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The Watcher
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Senate Approves Disappointing Budget Resolution

Last week before leaving town for another weeklong recess, the Senate approved its Fiscal year 2007 budget resolution. The resolution is a significant departure from President Bush's proposed budget submitted earlier this year, dropping the president's Medicare cuts, not extending tax cuts, and adding over $16 billion in discretionary spending above the president's request. Despite these changes that make it more election-friendly for Senate incumbents, the budget continues to fall short of the sound budget policy desperately needed to stem the growth of deficits.

The resolution was approved 52 - 48, with one Democrat voting with Senate Republicans and five GOP members crossing party lines to vote against the resolution. Sen. Mary Landrieu (D-LA), the lone Democrat supporter of the resolution, voted for the budget, according to *Congressional Quarterly*, in exchange for language giving her state "a sizable chunk of federal revenue from ANWR leases, offshore oil and gas leases and the federal auction of broadcast frequencies that television stations will hand back when they switch to digital telecasts." Landrieu has been on a crusade to increase spending for reconstruction of levees and wetland restoration along the Gulf Coast of Louisiana in the aftermath of Hurricane Katrina.

Republicans who voted against the resolution, drawn from the handful of GOP members that place logic over party affiliation, believed the budget did not represent the right priorities and lacked fiscal discipline by not addressing the dwindling tax base. These Senators included Sens. Lincoln Chafee (R-RI), Susan Collins (R-ME), Norm Coleman (R-MN), and Mike DeWine (R-OH). One notable surprise was Sen. John Ensign (R-NV), who voted against the bill because he felt it did not cut enough spending.

The Senate considered 33 amendments over 50 hours of debate throughout last week, finally approving nine of the amendments. In total, the Senate approved over $16 billion in additional discretionary spending on a variety of programs including the Low-Income Home Energy Assistance Program (LIHEAP), education and job training programs, veteran's health benefits, community development, and maritime security.

The Senate also rejected two separate amendments restricting spending, including capping discretionary spending and another round of cuts to entitlement programs, as the president proposed in his budget. Sen. James Inhofe's (R-OK) amendment to cap spending at 2006 levels for the next two years was rejected 35 - 62, and Sen. John Cornyn's (R-TX) amendment to include reconciliation provisions to cut mandatory spending failed 43 - 57.

But perhaps the most important amendment offered was Sen. Kent Conrad's (D-ND) pay-as-you-go (PAYGO) amendment that would have reinstated expired rules requiring both tax cuts and entitlement spending increases to be deficit-neutral. When in place in the 1990s, the rules successfully forced Congress to enact responsible budget and tax policies that reduced deficits and led to a short run of surpluses in the federal budget. Those surpluses were short-lived, however, as the rules expired in 2002 and the administration went on a spending and tax cut spree.

The amendment was expected to pass, with one key Republican Senator, Tom Coburn (R-OK) voting twice last fall to support PAYGO during votes that lost 50-49 each time. Former Sen. Jon Corzine (D-NJ) - a supporter of PAYGO rules - was absent from those votes while campaigning for governor of New Jersey, and his replacement Sen. Robert Menendez (D-NJ) could have cast the deciding vote and approve the amendment. Yet Coburn, demonstrating neither consistency nor conviction, changed his vote and opposed the amendment when it really counted, causing it to fail again by a vote of 50-50.

In another blow to a proper budget process, the resolution was approved including language to authorize drilling in the Arctic National Wildlife Refuge (ANWR). A setback for environmentalists who want to preserve the Refuge as one of the last untouched natural areas in the United States, the filibuster-protected provision also represents one of the worst abuses of the budget process, included while having absolutely nothing to do with the federal budget.

Opening of ANWR was attempted in the Senate last year as well, when Sen. Ted Stevens (R-AK) used his influence to add the ANWR language during the conference committee of the budget cuts bill passed in early 2006. It was eventually removed because it threatened the success of the budget bill. In both these instances, this provision should be considered in separate legislation brought to the Senate floor by the committee with oversight over the nation's energy policy, not in budget bills seeking to outline the nation's spending priorities.

The House of Representatives is far behind the Senate in construction and approval of its budget blueprint, with the House Budget Committee markup still at least a week away. In sharp contrast to the Senate, the House Budget Committee is expected to unveil a far more draconian budget resolution that could include a new round of deep cuts to domestic programs and possibly reconciliation provisions to cut entitlement programs and/or extend more tax cuts. It is also possible the House budget bill will include negative budget process changes such as the president's recent request for enhanced rescission power - or a new version of the line-item veto.

The final version of the Senate resolution is likely to draw sharp criticism from conservative House members and House Democrats for varying reasons, and negotiations toward a final compromise are already expected to be extremely difficult. Since the budget resolution is not a binding document, appropriations committees can still begin developing their spending bills if the negotiations drag on past May 15 or if Congress cannot agree to a compromise. This was the case two years ago when no budget resolution was adopted.

Income Inequality Has Intensified Under Bush

Though the Bush administration continues to laud the strength of the economy and the success of its economic and tax policies, a large percentage of Americans are continuing to struggle to make ends meet as income growth has become increasingly concentrated at the top of the income scale. Income inequality, in fact, is at an all-time high, illustrating that current tax, budget, and wage and employment policies are all not working in favor of average American families.

The country experienced relatively broad-based wage growth during the latter part of the 1990's, but this growth ended with the 2001 economic downturn. Growth in real wages for low- and moderate-income families began to slow, and by 2003 wages began to decline and have not picked up in real terms. The economic recovery after the recession, one of the weakest recoveries on record, has not been diverse enough to generate the kind of income gains among low- and middle-income families seen over the last decade.

This real wage stagnation comes despite economic expansion over the last two years, relatively strong Gross Domestic Product (GDP) growth of late, and record highs for corporate profits in many sectors. These gains have not been reflected in job and wage growth across the board for averages workers. Real hourly wages fell for most low- and middle-wage workers by 1 - 2 percent last year and have not increased since 2000 after adjusting for inflation. In addition, the Federal Reserve recently reported in its Survey of Consumer Finances that average income for American families declined 2.3 percent between 2001 and 2004 after adjusting for inflation.

Compounding this trend has been Congress's utter inability to pass even one minimum wage increase in the last nine years. The federal minimum wage still sits at $5.15 per hour and has lost over 17 percent of its purchasing power since 1997. In 2005, minimum wage workers earned only 32 percent of the average hourly wage and in fact, the wage would have to rise to $8.20 just to reach *half of the current average hourly wage*. If Congress fails raise the minimum wage this year, it will mark the longest stretch the wage has remained unchanged since it was instituted in 1938 and the greatest inequality between minimum wage and average wage earners since the end of World War II.

The connection between the drastically low minimum wage and growing economic inequality seems to have escaped notice only in the nation's capitol. Eighteen states have now enacted higher state minimum wages, and many others are currently considering increases of their own. According to the Ballot Initiative Strategy Center, as many as 30 states could consider legislative proposals this November to increase the minimum wage or tie it directly to inflation.

Other Bush administration policies have contributed to these negative income trends, particularly the regressive redistribution of federal revenues through the President's tax cuts. The Bangor Daily News summed up the problem succinctly:

> *"Suppose that the administration's tax cuts, which began in 2001, remain in effect until 2015. Over these 15 years, more than half of the tax cuts - 53 percent - will go to people*

with incomes in the top 10 percent, according to studies commissioned by The New York Times. And 15 percent of the cuts will go to the top one-tenth of 1 percent of taxpayers. By 2015 the tax cuts, if retained, will provide average yearly tax savings of $23 to taxpayers in the bottom 20 percent. The wealthy will fare better. The top one-tenth of 1 percent of all taxpayers will save an average of $196,000 a year, or a total of $2.9 million over the 15 years. By 2015, the top 1 percent of taxpayers will pay a lower share of total taxes than they did in 2001."

Far from distributing money back to average American families, the Bush tax cuts overall have profited the super rich, leaving the vast majority of Americans with comparatively little or nothing to show for it. This has only made the distribution of income and wealth across America more skewed.

Showing further evidence of an exacerbated income gap, the Center on Budget and Policy Priorities and the Economic Policy Institute recently released Pulling Apart: A State-by-State Analysis of Income Trends, a study highlighting the growing gap between rich and poor. The study finds that this gap -- mainly between the highest-income families and low- and middle-income families -- grew significantly between the early 1980s and the early 2000s. During this period of time, the incomes of the bottom fifth of families grew more slowly than the incomes of the top fifth of families in 38 states; the incomes of the rich grew by an average of 62 percent, while the incomes of the poor grew by an average of 21 percent. Additionally, in 39 states the incomes of the middle fifth of families grew more slowly than the incomes of the top fifth of families.

The five states with the largest income gap between the top and bottom fifths of families, according to the study, are New York, Texas, Tennessee, Arizona, and Florida. The five states with the largest income gaps between the top and middle fifths of families are Texas, Kentucky, Florida, Arizona, and Tennessee. Generally, income gaps are larger in the Southeast and Southwest and smaller in the Midwest, Great Plains, and Mountain West.

These trends indicate a fundamental inconsistency and unfairness within our economic system that threatens the well-being of future generations. Jared Bernstein, a senior economist at the Economic Policy Institute, makes this point, explaining, "When income growth is concentrated at the top of the income scale, the people at the bottom have a much harder time lifting themselves out of poverty and giving their children a decent start in life. A fundamental principle of our economic system is that the benefits of economic growth will flow to those responsible for their creation. When how fast your income grows depends on your position in the income scale, this principle is violated. In that sense, today's unprecedented gap between the growth of the typical family's income and productivity is our most pressing economic problem."

Growing income inequality in America did not happen by accident and it cannot fix itself. It will take proactive changes from policy makers at the state and national level to help reduce the gap and truly level the economic playing field to create a more robust environment for opportunity for all. Raising the minimum wage, as well as adjusting it annually for inflation, would be one small but necessary first steps toward reducing the enormous income disparity in America today.

Despite the White House's selective use of economic data and sweeping generalizations about the overall strength of the economy, mining the data actually paints a much drearier picture, one in which most Americans are not making progress but actually losing ground, while the wealthy prosper more and more. This trend will only worsen unless more just and sensible fiscal and economic policies are adopted.

White House Continues False Rhetoric on Impact of Tax Cuts

Attempting to justify the Congressional GOP's push to extend and make permanent President Bush's first term tax cuts, many Republican legislators and pundits, including the vice president, have recently claimed tax cuts pay for themselves by spurring economic growth. While this argument bolsters their call for tax cut permanence, the evidence shows the claim is more fiction than hard fact.

The first evidence pointing to the dubiousness of these claims is the tax cuts have yet to actually pay for themselves. The government has run massive, sustained deficits each year since the tax cuts were enacted and according to the president's own budget numbers, will continue to bring in insufficient revenue to close that gap. The Center on Budget and Policy Priorities (CBPP) has recently calculated that federal revenues in the three years following the president's tax cuts (2003 - 2005) have been $316 billion below what the administration had forecast before the cuts were adopted (*Claim That Tax Cuts "Pay For Themselves" Is Too Good To Be True*, Center on Budget and Policy Priorities, Mar. 8, 2006).

In fact, the administration itself does not believe the tax cuts will recover enough revenues through stimulated economic growth, as its own budget forecasts have continuously shown revenue growth to be smaller than historical averages, causing sustained deficits in the decades to come.

While there have been other forces involved in recent deficits, such as the recession during the president's first term and increase military and defense spending since Sept. 11, a study by the CBPP has shown the primary factor contributing to current deficits has been the tax cuts enacted in 2001 and 2003 (*Tax Cuts Have Played Much Larger Role Than Spending Increases In Current Deficit*).

Challenges to the administration's claims about its economic policies are nothing new. For years, prominent economists and analysts, some of whom have worked for the president, have called into question evidence to support the claim that tax cuts replace anywhere near the full amount of lost revenue. Ironically, the first group to cast doubt on such claims was the president's own Council of Economic Advisors (CEA). In 2003, during the debate over yet another round of huge tax cuts, Glenn Hubbard, then chairman of the CEA, maintained that less than half of the tax cuts would be replaced by increased economic growth, even in the best case scenario.

Hubbard's successor as chairman of the CEA had still harsher criticisms of the tax cuts. Greg Mankiw, who served as the chairman of the CEA from 2003 until 2005, wrote that there is "no credible evidence" that tax cuts pay for themselves and, in an often quoted line, an economist who makes such a claim is a "snake oil salesman who is trying to sell a miracle cure" (*Principles of Economics*, Gregory N. Mankiw, 2003).

This sentiment was repeated in the CEA's *Economic Report of the President* in 2003 that stated, "Although the economy grows in response to tax reductions (because of higher consumption in the short run and improved incentives in the long run), it is unlikely to grow so much that lost tax revenue is completely recovered by a higher level of economic activity" (*2003 Economic Report of the President*, pg. 58).

Many analysts have drawn similar, if not quite so rosy, conclusions. A recent report by the Congressional Budget Office (CBO) explored the economic and budgetary impact of a theoretical 10 percent cut in income tax rates under a wide variety of scenarios. The CBO concluded the budgetary impact could be estimated to offset between 1 and 22 percent of the lost revenue from the tax cuts in the first five years and could in fact *decrease those offsets by 5 percent in the second five years*. Even under the most optimistic of circumstances, CBO found any offset of the tax cuts to be almost 25 percent less than Dr. Hubbard's 40 percent estimate (*Analyzing the Economic and Budgetary Impacts of a 10 Percent Cut in Income Tax Rates*, Dec., 2005).

Studies by the Federal Reserve Board, the Congressional Research Service, and independent analysts of all political stripes have corroborated the conclusion that tax cuts do not fully pay for their cost to the U.S. Treasury. Both the former Federal Reserve Chairman Alan Greenspan and the current chairman Ben Bernanke have testified to Congress on multiple occasions that tax cuts do not pay for themselves, especially when they are deficit-financed, as almost all of the president's tax cuts have been. Former Chairman Greenspan told Congress in 2004, "Very few economists believe that you can cut taxes and you will get the same amount of revenues. When you cut taxes, you gain some revenue back. We don't know exactly what this is, but it's not small, but it's also not 70 percent or anything like that."

If fact, when tax cuts are deficit-financed, they increase both the deficit and the national debt and could actually have a negative economic impact, lowering the national savings rate, increasing long-term interest rates, and dampening economic activity. Worried economists and analysts watched as the national savings rate plummeted from 1.8 percent throughout 2004 (already a historical low) to *negative 0.5 percent* in the third quarter of last year. Consumers have been propping up the economy by continuing to spend--helped in large part by quickly rising housing prices--yet if consumer behavior shifts and Americans begin saving more, the economy might move toward another recession.

Changes in tax policy of the magnitude of the Bush tax cuts have more impact than simply giving Americans their money back, most particularly with respect to the government's fiscal health. Any claims by the administration or outside sources that tax cuts are able to completely pay for themselves should be immediately rejected. All the evidence shows that any economic benefits of the cuts will not offset the cost to the government, particularly when the cuts add to the national debt and place an increasing burden on the economy. While such claims may serve ideological ends of the president and his supporters', they are political rhetoric far removed from the facts.

House Passes Yet Another "Emergency" War Funding Bill

Before departing for a week-long St. Patrick's Day recess, Congress succeeded in further mangling the fiscal state of the nation. The House passed a costly emergency supplemental bill, while the Senate approved a misguided budget resolution . At the same time, both chambers approved an increase to the nation's debt limit to pay for their fiscal decisions. The $92 billion emergency supplemental measure passed by the House will significantly increase current deficits and do so by circumventing standard budget procedures.

The House measure, approved on March 16 in a 348-71 vote, allows the White House and Congress to sidestep spending caps by passing needed spending under the category of "emergency," when in fact said spending has been anticipated for months. The bill appropriates $91.9 billion in spending for this fiscal year, $67.6 billion of which will be spent on the wars in Iraq and Afghanistan.

When President Bush first sent the supplemental requests to Congress, the funding for war operations and hurricane relief were separate, but the House Appropriations Committee bundled the requests together, much to the chagrin of a number of House deficit hawks. Among the non-war-related spending included in the bill, $4.3 billion was appropriated for foreign aid and $19.2 billion for hurricane relief in the Gulf Coast. The bill also allows for $750 million to be shifted for Fiscal year 2006 low-income heating assistance programs, an important but somewhat tardy gesture.

Part of the hurricane package also includes $4.2 billion for housing in the form of Community Development Block Grants (CDBG). This funding for CDBG is a perfect example of the use of questionable budgetary practices by this Congress and administration, in order to fund important programs. The President's Fiscal year 2007 budget proposes $1 billion in cuts to the CDBG program (from $4 billion last year to $3 billion for FY07). As *Nation's Cities Weekly* recently pointed out, the proposal would mark the lowest level of funding for the program since 1990. Yet the White House and Congress are now appropriating CDBG funding through the emergency supplemental process. Not only does it make them less accountable to deficit-control measures, but it also sets up a "robbing Peter to pay Paul" situation, giving a false picture of how much funding is actually appropriated for CDBG.

Notably, a number of House conservatives revolted against certain aspects of the bill, specifically those regarding spending on hurricane relief. Twenty-nine members, mostly from the conservative Republican Study Committee (RSC), broke with their party and voted against a rule to consider the supplemental because they were upset at the lack of offsets to the spending. Despite the efforts of RSC members Mike Pence (R-IN) and Jeb Hensarling (R-TX), the rule passed 218-200. An amendment by Hensarling and Rep. John Shadegg (R-AZ) to provide offsets for hurricane spending was found by the Rules Committee to be out of order. However, House Republicans did reject an amendment to add an additional $1.9 billion to the bill to help with the post-hurricane housing crisis in a 212-210 vote. An amendment that would have put $825 million toward improved port security also failed.

The Senate has yet to mark up its version of the emergency spending bill, and is not expected to do so until sometime in April. It is unclear if the Senate will attempt to include any offsets for non-defense spending in its version.

Honest Debate Is Needed Around Vote to Increase Debt Limit

On March 16 the Senate voted 52-48 to increase the nation's statutory debt limit once again. The limit now sits at almost $9 trillion. The vote to increase the debt limit was necessary in order to avoid a government default, yet Senate Republican leaders pushed hard for this vote to take place without proper debate and without giving Senators a chance to offer amendments, some of which could potentially help to slow the rapid run-up of debt in years to come.

The following statement by Adam Hughes, OMB Watch Budget Policy Director, was released in response to the Senate vote to increase the national debt ceiling on March 16, 2006:

Today the Senate voted 52-48 to increase the nation's statutory debt limit once again. The limit now sits at almost $9 trillion. The vote to increase the debt limit was necessary in order to avoid a government default, yet Senate Republican leaders pushed hard for this vote to take place without proper debate and without giving Senators a chance to offer amendments, some of which could potentially help to slow the rapid run-up of debt in years to come.

This increase marks the fourth time Congress has needed to increase the debt limit in the five years since President Bush took office, ushering in a debt that has ballooned by more than 51 percent over that time. The vote highlights the abysmal record for both the President and Congress. At the start of the Bush administration - when the national debt was $5.95 trillion and large surpluses were projected for the government - Bush told Congress and America we could afford both tremendous tax cuts and paying down the debt. This turned out not to be true and the days of surpluses are long gone. Instead of dreaming of all we could provide and invest in for our country, we are confronted with mountains of debt and are continually let down by our leaders in Congress who are more concerned managing the political fallout of raising the debt ceiling again than actually debating how to fix the problem.

The need to increase the debt limit yet again is a direct result of the fiscal policies and practices implemented by Bush and Congress over the past five years. While the administration blames the increase in U.S. debt on both the 2001 recession and the costs of the war on terrorism, in reality the cost of his 2001 and 2003 tax cuts, ringing in at $225 billion in 2005 alone, carry far more of the blame for the burgeoning rise in national debt.

Democrats demanded as much as eight hours of debate and up to three separate amendments to the debt limit legislation, but Senate GOP leaders preferred to try to ignore the problem and avoid a much-needed public discussion on the causes and solutions to our current and growing debt troubles. In the end only one amendment was considered (and rejected), which sought a Treasury Department study on foreign investment in the United States.

Frist blocked Democrat attempts to offer another amendment on pay-as-you-go rules (PAYGO) that would have been an excellent first step toward stemming the irresponsible fiscal policies of this Congress and president. In the last few months, the PAYGO amendment has been offered often by Democrats, twice last fall and once this week. All three times it has been rejected by razor thin margins, with all but a handful of Republicans voting against it, leading many to question if the GOP has abandoned its fiscally conservative roots. Clearly, far too many Republican Senators felt fine burdening future generations with hundreds of billions of dollars of new debt every year, dampening future economic prospects for the country and seriously threatening our national economic security.

Unfortunately, Republican leaders were once again unwilling to take even the smallest step to redirect the nation's course toward sound and sustainable fiscal policy. And while the GOP is turning a blind eye, they continue plodding through their annual budgetary work, seemingly oblivious to the results of their actions. Nothing illustrates this more plainly than tomorrow's possible adoption of the FY 2007 budget that will add additional hundreds of billions of dollar to the government's debt next year.

If lawmakers continue to enact budget and tax legislation in the same irresponsible and reckless fashion that has marked the last five years, the debt will continue to explode. Even without factoring in the cost of the Iraq war and annual fixes to the Alternative Minimum Tax, the total national debt under current policy is expected to reach $11.5 trillion at the end of 2011, or twice that of the debt inherited by Bush when he took office.

Allowing this level of national debt to accumulate is both unfair and irresponsible. Every single U.S. citizen now carries $28,000 of national debt burden, and this number will dramatically increase unless Congress makes some real changes to current fiscal policies. At a minimum, Senators and Representatives should being having real conversations and debate about what is wrong with current budget and tax policies and how to fix them.

House Bill to Roll Back Food Safety

The "National Uniformity for Food Act" (H.R. 4167) that would preempt nearly 200 food safety laws and affect state law in all 50 states, passed out of the House on March 8, to ire of consumer advocates. The legislation was introduced by Reps. Mike Rogers (R-MI) and Ed Towns (D-NY).

The bill, being pitched as a measure to create a uniform set of federal food regulations, would in fact severely limit states' authority to develop safety standards and require warning labels that are not identical to those developed by the U.S. Food and Drug Administration (FDA).

According to the State Association of Food and Drug Officials, a group strongly opposed to the legislation, "H.R. 4167 effectively eliminates our nation's biosecurity shield, and will undermine our whole food safety and biosurveillance capability by undermining states' authority to assure food safety."

Consumer groups maintain that, over the years states have carefully developed food safety laws to fill gaps by FDA regulations. H.R. 4167 would sweep aside those improvements and leave consumers in many states at greater risk. While the bill includes a petition process through which states could seek an exemption to address food safety issues unique to their area, critics assert that such a process would create unnecessary, and even dangerous, delays in addressing food safety issues.

For example, states are beginning to address consumer right-to-know provisions, such as the labeling of genetically engineered foods and foods that undergo irradiation. The proposals in H.R. 4167 would have a chilling effect on these and other state efforts aimed at giving consumers informed choices. The legislation could also gut California's Proposition 65, which requires warning labels for products or food that expose consumers to chemicals that are known to cause cancer or birth defects.

Large food manufacturers that have long complained of overly stringent state-level food safety programs, support the legislation, claiming that the current patchwork of federal and state regulations results in increased costs and confusion for both food companies and consumers.

Similar legislation has yet to be introduced in the Senate.

Louisville Air Quality Program Threatened

Kentucky state lawmakers are considering a bill that would threaten the future of a fledgling air pollution program in Louisville. The program, called the Strategic Toxic Air Reduction (STAR) program, was passed unanimously by the Louisville Air Pollution Control Board in June 2005, and requires industrial facilities in the area to reduce emissions of 18 hazardous air pollutants.

The STAR program came out of pressure from citizens to reduce the area's high levels of hazardous air pollutants. In 2002, the U.S. Environmental Protection Agency (EPA) ranked Jefferson County, where Louisville is located, as the locale with the greatest health risks from hazardous air pollutants in the Southeast. EPA air monitors found levels of the 18 hazardous air pollutants now covered by the STAR program in excess of federal air quality standards.

But now Louisville's very ability to control local air quality is at risk. Earlier this month, Kentucky Sen. Dan Seum (R), who represents Jefferson County, introduced SB 39 that would have killed the STAR program by prohibiting any locality from adopting regulations more stringent than state or federal regulations. Seum argued that the STAR program would cost Kentucky jobs.

On Feb. 27 the Kentucky state senate passed an amended version of SB 39, which dropped the local preemption provision, but included a requirement that a three-fifths supermajority of the Louisville Metro Council approve the STAR program before the program could take effect. The bill, which had Seum's support and passed the state senate 27-10, had been sent to the state house.

The Kentucky House of Representatives, however, passed a major re-write of SB 39, March 14, that requires the Louisville Air Pollution Control Board to submit a cost/benefit analysis of the STAR program to the Louisville Metro Council by Nov. 30. The council would then have one month to submit "recommendations for modifications." The House bill, which passed 95-1, leaves the STAR program temporarily intact, but still creates the possibility that the program could be weakened.

The disparate House and Senate bills now head to a conference committee, where lawmakers will attempt to work out the differences.

Local environmental organizations, like Rubbertown Emergency Action (REACT) see the STAR program as an important step towards cleaner air and a healthier environment in Louisville. REACT member Eboni Cochrane explains, "The problem is there are only minimum standards at the federal level and they don't protect us from chemicals coming from the facilities located in Rubbertown."

STAR also demonstrates the importance of monitoring data and government-held toxic release data, to diagnosis environmental problems. According to Tim Duncan, also with REACT, "Without the air monitoring, and citizen access to that data, industries could have kept saying there is not a problem, and we would not have been able to push the city to deal with the industrial sources of our air pollution problems."

Spotlight on Secrecy and Overclassification

Testifying before the House Subcommittee on National Security, Emerging Threats and International Relations, representatives from the National Archives, the Department of Defense (DOD) and the Department of Energy (DOE) received harsh questions regarding a secretive, multi-agency reclassification program, as well as unclear sensitive but unclassified (SBU) policies.

As reported in the previous *Watcher*, the National Archives recently placed a moratorium on the reclassification program first reported by *The New York Times*. The program is believed to involve at least six federal agencies and the reclassification of some 55,000 pages of documents since 1999.

During the March 14 subcommittee hearing, representatives focused much of their questioning of National Archives officials on a classified Memorandum of Understanding (MOU) issued by a "branch" of the Defense Department that may offer the only documented details on the reclassification program's scope and procedures. Testifying for the Archives were Professor Allen Weinstein, Archivist of the United States, and J. William Leonard, Director of the National Archives Information Security Oversight Office (ISOO)

Rep. Henry Waxman (D-CA) repeatedly pressed Weinstein for details about the memorandum. Weinstein responded that he "can't talk about what the MOU says" because the program is classified. Pressed about the program's classified status, he said he did not "know why it is classified" and offered to talk about the MOU in a closed briefing.

Believing that the secrecy surrounding the document and the program cuts to the heart of the reclassification program's problems, Rep. Christopher Shays (D-CT), chairman of the subcommittee, indicated he will request that the Defense Department declassify the memo.

Weinstein said that he "wasn't aware of the [reclassification] program" until he "learned about it in *The New York Times*." Weinstein and Leonard stated that they are in the midst of reforming the program to prevent the reclassification of innocuous documents. Within 60 days, the Archives plans to complete its audit and issue a thorough analysis of the declassification program and offer recommendations on how it should be reformed.

The hearing also addressed what Shays calls "faux secrets," sensitive but unclassified information (SBU) that the federal government keeps from the public. Davi M. D'Agostino of the U.S. Government Accountability Office (GAO) explained the findings of the GAO's recent report, "Managing Sensitive Information." The report focuses on how the Energy and Defense Departments use Official Use Only (OUO) and For Official Use Only (FOUO) designations. GAO found that the agencies lack clear policies, oversight, and training on handling sensitive information.

Echoing the findings of the GAO report, Tom Blanton of the National Security Archive at George Washington University testified, "Nobody knows the scope of SBU." According to a recent report by the National Security Archive, 28 distinct policies on SBU exist throughout the federal agencies. In September 2005, OpenTheGovernment.org's Secrecy Report Card identified 50 "restrictions on unclassified information" that agencies use to keep information secret. Additionally, there are often few limits on who can classify a document as SBU. "Anyone [at DOD] can classify a document as FOUO, subject to a review by their supervisor" according to Robert Rogalski, Acting Deputy Under Secretary of Defense, and as Shays noted, a supervisor may never decide to exercise authority. At DOD alone, 2.5 million employees can mark a document as sensitive but unclassified. "SBU designations are being misused as an unregulated form of 'classification-lite,'" according to Shays. "We are drowning in a sea of our own faux secrets."

Court Rejects Data Quality Act Case Brought by Industry

A recent appeals court decision has dealt a blow to what many consider frivolous challenges to sound science made under the Data Quality Act (DQA). On March 6, the U.S. Court of Appeals for the Fourth Circuit dismissed a lawsuit brought by the Salt Institute and the U.S. Chamber of Commerce under DQA, when judges found that the act does not allow for judicial review and that the plaintiffs had not show injury and thus lacked standing. The suit requested court intervention on a 2003 challenge by the plaintiffs with the National Heart, Lung, and Blood Institute (NHLBI), requesting underlying data on a sodium study the institute had conducted.

The industry associations challenged, in both their 2003 data quality petition and the lawsuit, a grant-funded study which, they claim, "directly states and otherwise suggests that reduced sodium consumption will result in lower blood pressure in all individuals." The Salt Institute, an association of salt manufacturers that advocates on behalf of its members, and the Chamber of Commerce requested the release of raw data that supported the study's findings, accusing the study of not properly accounting for race, age, sex, and other such factors and of therefore violating DQA.

Writing for a panel of judges on the U.S. Court of Appeals for the Fourth Circuit, Judge Michael Luttig--once on the short list of President Bush's Supreme Court nominees--upheld a lower court's ruling, denying the reviewability of the data quality challenge.

The ruling was a definitive statement in the debate over whether DQA enables judicial review. The opinion of the court found the plaintiffs failed to establish "an invasion of a legal right" and thus an injury and concluded that "[t]he judgment of the district court dismissing the case for lack of jurisdiction is affirmed."

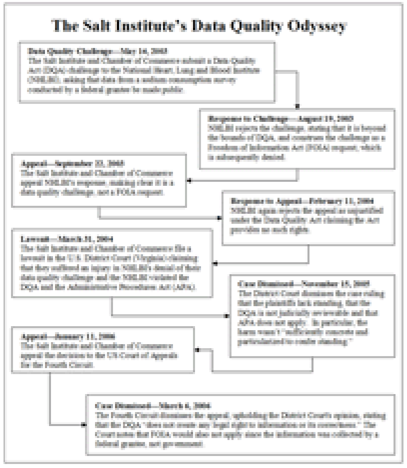

Figure 1: The Salt Institute's Data Quality Odyssey

This case, set up as a test of DQA's authority, has been watched closely by both sides of the DQA debate. The initial challenge with the NHLBI, the division of the National Institute of Health charged with fighting diseases of the heart, blood, and lungs, was rejected under the Freedom of Information Act (FOIA) because the challenge sought only to obtain underlying survey data. The institute rejected the FOIA request because the data was collected by a federal grantee, not the government, and non-governmental entities are generally not subject to FOIA. The Salt Institute and the Chamber of Commerce appealed the agency decision, making clear their challenge was under the Data Quality Act, not FOIA, and alleging that they had suffered harm from the study. Once NHLBI rejected that appeal, the industry associations pursued legal recourse.

Soon after the court decision, talk turned to pursuing other DQA cases in the courts and amending DQA to allow for judicial review. Rep. Candice Miller (R-MI) stated that she will consider introducing legislation to establish judicial review of DQA and may include it in a Paperwork Reduction Act reauthorization bill. The Center for Regulatory Effectiveness appears to be seeking another data quality challenge in the courts, in order to establish a counter precedent where a court finds DQA reviewable.

The Chamber of Commerce and the Salt Institute have three options for moving forward with the case. First, they can petition for a rehearing before the same three-judge panel. Second, they can submit an *en banc* petition, requesting a hearing before the entire Fourth Circuit. Finally, they can petition the Supreme Court to issue a writ of *certiorari*.

Sunshine Week Marked by National Discussion, News Coverage

The public is growing weary and distrustful of burgeoning government secrecy--that's the message brought to the public last week during Sunshine Week (March 12-18th), an effort by the media, civic groups, libraries, universities and others to highlight the importance of open government.

Joining the national efforts begun last year by media groups, OpenTheGovernment.org kicked off Sunshine Week by coordinating with several groups a program of local discussions on open government and secrecy at 47 sites across the country. Highlighting the program, entitled "Are We Safer in the Dark?", was a panel discussion on open government laws and the impact of secrecy on the public's ability to hold government accountable.

Contributing to the discussion was Mark Schleifstein, a reporter with the New Orleans *Times*

Picayune, who described via a pre-recorded interview his failed efforts to get critical safety information to his readers immediately after Hurricane Katrina struck. Moderator Geneva Overholser posed questions to the panel from national audience members.

Newspapers and other media outlets around the country contributed an impressive array of opinion pieces, editorials and news pieces for Sunshine Week (see this Google News search). PBS's NOW produced a special broadcast on government secrecy, looking at the government's failed response to Hurricane Katrina and the problem of overclassifying information.

Honoring Sunshine Week, OpenTheGovernment.org released a short flash video, a fun look at the not-so-funny problem of growing government secrecy.

PRA Hearing Features Industry Anti-Reg Wishlist

Testimony in a House hearing on the Paperwork Reduction Act (PRA) revealed industry groups' intentions of using PRA reauthorization to push an anti-regulatory agenda.

The Paperwork Reduction Act (PRA) establishes the guiding policies for the collection, dissemination and management of government information. Since its inception in 1980, the PRA has had a major impact on regulatory policy, even though it grants the White House no statutory authority to conduct regulatory reviews.

The PRA covers a broad spectrum of information management policy issues, including information dissemination, technology, security, and archiving. The March 8 hearing before the Regulatory Affairs Subcommittee of the House Government Reform Committee, however, focused primarily on the information clearance provisions of the law, which give OMB's Office of Information and Regulatory Affairs (OIRA) the authority to review and approve or disapprove any collection of information from 10 or more people by a federal agency. OIRA and the agencies are also required to work together to establish goals for reducing the total paperwork "burden." Though these provisions attempt to limit agency information collection activities, the total number of burden hours each year continues to rise. According to subcommittee chair Candice Miller (R-MI), the burden has increased 400 percent since the bill's passage in 1980.

Cutting Compliance Time, Not Information

Two witnesses stressed that the topic framed for the hearing -- how to reduce burden hours -- would not be the best way to approach reauthorization of the PRA.

OMB Watch's regulatory policy director Robert Shull argued that information technology has made the collection of information potentially easier and less burdensome than ever, and the PRA should be updated to reflect the new potential of technology to reduce reporting and recordkeeping burden without reducing the quantity, quality, or utility of the information collected. Moreover, according to Shull, the reported increase in burden hours could reflect any number of factors external to agencies -- such as new legislative mandates or more people filling out forms -- rather than gratuitous increases in paperwork. In fact, an increase in information collection is not necessarily a bad thing, Shull testified, given that it could also represent an increase in information *needs* being addressed.

Additionally, Sally Katzen, former administrator for OIRA under President Clinton, pointed out that not all burden should be counted the same way. When an individual receives a benefit from filling out an information request in order to receive a tax break, for instance, the information collection should not be considered a burden. As Katzen pointed out, in choosing to fill out the form for accelerated depreciation for oil and gas depletion allowances, the individual or company has already determined that the potential reward is worth the information collection burden. Moreover, these kinds of information burdens are actively sought out by industry. "Surely those who spend the hours filling out those forms have made the calculation (however informal) that the burden of doing the paperwork is outweighed (often greatly outweighed) by the benefit of obtaining the resulting tax advantage," according to Katzen.

Katzen also explained that requiring disclosure of information, such as requiring employers to post information about toxic chemicals in the workplace, can often be less costly than seeking regulation. Viewed in this light, even a large information collection burden might actually save the affected parties time and money.

Measuring information burden as an aggregated whole can obscure how and why the information collection is being imposed. Katzen called for a more nuanced approach to evaluating information burden and requested that reauthorization of the PRA resist implementing stringent burden reduction goals.

A Wolf in Sheep's Clothing: Industry's Anti-Regulatory Agenda

While much of the testimony addressed how to relieve information burden without reducing the quality or quantity of needed information collections, some witnesses used the opportunity to push non-germane, anti-regulatory proposals. Representatives from the U.S. Chamber of Commerce and the National Federation of Independent Businesses (NFIB), as well as former OIRA administrator James Miller, suggested "reforms" to the act that could have dangerous consequences for public health and safety provisions.

For instance, while recommending some changes to reduce burden, William Kovacs of the U.S. Chamber of Commerce also recommended codifying OIRA's regulatory review authority under Executive Order 12,866. This move would have little to do with information policy but would greatly increase OIRA's role in agency rulemaking and would legislate the use of cost-benefit analysis. Kovacs also recommended "look-back" studies that would open up the books on existing regulations, even those with proven efficacy.

Both Kovacs and Andrew Langer, Regulatory Policy Manager for the NFIB, recommended increasing OIRA's budget (calling it "full funding" of OIRA), without specifying that the money go to information management policy. Currently, same OIRA desk officer who reviews information collections under the PRA also reviews rulemakings, a role which has not been sanctioned by Congress. This linkage between paperwork and regulatory review began under the Reagan administration when OIRA was created. The PRA created OIRA to implement the law, and the Reagan administration issued an executive order that gave regulatory review powers to OIRA.

Langer also took the opportunity to recommend "regulatory sunsets," which would require all regulations to be periodically reviewed and re-justified in order to continue. Many versions of regulatory sunsets have come up in legislative proposals, but none has ever been enacted at the federal level. In Langer's version, "[a]ny regulation that is not reviewed at that ten-year point would be automatically sunset, and for a regulation to remain in place, its existence would have to be justified."

James Miller, who was the first OIRA administrator and the first to link paperwork and regulatory reviews, applied his reform suggestions for paperwork reduction to the regulatory process throughout his testimony. His ideas included applying controversial net benefits requirements, which seek to maximize the difference between the cost and benefit of a regulation or information collection, rather than optimizing the benefits. Applying this criterion to policy decisions could mean sacrificing the level of protection needed to keep people safe and healthy.

Miller also derided the congressional mandates that require regulation without consideration of cost. He called for a joint bill on paperwork and regulation that would mandate a regulatory and information collection budget, like the financial budget. According to Miller, under this plan, "[b]urdens pursuant to requirements/rules presently in force would be treated in the same way as entitlements in the financial budget. . . . But new requirements/regulations, as with discretionary spending, would have to be 'appropriated' and could not be promulgated unless they were within the scope of the relevant 'appropriation.'"

OMB Watch's Shull warned that such non-germane proposals would be bad for public health and safety and could derail the reauthorization of the bill.

Beyond Paperwork: Harnessing Technology to Improve Information Management

Because the PRA actually covers the entirety of information management policy, a reauthorization presents an opportunity to address broader issues surrounding government information, according to testimony by Shull.

While OIRA has been focusing on the information collection process, the agency has done much less to enhance information technology, security or dissemination, for instance. In his testimony, Shull referred to several GAO studies showing how OIRA has fallen behind on its information management duties.

Shull also pointed out the way information technology can be used to reduce burden and increase public access to information. Cutting-edge innovations such as nanotechnology can make information collection practically burden-free. Other technologies can make filling out forms faster and easier. Other initiatives already underway can also help relieve the burden on business, such as the Business Gateway, which small business groups urge should be improved to allow small-business owners to enter information about their businesses and receive details of applicable federal regulations.

The 1995 reauthorization of the Paperwork Reduction Act expired in 2001, leaving the PRA without designated appropriations though still enforceable. A bill to reauthorize the PRA has not yet been introduced, but both Reps. Miller and Tom Davis (R-VA), who chairs the House Government Reform Committee, have stated publicly that PRA reauthorization is a high priority for the 109th Congress.

FBI Used Anti-Terrorism Powers to Target Peace Group

The American Civil Liberties Union (ACLU) released documents on March 14, 2006 that document FBI surveillance and investigation of the Thomas Merton Center for Peace & Justice in Pittsburgh, PA, carried out because the group "has been determined to be an organization which is opposed to the United States' war with Iraq." This appears to be the first evidence that the FBI is using the viewpoint and activism of a U.S. nonprofit as a basis for investigation by the local Joint Terrorism Task Force (JTTF).

The documents show that the FBI began investigating the Merton Center in November 2002, noting that the group was distributing leaflets in downtown Pittsburgh. FBI documents also identify the Center as "a left-wing organization advocating, among many political causes, pacifism." A February 2003 memo titled "International Terrorism Matters" describes how the Pittsburgh JTTF reviewed the Merton Center's website to gain information about demonstrations and rallies against the war the group had planned. The memo concludes, "The above information is for your use and any action deemed appropriate."

According to Merton Center Executive Director Jim Kleissler, the organization's "members were simply offering leaflets to passersby, legally and peacefully, and now they're being investigated by a counter-terrorism unit. Something is seriously wrong in how our government determines who and what constitutes terrorism when peace activists find themselves targeted."

The documents have come to light as the result of Freedom of Information Act requests filed by the ACLU on behalf of more than 150 organizations in 20 states.

Questions Raised About IRS Enforcement Program

Complaints filed by two nonprofits illustrate the potential for abuse inherent in the Internal Revenue Service's (IRS) reliance on referrals from the public for leads in its enforcement programs. On March 14, a complaint filed by Citizens for Responsibility and Ethics in Washington (CREW) against Americans for Tax Reform (ATR) and Americans for Tax Reform Foundation (ATRF), alleged activities that "may violate IRS regulations and require a revocation of their tax-exempt status." The next day ATR filed a counter-complaint with the IRS against CREW, alleging that CREW, a 501(c)(3) organization, engages in prohibited partisan activity because the majority of its ethics complaints have been filed against Republicans.

The two complaints raise questions for the IRS's compliance program, particularly its Political Activity Compliance Initiative, a program of increased and expedited enforcement of the prohibition on intervention in elections by 501(c)(3) organizations. Publicity around the program could lead to a flood of retaliatory and harassment complaints this year unless the IRS develops standards to screen out such abuse of its procedures.

The CREW complaint does not allege partisan activity by ATR (a 501(c)(4) social welfare organization) or ATRF (a 501(c)(3) organization). Instead, it outlines a series of financial transactions, in which ATR and ATRF President and Treasurer Grover Norquist collaborated with convicted lobbyist Jack Abramoff, who represented Indian casinos in Mississippi, in order to engage in activity inconsistent with the organizations' tax-exempt purpose. CREW charges that Norquist allowed "the organizations to be used as a pass-through to funnel money generated by Indian casino gambling to individuals or groups engaged in anti-gambling efforts," in order to conceal the source of funds from the anti-gambling groups that received them. CREW maintains that ATR sent more than $1.15 million to anti-gambling groups, including the Christian Coalition in Alabama and Citizens Against Legalized Lottery. These groups, in turn, hired Century Strategies Inc., conservative Ralph Reed's firm, to conduct an anti-gambling campaign. It is unclear how much control the groups had over the funds. A representative of one recipient, the Faith and Family Alliance, told the *Atlanta Journal Constitution* that he had instructions to send the funds to Reed, saying, "I was operating as a shell."

CREW alleges that this activity was inconsistent with ATR's purpose of reducing the size of government and lowering taxes. By charging a fee to pass through the funds, CREW says ATR engaged in a commercial activity that benefited a private party (the Indian casinos wishing to prevent competition). The complaint asks the IRS to "conduct a full-scale investigation, including a forensic audit of the funds that were funneled through ATR" to determine if these activities are at odds with its tax-exempt status. The IRS would also have to determine whether these activities were incidental or constituted a substantial portion of ATR's activities.

The complaint does not address whether the funds were ultimately spent for a lobbying purpose- opposing casino gambling. CREW also asks the IRS to impose unrelated business income taxes on the fees charged for handling the funds and to impose sanctions on ATR for failure to publicly disclose its application for exempt status as required by Section 6104 of the tax code.

The ATR complaint against CREW was reported in the press, but is not posted on the ATR website. According to press reports, ATR charges that the vast majority of CREW's ethics complaints have been filed against Republicans. For example, its 2005 list of the 13 Most Corrupt in Congress included 11 Republicans and two Democrats. Melanie Sloan, director of CREW, responded, "Republicans are the ones in power. You're stupid to pay off a Democrat. They can't do a whole lot for you." She also noted other instances where CREW has filed complaints against Democrats.

Whether CREW's activity will be treated as partisan intervention in elections is unclear. While ATR points out that Sloan worked for Democratic members of Congress prior to coming to CREW, and other staff members have worked for liberal groups, it would appear more would be needed to prove intervention. Miriam Galston, associate professor at George Washington University School of Law, told *The Hill*, "Filing those complaints would not constitute, taken by themselves, intervening in a political campaign. If they went further and publicized the list and publicly tried to make some political mileage out of fact of the allegation and tried to sully campaign prospects using their own complaints, they could be said to be intervening in a political campaign."

Lobby Reform: A Bill in the House, While the Senate Moves Toward Vote

Heading into the week long St. Patrick's Day recess, the House Republican leadership has formally introduced a lobbying and ethics reform bill, while the Senate has scheduled a vote for March 27. While both chambers are finally moving legislation, it is increasingly unclear what new rules will eventually be enacted, and whether they will change business as usual in Washington.

Legislation in House

The House GOP proposal on lobbying and ethics reform has been under discussion for months, with Rules Committee Chairman David Dreier (R-CA) taking the lead. On March 16, Dreier introduced H.R. 4975, the Lobbying Accountability and Transparency Act, as a single comprehensive bill. Reportedly, the bill will be divided into pieces and parceled out to six different committees, Dreier's Rules Committee; Judiciary; Ways and Means; House Administration; Government Reform; and Ethics. The legislation currently focuses on:< p>

- **Disclosure by Lobbyists**: The trigger for registering would change from $24,500 in a 6-month period to $10,000 in a 3-month period. The bill also requires quarterly, electronic reporting by registered lobbyists, including disclosure of campaign contributions, gifts, and lobbyists' past congressional and executive branch employment, but does not include disclosure of expenditures for grassroots lobbying or coalitions;
- **Privately Funded Travel**: Privately funded travel would be banned for the remainder of the 109th Congress, and the Committee on Standards of Official Conduct would have to recommend new rules by Dec. 15;
- **Revolving Door**: While the one-year waiting period for members and senior staff before they could become lobbyists would be retained, legislators would be required to inform the ethics committee of any job negotiations that could be a conflict of interest, and refrain from voting on any matter that creates the appearance of a conflict of interest;
- **Earmarks**: The bill would require the identification of sponsors of earmarks in an appropriations bill, and appropriations conference reports would have to specify

earmarks that originated in conference, but there would be no simple method of challenging earmarks;
- **Oversight**: The bill would create an auditing authority for the House Inspector General to do spot audits on lobby disclosure forms;
- **527 Organizations**: Finally, the bill would apply Federal Election Campaign Act (FECA) restrictions to independent 527 organizations so that they can no longer raise unlimited amounts of money, and eliminate restrictions on party-coordinated expenditures.

House Majority Leader John Boehner (R-OH) has said the bill will be taken up after recess. As rank-and-file members groused about some of the provisions, however, Majority Whip Roy Blount (R-MO) suggested the members take the legislation home over the in-district work period and return with suggested alterations. Consequently, the bill could change substantially before leadership brings it to the floor.

Both members and some organizations are focusing most of their complaints on the provision that would ban - albeit temporarily - lawmakers' travel paid by private interests. According to United Jewish Communities Vice President for Public Policy William Daroff, "There is widespread, bipartisan consensus that a travel ban and a travel moratorium are not in the best interest of Congress and are not in the best interest of public policy."

Senate Moves Forward

In the Senate, debate on S. 2349 resumes on March 27 and a vote is expected that evening. An amendment introduced by Sen. Charles Schumer (D-NY), dealing with the Dubai Port World deal, is expected to be withdrawn. However, it is still unclear how the large number of amendments still pending will be dealt with. Sen. Majority Leader Bill Frist (R-TN) has said that he expects to spend only a limited amount of time on the legislation so that the Senate can move on to immigration reform on March 28.

While leadership may spend the week convincing members to set aside their non-germane amendments (an amendment that would add new and different subject matter to a bill it seeks to amend), a few amendments will likely remain to be dealt with. A controversial proposal to institute an independent ethics and disclosure enforcement office, introduced by Sen. Joe Lieberman (D-CT), is a pared-down version of his previous provision rejected by the Homeland Security and Governmental Affairs Committee. His newest proposal would not give authority to the office to conduct ethics investigations of members, a sticking point in committee.

Also unclear is whether the Senate will consider an amendment introduced by Sen. Robert Bennett (R-UT) to strike the disclosure of expenditures of grassroots lobbying by registered lobbyists. In light of opposition from many organizations, the fate of grassroots lobbying disclosure is uncertain. In addition, while the entire legislation affects the nonprofit community by helping to offset the role money has in influencing public policy, amendments filed by Sen. Tom Coburn (R-OK) and Sen. James Inhofe (R-OK) could impact charities and their federal funds. Coburn's amendment, co-sponsored by Sen. Barack Obama (D-IL), would require recipients of federal funds, if they are currently filing under the Lobby Disclosure Act (LDA), to disclose the following when they report:

- the costs and a description of any lobbying activities engaged in
- the name of any currently registered lobbyists that was paid money to lobby for federal funding
- the amount of money paid to the lobbyist.

Federal funds are described in the amendment as an "award, grant or loan".

Inhofe's amendment adds a penalty clause to Sec. 18 of the LDA, which prohibits 501(c)(4) organizations that engages in lobbying activities from applying for federal funds. The amendment adds a provision that, if a 501(c) organization engages in lobbying activities with federal funds, an officer of the organization can be imprisoned for not more than 5 years and fined.