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House Lobby Reform Bill Expected to Move Soon

The leadership in the House has been working on its legislation to reform lobbying disclosure and ethics practices and is expected to unveil the plan today, May 15, or tomorrow, May 16, with a mark-up of the bill in the Judiciary Committee expected May 17. Despite repeated statements that a bill will be filed soon, controversy over grassroots lobbying disclosure, limits on bundling of campaign contributions by registered lobbyists and expansion of the cooling off period before ex-members of Congress can lobby have stalled progress. Rumors abound that the Democratic leadership bill will address the revolving door issue by doubling the cooling off period to two years. But the other two issues — grassroots lobbying disclosure and bundling of campaign contributions — are not likely to be addressed, although the leadership seems willing to have them offered as amendments or separate bills.

On May 1, Reps. Martin Meehan (D-MA) and Christopher Shays (R-CT) stepped up the

pressure on the grassroots lobbying disclosure issue by filing H.R. 2093, a bill designed to amend the Lobbying Disclosure Act (LDA) by requiring firms that spend more than $100,000 on grassroots lobbying campaigns in a quarter on behalf of another entity to register and disclose their clients' identity, along with how much they are spending. The bill has been referred to the Judiciary Committee, which is expected to consider the leadership's bill on May 17. Meehan and Shays are likely to offer H.R. 2093 as an amendment to the leadership bill in committee and again on the floor if it is not accepted in committee.

The Meehan-Shays bill significantly scales back the proposal that was defeated in the Senate earlier this year by not requiring disclosure of grassroots lobbying activities by registered lobbyists or organizations and individuals acting on their own behalf. Instead, it applies only to lobbying firms, defined as "a person or entity that is retained by 1 or more paid clients *(other than that person or entity)* to engage in paid communications campaigns to influence the general public to lobby Congress, and receives income of or spends or agrees to spend, an aggregate of $100,000 or more for such efforts in any quarterly period." (emphasis added) Paid communications to influence the general public to lobby Congress are defined as a lobbying firm's efforts on behalf of a client to "influence the general public or segments thereof to contact 1 or more covered legislative or executive branch official" to take specific action.

The Meehan-Shays bill exempts communications to members of the lobbying firm's clients (since members are not the "general public") and direct mail campaigns that are "primarily for the purpose of recruiting membership to join the [client] organization."

H.R. 2093 is significantly narrower than the Senate provision that was stripped from S. 1, the Senate lobbying reform bill, earlier this year. That provision would have required lobbyists that meet the LDA registration threshold to also report grassroots lobbying expenditures. Under H.R. 2093, a group that files LDA reports on direct lobbying activities will not have to report grassroots lobbying unless it hires outside consultants or firms to carry out the work, and those consultants or firms accept more than $100,000 per quarter in fees for such activities. In that case, the outside firms would report the identity of the client but would not report information on the client's donors or members.

The sponsors of the Senate proposal said their language would not have triggered registration and reporting based on grassroots lobbying expenditures. Opponents of S. 1 argued that it would have done so, and rather than clarify the provision, they successfully worked to defeat it. Similar arguments are now being advanced by the same groups, including the National Right to Life Committee and the American Civil Liberties Union, in opposition to H.R. 2093. They claim it would require citizens or their organizations to register and report, despite the explicit statement in the bill that "No person or entity other than a lobbying firm is required to register or file a report under the amendments made by this section." A National Right to Life Committee letter sent to the House on May 4 opposing the Meehan-Shays bill says the legislation would "force countless

individual Americans and groups to register and report", ignoring the definitions and threshold specified in the bill. Another opposition letter signed by 39 groups argues that grassroots lobbying should not be referred to as "lobbying" but as "democracy", since "lobbying has a different connotation, and is regulated because of the possibility of corrupting influence." This semantic argument ignores the fact that charities have been reporting "grassroots lobbying" to the Internal Revenue Service for over 30 years, without claims that this advocacy corrupts government. Additionally, labor unions have been required to report such information to the government, and their grassroots lobbying activities are no more corrupt than, say, a corporate grassroots lobbying effort.

Supporters of grassroots lobbing disclosure are also being heard in Congress. OMB Watch's May 8 letter to House members pointed out that "Disclosure of the funding sources, particularly behind big money grassroots lobbying campaigns, is a critical element in rooting out corruption and establishing a system that creates public trust." Urging members not to be fooled by misinformation, the letter said disclosure by for-hire firms will not silence citizen organizations and notes that "23 states empower their citizens with information about the entities funding grassroots lobbying campaigns."

On May 2, a letter to Congress from several organizations often identified as government reform groups addressed constitutional concerns expressed by disclosure opponents. It cites *U.S. v. Harriss*, 347 U.S. 612 (1954), where the U.S. Supreme Court upheld a disclosure requirement for "artificially stimulated letter campaigns to influence Congress." The Court stated, "Present day legislative complexities are such that individual members of Congress cannot be expected to explore the myriad pressures to which they are subjected. Yet full realization of the American ideal of government by elected representatives depends to no small extent on their ability to properly evaluate such pressures....Toward that end, Congress has not sought to prohibit these pressures. It has merely provided for a modicum of information from those who for hire attempt to influence legislation..." 347 U.S. at 645. The process is no less complex in 2007 than it was in 1954.

Muslim Charity Files Libel Suit over Allegations of Terrorist Ties

KinderUSA, a U.S. charity that provides humanitarian aid to children in war zones, including Palestine, filed suit April 26 against the author and publishers of a book that ties the group to terrorist organizations. The libel suit, which seeks $500,000 in damages and other relief, was filed in Los Angeles Superior Court after the publishers refused a request to discontinue distribution.

Hamas: Politics, Charity, and Terrorism in the Service of Jihad was written by Matthew Levitt, a senior fellow at the Washington Institute for Near East Policy and former Treasury Department official, and published by Yale University Press in April 2006. In

its complaint, KinderUSA (Kinder) states:

> 9. "KINDER-USA is discussed in Chapter 6, *Foreign Funding of Hamas* on pages 151 and 152 and in the related footnotes numbered 21 and 22. The text states: 'Even after the closure of the Holy Land Foundation in 2001, other U.S.-based charities continue to fund Hamas. One organization that has appeared to rise out of the ashes of the HLFRD is KinderUSA.'"
> 10. The Defendants further falsely state that 'the formation of KinderUSA highlights an increasingly common trend: banned charities continuing to operate by incorporating under new names in response to designation as terrorist entities or in an effort to evade attention. This trend is also seen with groups raising money for al-Quaeda.' The footnote to this paragraph mentions two officers of KINDER-USA at the onset and continues with an extensive discussion of al-Quaeda funding networks, without informing the reader that there is no allegation that KinderUSA is tied to al-Quaeda."

The book's basis for tying Kinder to terrorism rests on the fact that the executive director was employed by the Holy Land Foundation for Relief and Development (HLF) before it was shut down by the Treasury Department in 2001 due to alleged ties to Hamas. In addition, a Kinder founder had also served on the HLF board. Currently, seven former HLF leaders are awaiting trial on criminal charges of diverting funds to Hamas. However, the factual basis of Treasury's designation of HLF as a supporter of terrorism and the criminal charges for providing support to Hamas have come under fire as faulty translations and fabricated evidence issues have been revealed in the press.

Kinder issued a press release denying the book's claims, saying Yale University Press failed to conduct a fact-check on these allegations. Attorney Jack Kilroy said, "The book falls far short of Yale University's reputation for excellent academic scholarship." However, on May 9, a Yale spokesperson told the *New Haven Independent* that "of course, the book was vetted. We took it through peer review, as with all our books." Levitt did not respond to the *Independent*'s requests for comment.

Prior to filing the suit, the complaint states that Kinder's attorney contacted Yale University Press and Washington Institute for Near East Policy and requested a public retraction and discontinued distribution of the book. Yale declined the request, and Kinder's complaint says book's allegations "subject the organization to unfair scrutiny or suspicion, damage its ability to raise funds and to recruit and retain volunteers for its charitable mission, and caused irreparable harm to its reputation." In the Kinder press release, board chair Laila Al-Marayati, M.D. said, "We are a transparent and accountable public charity that works diligently to comply with all applicable state and federal regulations." On its website, Kinder's statement on financial accountability says the impact of the book is to "take food out of the mouths of hungry children in Palestine that so urgently need our help. We are a transparent and accountable public charity that works diligently to comply with all applicable state and federal regulations, we use the best practices to insure that the money we raise helps the innocent victims of conflict and

natural disaster in Palestine and elsewhere."

Earlier this year, Kinder requested an investigation into illegal government surveillance, but the Justice Department did not grant the group's request.

Head Start Reauthorization Passes House without Faith-based Discrimination Language

On May 2, the Improving Head Start Act of 2007 (H.R. 1429) passed the House without a provision that would have allowed grantees to discriminate on the basis of religion when hiring for positions funded by Head Start. The 365-48 vote followed the defeat of an amendment sponsored by Rep. Howard McKeon ☼ (R-CA) that would have permitted the religion-based hiring decisions. The long battle over Head Start reauthorization will now move forward as the Senate considers Sen. Ted Kennedy's (D-MA) Head Start for School Readiness Act (S.556), which does not include a religious preference measure. In addition, neither bill contains controversial limitations on use of private funds for voter registration by Head Start agencies.

In March, the House Education and Labor Committee voted down a similar amendment sponsored by Resident Commissioner Louis Fortuno (R-PR). However, the proponents of the religious preference measure fought hard to insert the provision during the floor vote. This included the White House, which released a statement defending the faith-based amendment the day before the House vote. It said, "The Administration strongly encourages the House to amend H.R. 1429 to ensure that faith-based organizations are not asked to forfeit their religious hiring autonomy as a condition of receiving Head Start grants."

The House Rules Committee did not allow Fortuno's amendment to be considered on the floor, instead allowing an amendment introduced by Rep. Heath Shuler (D-NC), that inserted language praising the history and importance of faith-based organizations' contributions to and participation in Head Start programs. It also says, "Faith-based and community-based organizations continue to be eligible, on the same basis as other organizations, to participate in any program under this section for which they are otherwise eligible."

House Minority Leader John Boehner (R-OH) released a Dear Colleague letter advocating that the bill be sent back to the committee to consider the faith-based proposal in order to "prevent the federal government from revoking the rights of religious organizations to hire on a religious basis or to maintain their religious character." The letter charges that "the Shuler amendment is little more than a transparent attempt at political cover for Democrats."

During the debate on the House floor, Rep. Chet Edwards (D-TX) commented ,"Our principle is simple but deeply profound. No American, not one, should ever have to pass

another American's private religious test to qualify for a tax-funded Federal job."

The Coalition Against Religious Discrimination (CARD), made up of religious, civil rights, labor, health, and advocacy organizations, including OMB Watch, worked tirelessly to get a Head Start reauthorization bill passed without the discriminatory language. In the end, a motion to recommit the bill was defeated by a vote of 222-195, and the final bill passed in the House by a vote of 365-48.

The House bill bars use of funds for publicity or propaganda purposes and for funding pre-packaged news stories unless supplied by the Department of Health and Human Services. The Senate version bars use of employee program time for transporting people to the polls on Election Day, but drops previous language that would have barred use of private funds for voter registration activities. The restriction on private funds was a highly controversial issue as the last Congress considered Head Start reauthorization, and it is a good sign that it is not part of either bill.

House Hearing Asks Interior: Entangled in Politics, or Enlightened by Science?

In a May 9 hearing, the House Committee on Natural Resources heard witnesses discuss the extent to which Interior Department officials have manipulated scientific assessments when implementing the Endangered Species Act (ESA). The hearing came on the heels of the resignation of a top-ranking official and the release of a departmental investigation that found rules violations and intimidation of agency scientists.

Committee Chair Nick J. Rahall, II, (D-WV) said in his opening remarks that a range of actions taken by Interior in its implementation of ESA makes it clear "This is an agency that seems focused on one goal — weakening the law by Administrative fiat and it is doing much of that work in the shadows, shrouded from public view." He accused department officials of not cooperating with the committee, providing non-public information to private companies, and attempting to change ESA regulations behind closed doors. The hearing revealed agency practices that exhibit systematic efforts to undermine the information used to make ESA-related determinations.

Interior's Office of Inspector General investigated allegations against former deputy assistant secretary for fish, wildlife and parks Julie A. MacDonald that she intimidated staff and changed the scientific information agency scientists developed for decisions about listing or delisting threatened or endangered species. The report was released to Congress the week of March 26 and confirmed MacDonald's involvement in "editing, commenting on, and reshaping the Endangered Species Program's scientific reports from the field." MacDonald's background is in engineering and management, not biology or other natural sciences. MacDonald resigned her position April 30.

According to the investigation, MacDonald:

- extensively edited the Sage Grouse Risk Analysis;
- bypassed managers to bully field personnel "into producing documents" that suited her political philosophy;
- determined that the cost of designating an area as critical habitat was unacceptable and ordered a report rewritten to reflect her opinion;
- substituted "alternative outside sources" of science for staff scientists' sources and then declared the substitution "best practices"; and
- aggregated three separate species listings of salamander into one in order to change the species designation from endangered to threatened.

The report concludes MacDonald did nothing illegal, but that she violated the Code of Federal Regulations regarding disclosure of nonpublic information and the appearance of preferential treatment. Specifically, she disclosed information to the California Farm Bureau Federation and the Pacific Legal Foundation, a property rights group that often challenges agency endangered species decisions.

In her written testimony, Lynn Scarlett, Deputy Interior Secretary, testified that Interior is committed to scientific integrity, transparency and quality. Yet her testimony emphasized the voluntary nature of many of the programs and grants used in the endangered species program and the de-emphasis on listing species, which is often the focus of the extensive litigation the program regularly faces. She also downplayed the proposed administrative changes to ESA regulations circulating within the agency, about which Rahall complained. According to a BNA story (subscription) describing the oral testimony, Scarlett defended MacDonald's editing actions. MacDonald's editing was only to "ensure quality of product," according to BNA's article.

Witnesses from the environmental community had a different view of Interior's approach to using science. For example, Union of Concerned Scientists' Francesca Grifo provided testimony about the extent to which U.S. Fish and Wildlife Service (FWS) scientists had experienced political interference. A 2005 survey of FWS scientists working in field offices showed that 78 percent of respondents felt FWS was not effective in its habitat protection work, and 69 percent did not think it was effective in the recovery work for currently listed species. Almost two-thirds thought FWS was moving in the wrong direction.

Defenders of Wildlife executive vice president Jamie Rappaport Clark testified that the recovery programs Scarlett emphasized in her testimony were removed from the draft of the administrative rules changes. In addition, she noted:

> The general theme of all the administrative rule changes we have seen from, or discussed with, the administration is a withdrawal of the Fish and Wildlife Service and NOAA-Fisheries* from implementation of the Endangered Species Act. Having hamstrung the endangered species program by starving it of

resources and injecting political considerations into its science, the administration's rewrite of the ESA rules now would have the Fish and Wildlife Service and NOAA-Fisheries shed the responsibility entrusted to them by Congress on the basis that the agencies lack sufficient resources and expertise.

*National Oceanic and Atmospheric Administration's National Marine Fisheries Service, which is also responsible for ESA implementation.

Cost-Benefit Provision Latches onto Fuel Economy Standard

A Senate panel has approved a bill reforming the federal standard for passenger vehicle fuel economy. The bill aims to increase vehicle fuel efficiency over the next 25 years, but a proposal to mandate cost-benefit analysis could undermine meaningful regulation. The bill raises questions as to the limits of cost-benefit analysis in the federal regulatory process.

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. As OMB Watch reported in March, legislators from both parties introduced a number of fuel economy reform bills in the 110th Congress's early days.

The first of these bills to move toward a full chamber vote is the Senate's Ten-in-Ten Fuel Economy Act (S. 357), which the Senate Committee on Commerce, Science, and Transportation approved on May 8. The bill's primary aim is to increase the minimum fuel efficiency rate for all passenger vehicles to 35 miles per gallon by model year 2020. The legislation would then require NHTSA to raise the fuel efficiency rate by four percent each year from model year 2020 through model year 2030. The Senate has not yet scheduled a floor debate on the bill.

However, unlike the original CAFE legislation, this legislation would introduce mandatory cost-benefit analysis into NHTSA's standard-setting process. The original CAFE legislation requires federal regulators promulgate the "maximum feasible standard" and instructs NHTSA to consider "economic practicability." The law does not

require any formal analysis.

As proposed, the legislation would instruct NHTSA to consider "cost-effectiveness." The bill states "the term 'cost-effective' means that the total value to the United States of reduced fuel use from a proposed fuel economy standard is greater than or equal to the total cost to the United States of such standard." The proposed legislation uses the term "cost-effective" and "cost-effectiveness" repeatedly, but actually would mandate a cost-benefit analysis. The legislation would require NHTSA to prove a new standard's benefits outweigh its costs before regulating.

The introduction of a mandatory cost-benefit analysis raises two concerns. First, the legislation would mark a departure from the status quo. Currently, the national minimum rate for fuel efficiency is a static 27.5 miles per gallon and remains as such regardless of monetized costs or benefits.

Second, the often criticized requirements of cost-benefit analysis are particularly suspect with regard to fuel economy. The legislation would instruct NHTSA to consider a variety of factors in determining "cost-effectiveness," including national security and greenhouse gas emissions. However, the bill does not provide any indication as to how an intangible benefit such as national security should be monetized. Similarly, monetizing "the resulting costs to human health, the economy, and the environment" from greenhouse gas emissions would prove difficult. Subsequently, NHTSA's decision on whether to raise the CAFE standard may be based on inherently flawed estimates.

Critics of cost-benefit analysis point out the results of an analysis often understate benefits due to the difficulty of monetizing intangibles, as is the case with this proposed legislation. In testimony before Congress in February, OMB Watch's Director of Regulatory Policy Rick Melberth stated, "There are certain values we hold dear that cannot be adequately monetized." He went on, "A decision making process that doesn't provide for the expression of these nonquantifiable benefits is critically flawed."

The Senate legislation would still have to wait until a House proposal emerges. It would also have to be reconciled with President Bush's May 14 directive instructing the U.S. Environmental Protection Agency (EPA) and Departments of Energy, Transportation and Agriculture to collaborate on a regulatory plan for cutting automotive greenhouse gas emissions.

The White House issued the directive in response to an April U.S. Supreme Court decision that determined EPA could regulate greenhouse gas emissions under the Clean Air Act. Though Bush claims to prefer a legislative solution, he is proceeding with the regulatory approach, which may allow the White House to pursue its proposal on its own terms. Bush has instructed agencies to complete regulatory actions by the end of the administration, which may allow the White House to combat congressional initiatives and set less stringent standards.

Senate Passes FDA Reform Bill, Expands User Fees

On May 9, the Senate ended weeks of debate and passed S. 1082, the Food and Drug Administration Revitalization Act. The two primary aims of the bill are to renew the Prescription Drug User Fee Act and to generally strengthen the regulatory authority of the U.S. Food and Drug Administration (FDA).

In 1992, Congress passed the Prescription Drug User Fee Act (PDUFA). PDUFA gives the FDA the authority to collect fees from pharmaceutical companies for the safety review and approval of new drugs. Under the original legislation, Congress must reauthorize PDUFA every five years. PDUFA is set to expire Sept. 30.

If signed into law, the Food and Drug Administration Revitalization Act would renew and expand the user fee program. FDA would increase the amount of user fees it collects to almost $400 million, up from approximately $300 million. User fees would fund approximately half of the agency's drug review program and a fifth of the agency's overall budget.

While user fees account for a significant portion of FDA's funding, critics say the program ties the interests of FDA's drug approval office too closely to those of the pharmaceutical industry. In an open letter, the public interest group Public Citizen tells Congress "the agency has become dependent for its funding upon the very industry over which it has regulatory authority." Due to the dependence on user fees, the letter says, "pharmaceutical companies are increasingly seen as stakeholders, customers or even clients."

However, because user fees account for such a large portion of FDA funding and expiration of PDUFA is looming, a reauthorization bill is considered must-pass legislation. FDA has indicated it will notify drug review employees of potential layoffs if reauthorization is not signed into law by July.

In addition to reauthorizing PDUFA, the Senate bill proposes expanding the regulatory authority of the FDA. Recent controversies concerning the safety of the food and drug supply has subjected FDA to increasing public and congressional scrutiny. PDUFA reauthorization provided a vehicle for senators to address public concerns and to attempt to solve FDA's problems. Subsequently, the legislation morphed into a broad-based FDA reform measure.

In response to controversy over the arthritis drug Vioxx and other high-profile FDA missteps resulting in recalls, the Senate bill includes provisions to strengthen FDA's regulatory authority for drugs already on the market. The legislation would expand FDA's ability to require drug companies to perform post-market safety studies and perform "risk evaluation and mitigation" for drugs exhibiting adverse effects.

The legislation would also allow FDA to promptly order drug companies to change the labeling for a drug, a process which industry is now able to delay. Other post-marketing provisions include the creation of a database allowing FDA to collect information on adverse health effects and the expansion of a program rewarding drug makers who study adverse effects of drugs on pediatric health.

The legislation would expand FDA's ability to impose civil penalties on drug manufacturers. One measure would give FDA the authority to fine drug companies for false or misleading direct-to-consumer advertising. One of the bill's amendments inserts language that would allow FDA to impose fines of up to $2 million on delinquent pharmaceutical companies. Sen. Charles Grassley ☼ (R-IA) introduced the amendment, and the Senate agreed to it.

Another measure would expand FDA's regulatory authority on pet food. The recent controversy over melamine contamination exposed the inability of FDA to adequately regulate or recall pet food. Sen. Richard Durbin ☼ (D-IL) sponsored an amendment inserting language which would require FDA to promulgate better standards for pet food ingredients, improve labeling and make it easier for FDA to conduct recalls. The Senate agreed to the amendment without a dissenting vote.

Much of the debate on the Senate floor centered on controversial amendments related to drug importation. Sen. Byron Dorgan ☼ (D-ND) led the charge in attempting to insert language which would allow the importation of drugs from Canada and the European Union. Dorgan cited a Congressional Budget Office study claiming drug importation would generate savings of $50 billion over ten years.

Sen. Thad Cochran (R-MS) introduced an amendment to Dorgan's amendment. Cochran's provision would require the Department of Health and Human Services, of which FDA is a part, to approve all imported drugs. Due to the substantial burden the requirement would impose on the agency, the measure essentially nullifies Dorgan's amendment. The Dorgan amendment passed by voice vote, but only after the Senate attached the Cochran amendment by a vote of 49-40.

Several amendments the Senate failed to approve proposed expanding the scope of the bill. Moments before the final vote on the bill, Durbin introduced an amendment that would have inserted language making it more difficult for scientists with financial conflicts of interest to serve on FDA advisory panels. The Senate did not agree to the amendment in a 47-47 vote. Grassley introduced a provision which would have involved the Office of Surveillance and Epidemiology in post-market safety reviews, a responsibility currently left to the Office of New Drugs. The amendment was rejected 47-46.

The Senate voted 93-1 on the final bill, with Sen. Bernie Sanders (I-VT) voting "nay," citing dissatisfaction over the nullified drug importation provision. The House is in the early stages of developing companion PDFUA reauthorization legislation, which is

expected to contain similar regulatory expansion measures.

On May 1, the White House released a statement saying President Bush would veto the bill if it contained the Dorgan drug importation amendment. However, since the Cochran amendment has eliminated the chance of mass drug importation, prospects of a presidential signature have significantly improved.

Social Programs Are Collateral Damage of the War Funding Debate

Congress and the president have yet to resolve their differences over an emergency spending bill for the wars in Iraq and Afghanistan. Caught in the middle of this fight are high-priority proposals to raise the minimum wage, provide stopgap funding for a children's health insurance program, and restore some cuts for energy assistance. A drawn-out debate over war funding could end up causing unnecessary hardship for people who depend on the passage of these initiatives.

War Funding

President Bush vetoed the first FY 2007 supplemental appropriations bill, H.R. 1591, demanding that Congress strip it of language that set a goal for redeploying most soldiers out of Iraq by March 31, 2008. As an alternative, some Democrats and moderate Republicans had proposed using "benchmarks" for improvements in Iraq as a gauge for funding. But the Bush administration said that too would not fly. Yet under heavy pressure from moderate Republicans, the president appears to have shifted his position and is willing to accept legislative "benchmarks" for improvement in Iraq, but no further details as to the preferred timing, type and consequences of the benchmarks have been publicly discussed.

Following the veto of the supplemental appropriations bill, the House divided the original bill into two. H.R. 2206 includes all spending from the original bill except for agricultural programs and certain aid for western states. The $96 billion in military funding within the bill lacks withdrawal timetables and goals. However, this war funding is broken up into two installments, and the bill conditions the release of the second installment on congressional approval in July. The $4.5 billion H.R. 2207 contains the funding measures for agriculture programs and aid to western states that were excluded from H.R. 2206. The House passed both bills on May 10 (221-205 and 302-120, respectively), and the president responded with promises to veto each bill should it reach his desk.

The Senate has not taken action since the president's veto of H.R. 1591, though an agreement between the House and Senate on the supplemental bills is expected by the end of the week of May 21.

Minimum Wage Increase

Held up by the debate over military funding are a host of high-priority initiatives, the most consequential of which is arguably an increase in the minimum wage. A provision contained in H.R. 2206 would raise it from $5.15 to $7.25 per hour, phased in over two years. The original supplemental vetoed by Bush also included this minimum wage language.

The minimum wage was last adjusted in 1997. Since then, the cost of living has risen 26 percent nationally. Indeed, the real value of the minimum wage is the lowest it has been in over 50 years, according to the Economic Policy Institute.

It has been over five months since the House first passed the minimum wage increase, which it overwhelmingly did on Jan. 10, while the Senate passed the same increase on Feb. 1. Until the supplemental debate, an attached tax cut package that the Senate initiated had delayed the passage of the minimum wage bill. The value of these tax cuts was as high as $12 billion, but the House and Senate have now agreed to a $4.8 billion package. The tax cuts principally benefit businesses in the view of some and are fully offset.

Children's Health Insurance

The war funding debate has also delayed a stopgap appropriation for the State Children's Health Insurance Program (SCHIP). The Center on Budget and Policy Priorities estimates that in the current fiscal year, SCHIP funds are about $750 million short of the amount needed to cover the same number of children as it did in 2006. This would be the same as the cost to insure 510,000 children. A more recent estimate by the Department of Health and Human Services (HHS), supported by the Congressional Budget Office, put the shortfall at $650 million.

H.R. 2207 provides about $650 million in SCHIP funding. The total cost of the stopgap funding is about $400 million, because additional SCHIP funds reduce expenditures in Medicaid by about $250 million.

As many as 14 states are projected to have insufficient SCHIP funding by the end of 2007. Georgia has already run out of SCHIP funding for some beneficiaries, all of whom have been moved to a similar, but less comprehensive plan under Medicaid. Bruce Lesley, the president of First Focus, a children's advocacy organization, told *The Hill* that more states will run behind on funding by late summer.

Energy Assistance, Hurricane Relief, and Rural Schools

H.R. 2206 also includes a $400 million boost for the Low-Income Home Energy Assistance Program (LIHEAP). Despite high energy costs, funding for the LIHEAP

program was cut from $3.2 billion in FY 2006 to $2 billion in FY 2007.

There is also $6.8 billion in funding for Gulf Coast hurricane relief, about $3 billion above the president's request. About $1.4 billion of the unrequested funding would go toward rebuilding the levee system in New Orleans.

About $400 million is also included in H.R. 2207 for educational aid to communities that have been hurt by a long-term decline in the timber-harvesting industry.

It seems only a matter of time before Congress and the president finally reach a deal on the war funding issue. But the slow pace of the negotiations — as well as the inclusion of these provisions in the debate — could carry high costs.

Budget Resolution Report and Vote Could Come Soon

During the week of May 7, House and Senate budget resolution conferees began meeting to settle differences between the House- and Senate-passed $2.9 trillion budget resolutions. Despite a pre-emptive veto threat by the Bush administration, conferees are expected to produce a more generous and more fiscally sound budget plan than the president has proposed.

Since the beginning of March, the attention of much of Congress has been on the war in Iraq and whether or how to end it. But a small group of budgeteers, like House Budget Committee chair John Spratt (D-SC), his Senate counterpart Kent Conrad (D-ND), and other Democratic congressional leaders, have been quietly trying to work out compromises over the last few weeks that the budget resolution conference committee can ratify.

The day after conferees first met last week, OMB Director Rob Portman sent a letter to Congress, threatening presidential vetoes of any appropriations bills that exceed the amount requested in President Bush's original FY 2008 budget. The timing of Portman's letter was intended to suggest sudden White House fiscal disciplinarianism. The budget resolution will set overall spending and revenue targets for fiscal 2008-2012, including the specific FY 2008 discretionary spending total — which is expected to be about $20 billion above the president's request. Given the president does not have authority to veto the congressional budget resolution, Portman took a shot at the spending bills that might result from the budget blueprint. The president does have authority to veto spending bills.

The Portman letter was more about power struggles in Washington than it was about fiscal discipline. Conrad responded to Portman's letter in the *Washington Post* on May 12: "After racking up more than $3 trillion of new debt under its watch, the Bush administration now pretends to be fiscally disciplined by threatening to veto

appropriations bills."

As the House and Senate continue to negotiate over the total for discretionary spending, in addition to other issues, Conrad was arguing that the White House has sent an ironic message to Congress about fiscal discipline. Conrad, other Democrats and many fiscal conservatives have pointed out that the last six years have seen some of the worst fiscal management and debt accumulation in history — and many blame Bush for this situation. Now, as the Democrats wrestle with their first budget resolution during the Bush administration, the president says he is finally "serious" about fiscal discipline.

Democrats in Congress are certainly serious about passing a final budget — something their GOP counterparts were significantly worse at achieving, having failed to enact one in three of the last five years. The budget resolution sets an outline for subsequent tax and spending bills and is an early test of the Democrats' ability to prove they can govern. It is also essential in re-establishing PAYGO rules in the Senate — a crucial step in enacting more fiscally responsible legislation in the future.

While the conference committee is closing in on a final agreement, there are still a number of issues yet to be resolved:

- **The Baucus Amendment**: a provision in the Senate version of the resolution dedicating the $132 billion surplus *projected* for fiscal 2012 to pay for extending popular tax cuts over 2010-12, such as those benefiting married couples and the child tax credit, while fixing the estate tax at 2009 levels.

  The Senate indicated a preference to waive the offset requirements for certain tax breaks affecting the middle class and family farms, given that the Baucus amendment passed on a 97-1 vote, far in excess of the 60 votes required to waive the Senate's PAYGO rules. The House is less comfortable with that proposal, and it appears negotiators are trying to design a "trigger" mechanism in the House that would allows extensions of tax cuts expiring in 2010 under the Baucus Amendment to go forward only if surpluses actually materialize. This "trigger" would apply to legislation in the House but not the Senate. If the government does not produce surpluses in 2010, the tax cuts would have to be offset with spending cuts or other tax increases, as under the PAYGO rule.

- **Reconciliation Instructions**: The House version seeks special procedural protections from filibuster and amendment in the Senate, afforded by a "reconciliation instruction" to expand direct government aid to college students by cutting private lender subsidies. Conrad opposes instructions to the Education committees; he is on record saying that reconciliation is meant to be reserved for deficit reduction. He notes that Democrats criticized Republicans for misusing the reconciliation process and does not want Democrats to repeat those errors. Accordingly, Conrad does not like the precedent the House would set, since they only set aside a paltry $75 million in savings.

- **Discretionary Spending Caps**: The House and Senate are roughly $7 billion apart, with the Senate proposing a $948.8 cap on overall discretionary spending and the House proposing $955 billion. Rumors on Capitol Hill have pointed to a compromise figure tilting toward the House level. The numbers fly in the face of Portman's warning that he will recommend a veto of any spending bill that exceeds President Bush's discretionary FY 08 budget request of $933 billion.

The conferees have a lot to work out in a tightening timeframe if they intend to not extend much beyond today's (May 15) deadline for Congress to produce a budget resolution. The appropriations cap in the budget resolution is particularly important for the appropriations committees, which are permitted to report their spending bills to the floor of their respective chambers starting today. Without the guidance the budget resolution provides, the spending process becomes more of a free-for-all, first-come, first-served, with the faster-acting subcommittees leaving budget crumbs for the slower ones.

Conrad and other budget leaders are still more focused on finishing the budget before appropriators are forced to move ahead on their own — likely by the end of this week — than on the premature threats issued by Portman.

Open House Project Calls for New Era of Access

At a briefing in the U.S. Capitol on May 8, the Open House Project, a collaborative effort by government information experts, congressional staff, nonprofit organizers and bloggers to develop attainable reforms to promote transparency in the House of Representatives, publicly launched its new report and recommendations. The project was initiated and is managed by the Sunlight Foundation, a nonprofit that strives to use the Internet and technology to ensure greater government transparency and accountability.

The Open House Project recommended a series of technological reforms that would increase transparency and public access to the work of the House, as well as the elected leaders themselves. The project's report, *Congressional Information and the Internet*, included chapters explaining each major area for reform, including legislative data, member websites, congressional research materials and more. More than 30 groups from across the political spectrum participated and supported the project, including the Center for Responsive Politics, DailyKos, the Heritage Foundation, and OMB Watch.

Strikingly, regardless of ideological leanings, the groups all found common ground in the principle that government, and Congress specifically, should be more open to the public. "The Open House Project convened a diverse, bipartisan group of experts to help open the proceedings of the House of Representatives so it can be the transparent, open-source kind of legislature appropriate for the 21st century" said Ellen Miller, executive

director of the Sunlight Foundation.

The May 8 briefing included statements of support from House Minority Leader John Boehner (R-OH) and Rep. Brad Miller ☼ (D-NC), the chair of an influential subcommittee of the Science and Technology Committee, further underscoring the bipartisan nature of government transparency as an issue. "Good government isn't a liberal idea. It isn't a conservative idea," said Boehner. Miller followed by pointing out the practical dynamics of how transparency creates a more accountable and responsible government when he said, "Never underestimate the deterrent effect of being embarrassed."

House Speaker Nancy Pelosi (D-CA), also sent the group a letter welcoming the Open House Project report and expressing interest in using technology to improve communication and transparency of the House.

The Open House Project's suggested reforms include:

- Legislation Database — publish legislative data in structured formats
- Preserving Congressional Information — protect congressional information through archiving and distribution
- Congressional Committees — recognize committees as a public resource by making committee information available online
- Congressional Research Service — share nonpartisan research beyond Congress
- Member Web-Use Restrictions — permit members to take full advantage of Internet resources
- Citizen Journalism Access — grant House access to non-traditional journalists, including bloggers
- The Office of the Clerk of the House — serve as a source for digital disclosure information
- The Congressional Record — maintain the veracity of a historical document
- Congressional Video — create open video access to House proceedings
- Coordinating Web Standards — commit to technology reform as an administrative priority

The group practiced what it was preaching to Congress by using technology to develop its recommendations online in a collaborative and fully transparent way. Tools used by the group included an online list-serve, a blog, a project wiki and a YouTube video promoting the project.

As next steps for the Open House Project, those involved in the project will promote the recommendations more broadly to the House — and eventually the Senate — and explore the possibility of getting the legislators to champion these ideas for actual implementation.

EPA Increases Information on Dioxin

The U.S. Environmental Protection Agency (EPA) announced a final rule on May 10 to increase reporting of dioxin compounds, some of the most potent carcinogens, under the Toxics Release Inventory (TRI) program.

In accordance with the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986, all facilities have been required to report the combined amount of seventeen dioxin and dioxin-like compounds that are released or transferred from a facility. EPA is now expanding the reporting to include requirements that facilities report on each compound individually, beginning June 9. Such detailed reporting will enable EPA to more accurately track the toxicity of dioxin releases at a facility, as the different compounds have varying levels of toxicity. This "toxic equivalent" (TEQ) — a weighted toxic value using the most toxic compound as a baseline — provides a more accurate and useful comparison of facility releases. The new reporting should also allow communities to better determine the level of risk posed from dioxin and dioxin-like compounds released in their area.

Dioxins, unintentional byproducts of combustion and industrial chemical processes, are extremely toxic and mobile. Typically released as airborne pollution, they often contaminate air, soil, sediments and food, causing cancer, reproductive problems, and developmental delays. Not naturally found in the environment, dioxins are entirely a human creation with no known "safe" level. TRI requires disclosure of any release greater than a single gram, as opposed to the five-thousand pound threshold of other toxic chemicals. In 2005, more than 1,200 facilities released or disposed of approximately 84,500 grams, or 186 pounds, of dioxin compounds.

While this increased specificity in dioxin reporting is an improvement, it seems a very minor advance in the face of the larger rollbacks promulgated by EPA's December 2006 rule change, which reduced reporting on more than 600 other chemicals tracked under TRI. The December rule raised the reporting threshold for most chemicals from 500 pounds to 5,000 pounds, of which up to 2,000 pounds can be released directly to the environment.

DHS Doesn't Share Well with Others

The Homeland Security Act of 2002 granted the Department of Homeland Security (DHS) statutory authority to coordinate information-sharing networks with state and local governments. As the five-year anniversary of the creation of the Department approaches, along with the six-year anniversary of the 9/11 attacks, the U.S. Government Accountability Office (GAO) has found that DHS is falling short of its responsibility to effectively share information within the federal government, or with state, local and tribal governments and the private sector.

Congress created DHS to better coordinate homeland security efforts across the federal government. A large piece of the agency's mission is managing homeland security information and ensuring that the right information gets to the right people at the right time. Of particular importance is providing first responders and state and local governments with timely access to valuable nationwide information-sharing networks.

Despite these needs, a new GAO report and recent GAO testimony before the House Homeland Security Subcommittee on Intelligence, Information Sharing and Terrorism Risk Assessment find that DHS is not fulfilling its responsibilities. "While DHS is responsible for coordinating these network and system efforts among federal, state, and local governments, it has not done so effectively with regard to its primary information-sharing system and two key state and local initiatives," states the report.

GAO testified on May 10 before the subcommittee that DHS failed to coordinate with state and local governments in developing the Homeland Security Information Network (HSIN), the agency's leading web-based application to share homeland security information with the federal government, all fifty states and local governments:

> DHS did not work effectively with two key Regional Information Sharing Systems program initiatives. This program, which is operated and managed by state and local officials nationwide, provides services to law enforcement, emergency responders, and other public safety officials. However, DHS did not coordinate with the program to fully develop joint strategies and policies, procedures, and other means to operate across agency boundaries, which are key practices for effective coordination and collaboration and a means to enhance information sharing and avoid duplication of effort.

GAO's testimony states that, as a result, information sharing may not be occurring, and HSIN may be an unnecessary duplication of already-existing programs. Rep. Bennie Thompson ☼ (D-MS), chairman of the House Committee on Homeland Security, stated that "Every month, only 6% of HSIN law enforcement users and only 1% of counter-terrorism and emergency management users actually post something on the system."

In response to the GAO report, DHS has agreed with the findings and committed that within 60 days of the report's release, DHS will provide an update to the relevant committees on a series of agency actions to meet GAO's recommendations.

Also of concern is the failure to develop government-wide policy for sensitive but unclassified (SBU) information. The Office of the Director of National Intelligence (ODNI) reported that 107 separate SBU categories of information have been created since 9/11. The office concludes, "The growing and non-standardized inventory of SBU designations and markings is a serious impediment to information sharing among agencies, between levels of government, and, as appropriate, with the private sector."

The Secretary of DHS and the ODNI were required by a Dec. 16, 2005, memo from

President Bush "to standardize procedures for sensitive but unclassified information." The Information Sharing Environment (ISE) plan, established under ODNI, states that policy recommendations will be submitted to the White House in first quarter of 2007, but no such plans have been publicly released.

The Democratic and Republican leaders of the Senate Homeland Security and Governmental Affairs Committee submitted a May 1 letter to the Secretary of DHS and the Director of National Intelligence inquiring into the status of the standardization of SBU policies. "If we are to prevent future terrorist events and be better prepared to respond to such events, as well as natural disasters, there must be better information sharing between federal agencies and with our state, local, and tribal partners and the private sector," said Sens. Joseph Lieberman (ID-CT) and Susan Collins (R-ME), respective chairman and ranking member of the committee. They continued, "We believe that prompt attention to the standardization of SBU designations is essential to improving information sharing."

DHS and ODNI have yet to issue a response to the senators' letter.

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