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The Watcher
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IN THIS ISSUE

Letter from Gary Bass: OMB Watch Launches FedSpending.org to Shed Light on Government Spending

Dear OMB Watcher:

On Oct. 10, OMB Watch will open a window through which any American can see just how our federal government spends. With generous support from the Sunlight Foundation, we have created a new searchable website, FedSpending.org, that will let the public see who is getting federal contracts and other financial assistance, and how much is being spent on government programs and in specific states and congressional districts. FedSpending.org is unprecedented - and long overdue.

At OMB Watch, we've always believed that transparency and disclosure, in regard to

both government information and government decision-making, are essential to a functional democracy. An engaged and informed citizenry is the most important ingredient of a healthy democracy. For citizens to participate in the political and policy process, they need accurate and timely information about the government they are asked to judge. Elected officials, political appointees, and others who are operating the levers of power also need to know that their actions and decisions are tracked and evaluated. Such a record of accountability can create greater efficiency and effectiveness in our government's operations as it pursues our national priorities.

We believe FedSpending.org, by helping shed light on federal spending, will also contribute to a more vibrant democracy. You will be able to access information about federal contracts, grants, insurance, loans, and direct payments. You will be able to search by recipient name or by congressional district, for example. You will be able to obtain information about the size of specific contracts and grants, when they started, and where the service they provide was to be performed. You will be able to see whether or not a contract was competitively awarded and which contractors get the largest share of our nation's contract dollars. And this is just the tip of iceberg.

Because the data is so easy to access and because of its sheer volume and breadth, this database will be an invaluable resource to anyone interested in knowing how the federal government allocates funds and to whom those funds are awarded. It is a powerful tool for journalists and nonprofit leaders, for students and community groups, for conservatives and liberals and everyone in between.

In fact, the service that FedSpending.org provides is so important that Congress has passed, with overwhelming bipartisan support, a bill that will create a similar database to be administered by the federal government. And today President Bush signed that bill, the Federal Funding Accountability and Transparency Act (S. 2590), into law. The law mandates that the Office of Management and Budget (OMB) create and maintain a searchable database, not unlike FedSpending.org. The OMB-managed database will not be available, however, until Jan. 1, 2008. FedSpending.org, on the other hand, will be online in about two weeks and, we hope, will serve as a baseline for OMB's version.

We invite you to visit FedSpending.org on Oct. 10 and thereafter to explore our newest effort to expand government transparency and strengthen accountability. We rushed to get this site online before the upcoming national elections because we believe citizens have the right to take stock of their representatives' spending priorities before casting their vote.

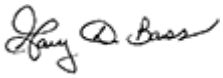
FedSpending.org is a work in progress. Visit the site, look around, and let us know how to improve it. There is much to be improved upon, we know. Some of our challenges have been the result of our tight timetable and others come from limitations in the data. Our hope is, with increased public use of the data, our government will feel a sense of urgency to improve the quality of its information on spending.

Nonetheless, we are committed to refining and improving this important tool. For example, in 2007 we will explore linking this data with other information about the role of money in politics. We also plan to add an interactive map that displays where federal

funding goes overlaid with U.S Census data to help to further put spending in perspective.

When you or I buy something at the store, we get a receipt. FedSpending.org is the first time you and I will get a receipt on government spending. Let's all take a look at that receipt and see just what kind of deal we're getting.

Yours truly,



Gary D. Bass
Executive Director

Budget Failures: Cutting to the Core

Republicans in Congress, in order to avoid a backlash from core supporters this November, are on a path to make harmful budget cuts under the cover of a "continuing resolution" and a post-election "lame-duck" session. Only two of 12 appropriations bills - the Department of Homeland Security and Department of Defense spending bills - are even close to passage, and both should receive hefty allotments that will crowd out spending in the remaining appropriations bills.

In a joint-chamber conference last week, legislators hammered out a compromise between the House and Senate versions of the Defense appropriations bill. The $447.4 billion spending package is $5 billion above the Senate's version - $5 billion that, under this year's tight budget cap will have to be made up for in cuts in other areas.

Programs in the Labor-Health and Human Services (Labor-HHS) appropriations bill will likely feel the brunt of these cutbacks. Neither the House nor the Senate has passed a Labor-HHS spending bill, but a version passed by the House Appropriations Committee gives us some idea what to expect. It would eliminate funding for 56 individual programs, including important assistance to students, children, and community organizations.

Earlier this year, Congress vowed against these cuts when both the Senate and the House added billions to the allotment for Labor-HHS programs in the Congressional Budget Resolution. Moreover, these cuts could have been avoided altogether had Congress waited for a supplemental appropriations bill to provide the extra $5 billion in defense funding. A supplemental bill would not have required being offset by slashing other program budgets.

Avoiding making hard decisions about budget priorities by using supplemental appropriations bills is not a particularly responsible budgeting practice, but neither is forcing Congress to vote on program cuts after an election in a lame-duck session. None of the remaining 10 appropriations bills will be passed before the election, and this failure will make all-but-inevitable budget cuts go largely unseen by the voting public on

election day. The end result is Congress will make unpopular cuts to important programs by removing the opportunity for the public to hold them accountable.

What makes this deplorable situation even worse is that it could easily have been avoided. Congress could have spent more days actually working this year. The Senate leadership could also have made appropriations bills a legislative priority. Instead, GOP leaders chose to focus what little time they had on polarizing, election-year legislation to score points with the GOP base (e.g. flag burning and anti-gay marriage amendments) while the core work of Congress went unfinished.

Meanwhile, the start of the new fiscal year is only *five* days away, and without a stop-gap funding measure, most federal programs will run out of money on Oct. 1. To avoid a shutdown, Congress must then pass a continuing resolution (CR) before it adjourns. The CR will fund federal programs until Congress can finish its appropriations work - most likely in late November.

The level at which this CR would fund programs is still up for debate. One proposal would fund all programs at the lowest of three levels: either the FY 07 funding level passed by the House or that passed by the Senate, or the FY06 (current) funding level. Any of those options could produce short-term cuts for important domestic programs. A similar CR substantially cut programs last year. Congress could also include an across-the-board cut to all programs covered under the CR as they did last year.

Congress has fulfilled few of its fundamental fiscal obligations this session. It has chosen instead to wait until it is politically convenient to do what it otherwise could not -- slash investments and resources many Americans count on.

Another Estate Tax Vote Unlikely During This Congress

With Congress now in its final week before adjourning for the midterm elections, the death knell may finally be sounding for the "trifecta" package (H.R. 5970), a bill lumping together popular tax credit extensions, a permanent reduction in the estate tax, and an increase in the minimum wage.

The trifecta passed the House in late July, but it failed in the Senate, falling three votes short of the 60 necessary to end debate, entirely on account of the estate tax provision.

Two weeks ago, Senate Majority Leader Bill Frist (R-TN) asked four of his colleagues -- Finance Committee Chair Charles Grassley (R-IA), Budget Committee Chair Judd Gregg (R-NH), and Sens. Jon Kyl (R-AZ) and Trent Lott (R-MS) to find ways to sweeten the package for Democrats and move the proposal forward.

But the group came up with no such recommendations, and all acknowledge that the trifecta package is dead, at least until after Congress reconvenes on Nov. 14 in a post-election lame-duck session.

Lott, for his part, floated the idea of adding language opening up the Outer Continental Shelf to oil and natural gas development. The idea was that this provision would make it hard for Sen. Mary Landrieu (D-LA), who voted against the trifecta, to oppose the package a second time. But this idea did not take and, in any case, would still have left the measure two votes short.

Similar gambits were tried before the Senate's August vote -- such as tax breaks for the lumber industry aimed at Sens. Maria Cantwell (D-WA) and Patty Murray (D-WA) -- but in the face of these and subsequent efforts, the Democrats remained remarkably united in their opposition to repeal of or significance cuts to the estate tax

Over the past month, there has been a rising chorus, led by Grassley and Senate Finance Committee Ranking Member Max Baucus (D-MT) to sever from the bill the popular tax extenders -- including such elemental tax breaks as the research and development tax credit, and the deductions for college tuition and state sales taxes -- and allow a stand-alone vote on the full extenders package.

Grassley has been disappointed twice this year, when Frist removed the extenders first from the $70 billion tax reconciliation measure (PL 109-222) passed in May and then from the pension overhaul bill (PL 109-280) passed in July, after having been promised by Frist that they would be included in these measures.

And in the last two weeks, Frist batted away three bids by Baucus to bring the extenders to the Senate floor as a stand-alone bill.

Frist is unlikely to abandon what he considers the legislative leverage of the extenders, which represent a perfect vehicle for him to continue to push for a drastic reduction to the estate tax because they carry such universal appeal.

This recalcitrance, however, may prove harmful to GOP candidates in close races this year, bristling under the yoke of the "Do-Nothing" Congress label. Grassley couched his last-ditch appeal last week to get a separate vote on the extenders in starkly electoral terms.

I think that people up in '06 ought to be concerned about the extenders, because it's pretty easy to make a 30-second commercial about Republicans not delivering on tax exemption for college tuition, tax deduction for teachers' supplies, and R&D, Grassley told CongressDailyAM.

Some congressional GOP candidates are hinting that they agree with Grassley and hope that Frist will relent.

"If the trifecta's out, we need to see the extenders move," Rep. Kevin Brady (R-TX) said in September 22nd's CongressDailyAM. Texas is one of eight that relies on the state sales tax for its revenue and therefore would particularly benefit from an extension of the state sales tax deduction.

Reportedly, there have been staff-level discussions about moving the extenders

separately among some GOP Senators up for re-election this year -- including Mike DeWine (R-OH), Olympia J. Snowe (R-ME), and Kay Bailey Hutchison (R-TX) -- who may side with Grassley this week.

However, even the electoral appeals of his colleagues may not be enough to change Frist's mind. He may continue to hold out hope of keeping the trifecta intact until after the midterm elections and passing an estate tax cut gift-wrapped in the extenders package.

Terrorism Task Force Raids Muslim Charity, Making Ramadan Giving Problematic

On Sept.18, federal agents raided the office of a Michigan-based Muslim charity. Agents from the Joint Terrorism Task Force (JTTF) seized files, cabinets, computers, and copied documents from the headquarters of Life for Relief and Development, a humanitarian relief organization. The group, founded in 1992, has been active in sending aid to Iraq, Jordan, Pakistan, Dubai, Syria, Sierra Leone, and Israel and is one of the largest American Muslim aid groups. Organization officials are cooperating with the investigation, which federal agents claim is not related to terrorism, but to tax issues, despite the raid being coordinated by a terrorism task force.

The federal agents searched five locations, including the group's headquarters, its accountant's offices, the homes of board member Muhahid Al-Fayadh and executive officer Khalil Jassemm, and the home of fundraiser Shakir Abdul-Kaf Hamoodi in Columbia, MO. In addition, searches were carried out at the Dearborn, MI home of Muthanna Al-Hanooti, a former employee of Life for Relief and Development who founded another group; Focus on American & Arab Interests and Relations, a lobbying and consulting group focused on American-Iraqi relations.

Federal agents told counsel for Life for Relief that the investigation, run out of the Justice Department in Washington, is related to tax issues, not terrorism. According to *The Detroit News*, the warrants were obtained from federal courts and sealed, but an FBI agent said it is a criminal investigation. Investigators are apparently concerned that the group's aid to Iraq violated U.S. sanctions before 2003. According to the *Columbia Daily Tribune*, a charity spokesperson maintains that the aid was sent with authorization under a special license from the U.S. Department of the Treasury, allowing them to legally send money to Jordan, where food and medicine were purchased and then shipped to Iraq. The director of public affairs for the Treasury Department agreed that licenses allowing groups to deliver food were issued, but said "the federal Trade Secrets Act barred her from saying which organizations had those licenses."

Life for Relief and Development was founded by Iraqi American professionals after the first Gulf War and has earned a solid reputation. According to its website www.lifeusa.org, the organization is a member of the well regarded American Council for Voluntary International Action (InterAction) and, in its 15 years of operation, has provided over $50 million dollars in humanitarian assistance to some 13 million

beneficiaries worldwide. Its efforts include orphan programs, medical assistance and drinking water infrastructure and schools in Iraq. The group also helped to fund a 2002 trip to Baghdad by three members of Congress opposed to the war.

The timing of the investigation is troublesome. The holy month of Ramadan began on Sept. 23, and during this time donations are typically at their highest because of *zakat*, a practice of giving to good causes that is a religious requirement for Muslims. The organization worries that donors will hesitate to make any financial contributions because of the investigation. In a statement, Life for Relief & Development has emphasized that the investigation has nothing to do with terrorism and that the organization continues to operate.

The investigation raises serious questions about the motives of federal authorities. In addition to its timing at the start of Ramadan, why the investigation required the use of the terrorism task force to conduct searches is unclear. Statements by the FBI that the searches are related to tax issues are not consistent with raids by JTTF. However, JTTF's presence is consistent with a pattern of government spying on anti-war groups by JTTF personnel, which has been well documented by the ACLU. Speculation that a retaliatory motive exists is further reinforced by the search carried out at the residence of war critic Shakir Hammodi, an active, well-known member of the Muslim community in Columbia, MO. There, on Sept. 20, almost 100 religious leaders, peace activists, and community members came together to condemn the FBI investigation and support Hamoodi.

An editorial in the *Columbia Daily Tribune* noted that local Muslims were told "the Friday before Monday's raid that any large contributor to a suspect agency might be questioned" and further observes, "Where the government crosses the line is when agents have staged high-profile raids and then leave the suspects twisting in the wind."

While it has only been reported on in Michigan and Missouri, the investigation has national implications. The outcome of the FBI investigation, the group's ability to deliver aid during the investigation, the impact on donations and its reputation all remain unclear. What is certain, though, is that the situation will contribute to the overall state of apprehension between Muslim charities and the federal government.

Bipartisan Effort Supports E-Filing of Senate Campaign Contributions

The Senate Campaign Disclosure Parity Act (S.1508), which has yet to be reported out of committee, would require U.S. Senate candidates to file their federal campaign finance reports electronically, just like House and presidential candidates do, and many critics say it's high time. Currently, Senate candidates report on paper and then those pages of contributors are entered manually by the Federal Election Commission (FEC), a time consuming process that denies the public the right to know who is contributing to a Senator's election campaigns when it matters most -- before the election.

The FEC requires federal candidates to file quarterly reports two weeks after the close of

the quarter. These reports contain information on total campaign contributions, as well as the amount given by individuals and political committees. Expenditures are also reported.

According to the FEC schedule, the next reports are due on Oct. 15. While campaign expenditure reports of House and presidential candidates are available on the Internet within 24 hours of being filed with the FEC, the Senate reports will not be available until *well* after the election. Reports for the period between Oct. 1 - Dec. 31 are not due until Jan. 15, 2007.

Jeffrey H. Birnbaum summed up the issue nicely in his *Washington Post* column: "In one of the most controversial quirks in election law, candidates for Senate are not required to file their campaign-finance reports electronically. That means voters can't effectively find out how much and from whom their would-be senators have collected money until long after the election -- too late for them to act."

A bipartisan group of senators introduced S.1508 in July 2005. In an effort to advance the bill four senators, including Russell Feingold (D-WI), Thad Cochran (R-MS), John McCain (R-AZ) and Richard Durbin (D-IL), sent a letter to colleagues asking for their support of the bill. If passed, it will apply to reports filed after the date of enactment.

The blogging community and public interest groups such as the Campaign Finance Institute have recently taken up the question of why Senate candidates enjoy such an exception. Among recent supporters of Senate electronic filing are DailyKos, The Huffington Post, and Sunlight Foundation.

The issue could gain prominence with the November election quickly approaching and citizens increasingly calling for measures to ensure they are able to make informed voting decisions. Unfortunately, as the time Congress is in session dwindles, the bill becomes less and less likely to move forward this year.

IRS Investigations of Political Activity Heat Up

As the election season gets underway, public attention has increasingly turned to the speech rights of charities and religious groups. Leaders of All Saints Episcopal Church, the Pasadena, CA church under investigation for alleged partisanship in 2004, announced they unanimously voted to refuse to comply with IRS requests, setting the stage for a legal battle that could significantly impact the rights of 501(c)(3) organizations. Two members of Congress wrote the IRS questioning its enforcement program and citing the All Saints case. Another case - Operation Rescue West - illustrates the consequences of egregious violations. And church-state separation advocates announced a mailing to 100,000 congregations warning against partisan activities.

All Saints Church refuses IRS document request

The IRS initiated an audit of All Saints Church following anti-war remarks delivered before the 2004 general election during a church sermon, which envisioned what Jesus would say to both candidates about the issues of peace, and poverty among others. In June 2005, the IRS notified All Saints of the inquiry, citing a Nov. 1, 2004 *Los Angeles Times* story that characterized the sermon as a "searing indictment of the Bush administration's policies in Iraq." Following a Sept. 2005 conference call between the IRS and church representatives, the IRS offered a deal: if the church would admit wrongdoing and agree not to allow similar sermons in the future, the IRS would not pursue the case further. All Saints rejected the offer.

In an October 2005 follow-up letter, the IRS told All Saints that the agency would be sending an information request in the near future. Nothing was heard until July 2006, when the IRS sent an informal request to the church. In response, an attorney for All Saints, Marcus Owens, replied to the IRS request by contending that questions in the informal request were too broad and would require voluminous research, proving to be unduly burdensome. He also affirmed All Saints' right to challenge the procedure used by the IRS in conducting the audit. Church officials felt the second request was also unduly intrusive and requested an official summons. Among the requested details in the summons are minutes of church meeting from 2004, an accounting of all expenditures associated with the sermon, various copies of church policy and planning documents, and any audio/visual documentation of the sermon in question.

On Sept. 15 Owens told reporters, "These substantive and procedural problems are crucial in the All Saints case because of the sweeping First Amendment implications of the government's examination. The recent unilateral reversal of the IRS position in the NAACP case raises a serious question as to whether the IRS has any legal basis for continuing its review of All Saints."

In comments made to his congregation (subscription required) on Sept. 17, the current leader of All Saints, the Rev. Ed Bacon, was very clear about why the church feels it must contest the IRS action, saying, "Neutrality, silence and indifference are not an option for us. We must express our conscience in word and deed or we will lose our soul in addition to losing our way. If the IRS is successful in chilling the voices in American pulpits and houses of worship, religion in America will lose all relevance and moral authority."

Members of Congress Write IRS About the PACI Program

On Sept. 18 two members of Congress expressed their concern about the chilling impact of the IRS's Political Activity Compliance Initiative (PACI) program in a letter to Treasury Secretary Henry Paulson and IRS Commissioner Mark Everson. Reps. Adam Schiff (D-CA) and Walter Jones (R-NC) argue that the program threatens nonprofits' First Amendment rights to discuss matters of public policy. The letter cites All Saints Church, which is located in Schiff's district, and the NAACP as examples of tax-exempt organizations that took a position on a public policy issue and paid for it with an IRS investigation. The congressmen contend that the IRS "facts and circumstances" test for determining whether an act is improper political intervention is "far too vague to ensure that not-for-profits understand their limitations on speech."

The letter also cites a recent OMB Watch report that showed the "IRS exaggerated the extent of non-compliance" in its February report on the PACI program. The members of Congress demanded a response to this inconsistency and hinted at the possibility of legislation if the response is not adequate.

Operation Rescue West Loses 501(c)(3) status

On Sept. 11 the IRS revoked the tax-exempt status of an anti-abortion group, Operation Rescue West. Although the IRS did not give a reason for the action when it announced the revocation, Catholics for Free Choice issued a statement that it had filed a complaint against Operation Rescue 2004 after it published an ad that "promised tax deductions for contributions to help defeat the Democratic Presidential candidate, John Kerry." Operation Rescue West officials were unfazed by the revocation. The group's outreach coordinator told reporters, "We have reorganized as simply Operation Rescue...Losing our tax exemption doesn't have much of an effect on us, one way or the other."

Americans United for Separation of Church and State Sends Letters

Americans United for Separation of Church and State (AU) has announced a plan to inform churches about the federal tax law prohibition on partisan intervention in elections. Citing IRS commissioner Mark Everson, the group explained in a press release that most of the nonprofits being investigated for non-compliance are churches. The AU effort takes aim at groups such as Focus on the Family in recruiting religious congregations for election activities, with AU director the Rev. Barry Lynn calling such recruitment "a religious Tammany Hall." AU notes that partisan political groups' involvement with religious organizations creates a direct danger to their tax-exempt status. The campaign is set to deliver letters to 117,000 places of worship spread across 8 battleground states in the upcoming election.

Secretive Biodefense Legislation Moves Forward

The House and Senate are nearing a vote on legislation to authorize a new federal agency, the Biomedical Advanced Research and Development Agency (BARDA), within the Department of Health and Human Services (HHS). The agency would oversee "advanced research and development" of countermeasures to bioterrorism threats, epidemics, and pandemics, and would have broad authority to exempt information from public disclosure under the Freedom of Information Act (FOIA).

Sponsored by Sens. Richard Burr (R-NC) and Edward Kennedy (D-MA), the Pandemic and All-Hazards Preparedness Act (S. 3678) would create BARDA to facilitate partnerships between industry and academia to meet public health and national security needs. The legislation would also empower BARDA to contract with academic institutions and pharmaceutical companies.

To carry out this mission, the bill's supporters argue, information collected and used by BARDA needs protection from public disclosure. According to Burr's staff, secrecy

provisions help the government avoid disclosing what the U.S. cannot protect itself against and how existing bioterrorism and epidemic countermeasures could be defeated. The bill thus specifies particular types of information that would be exempted from FOIA.

This approach is in almost direct contrast to the conclusions of the National Research Council (NRC), which reviewed biochemical research and bioterrorism safeguards in a recent report, entitled Globalization, Biosecurity, and the Future of the Life Sciences. The NRC concluded that an open and free exchange of scientific research and ideas is an essential component of effective program to protect the country from a biochemical attack or accident.

The legislation requires the Secretary of HHS to withhold from disclosure under FOIA "specific technical data or scientific information that is created or obtained during the countermeasure and product advanced research and development funded by the Secretary that reveal vulnerabilities of existing medical or public health defenses." The Secretary would have to review decisions to withhold every 5 years.

Another provision of S. 3678 exempts all anti-trust related information from FOIA and declares decisions to restrict access to such information not judicially reviewable. Moreover, the FOIA exemption does not appear to be limited to information generated by BARDA but may include any and all information at HHS.

In order to provide access to important health and safety information and to ensure adequate oversight of government collaborations with the pharmaceutical industry, S. 3678 needs revision:

- The requirement that the Secretary of HHS withhold certain sensitive information should be revised to permit the Secretary to release certain publicly valuable information.
- The FOIA exemption provision should include a provision that excludes information which is already publicly accessible.
- The FOIA exemption should be limited to BARDA and BARDA-related projects and should not permit the interpretation that it covers the entire HHS.
- The review period for restricted information should be reduced from every 5 years to every 2 years.
- Requests for protected information should trigger such reviews of the restriction.
- The anti-trust FOIA exemption should be removed entirely.

Such modifications will ensure that sensitive information is protected while providing access to information critical to harnessing the enormous resource represented by the scientific, research, and public health communities in the fight against disease and bioterrorism.

Introduced by Reps. Anna Eshoo (D-CA) and Mike Rogers (R-MI), the Biodefense and Pandemic Vaccine and Drug Development Act of 2006 (H.R. 5533) is the companion bill to S. 3678 in the House. It contains identical language exempting specific technical data or scientific information from release under FOIA and establishing five-year mandatory

reviews. It does not contain the anti-trust FOIA exclusion, however. Both versions have passed out of committee and may be considered on their respective floors this week.

Pending EPA Library Closures Spark Protest, Controversy

The U.S. Environmental Protection Agency (EPA) continues to move forward with plans to shut down agency libraries despite protests from EPA scientists and enforcement staff. According to a leaked EPA FY 2007 Library Plan, regional libraries in Chicago, Dallas and Kansas City, as well as the EPA headquarters library in Washington, will be closed by Sept. 30 and as many as 80,000 documents not electronically available will be boxed for digitizing.

The plan, obtained by Public Employees for Environmental Responsibility (PEER), indicates that EPA is prematurely implementing President Bush's proposed budget cut of 80 percent for the agency's library system. Though the House of Representatives has passed the budget cut in its version of the Interior-EPA spending bill, the Senate has yet to take up the proposal. EPA's funding will likely be part of a continuing resolution to keep the many federal agencies whose appropriations bills have yet to be approved functioning after the fiscal year ends on Oct. 1.

An internal memo from EPA's Office of Enforcement and Compliance (OECA) also released by PEER, detailed how the library closures will dilute the agency's enforcement efforts. According to the memo, "If OECA is involved in a civil or criminal litigation and the judge asks for documentation, we can currently rely upon a library to locate the information and have it produced to a court in a timely manner. Under the cuts called for in the plan, timeliness for such services is not addressed."

EPA's Assistant Administrator Marcus Peacock addressed criticisms of the planned closures in an Aug. 22 Letter to the Editor of YubaNet.com. Peacock writes that "EPA is providing comprehensive access to agency documents and materials through EPA's public Web site." Peacock also claims "[r]etrieving materials will not only be more efficient [after the library closures] but also is easier to locate by using the agency's online collection and reference services."

An EPA employee responded to Peacock, anonymously out of fear of agency retaliation presumably, with an Aug. 29 Op-Ed also at YubaNet.com. The employee stated that, while Peacock claims documents will be available via the agency's website, "what he does not say ... and what has repeatedly been raised by EPA scientists across the country ... is that there is no line item in EPA's budget to pay for the digitization of all of these reports." According to the anonymous EPA employee, agency scientists continue to be frustrated because EPA leadership refuses to answer the basic questions of how much digitizing the library collection will cost, how long it will take, and whether the FY 2007 budget will fund the digitization.

One thing is clear: with the closure of EPA libraries comes less access to important health and safety data -- available nowhere else -- to the detriment of the public and the

public servants who work to hold industry accountable to environmental law and regulation.

Chemical Insecurity

Last night, the Homeland Security Appropriations Conference Committee struck a deal to attach chemical security language to the FY 2007 DHS spending bill. The language, agreed upon by Rep. Peter King (R-NY) and Sen. Susan Collins (R-ME) last week, is a retreat from stronger, bipartisan bills pending in both houses and, according to environmental groups, "turns a blind eye to removing thousands of people from harm's way with off-the-shelf technologies." News of the agreement quickly met with strong criticism from members of Congress and public interest groups.

On Sept. 22, House Democrats on both the Energy and Commerce and Homeland Security committees sent a letter to House leaders and appropriators, urging them to reject the King-Collins proposal, which they called "inadequate chemical security measures promoted by the chemical industry." According to Rep. Edward Markey (D-MA), an author of the letter, "[k]ey homeland security protections against chemical disasters are being swept aside in favor of a rider drafted in consultation with industry."

Recently, the House Homeland Security Committee approved a strong bipartisan chemical security bill (H.R. 5695) that includes provisions that would require high-risk facilities to implement safer technologies when feasible, and ensure that states are not pre-empted from adopting stronger chemical security protections. The Senate Homeland Security and Governmental Affairs Committee had also passed chemical security legislation, (S. 2145), which was weaker than the bipartisan House bill, but far stronger than the King-Collins agreement.

Public interest and environmental organizations, including OMB Watch, have also called for chemical security legislation to make information available to the public so that communities can understand and minimize the risks they face. This call for disclosure has faced strong opposition from the chemical industry. The King-Collins agreement appears to have taken a cue from industry, ensuring "vulnerability assessments, site security plan, and other security related information shall be given protections from public disclosure" and thus ensuring the agreement will provide little, if any, public accountability.

In a Sept. 22 statement, Greenpeace outlined ten reasons why the King-Collins chemical security proposal fails to protect communities. Among them were the fact that the plan specifically exempts approximately 3,000 drinking water and waste water facilities, keeps DHS from requiring safer technologies, and fails to preserve state and local government's authority to set stronger security standards than the federal government (such as those currently in place in New Jersey).

The process by which the King-Collins proposal side-stepped open negotiations has received criticism equal to that leveled at the agreement's content. A Sept. 25 *New York*

Times editorial noted, "The Senate and the House spent many months carefully developing bipartisan chemical plant security bills." But instead of building on these efforts and seeing them through, *The Times* complains, "whatever gets done about chemical plant security will apparently be decided behind closed doors."

The House-Senate Conference Committee is expected to vote later this week on the Homeland Security appropriations bill. In the meantime, chemical security supporters continue to adamantly call on appropriators to oppose industry-supported loopholes (like the King-Collins agreement) that negate the purpose of meaningful chemical security legislation -- such as H.R. 5695 - namely, to secure the tens of thousands of hazardous U.S. facilities and to protect communities nationwide.

NSA Bills Head to a Vote

High on Congress' agenda this week is legislation to authorize the National Security Agency's (NSA) Terrorist Surveillance Program (TSP). In the Senate, Judiciary Committee Chair Arlen Specter (R-PA) brokered a hollow compromise with moderate Republicans on the National Security Surveillance Act (S. 2453), increasing the likelihood of its passage. In the House, Rep. Heather Wilson's (R-NM) Electronic Surveillance Modernization Act (H.R. 5825) passed out of committee and is likely to see a floor vote this week. Both bills would legalize the warrantless surveillance program and provide exceptions to the judicial approval required by the Fourth Amendment and the Foreign Intelligence Surveillance Act (FISA).

The Hollow Compromise

Sens. Larry Craig (R-ID), John Sununu (R-NH) and Lisa Murkowski (R-AK), previously opposed to the Specter bill, recently announced three changes to S. 2453 that compelled their support.

First, the Specter bill allows for an entire surveillance program to receive a blanket order for surveillance. The compromise revises program-wide orders to incorporate a requirement for individual approvals. This means that after the Foreign Intelligence Surveillance Court (FISC) issues a program warrant for an entire surveillance program, additional approval would be needed from FISC after a "person of interest" has been identified to ensure that the surveillance is in conformity with the Fourth Amendment.

Second, Specter's bill allows for warrantless surveillance of "agents of a foreign power" for one year if the target of the surveillance is not a U.S. person (i.e. a U.S. citizen or legal permanent resident). The compromise revises the language to state that warrantless surveillance of an agent of a foreign power must not include communications of American citizens.

Third, language has been removed from Specter's bill that stated that the president has the power to wiretap at his own discretion under the constitutional power of the executive branch. According to the *Washington Post*, the White House is pleased with

the three modifications.

While addressing some of the criticisms raised about Specter's bill, the revisions fail to ensure that TSP and other surveillance programs operate within the confines of the Fourth Amendment. The biggest loophole that the compromise fails to close is the redefining of electronic surveillance to permit what ordinary Americans would consider to surveillance.

Specter and Wilson Bills Redefine Electronic Surveillance

The Specter and Wilson bills offer the guise of increased oversight of domestic and international surveillance but, in fact, drastically reduce such oversight by restricting the protections embodied in the Fourth Amendment. The bills provide mechanisms for the FISA Court to review TSP, but at the same time, permit the program's continuation without judicial approval.

Though the language of the Specter and Wilson bills differ in some respects, they contain identical language on the most troubling provision of both bills. The House and Senate bills would restrict the definition of electronic surveillance to exclude TSP, thereby opening the door for untargeted warrantless domestic surveillance. According to the Specter and Wilson language, FISC would oversee surveillance programs that *target* people inside the U.S. who have a reasonable expectation of privacy. However, TSP targets people overseas, even though the communications of many innocent Americans may be collected in the process. Hence, FISA would not govern TSP, and the president would not have to receive judicial approval to wiretap these communications.

Moreover, the limited definition of electronic surveillance would allow programs to go far beyond TSP. First, the definition permits warrantless collection of communications between U.S. citizens and people overseas who have no connections with terrorism. Second, it would, presumably, authorize any *untargeted* warrantless program collecting a vast array of the domestic communications of innocent U.S. citizens.

House and Senate Versions Move

The Specter and Wilson bills recently passed out of committees on partisan votes and are expected to be voted on by the entire Senate and House, respectively, this week. It is yet unclear which vehicle will be used to present the Specter language. There are currently three possibilities. First, there is Specter's S. 2453. Second, Senate majority leader Bill Frist (R-TN) recently introduced the Specter language as the Terrorist Surveillance Act (S. 2931). Finally, Frist combined the Specter bill with revised military commission legislation and introduced it as the Terrorist Tracking, Identification and Prosecution Act of 2006 (S. 3929). Also uncertain is what will happen if the Senate passes the Specter bill and the House passes the Wilson bill, since there is limited time for negotiations between the two chambers.

If Senate Democrats are still opposed to the compromise language, they could attempt to block the Specter bill. On a conference call before the compromise was announced, Sen. Harry Reid (D-NV) told bloggers that the Specter bill was not going anywhere, hinting

that a filibuster may be used. In a surprising turn sure to add another fold in the NSA surveillance saga, the Specter-Feinstein legislation (S. 3001) passed out of committee on a bipartisan vote Sept. 13 and would contradict Specter's other bill, the National Security Surveillance Act, by reasserting that FISA and the Fourth Amendment and the issuance of individualized court orders are the exclusive means for electronic surveillance of U.S. persons.

OPEN Government Act Clears Senate Committee Hurdle

The Senate Judiciary Committee on Sept. 21 approved the Openness Promotes Effectiveness in our National (OPEN) Government Act (S. 394), a promising development for open government advocates. The bill, sponsored by Sens. John Cornyn (R-TX) and Patrick Leahy (D-VT), would remove hurdles to obtaining information from federal agencies under the Freedom of Information Act (FOIA).

The legislation addresses loopholes that allow federal agencies to delay releasing information to the public under FOIA. Government agencies seeking to withhold information under FOIA have in the past employed charged exorbitant fees, denied fee waivers, and thrown up a number of other bureaucratic obstacles. The OPEN Government Act will, among other things, allow the public to recoup legal costs from the federal government for improperly withheld documents, establish a tracking system for requests, and create a system to mediate disputes between those requesting information and federal agencies.

A House counterpart, H.R. 867, was introduced by Rep. Lamar Smith (R-Texas) and referred to the House Government Reform committee in February 2005. The Government Reform Committee is not expected to act on the measure before the end of this session.

In March 2005, another bill sponsored by Cornyn and Leahy, the Faster FOIA Act of 2005 (S. 589), which would appoint a commission to study backlog problems and possible improvements of agency procedures, was reported favorably out of committee. Then in December 2005, President Bush issued Executive Order 13392 that required agencies to develop FOIA improvement plans to reduce backlogs and increase public access to highly sought-after government information. Access advocates have argued that the executive order is unworkable without new resources for the agencies to help speed up FOIA processing.

Even though both Cornyn-Leahy bills on FOIA have passed out of committee in the Senate, it remains highly unlikely, in the limited time left before Congress breaks for elections, that either bill will make it to the Senate floor or out of committee in the House.. Hopefully, the progress made by the bills in the Senate means that action on these bills will be faster in future sessions of Congress.

GAO Fails to Adequately Assess the Data Quality Act

The Government Accountability Office (GAO) recently issued a report on how well major federal agencies are implementing and overseeing compliance with the Data Quality Act (DQA). The report is an excellent overview of DQA's use, but it fails to make recommendations necessary to improving the management of DQA impacts on the federal government, in particular to minimizing its potential abuse.

The Data Quality Act (DQA), also known as the Information Quality Act (IQA), is a two-paragraph provision that slipped through Congress without debate in late 2000. Since then it has amassed a mountain of controversy, pitting industry against the public interest. The act allows private parties to challenge the government's use of information and has been used with particular frequency by industry to challenge health and environmental regulations.

The report, the full title of which is the unwieldy *Information Quality Act: Expanded Oversight and Clearer Guidance by the Office of Management and Budget Could Improve Agencies' Implementation of the Act*, was the culmination of a year-long review of DQA by GAO at the request of Reps. Henry Waxman (D-CA) and Bart Gordon (D-TN). The report recommended that OMB:

1. work with DHS to implement DQA guidelines;
2. identify other agencies without DQA guidelines and work with them to implement such guidelines; and
3. clarify its guidance to agencies on improving access to DQA information online.

According to the report, DHS is the only agency that has not issued DQA guidelines. GAO also found problems associated with accessing information on DQA guidelines at other agencies. The report noted that "none of the agencies we visited had information about the actual workload, the number of staff days, or other costs, with one exception" The one exception was the Department of Labor, which had only one cost item tracked--a $170,000 contract to monitor the status of DQA requests.

Waxman and Gordon requested the GAO investigation in order to determine the effectiveness of DQA and how great a regulatory burden it creates, so it is surprising that GAO did not address either of these issues, nor did the report make recommendations to improve shortcomings in these areas. Without management procedures to monitor costs associated with the DQA process, it will be impossible for GAO, OMB, Congress or the federal agencies to determine the effectiveness of DQA guidelines.

The DQA process has been widely misused by industry to slow regulatory action and remove or revise important public health and environmental information from government websites. For instance, the National Toxicology Program at the National Institutes of Health has received numerous challenges of its Report on Carcinogens, which lists over 1,700 potentially carcinogenic chemicals.

Many such challenges are widely recognized as frivolous, and each increases regulatory

burden such that the effectiveness of government programs is harmed. Without outlining mechanisms to assess the effects of DQA, the report fails in its assignment to detect such problems and determine if DQA guidelines need to be revised to curtail the potential abuse of DQA.

E. Coli Outbreak Is Reason to Better Protect Food Supply

Though federal agencies responded relatively quickly to the recent outbreak of E.Coli in bagged spinach, the case highlights the need to ensure the safety of the nation's food supply and to have adequate tracking systems in place to do so.

Fortunately, food safety inspectors are close to discovering the exact source of the contaminated spinach. In the meantime, though, at least 171 people have become ill from the outbreak, one person has died, and 27 cases of kidney failure have been reported.

Recall Problems Might Still Arise

While federal agencies have worked diligently to locate the source of the contamination, FDA has yet to recall any of the bagged spinach products believed to be the source of the contamination. According to a 2004 GAO report, FDA and USDA often face problems getting contaminated food products off the shelves:

"USDA and FDA do not know how promptly and completely the recalling companies and their distributors and other customers are carrying out recalls, and neither agency is using its data systems to effectively track and manage its recall programs. For these and other reasons, most recalled food is not recovered and therefore may be consumed."

GAO found that agencies that oversee other consumer products, such as toys or automobiles, have mechanisms for recalling faulty products that are unavailable to USDA and FDA in dealing with food supply problems. "For example, by law, companies must promptly notify the Consumer Product Safety Commission after learning that a product may pose an unreasonable risk of serious injury or death, or face penalties of up to $1.65 million," according to the report. Companies making food face no penalties for delaying or failing to disclose contamination.

A Fragmented Food Safety System

Federal agencies investigating the matter believe that animal manure may have contaminated the spinach, causing the outbreak of E.Coli. Twenty-five states have reported outbreaks. Both the cause and the rapid spread of the bacteria bring to light dangerous loopholes in the current food safety system.

The Food and Drug Administration (FDA) and the Department of Agriculture (USDA) share responsibility (along with several other federal agencies) for food inspection and safety. As GAO reports and congressional hearings have pointed out, this arrangement often allows food inspection to fall through the cracks. As GAO pointed out in a letter to

Jo Ann Davis (R-VA) following a hearing on food safety, "for consumers as well as for GAO, it is at times difficult to determine which agency is responsible for ensuring the safety of a particular food product. For example, the Department of Agriculture (USDA) might be responsible for inspecting a particular food item, but once that item is used in a processed food product, it might be regulated by the Food and Drug Administration (FDA). Arbitrary jurisdictional lines of authority can make the current food safety inspection system difficult to assess and, more importantly, unresponsive to the needs of the public."

Congress has attempted to streamline food safety inspection by placing responsibility for it in a single federal agency. The Safe Food Act (S. 729/H.R. 1517), introduced in April 2005 by Sen. Dick Durbin (D-IL) and Rep. Rosa DeLauro (D-CT) in their respective chambers, would create the Food Safety Administration to oversee all food safety issues.

Food Labeling Bill Would Eliminate Food Safety Protections

While S.729 has yet to make headway, another food safety bill the Uniformity in Food Labeling Act of 2006 (H.R. 4167) has been making its way through Congress. It was approved by the House in March, and the Senate held a hearing on its companion bill (S. 3128) in July. Despite its innocuous name, the bill would actually preempt and weaken food safety laws in individual states without creating any new protections.

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