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Contracts and Grants Disclosure Bill Fast-Tracked

The Senate Committee on Homeland Security and Governmental Affairs unanimously passed the Federal Funding Accountability and Transparency Act (S. 2590) on Aug. 8. The bill would create a searchable website that provides information about all federal spending, including government contracts and grants. Following the quick committee action, Sens. Susan Collins (R-ME) and Joseph Lieberman (D-CT), the commitee's chair and ranking member respectively, jointly requested that the bill be fast-tracked and brought to the Senate floor for a unanimous consent vote. Unfortunately, time ran out for the unanimous consent request to reach the floor before the August recess.

The speed with which S. 2590 has moved in the Senate should come as no surprise given strong bipartisan support for the measure and last month's extremely positive hearing on the

bill. The bill was introduced by Sen. Tom Coburn (R-OK) and Barack Obama (D-IL) but has a growing list of cosponsors, 29 currently, from both sides of the aisle. The effort to bring the bill to the Senate floor under a unanimous consent vote reflects this broad support. Items brought to the floor under unanimous consent can only pass if no senator objects. Clearly, Collins and Lieberman believe that S. 2590 has enough appeal among both conservatives and liberals that not one senator would object.

Collins requested the unanimous consent agreement on Aug. 2 and Lieberman followed suit soon after. It was expected that the Senate would not break for its recess until Aug. 4. The Senate, however, wrapped up on Aug. 3, leaving little time for Senate offices to review the bill and for the bill to still have floor consideration. Even with strong bipartisan support, some fear that a senator might anonymously object to the bill given historically there's been little congressional enthusiasm of public disclosure.

When the Senate returns in September, the bill's fast-track schedule will likely resume, as long as no objections are raised. If the bill is passed under unanimous consent, the Senate's strong bipartisan support for the bill may convince the House to place identical legislation on a fast track for a vote.

Currently, the House has passed a bill (H.R. 5060) that would provide access to information about federal grants but not contracts. The House legislation, co-sponsored by Reps. Roy Blunt (R-MO) and Tom Davis (R-VA), has been strongly criticized as a half measure because of the failure to include online disclosure of federal contracts. Rather than attempt to reconcile the differences between two very different bills in conference, some have speculated that the House may simply take up the Coburn-Obama legislation.

Renewed Call for FOIA Improvement Legislation

Experts testified last month at a subcommittee hearing of the House Government Reform Committee that agencies still have a long way to go toward improving their handling of Freedom of Information Act (FOIA) requests. Their testimony, along with troubling findings from a congressional report on FOIA, may help move reform legislation forward.

The Subcommittee on Government Management of the House Government Reform Committee held a hearing on July 26 on improvements to FOIA processes. Sens. John Cornyn (R-TX) and Patrick Leahy (D-VT) testified at the hearing, Implementing FOIA--Does the Bush Administration's Executive Order Improve Processing?, continuing their call for legislation to build on Executive Order 13392, "Improving Agency Disclosure of Information."

The hearing focused on agency improvement plans required by the executive order, which

were released earlier in July. Responding to increasing public scrutiny of FOIA problems, Executive Order 13392 required agencies to develop plans to improve FOIA procedures, reduce backlogs, and increase public access to highly sought-after government information.

Despite the executive order, implementation of FOIA continues to be plagued by a number of problems, according to those who testified. "This month as we mark the 40th anniversary of the Freedom of Information Act, the current ebb tide of public access to government information has been especially severe. After four decades, FOIA--a bulwark of open government--is under a targeted assault," Leahy testified.

Rep. Brad Sherman (D-CA) called attention to a report from OpenTheGovernment.org on the FOIA improvement plans that, according to Sherman, "paints a bleak and very different picture of agency compliance with the executive order." Patrice McDermott, the report's author and director of OpenTheGovernmment.org, confirmed Sherman's observation testifying that "of the 459 possible scores assigned by the reviewers, only 14 were 'good.'"

The hearing was also an occasion for the release of a new Government Accountability Office (GAO) report on FOIA procedures and agency improvement plans.

"Despite processing more requests, agencies have not kept up with the increase in requests being made," according to the report. Increasing backlogs of unprocessed requests are cited as a major problem by the report, which found that "the number of pending requests carried over from year to year has been steadily increasing, rising to about 200,000 in fiscal year 2005--43 percent more than in 2002."

Tonda Rush of the National Newspaper Association testified that the executive order does not go far enough: "It fails to address some of the most pressing problems facing FOIA today, such as the lack of alternatives to litigation to resolve disputes, the lack of incentives to speed processing, and excessive litigation costs caused by unwarranted denials."

Leahy and Sherman made strong cases for FOIA legislation to improve the current law's implementation and to remedy problems beyond the scope of Executive Order 13392. In February 2005, Cornyn and Leahy introduced the Openness Promotes Effectiveness in Our National (OPEN) Government Act of 2005 (S. 394), aimed at strengthening FOIA. Then in March 2005, Cornyn and Leahy introduced a second bill, the Faster FOIA Act of 2005, to establish a commission to study backlog problems and possible improvements of agency procedures. Similar bills, the OPEN Government Act (H.R. 867) and Faster FOIA Act (H.R. 1620), have been offered in the House by Reps. Sherman and Lamar Smith (R-TX).

The hearing and the new GAO report may provide the needed momentum for Congress to take action on FOIA. "No generation can afford to take these protections for granted," stated Leahy, "and it should be the goal of each generation of Americans to hand over to the next

the legacy of a stronger and more vibrant FOIA than the one we inherited."

Safer Chemicals Provision Improves Federal Chemical Security Bill

The House Homeland Security Committee on July 27 passed what is being hailed by public interest groups as a substantially improved chemical security bill, the Chemical Facility Anti-Terrorism Act of 2006 (H.R. 5695). The bill, sponsored by Rep. Daniel Lungren (R-CA), establishes security requirements for our nation's chemical facilities, something that critics charge is long overdue. The original bill, however, had serious flaws, among them failing to require companies to use safer technologies and preempting states and localities from establishing their own security programs.

During the markup of the bill, Reps. Edward Markey (D-MA) and James Langevin (D-RI) successfully added amendments to the bill which will:

- Require high-risk facilities to consider switching to safer chemicals and process, and give the Department of Homeland Security the authority to require these facilities implement safer alternatives if it's feasible and not cost-prohibitive; and
- Allow states to set more stringent chemical security requirements, so long as these requirements do not "frustrate the federal purpose."

Public interest groups have praised the amendments. "We applaud the Committee for recognizing that guards and fences alone do not guarantee that Americans are protected because the deadly chemicals remain behind those fences," U.S. PIRG staff attorney Alex Fidis told reporters. "Switching to safer technologies removes the bull's-eye on chemical plants that terrorist could exploit to inflict mass casualties."

When Congress reconvenes in September, the House Energy and Commerce Committee, which also has jurisdiction over the legislation, will review and markup H.R. 5695. The Markey-Langevin amendments are likely to receive particular attention there. Committee members may strengthen the bill further, leave the current provisions or strip them out entirely.

The Senate is also expected to pick up where it left off on chemical security after the congressional recess. On July 14, the Senate Homeland Security and Governmental Affairs Committee unanimously passed chemical security legislation, S. 2145, that lacks the stronger provisions that were added as amendments to the House bill.

The Senate bill, however, has reportedly been bogged down because of a variety of objections from more than a dozen senators. In a letter to the objecting senators, Homeland Security

and Government Affairs Committee Chairwoman Susan Collins (R-ME) urged her colleagues to allow the bill to reach the Senate floor and settle any differences over the legislation there.

Bush Nominates Anti-Regulatory Zealot to Head Regulatory Policy

The White House has nominated Susan Dudley, an anti-regulatory extremist from the industry-funded Mercatus Center, to an obscure but powerful office where she would have the power to gut the federal government's very ability to protect the public.

Dudley would become the administrator of the Office of Information and Regulatory Affairs, an office in the White House Office of Management and Budget with enormous authority over environmental, health, and safety regulations.

Dudley would replace John Graham, who left the office in February to become dean of the RAND Graduate School. During Graham's time in office, regulatory agencies ranging from the Occupational Health and Safety Administration (OSHA) to the Food and Drug Administration have seen their policies weakened and their ability to develop new safety and health standards diminished.

Nominating Dudley to this office is a signal that the White House is not interested in reversing course. Through numerous comments on regulations and articles on regulatory policy, Dudley has displayed hostility to environmental, health and safety protections. She has opposed important health and safety standards such as limiting arsenic in drinking water and installing advanced air bag technology in automobiles.

In her own words:

- **On Davis-Bacon:** "The prevailing wage requirement does not offer net benefits to society, but rather reflects a transfer from low-skilled and low-wage workers to skilled and union workers . . . . There is no economic justification for a federal role in defining construction practices and determining wages, as required by the Davis-Bacon Act."
- **On OSHA regulation generally:** "In the case of OSHA regulation, empirical analysis has not found strong evidence that OSHA regulations have had a substantial impact on worker health and safety . . . . OSHA's regulations are costly for the economy. According to recent estimates, OSHA regulations contribute nearly one-half of the total direct cost of workplace regulations--around $41 billion per year in 2000. MSHA regulations cost another $7.4 billion. It is unclear whether these costs produce commensurate benefits. Econometric studies have generally failed to find evidence that OSHA regulations have had a significant impact on job safety."

- **On arsenic in the drinking water:** The Clinton standards were "an unwelcome distraction from the task of protecting the water supply. . . . While [EPA] should share information about arsenic levels and hazards, it should not impose its judgment, based on national average costs and benefits, on individual communities as to how best to invest in their own public health."
- **On food safety:** "Unscientific fears, fanned by activists and short-sighted government policies, have led to a regulatory framework that singles out genetically modified crops for greater scrutiny and even prohibition. . . . Policymakers regulating agricultural biotechnology face pressure from well-organized activists to constrain the new technology. Large biotech companies do not speak out aggressively against unscientific policies, either because they don't dare offend the regulators on whom their livelihood depends, or because regulations give them a competitive advantage."
- **Again on GM crops:** "In spite of hundreds of thousands of field tests as well as peer-reviewed research papers, no evidence indicates the presence of any unique environmental or health risks from the products of gene-splicing."
- **On environmental right to know:** "Informing the public about hazards in their community is an intuitively desirable social goal. . . . However, this does not argue that any information on chemical releases is desirable. . . .[I]t is important to recognize that information is costly to produce, and depending on how it is communicated and received, may confuse, rather than inform. Even if we determine that information on the release of certain chemicals has a net social value, we cannot assume that more frequently reported information, or information on a broader range of chemicals would be more valuable. Only when the social costs of information are weighed against the social benefits can a determination be made regarding what and how much information is optimal."
- **On investor right to know:** "Concerned that investors are not receiving the information they need regarding the tax consequences of investing in mutual funds, the SEC required mutual funds to report standardized after-tax returns along with the standardized pre-tax returns they already report. . . . The SEC's only stated criterion in developing the rule is that the information be deemed 'helpful' to investors in making investment decisions. But the SEC has no way of identifying information that meets this standard except by observing what information is brought forth by the private sector. It has not identified any market failure that would warrant regulatory action."
- **On privacy of consumer financial information:** "The implicit premise of the rule is that individuals and firms cannot come to a mutually satisfactory agreement as far as privacy is concerned without resort to government assistance. Indeed, if individuals truly value their privacy, and firms desire to maximally satisfy their customers, then a meeting of the minds ought to be achievable without resort to compulsory regulations."
- **On improved air bag standards:** "NHTSA estimates that air bags have reduced fatalities in frontal crashes by about 30 percent. Moreover, judging from vehicle

manufacturers' pre-regulation actions and ongoing advertising, which lists dual air bags as a positive attribute in new vehicles, consumers appear to prefer vehicles equipped with air bags. These facts, however, are not sufficient to justify federal regulation requiring air bags. If air bags protect lives, and consumers demand them, it is reasonable to assume that automobile manufacturers would have installed air bags in the absence of federal requirements to do so."

- **On fuel economy:** "Worst rule of 2003: The National Highway Traffic Safety Administration corporate average fuel economy (CAFE) standards for light trucks. NHTSA continues to force vehicle manufacturers to achieve higher miles per gallon than the market would offer, or consumers would choose, in the absence of the regulation. Absurdly, its economic model shows large net benefits to consumers even if markets are assumed to operate perfectly, i.e., without counting any externalities. We know this must be false, because any regulatory constraint that forces consumers away from their preferred choices must have negative net benefits (i.e., make Americans worse off)."

If Dudley is confirmed, she will have the opportunity to weaken the regulations she has spent her career criticizing, a prospect that could be devastating for the individuals who rely on the federal government to meet national needs, like providing safe drinking water, responding to global warming, or keeping workers safe on the job.

Sunset Legislation Delayed Until September

In a sign that public pressure from concerned citizens works, the two sunset commission bills in the House scheduled for floor votes the week before August recess were both delayed until September.

First, early in the week, the most radical of the two House bills, Rep. Kevin Brady's H.R. 3282, was pulled from the House's voting schedule. A vote was still scheduled for the other, Rep. Todd Tiahrt's H.R. 5766.

Because of provisions in the bill that thoughtful lawmakers on either side of the aisle could never agree to (such as putting Social Security and environmental, health, and safety regulations on the chopping block) and vocal opposition from citizens and public interest groups, Congress pulled the bills from the schedule at the last minute, delaying the votes until the fall.

Both Brady and Tiahrt vow to bring their bills back to the floor when Congress returns from its August recess, but both bills will likely continue to face the hurdle of garnering the support of House appropriators. House Appropriations Committee Chair Jerry Lewis (R-CA), as well as many members on the appropriations committee, have expressed strong

reservations about sunset legislation. They fear independent commissions could supplant the authority of Congress, including its responsibilities surrounding the appropriations process.

Continuing to take action and spread the word will ensure that Congress does not believe the pressure is off.

While members are back in their districts for the August recess, their constituents can also use the time to demand answers about the threat of sunset commission legislation.

FEC Releases Proposed Exemption for Grassroots Lobbying Broadcasts

The Federal Election Commission is set to vote soon on a grassroots lobbying exemption to the Bipartisan Campaign Reform Act's election-season ban on broadcast communications that discuss a federal candidate.

On Aug. 3, the Federal Election Commission (FEC) released a proposal to allow corporations and unions to fund advertisements 60 days before a general election or 30 days before a primary, on either television or the radio, discussing a federal candidate's position on an issue.

Specifically, the advertisement must:

- Be directed at the lawmaker in his capacity as an incumbent officeholder, not a candidate;
- Discuss a public policy issue currently under consideration;
- Urge either the officeholder or the general public to take a specific position on an issue, and in the case of the general public, urge them to contact the officeholder.

However, the advertisement cannot:

- Discuss the officeholder's character or fitness for office;
- Reference any political party or election; or
- Promote, support, attack or oppose any candidate for federal office.

The creation of the interim final rule was spurred by a petition for rulemaking filed by the AFL-CIO, Alliance for Justice, the U.S. Chamber of Commerce, the National Education Association and OMB Watch. The interim final rule, to be voted on Aug. 29, will be in effect through Sept. 2007. The FEC will take comments on the interim final rule until Sept. 30, 2006.

Background

The Bipartisan Campaign Reform Act (BCRA) forbids unions and corporations, including nonprofits, from funding TV and radio messages mentioning federal candidates that are aired 60 days before a general election or 30 days before a primary; however, BCRA allowed the FEC latitude in creating necessary exemptions.

In 2003 the FEC approved an exemption for 501(c)(3) organizations from the "electioneering communications" rule, because 501(c)(3) organizations are prohibited from electioneering under the Internal Revenue Code. The FEC, however, was ordered by a federal court to reconsider the exemption and later voted to drop the exemption. If the interim final rule is not approved, the restrictions will apply to all advertising aired during the blackout period of the 2006 U.S. congressional election cycle.

GAO Finds More Grantee Input. Standardization Needed in Grants Streamlining

A new report by the Government Accountability Office found that, while some progress has been made in the federal government's effort to simplify and streamline grant-making procedures, there is still room for improvement. Consequently, federal grantees may be continuing to divert resources from program objectives to comply with burdensome administrative requirements.

In a report released July 28, the Government Accountability Office (GAO) identified three areas that have not been adequately addressed as the federal government continues to streamline its grants process. In interviews with 17 grantees, GAO found that federal grantees still face an excessive administrative burden due to a continued lack of standardization, inadequate communication, and technical problems with Grants.gov, the website where grantees can find and apply for grants.

Key issues identified by GAO include:

Lack of Standardization Across Agencies

According to the report, grantees find that many federal grant-making agencies still use different application, payment, and reporting systems. Grantees must submit forms at times by mail or Grants.gov, and at others by an online federal agency system. Additionally, agencies have not yet standardized definitions and formats for grant documents across all agencies.

Many grantees also advocated "develop[ing] uniform reporting requirements, formats,

guidelines and submission frequencies." Progress and financial reports due dates are often varied, and the information required for various grants can be vastly different.

Technical Problems with Grants.gov

A law enacted in 1999, P.L. 106-107, requires a common system that grantees can use to apply for, manage, and report on federal financial assistance. However, under the current Grants.gov application, grantees cannot manage or report on grants across multiple agencies. There is a stalled initiative currently within OMB to create this common system, but had grantees "been consulted about their priority of needs, greater emphasis may have been placed on implementing this initiative," according to the report.

Inadequate Communication Between Grantors, Grantees and OMB

GAO found that there has been a continued lack of communication between OMB and grantees that has "limited [grantees'] ability to use and understand new technology" implemented through Grants.gov. Some grantees had not even heard of Grants.gov, and others expressed concern about the lack of training they received on the grants management system. Again, the report finds "some of these issues may have been resolved more quickly if communication with grantees had been greater."

GAO made two recommendations to further the grants streamlining process:

- OMB should ensure that grantees opinions are obtained as new technologies and policies are being created. Without ongoing grantee input, the enacted reforms are less likely to meet the needs of the grantees and achieve the purposes of P.L. 106-107.
- Congress should reauthorize P.L. 106-107 beyond its Nov. 2007 sunset date, because, as GAO concluded, "it appears that without additional oversight, the law's goals are not likely to be met in the short term."

Congress originally passed Public Law 106-107, the Federal Financial Assistance Management Improvement Act, in 1999 out of concern that administrative requirements imposed on federal grantees were overly burdensome. The legislation requires all 26 federal grant-making agencies to streamline administrative requirements for grantees and involve grantees in developing and implementing goals. It also requires the Office of Management and Budget to create a common application for all grants, currently called Grants.gov.

Senate Defeats Estate Tax Giveaway...Yet Again

The Senate voted last week to reject a tax and wage package dubbed the "trifecta" that would have slashed the estate tax permanently, increased the minimum wage modestly, and

extended a broad set of tax breaks. The bill, passed by the House last month, also contained a number of "sweeteners" to entice targeted senators to vote for the bill.

"What I will do over the next month [is] assess where America is," Frist said. "And what I would very much like to do or to have happen is ... pressure from the American people. If I felt that, I would use that procedural option in bringing these back."

The trifecta package cleared the House on July 29 on a 230-180 vote. It provided for:

- An increase in the estate tax exemption to $5 million ($10 million for a couple) from the current $2 million level, and a cut in the tax rate to 15 percent for the bulk of estates from today's 46 percent. These changes were to be phased in by 2015 and had different tax rates for estates valued above and below $25 million (see table below for proposed changes);
- A nominal increase in the minimum wage by $2.10 - the first such increase in almost a decade - but about half that amount in real terms when you adjust for inflation and a functional decrease in states where tips are counted against employers' wage.
- A tax break extension package including the research and development tax credit, the state sales tax deduction, the college tuition deduction, and the welfare-to-work credit.

Estate Tax Changes Proposed in H.R. 5970

		Taxable Rate	
Year	**Amount Exempted from Taxation**	**Estates under $25 million**	**Estates $25 million or larger (adjusted for inflation to the nearest $100,000 starting in 2016)**
2010	$3,750,000	Cap Gains (15%)	40%
2011	$4,000,000	Cap Gains (20%)	38%
2012	$4,250,000	Cap Gains (20%)	36%
2013	$4,500,000	Cap Gains (20%)	34%
2014	$4,750,000	Cap Gains (20%)	32%
2015 or thereafter	$5,000,000 (adjusted for inflation to the nearest $100,000 starting in 2016)	Cap Gains (20%)	30%

The bill also had a number of tax provisions inserted in order to entice selected senators to

vote for the trifecta. For example, a provision aimed at Sen. Maria Cantwell (D-WA), who held her ground and voted against the motion, would allow timber operators to claim a 60 percent deduction for "qualified gains" from timber sales before 2008. She didn't bite. West Virginia senators were thrown a $3.9 billion bone for cleaning up abandoned coal mines, a sweetener that may have been a factor in Sen. Robert Byrd's (D-WV) vote to proceed with the bill.

A $60 million provision was aimed at Sen. Daniel Akaka (D-HI) that would have restored a pre-1993 tax break allowing business-travel deductions for spouses that would help his state's tourism-dependent economy. The provision would end Jan. 1, 2008, and was not enough to sway Akaka. The bill included language Sen. Mark Pryor (D-AR) supported on rural development bonds that would help his state, but Pryor still did not vote to proceed with the bill.

Frist opened floor debate on the trifecta insisting, if not threatening, that this would be the Senate's last opportunity, perhaps assuming that a majority supporting each of the parts translated into a majority supporting the whole.

But in the end, the estate tax provision, which would have eliminated about 75 percent of estate tax revenues, amounting to $750 billion including interest costs in the first decade of full implementation, proved too costly to bear for Democrats and moderate Republicans.

Pryor resisted the addition of rural development bonds key to his state in the bill, saying that "the estate tax package before the Senate goes far beyond what out nation can afford." Republican George Voinovich of Ohio said the trifecta "would be incredibly irresponsible when we must fund the war, secure the homeland and when we know the tidal wave of entitlements are coming due. The numbers just don't add up."

In the end, four Democrats voted for the motion to proceed to debate on the bill: Byrd as well as Sens. Blanche Lincoln (D-AR), Ben Nelson (D-NE), Bill Nelson (D-FL). Two Republicans, Sens. Lincoln Chafee (R-RI) and George Voinovich (R-OH), voted against the motion to proceed. Sen. Max Baucus (D-MT), who would have likely voted for the motion to proceed, was away attending a funeral; Sen. Joseph Lieberman (D-CT), also absent from the vote, would have likely voted against the motion to proceed.

GOP outrage at the defeat of the trifecta was well-expressed by Sen. Kay Bailey Hutchison (R-TX): "We are turning our back [sic] on the middle-class and poor people in this country who depend on the minimum wage and death-tax relief."

Minority Leader Harry M. Reid (D-NV), citing the fact that, under the bill, "8,100 of the wealthy and well-off hit the jackpot, while millions of working families get $800 billion in [national] debt," managed to hold on to the votes of 38 Democrats, despite at times intense

lobbying by Frist. Reid was also quick to point out that estate tax repeal will not benefit the middle-class, but rather the richest of the rich in this county.

The Republicans gambled and lost on the all-inclusive bill, and have jeopardized the fate of the popular tax extenders that they could easily have passed as a standalone. Reid tried to attach the extenders to another bill before the Senate left for recess but was rebuffed by Frist. Reid has stated his intention to continue pushing for the tax extenders' passage.

Meanwhile, what will happen next with the provision for back-door repeal of the estate tax also remains to be seen. Frist has rejected calls to bring the "extenders" portion of the trifecta to the Senate floor in a standalone bill, saying "I don't see it unless we do these three." Given Frist's unwavering commitment to gutting the estate tax, the Senate could quite possibly vote yet again on an estate tax measure when Congress reconvenes in September. However, supporters of the estate tax in the Senate have held the line despite having some "vulnerable" members of their ranks tempted by targeted inducements in the bill. So it seems unlikely that any of these targeted senators would change his or her vote should Frist raise the issue again in September.