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In This Issue

Nonprofit Voter Protection Efforts Going Full Tilt

Nonprofit organizations have taken an active role in voter protection efforts this election season, leading the way with voter registration initiatives, fighting unlawful voter purges, protecting student voting rights, and fighting voter ID requirements, among other activities.

Many nonprofits are working to ensure that all eligible individuals who desire to register to vote are able to do so. The Nonprofit Voter Engagement Network has an array of resources on its website to assist nonprofits in various voter engagement activities, such as information on conducting voter registration drives, toolkits, voter guides, and voter links and hotlines.

The Lawyer's Committee for Civil Rights is operating an extensive voter protection program. As part of the program, the group has launched an election protection hotline, website, and legal field program. The hotline and website serve as a resource to answer voter questions, to assist voters in locating polling places, and to report any Election Day problems. The legal field program trains volunteer attorneys, law students, and paralegals to staff election protection hotlines and serve as mobile legal volunteers at polling places around the nation. The organization is also helping to recruit poll workers and monitoring efforts to disenfranchise

voters.

Voter purging has been a big issue this election cycle. There have been efforts across the nation to illegally purge voters from the voter rolls. The Brennan Center for Justice recently released a publication titled *Voter Purges* that gives a synopsis of voter purging issues around the nation and offers policy recommendations on how to address these issues. In one such effort, the United States Student Association Foundation, the American Civil Liberties Union Fund of Michigan, and the American Civil Liberties Union of Michigan filed suit on Sept. 17 against the Michigan Secretary of State, the Michigan Director of Elections, and the City Clerk for the City of Ypsilanti to prevent the state from implementing two voter removal programs. As a result of the suit, a federal judge ordered the state of Michigan to halt one of two methods used to purge voters and to restore 1,438 names to the voter rolls.

In Florida, the "No-Match, No-Vote" law requires that a person's drivers license number or Social Security number be verified before they are registered to vote. The Florida NAACP and various local groups filed suit to prevent the state from enforcing the law. The law was upheld and the state began enforcing it in September. Additionally, the Campaign Legal Center, along with other nonprofit organizations, is seeking to enter a case to prevent the state of Wisconsin from purging voter rolls.

Voter ID requirements have the potential to disenfranchise many eligible voters. Some states have instituted voter ID requirements to prevent voter fraud, even though numerous studies suggest that there is not a widespread voter fraud problem. According to the Brennan Center for Justice, up to 12 percent of eligible voters do not have a government-issued ID. "[T]he percentage is even higher for seniors, people of color, people with disabilities, low-income voters, and students." Several nonprofits, including the ACLU, the Brennan Center, AARP, and the NAACP Legal Defense Fund, filed amicus briefs in *Crawford v. Marion County Election Board*, a case challenging Indiana's voter ID law, which is the most restrictive voter ID law in the nation.

In Alabama, nonprofits are working to ensure that eligible ex-offenders are able to register to vote. Alabama law prohibits individuals convicted of felonies of "moral turpitude" from voting unless their rights are restored. According to the *Birmingham News*, the Alabama Attorney General has named approximately 70 crimes "that have by statute or appellate decision been defined as crimes of moral turpitude," but the state has been using a list of more than 400 crimes to disqualify individuals from voting. The NAACP Legal Defense Fund filed a lawsuit to allow Reverend Kenneth Glasgow to resume registering eligible voters who are incarcerated in Alabama prisons.

Nonprofits are also working to ensure that students are not disenfranchised. The Student Association for Voter Empowerment (SAVE), which was founded and is run by students, has been bringing attention to issues that affect student voters. The group held a press conference last month where political leaders affirmed their commitment to ensure that student voter rights are protected. Rock the Vote has been very instrumental in encouraging young people to vote and holding voter registration drives on college campuses. The Brennan Center for Justice

has produced a student voting guide. According to the Brennan Center, the guide "explains the basic residency, registration, identification, and absentee voting requirements for student voters in each of the 50 states and the D.C."

Judge Says Shuttered Charity Must Be Given Due Process

In the first decision of its kind, a federal judge issued a temporary restraining order barring the Department of the Treasury (Treasury) from designating KindHearts for Charitable Humanitarian Development (KindHearts), a U.S. charity, as a supporter of terrorism without affording the organization basic due process. Treasury shut down the group "pending investigation" in February 2006, but the investigation has never been concluded and the group's assets, including about $1 million, remain frozen.

The Treasury action against KindHearts is based on a provision of the Patriot Act that expanded economic embargo laws to allow all the sanctions used to seize and freeze assets of Specially Designated Global Terrorists (SDGT) when an investigation is pending. (See 50 U.S.C. 1702(a)(1)(B), 1705 and Executive Order 13224). There are no deadlines for the investigation to be completed.

On Feb. 19, 2006, Treasury froze KindHeart's bank accounts and seized all of its records, computers, and documents. Treasury did not provide formal notice with reasons for its actions, only stating generally that the assets "are blocked pending investigation" into whether the group is "controlled by, acting for or on behalf of, assisting in or providing financial or material support to, and/or otherwise being associated with Hamas." Treasury issued a press release announcing the action that provided some specific assertions that KindHearts refuted in a letter seeking reconsideration. For example, Treasury alleged that KindHearts gave more than $250,000 to the Sanabil Association for Relief and Development, which was designated as a terrorist organization in August 2003. However, according to the *Toledo Blade*, KindHearts board chair Dr. Hatem Elhady said the contract with Sanabil to provide aid in refugee camps occurred before Sanabil was designated.

On Oct. 9, KindHearts filed suit in the United States District Court for the Northern District of Ohio challenging the constitutionality of the process.

The complaint states that:

- The lack of substantive criteria for freezing assets pending investigation and for designation is unconstitutionally vague, violating KindHearts' First and Fifth Amendment rights.
- The asset freeze violated KindHearts' due process rights under the Fifth Amendment because the organization did not receive adequate notice of the basis of the freeze, did not have an opportunity for a hearing, and was not afforded a meaningful opportunity to challenge the freeze.
- There is no time limit on how long the freeze may last.

- KindHearts was not allowed to use its funds to pay for counsel or to access its own records to prepare a defense.
- Freezing KindHearts' assets and seizing files and computers is not authorized under the International Emergency Economic Powers Act (IEEPA), which is limited to sanctions against individuals and organizations of foreign countries.
- KindHearts will suffer irreparable damage to its reputation if it is designated as an SGDT, even if the designation is later lifted.

The temporary restraining order effectively maintains the *status quo* while KindHearts' constitutional challenge proceeds. The group is represented by the American Civil Liberties Union (ACLU) and several co-counsel.

According to the complaint, KindHearts was formed in 2002 to provide humanitarian aid, primarily in Palestine and Lebanon. It provided clean drinking water to schools, ran clinics, and sent disaster relief to victims of Hurricane Katrina and the earthquake in Pakistan. It had planned to open a hospital in Gaza in January 2007. On page 9 of the complaint, the group states, "Assistance was provided to the poor and needy without regard to political affiliation or belief. It identified recipients based on need alone, not ideology or association." These standards are consistent with the International Red Cross and Red Crescent Movement's Principles of Conduct in Disaster Response Programmes, but may be inconsistent with U.S. laws barring material support to terrorism, which bar all transactions, including humanitarian aid, with SDGTs. In areas where designated organizations control infrastructure and have popular support, it may be impossible to enforce a non-discrimination policy.

Pages 8-12 of the complaint detail extensive measures KindHearts took to comply with U.S. law, including adoption of Treasury's Anti-Terrorist Financing Guidelines. The Guidelines have been criticized by major nonprofit sector organizations, which have called for their withdrawal.

The complaint also describes KindHearts' post-shut down efforts to defend itself. Because it is illegal for any U.S. person to engage in a transaction with a group once it is designated and shut down, KindHearts' attorney had to get a license from Treasury granting permission to provide legal services. However, Treasury refused a request to allow legal fees to be paid from frozen funds until June 4. It limited the defense effort to two paid attorneys and imposed a ceiling on the number of hours to be paid. During this time, counsel wrote letters to Treasury seeking reconsideration of the asset seizure, the specific allegations against the group, and copies of KindHearts' files to assist in preparing a defense. After long delays, Treasury allowed limited access for counsel to view unclassified evidence, but the agency denied the attorneys security clearances to view the classified information the government had relied on.

On May 25, 2007, Treasury notified KindHearts' attorneys that it had "provisionally" decided to designate the group as a SDGT, but no further action has been taken. Since KindHearts has no right to a hearing where it can confront the evidence against it, and because there are no provisions for independent review of Treasury's decisions, the only remedy available was the

legal challenge.

In its brief, KindHearts pointed to court decisions affording rights to Guantanamo detainees that the charity currently does not have. For example, in *Parhat v. Gates*, the United States Court of Appeals for the District of Columbia held that the government must provide the defense with the sources of information used to support a designation as an "enemy combatant," and that defense counsel can be given security clearances or other means to "permit an appropriate assessment of the information's reliability while protecting the anonymity of a highly sensitive source." In *Bismullah v. Gates*, the same court held that attorneys for Guantanamo detainees must be allowed to review classified evidence against their clients.

EPA to Reduce Airborne Lead, but OMB Bedevils the Details

The Bush administration recently tightened the national public health standard for airborne lead, drawing rare praise from clean air advocates. However, shortcomings in the network for monitoring lead pollution persist, and a new requirement to increase the number of pollution detectors was watered down by the White House Office of Management and Budget (OMB).

The U.S. Environmental Protection Agency (EPA) announced the new standard Oct. 16. EPA tightened the exposure level to 0.15 μg/m^3 (micrograms per cubic meter), from 1.5 μg/m^3. The adjustment marked the first time EPA had revised the standard since it was first set in 1978.

Lead is a potent neurotoxin and does not easily break down in the environment. Children are particularly susceptible to the effects of lead. According to EPA, lead exposure can affect brain development and "can lead to IQ loss, poor academic achievement, permanent learning disabilities, and delinquent behavior." EPA expects improvements in lifetime IQ levels as a result of reducing airborne lead pollution.

Environmentalists and public health advocates who have often found fault with President Bush's clean air regulations complemented the decision to finalize a stricter rule on lead. The Natural Resources Defense Council called it a "big step toward protecting children."

Critics of the Bush administration's record on science-based policy were also pleased. In setting the standard, EPA Administrator Stephen Johnson took the advice of his scientific advisors who had recommended a standard below 0.20 μg/m^3.

In past rulemakings, Johnson has ignored the advice of EPA's Clean Air Scientific Advisory Committee (CASAC), a panel of independent scientists, researchers, and medical professionals who specialize in the effects of air pollution on human health. In March, for example, Johnson set a new standard for ozone, or smog, higher than CASAC had recommended.

The decision on ozone came after industry representatives and White House officials lobbied EPA to leave the standard unchanged. Many feared the lead standard would follow a similar

course. Lobbyists from the battery recycling industry, which will bear some of the costs of complying with the new standard, visited with White House officials to plead their case. The lobbyists presented the White House and EPA with material attacking EPA's scientific justification for pursuing a stricter standard.

Despite the praise for resisting industry pressure and setting a strong new lead standard, some dispute EPA's method for calculating the level of lead in the air. EPA will continue to average air concentrations over a calendar quarter. CASAC recommended EPA average concentrations every month.

Strengthening the so-called averaging time to one month would effectively establish a standard more protective of public health. A one-month averaging time would better account for big spikes in emissions. Conversely, under the three-month method, two months of low emissions could attenuate emissions spikes in the third month.

Frank O'Donnell of Clean Air Watch told *The Washington Post*, "A three-month average would permit smelters and other lead polluters to belch high levels of lead periodically and still be considered legal."

EPA's advisors say switching to a one-month averaging time would be more protective of those populations most sensitive to lead's effects, such as those who can be hurt by higher, albeit shorter, exposures.

New monitoring requirement undercut by OMB

To address concerns that EPA's system for monitoring airborne lead pollution is inadequate, the agency announced an expansion of its monitoring network. However, officials at OMB watered down a new requirement, which could allow more than 100 polluting facilities to go unmonitored.

Critics say the Bush administration has allowed the national system for detecting airborne lead to founder. Currently, state and local authorities operate 133 monitors nationwide, according to an EPA spokesperson. In 1980, 800 monitors were in operation.

EPA used its revision to the air quality standard for lead to set criteria for the placement or relocation of new monitors. EPA estimates the new criteria will require an additional 236 monitors.

One criterion that triggers the placement of monitors is the amount of lead pollution emitted by industrial facilities. The new regulation requires state and local officials to set up monitors near sources emitting one ton or more of lead pollution per year. In a public proposal EPA unveiled in May, the agency signaled its intent to set the threshold between 200 kg and 600 kg (about 0.22 tons and 0.66 tons). An OMB Watch investigation of EPA's rulemaking docket discovered documents that indicate officials from OMB pushed for the weaker threshold

requirement.

A draft of the final rule attached to an Oct. 13 e-mail from EPA to OMB contains language stating the emissions threshold would be set at 0.5 tons per year. The 0.5-ton threshold would have been consistent with EPA's May proposal.

But another e-mail from EPA to OMB sent late on Oct. 14 — less than 48 hours before the final rule was publicly announced — stated, "[I]f OMB wants a 1 ton threshold, it would have to provide a rationale for that point of view." The e-mail requested "a technical rationale, and not policy views." The final rule provides no such rationale.

The e-mail indicates EPA Deputy Administrator Marcus Peacock spoke to officials at OMB, possibly Susan Dudley, the head of OMB's Office of Information and Regulatory Affairs (OIRA). OIRA reviews and sometimes edits drafts of agency regulations.

Dudley and Peacock previously scuffled over the aforementioned ozone rulemaking in which EPA and White House officials disagreed over whether to set a separate standard to protect plant life. Dudley won that policy battle after President Bush was brought in to arbitrate.

The change from a 0.5-ton threshold to a one-ton threshold could have real consequences. EPA estimates the one-ton threshold will apply to 135 facilities. However, the 0.5-ton threshold would have applied to at least 259 facilities. The change means state and local officials will not be required to place new lead pollution monitors near at least 124 facilities that emit lead.

FDA to Open Regulatory Offices in Foreign Countries

On Oct. 16, Department of Health and Human Services (HHS) Secretary Michael Leavitt announced that the U.S. Food and Drug Administration (FDA) will send personnel overseas to staff offices to help ensure the safety of imported food and drugs. The plan calls for staff to be assigned to offices in China, India, Europe, and Latin America. Many assignments will begin before the end of 2008.

In a press release, FDA Commissioner Andrew C. von Eschenbach said, "The globalization of the food supply and medical product manufacturing has demanded that we do things differently. Through our Beyond our Borders initiative, we won't have to send our experts to another country to work with foreign governments and regulated industry to improve our oversight — we'll have staff living there and working on the ground 365 days a year."

The change comes as a result of problems with mostly uninspected products increasingly coming from firms that have shifted their manufacturing and production overseas. For example, in 2007, the problems included melamine contamination of pet foods that sickened and killed pets, toothpaste contaminated with antifreeze ingredients, and an FDA ban on five different types of seafood that had been contaminated with microbial agents not approved for use in the U.S. More recently, melamine has been discovered in Chinese milk-based products

such as infant formula and various candies sold both here and abroad.

There have also been concerns about drugs and medical devices commonly used in the U.S. For instance, FDA said many allergic reactions and even some deaths were attributed to ingredients in Heparin, a popular blood thinning drug. The agency also barred from import more than 30 generic drugs made in India because of poor quality control at the factories, according to an Oct. 16 *Washington Post* story about the HHS announcement.

HHS announced that it will open an office in Beijing before the end of 2008, and two other offices will open in other Chinese cities in 2009. A total of eight U.S. officials will operate in China. Ten employees will be posted in India once arrangements are negotiated with Indian officials. Other offices will open in nine Latin American countries, in Europe, and in the Middle East. According to an Oct. 17 BNA article (subscription), there will be about 43 employees total assigned to the foreign offices. The article notes it will cost $30 million to establish the offices by the end of 2009 and an estimated $20 million annually to maintain the offices.

The FDA staff will work with government officials and the companies producing the goods in an effort to improve quality assurance. They will inspect facilities, provide technical assistance, and help create third-party certification programs, according to the announcement. The certification programs require HHS to accredit independent organizations that would inspect manufacturing and production facilities and declare that the products meet U.S. import standards. Once their facilities are certified, the firms' products would gain expedited entry at American ports. Companies that do not meet certification would continue to work with FDA staff and government officials to improve the safety of their products.

The HHS plan grew out of an interagency working group, chaired by Leavitt, established by President Bush in 2007 to address the increasing number of safety scares consumers faced. The report issued by the working group in November 2007 largely calls for a series of incentive programs to get businesses to voluntarily comply with standards that may be established either by industry groups or the regulating agencies and then used by third-party inspectors. Incentive programs can be effective if based on the threat of direct regulatory action, but they are less effective when used with voluntary standards. (See OMB Watch's analysis of the working group report here)

According to the *Post* article, Leavitt and von Eschenbach admitted that new staff would not be able to meet the growing need for inspections of facilities in growing economies around the world. The two "hoped manufacturers would voluntarily pay for inspections by independent parties — including foreign governments and companies — to verify their plants meet U.S. standards," according to the article. Expedited access to American consumers would provide the incentive for firms to seek out independent inspections. The FDA does not, however, have the authority to accredit these independent inspection organizations. It would have to seek such authority from Congress.

A variety of legislative alternatives have been proposed and/or passed to address FDA's inspection capabilities, as well as other problems the agency has in meeting its food and drug

safety responsibilities. For example, on Sept. 20, 2007, Rep. John Dingell☼ (D-MI), chair of the House Energy and Commerce Committee, introduced H.R. 3610, which calls for mandatory user fees on food and drugs imported into the U.S. FDA would use the money for increased inspections and testing of imports. It also contains enhanced civil penalties for violations and other provisions expanding FDA's responsibilities. In the meantime, Congress reauthorized the Prescription Drug User Fee Act (PDUFA), which increased user fees on drug companies to pay for safety and approval programs. User fees on food imports have not yet been authorized.

SEC Wants Transparency in Wall Street Credit Gambling

Securities and Exchange Commission (SEC) Chairman Christopher Cox recently emphasized the urgent need for transparency of currently unregulated credit transactions, called credit default swaps (CDS), that contributed to the ongoing economic crisis. Cox is using the SEC's program to modernize its electronic disclosure system as a platform to call for oversight while the agency investigates alleged fraudulent transactions. Meanwhile, two other federal agencies are vying for regulatory oversight of CDS and industry is lobbying to minimize the impact. At issue will be whether transparency is accompanied with any other forms of accountability.

The SEC project, the 21st Century Disclosure Initiative, launched in June, seeks to change the way companies report financial information to the SEC and the way the commission distributes information to investors. The SEC plans to replace the current system — the Electronic Data Gathering, Analysis and Retrieval (EDGAR) — with one that utilizes interactive data structures. EDGAR relies on corporate reporting through paper government forms, whereas the new approach will utilize electronic submission and interactive tagging in a system called Interactive Data Electronic Applications (IDEA). The SEC proposed that companies be required to use the new submission method as early as 2009.

In an Oct. 8 speech at a small conference on modernizing the SEC's disclosure system, Cox made a strong case for transparency, contending that lack of transparency of CDS contributed to our current economic crisis. CDS were originally a form of insurance against bond defaults but have grown into a wildly popular vehicle for speculation. Because CDS are totally unregulated, no one knows how large the market is, although some have speculated that it could be around $55 trillion. The market for these transactions, according to Cox, has drawn the world's major financial organizations into "complex interconnections [that] pose risk to the financial system precisely because of the complete lack of information about who is exposed to whom." To address this transparency problem, Cox approved orders in September to require hedge funds, broker-dealers, and institutional investors to file statements under oath concerning trading of securities including credit default swaps. The statements were due Oct. 6; information about compliance or the content of submitted statements is not yet available.

Credit Default Swaps

CDS are contracts that guarantee to cover losses on certain securities in case of a default, thus

acting as a form of insurance. Swaps can occur when banks or hedge funds sell often risky investments such as mortgage-backed securities, municipal bonds, or corporate debt to another financial institution, often anonymously. Ideally, the institution purchasing CDS rests easy, paying premiums to cover itself in case of a default. However, since the Federal Reserve chooses to categorize CDS as "credit derivatives" rather than insurance, the market for the swaps goes entirely unregulated. Over the past number of years, CDS have become more a form of speculation on the health of the companies issuing the bond rather than insurance. The swaps are often reissued to hedge against a default. The end result is the potential $55 trillion in swaps, which is based on roughly $5 trillion in bonds. This can be dangerous for parties that purchase or sell them. For example, the American Insurance Group (AIG) had issued $440 billion in swaps but was unable to meet the promises to cover the defaults on debt. This led to the federal government loaning $123 billion to shore up AIG.

Being unregulated, there are no requirements on CDS sellers to maintain any specific amounts to cover possible defaults. The lack of transparency adds to the problem by preventing purchasers from knowing who the CDS seller is or if they possess the resources to cover the losses.

The CDS market was deregulated by congressional legislation less than 10 years ago with the passage of the Commodity Futures Modernization Act of 2000 (H.R. 5660 and S. 3283). According to Cox, the rate of these transactions has doubled in the past two years, creating increasingly dangerous connections of risky transactions between the world's major financial institutions. In fact, the contracts have increased 86 times since 2000. The SEC fears that CDS, as a tool for speculation, could manipulate stock prices of companies.

That is why the SEC has called for CDS reform as well as transparency. Cox defended CDS in part by stating they "play an important role in the smooth functioning of capital markets by allowing a broad range of institutional investors to manage the credit risks to which they are exposed." As early as September, Cox proposed that Congress create new legislation that would monitor CDS transactions for speculation, grant the SEC rulemaking authority to further prevent manipulation of the market, and establish an official platform for the market so institutions know the parties trading. By requiring reports on these contracts, Congress and the SEC would allow investors to be able to properly assess the risks being taken on by financial institutions and thus better understand their stability. Cox has argued that in the current crisis, such transparency would help investors "make informed decisions about where to put their resources," thus restoring confidence so that money and credit will once again be accessible.

The relationship of CDS to the economic crisis has attracted sharp-eyed attention in congressional investigations and the state of New York. During an Oct. 7 hearing, the House Committee on Oversight and Government Reform lambasted CDS as a key component in the near-collapse of AIG. Rep. John Sarbanes☼ (D-MD) equated AIG's entry into CDS trading to "opening a casino." In New York, Gov. David Paterson (D) announced that the state plans to begin regulating CDS. Such state action, however, would reportedly only cover one-fifth of the entire CDS market. Additionally, the Federal Reserve Bank of New York is proceeding with

new transparency requirements for those activities under its jurisdiction. There is also discussion about the Commodities Futures Trading Commission getting involved in regulatory oversight.

The battle over transparency and regulation is heating up in Congress as well. The business industry is lobbying hard to minimize regulation of these private-sector contracts. Action is expected soon.

Mixed Grades for Government on Free Speech and Science

A recent report card grading 15 federal agencies found inconsistent policies for releasing scientific information to the public. The analysis also showed that several agencies stifle their scientists' communication, causing scientists to fear retaliation for speaking their minds. Although some agencies have satisfactory policies or recently improved media policies, it appears much still needs to be done to ensure scientific information gets to the public.

On Oct. 17, the nonprofit scientific research and advocacy group Union of Concerned Scientists (UCS) released its report grading fifteen federal regulatory and scientific agencies on their policies controlling communication between staff scientists and the news media and the public. The report examined agencies' official policies governing such communication, as well as the implementation of the policies. The report card assigned each agency two scores: a letter grade (A through F or incomplete) for its media policy and a ranking (unsatisfactory to outstanding) for its practices.

Numerous federal agencies did poorly on both policy and practice, although there were a few exceptions; inconsistency across the government was the key finding of the report. The Occupational Safety and Health Administration (OSHA) received the only failing grade of the fifteen agencies for its media policy. At OSHA, most agency scientists told UCS they could not speak freely or feared retaliation for stating their personal scientific opinions. The U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the Consumer Product Safety Commission, and the Bureau of Land Management all received a grade of D for their official media policies. These agencies did just as poorly in practice, receiving ratings of "unsatisfactory" or "needs improvement" for the implementation of their media policies.

A few agencies, however, did well in the media communication rankings. The Centers for Disease Control and Prevention (CDC) received the only A grade for its policy governing communication between its scientists and the media. However, although the official policy received an A, the implementation of the policy was deemed to need improvement. One CDC scientist complained that in practice, the agency's chief information officers "have power to kill publications if they don't like the message by not clearing the manuscript, and sometimes do, even when it is good science."

Other high-ranking policies were identified at the Nuclear Regulatory Commission (NRC), which earned a B+, and at the National Institute of Standards and Technology (NIST), the

National Oceanic and Atmospheric Administration (NOAA), the National Aeronautics and Space Administration (NASA), and the Census Bureau, which each received a grade of B. The respectable score earned by NASA represents a major improvement to an agency that had received much criticism in the past for its science communications policy.

The report concludes by urging the next administration to require all federal agencies to adopt policies that ensure free and open communications between scientists, the media, policymakers, and the public. New guidelines established by the president's Office of Science and Technology Policy provide a good starting point for improving the openness policies of other agencies. These guidelines, listed in a memorandum released in May, encourage clear, well publicized policies for making scientific data available to the public; affirm the right of scientists to discuss their research publicly; and promote policies to resolve disputes.

Two tenets of scientific communication should underlay an agency's media policies, according to the report's authors. First, government scientists should be allowed to publicly express their personal views, provided they express a disclaimer that they are not representing the views of the agency. Second, scientists should be allowed to review, approve, and comment on any government document that draws on their research or scientific views.

UCS tracked down each agency's official media policy, either on the agency's website or through a Freedom of Information Act request. If no policy was found, the agency received a grade of "incomplete." Policies were evaluated on six broad categories that included dealing with promotion of openness, handling disputes, and protecting scientific free speech. Each agency's practice evaluation was based on the results of more than 6,000 questionnaires UCS sent to government scientists, of which 739 surveys were completed. The questions covered issues related to protections of scientific free speech, openness, the handling of disputes, safeguards against abuse, and more.

The report card comes after several years of controversy surrounding the White House's science communications policies, especially regarding climate change. The administration has been repeatedly accused of politicizing science. The policies controlling communications between government scientists and the public have been criticized extensively in recent years by watchdog groups and by the Government Accountability Office. Numerous reports of editing and censoring scientific information for partisan political purposes have brought the issue to the forefront.

The open exchange of scientific data among scientists and the public is vital to creating sound public policies and implementing them effectively. The report's authors describe a strong democracy as dependent on "well-informed citizens who have access to comprehensive and reliable information about their government's activities."

Agency	Policy Grade	Practice Grade
Bureau of Land Management	D	Needs Improvement
Census Bureau	B	Needs Improvement
Centers for Disease Control and Prevention	A	Needs Improvement
Consumer Product Safety Commission	D	Unsatisfactory
Environmental Protection Agency	D	Unsatisfactory
Fish and Wildlife Service	D	Unsatisfactory
Food and Drug Administration	Incomplete	Needs Improvement
NASA	B	Satisfactory
National Institutes of Health	C	Needs Improvement
National Institute of Standards and Technology	B	Satisfactory
National Oceanic and Atmospheric Administration	B	Satisfactory
National Science Foundation	Incomplete	Outstanding
Nuclear Regulatory Commission	B+	Satisfactory
Occupational Safety and Health Administration	F	Unsatisfactory
U.S. Geological Survey	C	Satisfactory

Project Makes Transparency Recommendations for Next President

More than 100 groups and individuals from across the country have been working collaboratively to develop recommendations for the next president on how best to improve federal government transparency. The effort, the 21st Century Right to Know project, was organized by OMB Watch, and it involves organizations and individuals from across the political spectrum. A draft set of recommendations is now available for review and endorsement.

Acknowledging the growing secrecy in government and anticipating opportunities a new president and Congress could bring to reversing the secrecy trend, OMB Watch launched the 21st Century Right to Know Project over a year ago to develop recommendations on how to improve government openness. Working hand-in-hand with the steering committee of the OpenTheGovernment.org coalition and with other right-to-know leaders, the project set an ambitious agenda to change the underlying policies, priorities, and practices regarding public access for the executive branch of government.

The project began in July 2007 with a two-day event involving conservatives, libertarians, and progressives representing journalism, good government groups, professional associations, academia, and others. From its beginning, the project proceeded on a "transpartisan" basis.

OMB Watch interviewed more than 100 people to identify past and new ideas for reform. There was also a string of listening sessions around the country, including meetings in Jacksonville, FL; Phoenix, AZ; Seattle, WA; and Minneapolis, MN. Data from these efforts were provided to three panels of experts, which were tasked with drafting initial recommendations in three main areas: security and secrecy, usability of information, and policies and mechanisms to support government transparency. In addition to the three expert panels, recommendations were developed for the first 100 days of the new president and for a long-term vision to strengthen government openness. The draft recommendations were the basis for a weekend retreat in September, involving nearly 70 people from across the country. During the retreat, each of the more than 60 recommendations was reviewed; some were revised, some added. Based on that weekend, a new report was developed and participants called for an open process to review the recommendations.

The latest draft report of the 21st Century Right to Know project is now available for review and comment through a.nnotate.com, which allows readers to place virtual Post-It Notes on the document. Alternatively, readers can download a copy and e-mail reactions to smoulton@ombwatch.org. Given the final report must be ready to give to the new president's transition team the day after the election, comments must be provided no later than Oct. 27.

The draft report currently consists of five chapters:

- Chapter A — Introduction: describes a brief history of government openness tracing back to the Continental Congress and the current status of government transparency, which has seen many threats but also some improvements.
- Chapter B — First 100 Days: depicts the need for major reforms in light of the current state of excessive secrecy and restricted public access and provides five recommendations for the president to immediately undertake.
- Chapter C — National Security and Secrecy: provides specific recommendations to addresses the increase in government secrecy that has occurred under the excuse of national and homeland security concerns.
- Chapter D — Usability of Government Information: focuses on recommendations for how interactive technologies can make information more easily accessed and used by the public, including protecting the integrity of information and use of best formats and tools.
- Chapter E — Creating a Government Environment for Transparency: addresses recommendations for incentives and other shifts in government policies and mechanisms to encourage transparency.

Over the past several years, the release and disclosure of government information, whether it be health, safety, environmental, financial, or national security information, has taken a backseat to misguided homeland security policies and efforts to protect special interests. With a new president and Congress, we expect there will be increased awareness of the need for greater disclosure of federal government practices and information. This project seeks to capitalize on that opportunity and create a unified message to the next president that great improvements in government transparency are desperately needed to help restore the public's

trust in government.

Commentary: Despite Record Deficits, Stimulus Package Warranted

Although enactment of an economic stimulus package could push the federal budget deficit above $1 trillion, political consensus on its necessity is emerging. Political factions are split on the issues of how large and what form a stimulus package should take. Economists, however, indicate that targeted spending can be a powerful weapon to address recession and the effects of economic hardship on American families, even if it increases the deficit. Now is exactly the time to be enacting such fiscal policy.

As the government wrestles with the true costs of the financial bailout, some commentators are saying this country cannot afford another economic stimulus package to help Americans hard hit by the economic downturn. They say that a second stimulus package could push the deficit to around $1 trillion in Fiscal Year 2009. However, targeted spending can be a powerful weapon to address recession and the effects of economic hardship on American families, even if it increases the deficit.

The growing budget deficit and commensurate mounting national debt are indeed causes for concern, even when the economy is faltering, but they should take a backseat to preventing economic disaster and blunting the effects of the looming recession on our nation's families. Since the beginning of 2008, 760,000 net jobs have been lost, 1.8 million workers have become unemployed, nearly a million more workers claim unemployment benefits, and food prices have sharply increased as real wages continue their downward slide. The credit crisis gripping Wall Street, while related to the overall deterioration of the economy, is not the root cause of the slide, and the $700 billion financial rescue package will do little to prod economic expansion. The data points are bleak and show no sign of abating, prompting ideological consensus around the need to pursue expansionary (i.e., deficit-increasing) fiscal policy.

Debate on a second fiscal stimulus package is no longer over whether or not there should be one, but rather over how big it should be and what form should it take. On Oct. 20, Federal Reserve Chairman Ben Bernanke testified before the House Budget Committee that "with the economy likely to be weak for several quarters, and with some risk of a protracted slowdown, consideration of a fiscal package by the Congress at this juncture seems appropriate." Within hours, White House Press Secretary Dana Perino said that the administration will "remain open to the idea" but qualified Bush's support by saying "we'll just have to see...what sort of package [Congress] want[s] to draft into legislation...and see if it actually would stimulate the economy."

Bush and Bernanke appear to be in agreement with the sentiments expressed in an enlightening discussion on the *National Journal* website, where a cadre of economic experts, from the arch-conservative American Enterprise Institute to the center-right Concord Coalition to the left-leaning Economic Policy Institute, have responded to the question, "Is

there room for fiscal stimulus?" While contention swirls around what is and is not most effective, a consensus has formed around recognizing that a deficit-increasing economic stimulus package is warranted.

Desmond Lachman, Resident Fellow at the American Enterprise Institute, succinctly states the case for fiscal stimulus:

> With monetary policy rendered largely impotent by the present financial market travails, the case for early, substantive, and well-targeted fiscal policy stimulus would appear to be overwhelming. The argument that this might compromise the longer run US budget position overlooks how very much worse the US budget position would be in the event of an even deeper recession than that already in train.

The ideological cohesion around the need for a government injection of money into the economy should serve to ease passage of a second round of fiscal stimulus, but given the White House's stated opposition to aid to "individuals who may need support during an economic downturn," details on what may be enacted will certainly remain in flux.

In a meeting convened by House Speaker Nancy Pelosi (D-CA) on Oct. 13, a group of economists, including Nobel laureate Joseph Stiglitz and former Treasury Secretary Lawrence Summers, indicated that a spending package should total two to three percent of GDP, or about $300 billion. Pelosi, however, said last week that Democratic legislators were looking at putting together a $150 billion (or about one percent of GDP) bill.

Details of the contents of such a bill are murky, as House members are currently at the drawing board, but a final economic stimulus package will likely contain elements from a previous version of a stimulus bill (H.R. 7110), which was passed by the House 263-158 in September. That bill included an unemployment insurance extension and increased funding for state aid, Food Stamps, and infrastructure. House Minority Whip Roy Blunt (R-MO), however, rejected "a huge public works plan" or "bailing out states who spent a lot more money than they should have." Republicans are also maintaining their fidelity to tax cuts and drilling for oil and gas.

In a letter to Pelosi on Oct. 13, House Minority Leader John Boehner (R-OH) enumerated House Republican stimulus demands. The set of proposals set forth includes:

- A package of tax cuts for energy production
- Cutting corporate income taxes
- Suspension of the capital gains tax
- A federal government guarantee of lending among banks
- Suspending a law that forces retirees to begin withdrawals from Individual Retirement Accounts at the age of 70½

In the Senate, Majority Leader Harry Reid (D-NV) is taking a different approach. He would use the tax code to "encourage businesses to hire more Americans here at home" while "extending

tax-free unemployment benefits for those looking for work." In addition to increasing aid to states and for home energy bills, Reid's plan would also push the federal government to renegotiate mortgage terms.

A Congressional Research Service report summing up the opinions of economists on economic stimulus states that "that spending proposals are somewhat more stimulative than tax cuts since part of a tax cut will be saved by the recipients. The most important determinant of the effect on the economy is its size." The report also indicates that "[t]he primary way to achieve the most bang for the buck is by choosing policies that result in spending, not saving ... many economists have reasoned that higher income recipients would save more than lower income recipients since U.S. saving is highly correlated with income." Additionally, the report presents a set of revenue and spending proposals and their likely effect on economic growth. The estimates are derived from *Moody's Economy.com* economic models and predict that corporate income and capital gains tax cuts return relatively little in the way of stimulus, while spending provisions provide the most.

Policy Proposal	One-year change in real GDP for a given policy change per dollar
Tax Provisions	
Non-refundable rebate	1.02
Refundable rebate	1.26
Payroll tax holiday	1.29
Across the board tax cut	1.03
Accelerated depreciation	0.27
Extend alternative minimum patch	0.48
Make income tax cuts expiring in 2010 permanent	0.29
Make expiring dividend and capital gains tax cuts permanent	0.37
Reduce corporate tax rates	0.30
Spending Provisions	
Extend unemployment compensation benefits	1.64
Temporary increase in food stamps	1.73
Revenue transfers to state governments	1.36
Increase infrastructure spending	1.59

Source: Mark Zandi, Moody's Economy.com in CRS Report RL 34349

Whatever specific elements are included, the package should provide temporary relief targeted at those who need it most and be enacted as soon as reasonable consideration will allow. Given that the FY 2008 budget deficit was the largest nominal-dollar deficit in history, particular attention should be paid to targeting; that is, Congress should seek to get the most "bang for the buck." By appropriately directing spending at the unemployed and the underemployed,

Congress can not only maximize the amount of economic aid provided by a stimulus package, but it can help the millions of families that need it most. And while adding to the national debt presents challenges to policymakers in the years to come, they must prioritize the needs of the nation by investing in its families today.

The concern about the size of the deficit will be a central issue for the next administration. Certainly, the next president should undertake every possible effort to reduce unnecessary spending (aimed heavily at military spending) and study options for reining in skyrocketing health care costs. Even though tax increases are unpopular, the next president should begin efforts to increase revenue. In the meantime, the next president should not be afraid to propose bold spending initiatives that will result in greater revenue. For example, a 21st century version of the Works Projects Administration that puts rebuilding our nation's infrastructure as a top priority would be wise deficit spending. If such initiatives generated public-private sector green jobs and critical local, state, and federal revenues, the entire nation would benefit tremendously.

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