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In This Issue

War Spending Keeps Climbing, Says CBO

A new round of defense and emergency appropriations will raise the total amount of money spent on the wars in Afghanistan and Iraq to nearly $750 billion by the end of FY 2008, according to a recent report by the Congressional Budget Office (CBO).

Later in March, Congress will begin consideration of President Bush's FY 07 request for an additional $93.4 billion in emergency war funding. $70 billion in war funding has already been appropriated for FY 07, bringing the likely total for incremental war expenditures (or additional funds needed for the wars, including reconstruction) to $163.4 billion for the current fiscal year.

The Bush administration requested $141.7 billion in war spending for FY 08 and

projected $50 billion for FY 09. The CBO calculates that these requests will bring the total amount appropriated for the military campaigns to $746 billion. But costs will most likely exceed the FY 08 request, as the rate of spending in Iraq has accelerated each year of the war, mostly due to increasing equipment maintenance and repair costs.

The Congressional Research Service (CRS) estimates that total spending for the Iraq war alone will reach $456 billion by the end of FY 07 and that the Iraq campaign has received about seventy to eighty percent of all spending on the two wars. These figures from the CRS are only estimates because the Department of Defense has not released data on the disaggregated costs of each recent military operation. Indeed, there is no consensus among budget-monitoring government agencies as to how much money in total has been spent on the wars. The Department of Defense does not track budget outlays.

Taken as a whole, the wars are on track to rank among the most expensive in U.S. history. The Vietnam War, which lasted more than 10 years, cost $660 billion in today's dollars. The estimated rate of spending per month in Iraq is significantly higher than it was during Vietnam — $8.0 billion and $5.1 billion per month respectively, in today's dollars.

Spending for the Iraq and Afghanistan wars, however, will take up a much smaller percentage of annual gross domestic product (GDP). Current war spending accounts for about one percent of GDP, whereas during the Vietnam war, spending took up nearly nine percent.

Calculations of incremental costs exclude potential future costs, such as medical care for wounded veterans. A recent study by Joseph Stiglitz, who is an economics Nobel Prize winner and teaches at Columbia University, and Linda Bilmes, who teaches at Harvard, showed that total future costs for the Iraq war could exceed $2 trillion, largely because of expensive long-term costs for veteran health care.

These cost calculations and projections also exclude interest payments on the loans that have been used to finance the wars. Almost all war spending in Iraq and Afghanistan has occurred at the same time that taxes have been severely cut, causing the federal government to run substantial deficits and continue to incur larger and larger interest charges on the national debt.

In its report, the CBO also projected total incremental (excluding health care, etc.) costs of the war over the next decade. Under a model where troop levels gradually decline over six years, CBO estimates that another $764 billion will need to be appropriated through 2017, for a total of $1.5 trillion. If troop levels decrease faster, CBO predicts another $317 billion will be necessary, for a total of about $1.1 trillion in combined war expenditures.

Spending on the Iraq war in particular is far more than what the White House told the American people the costs would be. Around the time war was initiated, the Bush administration estimated that the war would cost between $100 billion and $200 billion.

In fact, former OMB Director Mitch Daniels said at the time that the estimate was very high.

Congress Set to Consider Largest Supplemental Funding Request in History

Congress will soon begin work on the largest supplemental funding bill ever requested — $99.6 billion — to continue to fund the wars in Iraq and Afghanistan, along with other items. The request was submitted to Congress by the president in early February, when the FY 2008 budget was released. If approved, this request would add $93.4 billion to the $70 billion Congress already appropriated for the "war on terror" in FY 2007 and bring the total cost of the wars to over $500 billion.

Specifically, the emergency spending bill provides funding for:

- ongoing military operations ($41.5 billion);
- repairing and replacing equipment ($26.7 billion);
- providing body armor ($10 billion);
- training and equipping Afghan and Iraqi forces ($9.8 billion);
- conducting intelligence activities ($2.7 billion);
- combating roadside bombs ($2.5 billion);
- miscellaneous items ($6.5 billion).

In addition to war funding, there is money allocated for State Department operations and aid to Pakistan, Lebanon, Kosovo, Sudan and Liberia, and $3.4 billion for continued relief efforts related to the 2005 Gulf Coast hurricanes. The $99.6 billion total makes this the largest emergency supplemental relief bill ever submitted to Congress.

The bill will be marked up by House and Senate Appropriations Committees during the week of Mar. 19 and the committee chairs, Rep. David Obey (D-WI) and Sen. Robert C. Byrd (D-WV), hope to have the bills ready for floor consideration the following week. The president has said he wants the bill on his desk by the end of April.

Democrats have been somewhat divided as to what, if any, conditions or restrictions should be placed on the war funding. One idea now endorsed by the House leadership is Rep. John Murtha's (D-PA) proposal to impose readiness, rest and training requirements for all troops sent to Iraq but allowing President Bush to waive the requirement if he offers a public rationale for the waiver. Whether anti-war House Democrats will support this proposal is an open question, but the caucus seems to have consensus on one area — adding additional funding to the supplemental. Members in both chambers have signaled their intention to add several billion dollars for a variety of projects. Most are unrelated to the war and their urgency is arguable. Among the projects likely to be added via amendment are funding for:

- **BRAC** — to house troops returning from overseas deployments as part of the 2005 base-closing round
- **Agriculture (Midwest)** — to cover losses from drought, floods and other agricultural disasters during the past two years
- **Agriculture (California)** — to cover losses from the recent frost that damaged citrus crops
- **Avian flu** — to prepare for a potential bird flu outbreak
- **Pacific Northwest timber** — to provide compensation to communities suffering from declining timber sales
- **SCHIP** — to provide $750 million to the children's health insurance program to stave off immediate program cuts

If all of these amendments are adopted, the bill could end up costing over $110 billion and provoke a veto threat from a president, who purports to seek a balanced budget by 2012.

Yet it is not only those in Congress who are thinking of adding funding to the bill. One House member, Rep. Neil Abercrombie (D-HI), chair of the House Armed Services Subcommittee on Tactical Air and Land Forces, charged in the *Boston Globe* on Mar. 5 that "the administration [itself] is misusing emergency budget requests in another way":

The bill contains much more than war-related items — $14 billion is requested for new armored vehicles.... Some of the so-called emergency replacement items in the 2007 request won't even be available until 2010 or later. We've been asked to replace two $20 million fighter aircraft with $200 million Joint Strike Fighters, which are still in development. If these were all replacements for vehicles damaged or worn out in combat, they would belong in an emergency spending bill. But this request goes far beyond replacing combat losses.

The number of unrelated spending items inserted by both branches and a deep lack of consensus within both parties in Congress on war strategy and funding will certainly make consideration of the supplemental bill difficult.

Legislators Introduce Competing Entitlement Commission Proposals

The 110th Congress is barely two months old, but several lawmakers have introduced proposals to create "entitlement commissions" that would be charged with formulating policies to address projected long-term fiscal challenges in Social Security and Medicare. The plans have surfaced just as there are increasing concerns on Capitol Hill about the fiscal gap — that is, the amount of spending reduction or tax increases needed to keep the national debt as a share of gross domestic product (GDP) at or below the current ratio.

There are currently three plans:

- A still unnamed commission, proposed by Sens. Kent Conrad (D-ND) and Judd Gregg (R-NH)
- National Commission on Entitlement Solvency, proposed by Sens. Dianne Feinstein (D-CA) and Pete Domenici (R-NM)
- Securing America's Future Economy ("SAFE"), proposed by Sen. George Voinovich (R-OH) and Rep. Frank Wolf (R-VA)

All three proposed commissions are structured to be nominally bipartisan, consisting of seven Republicans and seven Democrats, but each plan calls for additional members to be either appointed by the president or be representatives of the administration. The commissions are similar in mandate, requiring that proposed legislation be approved by a supermajority of commission members and requiring Congress to act on proposals submitted by the commission within a specified timeframe.

However, each proposal has its own unique methodology. For instance, the Feinstein-Domenici plan would create a permanent commission that makes recommendations to Congress every five years, while the Voinovich-Wolf plan would disband after submitting its final proposal to Congress. Additionally, the Voinovich-Wolf plan calls for the commission to conduct town-hall style meetings for a year and report the public's views in its report to Congress.

Details of all proposed commissions, with the exception of the Conrad-Gregg plan, can be found on their sponsoring senators' websites (links at right). Conrad and Gregg have been circumspect in promulgating details of their plans, as all information in a comparison chart prepared by OMB Watch was obtained from media reports and transcripts of Senate Budget Committee hearings. It is possible that Conrad will include some more details of his commission proposal in the upcoming budget resolution.

For a detailed summary of each of the commission proposals, see this chart.

ECAP Campaign Takes Positive Budget Message to States

The Emergency Campaign for America's Priorities (ECAP) has been promoting its "First Things First" agenda for the FY 2008 budget with local events all over the country since February.

The "First Things First" agenda is premised on the belief that public services need to be expanded to ensure equal opportunity and prosperity for all Americans. To this end, ECAP has requested that Congress, for FY 08:

- Provide $450 billion for domestic discretionary spending.
- Increase outdated benefit levels for Food Stamps, fund SCHIP at levels adequate

to cover all eligible children, restore funds cut from child support enforcement, and strengthen the unemployment insurance program.
- Reject new tax breaks for the wealthy and special interests, and any changes in the tax system, such as an AMT "fix," that do not make the system more progressive and that do not, at a minimum, replace lost tax revenue.

To promote the "First Things First" agenda, ECAP partners have held local events across the country and released reports documenting the impact of federal budget decisions on specific states. Over the last four weeks, ECAP partners have released reports in Arkansas, Arizona, California, Colorado, Connecticut, Florida, Georgia, Iowa, Idaho, Maine, New York, Ohio, Oregon and Tennessee.

ECAP is also planning to hold press events throughout March and April in West Virginia, Wisconsin, Washington, Illinois, Kansas, Maryland, Michigan, Minnesota and Missouri to release state-based reports in those areas.

OMB Watch has been an ECAP partner since its inception in 2005, when the campaign was founded to oppose another round of tax cuts for the wealthy that were being paid for with cuts to domestic service programs. ECAP's membership is diverse, including labor unions, religious organizations, anti-poverty groups, and national advocacy organizations for women, the elderly, the environment, and children. Its strategy has been to engage grassroots networks and local media outlets on national budget issues to educate the public and Congress about growing needs throughout the nation.

Bush Continues Anti-Regulatory Efforts with Industry Nominee to CPSC

In nominating Michael E. Baroody Mar. 1 to be chairman of the Consumer Product Safety Commission (CPSC), President Bush demonstrated yet another example since the 2006 elections of his efforts to slow down or roll back government regulation. CPSC is the independent regulatory agency charged with protecting the public against injury and death from a wide range of consumer products.

According to the *Los Angeles Times*, Baroody currently serves as the executive vice president of the National Association of Manufacturers (NAM), an industry trade group which often works to ease regulations on manufacturers of consumer products. Baroody has been at NAM since 1990, except for a year when he worked for the Republican National Policy Forum. While at NAM, Baroody built a powerful lobbying and communications arm, which has had a very strong anti-regulatory agenda. He appeared to be next in line to get the top job at NAM until former Michigan governor John Engler was appointed president and CEO.

The CPSC was created in 1972 to ensure uniform product safety standards for domestic and foreign consumer goods used in homes, schools, and sports. It does not regulate products like tobacco, vehicles, guns, food, and medical products. CSPC issues product

recalls and is the federal agency we call to report product-related injuries or unsafe products.

One of the three CPSC commissioner positions has been vacant since July 2006. The commission's ability to act has been suspended since January because the law only allows it to act with a vacancy for six months. The agency no longer had the voting quorum necessary to regulate for consumer safety since Bush left the position unfilled until Baroody's nomination. Now he has nominated someone who actively worked against the agency's mission and that has infuriated consumer activists and some on Capitol Hill.

The *Los Angeles Times* reports that, for example, Baroody fought against ergonomic standards that the Occupational Health and Safety Administration recommended in 2000, and he spoke on behalf of NAM when the Supreme Court ruled the Environmental Protection Agency (EPA) acted constitutionally when it issued air pollution limits in 2001. Baroody's nomination goes to the Senate Commerce Committee where Sen. Barbara Boxer (D-CA) has vowed to scrutinize the nominee.

Brain Drain Also Plagues CPSC

CPSC's budget was level for both FY 2006 and 2007, and the current request is for an increase in funding of $880,000 for FY 2008. The agency's FY 2008 budget request states that these funding levels resulted in losing the equivalent of 31 and 20 full time staff in 2006 and 2007, respectively, and 19 more losses will occur if the agency is funded at the 2008 request level. Only about 450 employees will be monitoring over 15,000 products.

A Feb 15. *BNA* story (subscription required) reports that the House has already expressed concern that the CPSC wasn't able to do the job because of a brain drain at the agency. Turnover has been high, and many experienced employees have been leaving, exacerbating the budget problems described in the request.

CPSC Troubles Just One Piece in a Puzzle

Since the November 2006 elections, Bush has re-nominated Susan Dudley to head the Office for Information and Regulatory Affairs (OIRA) at the Office of Management and Budget, which oversees nearly all regulatory matters in government., Dudley was not confirmed in the Republican-controlled Senate because of her extreme perspectives on regulation, and some wonder why Bush would re-nominate her now that the Senate is controlled by the Democrats.

Meanwhile, Dudley continues to evade Senate questions about her approach to managing OIRA. According to a Mar. 2 *Inside the EPA* story, in written responses to senators' questions, she downplays her role in any reviews of the EPA rulemaking proposals and dances around her support for regulatory considerations like the senior

death discount. The senior death discount was a formula for lowering the value of a life of an older person, which thereby decreases the benefits derived from environmental and health regulation.

She needs to downplay her potential review of EPA rules because her husband is in charge of developing cost-benefit analyses for EPA rules. *Inside the EPA* reports that Dudley is "prepared to take the steps necessary to avoid any conflict of interest or even the appearance of a conflict of interest. . . . I would insist that OIRA treat EPA regulations no differently than those of other agencies." In another response, she wrote that agencies have "the in-depth expertise [on rulemaking], and OIRA's role is that of coordination, guidance and review." If OIRA really played that benevolent role in the regulatory process, it would be a dramatic change.

As OMB Watch has documented, Dudley evaded questions when she testified in November before the Senate Homeland Security and Governmental Affairs Committee. The fact that Bush renominated Dudley, even though her confirmation is unlikely, may be a clue that Bush intends to appoint her as administrator when Congress recesses in August, if not sooner. Coupled with recent amendments to an Executive Order that governs the regulatory review process, the news about protecting public safeguards just gets worse. The new E.O. adds new layers of analysis on agencies, requires a political overseer in agency to shape the development of regulations from the start, and centralizes more review authority, particularly for agency guidance, at OMB. The impact of the E.O. amendments will be to slow down if not stymie new regulation.

As we watch our nation's inability to respond to a range of challenges, whether it's regarding the quality of our national parks, our veterans' health care quality, the readiness of the National Guard, Hurricane Katrina, or the regulation of our food supply, Bush continues to nominate people not to govern the country, but to achieve ideological ends and protect corporate interests.

Scientific Consultant Sparks Controversy over Conflicts of Interest

Recent findings indicate a consultant to a federal reproductive health sciences panel also has industry ties, creating a conflict of interest. The controversy raises concerns about scientific integrity in the federal regulatory process, as well as contractor transparency and responsibility.

In 1998, the National Institutes of Health (NIH) established the Center for the Evaluation of Risks to Human Reproduction (CERHR). NIH intended CERHR to study the ways in which substances present in our environment affect reproductive and developmental health. NIH intended CERHR to use panels of independent scientists to evaluate the risks and hazards of potentially toxic chemicals. One of CERHR's intended audiences is the regulatory agencies ultimately responsible for making decisions on

behalf of the public.

A recent investigation by the Environmental Working Group (EWG), a Washington-based public interest organization, found CERHR is largely managed by Sciences International, Inc. (SI). SI is a private consulting firm with financial ties to the chemical and tobacco industries, according to EWG.

CERHR and SI have maintained a relationship since 1998. SI's website states, "The most significant project at our firm is the management of the National Toxicology Program's Center for the Evaluation of Risks to Human Reproduction, one of the premiere institutions for evaluation of reproductive and developmental health issues." According to FedSpending.org, a federal contracts and grants database maintained by OMB Watch, the SI contract exceeded $1 million for each of the fiscal years 2005 and 2006.

The findings come as CERHR prepares to evaluate the effects of bisphenol A (BPA) on reproductive health. BPA is a chemical commonly present in hard plastics and has been found to be toxic to animals in low doses. The findings of the panel, which meets from Mar. 5 through Mar. 7, will likely be used by regulators and policy makers to make decisions affecting rules on BPA exposure.

SI prepared the 300-page briefing document on the risks of BPA that the panel is using. The conflict of interest arises as "the lead SI manager of CERHR co-authored a scientific paper with an employee of Dow Chemical Company on the critical issue of how animal test results can be applied to human health risk. Dow is a major producer of BPA," EWG asserts. The document exhibits industry bias by under-reporting studies which indicate the toxicity of BPA.

The controversy recently caught the attention of at least two legislators. Sen. Barbara Boxer (D-CA) and Rep. Henry Waxman (D-CA), in a letter dated Feb. 28, asked the Director of the National Institute of Environmental Health Sciences, of which CERHR is a part, to brief the lawmakers on the issue before the panel meeting. Boxer and Waxman expressed concern "about potential conflicts of interest that may be raised if a contractor plays a role in determining who will sit on the Center's committees that assess the reproductive and developmental risks of environmental agents." The request was not fulfilled.

SI's involvement raises concern about contractor responsibility and disclosure. Despite an almost symbiotic relationship and a large contract, in the absence of both federal and CERHR rules, SI's consulting status precludes it from any conflict of interest disclosure.

As OMB Watch has reported, Sen. Byron Dorgan (D-ND) has introduced the Honest Leadership and Accountability in Contracting Act. The proposed legislation contains provisions intended to reduce conflicts of interest in federal contracting.

However, the relationship between CERHR and SI continues. In Monday's session, the

CERHR panel announced SI would not be in attendance for those meetings. Jovanna Ruzicic, an EWG spokeswoman, called the decision a "meaningless face-saving gesture." She points out SI was already a major participant in the drafting of the briefing document on which the panel will base its findings. EWG is urging CERHR postpone the panel until SI discloses all of its professional relationships to the public and can guarantee impartiality.

In Congress, No Shortage of Fuel Economy Proposals

In Washington, legislators and White House officials continue to debate reform of the federal standard for vehicle fuel efficiency. Democrats and Republicans have questioned Bush administration officials on the president's proposal to alter the fuel economy standard for passenger vehicles. Members in both chambers of Congress have also proposed bills that would change the standard.

In 1975, in response to national oil shortages, Congress enacted corporate average fuel economy (CAFE) standards for passenger cars and light trucks. The CAFE program sets a mandatory fuel efficiency rate (measured in miles per gallon) and fines manufacturers who are not in compliance. Manufacturers are evaluated based upon the fuel economy of their entire fleet as opposed to individual vehicles. CAFE standards were widely credited with improving automotive fuel economy in the years immediately following enactment, but progress has since leveled off.

Neither Congress nor the National Highway Traffic Safety Administration (NHTSA), the agency charged with setting standards, has raised the standard of 27.5 miles per gallon since the program's inception more than 30 years ago. A recent study by the Civil Society Institute claims that Americans face fewer fuel efficient car choices and support higher federally mandated fuel economy standards. Now, politicians are jockeying for position to lead the charge toward higher standards and improved fuel efficiency.

Despite calls throughout the 2006 campaign for a more responsible energy policy, Democrats were not the first to act on CAFE in 2007. In his State of the Union address on Jan. 23, President Bush called for CAFE reform. In a more detailed plan for his initiatives, Bush called on Congress to allow NHTSA to continue to set standards at its discretion, not by legislative mandate.

Bush followed up his rhetoric in early February by submitting draft legislation to Congress. Bush's bill would allow NHTSA to set different fuel economy standards for each class (such as mid-size, full-size, etc.) of vehicles. The legislation also proposes a cap-and-trade system similar to that utilized for sulfur dioxide. Manufacturers producing exceptionally fuel-efficient vehicles would be credited the difference between the mile per gallon ratio of their vehicles and the ratio of the minimum standard. These credits could then be sold to other manufacturers.

Bush's proposal would not allow changes in the standard unless the benefits of such a change could be proven to outweigh the costs. Presumably, this would supersede the current statutory language, which calls only for the consideration of "economic practicability." This potential for a cost-benefit analysis to stifle higher standards would not be in conflict with other provisions of the bill, as the legislation does not require any kind of measurable increase over time.

On Feb. 28, the House Energy and Commerce Committee subcommittee on Energy and Air Quality held a hearing to review Bush's proposed legislation. Both Democrats and Republicans criticized the bill. Subcommittee Chairman Rick Boucher (D-VA) warned against the class provision's "perverse incentive" for manufacturers to produce larger vehicles. Ranking member Joe Barton (R-TX) called the cap-and-trade provision "problematic to say the least."

Committee Chair John Dingell (D-MI) appeared dissatisfied by the limited extent of the administration's research in preparing the bill. Dingell asked NHTSA administrator Nicole Nason if the administration had studied how this bill might effect "overall fuel consumption in the United States." Nason responded: "I don't know if studied would be the right word. Again, we have some rough analyses." Dingell asked the chairman of Bush's Council of Economic Advisors, "Has the administration conducted any independent analysis on CAFE credit-trading proposals?" The answer was no.

Critiquing the absence of a measurable goal for improved fuel economy, Rep. Tammy Baldwin (D-WI) said, "There is nothing in this proposal that requires NHTSA to make significant meaningful steps that will truly make a difference in our fuel economy standard. In fact, there's nothing here before us to require NHTSA to act at all."

Congressional Republicans also moved more quickly than Democrats on CAFE reform. On Jan. 24, Rep. David Reichert (R-WA), along with 12 other Republicans, introduced their own legislation. The bill is similar to the Bush proposal in two ways: it would grant standard-setting control to NHTSA and establish a cap-and-trade system. The legislation exceeds the presidential bill by calling for a minimum CAFE standard of 33 miles per gallon by 2017. Since then, four additional Republicans and two Democrats have signed on as cosponsors.

The Senate has been considering CAFE reform as well. On Jan. 4, Sen. Ted Stevens (R-AK) surprised pundits by introducing a bill that would mandate a minimum CAFE standard of 40 miles per gallon by 2017.

Sen. Dianne Feinstein (D-CA) introduced a more broadly supported but less ambitious CAFE reform bill. The bill would set a goal of 35 miles per gallon by 2019. It also includes other related provisions such as improved automotive safety standards and mandatory fuel-efficiency gauges on dashboards so drivers can monitor their fuel consumption while driving.

On Mar. 5, a bipartisan group of seven senators reintroduced the "Fuel Economy Reform Act," which stalled in committee in the 109th Congress. The bill would have NHTSA raise the CAFE standard by four percent each year and, like the Bush proposal, allow NHTSA to set standards by class. The proposed legislation also includes tax incentives for domestic manufacturers. The sponsors claim the tax breaks will help defray the cost of new technologies automakers would have to employ to significantly improve a vehicle's fuel economy.

None of the proposed legislation has cleared the appropriate committee. As a result, no lawmaker has been forced to go on record as supporting or opposing specific reform efforts. A Democratically controlled Congress is unlikely to pass President Bush's proposal in its current form. It is unclear which proposed legislation, and in what final form, will move the farthest down the legislative pipeline. For now, Americans will have to continue to live with a fuel economy standard set in a bygone era.

Whistleblower Protection Begins to Move in Congress

On Feb. 14, the House Oversight and Government Reform Committee marked up and unanimously approved the Whistleblower Protection Enhancement Act (H.R. 985), a bill that would extend whistleblower protections to more federal employees and require officials to more vigorously investigate retaliation. Whistleblower protection legislation has also been introduced in the Senate.

The bill, introduced by Reps. Henry Waxman (D-CA), Todd Platts (R-PA), Chris Van Hollen (D-MD), and Thomas Davis (R-VA) is similar to legislation considered during the last session of Congress, which stalled after passing in the Government Reform Committee. During the markup of H.R. 985, the committee passed amendments to expand the court venues in which whistleblower cases may be heard and to expand the damages that a whistleblower can receive if successful in a lawsuit against the government. Many believe that allowing more courts to hear whistleblower cases will result in more suits being decided in favor of whistleblowers; currently, the judicial playing field is slanted heavily in the government's favor.

The bill must now be reviewed and approved by the House Armed Services Committee because of a provision to extend whistleblower protections to employees of military contractors. The House Armed Services Committee has not yet scheduled a markup of H.R. 985.

On the Senate side, a whistleblower bill, the Federal Employee Protection of Disclosures Act (S. 274), has been introduced but has yet to be marked up by the Senate Homeland Security and Governmental Affairs Committee. Sen. Daniel Akaka (D-HI) introduced the bill with ten cosponsors: Sens. Thomas Carper (D-DE), Susan Collins (R-ME), Richard Durbin (D-IL), Charles Grassley (R-IA), Frank Lautenberg (D-NJ), Patrick Leahy (D-VT), Carl Levin (D-MI), Joseph Lieberman (I-CT), Mark Pryor (D-AR), and George

Voinovich (R-OH).

Another Senate bill, the Honest Leadership and Accountability in Contracting Act (S. 606), also includes whistleblower protections. Sen. Byron Dorgan (D-ND) introduced S. 606 with provisions similar to those in S. 274 but that allow for classified disclosures to any member of Congress.

On the heels of the House movement on expanding whistleblower protections, Greenberg Quinlan Rosner released poll results that showed that 79 percent of 1,014 "likely voters" support passage of a strong federal whistleblower law to protect government employees from retribution if they report waste or corruption. The poll also found that 41 percent of those surveyed would be "much more likely" to vote for a candidate that passed such whistleblower legislation.

Legislation Criminalizes Disclosures of Classified Information

Sen. Jon Kyl (R-AZ) introduced an amendment Mar. 2 to prevent the unauthorized disclosure of classified information by congressional employees. The proposal is a scaled-back version of a previous ambitious attempt to criminalize all leaks of classified information, but the amendment still met with strong opposition from the public interest and open government community.

Kyl considered introducing an amendment to an unrelated bill regarding government transparency on matters of data mining. The proposal would have amended the Espionage Act to criminalize the unauthorized disclosure of classified information regarding "efforts by the United States to identify, investigate, or prevent terrorist activity." A coalition of organizations, including OMB Watch, OpenTheGovernment.org, the Federation of American Scientists, and others, described Kyl's amendment as an effort to, "stifle, with the threat of criminal prosecution, informed public debate about the most serious matters of the effectiveness of government counterterrorism efforts." Important disclosures of controversial counterterrorism efforts, like the National Security Agency's spying program, the Central Intelligence Agency's network of secret prisons, and the Abu Ghraib torture scandal, which potentially violate the Constitution, international law and sound policy judgment, would have been criminalized by the Kyl amendment.

In the face of strong opposition, the language of the amendment was narrowed to prevent leaks of classified information from Congress and introduced on a different bill. Kyl's new amendment would revise the Espionage Act to criminalize the disclosure by an employee or member of Congress of information "contained in a report submitted to Congress pursuant to the Improving America's Security Act of 2007, the USA Patriot Improvement and Reauthorization Act of 2005, or the Intelligence Reform and Terrorism Prevention Act of 2004." While an improvement over the previous

amendment, this new amendment is, likewise, opposed by public interest advocates as an affront to an accountable and transparent government on matters of national security.

Kyl is attempting to attach his new amendment to Senate legislation which enacts many of the unresolved 9/11 Commission recommendations, Improving America's Security Act of 2007, (S. 4). A floor vote could occur on the amendment later this week, though it remains unclear if it will be found germane.

Medical Marijuana Lawsuit Uses Data Quality Act

A new Data Quality Act (DQA) lawsuit was filed Feb. 22 in a federal court in California. The suit claims that the Department of Health and Human Services (HHS) and the Food and Drug Administration (FDA) are disseminating false and misleading information regarding the health benefits of marijuana. The lawsuit is another test of the judicial reviewability of DQA, which enables groups and members of the public to challenge the data quality of federal government information.

The lawsuit was filed in the United States District Court for the Northern District of California by Americans for Safe Access in response to a denial of an information quality challenge originally made against HHS and FDA in October 2004. The petition challenged various statements made by HHS and FDA in the *Federal Register* regarding the health benefits of marijuana. For instance, the Americans for Safe Access requested that the following statement, "There have been no studies that have scientifically assessed the efficacy of marijuana for any medical condition," be revised to state, "Adequate and well-recognized studies show the efficacy of marijuana in the treatment of nausea, loss of appetite, pain and spasticity."

HHS denied the challenge, stating that it was in the process of performing a comprehensive review of the "peer reviewed literature in order to make a recommendation to the [Drug Enforcement Administration (DEA)] as to whether marijuana should continue to be controlled under the [Controlled Substances Act]." HHS also noted that DEA has a process to receive petitions from the public regarding the scheduling of a substance and that it is not the intent of DQA to create duplicative procedures for challenging the dissemination of government information. The Americans for Safe Access went on to appeal the decision, which was also denied by HHS.

DQA was attached to the Treasury and Government Appropriations Act and passed into law in late 2000. It is a two-paragraph section that slipped through Congress without debate and has grown into a mountain of controversy, often pitting industry against the public interest. DQA enables interested parties to challenge the use of data by government agencies and has often been used by industry to slow regulatory action and pressure agencies to remove or revise information on important matters of public health

and safety.

Whether DQA supports judicial review has been a point of contention. Previous lawsuits to challenge agency decisions regarding data quality petitions have failed. In March 2006, 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 the court found that the act did not allow for judicial review and that the plaintiffs had not shown injury and thus lacked standing.

Though the current challenge is not made by industry and is not intended to slow regulatory action or restrict access to important government information, OMB Watch nevertheless has not supported the judicial reviewability of DQA decisions. First, DQA does not grant any unique right of action for litigation, as recent case law has shown. Second, enabling judicial review would provide another tool for industry to use against health, safety and environmental regulations. This seems highly inappropriate for a legal provision that has never been debated or reviewed by Congress.

House Starts Moving on Lobbying and Ethics Reform

Lobbying and ethics rules changes are rapidly becoming a focal point of the 110th Congress. Since the Senate passed the Legislative Transparency and Accountability Act of 2007, the action has moved to the House, where a bill on executive branch lobbying recently passed the Oversight and Government Reform Committee, and a Judiciary subcommittee addressed possible changes to the Senate bill.

On Feb. 14, the House Oversight and Government Reform Committee approved 29-0 H.R. 984, the Executive Branch Lobby Reform Act of 2007. The bill attempts to put an end to secret meetings between lobbyists and executive branch officials by requiring senior officials to report on a quarterly basis the contacts that relate to official government action. This includes each party's name, the date of the meeting, subject matter discussed, and the name of any client on whose behalf the contact was made. During the markup, the committee approved an amendment offered by Chairman Henry Waxman (D-CA) that requires that the reports of these contacts be publicly searchable in a computerized database. The Office of Government Ethics would also have to develop rules for implementing the reporting system and to check for accuracy. The bill also increases the waiting period from one year to two years before a former federal employee can lobby or influence grants and contracts. It also requires the government to develop standards for designating information as "sensitive but unclassified." (See more information here.)

H.R. 984 could be included as a part of the House's broad lobby reform legislation, which has not yet been filed. However, the House has started considering reform issues, even though no specific proposals have been made. It will likely use the Senate version, S. 1, the Legislative Transparency and Accountability Act of 2007, as a starting point.

New versions of proposals that were rejected by the Senate, including grassroots lobbying disclosure, now have an on opportunity to be considered as part of the House bill.

On Mar. 1, the House Judiciary Subcommittee on Constitution, Civil Rights and Civil Liberties held a hearing on the lobby reform measures included in S. 1. The agenda was centered on ethics and lobby changes passed in S. 1, but discussion instead focused mostly on grassroots lobbying disclosure, which was stripped from the Senate bill. Republican members opposed any grassroots lobbying disclosure requirements, fearing that the burden of disclosure and potential for penalties for failure to comply would stifle the average American's voice. However, witnesses explained that the "average Joe" referenced would not have to disclose, but would in fact benefit by knowing who is behind a large communications campaign and whose interests are being represented when confronted with such information.

Chairman Jerrold Nadler (D-NY) commented during his opening remarks that the "core issue is the pervasive influence of money in politics." In that context, disclosure of grassroots lobbying would help address the imbalance of power in the lobbying process and shine a light on campaigns lead by phony front groups. Opponents of grassroots lobbying disclosure referenced the Federalist Papers as a grassroots effort that would have been harmed if such disclosure existed at the time. However, even the rejected Senate version of disclosure would not have required disclosure by the Founding Fathers. And the legislative process has drastically changed since the 18th century, as budgets for grassroots lobbying campaigns have grown enormously. As Thomas Mann of the Brookings Institution noted during his testimony, disclosure would level the playing field. "Huge sums are spent on paid media, computerized phone banks, direct mail, and other forms of public communications to stimulate lobbying of Congress by citizens. Yet professional grassroots ("Astroturf") lobbying organizations and lobbying firms are not required to report on the sums they spend on these campaigns. It makes little sense to exclude these activities whose costs may well exceed expenditures for direct lobbying."

The heated debate over grassroots lobbying disclosure reflects concerns over constitutional issues. However, disclosure would not restrict speech because, as witnesses pointed out, only massively funded campaigns will be affected and would only be required to report, not restrict or alter their speech in any way. Additionally, there is a governmental interest in such disclosure. As a recent Congressional Research Service (CRS) report details; "...the courts have seemed to recognize the growth of importance of such 'grassroots' lobbying efforts in the legislative process, and the increased need for legislators and others to be able to identify and assess the pressures on legislators being stimulated (and financed) by interest groups by such methods."

There are signs that the Senate language on grassroots disclosure is being revised to narrow the impact and more clearly define the goals and objectives of the measure. As reported in *Roll Call*, Rep. Martin Meehan's (D-MA) version "would not require organizations that hire firms to help stimulate grass-roots activity to disclose those

efforts. Instead, the measure focuses on the firms themselves."

Other reform items were also discussed during the hearing, such as reporting campaign contribution bundling and extending the "cooling off" period before former lawmakers can actively lobby. It remains uncertain how these controversial measures will be finalized in the House lobby reform bill.

Justice Department Refers Kinder USA's Harassment Complaint against FBI to FBI

For nearly three years, according to Kinder USA, the U.S. relief organization based in Dallas, TX, has endured harassment and surveillance of its board, staff and volunteers by the FBI and the U.S. Attorney's office in Dallas. In December 2006, Board Chair Dr. Laila Al-Marayati sent a letter to the Department of Justice Office of Inspector General (IG) detailing the problem and asking for an independent investigation. She asked the IG to "take steps to terminate the wasteful and illegal governmental activities directed against a lawful charity managed and operated by United States citizens for needy children in areas of conflict." A month later, the IG's office wrote back saying the complaint had been referred to the FBI Inspection Division.

The Dec. 21, 2006, letter from Kinder USA to the IG's Civil Rights and Civil Liberties division spelled out a series of events the group said are "not based on any legitimate law enforcement purpose." Complaints against the FBI include:

- FBI visits to board members, the executive director and the Dallas office seeking interviews on Aug. 11, 2004, the day of a scheduled board meeting. Kinder says this was an attempt to disrupt the meeting and intimidate the board. One board member resigned out of fear for her livelihood and the emotional distress for her family.
- A September 2004 FBI interview of a Kinder employee where the Bureau alleged illegal acts by the group, and a subsequent interview at the employee's home where agents "quoted conversations that took place only during telephone calls," revealing electronic surveillance.
- An April 2005 interview with a Kinder employee where, in three hours of questioning, further telephone surveillance was revealed. The employee resigned "in fear of ongoing harassment by the FBI." That same month, a similar interview led a board member to resign.
- An overnight search of the Dallas office in February 2006

Kinder also urged investigation of the Dallas U.S. Attorney's office, which has been conducting a grand jury investigation of the group since November 2004. At that time, all the business records of the group were turned over to the grand jury pursuant to a subpoena. The grand jury has taken no action but has not closed its investigation. Kinder's letter says, "The use of the grand jury, in this manner and in this instance, to

collect data but to neither indict nor conclude an investigation, casts a chilling effect on the exercise of the rights of the Board, staff and donors of Kinder USA and is *per se* government misconduct." Kinder temporarily suspended fundraising after the subpoena out of fear the funds would be seized by the Treasury Department.

The IG's office responded to Kinder on Jan. 23, saying the "matters you raise are more appropriate for review by another office or Agency", and forwarded the complaint to the FBI's Inspection Division. On Feb.1, Kinder's attorney, John Kilroy, wrote back urging the IG to reconsider, saying "the FBI cannot be fair and impartial when investigating itself.... I urge you to reconsider and to initiate a thorough and impartial investigation." The request was apparently rejected, because on Feb. 15, the FBI Inspection Division wrote to Kinder that their Investigation Section "has reviewed your allegations and has determined that there is no evidence of misconduct on the part of any FBI employee. Therefore, no further action will be taken by this office." The letter did not address the substance of any of the complaints. There was no mention of the complaint against the U.S. Attorney's office in any of the correspondence from the government.

Patriot Act Drives Banking Problems for U.S. Muslim Charity

After a September 2006 raid by the federal Joint Terrorism Task Force, Life for Relief and Development (Life) of Michigan has had ongoing problems getting service from banks, even though at the time of the raid, the Federal Bureau of Investigation (FBI) said the investigation was not related to terrorism, and no charges have been filed. The only bank that will allow the humanitarian aid organization to make international wire transfers has required the group to comply with the Treasury Department's Voluntary Anti-Terrorist Financing Guidelines, which are supposed to be voluntary and flexible. However, Life officials say banks are reacting to the threat of litigation under unconstitutional provisions of the Patriot Act.

During the 2006 raid, the FBI seized computers and organizational records, but told the press the investigation did not relate to terrorism. Despite these facts, on Sept. 21, 2006, Comerica Bank informed Life that it planned to close all seven of its bank accounts by Oct. 2 of that year. The bank agreed to extend the deadline to Nov. 15 in light of the beginning of Ramadan, the traditional period when Muslims make charitable donations as part of their religious obligation. Because of Life's continued difficulty in opening an account at another bank, Comerica agreed to extend its deadline to Nov. 22, 2006. The bank never gave a reason for closing the accounts but did tell Life officials that it planned to share information about the group with other banks under Section 314(b) of the Patriot Act, which provides that "an institution must exchange information with other institutions regarding the closure of the account when it concerns money laundering or terrorist related activity."

Since the FBI had publicly stated that the raid was not related to terrorism, and such

information sharing would make it difficult if not impossible for Life to open another bank account and continue its operations, the group filed suit in federal court seeking an injunction to "prohibit Defendant Comerica from disseminating any false or misleading information under 314(b) of the Patriot Act." The suit also challenged the constitutionality of Sec. 314(b) and claimed Comerica's actions violated the Life's civil rights, since "Had the officers not been of Arabic descent or if Plaintiff was not a Muslim American charity, upon information and belief, the bank account would still be open." The community showed its support through a series of pickets and demonstrations at Comerica branches, and some Muslim Americans closed their accounts there.

On Dec.1, 2006, the U.S. Department of Justice moved to intervene in the case in order to argue for the constitutionality of the Patriot Act provision. However, that issue remains undecided, since Life and Comerica settled and dismissed the case after Life reviewed the bank's Sec. 314(b) filing and determined that Comerica "did not disseminate any negative information about Life." Despite this settlement, Life had difficulty opening a new bank account because applications ask for information on previous accounts. LaSalle Bank refused to open an account at all, and although Life was able to open accounts for administrative purposes with Chevy Chase Bank, it was not allowed to wire funds internationally.

Such a situation was not workable for an international humanitarian aid organization, so Life was forced to apply for a separate account for international transfers at another financial institution. Although they were successful with the application, the new bank forced them to respond to a Compliance Checklist that tracks old versions of the Treasury Department's *Voluntary* Anti-Terrorist Financing Guidelines verbatim. The form asks the applicant to answer Yes or No for each so-called best practice, and at the end states, "If the answer to any of the above questions are NO, the organization should take the immediate necessary legal and administrative steps to comply with the guidelines."

Although this use of the Treasury Guidelines is contrary to their stated purpose and Treasury's public statements about flexibility and voluntariness, Life completed the form because of their dire need for the account. Not surprisingly, the list included items that were impractical or ill-advised or both, and Life had to explain to bank officials why it did not comply with two provisions. After much back and forth, with the bank officials consulting their superiors, the account was opened.

Ihsan Alkhatib, Life's Legal Director, has called for reforming Sec. 314(b), saying the Patriot Act, not the banks, are the root of the problem. In an article in the *Arab American News* he said, "Banks are acting this way because of anti-terror laws.... Innocent banks doing business with entities that even the government did not classify as associated with terrorism have been subject to costly litigation." He cites Ted Frank in an Oct. 28, 2006, column in the *Wall Street Journal*, who describes the vague definitions of what constitutes "material support" of terrorism as the problem. It has led victims of terrorist attacks to sue banks for the actions of account holders that were not listed as

terrorist organizations by the U.S. government, saying "Lawsuits are pending now that claim, in effect, that the banks *should have known* then what the U.S. government did not decide until years later."

The government has since returned Life's seized computers and says it will return financial records on time for Life to file its annual Form 990 with the IRS. Since no charges have been filed, Life and its supporters are left wondering what was behind the raid. Their lawsuit noted that "this was the third year in a row that federal agents would either conduct interviews of Muslims or persons of Arabic Origin, or raid homes and Islamic charities right at the beginning of Ramadan the time period where donors provide the most generous donations." The Feb. 17, 2007, Columbia (MO) *Daily Tribune*, notes that the issue may be whether Life provided humanitarian relief to Iraq before the war, when transactions with the country were prohibited. The *Detroit News* also noted Sept. 26, 2006, that there were demonstrations against Israeli bombing in Lebanon during the summer. Whatever the cause, the effects have been to make delivery of humanitarian aid more difficult.