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Negative Reactions to Budget Come from Both Sides of the Aisle

President Bush's release of his budget proposal on Feb. 7 confirmed widespread speculation that its contents would prove unfavorable for a number of important agencies and social programs. The president stated many times in the weeks leading up to the budget release that his proposal for fiscal year 2006 (FY 06) would be "tough." In a bold effort to cut our national deficit in half — the same deficit which is mostly the result of his costly tax policies — Bush proposed slicing and dicing funding for many domestic programs, which would result in the termination of some.

As expected, a range of budget analysts, economists, journalists, and political and nonprofit organizations have spent the last two weeks criticizing the president's budget as detrimental to the nation as a whole. Prominent among the expected critics are OMB Watch, the Coalition on Human Needs and the the Center on Budget and Policy Priorities. However, in a somewhat surprising development, some political leaders within Bush's own party are showing skepticism regarding aspects of Bush's fiscal plan. As Senate Budget Committee Chairman Judd Gregg (R-NH) — himself a supporter of the FY 06 budget proposal — noted, the president's budget is "creating some significant angst among my colleagues."

One notable GOP leader to voice opposition is Sen. George Voinovich (R-OH). Voinovich, along with Sens. Olympia Snowe (R-ME), Susan Collins (R-ME), Robert Bennett (R-UT), and others, is part of the Centrist Coalition, a group of senators interested in working in a bipartisan manner to create more fiscally responsible tax and budget policies. Voinovich is particularly concerned with Bush's demand in the budget proposal that Congress make permanent the 2001 and 2003 tax cuts, estimated to cost at least $ 1.134 trillion from 2006–2015. That is a hefty sum, especially considering the future unknown costs of war efforts, Medicaid and Medicare liabilities, and a potentially very costly overhaul of Social Security. After Bush very strongly publicly encouraged Congress to make the tax cuts permanent, Voinovich responded by saying he would do whatever he can to block the president's tax cuts, including voting against the entire budget.

The concerns of these lawmakers are well-founded. Bush's proposed policies are not only costly now, but will continue to grow increasingly more expensive in the years ahead. According to the Joint Committee on Taxation and the Congressional Budget Office (CBO), both Bush's proposed and enacted tax cuts would cost $ 1.058 trillion from 2006–2010, and more than double that amount — $ 2.453 trillion — if applied through 2015. One *Washington Post* article points out, by the time the next president is in office, there could very little flexibility for any new initiatives, and instead the entire term may need to focus on "figuring out how to accommodate the long-range cost of Bush's policies." This concerns those who may seek the White House in 2008, such as Sen. John McCain (R-AZ). One advisor to McCain, John Weaver, said, "Hopefully some very difficult decisions will be addressed between now and the time we have a new White House resident so that occupant isn't faced with some very expensive chickens coming home to roost."

In addition, lawmakers on both sides of the aisle are questioning the administration regarding its latest request for emergency supplemental war spending. Last week the administration asked Congress to pass $ 82 billion in supplemental emergency war funds to pay for ongoing military and intelligence operations in Iraq and Afghanistan, antiterrorism operations, and tsunami relief. Key congressional GOP leaders are now expressing skepticism in lieu of the deference most gave the administration regarding earlier emergency war funding. Even House Majority Leader Tom Delay (R-TX) noted that Bush's request included expenses "that probably do not qualify as immediate emergencies." Other members questioned Defense Secretary Donald Rumsfeld and Secretary of State Condoleezza Rice during recent hearings as to whether this request tries to falsely cloak some of these expenses as emergencies to minimize scrutiny and help them pass more easily. Sen. Robert Byrd (D-WV) told Rumsfeld, "Mr. Secretary, this seems to me to be an abuse — an extraordinary abuse — of the supplemental process." Democrats and Republicans alike seem to believe the $ 82 billion requested by the White House can be scaled back dramatically, especially concerning costs to build a new, large embassy in Baghdad.

In the next few weeks Congress will decide how much supplemental emergency war spending is necessary to pass at this time. The fact that powerful GOP lawmakers are questioning Bush's spending requests — from Voinovich on the tax cuts to Delay on the emergency funding request — is a continuing sign of the increased difficulties President Bush is encountering so far in his second term. The fiscal health of this country depends on Congress both providing increased scrutiny in funding matters, and being willing to hold the administration accountable for its policies.

'Slow Down' Is the Bipartisan Buzz for Social Security

As President Bush continues his efforts to raise anxiety across the country about the Social Security program, more and more members of Congress, both Democrat and Republican, are starting to speak uniformly on the need for patience in working towards a solution. Even House Speaker Dennis Hastert (R-IL) and Federal Reserve Board Chairman Alan Greenspan urged caution and called for further debate in approaching Social Security reform this past week.

In an interview last week with the *Chicago Tribune,* Hastert said he was unsure how long the debate over reform should last and refused to lay out a timeline for when major legislation would be passed, saying it could take six months or perhaps two years. He warned, "You can't jam change down the American people's throat."

Greenspan expressed a similar sentiment in testimony last week before the Senate Banking Committee. He said the transition to private accounts would need to be done, "in a cautious and gradual way" since it was unclear how financial markets would react to as much as $ 2 trillion in additional debt that creating the accounts would cost taxpayers over the next ten years. "I would be very careful about very large increases in debt," he added.

Perhaps in reaction to these additional challenges to his plan to carve out private accounts in Social Security this year, Bush announced he would consider raising the income cap on Social Security payroll taxes currently set at $ 90,000.

Some members of Congress support raising the cap, including Sen. Lindsay Graham (R-SC), who has urged the White House to consider raising it to as high as $ 200,000. Bush has previously stated firm opposition to raising the tax rate but until now has remained silent on the cap.

The president's announcement opened the door to the possibility of dramatically increasing Social Security revenues. Estimates by Social Security actuaries show that by lifting the cap completely, it may be possible to close the entire funding gap in the program over the next 75 years.

The door seemed to remain open for only a day though, as House Majority Leader Tom DeLay (R-TX) expressed opposition to the idea of increasing the cap the next day. Delay said subjecting more earnings to the payroll tax would be the same as a tax increase and would be unacceptable. Hastert, who wanted to distance House Republicans from the idea, joined him in opposition to the proposal.

The quick and negative reaction from DeLay and Hastert underscores the increasingly difficult time Bush is having promoting his plan to overhaul Social Security, which he has made his number one domestic priority. The president has acknowledged his troubles, saying last week his plan was "going nowhere" unless he could convince Congress and the American public that action was required immediately. That has been the central challenge for the president at the beginning of his second term and it will continue to be as the debate over Social Security moves forward this year.

How Do You Measure Program Results?

For more than five years, the Bush administration has focused a good portion of its rhetoric on performance, accountability and results. To that end, in 2001, the Office of Management and Budget (OMB) began to develop a mechanism called the Program Assessment Rating Tool (PART) to help budget examiners and federal managers measure the effectiveness of government programs.

The PART has been changing and evolving since its inception and recently received a much more prominent place in the release of the president's fiscal year 2006 (FY 06) budget. Page four of the president's overview on the budget states, "the Program Assessment Rating Tool (PART) measures the success of programs in meeting goals and identifies which are achieving their intended results and which are not." The budget claims the PART helps the administration "to reward only those [programs] that succeed."

The president's FY 06 budget states the PART was developed to help consistently evaluate a program's purpose, design, planning, management, results and accountability to determine its overall effectiveness. The PART has been used to review 60 percent of federal programs over the last three years and all programs will have been reviewed once by 2007.

The PART consists of six questionnaires designed for different government activities — competitive grant programs, block/formula grant programs, regulatory-based programs, capital assets and service acquisition programs, credit programs, research and development programs, and direct federal programs. Essentially, it consists of yes and no questions that are used to evaluate the program, although in the results section of the tool there are some additional gradations. The surveys of programs are then submitted to OMB and a resulting rating (ranging from effective to ineffective) is determined by budget managers.

In his recent efforts to further promote a "good-government" approach, the president often referred to a list of 154 programs slated for deep cuts or elimination in his FY 06 budget because those programs were "not getting results." OMB Watch has analyzed this list and other sections of the FY 06 budget and compared program funding requests to the ratings received under the PART. This analysis has yielded some interesting and puzzling results. Out of the list of 154 programs to be cut or eliminated, supposedly for lack of results, more than two-thirds have never even been reviewed by the PART. It is unclear what kinds of determinations, if any, the president used to identify these failing programs when the White House budget staff has yet to assess them.

Of all the programs on that list that have been reviewed, nearly 20 percent of programs receiving an "effective" or "moderately effective" PART score — the two highest ratings — were eliminated. Further, 46 percent of programs receiving the middle rating of "adequate" were eliminated.

A quick review of programs rated under PART since its inception finds no logical or consistent connections with budget requests. Of the 85 programs receiving a top PART score this year, the president proposed cutting the budgets of more than 38 percent, including a land management program run by the Tennessee Valley Authority and the National Center for Education Statistics.

Even stranger, some programs receiving the lowest score were not cut. For instance, the Substance Abuse Prevention and Treatment Block Grant, a program that provides grants to states to address addiction problems, was given the lowest possible rating of "ineffective" but received no reduction in funding. Moreover, the Earned Income Tax Credit Compliance Program — which targets poor people who have claimed the EITC and double-checks their eligibility for the credit — was rated ineffective, yet it received a funding increase. There appears to be no logical or consistent pattern to be found in reviewing program funding requests and PART score results.

However, this is not the only illogical aspect of the PART. Another puzzling situation is how the PART relates to and is integrated with the Government Performance and Results Act (GPRA) of 1993. GPRA, which was fully implemented in 1997, set out to establish a system for measuring each agencies performance — both on a whole and for specific programs — that could be tied to the congressional appropriations process. It requires agencies and departments to develop three plans — a five year strategic plan, an annual performance review plan, and then a performance report, which is submitted to Congress.

The PART and GPRA appear to be redundant functions in the federal government — an ironic twist as each was meant to promote accountability and efficiency in government. A January 2004 Government Accountability Office report detailed the use of the PART and its relationship to GPRA. The GAO found the PART was a parallel and competing approach with GPRA's Performance Management Framework and expressed concerns the emphasis on the PART would shift agency focus and come to drive the strategic planning processes in the federal government. The report concludes, "By using the PART process to review and sometimes replace GPRA goals and measures, OMB is substituting its judgment for a wide range of stakeholder interests." The relationship between the PART and GPRA is not clear and is often confusing to program officials and agency managers and undermines the efforts of both to promote efficiency and accountability.

OMB Watch's current analyses of the PART have produced more questions than answers about its value and purpose. It is unclear how the PART scores impact budgeting decisions within OMB as there are no consistent patterns to follow. It is hard to determine whether the PART is measuring programs accurately, consistently and in a value-neutral way. Even if it achieves these, there has been little attention paid to the question of whether the PART is measuring the right kinds of outcomes. While a lot of emphasis is placed on efficiency and cost-savings measures, the PART does not give any extra credit for equity.

OMB Watch will continue to monitor, analyze, and investigate the PART and its effects on budgetary processes, agency planning, and congressional action. Promoting accountability and efficiency are certainly good goals to achieve, but it is important to achieve them in a flexible, unbiased and transparent way involving multiple actors and stakeholders.

Cornyn-Leahy Bipartisan Bill Would Strengthen FOIA

In perhaps one of the most significant moves to advance openness and accountability within the federal government in the last decade, Sens. John Cornyn (R-TX) and Patrick Leahy (D-VT) introduced bipartisan legislation to strengthen the public's hand in obtaining information from federal agencies under the Freedom of Information Act (FOIA).

Entitled the Openness Promotes Effectiveness in our National (OPEN) Government Act (S. 394), the legislation would:

- Allow the public to recoup legal costs from the federal government for improperly withheld documents;
- Expand the list of those eligible for fee waivers to include many nonprofits and blog writers;
- Establish a tracking system for requests, and require agencies to report on their 10 oldest pending requests, fee waivers approved and denied, and other ways FOIA requests are handled;
- Extend FOIA's reach to information held by federal contractors;
- Create a system to mediate disputes between those requesting information and federal agencies through the Administrative Conference of the United States;
- Require annual reporting for the next three years on how often industry gives information to the government voluntarily and declares it to be Critical Infrastructure Information (CII), thus immune from public disclosure; and
- Require an analysis of how effective the CII program is in protecting the country's critical infrastructure.

Plagued by loopholes allowing federal agencies to delay the release of information, charge exorbitant fees, deny fee waivers and post other obstacles to actually releasing documents to the public, FOIA has gone from a hallmark disclosure guarantee emulated around the world to a tool of last resort for those seeking to learn about government actions or obtain information in government's possession.

In 1996, Congress expanded FOIA's guarantees to reach documents stored electronically. Prior to those changes, the law had been amended several times since Congress initially passed it in 1966, although it has now been many years since either the House or Senate held oversight hearings on FOIA.

At a time when the White House has a reputation for being secretive, the OPEN Government Act is especially significant because it came from Cornyn, a Republican, which may foster bipartisan support. At a time when there are few champions of openness, a hallmark of democracy, this legislation is both a welcome sign that sunshine should prevail in government, and a serious proposal to strengthen government accountability and openness.

Nuclear Commission Expands Secrecy Provisions

The Nuclear Regulatory Commission (NRC) is proposing to expand the amount of information that can be withheld from the public as Safeguards Information (SGI). The new rule would amend existing SGI regulations to cover more types of information by inserting language and adding a new category of covered information — Safeguards Information-Modified Handling (SGI-M).

The SGI category was created under the Atomic Energy Act of 1954 for "sensitive but unclassified" information. Regulations required protection of information relating to physical protection at fixed nuclear sites; physical protection when in transit; inspections, audits and evaluations; and certain correspondence. For information such as vulnerability data about a facility, the information could be released to the public after the vulnerability was fixed. However, most of the SGI information was only released on a "need-to-know" basis.

The new regulations broaden the already expansive SGI regulations with the ability to hide more information. The new proposed SGI exemptions would withhold any information about emergency planning procedures, safety analyses, or defense capabilities. Additionally, NRC inserts language to specifically exempt information about the Design Basis Threat, defined by the agency as "[a] profile of the type, composition, and capabilities of an adversary." NRC has received strong criticism from public interest groups that the agency has not sufficiently utilized the Design Basis Threat mechanism to improve security at nuclear facilities. This provision would effectively silence such criticism and prevent any discussion intent on improving the safety of these dangerous facilities.

NRC also proposes the addition of a new sensitive but unclassified designation. The SGI-M designation would allow nuclear materials producers already using the SGI regulations to hide additional types of regulated information. The new category would also extend exemptions to additional manufacturers. Even though NRC estimates that SGI-M data carries a lower risk if released to the general public, the stipulations for access mirror those of SGI information. Similar to SGI, anyone requesting access to SGI-M must demonstrate a "need to know" and must belong to at least one of the prescribed categories, which are almost identical for both safeguards designations.

Under the SGI-M provisions almost any data relating to security activities, security forces, or response procedures would be hidden from the public. Communities neighboring nuclear facilities need this type of information to ensure facilities take adequate steps to protect their health and safety. Without this information, the community cannot hold a facility accountable.

An environmental group's effort last year to access security information resulted in a legal dispute after the NRC withheld the information. The group sought information about a facility that intended to waive certain security measures for shipments of nuclear fuel rods, which could have endangered thousands of people. NRC denied access to the information because the agency concluded that the group did not have a "need to know" and because the information was sensitive.

A recent *Boston Globe* story revealed that a shipment of radioactive cargo was lost in transit. Instead of being shipped from Newark to Houston, the shipment was found in Boston. Because the new proposed regulations are so broad and can withhold so much information, it is unclear just how much information NRC would hide under the modified Safeguards Information, and if stories like this one would be censored.

NRC's new sensitive but unclassified category joins similar efforts from other agencies in a growing epidemic of secrecy. Others include Sensitive Homeland Security Information, Sensitive Security Information, and Critical Infrastructure Information.

DHS Finally Speaks on CII

Almost a full year ago OMB Watch filed a request, under the Freedom of Information Act, to the Department of Homeland Security (DHS) for information on their Critical Infrastructure Information (CII) program. The request sought an accounting of how the program was used thus far including the number of submissions, rejections, and communications, as well as program procedures for handling information. Unfortunately, DHS was not very prompt with answers. In fact, it took a summons filed in the DC Circuit Court to get even a few pieces of basic information about the CII program.

According to documents obtained by OMB Watch, the CII program has received 29 submissions of information for which the submitters requested protections under the CII provisions. DHS approved 22 of those submissions for protection and rejected the other seven submissions as not meeting the program's requirements. To qualify, the information must address a vulnerability of some critical infrastructure, it must be voluntarily submitted, and it must not exist customarily in the public domain. DHS implies that the seven submissions "deemed non-CII or non protected CII" have been destroyed per agency policy.

Most of the submissions appear to be brief, measuring only a few pages in length, however, at least one submission contained over 300 pages of material. Additionally, it should be noted that the length of the documents reveals nothing about the importance of the information contained within those pages. Even the shortest documents may contain vital information about a vulnerability that threatens a community's safety, information that now sits in a locked drawer while nothing is done to fix the vulnerability or ensure the community's safety.

DHS also treated numerous communications between the agency and submitters concerning their CII submissions as protected under the same provisions. This appears to be an extension of the program's protections from what the agency outlined in its final CII rule.

Industry Challenges D.C. Ban on Hazmat Rerouting

The rail company banned from shipping hazardous cargo through the nation's capital has filed a suit to overturn the emergency legislation that was enacted earlier this month. The local law bans rail shipments of hazardous cargo from a 2.2-mile radius around the U.S. Capitol.

Owner of many District of Columbia rail lines, the CSX Corporation filed the lawsuit claiming that it is unconstitutional for D.C. to place restrictions on interstate commerce. Washington is the first city in the nation to enact rerouting as a safeguard to protect against the dangers of transporting hazardous cargo, and it is worried that other cities will pass similar legislation that would have a negative impact on its business. The Department of Transportation concurred with CSX, stating that federal law preempts the ban and that interstate commerce can only be regulated by the U.S. government. Arguments have been scheduled for March 9 in U.S. District Court, according to the *Washington Post*.

Late last year, CSX would not disclose whether it had redirected shipments of cargo around the city. Despite this, the D.C. Council received informal reassurances that CSX was voluntarily rerouting these shipments around the city, and therefore did not originally act on the legislation. As CSX filed suit, the public learned that instead of redirecting shipments around the city, the company had simply changed the rail lines it used within the city, continuing to pose dangers to large numbers of city residents.

Unfortunately, this is not the first time that industry and the federal government have joined in opposing new safety requirements for chemical safety. In the months following the 9/11 terrorist attacks, the Environmental Protection Agency was poised to launch a program requiring chemical plants to reduce their hazards. However, opposition from the chemical industry, with support from the White House, scuttled these efforts. As a result, the United States still has no federal legislation to protect its chemical facilities against terrorism.

FCC Requests Exemption in Open Meetings Law

The Federal Communications Commission (FCC) recently sent a letter to the Senate Committee on Commerce, Science and Transportation requesting an exemption from the open meeting requirements of the Government in Sunshine Act.

The letter's authors, Chairman Michael Powell and Commissioner Michael Copps, assert that the FCC needs the exemption because the open meeting requirements of the Government in Sunshine Act impair the agency's decisional processes by impeding the commissioners' "abilities to obtain the benefit of each other's views, input, or comments." Instead, the letter states, they must "rely on written communications, staff, or one-on-one meetings with each other." It seems troubling that the commissioners have relied on these methods to avoid their legal responsibilities, and now consider these back-door tactics as too difficult and inefficient. Apparently, the commissioners would prefer to be exempt entirely from the law so they can stop secretly avoiding it.

The Government in Sunshine Act ensures that the public has access to government information by requiring open meetings. Under the law, agencies must hold public meetings unless the content of the meetings falls within one or more of 10 exemptions. The exemptions are similar to those under the Freedom of Information Act and protect information exempt from disclosure by other laws; corporate trade secrets; an individual's personal information; and law enforcement information, among others. There are also provisions that allow meetings to be closed under other specific circumstances. Since the many exemption categories allow for closed meetings when necessary, the FCC's push for a blanket immunity seems excessive and irresponsible.

The FCC also states in the letter that the Government in Sunshine Act is not necessary for "ensuring that federal agencies explain their actions to the public." The agency believes that the Administrative Procedure Act (APA), which mandates that an agency explain how it makes each decision, is sufficient for informing the public. However, the APA is not a disclosure law and would not guarantee that agencies provide the public with all the information that it has a right to know. For instance, open meetings allow the public to observe and participate in the agency's process rather than simply being informed about final decisions after the fact. The Government in Sunshine Act is extremely important because it allows the public to participate in government decision making and holds the government accountable for its actions.

It would be in the public interest if the members of the Committee on Commerce, Science and Transportation reject the FCC's push for secrecy, and remind the agency that it has a responsibility to be open to the public.

Bill Proposes Taking Peer Review Away from OMB

Reps. Henry Waxman (D-CA), ranking member of the House Government Reform Committee, and Bart Gordon (D-TN), ranking member of the House Science Committee, introduced the Restore Scientific Integrity to Federal Research and Policymaking Act (H.R. 839) Feb. 16, which would move authority for federal peer review standards away from the Office of Management and Budget (OMB).

Waxman and Gordon's bill addresses increasing concerns about politicization of science in the executive branch under the current administration. For some time, Waxman has tracked instances of political interference with scientific decisions and functions of agencies. The new legislation would prohibit political officials from obstructing federally funded scientific research, censoring findings, or disseminating scientific information known to be false or misleading.

One section of the bill proposes quashing the OMB's bulletin on peer review. The bulletin establishes strict requirements for the type of peer review conducted for influential scientific information and recognized OMB's Office of Information and Regulatory Affairs as the authority on peer review in the federal government. OMB developed the bulletin as part of its role implementing the Data Quality Act, even though the act does not specifically instruct the political office to produce such standards. Waxman's bill would instruct federal science-based agencies to establish applicable standards for peer review.

The bill also addresses scientific advisory committees by barring appointments based on political views and strengthening conflict of interest provisions. Another portion of the bill would increase whistleblower protections for federal employees who uncover political interference with science. Additionally, the bill instructs the White House Science Advisor to annually report to Congress on scientific integrity in the federal agencies.

Iowa Supreme Court Rules Government Cannot Contract to Avoid Disclosure

The Iowa Supreme Court ruled that the fundraising organization hired by the state's three universities must open their records to the public. The court reasoned that the Iowa State University Foundation "is performing a government function, and therefore its records are subject to disclosure." The ruling sets an important precedent that a government agency may not avoid its disclosure obligations by contracting out the collection and management of information.

The lawsuit was filed after donors, ISU alumni, and employees became concerned over the handling of a 240-acre farm bequest to the ISU Agricultural Foundation. Apparently, the property was sold against the wishes of the donor, who requested the land be kept as a farm. The filers of the lawsuit felt the foundation failed to adequately account for how the $ 1.2 million in revenues from the sale were spent.

A lower court dismissed the case in September 2002, ruling that since the foundation was not a government body, it was exempt from the state's open records laws. The Iowa Supreme court decision overturns that ruling and sends the matter back to district court to determine exactly which records the foundation will have to make public.

The case could have serious repercussions nationwide, as contracting out information collection and management has become more common in both the federal and state governments. There are many in the public interest community that have become concerned that such actions would freeze the public out from the data with high fees and use restrictions, information that would have been freely available if the government continued to collect it. For instance, the Government Service Administration recently turned over management of the database on roughly $ 290 billion worth of government contracts to a private company. This court decision might mean that the contractor would still have to provide the data in response to requests under the Freedom of Information Act.

Fish and Wildlife Scientists Oppose Political Interference

A recent survey of scientists at the U.S. Fish and Wildlife Service (USFWS) conducted by the Union of Concerned Scientists (UCS) and Public Employees for Environmental Responsibility (PEER) revealed a disturbing amount of political interference in scientific activities at the agency.

The survey was distributed to more than 1,400 biologists, ecologists, botanists and other science professionals in Ecological Services field offices across the country. The survey inquired about their opinions of the USFWS's scientific integrity, as well as political interference, resources and morale.

Apparently, when USFWS officials learned of the survey, they issued a directive to all employees instructing them not to complete the survey, either while on duty or on personal time. Regardless of the gag directive, almost 30 percent of the scientists who were sent the questionnaire completed and returned the survey.

The results of the survey are extremely troubling. Approximately 70 percent of staff scientists and almost 90 percent of scientist managers knew of cases where political appointees injected themselves into Ecological Services determinations. More than half of the scientists knew of cases where commercial interests had gotten scientific decisions reversed or withdrawn through political intervention. One in five agency scientists revealed they have been instructed to compromise their scientific integrity.

The survey also indicates that political intrusion has undermined the service's ability to fulfill its mission of protecting wildlife from extinction. Three out of four staff scientists think that the USFWS is not acting effectively to maintain or enhance species and their habitats, and more than two out of three scientists do not believe the USFWS is effectively helping endangered species recover.

The survey also indicated significant discouragement of discussion and debate. Around a third of respondents noted that they felt they could not openly express scientific concerns in public or within the agency without fear of retaliation. Indeed, the directive instructing scientists not to respond to the survey appears to be a clear indication that the USFWS officials are not interested in listening to or considering points of view they disagree with.

Missouri Proposes Ignoring 'Annoying' FOIA Requests

On Jan. 31, state Rep. Shannon Cooper (R-Clinton) introduced a bill in the Missouri House of Representatives that would modify Missouri's Sunshine Law to allow a public governmental body to refuse any "vexatious" requests for documents. This bill would allow state agencies to reject any requests for information deemed annoying or frivolous. Unfortunately, a few other states have similar provisions in their sunshine laws.

The bill, H.B. 391, defines vexatious request as "any request for documents which is frivolous, repetitive, or unreasonable and made for the primary purpose of harassing a public governmental body or any member of a public governmental body." However, this definition still seems overly broad and vague. Agencies could easily misuse the authority to reject legitimate requests. For instance, an agency might seek to derail a request for information that would embarrass the agency or government officials. Also an agency might simply not realize the importance or usefulness of the requested data and instead rule the request as frivolous.

If an agency can summarily dismiss a request as vexatious, then a requester's only recourse would be court. Many requestors do not have the financial resources to pursue a court case, even if they believe the vexatious determination to be inaccurate. This in itself would have a chilling effect on requests, reducing the number of requestors willing to proceed with their case, and slowing down those challenges. The bill provides that if a court finds a government agency to have intentionally misused the provision, then the requestor could recoup all costs and reasonable attorney fees from the agency. However, another provision of the bill states that if a court upholds a vexatious determination then the requestor may be charged with costs and attorney fees.

The bill was referred to the state's Judiciary Committee on Feb. 17.

CFC Cites Treasury Guidelines to Justify Anti-Terror List Requirement

The Combined Federal Campaign (CFC) has filed a motion to dismiss a lawsuit challenging its requirement that participating charities check employee names against two government terrorist watch lists. The CFC motion claims the Treasury Department's Voluntary Anti-Terrorist Financing Guidelines as authority and cites activities by private foundations as justification for its actions. These guidelines have been widely criticized and are currently under review by Treasury. The motion provides plaintiffs with partial victory in the suit by stating CFC's intention of conducting a formal rulemaking on the list-checking requirement, giving the public an opportunity to comment. The background information in the motion reveals that the current list-checking rule was developed in a closed process with a coalition representing some of the largest CFC participating charities.

OMB Watch is one of 12 plaintiffs that have sued to block enforcement of CFC's employee list-checking requirement, claiming that it is unconstitutional and was implemented in violation of the Administrative Procedure Act. The motion cites Treasury's Voluntary Guidelines as authority, but misrepresents the suggestions made by the guidelines by equating employee list checking for all participating charities (CFC's requirement) with the guidelines suggestion that foreign recipient organizations be checked. The plaintiffs must respond to the CFC's motion by April 11.

The CFC motion also attempts to justify its employee list-checking requirement by noting that three foundations (Ford, Rockefeller and Charles Stewart Mott) have implemented general certification requirements for their grantees. However, the foundation certification requirements do not require employee list checking. Instead, they contain general language asking grantees to certify that foundation funds will not be used to support terrorism.

Inspector General Reports on IRS Review of Charities' Partisan Activity

The Treasury Inspector General for Tax Administration (TIGTA) has published its evaluation of the Internal Revenue Service's (IRS) process for reviewing referrals alleging illegal political campaign intervention by charities. It describes the process used in detail, and said it found no indications that the random sample of cases it reviewed were handled inappropriately. The IRS requested the review after its audit of the National Association for the Advancement of Colored People (NAACP), announced shortly before the election, raised questions about political motivation. The review did not specify whether the NAACP was included in the random sample of cases it reviewed.

Review of the Exempt Organizations Function Process for Reviewing Alleged Political Campaign Intervention by Tax Exempt Organizations describes a Political Intervention Project (PIP) established in June 2004 to "fast track" referrals and prevent recurring violations by groups exempt under Section 501(c)(3) of the tax code. A three-person committee reviewed the cases and decided which should be referred for further action.

Of the 131 cases the PIP committee reviewed, 10 were dismissed because they did not involve partisan political activities. Of the remaining 121 cases, the committee found that 80 warranted further investigation based on a "reasonable belief" that a violation may have occurred or that examination would lead to discovery of a violation. Of these 80 organizations, 34 are religious. The report found that slightly more pro-Republican groups than pro-Democratic groups were in the pool selected for further investigation.

The report did not address whether the IRS has the authority to "fast track" these cases absent a flagrant violation of the

ban on partisan activity by charities. The NAACP has refused to respond to a summons in its examination, saying the law requires a finding of flagrant violation before expedited review.

Grant Made to Politically Connected Group with Negative Rating

A politically well connected organization that promotes abstinence education received a major federal grant last fall under the president's AIDS program despite its proposal having been rated "not suitable for funding" by an independent review panel. A Feb. 15 letter from Rep. Henry Waxman (D-CA) to Randall L. Tobias, head of the President's Emergency Plan for AIDS Relief (PEPFAR), made public Waxman's repeated requests for basic information on the administration of PEPFAR and demanded information on the unusual grant.

On Nov. 1, 2004 the administration's global AIDS office approved a grant for an unspecified amount to the Children's AIDS Fund, an 18-year-old AIDS service organization that has become a leading proponent of abstinence-based AIDS prevention.

The Children's AIDS Fund originally submitted its grant request as part of an international competition for the funding of abstinence activities. Each grant request was reviewed by a technical panel. On Oct. 5, 2004, the U.S. Agency for International Development (USAID) announced that through a "competitive process" the agency was awarding 11 organizations with HIV prevention grants. The fund was not one of the 11 organizations. The review panel found that the organization had "serious technical issues" that had not been resolved, and that the proposal was "not suitable for funding."

However, on Nov. 1, the administration's global AIDS office secretly approved a grant for an unspecified amount of money to the Children's AIDS Fund. The decision by the panel was overruled by the head of the USAID, a key agency implementing the five-year, $ 15 billion Bush AIDS plan. USAID Director Andrew Natsios defended the grant, stating that Uganda, where the fund does much of its program work, has been a leader in the Abstinence, Be Faithful, Condoms (ABC) approach to HIV prevention. He also argued that the money would be funneled to a group with ties to Janet Museveni, the wife of Uganda's president, Yoweri K. Museveni.

The scope of work and the amount of money the Children's AIDS Fund will get are still under negotiation. Although the work was originally to be done in Zambia and South Africa, the USAID officials said that might change. The amount of money the 11 other groups will get has also not been decided, but USAID has indicated that the 11 organizations will each receive about $ 9 million. The Children's AIDS Fund award is likely to be comparable to the others.

The USAID grants are for efforts to support HIV/AIDS work in other countries. The purpose of the review is to ensure that taxpayer money is directed to programs that are successful. Funding grant requests that have been found "not suitable for funding" is a reckless disregard for taxpayer money. It can undermine the integrity of the entire program and is rarely done.

Some critics complain the grant reeks of political cronyism. Formerly known as Americans for a Sound HIV/AIDS policy, the Children's AIDS Fund is politically well connected. The organization's cofounder, Anita Smith, has close ties to the Bush administration. Two months after the grant was approved, Bush appointed Smith to co-chair the President's Advisory Council on HIV/AIDS. Additionally, her husband, Shepard Smith, is an appointee on the Advisory Committee to the Director of the Centers for Disease Control and Prevention.

The lack of information about membership of the panel is an additional concern. According to the *Washington Post,* USAID would not reveal the membership of the advisory panel, saying it was a "procurement matter," making it secret. Many federal agencies, such as the Food and Drug Administration and the National Institutes of Health turn to committees of outside experts for advice. In most cases, membership is public information. For this program to be truly accountable and transparent, the membership must be made public.

Federal Agency Censors Conference Workshop Title, Then Recants

A federal agency's attempt to remove the words "gay," "lesbian," "bisexual" and "transgender" from the title of a talk given at a federally funded suicide prevention conference is drawing ire from scores of mental health experts and the GLBT community.

The conference, which will be held on Feb. 28 in Portland, OR, is funded by the Substance Abuse and Mental Health Services Administration (SAMHSA). On the agenda was a talk that, until SAMHSA officials stepped in, was titled, "Suicide Prevention among Gay/Lesbian/Bisexual/Transgender Individuals."

Officials from SAMHSA suggested omitting direct reference to GLBT individuals in the title, instead using the term "sexual orientation." Ron Bloodworth, one of the three specialists coordinating the session, objected to the change. In an interview with the *Washington Post*, he stated, "Everyone has a sexual orientation, but this is about gays, lesbians, bisexuals and transgenders." He also noted that transgender people differ from others in terms of sexual identity, not sexual orientation. The agency also told him not to use the term "gender identity."

According to SAMHSA, the suggestion of the term "sexual orientation" is because of its inclusiveness. However, the latitude of their "suggestion" is debatable. Asked by the *Washington Post* how strong the suggestion was, Mark Weber, a spokesperson for SAMHSA, replied, "Well, they do need to consider their funding source."

The session was then re-titled "Suicide Prevention in Vulnerable Populations", but the censorship has already brought increased scrutiny to the agency. Consequently, SAMHSA has backed off its original position and is allowing the talk to proceed with its original title. However, both mental health professionals and activists have become increasingly concerned that this action may be part of a larger pattern of politics undermining the freedom and credibility of the health and science fields.

Study Looks at Independent 527s in 2004 Election

The Campaign Finance Institute has published a draft chapter of its upcoming book, *Election After Reform: Money, Politics and the Bipartisan Campaign Reform Act*, that examines the role of independent 527 groups in the 2004 election. It finds these groups did not replace party soft money, since overall levels of soft money went down in 2004. It also said independent groups overall were "scrupulous" in following the law banning coordination with candidates and parties. The study poses questions that should be carefully examined before Congress moves to regulate this independent political activity.

Authors Steve Weissman and Ruth Hassan found $ 591 million in soft money spent before passage of the Bipartisan Campaign Reform Act of 2002 (BCRA), but a decrease to $ 337 million after the law took effect. This more than offset the $ 254 million raised by independent 527s. The authors reject the view put forward by Sens. John McCain (R-AZ) and Russell Feingold (D-WI), sponsors of the 527 Reform Act of 2005, that these groups acted illegally in 2004, saying, "Although parties and campaigns and their close associates helped foster major 527 groups, there is no available evidence that they did anything illegal. On the contrary, the individuals involved in supporting the 527s appear to have been rather scrupulous in following the letter of the law and its regulations, which forbade parties, candidates and their agents after Nov. 6, 2002 from requesting or spending soft money in federal elections."

The study notes the role of parties in helping form 527s in the 2004 election, but also says key supporters took steps to separate themselves from the parties and "seem to have refrained from coordinating their communications with political campaigns." Weissman and Hassan go on to say, "After all, the 527s are not making contributions to candidates or parties, nor are they coordinating their spending with them. And many of the donors are promoting their ideologies rather than looking for individual favors. Aren't the 527 donors simply furthering independent political expression …?"

The study raises three additional policy questions to be examined in policy debates on what threat of corruption independent 527 groups may represent:

- Would money raised and spent by 527 groups create a feeling of obligation by candidates that become officeholders?
- Should there be special treatment of groups that have both regulated PACs that can make direct contributions to campaigns and independent arms that do not coordinate or communicate with campaigns?
- Do individuals closely associated with campaigns and party leaders that are involved with independent 527s pose a threat of corruption?

This study is a good beginning for discussion and debate on whether independent 527 groups should be regulated in the same way as parties and campaigns. Independent groups that do not coordinate with candidates and parties currently are subject to disclosure rules, filing reports with the Internal Revenue Service.

Faith-Based Roundup

On Feb. 16, the House Committee on Education and the Workforce approved a job-training bill that would allow, if it passes, federally funded religious organizations to discriminate against employees based on their religious beliefs. The committee also rejected an amendment that would have remedied the constitutional concerns.

A $ 5 billion job-training bill, the Job Training Improvement Act (H.R. 27), would combine funding streams for adults, dislocated workers and employment services into a single state block grant. The change would give governors more discretion over how the money is spent, possibly causing some programs to lose funding while others could benefit.

A controversial portion of the bill exempts religious organizations from a current provision that prevents all contractors under the Workforce Investment Act (WIA) from considering religious affiliation when hiring employees for a job-training program that is operated with federal funds. Any religious organization that receives federal funds from the Workforce Investment Act's job-training programs could refuse to hire employees from different religious backgrounds. Currently, all recipients of federal money for job-training programs must not discriminate on the basis of religion. Many religious organizations participate in federally funded job-training programs without difficulty, and are in full compliance with the current regulation.

The committee also rejected an amendment offered by Reps. Robert Scott (D-VA), Chris Van Hollen (D-MD), and Lynn Woolsey (D-CA) to reinstate the civil rights provision found in current law. Scott argued that because many churches are

all white or all black, allowing religious preference in hiring would be tantamount to discrimination based on race. “The idea that we are debating whether you can discriminate with federal money would be a shock to most Americans. It’s surprising that we are discussing this and it is embarrassing that we are losing. I oppose discrimination, so I oppose the bill.”

A lawsuit filed on Feb. 17 by the American Civil Liberties Union (ACLU) of Pennsylvania and Americans United for Separation of Church and State underscores the importance of retaining the civil rights provisions.

The complaint in *Moeller v. Bradford County* alleges the federal funding of the Firm Foundation program at the Bradford County Correctional Facility violates the Constitution by funneling public money to a program that proselytizes and hires only Christians. The county and the ministry operate a vocational training program for inmates in which a significant proportion of inmates’ time is spent on compulsory religious discussions, religious lectures and prayer, rather than on learning job skills. The complaint also alleges that program administrators discriminate in hiring workers based on their religious beliefs and affiliation.

Over 90 percent of the budget for the program comes from federal, state and local government funds. The funding for the program originally came from a U.S. Department of Labor program under the Workforce Investment Act. Currently, The U. S. Department of Justice provides some of the funds that underwrite the Pennsylvania program being challenged.

Emperor Bush?

How the White House and Congress Are Establishing an Imperial Presidency

Analyses of pending and expected antiregulatory proposals have revealed the usual themes from years past — net benefits, regulatory budgeting, sunsets, and so on. An unexpected theme has also been emerging, which is worth noting for anyone committed to a progressive vision of an open, accountable government responsive to public needs: a trend in favor of concentrating power in the White House free of democratic accountability. In short, the creation of an imperial presidency.

Imperial Presidency Proposals

The White House has provided many examples of imperial presidency gestures throughout the Bush administration, from the decision in the first term to constrict the applicability of the Freedom of Information Act to the recent request in the Iraq war supplemental for over $ 5 billion in unrestricted foreign aid that senators from both parties are decrying as a “slush fund.” The consequences of an imperial presidency are tremendous for openness and government accountability, of course, but a few key recent examples of proposed and anticipated measures suggest the consequences for regulatory protections of the public interest.

Raising Homeland Security Above the Law

Track developments on the imperial presidency and more at www.ombwatch.org/regs.

As we reported before, section 102 of the Sensenbrenner immigration bill (H.R. 418) would put the Secretary of Homeland Security above the law when securing the borders and removing obstacles to the detection of illegal immigrants. Superficial reportage in some press organs characterized the provision in passing as though it only enabled the Department of Homeland Security (DHS) to ignore a conflict with the California Coastal Commission that has been holding up construction of additional fencing in a three-mile segment near San Diego. In actuality, the provision as passed by the House would extend far beyond the San Diego area and would empower the DHS secretary to waive any and all laws, without any limit on the secretary’s discretion. Moreover, it is completely unnecessary; the federal law that governs the conflict with the California Coastal Commission already has waiver provisions that allow the White House ultimately to proceed, if necessary, with any needed fencing.

If the Senate agrees to this provision and the White House signs it into law, first in danger would be environmental protections along the border. The provision would allow DHS to waive many more protections of the public interest, such as the following:

- Criminal law — from racketeering to murder and everything in between
- Child labor laws
- Laws that protect workers by ensuring safe and healthy workplaces, preventing unfair contracting through Davis-Bacon Act wage determinations, and banning retaliation against whistleblowers
- Civil rights provisions that bar federal contractors from discriminating on the basis of race and sex
- Ethics laws for clean contracting and procurement policy
- Laws that give small businesses a chance at winning contracts for construction work along the border.

Another component of the DHS waiver authority would make any waivers and any cases arising from waivers unreviewable in any court. This section does not apparently have any limitations; it could shield not only government agencies but also private contractors from any liability for deaths, dismemberments, or any injuries whatsoever. For example, this section would empower the DHS secretary to give no-bid contracts for border construction to private companies and then could shield those contractors from all employment discrimination and workplace safety laws. Workers harmed by the contractors would likely be left with no recourse whatsoever.

Seizing Control Over All Government Operations

The White House is also seeking the power to reorganize the very structure of all government operations and eliminate civil service protections in its management of the workers who serve the public in government agencies. Rep. Tom Davis (R-VA), chairman of the House Committee on Government Reform, has also vowed to reintroduce legislation to empower the White House to reorganize all federal agencies.

Underneath the technical discussion of organizing, streamlining and restructuring government programs is the risk that the White House would use its new powers to weaken government programs that serve the public interest. We have previously documented how the Bush administration's tendency to give in to special interests makes its regulatory record one long pattern of failure; new powers to reorganize and restructure government programs would likely continue that trend. Particularly at risk would be government programs that target highly vulnerable and underserved populations. The Appalachian Regional Commission, for example, was recently criticized in a White House program assessment for doing work that duplicates the work of other government programs, even though the ARC was created precisely because the existing patchwork of government programs was not doing enough to meet the needs of the severely disadvantaged population in Appalachia.

The White House has pushed not just for the power to reorganize government programs but also for the authority to establish new management controls over the government workforce, free to ignore existing civil service law. The White House has already been granted such power for the Department of Homeland Security, and it has announced its intention to seek the same "flexibility" for all other government departments. The government workers whose jobs could be at risk without civil service protections are not merely faceless functionaries — they include such important figures as David Graham, the FDA researcher who discovered that Vioxx put seniors at risk; Sibel Edmonds, the FBI translator who blew the whistle on mismanagement of the so-called "war on terror"; and Jack Spadaro, a mine safety inspector who refused to keep quiet as the Department of Labor botched the investigation of what has been called the worst environmental disaster in decades. "Flexible" management policies without the procedural guarantees of existing civil service protections could threaten not just those who expose mismanagement and fraud but also those who, like Graham, reach conclusions that threaten the bottom line of the industries that exert extraordinary influence over the administration.

Erasing Local Protections of the Public Interest

The press is increasingly taking notice of the Bush administration's campaign to serve corporate special interests by weakening and eliminating protections of the public. In addition to its efforts at the federal level by slashing agency enforcement budgets and weakening or eliminating federal regulations, the administration has mounted a similar attack on regulatory protections at the state level.

One of the most prominent examples has been the Food and Drug Administration's efforts, under former chief counsel Daniel Troy, to argue in court that drug companies should be exempted from state product liability laws whenever a harmful drug has been approved by the FDA. The FDA's record on drug safety has recently been called into question by the Vioxx case and growing concern about adolescent use of antidepressants. The FDA's preemption argument would prevent state and local governments from protecting their residents, even when the FDA's only protective action is inaction.

The White House's attack on block grants, using the rhetoric of "performance" and "results," is another example. In the White House's performance assessment schema (the Program Assessment Rating Tool or "PART"), block grants must, like all other government programs, show "results" acceptable to the Office of Management and Budget. It hardly sounds controversial — who could be against "results," after all? — but the rhetoric of results masks the underlying conflict with the very purpose of block grants, which is to send funds to the states with no strings attached. Most states actually have performance management programs of their own, but the PART essentially holds states accountable to the White House's own measures. Aside from this basic conflict, the PART sets up block grants for failure, thus enabling the president to declare that a program's failure to show results is the reason for proposed budget cuts.

Although the PART could disappear when the Bush administration leaves office, the recently reintroduced Program Assessment and Results Act would effectively codify the PART and enshrine it in law. The White House would therefore be empowered to continue using this tool in its larger campaign to serve corporate special interests by blocking the states from creating protections of the public health, safety, and environment that the administration refuses to provide.

Fundamental Problems of an Imperial Presidency

An imperial presidency spells disaster for regulatory protections of the public interest. As has been shown repeatedly — from the early 1980s, when the White House used the Paperwork Reduction Act to block the FDA from requiring Reye's Syndrome warnings on aspirin, to a more recent decision such as the White House's use of centralized regulatory review to weaken regulations requiring tire pressure monitoring systems — centralizing regulatory policy in the White House facilitates the undue influence of corporate special interests and can produce deadly results. Moreover, an imperial presidency is offensive to the constitutional order, which establishes checks and balances among three coequal branches of government, distributes power among multiple sovereigns in the federalist design, and diffuses federal power within each branch. Just as legislative power is split between two chambers, executive powers are allocated not only to the White House but also to the departments of government, to which Congress can directly delegate specific authorities. Hovering over the potential imperial presidency is the specter of government by fiat, beyond the reach of the very people who constitute the government in a democratic state.

The vision of the imperial presidency is not empire so much as the mythic corporate executive. Enron, Tyco, WorldCom — the list of colossal failures, and devastation to people's lives from unchecked greed, continues to grow. The effort to reshape the presidency in the model of the corporate executive only sets us all up for more harm from the real corporate executives who come calling at the White House, day after day, leaving weakened protections as their calling card.

Budget Slashes Enforcement at FDA, EPA

The White House's fiscal year 2006 budget submission will mean big cuts in food and drug safety inspection as well as state enforcement of environmental protections.

FDA

Amidst mounting concern over the safety of our food supply from threats such as mad cow disease and bioterrorism and after a storm of criticism about FDA's botched inspection of British flu vaccine facilities, which led to a vaccine shortage this winter, FDA's budget proposes cuts to nearly all of its inspection programs.

The new FDA budget proposes major cuts in both foreign and domestic inspection programs, including significant spending reductions of:

- 5 percent for domestic food safety inspections
- 5.8 percent for foreign drug plant inspections
- 4.7 percent for inspections of national blood banks.

According to an agency statement given to *USA Today*, FDA will stretch its meager budget by targeting inspection towards only high risk cases: "Intelligent, risk-based inspections are more important than absolute numbers of inspections." Still, overall inspections will drop significantly if the proposed budget is approved. Despite FDA promises to Congress to increase vaccine plant inspections from once every two years to once a year in response to the flu vaccine debacle, the number of drug plant manufacturing inspections will drop from 1,430 this year to 1,355 next year. Inspections of foreign drug plants will fall from 515 to 485 per year.

The $ 1.9 billion budget provides a 4.5 percent overall increase in the FDA budget. FDA has taken the hint from the storm of public outrage over Vioxx and has asked for increased funding for drug safety reviews. The budget also includes an expansion of bioterrorism food safety programs.

Considering the controversy surrounding FDA this past year, the budget cuts for inspection are particularly ironic. Last fall, contamination at a British flu vaccine plant left the U.S. scrambling for vaccines weeks before the flu season. Congressional hearings and news media coverage revealed that the FDA had failed to frequently inspect the plant, which accounted for half of the U.S. flu vaccine supply.

EPA

Bush's proposed budget for the Environmental Protection Agency not only cuts overall budgetary spending by 5.6 percent but specifically targets money that passes through EPA to the states.

Despite the central role states play in carrying out environmental protections, Bush's budget request has cut $ 271 million of EPA funds that pass through the states. In fact, the cuts to the states are proportionally greater than the overall cut in the agency funding request. The White House asked for $ 400 million less than what Congress allocated to the agency in 2005 and $ 220 million less than the White House 2005 budget request.

The 2006 budget represents the second year in a row that the state portion of EPA's budget has decreased while the agency's portion increased. The ratio of funding that stays at EPA to funding allocated to the states is generally about 5 to

3, which in the past has meant about $ 3 billion of EPA's budget has been funneled to the states. On top of that, states spend another $ 15 billion, approximately, on environmental protections with money that comes from both state sources and permit fees.

EPA delegates 75 percent of its work to the states, and the states are responsible for 90 percent of enforcement efforts. Therefore, as EPA's portion of funding to the states decreases, so will state enforcement and permitting, according to Steven Brown, executive director of Environmental Council of the States (ECOS).

The situation for state environmental protection is made even more dismal by growing state deficits. Currently 26 states are running a funding deficit, forcing state legislatures to cut discretionary spending, which often includes cuts to environmental enforcement.

Over the past five years, EPA has promulgated 160 new rules that have major impacts on the states. Despite the necessity of these rules to protect public health and the environment, dwindling state funding has hindered implementation and enforcement of these important safeguards. At the same time, environmental enforcement has already dropped off significantly over the past several years.

FDA Announces Drug Safety Oversight Board

The Food and Drug Administration (FDA) plans to initiate an independent oversight board to handle drug safety issues, but some lawmakers and consumer groups say the new panel lacks teeth.

Michael Leavitt, secretary of the Department of Health and Human Services (HHS), announced Feb. 15 that FDA will create an independent drug safety oversight board. The board will be responsible for overseeing drug safety policies and resolving internal disputes over drug risks as well as approving information and content for a new government website on drug safety information.

The panel will be appointed by the FDA commissioner and comprised of government officials from FDA, HHS and other government agencies. Medical experts as well as patient and consumer groups will act as consultants to the board.

The panel emerged out of several recent controversies at FDA surrounding drug safety, including the discoveries that antidepressants may lead to increased suicidality in children and that patients on Vioxx faced an increased risk of heart attack or stroke. In each case, FDA was slow to act and ignored or suppressed findings from its own reviewers in the Office of Drug Safety.

Aside from the review panel, the 2006 budget requests a $5 million increase in funding for the Office of Drug Safety. The office will also get an increase of $1.5 million from industry fees. The new money will allow the agency to have more access to industry drug safety information as well as pay for an additional 25 employees.

Lawmakers and consumer groups responded to the news with skepticism, saying the new board needs more independence and authority to fully ensure the safety of FDA-approved drugs. Since all of the board members will come from within FDA, HHS or other government agencies and medical experts will act only as consultants, the board will lack true independence.

"It's really a cosmetic way of dealing with a much more serious problem," Dr. Sidney Wolfe, director of the nonprofit Public Citizen Health Research Group in Washington, DC, told Newsday. "In the absence of any fundamental change, it's a cruel hoax."

Many lawmakers believe the board does not reach to the core of the problems with drug safety reviews. Senate Finance Committee Chairman Charles Grassley (R-IA) and Sen. Christopher Dodd (D-CT) are each developing legislation that would give the Office of Drug Safety more independence from the Office of New Drugs. Congressional hearings last fall on FDA's handling of Vioxx pointed to mounting tensions between the FDA's Office of Drug Safety and the Office of New Drugs. Though the two offices are theoretically independent of one another, testimony revealed that the Office of New Drugs exerts considerable influence over the Office of Drug Safety. Many advocates believe such influence is inevitable when the same agency both approves drugs and evaluates their post-market safety. The agency is often reticent to release criticism of drugs already on the market, leaving patients at risk for harmful, or potentially fatal, side effects.

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