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The Watcher

November 6, 2007

Vol. 8, No. 22

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CPSC Reform Efforts Progress as Agency Woes Continue

Congress is working toward passage of legislation that would expand the resources and regulatory authority of the Consumer Product Safety Commission (CPSC). The bill would also address the continuing problem of lead-contaminated children's products by effectively banning the heavy metal's presence in toys and other goods. Senior administration officials are working to derail the legislation.

On Oct. 30, the Senate Commerce Committee approved by voice vote the CPSC Reform Act of 2007 ([S. 2045](#)). Sens. Mark Pryor (D-AR) and Daniel K. Inouye (D-HI), chairman of the committee, are the lead sponsors of the bill.

Recent high-profile regulatory failures have highlighted the need for expansion of CPSC's

authority and resources. CPSC has been the subject of media and congressional scrutiny as recalls involving lead-contaminated children's products have spiked in 2007. As of Nov. 5, CPSC has announced 78 recalls accounting for more than 15 million products. In 2006, CPSC announced only 17 recalls accounting for less than three million products.

One recall announced on Oct. 31 involved a Halloween party favor called Ugly Teeth. The product — fake teeth painted black, white, orange and brown — contains "excessive levels of lead," according to a [CPSC press release](#).

The bill would dramatically expand the budget and staffing of CPSC. The bill would, by 2014, double the agency's budget and increase staffing levels to 500, from current levels of approximately 420. Even with these efforts, staffing levels would still fall short of the peak employment — 978 full-time employees — of the 1970s.

The bill would also expand the agency's regulatory authority by officially limiting to trace amounts the presence of lead in children's products and enabling the agency to levy stiffer civil penalties against violators of federal regulations. To ensure greater safety, the bill would require children's products to be certified by "a nongovernmental independent third party qualified to perform such tests."

The bill also includes a provision which would prohibit CPSC from issuing regulations that would preempt state or local regulations. Lawmakers included this provision in response to a [recent trend](#) in federal rulemaking in which federal regulators prohibit state or local regulators from developing rules stricter than those issued by the federal government. The federal preemption efforts often denied people the right to sue companies for damages if they were injured by faulty products. One such rule involving mattress flammability was issued by CPSC. The CPSC Reform Act would nullify the preemption provision in that rule.

Progress on the bill came despite opposition from the White House and a CPSC commissioner. CPSC's acting chair, Nancy Nord, [wrote](#) to Pryor and Inouye outlining her concerns with the legislation. One of Nord's primary concerns is that the legislation would impose too many new mandates on CPSC. CPSC's other commissioner, Thomas Moore, supports the bill.

Alan Hubbard, a leading economic advisor to President Bush, also voiced opposition to the bill on behalf of the White House. The White House has denied coordinating its lobbying efforts with Nord.

Nord's opposition to the bill caused some leading Democrats to call for her resignation. House Speaker Nancy Pelosi (D-CA), along with members of both the House and the Senate, has publicly asked Bush to dismiss Nord. Public interest organizations such as the Campaign for America's Future and Public Citizen have also called for Nord's resignation.

Strikingly, Nord's ouster would carry [unintended consequences](#). CPSC has been working with only two of its three commissioners since July 2006. The commission is currently

conducting official business under a temporary extension of its voting quorum. If Nord were to resign, CPSC would have only one commissioner and would be unable to promulgate regulations or force mandatory recalls.

Nord and CPSC suffered another black eye on Nov. 2 when a *Washington Post* [investigation](#) revealed Nord and former Chair Hal Stratton have taken nearly 30 trips financed by some industries that CPSC is responsible for regulating. According to the investigation, "The airfares, hotels and meals totaled nearly \$60,000, and the destinations included China, Spain, San Francisco, New Orleans and a golf resort on Hilton Head Island, S.C."

The trips may be a violation of federal regulations of government employee travel. Nord has requested that the Office of Government Ethics investigate the matter.

The *Washington Post* published [a follow-up story](#) on Nov. 6 indicating that nine of the industry-financed trips were paid for by companies that had business before CPSC. Moreover, the newspaper found that on at least one trip paid for by a regulated industry, the agency's ethics officer traveled with the commission chair as a guest. On another trip, the written approval for the trip came after the trip had been taken.

Senate Majority Leader Harry Reid (D-NV) has indicated he will attempt to find room for floor consideration of the CPSC Reform Act this year, [according to the *National Journal*](#) (subscription). It is not clear how the recent revelations about industry-financed travel for CPSC decision makers might influence the legislation.

According to an [Associated Press story](#), President Bush's Interagency Working Group on Import Safety is expected to release a report Nov. 6 that will call for enhanced CPSC recall powers for defective products and a certification program for companies with good product safety track records among its recommendations. It's unclear what effect the report might have on the CPSC legislation.

House members have introduced a companion bill, the Consumer Product Safety Modernization Act of 2007 ([H.R. 4040](#)). A subcommittee of the House Energy and Commerce Committee is scheduled to consider the bill Nov. 6. Like the Senate bill, the House version has bipartisan support and is expected to pass the chamber.

Vice President Reemerging in Regulatory Review Meetings

Representatives from the office of Vice President Richard Cheney have been involved in three current administration rulemakings. Their presence is indicative of a recent trend in which Cheney has involved his office in high-profile regulations.

The White House Office of Management and Budget's [Office of Information and Regulatory Affairs](#) (OIRA) reviews all the significant proposed and final regulatory actions of non-independent federal agencies. During the review process, OIRA often conducts meetings to

solicit the opinions of outside stakeholders. A representative from the issuing agency must also be invited to the meetings.

Throughout the Bush administration, OIRA has frequently conducted such meetings and generally met with industry lobbyists and members of the regulated communities. OIRA also often engages representatives from other White House offices such as the Council on Economic Advisors or the Office of Science and Technology Policy to assist in the review process. However, until recently, representatives from Vice President Cheney's office have rarely been included.

On Oct. 25, OMB held a [meeting](#) with members of the Climate Policy Group, a coalition of public power utilities. A representative from the Office of the Vice President (OVP), as well as officials from the U.S. Environmental Protection Agency (EPA) and Departments of Agriculture, Energy and Transportation, attended. The coalition submitted material regarding greenhouse gas reduction policy. Although the nature of the meeting is not disclosed on the OMB website, attendees likely discussed the rulemaking EPA is preparing to initiate to reduce greenhouse gas emissions.

A representative from OVP attended four meetings regarding Department of Homeland Security (DHS) regulations of chemical plants. Those meetings were held between June and September and included representatives from the National Propane Gas Association, the American Trucking Association, and other industry groups. The consultation between the government officials and the industry groups helped shape the final regulation which the agency announced Nov. 2, BNA news service [reports](#) (subscription).

The regulation sets thresholds for quantities of certain chemicals which, if possessed by a chemical plant, would require the plant to submit information in order to allow DHS to assess the risk of a potential terrorist attack on the plant. The final regulation lists fewer chemicals than DHS's initial proposal announced in April. That proposal did not include thresholds but would have required reporting if plants held listed chemicals in "any amount."

In June, a representative from OVP attended a [meeting](#) on EPA's proposal to revise the standard for ozone. Representatives from the Chemical Industry Institute and the Auto Alliance, a coalition of major automakers including Ford, GM and Toyota, also attended. Later that month, EPA announced its proposal to tighten the standard slightly, but critics assailed the proposal for being too lenient. Industry groups, including those lobbying the White House, wanted EPA to maintain the current standard. EPA's board of independent scientific advisors recommended a standard tighter than EPA's ultimate proposal.

The influence of OVP in these three recent rulemakings marks a recent trend in the Bush administration. According to information posted on the OMB website, OIRA has held more than 540 regulatory review meetings since February 2002. A representative from OVP has been present at only 11, about two percent. However, eight of those 11 meetings have

occurred since February, including the four meetings on the DHS chemical security rule.

Based on the meetings a representative from OVP has attended, Cheney is focusing his attention on environmental and homeland security rules. The 11 meetings pertained to eight separate rulemakings, four of which were for EPA rules, and three of which were for DHS rules. The rulemakings are also those expected to have a significant impact on the economy, as the regulations on greenhouse gas emissions, chemical security and ozone likely will.

The recent surge in involvement of representatives from OVP harkens back to the presidencies of George H.W. Bush and Ronald Reagan, both of whom formed regulatory review panels headed by their respective vice presidents, with the intent of undermining public health and safety regulations. Reagan formed the Task Force on Regulatory Relief, headed by then-Vice President Bush, and Bush formed the Council on Competitiveness, headed by Vice President Dan Quayle.

Those panels operated similarly to the current groups of OMB, OVP and agency officials that meet with industry representatives. However, the Quayle Council became more involved in review of individual rules. For example, in 1991, the Quayle Council responded to industry requests by manipulating EPA's program for granting permits under the Clean Air Act, easing requirements for polluters. At the time, Rep. Henry Waxman ☀ (D-CA) said, "There is unmistakable evidence that White House officials, spearheaded by Vice President Dan Quayle ... are working with industry to undermine implementations of the new clean air law."

Today, critics levy [similar charges](#) that the White House weakens regulations at the behest of industry. Furthermore, both panels operated behind closed doors, disclosing little information to the public, much like current regulatory review meetings.

Under President Clinton, the role of the Quayle Council was quickly quashed. On the first day of office, Clinton terminated the Council and indicated that all reviews would be conducted by OIRA, not the vice president's office. A few months after that, Clinton issued [Executive Order 12866](#), which set out a new process for the White House review of regulations. While E.O. 12866 still named the vice president as the arbitrator between OIRA and agency conflicts, it was clear that the reviews — and any meetings related to regulations under review with non-governmental entities — would be carried out by senior OIRA officials.

President George W. Bush ended the formal involvement of the vice president in the regulatory review process. In February 2002, Bush amended E.O. 12866 to remove most mentions of the vice president and further reduced the office's role in federal rulemaking. However, the pendulum now seems to be swinging back toward greater involvement of the vice president.

Congress Told of FDA's Lax Inspection of Foreign Drug Makers -- Again

The Government Accountability Office (GAO) recently told Congress that the U.S. Food and Drug Administration (FDA) inspects an estimated seven percent of foreign drug manufacturing facilities. GAO can only provide an estimate because FDA doesn't know how many foreign facilities are subject to inspection due to inaccurate and uncoordinated databases that have vastly different estimates of the number of drug makers subject to the foreign drug inspection program. At this inspection rate, it would take FDA more than 13 years to inspect all existing facilities one time, assuming no additional facilities were added to the list.

FDA has the responsibility to safeguard the supply and effectiveness of drugs sold in the U.S. and requires both domestic and foreign drug makers to register with the agency. FDA is required to inspect domestic manufacturers every two years, but there is no requirement for inspecting foreign manufacturers. According to GAO, FDA inspections varied from 190 to 295 foreign establishments annually between Fiscal Years 2002 and 2007.

GAO's health care director, Marcia Crosse, testified Nov. 1 at the House Committee on Energy and Commerce's Subcommittee on Oversight and Investigations [hearing](#) on the FDA's foreign drug inspection program. According to [her testimony](#), GAO told Congress in 1998 that FDA's foreign drug inspection program had serious flaws in the management of its inspection data and that "it lacked a comprehensive automated system for tracking this important information."

The databases FDA currently uses for the inspection program, Crosse reported, were not designed for this kind of data tracking. As a result, one database reports that about 3,000 drug manufacturers were registered to sell drugs in the U.S. in FY 2007, while another indicates that drugs from more than 6,800 foreign manufacturers were imported that year.

Furthermore, according to the testimony, the foreign inspection program faces a unique set of problems: "FDA does not have a dedicated staff to conduct foreign inspections and relies on those inspecting domestic establishments to volunteer." FDA inspectors do not arrive at the foreign facilities unannounced, and they have to rely on English-speaking employees at the facilities because FDA does not generally provide translators.

Other witnesses at the hearing described how the system of inspecting U.S. manufacturers and of approving drugs — those manufactured domestically — remains "the gold standard" to which other countries aspire; however, the number of drugs and drug ingredients imported is increasing rapidly while FDA's capacities decline. For example, in his [written testimony](#), William K. Hubbard, a former FDA associate commissioner in the drug program, described this dismal picture:

- FDA's inspection rate for imported drugs (and drugs ingredients) when they arrive

at a U.S. port is around 1%, which means that the vast majority of imported drugs do not receive an FDA inspection upon entry into this country.

- The chances of an imported drug being sampled and tested at entry to this country is even lower; in fact, of the millions of drug shipments arriving from foreign countries last year, only 340 samples were taken for laboratory testing.
- Although there are approximately 3,000 foreign drug manufacturers registered with the FDA, only 341 were inspected last year. And even that number is misleading, as most of those inspections were so-called "preapproval inspections" for drugs about to be approved by FDA for marketing. The number of good manufacturing compliance inspections was perhaps two dozen or so.

Hubbard and other witnesses called for increased staff, more resources to fix FDA's poor information systems, and improved inspection approaches.

Andrew C. von Eschenbach, Commissioner of FDA, acknowledged the challenges the agency faces in the growing global market for drugs. Specifically, [he reported](#) that upgrading FDA's information systems is one of his top priorities and outlined the many efforts underway at FDA to improve those systems.

In addition, he outlined several cooperative arrangements with international organizations to share information and improve inspection systems globally. As other federal officials have done in recent congressional testimony, von Eschenbach referred to President Bush's Interagency Working Group on Import Safety (IWG) as the entity charged with developing a system to ensure the safety of imported goods. As [OMB Watch recently reported](#), these officials have used the work of the IWG to deflect congressional criticism of federal agencies' poor performance on import safety issues and to delay action until the release of the IWG report expected later in November.

GAO's Crosse summed up the urgency of the problem, however, in her concluding observations on the similarities between the current situation and GAO's description nine years ago when she wrote, "[U]ntil FDA responds to systemic weaknesses in the management of this important program, it cannot provide the needed assurance that the drug supply reaching our citizens is appropriately scrutinized, and safe."

Senate Judiciary Committee Skeptical of Telecom Immunity

As the Senate considers legislation to address the president's surveillance powers, the Senate Judiciary Committee registered concern regarding the recent compromise brokered in the Senate Intelligence Committee to grant the telecommunications industry immunity for alleged illegal assistance with the National Security Agency's (NSA) warrantless surveillance of American citizens. Sens. Patrick Leahy (D-VT) and Arlen Specter (R-PA), respectively, chairman and ranking member of the Senate Judiciary Committee, stated that immunity did not appear to be necessary, and that those alleging harm should have their

day in court.

As reported in the previous edition of the [Watcher](#), the Senate Intelligence Committee passed the [FISA Amendments Act of 2007 \(S. 2248\)](#) by a vote of 13-2. The bill included provisions that would provide immunity for any telecommunications company that, in response to a request authorized by the president, assisted in counterterrorism operations between Sept. 11, 2001, and Jan. 17, 2007, or if the attorney general certifies the company was not involved in the activities addressed by a particular lawsuit.

To date, approximately 40 lawsuits have been filed involving telecommunications companies allegedly assisting the NSA's warrantless wiretapping program. All of these suits would likely be thrown out if the Senate bill becomes law.

Upset with the blind agreement to grant blanket immunity, [OMB Watch](#) and the [civil liberties community](#) called for the Senate Judiciary Committee to hold public hearings on the issue before moving forward in considering the legislation. In heeding such advice, the committee held a hearing receiving testimony from, among others, Kenneth Wainstein, Assistant Attorney General at the Department of Justice.

With most of the hearing centering around debates over immunity, Leahy opposed the S. 2248 legislation because of its inclusion of immunity provisions. "The Congress should be careful not to provide an incentive for future unlawful corporate activity by giving the impression that if corporations violate the law and disregard the rights of Americans, they'll be given an after-the-fact free pass."

Specter also registered concern with the immunity provisions and argued for granting indemnity to the telecommunications companies involved in assisting the government's warrantless surveillance activity. This would permit the lawsuits to proceed but would hold the government liable for payment of damages. "I doubt very much that the cases will be proved," stated Specter, "but if plaintiffs can prove them, I think they ought to have their day in court."

Wainstein argued that the immunity provisions were necessary because the telecommunications companies were "operating on good faith, on assurances from the government. If there is fault here, it's the fault in the legal analysis and the decisions made by the government." Moreover, Wainstein said, such lawsuits would interfere with the government's ability to cooperate with telecommunications companies in the future by instilling in companies a clear incentive to be risk-averse.

Sen. John D. Rockefeller (D-WV), Chair of the Senate Intelligence Committee, argued similar points in a [Washington Post column](#) defending his committee's inclusion of immunity in S. 2248. "Companies are being sued, which is unfair and unwise. As the operational details of the program remain highly classified, the companies are prevented from defending themselves in court. And if we require them to face a mountain of lawsuits,

we risk losing their support in the future."

Leahy dismissed such arguments for immunity at the Judiciary Committee hearing, explaining that immunity would deprive those allegedly harmed from having their day in court. Leahy fully expects the government will invoke the state secrets privilege for any lawsuits brought against it and thereby get the cases dismissed. This would leave the lawsuits against telecommunications companies as the only opportunity for having the matter heard by courts.

The Senate Judiciary Committee is expected to consider and vote on S. 2248 before the Thanksgiving recess.

California Moves Forward with Greenhouse Gas Reporting

On Oct. 19, the California Air Resources Board (CARB) released a [draft rule](#) that would create an extensive mandatory greenhouse gas reporting system and held a public workshop to review the proposal on Oct. 31. The Global Warming Solutions Act of 2006 ([A.B. 32](#)) requires CARB to adopt regulations creating a greenhouse gas registry by Jan. 1, 2008, putting in place what appears to be the country's most comprehensive and sophisticated greenhouse gas registry.

The proposed regulations were developed with input from public and private stakeholders, state agencies and the general public. Modeled after the [California Climate Action Registry \(CCAR\)](#), a voluntary greenhouse gas reporting program started in 2001, the regulations detail which industrial sectors will report, what the reporting and verification thresholds and requirements will be, and how calculations will be made. Approximately 800 facilities will be required to report greenhouse gas (GHG) emissions, which CARB estimates will represent 94 percent of California's total carbon dioxide production from stationary sources.

Similar to other reporting registries, such as the Toxics Release Inventory, the GHG reporting will be annual (first reporting year is 2008) by facility with requirements to identify the parent company. Companies will be required to report carbon dioxide, nitrous oxide and methane emissions produced from on-site stationary source combustion and some fugitive emissions. The system will also require certain industrial sectors to report process emissions. Carbon dioxide emissions from biomass-derived fuels will be separately identified. Some industries have more specific requirements, such as mandatory hexafluoride and hydrofluorocarbons reporting for the electric power sector.

The following industries will be subject to the regulations:

- Electric generating facilities
- Electricity retail providers
- Power marketers

- Oil refineries
- Hydrogen plants
- Cement plants
- Cogeneration facilities
- Industrial sources that emit over 25,000 metric tons per year of carbon dioxide from stationary source combustion (Food processing, oil and gas production and mineral processing)

Hospitals and primary and secondary schools would be exempt.

The regulations seek to create a program with substantial oversight and assistance. The program will utilize online reporting with user-friendly interfaces, potentially compatible with other criteria pollutant reporting such as the [Climate Registry](#), a non-governmental organization coordinating a common GHG registry between states, tribes and provinces in North America. CARB's regulation establishes staggered reporting deadlines to ease the administrative burden and enable staff to better assist reporting facilities with any questions or problems. Facilities will also have to get third-party verification that reports are accurate and comply with international standards on an annual or triennial basis.

Though the proposed rule does not specifically direct the creation of an online searchable database, California state law requires all emissions reporting to be publicly accessible. Therefore, it is likely that the GHG reporting inventory will be made publicly available in an online searchable database.

At least [four other states](#) (CT, ME, NJ, WI) have, albeit more limited, mandatory GHG reporting requirements. Another 38 states have committed to create similar programs with the voluntary Climate Registry. California's program appears to be the most ambitious effort to track the exact sources of GHG emissions.

After the public comment period, final review of the proposed regulations will begin on Dec. 6. [Federal legislation](#) creating a national greenhouse gas inventory is pending.

National Research Council Recommends Greater Openness

The National Research Council of the National Academies issued a report in October calling for policies to improve government openness with regard to scientific information. The report stressed that certain government policies developed after 9/11 overly restrict access to scientific information and thereby harm scientific progress and national security.

The fundamental issue addressed by the National Research Council in [Science and Security in a Post 9/11 World](#) is how to "bridge the legitimate concerns of the national security community with the need to maintain open and vibrant research universities." The report discusses a number of post-9/11 policies that have restricted access to potentially sensitive information and examines the rationale behind such efforts. The report notes, however, that

"these concerns do not justify the use of extreme measures that could serve to significantly disrupt the openness that has characterized the U.S. scientific and technology enterprises."

One particularly important policy examined in the report is the creation of over 100 new Sensitive But Unclassified (SBU) information categories. Most of the new SBU categories have been created by individual federal agencies without broader consideration, planning or approval from Congress. The explosion in these SBU categories, which are used to restrict access to government information, has resulted in the inability to adequately share information both within the federal government and with state and local governments. This problem of information sharing carries over into scientific research and data.

Stressing that the "success of U.S. science and engineering has been built on a system of information sharing and open communication," the report recommended comprehensive reform of the SBU information categories. "Research administrators ... described the difficulty of anticipating and implementing the requirements for SBU information and recommended that SBU should be largely (if not fully) eliminated."

The National Research Council also cited a survey by the Association of American Universities and Council on Government Relations for examples of interference by government in scientific research. The survey of 20 institutions from 2003 to 2004 found 138 attempts by the government to restrict publication or to prevent foreign-domestic participation in research.

The National Research Council conducted the report at the behest of the House Committee on Science and Technology and the White House Office of Science and Technology Policy, the National Science Foundation and the National Institutes of Health.

Consumer Products Expose Children to Toxic Chemicals

If you are worried about products exposing you or your children to toxic chemicals, don't look to the federal government for much help. The government, to a large extent, does not require companies to test chemicals for possible health effects before using them in consumer products, nor does it require that such products be fully labeled with chemical ingredients. In the absence of such government activity, public interest groups and the media have stepped into the role of testing and informing the public.

The Environmental Working Group's (EWG) cosmetic safety database [Skin Deep](#) provides a comprehensive guide to toxicity in personal care products, with ingredient information and safety assessments for almost 24,000 products. On Nov. 1, EWG released the [survey results](#) of children's product use, which found that every day, the average child is exposed to 27 chemicals that have not been found safe for children. Even "gentle" and "non-irritating" products were part of the problem, with approximately 80 percent containing ingredients linked to allergies.

Children are much more vulnerable to toxins than adults, as children eat, drink and breathe proportionally more than adults. With still developing organs and immune systems, their bodies experience more harm and are less able to detoxify themselves. "Body burden" testing, or biomonitoring, the burgeoning practice of testing people for the presence of industrial chemicals, confirms children's much greater burden. The first [family body burden testing](#) in 2004 discovered that some children had up to seven times the chemical exposure as their parents, and a concurrent [investigation](#) by EWG found an average of 200 toxic chemicals in umbilical cord blood.

Body burden testing was showcased in CNN's Oct. 23 and 24 special report "Planet in Peril," a four-hour exploration into global environmental degradation. The show reported on the Hammonds, a family of four in Oakland, CA, who, after participating in the first family body burden tests, found that their children, ages five and one and a half, tested much higher for chemical exposure than their parents. The youngest child had levels of a certain class of flame retardants — polybrominated diphenyl ethers (PBDEs) — three times higher than the level that causes thyroid problems in rats. Correspondent Anderson Cooper also participated in a body burden assessment and tested positive for over 100 chemicals, including DDT, which was banned in the United States in the 1970s.

Unfortunately, even knowing the levels of toxic chemicals in our blood often leaves us to guess about possible health risks, as the government has done little research into the effects of such exposures. Dr. Leo Trasande at the Center for Children's Health and the Environment at the Mount Sinai Medical Center in New York City, who conducted Cooper's body burden test, noted that the lack of information is cause for alarm. "Rates of asthma, childhood cancers, birth defects and developmental disorders have exponentially increased, and it can't be explained by changes in the human genome," noted Trasande. "So what has changed? All the chemicals we're being exposed to."

Despite having the authority to demand greater testing and labeling, as well as resources for more comprehensive studies about the impacts of chemical exposures on health, the federal government has been slow to take action. Companion bills in the Senate ([S. 2082](#)) and House ([H.R. 3643](#)) introduced by Sen. Hillary Clinton ☼ (D-NY) and House Speaker Nancy Pelosi (D-CA), respectively, would increase funding for Centers for Disease Control and Prevention biomonitoring projects. Sen. John Kerry ☼ (D-MA) is also reportedly [considering a bill](#) to increase FDA regulation of personal care products and cosmetics.

Lobbying and Ethics Reforms Being Implemented

President Bush signed the Honest Leadership and Open Government Act of 2007 (HLOGA), [S.1](#), on Sept. 14; revised House ethics rules took effect in March. The focus of these reforms has now shifted to implementation of the changes. Congressional officials have started developing the new forms and guidance that will be used by lobbyists to comply with the law. The Federal Election Commission (FEC) has proposed new regulations to implement campaign contribution bundling disclosure requirements. From lobbyists to

lawyers, nonprofits, and members of Congress themselves, all parties in Washington have begun preparing for these and other adjustments to their current practices.

Implementation of lobbying and ethics rules changes is an immense undertaking, impacting registration and reporting requirements under the Lobby Disclosure Act of 1995 (LDA). The LDA contains new rules for gifts to members of Congress, new congressional travel rules, new coalition lobbying disclosure requirements and much more. Lawyers who can explain the intricacies of the new law are in high demand. The House and Senate ethics committees have handled more than 1,000 questions from lobbyists and congressional staffers seeking guidance.

Even as the law and new rules are being put into practice, there are news reports about efforts of lobbyists and lawyers to find loopholes in the law. According to the [Washington Post](#), "[A]bout 100 members of Congress and hundreds of Hill staffers attended two black-tie galas, many of them as guests of corporations and lobbyists that paid as much as \$2,500 per ticket." Companies cannot buy the tickets, but reportedly purchase tickets and donate them back to the charity sponsors with the names of the recipients they want to attend the galas.

Travel rules

House members, senators, and their staff may accept travel funded by an entity that employs a lobbyist for a one-day event or fact-finding trip with pre-approval from the House or Senate ethics committees. [USA Today](#) reported how this exemption has allowed House members to continue to travel on lobbyists' dime. "In all, 22 House Democrats and three Republicans accepted nearly \$40,000 in travel under that exemption, according to reports filed with the House ethics committee."

Members of Congress also now need to rethink paying for travel when campaigning for re-election. The FEC has proposed [new regulations](#) to implement air travel provisions which require presidential and Senate candidates to pay charter rates for campaign travel on noncommercial aircraft. House campaign travel on private aircraft is also prohibited except if the plane is owned by the lawmaker or his or her family.

Bundled Campaign Contributions

One of the most controversial parts of the new law requires registered lobbyists who bundle multiple campaign contributions totaling more than \$15,000 to file reports every six months. This includes individual lobbyists, lobbying firms, corporations, unions, and associations. On Oct. 30, the FEC approved a [Notice of Proposed Rulemaking](#) (NPRM) on Reporting Contributions Bundled by Lobbyists, Registrants and the PACs of Lobbyists and Registrants. The FEC asked for feedback on various questions, including whether the requirements for disclosure should extend beyond registered lobbyists to include money bundled by other employees of a lobbying organization. The FEC also proposed to apply the bundling disclosure requirement to campaign money bundled by a political action

committee connected to a lobbying organization, "lobbyist/registrant PACs".

The FEC also left open the timing of the reporting requirement by offering two alternatives. One would require political committees to disclose quarterly any bundlers who gather more than \$15,000, and the second would mandate semiannual reports that would aggregate bundling totals from the previous two quarters. Another issue raised by the proposed rulemaking deals with earmarked campaign contributions. Comments on the NPRM are due by Nov. 30.

Abramoff connections and the White House

Meanwhile, one of the high-profile cases that brought on the ethics and lobbying changes, that of convicted lobbyist Jack Abramoff, continues to be in the limelight. A recent [letter](#) sent to the White House from Rep. Henry Waxman (D-CA), chairman of the House Oversight and Government Reform Committee, requested more documents relating to Abramoff's activities. The White House material is being withheld because it involves internal White House discussions. More than 3,700 documents have already been supplied outlining that Abramoff and his associates had hundreds of lobbying contacts with White House officials, billed clients more than \$24,000 for meals and drinks with those officials, and provided officials with tickets to sporting and entertainment events.

Senate Committee Hears GAO Testimony on New Report on Terrorist Watchlist

An October 2007 report from the Government Accountability Office (GAO) addresses lingering weaknesses in the Terrorist Screening Center (TSC) watchlist. GAO's report provides insight into what further actions can be taken by government agencies to enhance the accuracy of anti-terrorism screening efforts. The GAO report was released just as the Senate Homeland Security and Governmental Affairs Committee held a hearing on the reliability of the Terrorist Screening System.

During the hearing, Sen. Joe Lieberman ☼ (I-CT) [commented](#) on the "critical vulnerabilities and weaknesses in the watch list system" saying, "We have a new system in place. It is a great improvement over what existed before. But there are still occasions when that system lets in people who are on the watchlist and keeps out people who shouldn't be on the list." He said, "We need to know that there are clear standards for placing names on it, and of course, for taking them off it."

GAO's report and the testimony of GAO's Eileen Larence, Director of Homeland Security and Justice, helped provide clear insight into how names get on the watchlist. According to Larence, there is a relatively low bar set for watchlist nomination because intelligence agencies do not want to overlook potential threats. The GAO report states that the National Counterterrorism Center (NCTC) collects its information on domestic and international terrorists from several executive branch departments and agencies, such as the CIA,

Department of State, and the FBI. She said the NCTC uses available information and standards of reasonableness to ascertain if suspected individuals have links to terrorist activity. If the FBI's threat assessment determines that no nexus exists between the suspected individual and international terrorism, then the NCTC initiates the process for deleting the record from its database and watchlist.

While all of these improvements may enhance counter-terrorism efforts, the GAO report contends that an up-to-date strategy and a prioritized investment and implementation plan will result in the best use of terrorist related screening. GAO found that the Department of Homeland Security has not updated its strategy or plan for terrorist-related screening activities since 2004. Without such a plan, the federal government cannot fully support a comprehensive and coordinated approach toward terrorist-related screening. A comprehensive strategy or plan, with measurable goals, would make assessments much easier. In addition, GAO officials found that to date, no governance structure with clear lines of responsibility and authority monitors government-wide screening activities. Such monitoring efforts might include assessing vulnerabilities in screening processes, identifying new screening opportunities, and common corrective actions. Until oversight is provided, it seems that many concerns about the TSC watchlist may continue.

However, because all watchlist records are not shared with all screening agencies, the actual effectiveness of the TSC watchlist is compromised. GAO's report reveals that principal agencies that frequently deal with travelers do not have access to all watchlist records, due to computer capabilities, varying organizational missions or mere operational feasibility. GAO concluded that federal departments and agencies have not identified all appropriate opportunities for conducting terrorist-related screening. For instance, Homeland Security Presidential Directive 6 allows private sector employees to be screened against the TSC list, but these screening opportunities remain primarily untapped. Such practices result in the types of errors mentioned by Lieberman.

According to the GAO report, the TSC and other federal agencies are currently taking steps to address practices that have occasionally allowed watchlist persons to pass through screening processes undetected. For example, U.S. Customs and Border Patrol recently created an interdisciplinary working group to ascertain how individuals on the watchlist have gained entry into the U.S. In a similar manner, in April 2007, U.S. Citizenship and Immigration Services entered into a memorandum of understanding with TSC, which if implemented could allow more efficient and thorough searches of watchlist records during the screening of benefit applicants. Also, the TSC has formed and chairs an interagency working group that helps share best practices amongst various agencies. The GAO report also reveals that the TSC has ongoing quality assurance efforts to identify and correct incomplete or inaccurate records.

Short Colbert Campaign Stirs Election Law Debate

On Oct. 16, Comedy Central comedian Stephen Colbert used his nightly television show to announce that he was running for President of the United States and would file to get on both the Democratic and Republican primary ballots in his home state of South Carolina. The campaign was cut short on Nov. 1 when the South Carolina Democratic Party Executive Committee voted 13-3 to reject his application to get on the ballot. Colbert did not file to run as a Republican because of the party's \$35,000 filing fee. The short-lived campaign gave both Colbert and election law experts a chance to examine the ins and outs of federal election law, with Colbert winning the laughs.

Colbert is the first comedian to seek the presidency since [Pat Paulsen](#) ran in 1968, before passage of the Federal Election Campaign Act. Soon after Colbert's announcement, election law bloggers and news outlets began speculating whether Colbert's use of his television show to promote his campaign violated federal campaign finance laws, which prohibit corporate contributions to campaigns. The Comedy Central and *Colbert Report* sponsor Doritos (made by Frito-Lay, a division of PepsiCo, Inc.) could both have arguably been sanctioned for illegal contributions.

Colbert separated his South Carolina petition drive from Comedy Central by running it through a barebones [Colbert Campaign website](#). He then consulted the law firm Wiley Rein and showed his audience a copy of their letter, which warned him not to use corporate funds or sponsorship "to directly fund campaign activities." Colbert then said, "In accepting corporate money, I promise to respect federal election laws the same way I respect the must-shower-before-swimming law at the Y.... As a candidate, I am under no obligation to promote the zesty, robust taste of Doritos brand tortilla chips, regardless of how great a snack they may be for lunchtime, munch time, anytime." To ensure compliance with the law, he said Doritos would not sponsor his campaign, just the coverage, which the show called "The Stephen Colbert, Hail to the Cheese, Nacho Cheese Doritos 2008 Presidential Campaign COVERAGE."

This did not satisfy the experts and commentators, who speculated that Viacom, which owns Comedy Central, could still face sanctions from the Federal Election Commission for using its corporate facilities to promote the Colbert campaign on the show. This would be considered an in-kind contribution, unless the campaign itself qualifies for the exemption for news stories, editorials or commentary. It is not clear how comedy and entertainment would fit into that exemption. *Slate* [reported](#) that NBC had already taken the cautious approach by stopping *Law & Order* reruns starring actor and Republican presidential candidate Fred Thompson.

Colbert's television show and his announced candidacy demonstrated the intersection of humor and election law. On one episode, Colbert had Center for Responsive Politics' Massie Ritsch on [to discuss](#) how Colbert could skirt the campaign contribution limits. The humor highlighted interesting ways to skirt those limits.

Even though the [Los Angeles Times](#) reported a Republican poll in South Carolina that showed Colbert had the support of 2.3 percent of the voters, the state Democratic Executive Committee voted Nov. 1 to deny him access to the ballot because he failed to show he was a nationally viable candidate. Carol Fowler, the state party chairwoman, told [CNNPolitics.com](#), "He does not appear to be campaigning to win if he is only running in one state."

Colbert did meet South Carolina's other ballot criteria by spending the last weekend in October campaigning in the state, receiving the key to the city from Columbia mayor Bob Coble at a well attended rally. Videos of these events are all available on the Comedy Central website.

On Nov. 5, Colbert [announced](#) he was officially dropping his campaign. However, he is encouraging supporters to give to South Carolina schools through [donorschoose.org](#). So far, the campaign has raised \$51,938 toward its \$100,000 goal. Colbert's announcement ending his campaign also promotes the upcoming release of the *Best of the Colbert Report* DVD.

AMT: Mother of All Tax Bills and Progeny

On Oct. 25, after a gestation period of nearly nine months, House Ways and Means Committee Chair Charles Rangel (D-NY) finally unveiled the Tax Reduction and Reform Act of 2007 ([H.R. 3970](#)), his self-described "mother of all tax bills." The Rangel bill is a \$930 billion, multi-faceted tax reform package that seeks to abolish the Alternative Minimum Tax (AMT) on a revenue-neutral basis. The measure redistributes the tax burden away from lower- and middle-class taxpayers and toward the wealthy beneficiaries of the Bush tax cuts of 2001 and 2003.

Congressional action on the AMT is urgent. The Bush tax cuts increased the number of people subject to the AMT and the exemptions used under the AMT have not been indexed for inflation. As a result, 23 million taxpayers, up from the current 4.2 million, will have to pay the AMT when they file their 2007 taxes if Congress does not enact a hold-harmless patch freezing the number of Americans paying the AMT before the end of the year.

The Rangel plan's central feature is the permanent repeal the AMT at a ten-year cost of \$845 billion. It should be noted this estimate assumes current law — namely the Bush tax cuts — expires. If those tax cuts were extended, AMT repeal cost would nearly double to about \$1.5 trillion over ten years. The plan also calls for a \$48 billion increase in the standard deduction and a \$30 billion expansion of the Earned Income Tax Credit for childless workers. These proposals are paid for mainly by scaling back the Bush tax cuts (the plan would impose a "surtax" of 4.0-4.6 percent for those earning over \$200,000 a year), bringing in \$832 billion over ten years. It also restores some phase-outs of deductions for the wealthy that would add \$29 billion, eliminates the so-called "carried interest" tax loophole for fund managers (\$26 billion), and closes another loophole for offshore deferred

compensation for hedge fund managers (\$23 billion).

On the business side, Rangel's plan reduces the corporate tax rate from 35 to 30.5 percent, at a ten-year cost of \$364 billion. The bill pays for this decrease by ending a raft of corporate tax deductions, from elimination of the domestic manufacturing deduction (adding \$115 billion in revenue) to ending the "last-in, first-out" (LIFO) accounting practice (\$107 billion), to deferring deduction of unrepatriated income (\$106 billion), and other provisions (\$71 billion).

A knee-jerk reaction from Republicans to the Rangel plan came swiftly after it was introduced. Vice President Dick Cheney immediately called it a [bad proposal](#) filled with "terrible ideas" that would do "an awful lot of damage" to the economy. House Minority Leader John Boehner (R-OH) [wrongly criticized](#) the plan as "the largest tax increase ever proposed on the American people."

Some of the opposition to the plan may exist because the plan has a redistributive impact, which means it helps the vast majority of American taxpayers. In the aggregate, it amounts to a modest tax cut for 99 percent of Americans. According to the nonpartisan [Tax Policy Center](#), the plan would trim average federal tax rates by 0.2-1.4 percent for 99 percent of taxpayers in 2008. To pay for this reduction, the top 2.4 percent of taxpayers would pay more in taxes in 2008 should the Rangel plan be enacted. In sum, the major components of the legislation would provide a net tax reduction for 2008; the average tax cut across all households would be \$81.

Most observers recognize the Rangel tax bill is fairer than the current tax code. The larger standard deduction and tax credits for low-income workers are paid for by scaling back the excessive Bush tax cuts for the wealthiest people. In addition, it achieves one of the president's goals of tax reform by simplifying the tax code. It repeals the complex AMT and removes many of the code's largest deductions and loopholes. Significantly, the bill is compliant with the congressional pay-as-you-go (PAYGO) rules and shifts no costs onto the national credit card by requiring additional borrowing.

On Nov. 1, the Ways and Means Committee approved the Rangel bill's short-term provisions, [H.R. 3996](#), the Temporary Tax Relief Act of 2007. This legislation consists of an increase in the exemptions from the AMT that keep additional taxpayers from having to pay that tax, as well as a one-year extension of popular tax credits and deductions such as the research and development credit, state and local taxes deduction, and teacher supply deduction, among others. To pay for this, H.R. 3996 changes tax provisions for companies and other financial enterprises by closing the carried interest tax loophole, disallowing deferred foreign income, delaying worldwide allocation of interest, and other provisions. A House vote on the bill is expected on Nov. 8 or 9, with party-line approval likely.

After House approval, the next step would be the Senate, where a pitched battle is expected over adherence to fiscally responsible PAYGO principles. President Bush has already threatened to veto an AMT patch bill that is fully offset, and the thin majority in the Senate

could easily abandon PAYGO principles unless members supporting fiscal responsibility make a stand to not add to the national debt.

While no floor action is expected during the remainder of 2007 on the larger, comprehensive Rangel bill, it could become the frame of reference for the next major tax reform effort, perhaps early in the next presidential administration. The Bush administration has abandoned any plans to propose or enact comprehensive tax reform — a fact not lost on Rangel. In [a letter](#) to Treasury Secretary Paulson dated Nov. 2, Rangel urged the administration to show leadership on tax reform, saying that merely criticizing the House plan is not enough to enact reforms. "President Bush has been in office for nearly eight years and yet we have received no bill, no suggestions, and no direction. It is easy to be critical, but if not this bill, what would the administration recommend that we pursue to meet these goals?"

Congress to Send Labor/HHS Appropriations to President While SCHIP Conflict Continues

President Bush is soon expected to veto a congressionally approved version of the Labor/Health and Human Services/Education (Labor/HHS) appropriations bill, which funds an array of human needs programs. It is still uncertain if there is enough support in the House to override the president's veto. Meanwhile, enough Republican opposition remains to a proposed reauthorization of the State Children's Health Insurance Program (SCHIP) that the months-old conflict over the program drags on.

The Labor/HHS appropriations bill is likely to be the first piece of appropriations legislation sent to the president during the Fiscal Year 2008 budget cycle. It will be part of a two-bill package that also includes funding for the Department of Veterans Affairs.

Advocacy groups are pushing to send the package to the president on Veteran's Day (Nov. 12); in order to meet this deadline, the House may vote as early as today (Nov. 6), with the Senate expected to follow shortly thereafter.

The \$150 billion Labor/HHS bill funds the Education, Health and Human Services, and Labor Departments, which hold a wide array of human needs programs, from Head Start and the National Institutes of Health to the Occupational Safety and Health Administration and college loan programs. The Senate-passed version contains \$8.4 billion more than the president's request, which called for drastic cuts (for more details on the president's proposed cuts, see either the Coalition on Human Needs' [analysis](#) or the Center on Budget and Policy Priorities' [analysis](#)).

The Senate passed the measure on a [75-19](#) vote on Oct. 23, while the House passed its version in July, [276-140](#). The margin of the Senate vote was large enough to override a potential presidential veto, but the House vote fell just short.

The Labor/HHS appropriations bill may get more support by being paired with the \$65 billion Veterans/Military Construction appropriations bill, which passed with nearly unanimous approval in both the House and Senate. The programs covered under this bill received a significant boost in proposed funding following the revelation of poor conditions at the Walter Reed Medical Center in Washington, DC.

The president is all but certain to veto the combined bill. Congress will then vote on whether to override the president's veto, which is, despite solid majority support in both chambers, no easy task. It takes a two-thirds majority of voting members in both the House and the Senate to override a veto. Congress has yet to override a presidential veto in 2007, as the House has [repeatedly failed](#) to override the president's veto of bills to increase funding for SCHIP.

If Congress does not override the president's veto, it will likely be forced to reduce funding for social programs covered by the Labor/HHS appropriations bill, and other appropriations legislation may also see funding reductions. The president has threatened to veto [eight other FY 2008 appropriations bills](#) that he says contain excessive levels of spending.

Regardless of whether or not the dual Labor/HHS-Veterans appropriations bill is enacted, a continuing resolution (CR) will have to be enacted before Nov. 16 to keep funding the federal government.

Conflict over SCHIP Continues

While the showdown over appropriations has unfolded, Congress has attempted to resolve the drawn-out conflict over the \$35 billion SCHIP reauthorization through revisions to eligibility standards and funding incentives. But the new parts of the bill did not substantially change which members supported it in either the House or the Senate. It remains unclear how the conflict over the SCHIP reauthorization will be resolved.

The new version of the SCHIP bill retained a funding increase of \$35 billion over five years that was paid for by a 61-cent cigarette tax increase. Changes in the new legislation include additional incentives to target funding to low-income children and limited eligibility for children in families whose incomes were below 300 percent of the poverty line (about \$60,000 annually for a family of four (see this Center on Budget and Policy Priorities [paper](#) for more on the changes)).

The changes were made to attract more Republican support in the House, since many Republicans cited those issues as reasons they opposed the bill when it was first considered. However, the vote in the House and Senate did not significantly shift. The Senate vote was [65-30](#), and the House vote was [265-142](#).

Because the initial votes in the House and Senate on the two different versions were so similar, Democrats in Congress may decide not to send this bill to the president. It is

unlikely votes to override a second expected presidential veto will differ from the first.

It is unclear what will happen next to resolve the conflict over the SCHIP bill. Senate negotiators have been working on a bill to attract the 15-20 additional votes needed in the House to override a veto. SCHIP supporters are holding firm on the \$35 billion funding level and the cigarette tax-revenue raiser. Although the Bush administration recently claimed to be open to more funding than the meager \$5 billion increase the president proposed in his budget, it has now [taken issue](#) with the cigarette tax provision. Until the conflict is resolved, the SCHIP program will likely be extended in the next extension of the CR, which is currently being designed to run through Dec. 14.

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