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Congress Passes Sweeping Lobbying and Ethics Reforms

After a year-long debate and negotiations over enacting lobbying and ethics reforms, Congress finally passed the Honest Leadership and Open Government Act of 2007 (S. 1). While not an ideal set of reforms, the new law is the most significant lobbying and ethics reform in a decade and should make important strides in increasing accountability and transparency in Washington.

The reform package, which overwhelmingly passed the House on July 31 (411-8) and the Senate on Aug. 2 (83-14), strengthens the Lobbying Disclosure Act and includes

important earmark disclosure provisions that will allow the public to view the sponsors of congressional earmarks on the Internet. The legislation also requires the disclosure of coalitions that control lobbying efforts but protects the identity of donors and members, bans lobbyists from paying for travel or gifts for members of Congress and staff, strips pensions of members convicted of certain felonies, and contains a cooling-off period for staff and members of Congress before they can lobby their old offices again.

This bill was the top priority for Democratic leaders this year in Congress. After winning a majority in both the House and Senate in the wake of numerous bribery, earmarking and lobbying scandals in 2006, the Democrats made these reforms the first piece of legislation they undertook in the Senate, passing it 96-2 in January. A similar measure passed overwhelmingly in the House by a 396-22 margin on May 24.

Yet the momentum to pass the law stalled during the summer as the issues of bundling campaign contributions and the cooling off period for members and staff before moving into the private sector became highly contentious. Further complicating the negotiations, Sen. Jim DeMint (R-SC) wanted assurances that the conference between the House and Senate would keep strong earmark disclosure provisions, and when he did not receive them, he blocked appointment of conferees, effectively stalling, if not killing, the legislation.

While the Senate's earmark disclosure language was stronger than previously passed House rules, DeMint's actions forced Majority Leader Harry Reid (D-NV) and Speaker of the House Nancy Pelosi (D-CA) to compile a compromise bill outside of the conference committee structure and pass it again in both chambers. By passing identical bills, Congress did not need a conference and could send the legislation directly to the president for his signature. While this strategy ultimately succeeded, it removed some transparency from the drafting process and led to minor changes in legislative language in the bill that weakened it slightly.

The provision to have lobbyists disclose bundling of campaign contributions was softened by raising the dollar threshold and by reporting every six months instead of quarterly. The Senate agreed to have a two-year cooling off period from lobbying Congress when moving to the private sector; the House kept the current one-year period. There was also some additional controversy with DeMint and Sen. Tom Coburn (R-OK) claiming that the secret bill writing process resulted in weakening the earmarks provision.

Nonetheless, the final bill is a major step forward in reducing the "culture of corruption" that the Democrats talked about in last year's election. The bundling provision and two other provisions — a new database providing public access to data about lobbying and ethics, and an elimination of secret holds in the Senate — could have a significant impact on the way Washington operates.

At the same time, the new law is not perfect. One of the most glaring omissions from the

lobbying and ethics reforms are provisions to require reporting of big money grassroots lobbying expenditures from lobbying campaigns. These disclosure rules would have revealed not only large spending campaigns seeking to influence legislation, but also the identity of groups or individuals who were behind the campaigns. Despite attempts in both the House and the Senate to pass tough grassroots lobbying provisions, neither chamber included the disclosure of this valuable information due in part to a misinformation campaign about the impact of the proposals.

Below are short descriptions of the major reforms in the legislation.

Stealth Coalitions
The new law addresses the problem of "stealth coalitions" — front groups with sympathetic sounding names that do not actually represent grassroots, community-based activism — by requiring registered lobbyists to disclose who is behind groups that:

- contribute more than $5,000 to the registrant or their client in a quarterly period, and

- "actively participates in the planning, supervision, or control of such lobbying activities".

The information disclosed includes the name, address and principal place of business of the organization behind the coalition. No disclosure of members or donors is required. In addition, if the organization being identified as affiliated with the client a registered lobbyist represents is publicly identified on the client's website, only the Internet address with that information needs to be disclosed, unless the affiliated group "in whole or in major part plans, supervises, or controls such lobbying activities."

Secret Holds
Ends the use of extended secret holds in the Senate by requiring a senator wishing to block a piece of legislation from going forward to identify him/herself within six session days.

Earmarks
One of the new reforms enacted with this law concerns earmark transparency and disclosure. All earmarked spending items and tax expenditures in bills, resolutions, conference reports and managers' statements must be identified and posted on the Internet at least 48 hours before a vote on the underlying legislation. Legislators must also certify that they and their immediate family will not financially benefit from any earmarks they've requested. Earmarks that suddenly appear in a conference report — i.e., not approved by either chamber — are now subject to a 60-vote point of order in the Senate. The new point of order rules are critical because they allow for the underlying bill to continue to be considered even when striking a specific provision. This is a vast improvement over the old rules where attempting to strike one small provision would

send the entire legislation back to the conference committee.

Lobby Disclosure/Bundling of Campaign Contributions
Strengthens the Lobbying Disclosure Act by requiring quarterly rather than semi-annual filing of lobby disclosure reports, disclosure of contributions from lobbyists to federal candidates and leadership PACs, and increasing civil and criminal penalties for failure to comply with disclosure requirements and the Lobbying Disclosure Act. Lobbyists are required to file reports electronically.

The new law creates a searchable website containing all registrations and reports required by the Lobbying Disclosure Act with the data being downloadable. The searchable website must also provide links or "other appropriate mechanisms" to have users obtain data from the Federal Election Commission on campaign contributions. (The Attorney General is required to develop a similar searchable database for information collected from lobbyists for foreign governments.)

One of the most controversial provisions requires congressional and presidential candidates to report when lobbyists arrange donations and deliver them as bundled contributions. The reports are required when the bundles reach $15,000 during a six-month period, thresholds that are weaker than earlier versions of the House bill.

Revolving Door
The bill extends from one to two years the "cooling off" period during which senators must wait before they can lobby their colleagues (the House will retain a one-year moratorium on such activities). It also requires all members to publicly disclose any job negotiations while serving in Congress and requires senior staff to disclose to the Ethics Committee any employment negotiations. The bill would also ban senior House and Senate staff (anyone making 75 percent of their boss's salary) from lobbying anyone in Congress for one year, not just his/her former office or committee.

Gifts and Travel
Senators, House members and presidential candidates would have to start paying the equivalent of charter fares for rides on private planes (and require pre-approval of privately funded travel), and representatives, senators and staff members would be barred from accepting gifts and meals from lobbyists. Further, the legislation bans lobbyists from hosting parties in honor of members at national party conventions.

Other Key Items
The House will create a searchable website with data that can be downloaded on travel and financial disclosure.

The Senate requires all committee and subcommittee meetings to be publicly available through the Internet — in the form of a video recording, audio recording or transcript — within 21 business days of the meeting. Additionally, there is a nonbinding sense of the Senate that all conference committees should be open to the public and that conferees

should be given adequate notice of time and place of the meetings.

Senate Committees OK Nussle

On July 31 and Aug. 2, the Senate Homeland Security and Governmental Affairs and Budget Committees approved the nomination of former Rep. Jim Nussle (R-IA) to serve as Office of Management and Budget (OMB) Director, by votes of 16-0 and 22-1, respectively. Senate Majority Leader Harry Reid (D-NV) has scheduled a floor vote on the nomination for Sept. 4.

On June 19, current OMB Director Rob Portman announced his resignation, effective in August. The same day, President Bush nominated Nussle to be the next OMB director. Portman left his post on Aug. 3, creating a vacancy that will last at least through Labor Day, barring a recess appointment. The Constitution allows presidents to fill vacancies "that may happen during the recess of the Senate" without waiting for confirmation votes. The Senate is in recess for the month of August.

At least two holds against the nomination are currently in place. After casting the only vote against Nussle in the Budget Committee, Sen. Bernie Sanders (I-VT) announced he had placed one of the holds on Nussle. Committee chair Kent Conrad (D-ND) confirmed at least one Democrat had also placed a hold on the nomination. Sanders cited philosophical differences with the administration's fiscal policy, saying, "President Bush is completely out of touch with the economic realities facing working families in America. Bush needs to hear the truth, not an echo. He needs a budget director who will make him face the facts, not fan his fantasies."

Another hold, by Republican Sen. Pete Domenici ☼ (NM), was lifted on the day the Budget Committee cleared Nussle for floor action. Domenici announced the hold was related to concerns he had about the Bush administration not moving forward on a new loan program he cared about. Apparently, he received assurances about the program and lifted the hold.

How and when the two remaining holds might be lifted is a matter of speculation. Although the confirmation process has slowed down with the Senate in recess, no observers expect Nussle's nomination to be rejected in the end. If Reid wants to proceed with floor consideration after the recess, he can move forward even with the holds still standing. However, he may need 60 votes if the senators with the holds choose to follow through with a filibuster.

Congress Approves Fiscally Responsible Expansion of Children's Health Insurance

During the week of July 30, the House and Senate passed different versions of a reauthorization and expansion of the State Children's Health Insurance Program (SCHIP) that will expand health care coverage to millions of uninsured children across the country. The Senate version would extend coverage to about four million additional children, while the House version would add five million children and root out excess costs in the Medicare Advantage program, which privatizes health insurance but at a higher cost than traditional Medicare coverage. President Bush has threatened to veto both bills.

The Senate approved its version (H.R. 976) on Aug. 2 68-31, which is enough votes to override a potential presidential veto should one occur. Senate Republicans have warned that even slight changes in the bill could result in them changing their votes, which would make it nearly impossible to override a veto.

The House bill's (H.R. 3162) vote was closer than the Senate's at 225-204. Under normal circumstances, this vote margin would not be enough to override a veto.

The closeness of the House vote is owed to the bill's many contested provisions, mostly regarding total SCHIP funding and the cuts in the Medicare Advantage program. The House bill includes $15 billion more in SCHIP funding over five years than the Senate's $35 billion version, which will help to cover an additional one million children. The Congressional Budget Office found that between five and six million uninsured children are eligible for SCHIP but have not been enrolled. A Bush administration-touted study showed that only one million eligible children were uninsured, but its study only included children who lacked insurance for a full year or more, instead of shorter periods within the year.

Both bills accomplish an expansion of the SCHIP program in a responsible, deficit neutral manner. Funding for the Senate bill came entirely from a 61-cent increase in the federal tobacco tax. The House bill would raise the tobacco tax by 45 cents, while eliminating overpayments in the Medicare Advantage program and its stabilization fund (for more on Medicare Advantage, see this background brief).

The Bush administration has issued a veto threat for both bills, on grounds of its opposition to "government-run" health care, the percentage of already insured children who would sign up for SCHIP under an expansion and the program's inclusion of a small percentage of adults. However, as the Center on Budget and Policy Priorities has documented, this SCHIP legislation should minimize these concerns. SCHIP programs are managed by the states, which work with private insurers to provide coverage, and health economists have found that SCHIP lets in a low percentage of insured children who opt out of private plans and sign up for SCHIP, compared to other federal insurance

programs.

Studies have also shown that when parents are enrolled in SCHIP, their children get coverage at a much higher rate. Even so, both the House and Senate versions would limit the extent to which states will be allowed to sign up parents and childless adults.

While the passage of these two bills is a significant accomplishment, the House and Senate will need to conference their two versions to arrive at a final proposal to reauthorize and expand the SCHIP program once they return to Washington in September. With time running out (the program is set to expire on Sept. 30) and the president threatening to veto either version of the reauthorization, there are still considerable obstacles to be overcome before work on the legislation is finished.

President's Warrantless Wiretapping Authority Vastly Expanded

Just before Congress broke for its August recess, members vastly expanded the Bush administration's authority to wiretap communications without warrants.

On Aug. 6, President Bush signed the Protect America Act of 2007 (S. 1927) (PAA), which gives the Attorney General and Director of National Intelligence (DNI) the authority to wiretap any person reasonably believed to be overseas, including communications to or from one or more parties who are inside the United States. Even though the PAA included a six-month sunset on the powers granted by the law, the mandatory orders can be issued for up to a year in secret with limited oversight by Congress and the judiciary.

Passage of the bill came after heavy lobbying by the administration to make drastic changes to the Foreign Intelligence Surveillance Act (FISA) and to reject revisions proposed by the Democratic majority. Congress deemed FISA, as it was written, inadequate because it permitted the warrantless wiretapping of communications between two foreigners when the wiretap was executed on foreign soil. When the call was routed through the U. S., however, as many communications are, a FISA order was required. Congress was under pressure to make revisions due to a revelation by Mike McConnell, the DNI, that the FISA court recently issued an opinion confirming the requirement of court orders for such wiretaps.

Congress's action comes on the heels of McConnell's other revelation that the spying activities under the administration's warrantless wiretapping program were in fact broader than previously acknowledged by Bush. In a letter to Sen. Arlen Specter ☼ (R-PA), ranking member of the Senate Judiciary Committee, McConnell acknowledged the existence of other programs beyond the National Security Agency's (NSA) Terrorist Surveillance Program (TSP), which was limited to international communications involving members of Al Qaeda. The revelation was made, in part, to allay concerns that

Attorney General Alberto Gonzales made a misstatement in his testimony before the Senate Judiciary Committee.

The Democratic proposal, drafted by Sen. Jay Rockefeller (D-WV), revised FISA to permit warrantless wiretapping of foreign-to-foreign communications, while preserving several important checks and balances. On Aug. 3, McConnell issued a statement arguing that the majority bill, by requiring warrants for communications involving U.S. citizens in the country, created "significant uncertainty" in the legality of the agency's surveillance practices. "I must have certainty in order to protect the nation from attacks that are being planned today to inflict mass casualties on the United States."

The administration rejected Rockefeller's bill and proposed the alternative, PAA, that was eventually signed into law. The PAA permits warrantless wiretaps involving foreign-to-foreign communications but does so by permitting warrantless wiretapping for all foreign intelligence collection methods and may even permit domestic warrantless wiretapping.

The PAA redefines "electronic surveillance" to omit "surveillance directed at a person reasonably believed to be located outside of the United States." Hence, the statutory requirement that judicial orders be received for electronic surveillance no longer applies to communications involving foreigners, even if U.S. citizens on U.S. soil are involved and even if there are no clear ties to criminal or terrorist behavior.

Congress's grant of authority in PAA goes far beyond the limits of TSP, which ignited a firestorm of controversy when it was reported by the *New York Times* in Dec. 2005. "The NSA could collect the communications of billions of people overseas and seize millions of international communications of Americans every day for the foreseeable future," stated the Center for National Security Studies.

The revision to FISA eliminates the statutory requirement to obtain judicial approval for wiretaps involving communications in which a "significant purpose" of the order is to collect foreign intelligence and one or more of the persons are not within the U.S. The orders to disclose communications are mandatory, though they can be challenged in court. It is still an unsettled question, though, as to whether the Fourth Amendment, which protects against unreasonable searches and seizures, or other sections of the U.S. Constitution apply to the subset of these communications involving American citizens, in which case a court order may still be required.

"I commend members Congress who supported these important reforms," said Bush on Aug. 5. "When Congress returns in September the Intelligence committees and leaders in both parties will need to complete work on the comprehensive reforms required by Director McConnell, including the important issue of providing meaningful liability protection to those who are alleged to have assisted our Nation following the attacks of September 11, 2001."

One provision not included in the bill but proposed by the administration, would have given blanket liability protection to telecommunication companies currently being sued for complying with orders issued by NSA's TSP. This issue will likely be debated in the lead-up to the six-month renewal of the PAA.

There are few reporting requirements in the PAA. The administration merely has to report to Congress if an agency exceeds the authority granted in the bill and does not have to report on how many calls are monitored or how often the powers of PAA are invoked. Additionally, there is a requirement for the executive to report to the FISA court on the procedures used to target foreigners after implementation of an order, but the court can only reject such procedures if the executive is found to be "clearly erroneous," a notoriously difficult standard to prove. The court is limited to considering whether or not the procedures limit the collection of intelligence to communications in which one or more persons outside the U.S. are targeted and in which foreign intelligence collection is a significant purpose.

A six-month sunset was placed on PAA after which, without renewal, its provisions would expire. The sunset, though, is weakened by the provision granting the Attorney General and DNI the authority to issue orders that are good for up to one year. Assuming this provision is still in effect in January 2008, warrantless wiretapping orders could be issued which would be good for the remainder of the Bush administration.

TRI Restoration Bill Passes Senate Committee

The Senate Environment and Public Works Committee voted 10-9 to approve the Toxic Right-to-Know Protection Act (S. 595) on July 31. The act would reverse a December 2006 U.S. Environmental Protection Agency rule change to the Toxics Release Inventory (TRI) that significantly reduced toxic release reporting requirements for polluting facilities.

Introduced by Sens. Frank Lautenberg (D-NJ), Robert Menendez (D-NJ) and Barbara Boxer (D-CA) in February, the bill was approved along party lines. Republican senators voiced concern over the impact of the regulatory burden on small businesses. Sen. James Inhofe ☼ (R-OK) was the most vocal opponent of the bill, originally submitting a series of amendments, each of which was designed to substantially weaken the bill's effect in restoring the TRI program. After Inhofe's first amendment met with defeat, he withdrew the remaining amendments. However, Inhofe appears ready to resubmit the amendments before the full Senate should S. 595 reach the Senate floor.

A House companion bill, H.R. 1055, has not moved from the Energy and Commerce Committee since being introduced by Reps. Frank Pallone (D-NJ) and Hilda Solis (D-CA) in February. The Senate committee vote may provide the momentum to prompt corresponding action in the House, although the House bill has yet to be scheduled for a

vote in committee.

Three hundred and five organizations publicly supported the passage of the Toxic Right-to-Know Protection Act in a July 30 letter to Congress, and there has been strong, decades-long public support for the TRI program, a small, yet powerful tool of pollution information and reduction.

Senate Passes FOIA Reform

On Aug. 3, the Senate passed the OPEN Government Act of 2007 (S. 849) by unanimous consent. The House passed similar legislation in March.

The bill was favorably reported out of the Senate Judiciary Committee April 12, but Sen. Jon Kyl ☼ (R-AZ) placed a hold on it. Kyl and the Justice Department had voiced several problems with the bill. After negotiations between Kyl and the bill's co-sponsors, Sens. Patrick Leahy (D-VT) and John Cornyn (R-TX), Congress moved to institute several important reforms to the Freedom of Information Act (FOIA) process.

The mounting problems regarding FOIA are well-documented. The Coalition of Journalists for Open Government's report *Waiting Game: FOIA Performance Hits New Lows* found that even though FOIA requests were down in 2005, the backlog of unanswered requests rose from 20 percent of total requests made in 2004 to 31 percent in 2005. In addition to the increase in unanswered requests, requesters had to wait longer for replies.

In response to increasing pressure to relieve agency backlogs and improve FOIA procedures, President George W. Bush issued Executive Order 13392 on Dec. 14, 2005. The order, though, did little to relieve agency backlogs. The Government Accountability Office (GAO) recently stated, "Despite increasing the numbers of requests processed, many agencies did not keep pace with the volume of requests that they received."

On March 14, by a vote of 308-117, the House passed the Freedom of Information Act Amendments of 2007 (H.R. 1309).

The Senate and House bills reaffirm the 20-day response requirement and impose penalties on agencies that fail to meet the requirement. They create a FOIA ombudsman at the National Archives to serve as a resource for the public in requesting documents and to exercise oversight of FOIA compliance. Additionally, the bills offer a needed correction and expansion of access to attorney's fees for those forced to hire lawyers and pursue information disclosure in court after agencies unjustly deny requests. Finally, the OPEN Government Act restores the presumption of disclosure under FOIA that was eliminated by a memorandum then-Attorney General John Ashcroft issued soon after 9/11.

The bills are expected to go to conference after the August recess to resolve differences between the two pieces of legislation.

House Committee Holds Hearing on Abuse of Information

A July 31 House Natural Resources Committee hearing continued to investigate reports of science manipulation within the U.S. Department of the Interior. Much of the hearing focused on the 2002 Klamath salmon die-off and former U.S. Fish and Wildlife Service (FWS) Deputy Assistant Secretary Julie MacDonald's interference in Endangered Species Act (ESA) findings.

The testimony of staff from two Inspectors General offices and an agency scientist established a clear disparity in perspective between those involved in the scientific analysis on the ground and those making policy decisions at higher levels. Committee Chair Nick Rahall (D-WV) aggressively questioned recent determinations made under the Endangered Species Act (ESA). Although no one claimed science research was changed outright, it became apparent that normal procedures were circumvented and expert recommendations were routinely disregarded when they resulted in conclusions that strayed from higher agency officials' policy priorities.

The Klamath Project controls water flows in the Klamath River basin, maintaining the natural river ecosystem while also diverting flows for agricultural needs. During a 2002 drought, the National Marine Fisheries Service (NMFS) decided to divert water in the river basin to local farms and ranches, and the area experienced the largest salmon die-off in history with over 60,000 fish dying.

A June 27 *Washington Post* article revealed possible interference from Vice President Dick Cheney in this farm-biased water management plan. Cheney reportedly pressured a high ranking Interior Department official, Sue Ellen Woodridge, and others "to get science on the side of the farmers." The water was ultimately diverted to the farmers after the National Research Council (NRC) found "no substantial scientific foundation" that restricting water from farmers' use would help the salmon.

Mike Kelly, the lead FWS biologist responsible for water management recommendations for Klamath Project operations, removed himself from the project because he believed that political pressure resulted in a decision that was inconsistent with the science, to the detriment of salmon, and potentially in violation of ESA. Kelly attributed the 2002 fish kill as "strong evidence" that the Klamath Project's failure to take a precautionary approach with regard to the salmon was partially responsible for the die-off. NRC's review supporting the farm-biased plan, he said, resulted from an "inappropriate burden of proof." This conclusion was supported by Oregon's science review team and an October 2004 Office of Inspector General (OIG) report which showed that normal standards and procedures ensuring scientific rigor were bypassed or expedited. Two of

three reviewers for the OIG report concurred that the "best science" was not used.

MacDonald resigned following an OIG report indicating her inappropriate involvement in endangered species de-listings. With no formal scientific background, she edited field reports and badgered staff to her accept her perspective. Responding to the Natural Resource Committee's previous investigation of MacDonald's scientific tampering, FWS Director Dale Hall affirmed at the hearing that the agency is reviewing eight ESA determinations that may have been unduly influenced by MacDonald. The process will be, according to Mary Kendall of OIG, "time-consuming and costly."

The Klamath Project and MacDonald's actions join the growing list of instances of scientific manipulation by the Bush administration, including information on polar bear and eagle ESA de-listings, the scope and extent of humanity's role in climate change, the Surgeon General's repressed health reports, and the U.S. Environmental Protection Agency's potentially higher-than-scientifically-recommended ozone standard.

OIRA Issues New Standards for Disseminating Statistical Information

Under the authority of the Information Quality Act, the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget published a new draft Statistical Policy Directive on Aug. 1, focusing on disclosure standards. OIRA uses Statistical Policy Directives to establish government-wide standards for statistical activities conducted by agencies.

Apparently, OIRA has been working on a new statistical policy directive that builds on the National Research Council's (NRC) Statistical Policy Directive No. 3 on the *Compilation, Release, and Evaluation of Principal Federal Economic Indicators*. However, a comparison reveals several potentially significant differences between the NRC directive and OIRA's draft.

A large portion of OIRA's directive addresses pre-release access to statistical information. While NRC's directive also addresses this issue, it makes clear that the primary intent of pre-release access is to inform the president and other policy officials about release of new economic indicator results. In contrast, OIRA's draft statistical directive makes no mention of policy makers being the primary audience for pre-release access and leaves the potential recipients of such access unaddressed. OMB Watch is concerned that under OIRA's more open-ended directive, industry associations and other special interest groups could be granted unfair early access to statistical information in order to promote "accuracy of any initial commentary."

Another noticeable difference between the directives is the elimination of the restriction that pre-release access can only precede release by 30 minutes or less. The OIRA draft directive contains no specific time restrictions at all on providing pre-release access and

offers no explanation as to why the provision was removed. Strict time restrictions are necessary to prevent misuse of early access to such information.

Finally, OMB Watch notes that the OIRA directive contains no reporting or evaluation provisions that would allow OIRA or others to monitor the impact of the directive's implementation. The NRC directive included requirements for agencies to submit performance evaluations every three years covering both the accuracy of the statistical indicators and the success of implementing the dissemination requirements. OMB Watch strongly recommends that OIRA include such monitoring provisions in the directive should it be finalized. For instance, in consideration of the heavy focus on pre-release access, OMB Watch would urge that agencies publicly report the official release of a statistical product, which parties received pre-release access and for what period of time.

The public has until Oct. 1 to submit comments on the directive to OIRA. OMB Watch will be conducting a more detailed review of the directive and submitting comments.

Toy Recalls Bring Attention to Commission's Inadequacies

The Aug. 2 recall by Mattel, Inc. of 1.5 million toys that may contain excessive levels of lead paint once again calls into question the Consumer Product Safety Commission's (CPSC) voluntary approach to regulating industry. Mattel's recall follows the June recall of 1.5 million toys by the RC2 Corp. for the same lead-based paint danger.

CPSC recalled certain Mattel toys manufactured between April 19 and July 6, 2007, bearing the Fisher-Price label. According to the announcement, "Surface paints on the toys could contain excessive levels of lead. Lead is toxic if ingested by young children and can cause adverse health effects." The June recall involved wooden toy trains coated with lead-based paint.

Sens. Dick Durbin (D-IL), Bill Nelson (D-FL), Chuck Schumer (D-NY) and Amy Klobuchar (D-MN), sent a letter Aug. 2 to Nancy Nord, chair of the CPSC, asking CPSC to conduct a risk analysis of Chinese toys to determine the need to issue a "detain and test" program similar to one the U.S. Food and Drug Administration issued for Chinese seafood after the recent discoveries of contaminated seafood products. CPSC is to respond to the letter in seven days.

A BNA article ($) notes that this is the fourth recall by Mattel or its Fisher-Price subsidiary in the last 12 months and the 26th toy recall this year, all involving toys made in China. BNA quotes a *Consumer Reports* spokesperson as saying there is a clear need for "better vigilance" on the part of manufacturers, but he goes on to say "As we have previously stated, we believe that independent, third-party inspections and certifications are crucial to keeping dangerous products off of U.S. shelves."

The problem with lead in toys is especially troublesome since 80 percent of toys bought in the U.S. are made in China, according to a *Washington Post* article about the recall. The toy industry is considered diligent and Mattel is supposed to have some of the strictest safety standards in the industry. Toy companies are required to report safety problems to the CPSC. The *Post* story quotes an independent toy industry analyst as saying the recall represents "a breakdown of that system. It raises a question of whether the industry can continue to be self-policing."

Furthermore, the CPSC's ability to set penalties, sue manufacturers and write rules for product safety was hampered by a lack of a quorum of its commissioners. As OMB Watch reported in an earlier *Watcher* article, CPSC had been operating without a quorum since January due to a commissioner vacancy. The law allowed the CPSC to operate for six months with just two of the three members of the commission. But since January, when the six months elapsed, they had not been able to take certain official actions. On Aug. 3, the problem was temporarily addressed when President Bush signed S. 4, Improving America's Security Act of 2007, into law. The bill contains a provision creating a waiver of the voting quorum for six additional months. The vacancy remains, however.

CPSC has also been plagued by diminishing resources. The commission was level-funded in 2006 and 2007, causing a significant staff decline. Both the House and the Senate FY 2008 Financial Services and General Government appropriations bills call for increasing the agency's budget above the small increase Bush requested for CPSC, according to a Senate appropriations report.

Durbin and Nelson introduced legislation July 23 to address some of the problems at CPSC. The Consumer Product Safety Modernization Act of 2007 reauthorizes the Consumer Product Safety Act (15 U.S.C. 2081), increases funding and permanently reduces the quorum requirement to two commissioners instead of three. It expedites the disclosure of several types of safety information and increases the maximum financial penalties the commission can impose. The bill has been referred to the Senate Committee on Commerce, Science and Transportation.

OMB Manipulates Science in Cost-Benefit Analysis for Ozone Rule

The U.S. Environmental Protection Agency (EPA) has released a cost-benefit analysis for a proposed rule aiming to tighten the federal standard for human exposure to ground-level ozone, also known as smog. Before its release, the White House Office of Management and Budget (OMB) edited scientific language in the analysis in order to downplay the economic benefits of the proposed rule.

On June 21, EPA announced a proposed rule revising the national standard for ground-level ozone. EPA proposed a range, 0.070 parts per million (ppm) to 0.075 ppm, from which it will choose a final standard. The current standard is 0.08 ppm. OMB reviewed

and edited the proposed rule before EPA released it for public viewing. EPA's proposal has drawn criticism for being too weak to fully protect the public from the adverse health effects of ozone.

On Aug. 2, EPA released a cost-benefit analysis for the proposed rule. Executive Order 12866, Regulatory Planning and Review, requires agencies to prepare a detailed economic analysis for rules that may have an annual impact on the economy of $100 million or more — an impact the ozone rule is likely to levy. The process and format for these cost-benefit analyses is governed by OMB Circular A-4, which was issued in 2003.

Agencies must attempt to monetize the costs and benefits of proposed rules and then judge the economic value of the rules through "net benefits" calculations. For purposes of comparison, agencies must also assess the costs and benefits of a variety of alternatives. Agencies release the final products as regulatory impact analyses (RIA). Before the RIAs are made public, OMB reviews and edits them.

In its review and edits of the ozone RIA, OMB manipulated scientific language in order make the benefits of EPA's proposed rule appear smaller, thus reducing its appeal from an economic standpoint. OMB consistently calls into question the causal relationship between ground-level ozone exposure and premature mortality and argues ground-level ozone is significantly beneficial due to its ability to block UVB rays.

According to the RIA, "the overall body of evidence is highly suggestive that (short-term exposure to) ozone directly or indirectly contributes to non-accidental cardiopulmonary-related mortality." For the purposes of cost-benefit analysis, assuming a causal relationship dramatically increases the economic benefits of reducing ozone exposure by incorporating the monetized value of human lives saved. As EPA states in the RIA, "Including premature mortality in our estimates had the largest impact on the overall magnitude of benefits: Premature mortality benefits account for more than 95 percent of the total benefits we can monetize."

Once EPA began drafting the RIA, OMB began altering language, which resulted in undermining the causal relationship between ozone and premature mortality. According to publicly available documents, an early draft of the RIA stated, "There is considerable variability in the magnitude of the ozone-related mortality association reported in the scientific literature, which we reflect by summarizing the primary estimates from four different studies below."

OMB altered the language to: "There is considerable *uncertainty* in the magnitude of the association between ozone and premature mortality. This analysis presents four alternative estimates for the association based upon different functions reported in the scientific literature." [emphasis added]

EPA's original language recognizes differences in the conclusions of scientific studies on the relationship between ozone and mortality, but it does not question the existence of a

causal relationship. OMB's edits are clearly intended to question the relationship.

OMB's manipulation is reflected in the benefits calculation for the proposed rule. At OMB's behest, EPA made two benefits calculations for each regulatory alternative — one that assumes a causal relationship between ozone exposure and one that assumes no relationship. EPA then presents monetized benefits as a range including the figures from both assumptions. The final outcome is damaging: Claiming no causal relationship reduces benefits associated with decreased mortality and skews the benefits range for each regulatory alternative in order to downplay the economic benefits of the proposed rule.

In its review and edits, OMB also pushed for the inclusion of questionable negative benefits by trumpeting the claim that ground-level ozone is beneficial because it blocks harmful UVB rays. Ozone does protect against UVB exposure, but the majority of protection occurs in the stratosphere, not at ground level. The ground-level ozone which shields UVB rays is largely naturally occurring, as opposed to the anthropogenic sources reduced by ozone regulations, according to EPA.

In initial drafts of the RIA, EPA addressed the negative benefits of increased UVB exposure but did so in only one paragraph. After OMB's review, EPA included a more detailed discussion and pledged to "work to present peer-reviewed quantified estimates for the final rule."

Expanding the discussion of UVB rays may reflect the influence of OMB's Office of Information and Regulatory Affairs (OIRA) Administrator Susan Dudley. According to a report by OMB Watch and Public Citizen, Dudley has a record of attempting to undermine the benefits of reduced ozone exposure by cautioning against increased UVB exposure. Dudley's nomination to head OIRA faced opposition from public interest groups and some senators for her views that regulations are harmful to the economy. President George W. Bush named Dudley administrator by recess appointment in April.

The Clean Air Act prohibits EPA from considering economic factors in setting its standard for ozone. The law orders EPA to protect public health within "an adequate margin of safety" regardless of economic costs or benefits.

The Act does not exclude economic considerations entirely. The air pollutant standards EPA sets are a two-step process. After setting the standard using only public health considerations, EPA then sets an implementation regulation in order to guide polluters in the proper way to achieve emission reductions. In this phase, EPA may consider economics in determining the most efficient way to reduce air pollution.

This proposed rule is in the first step of the Clean Air Act process. Nonetheless, EPA is forced to prepare the accompanying RIA because of provisions in E.O. 12866 and Circular A-4. Despite the intensive process of preparing the more-than-350-page document, EPA will be unable to use the RIA in setting the standard for ozone.

Nevertheless, industry lobbyists are already manipulating its findings with the goal of weakening the regulation. According to the Associated Press, a spokesman for the National Association of Manufacturers called the proposed rule "very expensive." OMB may also use the RIA's findings when it reviews the draft of the final rule.

In fact, because OMB forced EPA to include figures assuming no causal relationship, the net benefits range is so large the analysis may be of little use. For the 0.070 ppm option, estimated net benefits range from -$20 billion to $23 billion.

Examining benefits outside of an economic context provides information about the potential impact of the ozone standard. The upper-end of the benefits range for the 0.070 ppm option assumes as many as 5,400 lives saved and 780,000 school absences prevented per year.

EPA is under court order to publish the final standard by March 2008. The final rule will be accompanied by a final RIA, both of which will be subject to OMB review.

Size Matters: Nanotechnologies Present New Challenges

Three documents released since July 26, and a recent public hearing, highlighted the difficulties of promoting promising new nanotechnologies, protecting public health and safety, and safely disposing of waste products from their use and manufacturing. Nanotechnology involves manipulating matter the size of one-billionth of a meter or 100,000 times smaller than the width of a human hair. In 2005, more than $30 billion in nanotechnology products were sold globally, according to the Project on Emerging Nanotechnologies (PEN) at the Woodrow Wilson International Center for Scholars.

Nanotechnologies have been called the "next industrial revolution" with the potential to affect future products, from clothes to cars to medicine, according to Pew Trusts. However, if early studies are accurate, this promise comes with health, safety and environmental risks that should be considered.

First, the U.S. Food and Drug Administration's (FDA) Nanotechnologies Task Force issued a report July 25 urging the agency to issue guidance documents to clarify what information is necessary to ensure effective oversight of drugs, medical devices and other products. The report emphasizes the need for guidance to manufacturers and researchers because "the potential use of nanoscale materials includes most product types regulated by FDA and that those materials present regulatory challenges similar to other emerging technologies," according to a press release announcing the report.

BNA ($) reported July 26 that FDA's report brought both praise and criticism. The Director of PEN, Michael Wilson, a former FDA deputy commissioner, thought it was an important, positive step for the agency. The report's long list of required tasks, however,

means that Congress "needs to fix the problem of FDA's chronic underfunding."

At the same time, the report's call for issuing guidance documents instead of regulations and for not recommending labeling of nanotechnology products drew criticism from the International Center for Technology Assessment (ICTA). ICTA and a coalition of consumer and environmental groups petitioned FDA in 2006 to develop regulations for nanomaterial products.

Second, PEN released a report July 26 that focused on the critical issue of managing wastes from the manufacture and use of nanomaterials.

> Today, with over 500 nano-enabled products already on the market, one of the questions in greatest need of attention is how various forms of nanomaterials will be disposed of and treated at the end of their use. They may find their way into landfills or incinerators, and, eventually, into the air, soil, or water bodies. As we are learning, when we throw something away, there really is no "away."

The authors analyze the two primary U.S. statutes for regulating waste products, the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or Superfund. Both laws give authority to regulate waste materials to the U.S. Environmental Protection Agency (EPA). The report concludes with recommendations for EPA such as encouraging "the development of data on human health and eco-toxicity and on the fate and transport of nanomaterials in the environment." It also contains recommendations for businesses and the investment community.

Third, on July 31, an international coalition of more than 40 groups from nearly every continent released a statement of principles for the oversight and regulation of nanotechnologies. The statement, released through ICTA, calls on governments, universities and businesses to adopt eight principles the coalition believes provides "the foundation for adequate oversight and assessment of the emerging field."

The principles include adopting a precautionary approach to approving products with nanomaterials and holding manufacturers liable for harm resulting from products and their production; protecting the environment through life cycle costing and protection of workers exposed to nanomaterials; labeling products and disclosing product safety data; and developing mandatory regulations for specific product classifications.

EPA held a public hearing Aug. 2 on its strategy for managing nanotechnology, a proposed Nanoscale Materials Stewardship Program (NMSP). The agenda included speakers from the public and private sectors and from government. Former EPA official and advisor to PEN, Terry Davies, stressed a sense of urgency that EPA's voluntary strategy does not recognize. He also criticized EPA's policy of using the Toxic Substances Control Act (TSCA) as the framework for its strategy, which treats nanomaterials as chemical substances. The size of nano-engineered substances means that their molecular

structure is different from larger-scale particles and, therefore, poses different risks because their properties are different, according to Davies. He urged EPA to begin a regulatory program in addition to the voluntary one.

Congress was not silent during this time. Rep. Mike Honda ☼ (D-CA) introduced H.R. 3235 July 31, which would establish a $100 million nanomanufacturing investment partnership to assist in the development of a research strategy. The research is to address the uncertainties hindering the commercialization of nanotechnologies. The bill has been referred to four House committees for action.

Senate Bill Bans States from Limiting Nonprofit Voter Registration Drives

On July 25, the Senate Rules Committee held a hearing on an election reform bill that includes a provision that would prevent states from placing undue restrictions on voter registration drives by nonprofits. During the last several years, there has been an increase in the number of voters registered through voter registration drives conducted by charities and other third parties, such as the League of Women Voters and ACORN. Discussion of the bill before the committee — the Ballot Integrity Act of 2007 (S. 1487) — largely focused, however, on provisions that mandate paper records for all electronic voting machines.

In recent years, lawmakers in several states have sought to limit the voter registration activities of nonprofit and other third-party groups. Florida, Texas, New Mexico, Ohio, Colorado, Maryland, Washington and Missouri have all passed laws intended to keep nonpartisan registrants on the sidelines, enforcing these new regulations with heavy fines and criminal penalties. These laws require voter registration groups to go through complicated procedures before conducting registration drives. Consequently, many nonprofits have been forced to discontinue their registration campaigns.

The Ballot Integrity Act of 2007 would prevent states from passing such laws, while at the same time allowing room for states to ensure their voter rolls are accurate and up-to-date. The bill also directs states to institute new safeguards to prevent errors and tampering at the polls, begin conducting public manual audits of all federal elections by the 2010 elections and improve poll worker training.

The bill is sponsored by Rules Committee Chair Dianne Feinstein (D-CA) and 11 other senators, including Christopher Dodd (D-CT), Hillary Rodham Clinton (D-NY), Barack Obama (D-IL), Patrick Leahy (D-VT), Edward M. Kennedy (D-MA), Daniel Inouye (D-HI), Robert Menendez (D-NJ), Sherrod Brown (D-OH), Bernard Sanders (I-VT), Barbara Boxer (D-CA), and Joseph Biden (D-DE).

Among the witnesses at the hearing was the president of the League of Women Voters, Mary Owens. She testified in support of the components of the bill that are designed to

prevent excessive regulation of voter registration drives. The Florida chapter of the League suspended its voter registration efforts in 2005 in the wake of a new Florida law which instituted new requirements for nonprofit registration drives and stiff penalties for organizations unable to comply. In her testimony, Owens said "the League applauds Congress stepping up to the plate" on the voter registration drive issue.

People For the American Way's Director of Public Policy Tanya Clay House also testified at the Rules Committee hearing in support of the bill's provision to prevent states from placing undue restrictions on third-party registration. In her testimony , House said that this portion of the bill "is especially urgent in light of the many instances of voter suppression that have taken place in recent elections as a result of voter registration problems.... which led to widespread confusion about registration status and very likely led to the disenfranchisement of hundreds, if not thousands, of voters."

A similar election reform bill — the Voter Confidence and Increased Accessibility Act of 2007 (H.R. 811) is also making progress in the House. The bill, however, does not contain provisions related to voter registration drives. Instead, the bill focuses on requiring that states ensure all electronic voting machines produce paper verification of ballots cast by the upcoming 2008 presidential election. The bill would also require states to conduct manual audits of elections in randomly selected counties. On July 27, House Majority Leader Steny Hoyer (D-MD) and Rep. Rush Holt ☼ (D-NJ) announced a compromise on some terms of the bill, which had been controversial. The compromise should allow the bill to move to a vote by the House soon.

Panel Discussion Focuses on Need for Clear Rules for 501(c)(3) Groups at Election Time

On Aug. 3, OMB Watch sponsored a panel discussion to address the pros and cons of creating a bright line rule defining what is and is not prohibited partisan intervention in elections by charities and religious organizations. The panelists addressed problems created by the current "facts and circumstances" test, which allows the Internal Revenue Service (IRS) to apply its interpretation of the standard on a case by case basis. They also discussed action the nonprofit sector can take to propose and promote a bright line test.

All four panelists were legal experts on nonprofit tax and election law. Each felt the ambiguities in the IRS rules regarding nonpartisan voter engagement activities create a chilling impact on charitable activity. One of the panelists, Beth Kingsley of Harmon Curran Spielberg & Eisenberg, noted that she cannot give clients a definitive statement about whether particular activities are permitted under IRS rules. She added that the IRS is woefully behind the times when it comes to addressing use of the Internet.

Marcus Owens, a lawyer with Caplin & Drysdale who previously ran the exempt organizations division within the IRS, provided a brief history of IRS regulations. He noted that the regulations regarding voter engagement activities were developed in a

very different manner than regulations regarding lobbying activities. He felt the IRS should find ways of refining the regulations given today's policy conditions.

Owens was referring to points raised by Karl Sandstrom, a lawyer with Perkins Coie and former Commissioner on the Federal Election Commission. Sandstrom highlighted the recent U.S. Supreme Court decision in the *Federal Election Commission v. Wisconsin Right to Life* (WRTL) case, which emphasized that for an ad to be considered electioneering, it must explicitly assert support or opposition of a federal candidate. Sandstrom emphasized that this standard runs counter to the IRS culture, which he likened to a "disease" orientation — that the IRS looks at voter engagement as a disease rather than as a sign of a healthy democracy.

Owens and Greg Colvin, a lawyer from San Francisco-based Silk Adler & Colvin, concurred that the Supreme Court's WRTL decision creates a new environment in which the IRS needs to respond. Colvin described a seven-point proposal he put forward in February 2006 for safe harbors; if embraced by the IRS, nonprofits could count on these activities as not constituting participation in political campaigns. But some of the safe harbors are controversial, such as a ban on communications pertaining to a candidate within 60 days of an election. This would eliminate all charitable issue advocacy, including lobbying, 60 days before an election, even if Congress is still in session.

Notwithstanding the controversy about specific safe harbors, all the panelists agreed that the current ambiguity in the IRS "facts and circumstances" test is a serious problem. While Sandstrom argued the merits of litigation, the other panelists were more supportive of mobilizing a campaign to get the IRS to write bright line rules. And all panelists agreed that IRS already has the authority to make regulatory changes.

House Hearing on Nonprofits Sees the Positive

The House Ways and Means Subcommittee on Oversight, led by Chairman John Lewis (D-GA), held a hearing July 24 on tax-exempt charitable organizations. Lewis praised charities and foundations, acknowledging they "make up the very fabric of our communities. They know the deepest human needs of our friends and neighbors and they know the solutions that work." Other members spoke positively about the work of nonprofits, referencing successful groups in their districts. The opening remarks of Rep. Bill Pascrell (D-NJ) challenged the Department of Treasury's assertion that charities are a "significant source of terrorist funding," observing that Treasury seems to be "painting the sector with a wide brush." Committee members focused on what could be done to promote charitable giving and increase volunteerism.

Pascrell's opening remarks were welcome, given that Treasury continues to allege that charities are a significant source of terrorist financing. OMB Watch and others have asked Treasury to withdraw this claim. During questioning, Pascrell asked Steve Gunderson, the President and CEO of the Council on Foundations, if he agrees with

Treasury's claim. Gunderson responded that he does not and went on to explain the difficulties facing the sector as a whole. Pascrell emphasized Gunderson's statement that not a single U.S. charity has been found to have redirected funds to a terrorist organization.

Gunderson's written statement stated, "In fact, we have seen no evidence to indicate that U.S. charities are a major source of terrorist support. Out of hundreds of thousands of U.S. charities and billions of dollars given out in grants and material aid each year, only six U.S. charities are alleged to have intentionally supported terrorists. Thus far, Treasury has not identified a single case of inadvertent diversion of funds from a legitimate U.S. charity to a terrorist organization. . . . An even larger issue is that, by exaggerating the extent to which U.S. charities serve as a source of terrorist funding, Treasury is fueling an environment in which wary donors may refrain from making charitable contributions."

The Internal Revenue Service (IRS) confirmed that nonprofits face challenges, including a blurred line between the tax-exempt and commercial sector, the overvaluation of donations, and charities established to benefit the donor. However, Steven Miller, IRS Tax Exempt and Government Entities Division commissioner, prefaced this by saying, "The charitable sector deserves to be commended for the vital work it does throughout America, and indeed throughout the world. Second, on the whole, the charitable sector is very compliant with the Tax Code. While we have seen problems, some of them serious, and some of them involving major charitable institutions, they are not widespread."

A new Government Accountability Office report that was released in conjunction with the hearing found that about 55,000 tax-exempt organizations have unpaid taxes. The alarming title of the report — "Thousands of Organizations Exempt from Federal Income Tax Owe Nearly $1 Billion in Payroll and Other Taxes" — moved Rep. Stephanie Tubbs Jones ☼ (D-OH) to observe that there are currently over one million 501(c)(3) charitable organizations in the U.S. She wanted a clarification in what she saw as a clearly skewed title given that only roughly three percent of charities have unpaid taxes. "Don't you think it would have been good to tell us there are 1.8 million exempt organizations when you threw out that 55,000 number? It's your job to get the numbers right," she said.

There was also discussion of the Pension Protection Act because certain provisions will expire on Dec. 31. Witnesses from both the Council on Foundations and Independent Sector stressed their support for expanding the IRA Charitable Rollover, which allows older Americans to make charitable contributions from their individual retirement funds without suffering tax consequences. Diana Aviv from Independent Sector also proposed that Congress create a Small Nonprofit Administration comparable to the Small Business Administration.

FBI Raids Two U.S. Muslim Charities on Eve of Holy Land Trial

On July 24, the Goodwill Charitable Organization (GCO) of Dearborn, MI, was added to the Department of Treasury's Specially Designated Nationals (SDN) list for alleged ties to Hezbollah. As a result, the group's assets have been frozen and U.S. citizens are barred from conducting any transactions with the organization. The office of Al-Mabarrat Charitable Organization was also searched and files removed, but the organization was not designated as a supporter of terrorism and continues to operate. The designation and raids occurred the same day as opening arguments in a high profile criminal trial involving a Muslim charity, the Holy Land Foundation. It appears the government relied on information from a former Treasury official whose credibility has been challenged in at least two instances.

The Treasury Department's press release said GCO functioned as a "Hizballah" front organization, reporting to the leadership of the Martyrs Foundation in Lebanon. It went on to say, "Hizballah recruited GCO leaders and has maintained close contact with GCO representatives in the United States. GCO has provided financial support to Hizballah directly and through the Martyrs Foundation in Lebanon. Hizballah's leaders in Lebanon have instructed Hizballah members in the United States to send their contributions to GCO and to contact the GCO for the purpose of contributing to the Martyrs Foundation. Since its founding, GCO has sent a significant amount of money to the Martyrs Foundation in Lebanon." A spokeswoman for the FBI in Detroit told *USA Today* that "JTTF [Joint Terrorism Task Force] removed paper files from GCO office but no arrests were made."

It appears the government relied on information provided by a controversial former Treasury official, Matthew Levitt, who has made broad allegations about ties between Islamic charities and terrorist organizations, often without citing supporting sources. Levitt is the director of the Stein Program on Terrorism, Intelligence and Policy at the Washington Institute for Near East Policy. Over a two-year period, he testified in congressional hearings three times and repeated the same information about GCO and other charities. In the transcript of an April 2005 House International Relations Subcommittee on Europe hearing titled "Islamic Extremism in Europe," Levitt stated, "According to a declassified research report based on Israeli intelligence Hezbollah also receives funds from charities that are not directly tied to Hezbollah but are radical Islamist organizations and donate to Hezbollah out of ideological affinity. . . . The report cites many such charities worldwide, including four in the Detroit area alone: The Islamic Resistance Support Association, the al-Shahid Fund, the Educational Development Association (EDA) and the Goodwill Charitable Organization (GCO)."

The testimony was repeated in a Senate Homeland Security and Governmental Affairs hearing on May 25, 2005, titled "Terrorists, Criminals and Counterfeit Goods" and a House Foreign Affairs Subcommittee on Europe hearing on June 20, 2007, titled,

"Adding Hezbollah to the EU Terrorist List."

Levitt's testimony cites a June 2003 study from the Intelligence and Terrorism Information Center of the Center for Special Studies (CSS) in Israel. According to its website, the center is an "NGO dedicated to the memory of the fallen of the Israeli Intelligence Community" and focuses on issues concerning intelligence and terrorism. Because current law does not allow GCO to see all the evidence against it, or to present evidence on its own behalf, the accuracy of the CSS information used by Levitt is not likely to be tested.

Levitt's credentials as an expert have been challenged on at least two occasions. Kinder USA filed a libel suit against him and Yale University Press in May over allegations in Levitt's book about Hamas that Kinder USA has ties to terrorism. According to the *Dallas Morning News* Levitt's testimony as an expert witness in the current criminal trial of leaders of the Holy Land Foundation was challenged by defense attorneys, who noted that he did not visit grassroots charities in the Palestinian territories he claimed have ties to Hamas, and instead relied on second-hand sources.

The JTTF raid on the Al-Mabarrat Charitable Organization seized files, but the group was not designated as a terrorist organization and its assets were not seized. The *Detroit Free Press* reported that Al-Mabarrat has a significant presence in the community through fundraisers and the placement of donation boxes at Dearborn mosques and restaurants that read, "Orphan's happiness depends on your donation." The raid left many Muslims in the Dearborn area "confused about the government's actions. Al-Mabarrat is still allowed to operate, though agents hauled away its documents and computers, making it difficult to function."

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