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Congress Passes Irresponsible Budget Resolution

Last week, after lengthy negotiations, House and Senate Republican leaders finally agreed to a set of compromises in the fiscal year 2006 (FY06) budget resolution that allowed both chambers to narrowly pass the legislation. Negotiated behind closed doors, the final budget resolution is a dishonest and irresponsible agreement that will weaken both the federal government and the U.S. economy -- and negatively impact most Americans. Most striking is that it provides another tax break for the wealthy and cuts programs to needy and middle-income Americans while still increasing the deficit.

The resolution, setting spending levels and tax-cut thresholds for the next five years, passed late in the day on April 28 by narrow margins: 214-211 in the House and 52-47 in the Senate. The resolution would cut both annually appropriated programs and entitlement spending over the next five years, allow for two-thirds of a total $ 106 billion in additional tax cuts (primarily for the wealthiest Americans) to be "fast-tracked" in the reconciliation process, and would actually increase deficits contrary to Republicans' claims.

The main roadblock to reaching an agreement on the budget resolution was resistance from a small group of moderate Senate Republicans, led by Sen. Gordon Smith (R-OR), over cuts to the Medicaid program. A member of the Senate Finance Committee, Smith led the effort to add an amendment to the Senate's FY06 budget resolution in March to prevent $ 14 billion in Medicaid cuts. Smith's amendment also called for the establishment of a commission to study Medicaid to better target savings proposals. To achieve agreement in the final budget, a deal was reached with Smith, who was considered the linchpin in the fight against reducing Medicaid spending, on the maximum level ($ 10 billion) and provisions (no cuts in the first year) for enacting Medicaid cuts.

Under the Medicaid budget agreement, a commission will be created to determine the policy changes needed to produce required program savings. Senate Budget Committee Chairman Judd Gregg (R-NH) said the advisory committee would report its suggestions to Congress by Sept. 1.

Key Aspects of the Budget Resolution

Large Cuts in Domestic Discretionary Spending

The budget resolution sets the total level of funding for discretionary programs in 2006 at $ 893 billion, which equals the $ 843 billion proposed in the president's budget plus $ 50 billion for supplemental funding for the wars in Iraq and Afghanistan. (The president's budget included no funds for Iraq and Afghanistan in 2006 or subsequent years, but it is widely acknowledged the president will continue to request supplemental funding.) It will be difficult to adequately fund programs at current levels under the $ 893 billion cap.

Funding for domestic discretionary programs (those outside of defense and international aid) will total $ 373 billion in 2006,

representing a cut of $ 23 billion (5.9 percent) below 2005 funding levels after adjusting for inflation. Over five years, the cuts in domestic discretionary funding total $ 212 billion. These cuts will have substantial effects on programs across the federal budget, from education, job training, and child care, to after-school, veterans, environmental and natural resource programs.

Reconciliation Instructions to Cut Mandatory Programs

For the first time since 1997, the budget resolution contains reconciliation instructions requiring legislation that will achieve reductions in mandatory spending and further tax cuts, as well as an increase in the debt ceiling. Congress is supposed to use the reconciliation process to reduce deficits. The process expedites consideration of legislation requiring sensitive political decisions on raising taxes or cutting mandatory programs. However, this budget resolution hijacks the process, and in a bastardization of its original intent, partially funds continued unpaid-for tax cuts mostly for the rich by cutting social programs that primarily benefit lower-income Americans. The result, ironically, is increased deficits.

Although it is not a procedural requirement, the resolution calls for three separate reconciliation bills -- one for tax cuts, one for spending cuts, and one to increase the debt ceiling -- all of which are to be finished by September. This is done in a not-so-subtle attempt to hide the juxtaposition of reducing spending primarily on low-income entitlement programs to help pay for tax cuts primarily benefiting the wealthy.

The tax reconciliation bill allows for $ 70 billion in tax cuts over the next five years. While it is up to the tax-writing committees to determine which tax cuts will be included in the $ 70 billion, the bill is likely to include extension of expiring provisions from the 2001 and 2003 tax cuts, most notably the reduced rate on capital gains and dividends. (The Urban Institute-Brookings Institution Tax Policy Center estimates that more than half of the benefits of this tax cut go to households with incomes over $ 1 million per year and nearly 80 percent of the benefits go to the 3 percent of households with annual income over $ 200,000 per year.)

The spending reconciliation bill requires $ 34.7 billion to be cut across eight authorizing committees. The largest program reductions will most likely come from Medicaid ($ 10 billion), the Pension Benefit Guaranty Corporation ($ 6.6 billion), student loan programs ($ 4.7 billion) and programs under the agriculture committees ($ 3 billion). (The budget resolution can provide guidelines to committees, but cannot require cuts in specific programs. Hence, the identified cuts are likely to occur, but the committees could choose other areas for cuts, such as Medicare.) Below is a breakdown of the cuts to be achieved through reconciliation bills in the House and Senate.

Cuts to Mandatory Spending Protected Through Reconciliation (FY06 - FY10)

(billions of dollars)

House Committees		**Senate Committees**	
Agriculture	3.000	Agriculture	3.000
Education and Workforce	12.651	Banking	0.470
Energy and Commerce	14.734	Commerce	4.810
Financial Services	0.470	Energy	2.400
Judiciary	0.300	Environment & Public Works	0.027
Resources	2.400	Finance	10.000
Transportation and Infrastructure	0.103	Judiciary	0.300
Ways and Means	1.000	Health, Education, Labor & Pensions	13.651
Total Mandatory Program Cuts	**34.658**	**Total Mandatory Program Cuts**	**34.658**

Still More Deficit-Financed Tax Cuts

The budget resolution calls for $ 106 billion in tax cuts over the next five years, which more than negates any deficit reduction achieved by reducing mandatory spending. This amount is sufficient to extend all of the expiring provisions of the 2001/2003 tax cuts through 2010 including reduction of rates on capital gains and dividends, marriage penalty relief, expansion of the 10 percent income tax bracket, expansion of the child tax credit, research and development tax credits, and other associated provisions.

As discussed above, $ 70 billion of the total tax cut amount would be included in a reconciliation bill that will be considered under expedited procedures, is difficult to amend, and cannot be filibustered. The inclusion of deficit-exploding tax cuts in reconciliation is the most disturbing, irresponsible, and arrogant aspect of the budget resolution and is opposite of the original intent of the process, which was to allow political cover for members of Congress to vote to increase taxes in the name of deficit reduction. In its current use, it is being used to ram through another round of unending tax cuts mostly benefiting the most well-off even while federal revenues are at their lowest levels since the 1950s. These additional deficit-financed tax cuts will continue to push revenues to historically low levels and institutionalize structural deficits for decades to come.

But Wait, There's More...

In addition to drastically poor budgeting practices and misguided priorities, the budget resolution also contains three provisions that could diminish the ability of Congress to maintain authority over the federal budget and protect the public interest. The provisions endorse the establishment of results commissions, mark the first step in turning the Unfunded Mandates Reform Act into an insurmountable obstacle for new protections of the public interest, and restrict the ability of future congresses to respond to changing national spending priorities.

The first provision is a "sense of the Congress" measure in support of proposals in the president's budget to establish

commissions to review the effectiveness of government programs. Referred to as "results commissions," in the budget, they would have "the express purpose of providing Congress with recommendations to realign or eliminate government agencies and programs that are wasteful, duplicative, inefficient, outdated, irrelevant, or have failed to accomplish their intended purpose." (Budget Resolution conference report, pages 66-67). The second provision was reportedly inserted into the budget resolution by Sen. Lamar Alexander (R-TN) and would turn a relatively harmless procedural mechanism in the Unfunded Mandates Reform Act into a roadblock to protecting the public interest. (Read more about these provisions and their harmful effects.)

The third provision in the budget resolution is a requirement that any legislation increasing direct spending by $ 5 billion over any of the ten-year periods between 2016 and 2055 be approved by three-fifths of senators. This budget enforcement rule will make it extremely difficult for future Congresses to respond to evolving needs.

Congress Can Do Better

The budget resolution approved last week will damage not only specific programs and investments millions of Americans rely on to build and support their communities, but also the overall fiscal and economic health of the nation. As the baby-boom generation approaches retirement, Congress and the American people will need to invest substantially more in our society -- not less, as this budget does. By continuing to prioritize tax cuts that undermine the revenue base of the government, Congress is creating a structural deficit that will cripple the country's ability to invest in infrastructure, health care, transportation, and other quality of life services and systems that all of us depend on. It would have been far better if Congress had done nothing at all.

Despite Public Disdain, Private Accounts Will Not Die

The issue of Social Security reform is gathering steam once again as President Bush wraps up his "60-cities-in-60-days" tour to sell his privatization plan to the public. Although the latest polls show more Americans oppose the president's proposal than ever, recent congressional hearings continue to keep the plan on life support.

On April 26 the Senate Finance Committee held a hearing on Social Security solvency, in what could possibly be the final Senate hearing before Committee Chairman Charles Grassley (R-IA) delves into crafting legislation. The hearing focused on the issue of achieving solvency within the benefits program but also covered the widely-discussed idea of private accounts. While witness Peter Orszag of the Brookings Institution focused his testimony on the importance of solvency, other witnesses, such as Peter Ferrar and the Cato Institute's Michael Tanner, chose instead to discuss what they believe would be the benefits of personal retirement accounts. Grassley praised witness Robert Pozen's Progressive Price Indexing plan because, according to Grassley, it "seems like a compromise." Critics of Pozen's plan, however, believe it will result in benefits cuts for too many people.

The hearing was well attended by senators serving on the committee, many of whom asked witnesses pointed questions regarding how reform would impact the national level of debt, how much risk private accounts would create for beneficiaries, and how to avoid across-the-board benefit cuts. For some senators, this issue is very personal. Sen. Trent Lott (R-MS) discussed his elderly mother and Grassley exhibited intense anxiety about what kind of a benefits program would exist for his grandchildren.

Other members of the committee had a different focus to their comments, framing the Social Security debate in a larger context. Sen. John Kerry (D-MA) commented with frustration that both Congress and the administration had wasted precious months focusing on small details such as private accounts while avoiding the bigger issue of solvency. He discounted the "crisis" mentality, saying "we do have enough money to pay benefits," and that the entire seventy-five year Social Security shortfall is equivalent to one-fifth of the cost of making the president's tax cuts permanent. (See statistical analysis.) Sen. Kent Conrad (D-ND) focused on misplaced priorities, stressing the Medicaid and Medicare programs face a much greater fiscal crisis than Social Security, calling Medicare "the real eight-hundred pound gorilla."

For months, Democrats in the both the Senate and House have remained unusually united against any Social Security reforms that would cut benefits for recipients in the future. At an April 26 "anti-privatization" Social Security rally on Capitol Hill, sponsored by Americans United to Save Social Security, scores of congressional Democrats stood on stage before the rally participants showing their unity in opposition to private benefits accounts. House Minority Whip Steny Hoyer (D-MD) was one of many to address the crowd, saying, "Democrats, as you have seen, are seeing, and will see, are absolutely united in opposition to the Republican plan to privatize one of the most important programs this country has ever adopted."

Despite unified Democratic opposition and an unsuccessful nationwide campaign, President Bush held a prime-time televised news conference on April 28 in a last ditch effort to rally support for his dying proposal. Bush reiterated his belief that private accounts would be the best way to solve issues of Social Security solvency. In a change of strategy, he stated he did not want reforms to cut benefits for low-income workers, who represent a traditionally Democratic demographic. In doing so, the president made it clear there would be cuts in benefits to middle and upper-income beneficiaries and Democrats immediately lashed out at the president for proposing a means-test that would translate into cuts for average American retirees. Bush repeated during the news conference what has become increasingly clear over the past several weeks -- that is it is up to Congress now to achieve an actual solution. Chairman Grassley will undertake the task of drafting legislation to reform Social Security in the Senate. He will begin by working solely with members of his own conference on the legislation, although aides have noted Democrats on the Finance Committee, all of them opposed to private accounts, may end up helping. Grassley is expected to look seriously at key aspects of Pozen's plan.

In addition to the Senate's efforts, the House Ways and Means Committee will also be exploring Social Security reform and plans a full hearing on May 12. The hearing will be followed by an ambitious schedule of subcommittee hearings -- about one a week, according to Chairman Bill Thomas (R-CA). The committee will study specific details such as adjustments to the payroll tax, changing the retirement age, retirement benefits for dual earners, and how the current benefit structure is unfair to women. Thomas expects the committee will begin writing legislation in June.

Bush Criticized for Continuing 'Dishonest' War Budgeting

For months, President Bush's budget proposal has been criticized for not being an honest reflection of his intended policies or the current fiscal reality. The president purposely left out a number of major policies, including Social Security reform, extension of Alternative Minimum Tax relief, and perhaps most egregiously of all, any funding for the future cost of the wars in Iraq and Afghanistan. That last omission garnered increased criticism from Capitol Hill last week.

During the debate on the latest emergency supplemental funding bill, Appropriations Committee Ranking Member Robert Byrd (D-WV) offered an amendment that dealt a symbolic blow to the administration's practice of funding the current wars through an ad-hoc system of irregular spending requests. The amendment, which passed 61-31, expressed the sense of the Senate that war funding should be included in regular budget requests, not through supplemental spending bills. The president's FY06 budget proposal included no funding for the wars.

Byrd expressed outrage over the lack of transparency resulting from the piecemeal information the president provides Congress concerning the long-term costs and planning for ongoing military operations. Byrd felt the White House, by separating the regular budget of the Defense Department and other parts of the federal government from the wartime costs of military operations, had effectively denied Congress the ability to balance the whole picture of military needs of our troops and the other national priorities, such as education, highways, and veterans medical care.

The practice of using supplemental funding requests also has more serious implications for the goal of balancing the budget. During his introductory statement, Byrd highlighted the misleading and dishonest nature of a budget proposal containing such omissions. "By refusing to budget for the cost of the war, the President is submitting annual budgets to Congress that are downright inaccurate. These budget requests are inaccurate. They understate the actual amount of our annual deficits by scores of billions of dollars."

Byrd's amendment passed with the support of 21 Republicans, showcasing the growing bipartisan uneasiness in Congress with the administration's practices and the implications for the nation's fiscal health. To date, over $ 200 billion has been appropriated through supplemental spending requests for the wars and the Congressional Budget Office estimates it will cost an additional $ 458 billion over the next 10 years.

In the end, Byrd believes the key issue is honesty. "The President will not tell the American people what the war in Iraq will cost. By understating the deficits, the American people are being led down a primrose path. That is dishonesty."

To help solve this problem, Byrd's amendment calls on the president to include funding for the wars in regular budget proposals and submit to Congress by Sept. 1 a separate, detailed plan for the cost of each of the wars for the entire 2006 fiscal year.

Unfortunately, the amendment is non-binding and given the administration's penchant for secrecy and inability to admit to mistakes, it is unlikely to change the current practices for funding the wars. Byrd remained optimistic however, stating, "Hopefully, this will be the first step in restoring some sanity to the President's budget request that has so far ignored the enormous costs of military operations in Iraq and Afghanistan."

Senate Passes Emergency Supplemental; Bill Held up in Conference

The latest emergency supplemental spending bill (H.R. 1268) was held up as House and Senate conferees struggled to reach an agreement regarding specifics for the bill before leaving town April 29 for the week-long May recess. The bill, which will mainly fund war operations in Iraq and Afghanistan, was held up due to disagreements over provisions regarding immigration, border security funding, and earmarks for special projects and programs.

In February, President Bush originally asked Congress to pass an $ 81.9 billion emergency bill to fund ongoing war operations. The president has recently received additional criticism, particularly from Sen. Robert Byrd (D-WV), over the practice of funding the wars through emergency supplemental bills, instead of through the traditional congressional budget process.

The House passed its version of the emergency supplemental March 2. It closely resembled the president's request, including all but $ 800 million of what he had requested. The Senate, on the other hand, passed a bill appropriating extra funding to address growing security concerns along the Mexican border. Additional items in the Senate bill include:

- $ 276 million for Immigration and Customs Enforcement to ensure adequate funding for critical investigative and detention programs
- $ 536 million of funding for the Department of Homeland Security to provide 1,050 border patrol agents, 250 immigration and customs investigators, 168 enforcement agents and detention officers, and 2,000 detention beds
- $ 65 million to help the federal judiciary deal with an increased caseload
- $ 100 million in loan guarantees for a coal program along with $ 24 million in other earmarks
- A provision offered by Sen. Richard Durbin (D-IL) that would ensure federal employees in the National Guard and Reserves do not see a loss of pay.

House Appropriations Chairman Jerry Lewis (R-CA) has been pressuring his Senate counterpart, Appropriations Chairman Thad Cochran (R-MS), to drop many of the items not related to the war added to the Senate bill since a majority of House Republicans want the bill to resemble the president's request as closely as possible. Lewis' request is despite the inclusion in the House version of a controversial immigration bill that includes dangerous language allowing the Department of Homeland Security to waive all law when securing the nation's borders.

As Congress takes a week-long recess, the two chambers remain approximately $ 800 million apart on border protection funds and without agreement on the House immigration rider -- the REAL ID Act. Final negotiations on the emergency supplemental bill will most likely be hammered out in private meetings between congressional GOP appropriations leaders and White House staff.

Economy and Jobs Watch: Economic Recovery Still Shortchanging Workers

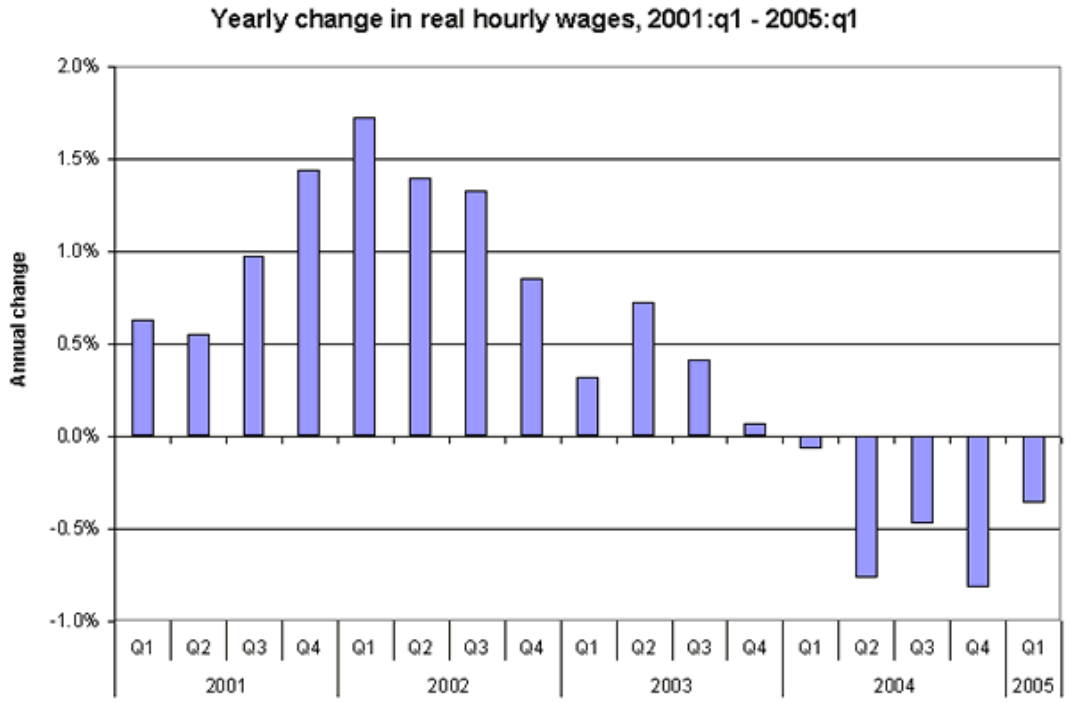
The gross domestic product (GDP) of the United States grew at a slower pace than expected during the first quarter of 2005 according to data released by the Commerce Department. At just 3.1 percent, it was the slowest rate of growth in over two years since the first quarter of 2003.

Economists and financial market investors were caught off guard by the slow rate of growth. Nigel Gault, chief U.S. economist at Global Insight, stated, "I think we do have to get used to the idea that growth is going to remain substantially slower [now] than in the earlier part of the recovery." Caused mostly by higher energy costs, lower business investment, and an ever-widening trade gap, the slow economic growth is seen as hurting workers the most.

Much of the drop in GDP growth is due to a falloff in the growth rates of both consumer spending and business investment, as well as the widening trade gap. With inflation and prices for goods -- especially foreign oil (although this has been dropping in the past number of days) -- on the rise, public consumption by both businesses and consumers is down. Final sales to domestic purchasers grew by only 3.2 percent this quarter. In 2004, the growth of sales to domestic purchasers was significantly higher, averaging 4.2 percent over all four quarters.

Helping to slow economic growth was a decline in real, disposable personal income by 0.3 percent in the first quarter of 2005. The Economic Policy Institute (EPI) reported April 20 that "real wages continue to deteriorate for many U.S. workers" with private-sector jobs experiencing slower than usual wage and salary growth.

In fact, March marked the 11th consecutive month in which annual wage growth failed to outpace inflation. Real hourly wages fell for the fifth consecutive quarter due to the continually and persistently weak job market, building upon a trend of either flat or declining wages relative to inflation throughout 2004. The chart below illustrates a worsening trend in real hourly wages from 2001 - 2005. This erosion of real wages, despite rapid productivity growth and continued job growth, is disappointing and a real detriment to working families' living standard.



Source: The Economic Policy Institute's Jobwatch.org site

This Feb. 16 report from the Economic Policy Institute and the Center on Budget and Policy Priorities also finds the only group to see wage gains from 2003 to 2004 were workers who had attended graduate school. While most workers have been left out of the economic recovery, it has negatively impacted low-income workers most severely.

Chemical Security Remains an Unaddressed Problem

An April 27 panel of government officials and security experts told the Senate Subcommittee on Homeland Security and Governmental Affairs that chemical security remains a looming problem that the federal government refuses to address. The same day the House Committee on Homeland Security proved that point by rejecting an amendment to improve security related to shipments of dangerous chemicals. Also the same day, President Bush called for development of new oil refineries on old military bases but did not address the existing gaps in chemical security.

The Senate hearing addressed the fact that there are no federal regulations that require security measures at chemical facilities although numerous officials have noted the significant risk these facilities pose to national security. One panelist referred to these facilities as thousands of "weapons of mass destruction" around the country.

While the panelists offered different recommendations on how best to structure a federal solution to the problem they all agreed that new federal laws are needed to address chemical security issues. Richard Falkenrath, a visiting fellow studying foreign policy for the Brookings Institution and a previous homeland security advisor to President Bush, told the committee that some the chemical industry's voluntary efforts "are good," but "I recommend federal regulations; no question."

Sen. Jon Corzine (D-NJ), sponsor of chemical security legislation in the last Congress, also testified at the hearing and stressed the importance of congressional action on the issues. Corzine informed the committee that any chemical security legislation should include both improving plant perimeter security and reducing hazards in the facilities to minimize the impact of a successful attack.

Corzine strongly recommended requiring facilities to consider safer chemicals and technologies. "Examination of alternative approaches should be required in legislation," Corzine testified, "not mandated, but legislation should make certain they've been examined."

Sen. Susan Collins (R-ME), chairman of the committee, appeared convinced by the testimony that chemical security was an important issue that had gotten too little attention in the over three years since the 9/11 terrorist attacks. Collins stated, "I am inclined to believe we need strong federal legislation in this area, but legislation that does not put a significant burden on the chemical industry." Sen. Joseph Lieberman (D-CT), the ranking Democrat on the committee, agreed and predicted, "we're going to get something done to protect chemical facilities in this Congress." However, no chemical security legislation has been introduced in the Senate in the 109th Congress.

At the same time, the House Committee on Homeland Security rejected an amendment to require rerouting of extremely hazardous materials around sensitive areas. Rep. Edward Markey (D-MA) submitted the amendment to the Homeland Security Authorization Act for Fiscal year 2006 (H.R. 1817). Markey noted that the administration has done nothing to address shipments of hazardous materials and proposed in the amendment a national plan to protect such shipments. Under the plan, rerouting would only have been required if the Department of Homeland Security had determined that a safer route was available.

Markey originally introduced the plan as a stand-alone bill, the Extremely Hazardous Materials Transportation Security Act of 2005 (H.R. 4824), but then decided to attach the measure to the Homeland Security authorization bill. The amendment failed after receiving a 16-12 vote along party lines on April 27. The authorization bill now moves the House floor for debate.

The provision was introduced, in part, to address the District of Columbia's recent struggle to improve safety by requiring hazardous shipments to be rerouted around the city. The provision has been challenged by both CSX, a rail transportation company, and the federal government. District Councilwoman Kathy Patterson (D), categorized the rejection of the Markey amendment as "a slap in the face to citizens who look to their federal government for protection from terrorist threats."

Also on April 27, the president proposed building new oil refineries at closed military bases and jumpstarting construction of new nuclear power plants to address rising energy costs. He also proposed giving federal regulators the lead authority to decide where to locate terminals for processing imported natural gas. Liquefied natural gas terminals take compressed, supercold natural gas shipped from overseas and warm it into usable energy. Only four such terminals exist in the United States and authority for terminals currently resides with states. Despite these proposals that increase chemical risks, the president has yet to address the need to strengthen chemical security at plants and terminals.

National Security Whistleblowers Urge Better Protections

The National Security Whistleblowers Coalition met with key congressional committee staff April 28, stressing the important role of whistleblowers that disclose security problems, and detailing the retaliation these individuals then encounter. On the same day, Rep. Edward J. Markey (D-MA) announced his intention to introduce legislation in the House to strengthen whistleblower protections.

After meeting with staff from the House Government Reform Committee and the Senate Judiciary and Armed Services Committee, the new coalition held a press conference. Sibel Edmonds, the FBI translator fired after exposing security problems within the agency, is lead organizer for the coalition. She testified about the current climate for whistleblowers, stating, "Currently we have no system in place that applies direct, individual accountability when it comes to retaliation against whistleblowers. Thus, there exists NO deterrence for those who engage in government waste, fraud, and abuse, and criminal activities that jeopardize our nation's security, interests, and wellbeing."

Edmonds had sued the FBI for wrongful termination, and oral arguments for her appeal began April 21. However, at the last minute, the U.S. Court of Appeals closed the hearing to the public and journalists, allowing only Edmonds and her attorneys into the courtroom. The government had already barred access to most of the information regarding Edmonds and her allegations -- it retroactively classified information presented during a congressional briefing, and classified a CBS *60 minutes* interview featuring Edmonds. The court dismissed her initial lawsuit after the government argued it would divulge state secrets.

During the coalition's press conference, Markey promised to introduce legislation that would provide government whistleblowers similar protections to those in the Sarbanes-Oxley Act, a corporate accountability law that protects corporate whistleblowers. "It is preposterous that Congress, in the Sarbanes-Oxley Act, gave better whistleblower protections to employees of Enron or WorldCom who report accounting fraud than it gives to FBI employees, TSA baggage screeners, or nuclear reactor security guards who report serious risks to homeland and national security!" Markey said. An amendment version of his whistleblower improvements was rejected during the April 27 markup of the Homeland Security Authorization Act.

According to a press release from Markey's office, the upcoming bill would protect whistleblowers that disclose information about national security, a public health threat, or fraud, waste and mismanagement. Any retaliation against a whistleblower would be punishable by up to 10 years in jail. The bill would also permit a whistleblower to bring his or her case to civil court if the Department of Labor does not act on the case within six months. Additionally, the bill will stipulate that if the government exerts the state secret privilege and a case is not heard by the court, the whistleblower would automatically win.

As reported in the last *OMB Watcher* Sen. Daniel Akaka (D-HI) is the sponsor of whistleblower legislation currently moving through the Senate. The Senate Committee on Homeland Security and Governmental Affairs favorably reported out the bill, S. 494, on April 13.

Whistleblower protections are also being addressed outside of Congress. The Department of Defense issued a memorandum Jan. 7, modifying the agency's whistleblower policies. The memo explains that civilian employees working on intelligence issues are now covered by whistleblower laws. In addition, anyone that blows the whistle is protected from having security clearances revoked or modified in retaliation. While these changes are steps in the right direction, the protections for civilians and service members are still not equal. Civilians cannot report waste, fraud or abuse to a direct supervisor; service members can.

The Project on Government Oversight (POGO), supporting the need for changes in whistleblower protections, especially in the area of homeland and national security, released a report the day of the hearing. The report details the increase in national security whistleblowers since 9/11, and points out gaps in current law along with possible legislative solutions. The report, "Homeland and National Security Whistleblower Protections: The Unfinished Agenda," is available at POGO's website.

Defense Department Seeks New FOIA Exemption

The Department of Defense (DoD) is seeking a broad Freedom of Information (FOIA) exemption, which would remove critical information from public purview -- everything from information on human rights abuses, to historical military records. The agency sought such an exemption in 2000, but Congress rejected the measure.

The proposed FOIA exemption would be specifically for the Defense Intelligence Agency (DIA), an agency that creates and supplies intelligence information for the DoD. The exemption would allow both the DIA director and the new Director of National Intelligence to exempt operational files from public disclosure. DoD included the exemption in Section 901 of the National Defense Authorization Bill for fiscal year 2006, sent to Congress April 7.

The provisions mirror a FOIA exemption the CIA has for operational files, granted through the CIA Information Act of 1984. However, the DIA's mission and duties vary significantly from the CIA, making it impossible to apply the same disclosure standards. Currently the DIA does release certain operational files that are important to the public. Past examples include a 1990 declassified intelligence report on events in Rwanda, and a 1990 partially declassified intelligence report on arms sales between Britain and Saudi Arabia.

In 2000, the Senate passed the same provision in the FY01 Defense Authorization Act, but after significant objection from public interest groups the full Congress rejected the measure.

The text of the FY06 authorization bill can be found through the Department of Defense website. Analyses of the FY01 provision is available from the National Security Archive and the Federation of American Scientists.

Ohio Bill To Privatize Government Information, Services

An Ohio state legislator last month reintroduced legislation to force taxpayers to pay companies for services and information that taxpayers already receive more efficiently and cheaply directly through the government. An anti-government conservative group, the American Legislative Exchange Council, originally drafted the legislation and saw it introduced in at least five states in 2003. It previously failed in Ohio.

The Electronic Government Services Act, introduced as H.B. 188 in the current session of the Ohio General Assembly, could require state agencies to stop providing hunting, sport fishing and business licenses and re-using inexpensive furniture in government offices if private companies are trying to sell similar services. The proposal would limit access to important information held by government if two or more private companies were providing similar services or information. It would limit government information only to those who could afford to pay.

In the legislature's last session the bill passed through the Ohio House of Representatives. It was attached to the state Senate's budget bill before being pulled at the last minute after drawing public criticism from many groups and the community, including the Ohio Public Interest Research Group and a scathing editorial in the Cleveland *Plain-Dealer*.

When the legislation was originally introduced two years ago, a number of good-government groups denounced the legislation in a letter to Bill Harris (R), chairman of the Ohio Senate's Finance and Financial Institutions committee, because it would "undermine one of the most fundamental tenets of American democracy -- that public access to legal and government information is the bedrock of our society and crucial to the ability of citizens to participate in their government."

Kentucky Attorney General Caps Copying Fees

Kentucky Attorney General Greg Stumbo (D) recently limited the amount the state agencies could charge citizens for copies of government documents. The prices the government charges for searches and copies are often cited by groups as a major obstacle to obtaining more information through the Freedom of Information laws.

In an April 25 opinion, Stumbo capped fees on copies of public records at 10 cents per page. The opinion came after Beaver Dam resident Mike Nance contacted the attorney general's office complaining about the 50 cents per page the Hartford, KY, county government charged him.

Under the federal Freedom of Information Act (FOIA) and state open-records laws, agencies are permitted to charge requestors fees for search time and document duplication. However, high fees have become a serious impediment to obtaining government information. Some contend that agencies intentionally discourage requests and limit access with higher fees to avoid public scrutiny and accountability.

While the opinion improves the situation for Kentucky citizens that want government information, steep fees remain an obstacle elsewhere. For example, the Justice Department tried to charge the People for the American Way nearly $ 400,000 just to conduct the search for documents associated with the organization's request under the Freedom of Information Act. The request, filed Nov. 25, 2003, seeks all records related to the Justice Department's decision to hide the identity of immigrants detained in the wake of the 9/11 terrorist attacks.

Journalists Teach Communities to Access Government Information

On the heels of Sunshine Week, during which journalists highlighted the importance of open government, several newspapers have taken an extra step and begun training local communities to use freedom of information laws. Though freedom of information laws grant the general public rights to access government information, many citizens do not know how to use them and often journalists act as intermediaries between the public and the government. However, journalists can never fully represent a community's range of concerns, so it is important to inform and empower the public.

New Jersey's *Courier-Post Journal* is holding seminars to teach community members how to use the state's Open Public Records Act. The newspaper promoted the free sessions with articles in its own paper. Two seminars have been conducted and a third is scheduled for May 3. According to the *Courier-Post*'s Executive Editor Derek Osenenko, "Participation has been great and has motivated us here at the *Journal* to continue the fight for access to information." The first two sessions were filled to capacity with about 50 people at each. The newspaper has increased the capacity for its third session to 75 and has already filled it.

In a different approach, an El Paso, TX, paper, the *Newspaper Tree*, has showcased its use of the state's open records law to obtain information. The paper has provided the community with a blueprint for using the access laws by providing a detailed example of the process. On Jan. 14, the paper requested documents from the City of El Paso about the amount the city paid lawyers for an air permit renewal for the company ASARCO. The city originally claimed the information was exempt from disclosure. However, an opinion from the Texas attorney general concluded that some of the records could be released. The newspaper received the records nearly four months after the initial request.

Newspapers represent an ideal source on right-to-know laws for communities. The organizations are familiar with regional issues and have intimate familiarity with the process. While most newspapers willingly answer any questions from the public about requesting government information, a more proactive effort to educate the public would likely reach more people.

Senate Committee Passes Amended 527 Bill

An attempt by Sens. John McCain (R-AZ) and Russell Feingold (D-WI) to extend federal campaign finance regulation to independent political groups has backfired in the Senate Rules Committee, which amended the 527 Reform Act of 2005 (S. 271), to repeal portions of the Bipartisan Campaign Reform Act of 2002 (BCRA). The vastly altered version of S. 271 passed by the committee on April 27 is a crazy quilt of amendments that restricts independent groups while lifting limits on business groups and PACs run by members of Congress. An additional amendment exempts groups that limit their activities to voter mobilization if they do not use broadcast media. Another exempts the Internet from the definition of regulated public communications. The bill reflects opposing approaches to changing campaign finance laws that were also debated in an April 21 hearing by the House Administration Committee.

S. 271 would subject many non-party groups that do not coordinate with candidates or campaigns to Federal Election Commission (FEC) rules that require registration and reporting and limit the amount and sources of funds that can be raised. A sponsors' amendment was submitted before the committee markup began April 27 to clarify that the bill applies to 527s that register with the Internal Revenue Service (IRS), eliminating the original threshold that would have regulated groups "described in" Section 527. This change made it clear that the bill would not cover other nonprofit groups such as 501(c)(3) and 501(c)(4) entities. The sponsors also narrowed its application to state and local political committees.

Summary of Amendments

The committee approved an amendment proposed by Sen. Charles Schumer (D-NY) that would protect voter mobilization activity by exempting independent political committees that work exclusively to get out the vote and do not use broadcast communications. The result is that wealthy individuals can continue to give unrestricted donations to groups that qualify for this exemption. Internet postings were exempted from the definition of regulated public communications in an amendment proposed by Sen. Robert Bennett (R-UT).

A series of additional amendments offered by Bennett would repeal parts of BCRA, making it easier for federal officeholders to raise and contribute political funds, and tilt the political playing field in favor of business corporations. The amendments would:

- Increase the limits on individual contributions to regulated political action committees (PAC), PAC contributions to candidates, and contributions from one PAC to another from $ 5,000 to $ 7,500
- Increase the limits on PAC contributions to national political parties from $ 15,000 to $ 25,000
- Allow unlimited transfers of funds from leadership PACS (operated by members of Congress) to national party committees
- Increase the threshold for registration with the Federal Election Commission (FEC) from $ 1,000 to $ 10,000
- Index all limits for inflation
- Eliminate the requirement that trade associations get prior written approval from their member corporations before soliciting contributions from executives and administrative personnel, and allow members to permit fundraising by more than one association
- Eliminate the twice yearly limit on employee political fundraising by corporations.

The committee also approved an amendment offered by Sen. Richard Durbin (D-IL) that would require broadcasters to charge candidates the lowest advertising rate available during the election season.

Rancorous Committee Debate Defines Issues for the Senate Floor

Schumer withdrew his sponsorship of the bill, saying the bill was "serving as an anti-campaign-finance Trojan horse." Senate Minority Leader Harry Reid (D-NV) released a statement after the hearing noting the Republicans "moved to report the bill from Committee without a recorded vote over strong and repeated Democratic objections," resulting in amendments that "unravel McCain-Feingold campaign reform legislation." The majority of Republicans voting for the bill opposed McCain and Feingold's BCRA legislation in 2002.

More amendments are likely when the bill goes to the Senate floor. McCain and Feingold said they would seek to remove the amendments, while Sen. Ted Stevens (R-AK) promised an amendment extending FEC regulation to 501(c) groups that broadcast ads asking people to "call so and so." This would treat grassroots lobbying communications as election ads. Sen. Diane Feinstein (D-CA) said she would continue working on an amendment that would extend expenditure disclosure requirements to non-broadcast communications of regulated 527s. The amendment was withdrawn during the committee's consideration of the bill because of confusion over its impact.

The Internet exemption is the subject of separate legislation Reid introduced in March. S. 678 would exempt Internet communications from FEC regulation. A companion bill (H.R. 1606 is pending in the House. The FEC is currently seeking comments on a proposed rule regulating some Internet communications. The rulemaking is in response to a court order that invalidated a rule exempting all Internet communications from the definition of a regulated public communication. The court found the FEC did not adequately explain the basis for the exemption. The Rules Committee action and pending legislation make it clear that Congress does not intend to extend campaign finance regulation in this direction.

IRS Describes Increased Enforcement of Nonprofit Sector

Mark Everson, commissioner of the Internal Revenue Service (IRS), told attorneys at the Georgetown Law Center's Tax-Exempt Seminar that the sector must act to head off a "gathering storm" resulting from use of the sector as a vehicle for tax avoidance. Other IRS officials at the April 28 training described new and increased enforcement activities.

Everson expressed concern that a 1990s trend in banking and accounting that designed and marketed abusive tax shelters has negatively impacted the nonprofit sector. He also said, "Shoddy shelters are now moving into organizations that you are working with." However, he said he is optimistic that the sector can respond positively, noting, "I think that unlike the business community and the profit-making community, the exempt community is taking steps to address this." The IRS's main priorities for enforcement in this area are donor-advised funds, supporting organizations, inflation of deductions, executive compensation, and credit-counseling groups.

Currently the IRS has more than 2,000 inquiries into executive compensation pending. In addition, it has established a data analysis unit to help target resources more effectively. A pilot program with California will help establish ways to work more closely with state charity regulators. Overall, IRS staff said they want to "touch more organizations sooner," in order to enhance education and compliance. One possible approach would be a "follow up" with organizations three to five years after they are granted tax exemption.

GAO Finds Bush's Social Security Campaign Not Illegal Lobbying

On April 27, the Government Accountability Office (GAO) sent a letter to eight Democratic senators finding that the Bush administration's program to promote its Social Security plan to the public does not constitute illegal use of government funds for grassroots lobbying. The senators had asked for an assessment of whether the overall context and message of the administration's Social Security campaign amounted to a clear appeal to the public to contact members of Congress. The GAO disagreed, saying that no violation occurs unless there is an express request to the public to contact Congress.

House Ways and Means Committee Holds Hearing on the Tax-Exempt Sector

More law school seminar than hearing, on April 20, the House Ways and Means Committee examined the "legal history of the tax-exempt sector; its size, scope and impact on the economy; the need for congressional oversight; Internal Revenue Service (IRS) oversight of the sector; and what the IRS is doing to improve compliance with the law." According to Chairman Bill Thomas (R-CA), the hearing, was not meant to parallel a recent hearing by the Senate Finance Committee reviewing specific reforms. Instead the committee wanted to "establish a foundation from which members can systematically begin to examine the tax-exempt sector, and determine what remedies, if any, are needed to provide greater clarity, transparency, and enforcement."

Throughout the hearing, the committee grappled with understanding how tax-exempt organizations function while attempting to identify the greatest problems in the sector. The hearing seems to be a reaction by the committee to the massive overhaul of the sector proposed by the Senate Finance Committee's staff draft. It forecasts an attempt by the House to make smaller, more piecemeal changes to the tax-exempt categories of the IRS code that would serve as a template for further reforms.

In his opening remarks, Ranking Member Charles Rangel (D-NY) asked why representatives from the IRS had not been invited to testify and asked the Chairman if the panels would address the question of religious organizations. Thomas replied that the hearing was intended to provide an overview of the tax-exempt sector and subsequent hearings would focus on enforcement. He then noted that the status of religious organizations would not be discussed separately.

U.S. Comptroller General of the Government Accountability Office (GAO) David Walker advocated the need to engage in a fundamental review of the sector. The review should ensure the effective and efficient running of nonprofits by focusing on strengthening sound governance practices, improving transparency, enhancing oversight by the IRS and examining the rationale of tax exemption, he said.

Joint Committee on Taxation (JCT) Chief of Staff George Yin described the tax-exempt categories as a largely piecemeal attempt at regulation. According to Yin, there was no overarching reason for the creation of the tax-exempt categories. Yin did not discuss the JCT's proposals to reform the sector.

Douglas Holtz-Eakin, head of the Congressional Budget Office (CBO) focused on the complex issues that arise when tax-exempt organizations sell goods and services that put them in direct competition with for-profit entities. He urged the committee to examine the impact nonprofit hospitals, credit unions and municipal utilities have on for-profit businesses and the effect of revocation of tax-exempt status.

John Colombo, a law professor at the University of Illinois, made the distinction between organizations under 501(c)(3) of the tax code and all other tax-exempt organizations. He noted that public charities get their money from a broad cross section of the general public and are therefore more accountable to the general public than private foundations, which are funded by a single donor or family. He urged the committee to examine transparency levels in 501(c)(3)s and to determine whether the public is getting the information it needs to hold charities accountable.

Colombo advocated a system which uses donative status to distinguish whether an organization should be tax-exempt. Under this system, charitable organizations under 501(c)(3) would be limited to entities that were substantially dependent on donations for their operating revenues each year.

Francis Hill, a law professor at the University of Miami in Florida, said that the tax-exempt sector should be accountable but not improperly constrained. She stated that government oversight is vitally important and urged Congress to work with the IRS and Treasury to help define who is benefited by tax-exemption of charities and what the charitable class is. She also stated that greater numbers of specially trained IRS staff and increased IRS funding are critical in any revamping of the laws governing the nonprofit sector.

Sheldon Cohen, a former IRS commissioner, talked about the history and complexity of the tax code as it relates to tax-exempt organizations. He noted the government's lack of information regarding small organizations and urged the committee to establish rules promoting greater transparency for small organizations.

Bruce Hopkins, an attorney with Polsinelli Shalton Welte Suelhaus, P.C. in Kansas City, MO, reiterated that the tax code provisions on nonprofits have evolved over decades in a disorderly and unplanned fashion and that Congress has frequently modified and expanded the laws governing the sector. He called the current tax laws unbalanced and uneven, recognizing that many aspects of today's laws governing the sector are unclear. He specified six of 12 areas that could benefit from congressional overhaul:

- Create laws spelling out criteria for tax-exempt status
- Spell out the elements of private inurement and private benefit doctrine
- Amplify the political activities rules
- Codify a version of the commerciality doctrine
- Develop statutory law concerning tax-exempt organizations' use of the Internet
- Consider the need for more reporting and disclosure.

In response to questions from committee members, Hopkins suggested revising the definition of the "charitable, scientific, educational" standard for determining exempt status under Section 501(c)(3) and establishing intermediate sanctions.

Thomas suggested the committee focus on charities, the largest segment of the tax-exempt sector, given the time and resource constraints of the committee. Walker agreed, saying that efforts focused on the charitable sector could be used as a template for other tax-exempt organizations. Thomas was particularly interested how nonprofit hospitals fit into the proposed "donative structure," and indicated nonprofit hospitals could be the first target of new legislation. Yin volunteered that the health arena, by assets and revenue, was the largest in the charitable sector, and the largest of that is hospitals.

Rangel stated the panel had painted a picture of a sector that "screams out for correction" and indicated he would like more information on the reported violations and the panel's specific recommendations. Thomas suggested that the majority and

minority committee staff work together to submit additional questions to the panel witnesses ostensibly in preparation for future legislation.

Rep. Sander Levin (D-MI) asked each panelist to describe the major problem with the tax-exempt categories section of the code. Colombo, Walker, Holtz-Eakin, Yin and Hopkins cited the lack of an overarching rationale or criteria for tax-exemption in the current law. Yin also mentioned a lack of oversight and transparency in the sector. Hill pointed to the need to reduce abuse without stripping the sector of the capacity to do good works. Cohen mentioned the failure of congressional and IRS oversight.

Rep. Dave Camp (R-MI) asked if most of the abuses would be eliminated by greater enforcement of current laws by IRS. Although that would certainly reduce the number of abuses, Walker replied, the sector needs more transparency and additional data sharing so that the IRS can have better targeting and more effective enforcement. Walker also advocated supplemental, intermediate sanctions available to the IRS.

Rep. Ben Cardin (D-MD) questioned the need for Congress to create more sanctions while the IRS examination rate is so low and the chances of sanctions being used so minimal. He also noted the possible lack of national political will to be more stringent on tax-exempt organizations.

Rep. Earl Pomeroy (D-ND) stated that the hearing highlighted two issues: one, the confused state of the tax code regarding nonprofits, and two, the lack of IRS enforcement of current laws. He urged the committee to consider enforcement and compliance problems immediately and hoped they would also support increased funding and resources for the exempt organization division.

The committee continues to accept written statements, which must be submitted by May 4.

Unfunded Mandates, Results Proposals Advance in Budget Resolution

The budget resolution Congress finally agreed upon last week incorporated language that endorses the establishment of a results commission and marks the first steps in the direction of turning the Unfunded Mandates Reform Act (UMRA) into an insurmountable obstacle for new protections of the public interest.

The House and Senate passed the resolution on April 28 after heated negotiations. As Medicaid funding in particular dominated the debate, a final resolution appeared unlikely at times. Two pieces of the budget resolution -- one section affecting UMRA points of order, and another endorsing a proposal to establish a results commission -- were simply crowded out by these controversies and went under the radar.

UMRA Point of Order

The final budget resolution retains a section, reportedly inserted at the behest of Sen. Lamar Alexander (R-TN), that turns a relatively harmless procedural mechanism into an insurmountable roadblock. UMRA currently requires the Congressional Budget Office to estimate the costs to the states of complying with new legal mandates. For any bill that establishes new requirements for state and local governments that would cost $ 50 million in a single year (indexed for inflation to $ 62 million), a member of Congress can raise a point of order, which can be waived by a simple majority vote under current law. The Alexander provision increases the required vote count in the Senate to a 60-vote supermajority, which would make it much more difficult to pass mandates in the Senate.

This measure, section 403(b) of the budget resolution, was never debated, and many senators on both sides of the aisle were so distracted by the draconian budget cuts for important programs that they did not focus attention on the UMRA provision.

Immediately at stake would be new environmental protections, which typically either rely on state and local governments as partners in enforcement activities or call on the local governments to modify their own behaviors (as polluters, as managers of water systems, sewers, and waste facilities, etc.). Also at stake would be any improvements for workers, such as a real increase in the minimum wage, if the costs to states for applying new safeguards for their own employees reach $ 62 million or more. One of the few statutes ultimately enacted that met the UMRA threshold was, in fact, the minimum wage increase from the mid-1990s.

Moreover, this change in the point of order is only the first step in a larger plan to make UMRA a more significant obstacle to new protections of the public interest. State and local government groups are lobbying for the elimination of exemptions from UMRA's coverage, which currently include civil rights protections and conditions of grant funding.

Because the budget resolution is only a concurrent resolution, UMRA itself has not been amended. Presumably, this section is tantamount to a change in the Senate rules. The revised point of order mechanism will be governed by a section of the Congressional Budget Act that requires this supermajority requirement to be renewed in 2010.

Results Commission

Another section of the budget resolution advanced the concept of a results commission with a "sense of the Senate" resolution. As has been proposed in past sessions of Congress and more recently in the White House budget submission, a "results commission" would be charged with reviewing government programs and considering proposals to restructure or eliminate programs in order to "improve performance and increase efficiency." These proposals would then be fast-tracked through Congress.

Although the proposals to "consolidate" and "streamline" programs would seem initially more structural than substantive, structural changes can be the technical cover under which major substantive changes are hidden. For example, this year's budget submission called for consolidating various block grants into the new "Strengthening America's Communities Grant Program," while subtle clues in the text -- referring to "focuse[d] resources" and a "targeted, results-oriented approach"--

indicated the White House's intention to change the direction, purpose and function of the original grant programs.

A recurring theme in discussions of results commission proposals is that any such commission would rely on White House performance reviews using the Program Assessment Rating Tool. The clear intention of this proposal, as evinced by both the language of past results commission bills and related Senate testimony, is to use tools like the PART assessments to justify eliminating or cutting back government programs and agencies. Though PART is touted as a neutral tool to assess government productivity, we have shown elsewhere that PART is highly political and fails to capture the real successes and failures of government programs. PART is so flawed that some programs actually receive point reductions for following the law. Using this tool to remake government could have dangerous consequences for the health, safety and security of Americans.

This section of the budget resolution is merely hortatory and has no legal ramifications. It does signal, however, the likelihood that there could be some momentum for a results commission proposal during the 109th Congress.

Section 502 of Budget Resolution

Sec. 502. Sense of the Senate Regarding a Commission to Review the Performance of Programs.

It is the sense of the Senate that a commission should be established to review Federal agencies, and programs within such agencies, including an assessment of programs on an accrual basis, and legislation to implement those recommendations, with the express purpose of providing Congress with recommendations, to realign or eliminate Government agencies and programs that are wasteful, duplicative, inefficient, outdated, irrelevant, or have failed to accomplish their intended purpose.

Anti-Regulatory Hit List Debated in House Hearing

The Bush administration again defended its anti-regulatory hit list to Congress, this time presenting the initiative as a boon to small manufacturers in a hearing before the House Small Business Committee that also featured renewed calls for regulatory sunsets.

The committee's Subcommittee on Regulatory Reform and Oversight held a hearing on April 28 to discuss the White House's hit list of regulatory protections to be weakened or eliminated supposedly for the benefit of the manufacturing sector.

Proponents of the hit list, including White House regulatory czar John Graham and a representative of the National Association of Manufacturers, relied heavily on a discredited study commissioned by the Small Business Administration to argue that the manufacturing sector needs the hit list to counter its supposedly disproportionate burden of costs from complying with public health, safety, and environmental regulations. That study is deeply flawed for several reasons:

- It calculates what it calls "regulatory costs," or the costs to industry from complying with protections of the public health and safety, based on old studies that are based, in turn, on *ex ante* guesses of potential costs that the agencies developed when promulgating the regulations. These guesses have been shown to overestimate actual compliance costs, often to a significant degree.
- The figures aggregate cost and benefit estimates from agencies which use methodologies so divergent that the resulting numbers are not comparable in any meaningful way.
- The study actually treats the costs to industry of *lobbying Congress and waging public relations campaigns against regulatory protections* as part of the compliance cost totals.
- Even John Graham himself has admitted before that the study is too shoddy to be a reliable basis for public policy. In a July 2003 hearing before the House Committee on Government Reform, Graham had this to say about the study:

> The fact that attempts to estimate the aggregate costs of regulations have been made in the past, such as the Crain and Hopkins estimate of $843 billion ..., is not an indication that such estimates are appropriate or accurate enough for regulatory accounting. Although the Crain and Hopkins estimate is the best available for its purpose, it is a rough indicator of regulatory activity, best viewed as an overall measure of the magnitude of the overall impact of regulatory activity on the macro economy. The estimate, which was produced in 2001 under contract for the Office of Advocacy of the Small Business Administration, is based on a previous estimate by Hopkins done in 1995, which itself was based on summary estimates done in 1991 and earlier, as far back as the 1970s. The underlying studies were mainly done by academics using a variety of techniques, some peer reviewed and some not. Most importantly, they were based on data collected ten, twenty, and even thirty years ago. Much has changed in those years and those estimates may no longer be sufficiently accurate or appropriate for an official accounting statement. Moreover, the cost estimates used in these aggregate estimates combine diverse types of regulations, including financial, communications, and environmental, some of which impose real costs and others that cause mainly transfers of income from one group to another. Information by agency and by program is spotty and benefit information is nonexistent. These estimates might not pass OMB's information quality guidelines.

Moreover, although the study may well be correct in its conclusion that manufacturers bear more compliance costs than other corporations, that conclusion does not necessarily mean that the sector is unfairly burdened. In fact, the very opposite may be true: manufacturers cause most of the pollution and workplace harms that we suffer, and their larger share of compliance costs may therefore be evidence that regulatory policy is wisely targeting those corporations that are most responsible for the harms from which the public must be protected.

Even if the manufacturing sector needs help to be more competitive in the global marketplace (particularly in an era of free trade agreements that have proven devastating to American jobs), there is no scholarly evidence to back up the administration's argument that regulatory rollbacks will fit the bill. Economist Frank Ackerman and law professor Lisa Heinzerling have recently surveyed the scholarship on regulation and competitiveness, which they conclude actually proves the

opposite of the administration's contention:

- There is new evidence that investment in Mexican industry has grown at a time when Mexican regulations were becoming much stricter, consistent with the "Porter hypothesis" that regulation may actually stimulate growth and competitiveness.
- A recent study found that growth is positively correlated with pollution reduction within the Los Angeles area.
- Restrictions on timber harvesting caused by protection of the spotted owl under the Endangered Species Act may have had net benefits for timber companies, by raising the value of their non-protected timber.
- Finally, some occupational safety and health regulations have actually increased productivity in manufacturing in Quebec.

Administration officials and industry witnesses also repeated several times the argument that regulatory "sunsets" will aid the manufacturing sector. As envisioned by the corporate-conservative alliance mobilizing a larger assault on regulatory policy, regulatory "sunsets," or expiration dates, would be automatically written into every regulatory protection on the books.

Regulatory sunsets differ from proposals for a sunset commission. Whereas a sunset commission would set an expiration date on government programs, such as the Environmental Protection Agency in its entirety, regulatory sunsets would force expiration dates for individual regulatory protections, such as the ban on lead in gasoline.

The argument is primarily that older regulations must presumably be out of date. In fact, in most cases "old" regulations are still as necessary today as they were when originally enacted. The ban on lead in gasoline, for example, is every bit as good an idea today as it was 30 years ago. Present-day cost-benefit analysis would have actually counseled against that ban; given that the Reagan administration, which pioneered the requirements of cost-benefit analysis in regulatory policy, sought to reverse the phase-out, a regulatory sunset could very well have restored lead in gasoline long before science conclusively proved the benefits of the ban.

Although six witnesses from the administration and the manufacturing sector were invited to testify in favor of the hit list, the Democratic members of the committee were allowed only one witness to criticize the hit list. The written statement of OMB Watch's Robert Shull is available for download at www.ombwatch.org/regs/2005/HitList/ShullTestimony.pdf.

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