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Path to Chemical Security Is Clear, But Overlooked

Approximately 284 facilities in 47 states have reduced risks to nearby communities from hazardous chemicals by switching to safer chemical processes or moving to safer locations, according to an Apr. 24 report by the Center for American Progress (CAP). *Preventing Toxic Terrorism* highlights the need for a national program to encourage thousands of other chemical facilities to become safer neighbors through the use of alternative, inherently safer chemicals and technologies.

CAP surveyed 1,800 facilities that had 'deregistered' from the federal Clean Air Act program, which requires roughly 14,000 facilities with large quantities of hazardous chemicals to report on measures they take to manage and respond to the potential chemical risks. A facility can deregister (cease sending the reports) by eliminating the

use of regulated substances or reducing the quantities of the chemicals below reporting thresholds.

Many of these chemical plants place thousands of people in harms way from a possible release of dangerous chemicals. The report estimates that 450 facilities have the potential to harm more than 100,000 people each. For some time, government experts, research institutes, trade associations, labor unions, and public interest groups have warned that chemical facilities, while vulnerable to accidents, are also highly vulnerable to potential terrorist attacks, but the government has been slow to act to address this threat.

"Unfortunately, more than four years after the 9/11 terrorist attacks, the White House and Congress have failed to act. Currently, no federal law or regulation requires hazardous chemical facilities to review or use readily available alternatives," according to a press release accompanying the report. Implementing safer alternatives, considered by many to be the best first step in securing these chemical facilities, eliminates the possibility of a catastrophic chemical release from either an accident or terrorist attack.

Sens. Susan Collins (R-ME) and Joseph Lieberman (D-CT) have introduced the Chemical Facility Anti-Terrorism Act of 2005 (S. 2145), aimed at protecting our chemical facilities and surrounding neighborhoods from terrorism. The bill would require chemical plants and other facilities storing large quantities of hazardous chemicals to develop vulnerability assessments, site security plans, and emergency response plans, Unfortunately, however, the bill falls short of requiring any reporting on the use of safer technologies. The bill currently has five cosponsors.

Sens. Frank Lautenberg (D-NJ) and Barack Obama (D-IL) have also introduced the Chemical Security and Safety Act of 2006 (S. 2486) that would require chemical facilities to thoroughly review and use safer technologies where practicable. This bill also has five cosponsors.

Preventing Toxic Terrorism demonstrates that many chemical facilities can reduce the hazard they pose and thereby protecting millions of Americans. The report estimates that at least 30 million people no longer live under the threat of a major toxic cloud, as a result of companies switching to safer chemicals or relocating activities to less-populated areas. A concerted national effort to convert other high-risk facilities to safer chemicals and processes could protect millions more.

Experts to Senate: EPA's Pollution Plans Stink

An Apr. 20 Senate staff briefing brought to Congress's attention concerns over the U.S. Environmental Protection Agency's (EPA) proposals to reduce Toxics Release Inventory (TRI) chemical reporting. A diverse panel of experts discussed how the changes proposed by EPA would cripple this successful environmental program, undermine first responder readiness, impede financial investment decisions and interfere with state and local programs.

Panelist were:

- **Alan Finkelstein**, Assistant Fire Marshall and Chair, Emergency Response, Cuyahoga County Emergency Planning Committee, Strongsville, OH
- **Julie Fox-Gorte**, Vice President, Calvert Investment Group
- **Andrew Frank**, Assistant Attorney General, New York State Attorney General's Office
- **Sean Moulton**, Director Federal Information Policy, OMB Watch

Importance of the Toxic Release Inventory

Since Congress' enactment of the Emergency Planning and Community Right to Know Act (EPCRA) of 1986, TRI has been an essential tool in alerting communities, workers, first responders, and public health officials to the presence of chemicals. The program uses the transparency of public reporting rather than command and control regulations to reduce toxic pollution, while also providing information vital to averting and dealing with life-threatening situations. In the last 5 years annual toxic pollution has dropped by 2.8 billion pounds. In the Senate briefing, Sean Moulton detailed EPA's plans to scale back TRI reporting:

- Allowing companies to release ten times the amount of toxics before detailed reporting is required.
- Creating a first-ever exemption on reporting the most dangerous class of chemicals--Persistent Bioaccumulative Toxins (PBTs).
- Moving from annual to biennial reporting, leaving a gap every other year during which companies could pollute as much as they want without reporting.

"If the changes go forward, not only would all numerical data be lost every other year, but during the reporting years, one in 10 communities that have TRI facilities would lose all numerical data about dangerous toxic chemicals," stated Moulton.

First Responders and Emergency Preparedness

Although not designed primarily as a first responder tool, first responders use TRI information to preplan for emergencies or disasters. In the aftermath of Hurricane Katrina, usefulness of TRI data in emergency response was evidenced, as it served as the best road map of possible toxic hotspots for rescue workers and emergency personnel.

As a firefighter and a concerned citizen, Alan Finkelstein told attendees, "I want as much information about a facility as possible, so the necessary precautions can be taken when entering into a hazardous situation in the event of a chemical release."

Finkelstein went on to aver that any reduction in TRI data would likely place first-responders, as well as the public, at greater risk. In addition, he noted that, "the community as a whole is deprived of current information as to what chemicals the facilities in their neighborhoods are creating, transporting and releasing legally. This may have an adverse affect on property values and the economic climate for their communities."

Investment Information

Accurate and timely information is a necessary component of functional markets, and

information is needed for any decision-making process. So, naturally TRI data has been a source of information for investors since its inception. In particular, socially responsible investors use TRI information to make important decisions about which companies to invest in and stand to lose a great deal of data relevant to those decisions if EPA's plans are carried out. This is no small loss: with assets of $2 trillion and growing, socially responsible investments are a significant and increasingly large part of total investments.

Julie Fox-Gorte explained that if the EPA's proposals go forward, investors will have to work with two- or three-year-old data that is less comprehensive. Many investment companies throughout the country include TRI among the indicators reviewed for possible financial liabilities and management problems. Calvert Investments avoided the Tyco collapse thanks to TRI information, which the group interpreted as an indication of management problems.

Fox-Gorte explained, "These changes not only make it more difficult for citizens and communities to be aware of potential risks to health and environmental safety, but they are also are a significant setback to the advancement of corporate disclosure and accountability."

State Impact

Attorneys General from 12 states--California, Connecticut, Illinois, Iowa, Maryland, Massachusetts, New Hampshire, New Jersey, New Mexico, New York, Vermont Wisconsin--sent EPA official public comments challenging the legality of the agency's TRI proposals. Andrew Frank detailed how states rely on TRI information in assessing community risks, identifying bad actors, prioritizing enforcement decisions, tracking pollution across industry sectors, and highlighting industry leaders.

Frank also found serious deficiencies in EPA's research of the potential impacts of the changes. The agency did not produce any analysis of health risks, state impacts, environmental justice impacts, or of the loss of all reporting on some chemicals. Frank noted that, "the changes would eliminate all numerical reporting for 26 chemicals. This is in clear violation of the Environmental Planning and Community Right to Know Act which requires that any change in TRI reporting thresholds maintain reporting for the substantial majority of data for each chemical."

Under the Emergency Planning and Community Right to Know Act, the EPA does not need congressional approval to make changes to TRI reporting. However, given the increasing interest among members of both the Senate and House, legislation may soon be introduced to prevent EPA from proceeding with its proposals.

Ray of Light Shed on Spying, Legislation Demands More Oversight

Sen. Arlen Specter (R-PA) is harnessing the power of the purse string to challenge the Bush administration's self-appointed power of the wiretap. Specter has introduced a legislative amendment that would eliminate funding for the National Security Agency's

warrantless spying program unless Congress is kept in the loop about the program's activities.

Specter's amendment (SA 3679) to the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery would require that the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence, as well as all members of these committees, receive full, timely information on the NSA spying program.

In addition, the amendment would require that the Senate and House Judiciary Committees also be kept informed of the program. Specter is chairman of the Senate Judiciary Committee. A provision of the amendment specifies that the information provided to the committees should be sufficient for them to carry out their oversight responsibilities.

The amendment comes just as a deal for greater disclosure reached during Patriot Act negotiations begins to bear fruit. The Federal Bureau of Investigations (FBI) delivered a report to congressional leaders on the use of National Security Letters (NSLs) by the bureau. The FBI uses NSLs to obtain records from businesses about their customers including credit reports, records from Internet Service Providers, and financial records.

The report indicates the FBI issued more than 9,200 NSLs in 2005 seeking information on more than 3,500 individuals. The report does not cover other similar letters that the FBI issues to obtain more limited information on individuals. The report also notes that 2,072 warrants for secret searches were issued in 2005 under the Foreign Intelligence Surveillance Act (FISA), an 18 percent increase from 2004. This initial disclosure of official details on the use of NSLs and FISA search warrants represents the first step in greater congressional understanding and oversight of these controversial tools.

Specter introduced his amendment for greater disclosure of NSA spying on Apr. 27 without any cosponsors.

National Archives Reclassification Revealed

An audit conducted by the National Archives estimates that more than 8,500 of the 25,000 (or nearly one-third of) records removed from the public shelves of the Archives should not have been removed.

The National Archives Information Security Oversight Office (ISOO) audit report was the culmination of an investigation into the massive reclassification efforts of four federal agencies first uncovered by a historian in late 2005. As previously reported in the *Watcher*, historian Matthew M. Aid discovered that many of the documents removed from the shelves of the archives contained no sensitive information. Some of the reclassified documents dated back to World War II, others contained embarrassing details about the government, and still others had been published and were readily available online.

The ISOO report highlights a number of disturbing findings regarding the current state of classification procedures at federal agencies. The sparse communication between

agencies declassifying documents has resulted in the failure of agencies to recognize the sensitive details of documents involving other agencies. Additionally, the report noted a lack of documentation of declassification or reclassification decision-making and found insufficient quality control and oversight of declassification and reclassification procedures within agencies

The report found that "sufficient judgment is not always applied to decisions to withdraw previously declassified records." In particular, information otherwise publicly available was reclassified, and documents that contain no sensitive information but that relate to sensitive documents were often removed. Such reclassifications are ineffective and unjustified. Proper oversight and quality control, it seems, would have prevented such mistakes.

Also problematic is the secretive nature of the reclassification process. The public (and members of Congress) only became aware of the massive reclassification program after its accidental discovery by a single independent researcher. In a few cases, the National Archives entered into Memorandums of Understanding with agencies, which detailed the extent of the program and the requirement for secrecy. The Archives stated that "never again would the National Archives enter into such classified agreements."

Lifting the Mar. 2 formal moratorium on the reclassification program, the National Archives report made a series of prescriptions for reforming the reclassification process pursued by agencies. The ISOO will issue and encourage the implementation of standardized procedures "to ensure that re-review and withdrawal actions are rare and that collaboration between agencies and National Archives with respect to determining the appropriateness of such action in the first place always occurs with provisions for challenge and appeal." ISOO and participating agencies will implement a National Declassification Initiative which will include, among other things, training on proper declassification procedures. Additionally, the Archives will require the documentation and public notification for each document's withdrawal from the shelves of the Archives.

Findings on Whales and Sonar Remain Murky

Two reports from the National Oceanic and Atmospheric Administration (NOAA) with vastly different conclusions raise questions both about the connection between Navy sonar and whale beachings and about consistency within, and the scientific integrity of, the agency.

In an Apr. 27 report, the agency drew strong connections between Navy sonar and a 2004 mass whale beaching in Hawaii. The NOAA report concludes that, after ruling out any biological or weather related cause, the most likely cause was naval sonar used in the immediate vicinity and at the time of the Hawaii beaching incident. Specifically, the agency stated "While causation of this stranding event may never be unequivocally determined, we consider the active sonar transmissions of July 2-3, 2004, a plausible, if not likely, contributing factor in what may have been a confluence of events."

A NOAA report on last January's beaching event off the coast of North Carolina, however, all but ruled out the involvement of sonar. The agency, as it did for the Hawaii incident, ruled out any biological or weather related cause. Also, similar to the Hawaii

incident, significant naval sonar exercises were occurring in the location of the beaching and immediately preceding the event.

In this report, however, NOAA concluded that "given the occurrence of the event simultaneously in time and space with a naval exercise using active sonar, the association between the naval sonar activity and the location and timing of the event could be a causal rather than a coincidental relationship. However, evidence supporting a definitive association is lacking." This has led many to wonder what allowed NOAA to nearly rule out sonar in its recent report.

One major difference between the two events is that the Navy has proposed building an underwater sonar training range at the exact location of the North Carolina beaching. The proposed facility is currently undergoing an environmental review.

Given the contention by many in the scientific community that the Bush administration continues to manipulate scientific reports, as well as the complaints of censorship by individual, skepticism about the findings of the NOAA report on the North Carolina beaching seems reasonable. Was the report a complete and unedited reflection of the agency's understanding of the event, or did political pressure to establish the naval sonar training facility result in a more limited conclusion?

That active sonar is harmful to whales is neither a new or hotly contested issue.. In fact, the Navy has agreed to comply with a NOAA request to reduce the power of its sonar for future exercises in Hawaiian waters, a safeguard NOAA does not request in North Carolina waters.

As previously reported, more than three dozen whales beached themselves within a few hours of one another on North Carolina's Outer Banks on Jan. 15, 2005. At the time, the Navy was testing offshore sonar at the site of a proposed 600-square-mile Undersea Warfare Training Range on the continental shelf off North Carolina, less than 200 miles from the Charleston jetties.

According to documents released to the Natural Resources Defense Council, all references to the possibility that naval sonar may have caused the whales to swim ashore and die in North Carolina last year were deleted from a NOAA draft report on the incident. The final report, which was released in March, finds the cause of the beaching to be "unclear."

In the currently sad state of affairs, the veracity of federal findings are increasingly called into question. Regardless of the soundness of data or how scientifically rigorous conclusions appear, increasingly politics are allowed to supersede science in the Bush administration. Greater transparency would be enormously beneficial to reversing this trend, allowing the public to verify the integrity of government reports.

Sunset Commissions Could Be Folded Into Budget Process Reform

Hill sources indicate that sunset commission proposals could move through the House

by riding onto a package of budget process reforms.

Ever since the revelation that House leadership conceded to the Republican Study Committee's demands for a guaranteed floor vote on sunset commission proposals, the key question for many has been what legislative vehicle will be used to fulfill that promise.

A few news sources had suggested that the preferred proposal for sunset commissions would be a bill sponsored by Rep. Todd Tiahrt (R-KS), but a more recent article referred to elements from a bill sponsored by Rep. Kevin Brady (R-TX) based on an earlier White House proposal. (Click here for a one-pager explaining key features of the two leading bills.)

Even with the two leading proposals identified, it remained unclear just how the proposal would move to a floor vote. Only one sunset commission bill has even been the subject of a hearing, and no bill has been reported out of committee.

Now some Hill sources are reporting that the House leadership, already stymied with lobby reform and budget legislation, believes a stand alone bill on sunsets would be difficult to bring to the floor. According to some reports, House leaders are considering advancing a sunset commission proposal as part of a package of budget process reforms.

Still others report that the actual vehicle is still an open question, although inclusion in budget process reform is a viable possibility.

OMB Watch has reported recently on some of the more controversial proposals for budget process reforms. The Republican Study Committee, which propelled sunset commissions from congressional limbo with their recent demands of floor time for the issue, is also pushing its own set of proposals, including the ability to strike earmarks inserted for the first time in conference reports and the right to challenge emergency spending above certain limits.

Whatever the actual vehicle, sources anticipate that the chairs of authorizing committees will be displeased with the move to bring the sunset commission proposal to the floor. Although the sunset commission proposal could move in budget process reform legislation, the concept would not reform the actual budget or appropriations processes but, instead, would threaten to force an end-point to existing programs created and periodically reauthorized by the authorizing committees of jurisdiction, thus challenging the authority of these committees.

More information is available in OMB Watch's resource center for sunset commission news and analysis, and up-to-the-minute developments will be noted in the Regulatory Policy Program's weblog REG•WATCH.

Needed Health and Safety Regulations Left Idle on Agency 'To-Do' Lists

With the release of their Spring 2006 regulatory agendas on Apr. 24, federal agencies

once again relegate important health and safety protections to the back burner.

Though several needed protections have been added to agency agendas, most notably at the Mine Safety and Health Administration, many health and safety standards that have been long-identified as high priorities continue to sit on agencies' to-do lists, while motorists, workers and consumers continue to be exposed to unnecessary hazards.

OSHA

- The Occupational Health and Safety Administration (OSHA) completed only three regulations in the past six months. Two of these were completed under court order: the regulation of occupational exposure to hexavalent chromium and the regulation for slip resistance of skeletal steel structures. The third, on rollover protective structures for tractors, was not a new regulation but rather a repeal of revisions the agency made in 1996.
- Standards for occupational exposure to crystalline silica are still in the "prerule stage." Crystalline silica has been on the agency's agenda since fall 1997. Over two million workers are exposed to crystalline silica dust, which has been shown to cause death and disabling illnesses. According to the agenda, the agency has postponed the completion of a peer review of health effects and a risk assessment for crystalline silica originally due in April to sometime in November. No date has been set for a proposed rule.
- Standards for occupational exposure to beryllium are also in the "prerule stage." The beryllium standard has been on the agency's agenda since spring of 1998. Exposure to beryllium dust in mining, extraction and processing causes lung and skin disease in 2 to 10 percent of exposed workers, according to OSHA.
- OSHA has delayed implementing a standard requiring employers to pay for personal protective equipment, such as work gloves and safety glasses. The rulemaking was first proposed under Clinton in 1998, but the agency let the regulation languish for so long that in 2004 it called for a second round of comments on the regulation.

MSHA

- The Mine Safety and Health Administration (MSHA) completed only three actions in the past three months, including an evaluation of regulations to be terminated.
- MSHA added several standards to address January's mining tragedies. In March the agency issued a temporary standard for emergency mine evacuation. The agency plans to issue a final standard, as directed by statute, by December 2006. MSHA also plans to investigate underground mine rescue equipment and technology and to evaluate the International Electrotechnical Commission's standards for explosion-proof enclosures.

FDA

- The Food and Drug Administration (FDA) completed just three regulations in the past six months.
- While FDA does have a temporary measure in place, the agency has yet to promulgate a standard for shippers of imported food to give prior notice, as is

required under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002.

- Three safeguards against the spread of bovine spongiform encephalopathy (BSE), or mad cow disease, are still languishing on the agency's agenda. The rules would help close loopholes that allow cattle parts to be fed back to cattle, which is the main way BSE is spread among cattle. While these loopholes mean that BSE could still be spreading, the Department of Agriculture has also recently announced that it will reduce its surveillance program for BSE. (For more, see the recent white paper from Center for Science in the Public Interest, OMB Watch, and Consumer Federation of America, Cow Sense: The Bush Administration's Broken Record on Mad Cow Disease.

NHTSA

- The National Highway and Transportation Safety Administration (NHTSA) completed a standard for the average fuel economy of light trucks, along with six other regulations in the last agenda period. Unfortunately, the light truck fuel economy standards provides a sliding scale for determining average fuel economy standards, allowing manufacturers to avoid making significant improvements in fuel efficiency.
- Despite claims that "mitigation of rollover fatal and serious injuries is one of the Agency's highest priorities," NHTSA has failed to strengthen roof crush resistance standards for SUVs. First added to the agenda in 1996, the rulemaking has been moved to the agencies' long-term agenda. Moreover, the proposed regulation issued by the agency in August 2005 is only a slight improvement over the current standard. NHTSA is statutorily required to produce a standard by July 1, 2008.

Estate Tax Vote Nears; Lobbying Heats Up

In a recent letter to his colleagues, Senate Majority Leader Bill Frist (R-TN) reaffirmed his promise to hold a vote on full repeal of the estate tax, writing that one of his major priorities this summer is to "kill the death tax forever." Groups on both sides of the issue are stepping up their efforts leading up to the vote, holding press conferences and events and producing reports, all in the hopes of getting as much attention as possible from legislators around what promises to be a very close battle. You can still add your voice to growing **support for the dynasty tax**.

While passage of full repeal of the estate tax does not appear likely in the Senate (repeal passed in the House last April), a back-door repeal proposal put forth by Sen. Jon Kyl (R-AZ) could potentially garner enough support to pass in the Senate. Kyl's "reform," supported by a number of Republicans, would likely raise the estate tax exemption level to $5 million ($10 million per couple) and set the tax rate at 15 percent, equal to that of the capital gains tax. This reform previously reported on by OMB Watch amounts to little more than repeal, because it would cost upwards of 90 percent of the cost of full repeal.

Before Frist brings any votes to the floor, however, members will be heavily lobbied by the National Association of Manufacturers (NAM), and other anti-tax groups at the annual Summit for Permanent Death Tax Repeal in Washington, DC on May 2.

According to a NAM statement, "during the day-long event, family business owners will meet with Members of Congress to discuss the impact of the death tax on their ability to create jobs, invest in needed capital improvements, and continue giving to their local community."

Their message is in direct conflict with a number of recently released reports that all point to the best interests of the country being served by retaining the estate tax. The recent National Council of La Raza report *Undercutting the American Dream* concludes that the wealth gap between Latinos and other Americans would be exacerbated by repeal of the estate tax. The report concludes that, "[f]ew Latinos are aware of the importance of the tax in supporting government programs, encouraging charitable giving, and restricting growth in the race-ethnic wealth gap. The repeal of the estate tax will hurt the budget and exacerbate the wealth gap. For these reasons, Congress should not repeal the tax. Rather, lawmakers should concentrate on raising needed revenue to balance the budget and institute stronger policies that assist asset-poor families in building wealth."

In addition, Public Citizen and United for a Fair Economy released a Apr. 25 joint report entitled, *Spending Millions to Save Billions: The Campaign of the Super Wealthy to Kill the Estate Tax*, bringing to light the secret funding of anti-estate tax groups by super-wealthy families. Specifically, the report points to 18 families, who have "strategically stayed out of sight," while funneling money to various anti-tax organizations to fight on their behalf. These families, according to the report, have spent millions upon millions of dollars to repeal the estate tax to allow their heirs to avoid paying billions in taxes.

Your Senators needs to hear from you about the estate tax! The vote could be anytime in May or June - contact your Senators today!

TAKE ACTION and help us counter the myths pushed by the National Association of Manufacturers and other pro-repeal groups. Tell your Senators to oppose more tax cuts for multimillionaires by voting NO on repeal *and* irresponsible reform.

Harsh Budget Resolution On Its Last Leg?

There has been little movement on the FY 2007 budget resolution since it was pulled from the House floor before the April congressional recess. Despite a deal late last week between Majority Leader John Boehner (R-OH) and Appropriations Committee Chairman Jerry Lewis (R-CA) that removed one of three major obstacles to approval in the House, the outlook for the resolution remains bleak.

Before the April recess, during attempts to craft a compromise over spending levels between conservatives and moderates within the Republican caucus, Boehner agreed to a budget process provision requiring that the Budget Committee approve all non-defense emergency spending over $4.3 billion. This irked Lewis, who withdrew his support for the resolution and took members of the Appropriations Committee with him. Because the support of approximately two dozen moderate Republicans was already in doubt due to the drastically low spending levels outlined in the resolution, there was no way for the GOP leadership to pass the bill.

With Lewis' support back, it is now possible, though still unlikely, that the resolution will pass. One remaining obstacle is continued dissatisfaction among moderates that could keep the resolution from garnering a majority should they join with all the Democrats in opposition. Led by Rep. Mike Castle (R-DE), 23 moderates have publicly stated the need for this year's budget to include more discretionary spending, now set at just $873 billion. Whether those Republicans will be willing to vote against a budget approving such meager discretionary spending could depend on promises from their leadership to shift defense funds toward domestic spending needs in education and health care.

Further dampening the possibility of a budget, the House Appropriations Committee is scheduled to begin work on the Agriculture, Military Construction-VA, and Interior appropriations bills this week and plans move at least two to the floor the week of May 15, with two or three more to come the following week. With the appropriations process likely to be in full swing, a continued push by GOP leadership for a resolution in May could be unnecessary and even damaging. Even the Majority Leader stated before the House recessed that there may be little point in having a resolution if one was not at least passed by both chambers by the end of April.

Still Boehner has stated more recently that he would still like to pass a budget and believes it is possible within the next few weeks, perhaps as early as this week. The resolution has not been scheduled for debate on the floor however, and even if the House does pass a budget, at this point in the legislative year - a historically short one at that - it may serve little more than damage control leading up to the November elections. The House has succeeded in passing its version of the budget every year since Republicans re-took control of the chamber in 1994.

White House Misleads Public, Congress on PART Results

In each of the past two years, President Bush has publicly cited a group of 100-plus federal programs in his State of the Union address that he wishes to eliminate or drastically reduce because they are "not getting results." Yet, over two-thirds of these programs have not even been reviewed by the administration's own tool for determining results: the Program Assessment Rating Tool (PART).

Unfortunately, this is just one indication of the administration's biased use of the PART, which, along with positive spin on performance and results, is used to drum up support for its pre-ordained ideological goals. OMB Watch has prepared two new fact sheets de-bunking the myth that the PART and the president's "objective" performance and results data are the basis for the president's budget proposals. The fact sheets conclude:

> *There is little evidence in the budget submissions of the past two years to support the presidential rhetoric that results are the basis of funding decisions. The president's rhetorical focus on performance and results seem to be just that--merely a smokescreen providing political cover for a Bush agenda that seeks to promote particular ideological policies while drastically reducing the size of the federal government.*

2006 Tax Reconciliation Bill Languishes

Despite claims by the two senior GOP tax writers of a breakthrough last week following daily meetings with Republican leaders, last year's $70 billion tax cut bill remains unfinished. The bill is expected to be finalized and brought to the floor of both the House and the Senate, as long as House Ways and Means Chairman Bill Thomas (R-CA) and Senate Finance Committee Chairman Charles Grassley (R-IA) reach a compromise over how to pay for a small part of the bill that exceeds budget targets.

The bill, locked in a Senate-House conference committee, reportedly now includes a two-year extension of a reduced 15 percent rate for capital gains and dividends, a one-year patch to protect upper-middle income households from paying the Alternative Minimum Tax (originally intended for only the super-rich), and a two-year extension of a provision important to the financial services industry. The financing provision essentially allows U.S. companies to defer taxes on income earned abroad by foreign subsidiaries until that income is returned to the American parent company (if it is ever returned). This provision has been in place since 1997, and its extension puts the net cost of the tax bill at $74 billion.

Initially, it appeared the reconciliation bill would only contain the capital gains and dividend reductions and the one-year AMT patch, when an agreement was reached to include the extension of other popular tax cuts in a separate bill. Thomas, however, has pushed hard against both Grassley and GOP leadership to include the financing provision in the filibuster-proof reconciliation bill.

Because of its inclusion, the cost of the bill exceeds the $70 billion limit set forth in the FY 2006 budget resolution, and the bill would thus no longer receive expedited protections. This could endanger final passage in the Senate, so negotiations over how to offset that last $4 billion have dragged out consideration of the bill. The strong personalities of Thomas and Grassley - who have had memorable standoffs over the past few years - have not helped speed the process along.

The pressure to deliver yet another tax cut in an election year - even if it only benefits the wealthiest Americans and corporations - nearly guarantees Thomas and Grassley will eventually reach a compromise. Once a final package is agreed to, however, the bill still faces a possible challenge because it violates a Senate budget rule designed to keep policy changes from increasing long-term deficits. The capital gains and dividend cuts alone would increase the deficit outside of the bill's budget window and could face a budget point of order on the Senate floor.

To avoid this, the bill's authors have included a sham provision to pay for that lost revenue that amounts to little more than another huge tax giveaway to the rich. In one of the more ironic policy ploys in recent years, Thomas and Grassley pay for the capital gains and dividend tax cuts that exceed the budget window (or $31 billion) by allowing people to shift money in traditional Individual Retirement Accounts (IRA) to Roth IRAs. Under a Roth IRA, a worker pays taxes before contributing each year but collects the invested income tax-free upon retirement. This proposal would generate money in the short-term because taxes would be paid upon converting accounts to a Roth IRA, but cost the government significant revenue in future years.

Analysis shows this provision overwhelmingly benefits wealthy Americans, and is an egregious gimmick that is being used only to circumvent the budget rules and allows the rich to save even more in taxes over the long-term. And when all is said and done, instead of offsetting lost revenue, this plan will end up costing the U.S. Treasury money according to the Joint Committee on Taxation.

For this gimmick to succeed, the Senate Parliamentarian would have to agree that it did not violate the rule prohibiting the deterioration of long-term deficits. Despite the findings of most analysts, including the Joint Committee on Taxation that produces official estimates for Congress, that the scheme would increase long-term deficits, the Parliamentarian usually defers to the Senate Budget Committee Chairman, Sen. Judd Gregg (R-NH), in interpreting cost estimates. So if Gregg approves it, this accounting sleight of hand will almost surely be upheld.

Remaining hurdles notwithstanding, the House and Senate will waste little time once a final package is agreed to, with floor consideration of the tax cut bill possible at the end of this week in the House and perhaps early next week in the Senate. Yet there are no guarantees, as Grassley and Thomas have yet to iron out the final details.

House to Vote on Lukewarm Lobby Reform Bill

Following intense negotiations, House leadership sent a lobbying and ethics package to the floor for a May 3 vote made up of watered-down provisions that passed through five committees. A rule restricting amendments during the floor debate will prevent reform advocates from strengthening these provisions.

Democrats, watchdog groups, and reform-minded Republicans harshly criticized H.R. 4975, the Lobbying Transparency and Accountability Act, which many feel is too weak. House Minority Leader Nancy Pelosi (D-NY) said the legislation was "an embarrassingly trivial response to the culture of corruption that has thrived under the Republican congress." Rep. Chris Shays (R-CT) called the bill "a total sham," adding that "a good number of members know it is a sham."

Watchdog groups also expressed disappointment with the bill that will go to the floor under a restrictive rule that limits discussion and closes the legislative process. On Apr. 28 a coalition of reform groups sent a letter urging House members to vote against the rule and the final package. OMB Watch, in its letter opposing the final bill, called it "window dressing."

The bill to be considered on the House floor was changed by Republican leadership that feared rebellion from rank-and-file members. The bill was weakened by stripping or altering language added during markup in five different committees.

What's Out:

- A provision requiring lobbyists to report the details of fundraising events they host or co-host on their LDA form;
- A provision requiring lobbyists to document every "lobbying contact" with a lawmaker. "Lobbying contact" is defined by the Lobbying Disclosure Act as

virtually any nonexempt oral, written, or electronic communication on behalf of a client that addresses the "formulation, modification, or adoption" of federal laws, executive orders, federal agency rules and regulations, or "any other program, policy, or position of the United States Government;" the administration of federal programs and policies, including negotiation, amendment, or administration of government contracts, licenses, and loans, and Senate confirmations;
- A provision requiring lobbyists to disclose when they are campaign treasurers; and
- A provision designed to "rein in" 527 organizations, which was instead taken up as stand alone legislation, H.R. 513.

What's Changed:

- A provision allowing points of order to be raised against conference reports or bills that do not have a complete list of earmarks and their sponsors has been changed to allow for 30 minutes of debate, instead of 20.
- A provision prohibiting former members of Congress, congressional staff and executive branch employees convicted of corruption while in office from receiving their pensions has been altered to remove the language extending the provision to congressional staff and executive branch employees. The language had been added by the Government Reform Committee.

Additionally, the rule governing floor debate moves to marry H.R. 513, a completely unrelated bill to "rein in" 527 organizations to the lobby reform bill after it is passed by the House, in order to force Senate consideration of the 527 legislation.

Opposition to the bill began when Republicans on the Rules Committee blocked a number of amendments offered to strengthen the underlying bill. Only nine of the 74 amendments offered to the committee were accepted. Rejected amendments include:

- A substitute offered by Rep. Louise Slaughter (D-NY) consisting of the text of the Democrats alternative bill, the Honest Leadership and Open Government Act of 2006 (H.R. 4682), which would ban gifts from lobbyists, and organizations that retain or employ lobbyists, shut down the K Street Project, end the practice of adding special interest provisions in the dead of night, require the public disclosure of earmarks, and toughen lobbyist disclosure requirements and disclosure;
- A bipartisan package of amendments offered by Reps. Chris Shays (R-CT) and Marty Meehan (D-MA). These amendments dealt with issues such as corporate jet travel, establishing an Office of Public Integrity to put some teeth into enforcement, disclosure of financial benefits provided by lobbyists and tougher gift rules. The package included a provision, identical to the Senate's provision, that would have required disclosure of grassroots lobbying expenses above $25,000 in a quarter for organizations already disclosing under the Lobbying Disclosure Act;
- An amendment by Reps. Tom Davis (R-VA) and Henry Waxman (D-CA) that would:
  (1) require all political appointees and senior officials in federal agencies and the White House to report the contacts they have with private parties seeking to influence official government action;

(2) deem lawyers, lobbyists and executives appointed to high-level government positions to have a prohibited conflict of interest if they take official actions affecting their former clients or employers within two years of entering government;
(3) restrict activities of procurement officials as they pass between the government and private sectors;
(4) provide whistleblower protections for national security personnel;
(5) eliminate the use of unregulated "pseudo-classifications" such as "sensitive but unclassified" or "for official use only;" and
(6) require the federal government to disclose its role in funding or disseminating advertising and communications and prohibits the expenditure of funds on unauthorized propaganda.

For a complete list of amendments visit the Rules Committee website.

On Apr. 26 Republican leadership appeared unable to pass its much maligned rule governing floor debate on the bill as the structured rule (which permits members to offer only those amendments pre-approved by the Rules Committee) came under attack from House Democratic leadership, House appropriators, and watchdog groups.

House Rules Committee Chairman David Dreier (R-CA) yanked the rule midway through the debate because all 37 Republican Appropriations Committee members threatened to vote against it. Leadership hastily convened a meeting of the entire Republican Conference and emerged to reconvene the chamber to try again to muster a majority for the rule. They succeeded, approving H.Res. 783 by a vote of 216-207.

Appropriators had threatened to vote against the rule because it did not permit consideration of an amendment to extend new earmark disclosure requirements to tax and authorization measures, as well as appropriations bills. The House bill is currently silent on tax and authorizing bills, only requiring the identification of members sponsoring appropriations earmarks. After a deal cut with Speaker Dennis Hastert (R-IL), Dreier promised on the House floor that he would not support a conference report that did not address comprehensive earmark reform.

That appeased Appropriations Chairman Jerry Lewis (R-CA), but Ways and Means Chairman Bill Thomas (R-CA) is unlikely to accept it. In large part conservatives view earmark parity with tax and authorization bills as a "poison pill" that will kill the bill by giving members of Ways and Means and other committees reason to vote against it. If House tax writers vote against the bill the floor vote could be close.

Those monitoring the vote counts of Democrats and Republicans are having a hard time determining whether there will be enough votes for passage on May 3. Reportedly, as many as 10 Democrats are considering voting for the bill even in its watered-down state. If indeed the case, that may be enough to win passage. Except just how many Republican votes there are for the bill also remains unclear. Some who voted for the rule last week have not announced whether they will vote for the bill. And some, like Rep. Heather Wilson (R-NM), who face a tough re-election bid, are getting heat from home for voting for the rule.

New Election Year Resources for Nonprofits

The Congressional Research Service (CRS) has released a report to members of Congress that explains restrictions on advocacy and election activity by different types of nonprofits, along with reporting and disclosure requirements that apply to each type. The report should help reduce confusion on the Hill about nonprofit advocacy. OMB Watch has summarized the report as a resource for nonprofit organizations in this election year. In addition, NPAction.org, hosted by OMB Watch, has launched Nonprofits Can Help America Vote!, an online resource dedicated to guiding and increasing nonprofits' activities around elections.

The Congressional Research Service (CRS) has released a report to members of Congress that explains the restrictions on advocacy and election activity by different types of nonprofits, along with the reporting and disclosure requirements that apply to each type. CRS is the policy research arm of Congress that works "exclusively and directly for Members of Congress, their Committees and staff on a confidential, nonpartisan basis." *Tax-Exempt Organizations: Political Activity Restrictions and Disclosure Requirements* provides a good summary of the law governing nonprofits and should help reduce confusion among lawmakers and their staff about nonprofit advocacy.

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