress or registered lobbyists and can only be a member if they have been off the House payroll for a year
- Terms will last four years, with one reappointment possible
- OCE will be prohibited from initiating an investigation within 60 days of a primary or general election

Senate Looks at Claims that Voter Fraud Justifies Photo ID Requirements

The Senate Committee on Rules and Administration held a hearing March 12 on the controversial tactics states and the federal government have used and proposed in response to claims of voter fraud. Senators who testified were sharply divided along partisan lines. Democrats argued that voter fraud is a false pretence used to justify laws that disenfranchise poor, minority, and elderly voters, but Republicans asserted that the problem is real and needs to be addressed. Nonpartisan witnesses cautioned lawmakers against exaggerating the extent of any election fraud.

Voter fraud (more accurately described as voter impersonation) has become a politically divisive topic over the last several years across all levels of government — federal, state, and

local. Senate Rules Committee Chair Dianne Feinstein (D-CA) described the purpose of the hearing, saying, "At today's hearing, I hope we will get into a full and robust discussion regarding to what extent that there is in-person voter fraud. Or to put it another way — are individuals going to vote pretending to be registered voters at the polls?" Despite Feinstein's appeal to reason, the testimony reflected the issue's troubled history.

Since 2002, the Bush administration has dedicated resources to investigating alleged incidences of voter fraud through the Department of Justice's (DOJ) Ballot Access and Voting Integrity Initiative. The refusal of several U.S. Attorneys to pursue voter fraud prosecutions, despite pressure from the administration, ultimately led to the "Attorney-Gate" scandal that felled former U.S. Attorney General Alberto Gonzalez. During her opening statement, Feinstein said that her office repeatedly asked William Welch, the Chief of DOJ's Public Integrity Section, which has jurisdiction over election crimes, to testify at the hearing, but he refused the request.

In his testimony at the hearing, Sen. Patrick Leahy☼ (D-VT) argued that laws that require a photo ID at the polls represent an undue barrier to voting. Leahy said, "Despite lack of credible evidence, the myth of voter fraud has increasingly been used to justify policies that suppress political participation by passing laws that threaten to exclude millions of eligible voters, with a disproportionate impact on vulnerable populations, such as the elderly, low-income, disabled, and minority communities."

Sen. Kit Bond (R-MO) argued on behalf of proponents of photo identification requirements, saying, "Vote fraud is alive and well in America. The only question for us is, are we willing to stop it?" He went on to defend the Missouri law requiring photo ID at the polls, saying, "Indeed, showing an ID is a universal feature of modern life. Cashing a check, renting a movie, boarding a plane, all require a photo ID. And for those who do not have one, photo ID laws now require States to provide photo IDs at no cost to anyone shown in such need."

Several witnesses before the Committee challenged Bond's assertion that voter fraud is "alive and well." Justin Levitt, counsel for the Brennan Center for Justice, cited their recent report that evaluated allegations of voter fraud, The Truth About Voter Fraud. Levitt testified that based on his extensive research, "We conclude that the incidence of actual in-person impersonation fraud is extraordinarily rare. Though it does occur, there are only a handful of recent accounts, even fewer of which have been substantiated."

David Iglesias was one of the former U.S. Attorneys infamously fired for not pursuing voter fraud as vigorously as the Bush administration wanted. Iglesias testified that as a U.S. Attorney, he established an Election Fraud Task Force in his district to investigate and prosecute cases of election fraud but found no evidence that voter fraud existed. He consequently filed no prosecutions.

The debate over voter fraud and its outcome has important ramifications for voters across America because it is being used to rationalize new laws requiring voters to present photo identification at the polls. Georgia, Missouri, and Indiana have all passed such laws. Similar

legislation has been introduced in 18 other states in the current session (2007-2008). The issue is also pending at the U.S. Supreme Court. In January, the court heard oral argument in *Crawford v. Marion County Election Board*, a case testing the constitutionality of Indiana's voter ID law.

Also testifying at the hearing: Missouri Secretary of State Robin Carnahan, Georgia Deputy Secretary of State Robert Simms, and James C. Kirkpatrick of Missouri's State Information Center.

Bills Improving Federal Contracting Gain Momentum

In FY 2007, the federal government paid contractors about $420 billion to provide thousands of goods and services, but it had little insight into whether those companies were delinquent in paying their federal taxes, had broken contracting rules or laws, or if those firms paid top-level executives exorbitant levels of compensation. However, if several proposed bills become law, these obstacles to oversight and transparency will be greatly reduced. H.R.s 3033, 3928, and 4881 were approved by the House Oversight and Government Reform Committee the week of March 10, while H.R. 5602 and a companion Senate bill were introduced the same week.

H.R. 3033: Contractors and Federal Spending Accountability Act of 2007
H.R. 3033 would direct the General Services Administration to compile and maintain a database containing information on civil, criminal, and administrative proceedings brought by the federal government and state governments against contractors or assistance recipients. It would also include federal suspensions and debarments of federal contractors.

Testifying before the Government Management, Organization and Procurement Subcommittee on Feb. 27, Scott Amey, General Counsel of the Project on Government Oversight (POGO), declared his support for the measure.

> H.R. 3033 would go a long way in improving pre-award contracting decisions and enhancing the government's ability to weed out risky contractors, especially those with repeated histories of misconduct or poor performance.

But Amey also expressed astonishment that such a database is not currently administered by the federal government, as POGO currently operates a database similar to the one described in the bill. Amey thought it "shocking" that a nonprofit would be compiling this data instead of the federal government. Without easy access to such data, it is impossible for government procurement officers to make informed decisions about proper allocations of federal contracts.

H.R. 3928: Government Contractor Accountability Act of 2007
Although publicly-traded firms are required by the Securities and Exchange Commission to disclose the names and salaries of top-level managers, many firms that contract with the federal government, like private security company BlackwaterUSA, are private entities for which this information is not publicly available. H.R. 3928 is intended to provide the federal

government and citizens insight into whether federal contractors are adding value to federal procurement or simply lining the pockets of a select few individuals.

The measure would provide this level of transparency by requiring federal contracting firms or grant recipients receiving more than 80 percent of their revenue from the federal government to disclose the names and salaries of their most highly compensated executives and would make this information available in the Federal Procurement Data System-Next Generation (FPDS-NG). During the committee markup, an amendment from Rep. Chris Murphy☼ (D-CT) was adopted that would require disclosure of this information only from companies that have more than $25 million in gross revenues. The bill does not differentiate between for-profit and nonprofit companies.

While this increased transparency is certainly welcome, it would be a mistake for Congress to solely add this information to the FPDS database. The database is a complex and hard-to-use data source that often confounds even the most expert analysts and government employees. It is not a sufficient vehicle for disclosure of this important information to the public. At a minimum, this data should also be included in the new government website designed for tracking federal contracts — USASpending.gov, which is authorized under the Federal Funding Accountability and Transparency Act.

H.R. 4881: Contracting and Tax Accountability Act of 2007

According to the Government Accountability Office (GAO), there are thousands of firms that are delinquent in paying their taxes to the federal government. Exasperated that over $7 billion is owed to the Treasury by firms receiving payments from the federal government, Rep. Brad Ellsworth☼ (D-IN) introduced H.R. 4881 to ensure that this practice ceases. H.R. 4881 would require all firms bidding on federal contracts to submit a declaration that they are not delinquent in their taxes. The bill would also bar firms on which the IRS has placed a tax lien from being awarded a federal contract.

POGO's Amey believes the act would "help address the need for greater transparency to prevent risky contractors from receiving federal dollars," and that "[i]mproved market research and contractor specific information should provide for better preaward contractor responsibility determinations."

The legislation has undergone significant changes since Ellsworth first introduced it in May 2007, in order to address concerns about how the law would be administered. Rather than setting a dollar level to focus on only the largest delinquent companies, the new version uses the filing of a tax lien by the IRS as the determinant. The change is designed to ensure that only significant cases are used to prevent companies from getting contracts. It also was made to give federal procurement officers a clear-cut way to check whether a company is ineligible for a contract.

Sen. Barack Obama☼ (D-IL) has sponsored a companion measure (S. 2519) in the Senate.

H.R. 5602: Fair Share Act of 2008
Introduced March 13 by Reps. Rahm Emanuel (D-IL) and Ellsworth and Sens. John Kerry (D-MA) and Obama, this bill could also be called the "KBR's Fair Share Act." Kellogg Brown & Root, one of the largest contractors working in Iraq, has been using a shell company located in the Cayman Islands to avoid paying an estimated $100 million per year in taxes. The practice, in which some 10,500 KBR workers are officially employed by an off-shore company, allows the firm to avoid paying Social Security and Medicare taxes. And according a *Boston Globe* story, only KBR and one other American firm use this method of employment to dodge paying payroll taxes. H.R. 5602 would change the tax code "to treat foreign subsidiaries of U.S. companies performing services under contract with the United States government as American employers for the purpose of Social Security and Medicare payroll taxes."

Budget Resolution: Recap and the Road Ahead

Late on March 13 and early in the morning of March 14, the House and Senate adopted $3 trillion budget resolutions for Fiscal Year 2009 by votes of 212-207 and 51-44, respectively. While the resolutions are similar in terms of broad policy outlines and priorities, they differ on a few major points, including the total amount of discretionary spending and whether to offset the cost of a one-year patch to the Alternative Minimum Tax (AMT).

The congressional budget resolution is a non-binding blueprint for the direction of budget policy over the next five fiscal years and sets the overall amount of money the twelve appropriations subcommittees will have to allocate to individual programs under their jurisdiction in each chamber. Before a final version is passed by Congress, the Democratic leadership will need to reconcile the differences between the two versions. Foremost among these are overall FY 2009 discretionary spending levels, where the chambers are about $4 billion apart, and plans to "patch" the AMT for next year, which the House does with instructions to provide offsets, while the Senate provides no offsets in violation of pay-as-you-go (PAYGO) rules. These and the numerous other differences will need to be worked out in conference committee, which will convene soon after Congress returns from its two-week recess on March 31.

In the end, 16 Democrats in the House crossed party lines to oppose the resolution, but it still passed with a five-vote margin. In the Senate, the vote on the resolution was party-line, except for Sen. Evan Bayh☼ (D-IN), who voted against it, and Maine Sens. Olympia Snowe (R) and Susan Collins (R), who voted in favor.

The House resolution adds $21.8 billion in discretionary funding over and above the president's top line; the Senate resolution adds $18 billion. While the House includes $4 billion in additional discretionary spending, both the House and Senate budget resolutions reverse the deep cuts proposed by President Bush in February to such programs as Medicare and Medicaid, a community policing program, low-income energy assistance, the Social Services and Community Development Block Grant programs, Amtrak, and the Centers for

Disease Control and Prevention.

In all, S. Con. Res. 70, the Senate budget resolution, was amended 18 times during the course of an all-day "vote-a-rama" that featured a total of 42 roll call votes. The first and most far-reaching amendment was offered by Sen. Max Baucus☼ (D-MT) and adopted by a vote of 99-1. The Baucus amendment calls for spending the resolution's projected budget surpluses in 2012 and 2013 on "middle-class" tax cuts, keeping the lowest income tax rate at 10 percent and the $1,000 child credit and preserving the estate tax at the 2009 rate and exclusion level, indexed for inflation.

The Senate voted on five amendments seeking to cut the estate tax, all of which failed. The closest vote came on an amendment by Sen. Jon Kyl☼ (R-AZ) raising the estate tax exemption to $10 million per-couple, with a top rate of 35 percent — at a 10-year revenue cost of about $750 billion. The Kyl amendment was technically defeated in a 50-50 tie, on a nearly party-line vote (Sen. Blanche Lincoln (D-AR) voted with the GOP). If Vice President Cheney had been in the presiding officer's chair at the time and voted, the amendment would probably have been adopted.

The voting generally followed a pattern in which Republicans offered amendments to create new deficit-financed and regressive tax breaks, which were voted down, but paired with or followed by amendments by Democrats proposing tax breaks that were similar but offset — several of which were adopted.

The House adopted its own version of the budget resolution, H. Con. Res. 312, after rejecting three alternatives. The Republican's version lost by a vote of 157-263, including being opposed by 38 Republican members. The GOP substitute budget plan sought to reduce mandatory spending by $412.4 billion over five years. The Progressive Caucus budget lost 98-322; the Black Caucus bill was rejected 126-292. There were no votes on amendments to H. Con. Res. 312, so it was passed by the full House unchanged from the version reported out of the House Budget Committee.

Looking ahead to conference, both sides have expressed optimism that a compromise on a resolution is achievable. The biggest sticking point in the negotiations will be whether or not to offset the revenue loss from a one-year patch of the AMT, estimated at $70 billion. Senate Democrats say a paid-for patch will never fly in their chamber, as they were unable to generate anywhere near the support to pass an offset patch in 2007. Fiscally conservative Democrats in the House are insistent that instructions in the budget resolution to develop a proposal for a revenue-neutral patch be retained. When this fight was fought in December 2007, the Senate prevailed. There is little reason to expect a different outcome this time, certainly not at the expense of an ultimate agreement on a budget resolution for FY 2009. Yet given the chance than Congress will wait to enact appropriations bills until a new administration is in place in the White House in 2009, House leaders may decide sticking to their fiscally responsible "guns" may be more important than finding agreement with the Senate on a final budget resolution.

GAO Report Examines Overuse of Supplemental Spending

In a recently released report, the Government Accountability Office (GAO) examined ten years of supplemental spending (FY 1997-FY 2006) and found not only a five-fold increase in the amount of expenditures funded through the supplemental process, but also that procedures that enable legislative deliberation are bypassed when Congress funds government operations through supplemental spending. Supplemental spending has become an alternative funding process, parallel to the normal annual appropriations process. This allows certain expenditures to elide close congressional and public scrutiny and allows Congress to escape debate over federal funding priorities.

"Emergency" and "Supplemental": A Fine Practical Distinction

Although the terms "supplemental" and "emergency" are often used to describe discretionary spending authorized outside of the annual appropriations process, there is a difference between the two. Emergency spending, when designated as such by the president, is not subject to the budgetary constraints established in the congressional budget resolution. Supplemental spending, on the other hand, is spending that is simply authorized outside of the twelve annual appropriations bills that fund the operations of the federal government, be it "emergency" or not. So, emergency funding may be included in any of the twelve appropriations bills, and supplemental spending may not necessarily be classified as "emergency." But, more often than not, emergency spending is enacted in supplemental spending bills.

While supplemental spending is technically subject to budgetary constraints, the mechanism to enforce such restraint is primarily toothless. Prior to FY 2003, spending that exceeded the congressionally established budget caps was sequestered — a process by which discretionary spending was reduced across the board automatically in order to push it below those budgetary limits. Since the expiration of those procedures, however, a point of order — a parliamentary hurdle — may be raised to prevent excess spending. Despite having the tool, members of Congress rarely raise points of order, and when they are raised, they are often waived. This lack of discipline in Congress effectively renders budgetary excesses without repercussion.

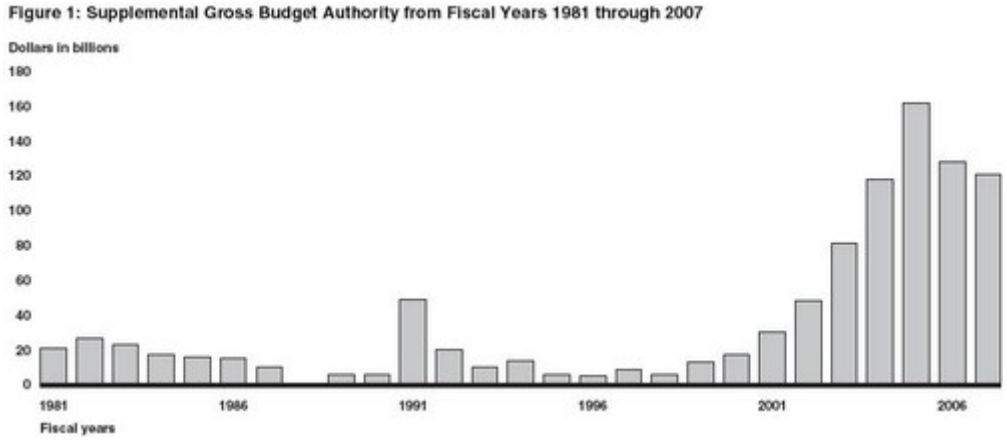
A Five-Fold Increase in Supplemental Spending

The GAO report, which examined supplemental spending only (i.e., ignoring emergency spending funded through the regular appropriations process), notes:

> The regular budget and appropriations process provides for greater legislative deliberation, procedural hurdles, and funding trade-offs which may be bypassed through the use of supplementals.

While this bypassing of budgetary controls is troubling in any context, the recent increase in supplemental spending makes these problems acute. Compared to the previous ten-year window (FY 1987-FY 1996), supplemental spending has increased five-fold. GAO indicates the $48.6 billion in emergency funding approved in 1991 for the first Gulf War is an outlier in the flat-line pattern of 1981 to 2001, in which supplemental spending averaged less than $20

billion annually. Since 2001, however, supplemental spending has been on a rapid ascent, leveling out at well over $100 billion annually after peaking in 2005 at $160 billion.



Non-Emergency and Regular Funding Evade Attention

The prevalent use of emergency supplemental funding is problematic, in part, because these legislative bills often attract unrelated or unnecessary spending items. And because emergency funding measures are often fast-tracked through Congress, such bills receive less consideration and debate. GAO found eight of the 25 emergency supplemental appropriations bills passed by Congress in the past ten years contained additional non-emergency spending provisions, totaling over $11 billion. Furthermore, GAO also found there were certain budgetary accounts that were regularly funded through the supplemental spending process.

In at least six of the past 10 years, 35 federal budget accounts received supplemental spending. At $375 billion, this recurring account funding represents 61 percent of the gross supplemental budget authority in the past ten years. The majority of these accounts were within the Department of Defense, but the Federal Emergency Management Agency and the Department of the Interior's Wildland Fire Management accounts also saw recurrent supplemental spending. That programs receive regular funding through supplemental appropriations should concern policy makers for a number of reasons, most notably because:

> For activities that regularly receive emergency-designated supplemental appropriations, there can be an incentive to provide funding in a supplemental rather than in the regular appropriations process where these activities would have to compete with others for limited resources in trade-off decisions.

The GAO report also notes other troubling trends in supplemental spending — relaxed standards as to what constitutes an emergency and combining emergency with non-emergency funding on individual supplemental spending bills. The emergency supplemental bills examined for the report contained $12.7 billion in spending provisions designated as "emergency" that appeared to be unrelated to the situation that originally prompted the need for the bill.

For example, the "Kosovo and Other National Security Matters" law in 2000 contained $110

million for a Great Lakes Icebreaker replacement as part of a $578 million appropriation for the Coast Guard, and the "Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006" bill contained $9 million for drought relief. The report also shows that funding designated as emergency does not always conform to the definition of "emergency" as promulgated by OMB, defined thusly:

- a necessary expenditure (an essential or vital expenditure, not one that is merely useful or beneficial)
- sudden (coming into being quickly, not building up over time)
- urgent (a pressing and compelling need requiring immediate action)
- unforeseen (not predictable or seen beforehand as a coming need although an emergency that is part of an overall level of anticipated emergencies, particularly when estimated in advance, would not be "unforeseen")
- not permanent (the need is temporary in nature)

More than $31 billion, or 5 percent, of spending designated as "emergency" in the funding bills studied by GAO were inconsistent with OMB's definition. In fact, some 26 provisions totaling over $6 billion "stood out as being clearly incongruent with the emergency-designation criteria of 'sudden' and 'unforeseen'," while nearly $25 billion in funding lacked sufficient detail for the GAO to determine the appropriateness of the "emergency" designation. Although the wars in Iraq and Afghanistan are now in their sixth year, and many experts would argue fail to meet the emergency spending criteria, the GAO did not find that this spending, totaling more than $500 billion, was misclassified as "emergency." Despite this, GAO did conclude that regardless of whether these funds were classified as emergency or not, "continuing to fund GWOT [Global War on Terrorism] through supplementals reduces transparency and avoids the necessary reexamination and discussion of defense commitments and funding tradeoffs."

Reining in Extra-Budgeting Spending

Until key changes are made in the spending process, it is doubtful the trend will reverse itself. Concluding the report is a discussion of several options that budget experts consulted by GAO suggested would restore tighter budgeting controls. The experts suggested that, among other practices, funding must meet an established set of criteria to be designated "emergency." Additionally, supplemental bills should not be used when the regular appropriations process can meet the needs of the program, but a balance must be struck between flexibility and oversight with respect to availability of additional funds.

Sen. George Voinovich☼ (R-OH) requested the GAO study on supplemental appropriations. As he had done during last year's budget resolution floor debate, Voinovich once again offered an amendment to the FY 2009 budget resolution that would made the supplemental appropriations process more fiscally responsible and restored integrity to the federal budgeting process. The amendment provided that a point of order may be made against any supplemental appropriations legislation requesting over $15 billion for domestic purposes or $65 billion for overseas purposes in a given fiscal year.

The Voinovich proposal would have provided a stronger tool for senators to control supplemental spending excesses than current budget mechanisms because the point of order could not be waived. This change would have gone some distance toward bringing greater accountability to the budget-making process and promoting fiscal responsibility while still maintaining the flexibility Congress needs to respond to true emergencies. Unfortunately, the amendment never came up for a floor vote and was not adopted by unanimous consent as it was in 2007 (the 2007 amendment was later dropped in a conference committee).

House Panel Hears Testimony on IRS Policies

On March 13, the House Ways and Means Subcommittee on Oversight heard testimony concerning the 2008 tax return filing season, Internal Revenue Service (IRS) operations, the Fiscal Year 2009 budget proposals, and the National Taxpayer Advocate's Annual Report to Congress. Then-Acting Commissioner of the IRS Linda Stiff testified, and Nina Olson, the National Taxpayer Advocate, pressed for reforms that would both protect taxpayer rights and improve tax enforcement.

The two main issues discussed during the hearing were the progress the IRS has made on implementing the recently passed fiscal stimulus package and the rationale behind and progress to date of the private tax collection program run by the IRS since late 2006. Stiff reported significant progress in implementing the tax rebate portion of the stimulus package. The IRS estimates it will process 130 million payments to taxpayers who file income tax returns this year and will also identify and process rebates for over 20 million taxpayers who do not file income tax returns. Stiff reported the IRS is working with the Social Security Administration and the Veterans Affairs Department, in addition to outside organizations like AARP, to identify those individuals who will file no return this year.

Despite the less-than-ideal timing of the stimulus package and complications caused by the extremely late passage of changes to the Alternative Minimum Tax (AMT) at the end of 2007, the IRS is performing admirably, according to statements made at the hearing. In fact, Olson made a point of commending the IRS for its extraordinary work under difficult conditions, stating, "The fact that the IRS has managed to turn on a dime and deliver this filing season without significant glitches is a testament to the extraordinary people who work at the IRS."

Olson was less supportive of the other main topic during the hearing, the private tax collection program. Olson has repeatedly expressed serious concerns about the private debt collection program instituted by Congress in 2004 and implemented by the IRS in September of 2006. She reiterated her concerns during the hearing and in her annual report to Congress, particularly mentioning potential taxpayer rights violations and the lack of transparency within the private collection agencies (PCAs). Despite the fact that IRS has made changes to the program to try to address these concerns, Olson's fears have not been assuaged.

Olson focused on the basic revenue projection during the hearing, however. She testified the program would lose $81 million annually in tax revenue and opportunity costs for the IRS and

could lose almost half a billion dollars over the next six years. Based on data from the program's first year of operation, Olson calculated the private debt collection program created a dismally small return on investment (ROI) of 1.45:1. She further testified if the IRS used the funds appropriated by Congress to administer the program ($7.65 million in FY 2008) on its Automated Collection System (ACS) program, it would yield between $91.8 million and $145.35 million in net revenue for the government each year. This is at least $81 million more than the private debt collection program is generating, which is around $11 million annually. Olson concluded:

> Since the purpose of the PDC [private debt collection] program was to raise revenue, the fact that it is costing the government $81 million or more each year destroys whatever thin rationale might remain for its existence.

OMB Watch has stated similar objections to the private tax collection program run by the IRS and detailed many of the same types of arguments offered by Olson in a recently released report, *Bridging the Tax Gap: The Case for Increasing the IRS Budget*. The report calls on the IRS to end the private debt collection program.

There were two other areas of agreement between the report's recommendations and Olson's recent testimony. First is the excessive burden placed on taxpayers claiming the earned income tax credit (EITC). Olson testified the EITC audit process places "a heavy burden on taxpayers who may be ill-equipped to correctly navigate the audit process." Olson focused in particular on poor communication between the IRS and taxpayers claiming the EITC, reporting more than 70 percent of a sample of audited EITC taxpayers found the IRS audit notification letter hard to understand, and only 50 percent of those surveyed knew what they needed to do to answer IRS questions. Most shocking, more than 25 percent of respondents *did not even realize* their tax return was being audited. Olson encouraged the IRS to take steps to improve the services offered to EITC filers.

Second is the need for additional resources for Taxpayer Assistance Centers (TACs). Olson did praise the IRS for beginning to stop efforts to limit the types of services and methods of delivery of those services at TACs and for relaxing overly harsh or illogical rules for determining out-of-scope topics and providing tax return transcripts. However, Olson reiterated previous findings that TACs were only servicing 60 percent of the U.S. population and that recent efforts by the IRS to close one quarter of existing TACs and reduce staffing at the others was hurting taxpayer services. The president's FY 2009 budget request continues these efforts, as it cuts the budget for TACs by over $31 million and proposes reducing staffing by an additional 100 employees. Instead, Olson recommended providing a level of staff and resources for TAC offices necessary to meet all taxpayer needs.

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