



June 16, 2003

Vol. 4 No. 12

In This Issue

Federal Budget

[The House Takes Up Permanent Repeal of the Estate Tax](#)
[Child Tax Credit: The Poor as Political Theatre](#)
[Economy and Jobs Watch](#)

Information Policy

[Bill Introduced to Bolster Whistleblower Protections](#)
[Panel Investigates Impact of SBU on Media](#)

Nonprofit Issues

[Charitable Giving Bill in House Sparks Controversy Over Foundations' Costs](#)
[Head Start Group Sues HHS Over Threatening Letter](#)
[HHS Seeks Input on Best Practices for Intermediary Organizations](#)
[Public Service: Get a Job, Get a Career \(or Get a Clue?\)](#)
[2003 Community Technology Centers Grants Competition](#)

Regulatory Matters

[Ose Introduces Bill to Test Regulatory Budgeting](#)
[Graham Advises Agencies on Valuing Lives of Seniors](#)
[EPA Study Finds Water Polluters Not Penalized](#)
[Administration to Gut Roadless Rule](#)
[OSHA Unveils Unenforceable Ergonomics Guidelines for Poultry Plants](#)

Right-to-Know

[CIA Memo Stands Up for Secrecy](#)
[Government Increasingly Citing Privacy for FOIA Denials](#)
[First Amendment Under Attack from Anti-Terrorist Measures](#)

Federal Budget

The House Takes Up Permanent Repeal of the Estate Tax

After hijacking the child tax credit with add-ons that inflated the cost to \$82 billion, House GOP leaders continue this month in their headlong rush to drain resources from government by cutting taxes for corporations and the wealthy. The campaign has just moved from the outrageous to the egregious.

The House leadership has scheduled consideration of the "Death Tax Repeal Permanency Act of 2003" (H.R.8) for Wednesday or Thursday of this week. The purpose of the bill is to permanently extend full

repeal of the estate tax -- which under the "sunset" provisions of the 2001 tax bill is repealed for 2010 but reinstated in 2011. The estimated 20-year cost of full repeal would be a stunning \$1 trillion. This comes during the same decade that the baby-boomer generation will be retiring in record numbers, creating huge burdens on Social Security and Medicare.

This headlong rush for more tax cuts comes in spite of:

- A record \$400 billion budget deficit predicted by the Congressional Budget Office for FY 2003, and deficits expected to continue for as far as the eye can see.
- A national debt that is estimated to reach \$7.9 trillion by 2013, when the first baby-boomers begin retiring.
- An unemployment rate remaining over 6%.
- The worst state fiscal crises since World War II, forcing states to cut services and raise taxes to balance their budgets -- actions that work against economic recovery.
- Increased military costs as conflict continues in Iraq.
- Continuing unmet needs for domestic security.

On top of these counter-indications for passing a huge new tax cut is the lack of public support for more tax cuts. But then, the "public" -- ordinary voters -- don't seem to matter much to the House leadership.

Of all the possible tax cuts, repealing the estate tax is perhaps the most flagrant. It reveals the unbridled ideological bent of a radical right ideology to reduce government by rewarding wealthy contributors.

The estate tax affects the wealthiest 2 percent. It provides substantial federal and state revenue. It is the only tax on appreciated wealth that is passed from generation to generation. Finally, it provides a vital incentive for charitable bequests and lifetime giving, which is especially needed at a time when charities and nonprofits -- from soup kitchens to universities -- are facing increased demand and declining resources. It certainly isn't an economic stimulus; it doesn't even go into effect until 2011.

As government shrinks, the people who will be most affected are the poor. But ordinary, middle-class Americans who cannot pay for a private education for their children or afford the full cost of a decent retirement and health care in their old age will also be harmed. The environment, national parks, regulatory protections, transportation, and security against events like terrorist attacks or natural disasters will all suffer. That the House can continue to ignore real issues and concerns about long-term priorities in favor of cutting taxes for the wealthy is unconscionable.

The "Death Tax Repeal Permanency Act of 2003" will almost surely pass the House, and just as certainly be stopped in the Senate. Debating this bill will be another waste of the taxpayers' money -- another act of theater -- but it is also a warning about the extent to which an ideologically driven House majority is willing to go to accomplish its aims of shrinking government.

Child Tax Credit: The Poor as Political Theatre

The story is confusing. How did it end up that some Democrats voted against the House bill extending the refundable child tax credits to the 6.5 million low-income families who got left out of the latest tax break for the wealthy?

Neither the President's \$600 plus billion proposal eliminating the taxes on investment dividends, nor the original House or Senate bills included a provision extending the child tax credit to the poorest families. However, the bill that came out of the Senate Finance Committee (cutting investment dividends and capital gains taxes) did include it. The provision was then quietly dropped during the conference proceedings that reconciled House and Senate versions. Thus it was left out of the final bill that was voted on and approved.

A huge uproar followed and was justified. It was bad enough that Congress, working at the behest of the Bush administration, passed trillions of dollars in irresponsible tax cuts targeted at the wealthy, but the refusal to include \$3.5 billion to cover low-income working families was over the top. The Senate moved quickly to correct the problem, passing a \$10 billion bill that paid for the lost revenue. The House, however, decided to use the issue as political theater, passing an \$82 billion bill with a number of add-ons that were not paid for. A few principled Democrats, led by House Minority Leader Pelosi and Minority Whip Hoyer refused to fall for this cynical and irresponsible power play.

Predictably, the House bill nevertheless passed, though Democrats were successful in blocking a procedural rule that would have kept the \$10 billion Senate bill from being considered in conference. There seems to be little hope that the House and Senate will ever actually agree in conference. Basically, the Republican leadership got what it wanted--to be able to say it passed a bill for low-income people while knowing full well that the bill will never take effect. This seems to be a strategy that will continue to be used by the Republican leadership--pair expensive tax cuts for the wealthy with a few tax cuts or benefits for the rest of us and then complain that anyone who votes against the bill doesn't care about poor people.

Ultimately, the losers in this situation are low-income families. A bill that includes an extension of the child tax credit to low-income families will not be passed in time for them to receive their refund along with everyone else, and probably will not be passed at all. The larger picture is even worse. The tax cut mania threatens to literally bankrupt the United States government. Using poor people to get more tax cuts for the rich is reprehensible, but the bigger problem is that the huge cost of irresponsible and irrational tax cuts will harm low- and middle-income people for decades to come, forcing cuts in services and benefits that we all depend upon.

Economy and Jobs Watch

Two recent economic reports show the depth of economic mismanagement by the Bush administration. First, it was reported last week that the unemployment rate has risen to 6.1 percent in yet another indication of the poor state of the labor market. Second, the Congressional Budget Office (CBO) announced that it expects the current year's budget deficit will be around \$400 billion.

Labor market

The recent [Employment Situation report by the Department of Labor](#) shows the continuing weakness of the economy. The unemployment rate rose to 6.1 percent in May from 6 percent in April. In addition, the report demonstrated just how many jobs have been lost during the current administration. According to establishment data (i.e., data from companies and other employers), employment levels peaked in February 2001, and, since then, employment in the private sector has fallen by 3.1 million jobs.

The administration's first round of tax cuts (enacted in 2001) clearly have not brought about a recovery in jobs. The [administration has claimed](#) that the second round of revenue reductions enacted last month will create 1.4 million *additional* new jobs over the next 18 months. (A publication by [The Economic Policy Institute](#) has documented the current labor situation, and offers a method for evaluating this goal.)

In addition, according to the [administration's own analysis](#), it appears that over the next ten years a large percentage (90 percent) of the 1.4 million additional jobs would have been created anyway.

Even if these claims turn out to be true, spending \$350 billion to create 1.4 million additional short-run jobs (that's \$250,000 per job), and many fewer additional jobs over the long run, is a very inefficient way to help the economy.

Deficit

Last week also brought data to light on just how far we have fallen when it comes to fiscal responsibility. The current administration inherited record budget surpluses and has brought the budget into record deficit territory. The CBO [announced that it expects the current year's budget deficit will be close to \\$400 billion, about 4 percent of GDP](#). This record deficit, and the ones expected as a result of current revenue reductions, add to the amount of debt that the government must eventually pay. The current tax-cut binge must eventually be paid for in the future by imposing taxes on this generation or, more likely, the next generation, which would ultimately be greater than would otherwise be necessary.

In addition, while the stated cost of the 2003 revenue reduction is \$350 billion, estimates by the [Tax Policy Center](#) place the true cost (if temporary provisions are made permanent) at around \$1 trillion. If all the temporary provisions are removed from both the 2001 and the 2003 reductions, the cost will be about \$2 trillion.

Fairness

The 2001 and 2003 revenue reductions were not only ineffective, inefficient, and fiscally irresponsible; they were unfair. The reality is that the [primary beneficiaries](#) are those at the very top of the income distribution. Those with an income greater than \$1 million get a \$94,000 break, while those in the middle of the income distribution get only \$217.

State by State Impacts of the Bush Tax Plan

Citizens for Tax Justice has released a new [analysis](#) of the state-by-state impacts of the latest tax cut bill, signed by President Bush on May 28.

Information Policy

Bill Introduced to Bolster Whistleblower Protections

Last week Sens. Leahy (D-VT), Levin (D-MI), and Akaka (D-HI) introduced an important bill to reinforce traditional whistleblower protections. The [Whistleblower Protection Act Amendments \(S. 1229\)](#) are the product of three years of research and staff review, as well as in-depth hearings. Various court decisions have eroded the protections for whistleblowers established by Congress in 1989 with the unanimously supported [Whistleblower Protection Act](#), which was later strengthened, again with a unanimous vote, in 1994.

The proposed amendments would restore policy choices that have already been made by Congress but have not been respected by the Federal circuit courts. The bill would codify prior [Governmental Affairs Committee](#) report guidance or restore explicit statutory language including:

- Banning non-statutory loopholes in the scope of protected speech;
- Removing a judicially-created test requiring an employee to irrefutably prove misconduct, rather than establish a reasonable belief;
- Prohibiting gag orders from canceling speech protected by the WPA;
- Establishing independent review of security clearance decisions as a check against using clearance actions to harass whistleblowers;
- Clarifying the settings when a whistleblower responsibly can disclose classified information to Congress.

This legislation would give employees who disclose important information about fraud, mismanagement, or misconduct a fair chance to survive professionally. These are federal government employees who choose to act on their duties under the Code of Ethics and work within governmental channels to challenge betrayals of the public trust. Our country needs advance warning from whistleblowers more than ever to address security breakdowns.

The bill is scheduled to be marked-up on June 17 by the full Government Affairs Committee.

Panel Investigates Impact of SBU on Media

Last week, [The Annenberg Public Policy Center](#) of the [University of Pennsylvania](#) held a conference entitled, "Sharing and Protecting Homeland Security Information -- Avoiding Conflict Between the Media and the Government."

The main panel dealt with new information restrictions, and how that affects media professionals. More specifically, discussion focused on Subtitle I ("Information Sharing") of the [Homeland Security Act](#), which requires the president to develop a policy on protecting Sensitive Homeland Security Information. The panel worried about the possible chilling effects this could have, along with implications for government accountability, and explored avenues available to the media to obtain information. It was also noted that the media has not adequately covered the topic of information restrictions, possibly because of reluctance to misuse their influence for self-serving purposes.

The panel was moderated by Terence Smith, media correspondent from the Lehrer Newshour, and participants included Scott Armstrong, executive director of the Information Trust, Tom Bettag, executive producer of Nightline, Barbara Cochran, president of the Radio Television News Directors Association, Tom Gjelton, correspondent for Nation Public Radio, Bill Leonard, director of the Information Security Oversight Office, Jack Nelson, former D.C. bureau chief of the Los Angeles Times, and Jeff Smith, former general counsel of the CIA.

Nonprofit Issues

Charitable Giving Bill in House Sparks Controversy Over Foundations' Costs

When the "Charitable Giving Act of 2003" [H.R. 7](#) was introduced in the House last month, there were optimistic statements that the Ways and Means Committee could consider the bill before the July 4 recess. However, no action is pending and controversy about provisions involving foundations is gaining national attention.

The bill proposes excluding administrative and operating costs from the annual required "payout" of 5% of foundation assets. Currently, both administrative costs and grants count toward the 5% requirement. A recent [report](#) by the National Committee for Responsive Philanthropy (NCRP) estimates the House proposal would increase foundation grants by \$4.3 billion a year. The estimate is based on the amount foundations spend on administrative costs in 2001, according to the [National Center for Charitable Statistics](#). The Council on Foundations has criticized the NCRP study, claiming that it is seriously flawed.

Leaders in the foundation world are opposing the provision, saying it would eventually force many to spend down their assets. NCRP disputes this claim, noting that the net effect would raise overall payout to 5.4%, an overall increase of .04%, a level it says makes foundations sustainable. NCRP cites several studies that conclude that foundations can pay more than 5% in payout without undermining perpetuity. Even so, some foundations claim it would be quite troubling. For example, one foundation claims that it

would need approval from the courts to receive enough money from its two trusts in order to insure that there are not cuts in annual grant making.

The Foundation Executives Group, made up of the Carnegie Corporation, the Mellon Foundation, the Bill and Melinda Gates Foundation and Hewlett Foundation, has hired former Republican Representative Bill Paxon, now a lobbyist at a major national lobbying firm, to represent them in the debate in Congress. Not all foundations oppose the House provision. For example, Diane Feeney of the French American Charitable Trust writes for the *Philanthropy Journal* that the House provision is quite supportable.

Meanwhile, the House debate has gained national attention, with papers like *USA Today* endorsing the proposal ([in a May 29 editorial](#)) and the *New York Times* calling for congressional hearings to assess the potential impact in a [June 8 editorial](#).

It is quite striking that this payout issue has swamped the discussion about other parts of the bill. While the outcome in the House is unclear, it does appear that the sponsors of H.R. 7, Reps. Roy Blunt (R-MO) and Harold Ford, Jr., (D-TN), were surprised by the overwhelmingly negative response by foundations. Whether it had its intended impact on the sponsors is unknown.

OMB Watch has not taken a position on this issue. On a related matter, we have suggested that the foundation excise tax on net investment income be reduced to a flat 1%. The revenue it generates should be used for increased oversight of the nonprofit sector by the Internal Revenue Service as well as for grants to nonprofits for efforts to strengthen accountability.

Head Start Group Sues HHS Over Threatening Letter

The [National Head Start Association](#) (NHTA), an organization representing parents, teachers and Head Start programs, filed suit against the Department of Health and Human Services (HHS) and Secretary Tommy Thompson on June 11th, seeking a court order that would prevent HHS from penalizing Head Start advocates that speak out against the administration's proposed overhaul of the program. The suit also asks that a copy of the Court order be sent to all Head Start programs in order to correct the chilling impact May 8, 2003 HHS letter has had on the Head Start community's voice in the debate over the program's future.

The suit is a response to a letter HHS sent to Head Start programs in May that contained inaccurate and confusing information about federal laws governing their right to lobby Congress, and threatened sanctions for programs that violate the law. (See the [June 4, 2003 Watcher story](#) for details of events that lead up to filing the suit.) NHTA responded with a letter asking for clarification of the HHS position. When none came within two weeks, NHTA filed the suit.

NHTA is being represented by Edward T. Waters, who said, "The legal problems with the Bush Administration letter are both obvious and severe. The letter exceeds the boundaries of any conceivably applicable statute or regulation..." The original letter from HHS warned against engaging in "political activities," invoking the Hatch Act's ban on campaigning for candidates on time paid for with government funds. However, the activity the HHS letter objected to was grassroots legislative lobbying communication, which has no reference to candidates or elections; hence, the Hatch Act does not apply.

OMB Circular A-122 prohibits nonprofit federal grantees from spending grant money on legislative lobbying, but this prohibition does not extend to privately raised funds. HHS does not appear to be claiming that Head Start programs have used federal funds for lobbying. However, there is a dispute about whether matching funds can be spent free of this restriction. Generally, matching funds are considered to be "federal funds" and subject to the rules in Circular A-122. However, NHTA's suit notes that the Head Start appropriations law only prohibits the use of "appropriated" funds for lobbying, and claims this frees matching dollars to be used for lobbying activities.

The entire controversy is a result of the Bush administration's proposals to turn over the Head Start

program to the states. The impact on early childhood education could be profound, since the program has a wide reach, including 870,000 parent volunteers, 51,681 teachers, and serves over a million at-risk children. Head Start advocates have opposed the move because they fear it will result in lower standards and less commitment to health, nutrition and parent involvement. Last week the House Subcommittee on Education Reform voted to scale back the administration's proposal by limiting state control in a pilot within eight states that have a record of financial commitment to the program. These states would be allowed to merge the state and federal funds. The committee also inserted controversial language that would allow faith-based organizations to discriminate in hiring on the basis of religion. The bill now goes to the full Education and Workforce committee.

The NHSA case, *National Head Start Association v. Department of Health and Human Services* was filed in the United States District Court for the District of Columbia on behalf of NHSA, its 1100 members and parents and staff. For more details see [Save Head Start website](#), sponsored by NHSA.

HHS Seeks Input on Best Practices for Intermediary Organizations

On June 9th, the Department of Health and Human Services (HHS) published an announcement seeking public comment on a proposed research study to examine best practices of intermediary organizations that serve faith and community based organizations.

The purpose of the study is to look at the role intermediaries play in helping these groups build capacity to serve low-income families, identify innovative practices, examine methods for evaluation, and establish benchmarks to assess performance. The proposed survey is [available at OMB Watch's site](#). HHS recommends that public comments be filed by July 8th, and sent to:

Office of Management and Budget, Paperwork Reduction Project
725 17th Street NW
Washington, D.C. 20503
ATTN: Desk Officer for ACF.
Email: lauren_wittenburg@omb.eop.gov

The project will involve up to 10 intermediary organizations and up to 4 faith-based and community organizations. It will be conducted by Branch Associates of Philadelphia, PA and ABT Associates of Cambridge, MA.

Public Service: Get a Job, Get a Career (or Get a Clue?)

A recent survey conducted by the [Center for Public Service](#) at the [Brookings Institution](#) offers some telling lessons for organizations interested in attracting the oft-cited but difficult to attract "next generation of public service leadership."

The [survey findings](#)-- drawn from a random sample of 1,002 college seniors pursuing degrees in liberal arts, social work, and human services fields-- indicates that the nature of the work and the satisfaction it entails plays an important role in determining what they look for in potential jobs. It also underscores that even during a time in which government institutions, service providers, and charities face economic difficulties and issues around credibility and accountability, college seniors are still interested in following through on a commitment to public

The "[Internet Self Organizing Survey](#)" is seeking participants ages 14-24 to answer questions regarding the types of online activities that are most effective to encourage greater political and civic participation in the United States. The survey will be available until June 27, 2003.

service.

The perception of public service, by this population, is indeed broad; it encompasses helping individuals, a community, the nation, or society, volunteering, voting, and donating to charity. Just 2% of those surveyed felt "public service" means working for a nonprofit, and only 5% of those surveyed believed it means working for government (coincidentally the same number that considered donating to a political campaign as a form public service). Yet 58% considered nonprofit work to be "completely public service in nature", compared to 28% who held that view towards government work.

Roughly a quarter of those surveyed gave serious thought, and 36% gave somewhat serious thought to working in the public sector, broadly defined. A further cut revealed 20% of all seniors gave very serious consideration to taking a nonprofit job, 18% in the federal government, 19% to state or local government, and 13% to a government contractor. Moreover, 42% expressed a stronger preference for nonprofit sector work, versus 37% for work with the government and 19% for jobs with a government contractor.

When the reputation of each sector is considered, some startling differences appear. For example, 76% of respondents thought nonprofits to be strong with respect to helping other people, compared to 16% for government, and just 4% for contractors. Moreover, 60% thought nonprofits spend money wisely versus 29% of contractors, and just 6% of government. In terms of fairness in the workplace, 61% felt nonprofits were better, versus just 22% for government and 10% contractors.

Tied to these perceptions, however, is a great sense of confusion, if not frustration, about how to actually land a "public service" job. Only 44% felt they knew how to secure a job in government, with 63% calling the application process confusing and 78% considering it slow, though 77% thought it fair. By comparison, 44% knew about nonprofit opportunities, with 69% considering the process for finding nonprofit work simple, 89% fair, but only 56% considering it fast. Somewhat ironically, 62% of seniors felt that finding a nonprofit job would be easy, compared to 34% for contractors, and 28% for government.

The findings raise questions as to where students form their perceptions about public service work. Encouragingly, 85% of those first exposed to nonprofit work before their senior year -- whether through volunteering or internships -- were more interested in pursuing public service jobs, compared to 68% pursuing government work, and 66% pursuing contractor work. While 54% of those surveyed have volunteered for a nonprofit, only 8% ever volunteered, interned, or worked in federal government, 11% in state or local government, or 10% for a contractor. Whether this is because of a lack of interest on the part of students, a lack of opportunities among organizations, or both, is not clear.

If perceptions are based on limited interaction with the very organizations with which seniors want to work, then where is their interest stoked? Some 42% of seniors claimed they received career advice from their parents, 22% from professors, and 10% from peers. Only 8% sought or followed advice from both past professional contacts or current workplace associates, 6% from a college career services office, and just 5% from a volunteer/service learning office.

The role of parents matters more than organizations may realize, as they proved to be the most important source of information and advice among college seniors. Over 50% of seniors who took jobs with contractors (considered best in terms of pay), did so on the advice of parents. By comparison, parents influenced 42% of seniors who considered government jobs, though that sector was viewed best overall in terms of benefits and "serving one's country". Strangely enough, though parents influenced 32% who considered nonprofit work, the nonprofit sector was considered best, overall, in terms of helping others, making a difference, and helping seniors to achieve respect in the eyes of their peers and parents.

The level of satisfaction with respect to one's work also plays a big role in determining job choices. Over 60% of seniors considered nonprofit jobs to offer a greater sense of "value," compared to 43% for government and contractors. Some 50% considered the work of government contractors more "challenging", compared to 48% for nonprofit and 38% for government work. Moreover, 13% thought contractor work to be frustrating, versus the 24% for nonprofits and government.

This survey suggests that though young people value a dedication to work that helps others, engages their skills and talents, and affords a level of self-satisfaction, when it comes to practical matter like pay and benefits, they rely less on appeals through school resources, and more on the advice of people who have experience interacting with organizations in their prospective sectors of choice-- if not actual experience with those actors themselves.

Whether any organization can meet the expectations of young workers desiring to "do public service", if indeed the ability and inclination to do so are genuine, remains to be seen. For prospective employers, the survey raises questions with which organizations have long struggled. Nonprofits constantly address issues of low pay, job security, and benefits. Contractors face questions about the nature of the work associated with potentially lucrative pay levels. Government navigates between attracting those with lofty ambitions to serve, and to retain talent in areas marked by challenges in actually delivering services to people.

It is clear, however, that the eagerness of new public service workers, and those actors who influence them, need to be engaged and informed about the nature of what is available, before they can deliver on their promise to serve.

2003 Community Technology Centers Grants Competition

The U.S. Department of Education Office of Vocational and Adult Education is currently accepting applications for the FY2003 federal Community Technology Centers (CTC) program. The purpose of the program is to help create and expand information technology access and training points for disadvantaged residents of economically distressed urban and rural communities.

There are two grants streams for FY2003: this current round, for which approximately \$24,318,750 in funds are available, and an additional "novice" competition for first time CTC applicants later this year for which \$8,106,250 will be made available. Unlike previous funding rounds, the priority for awards towards new centers will focus on improving the academic performance of low-achieving high school students.

Applications are due July 7, 2003, and will only be accepted using the Department's electronic e-Application system. For more information, visit the [federal Community Technology Centers home](#). Additional resources are available from [CTCnet](#).

Regulatory Matters

Ose Introduces Bill to Test Regulatory Budgeting

Rep. Doug Ose (R-CA) recently [introduced legislation](#) (H.R. 2432) that would test regulatory budgeting at five agencies, including EPA and the departments of Labor and Transportation.

Under these "pilot projects," the participating agencies -- including two to be designated by OMB -- must present the "varying levels of costs and benefits to the public that would result from different budgeted amounts" for at least one of their "major regulatory programs." OMB is to include these regulatory budgets in the president's budget submission to Congress for fiscal year 2007.

At this point, these pilot projects appear designed to test the preparation of agency regulatory budgets, and would not actually implement them. The idea of a government-wide regulatory budget has been

around since the Reagan administration, and emerged as a key component of Newt Gingrich's Contract with America.

Under the Contract with America proposal -- which was rejected as too extreme -- federal agencies were to cap regulatory costs at a certain percentage of GDP; if costs exceeded that cap, agency rules would have to be eliminated and no new regulations could be issued. In fact, this proposal actually required cuts in regulatory costs by reducing the cap by a set percentage each year.

Ose's bill does not create a regulatory budget, but rather lays the groundwork for creating one in the future. The bill directs OMB to issue a report by February of 2009 on the pilot projects and "recommend whether legislation requiring regulatory budgets should be proposed..."

In addition to the pilot programs, the bill directs each agency to prepare its own annual estimates of the costs and benefits of federal rules and paperwork for "each agency program" and in the aggregate -- a presumed prerequisite for regulatory budgeting. Each of these "accounting statements" is to cover not only the current fiscal year and the year prior, but also each of the five subsequent fiscal years. In other words, agencies must predict the future regulatory impacts of rules that are either still in development or haven't yet been considered.

Needless to say, this is next to impossible. Since 1997, OMB has been charged with providing annual estimates of cumulative regulatory costs and benefits across government. The results should give proponents of regulatory budgeting pause.

Specifically, OMB has continually disavowed its own numbers, pointing out enormous analytical uncertainties in such an exercise. "We still believe that the limitations of these estimates for use in making recommendations about reforming or eliminating regulatory programs are severe," OMB stated in its second report. "Aggregate estimates of the costs and benefits offer little guidance on how to improve the efficiency, effectiveness, or soundness of the existing body of regulations."

For example, OMB bases its estimates largely on prospective analysis, conducted by agencies prior to formal adoption of a rule. Yet predicted costs frequently [prove overblown in the real world](#). This is because of adaptive responses to regulation, such as technological advances or "learning by doing", which drive down costs over time.

Notably, regulatory budgeting assumes the precision of such prospective [cost-benefit analysis](#) even though it consistently misses the mark. With an artificial cap on costs, agencies could be prohibited from taking protective action based on these predictions, representing a significant departure from most current health and safety statutes, such as the Clean Air Act and the Occupational Safety and Health Act, which require a high level of protection regardless of costs.

In addition, Ose's bill includes several other notable provisions. In particular, it would mandate that OMB's Office of Information and Regulatory Affairs assign at least two staff to review IRS paperwork under the [Paperwork Reduction Act](#). Health and safety agencies have a disproportionate number of OIRA "desk officers" overseeing their work compared to the amount of paperwork they actually produce, reflecting OIRA's current and historical anti-regulatory bent. For instance, EPA's paperwork burden is less than 2 percent of total government paperwork, yet it has six desk officers overseeing its work. By contrast, the Treasury Department, which accounts for more than 80 percent, has only one assigned desk officer.

The bill would also permanently authorize funding for an office within the [Government Accounting Office](#) to evaluate agency rulemakings at the request of Congress. Originally, this office was conceived as a three-year pilot project in [legislation signed](#) by President Clinton in the fall of 2000. However, Congress has never appropriated funding for the office. With President Bush in office, the Republican Congress has shown no desire to create a new office to look over his shoulder -- especially since it broadly agrees with his anti-regulatory agenda.

Graham Advises Agencies on Valuing Lives of Seniors

In a [Washington Post op-ed](#) on June 1, Robert Hahn and Scott Wallsten of the [American Enterprise Institute](#) pose a fantastic scenario: There are two simultaneous fires, one at a nursing home and one at a nursery. The problem is that the fire chief has only one pump, and must choose whether to save 11 seniors or 10 toddlers. Obviously, the chief should choose the toddlers, they write.

Fortunately, in the real world, there is no reason to make such a choice. The fire chief would have enough pumps to rescue both the seniors and the toddlers. And if he didn't, you can bet that the town would be outraged, and the authors' fictional mayor would soon be out of a job. The expectation is that we should be able to protect both young and old.

Hahn and Wallsten, however, would like to make the real world more like their fantasy world, forcing us to choose. Specifically, they are defending what's been called the "senior death discount" in regulatory analysis, in which the lives of seniors are assigned less monetary value than the rest of the population. For example, in evaluating its flagship environmental proposal, the Clear Skies Initiative, EPA determined that those over 70 were worth \$2.3 million per life compared to \$3.7 million for those younger.

This approach was reportedly urged by John Graham, administrator of OMB's Office of Information and Regulatory Affairs (OIRA), which acts as a clearinghouse for new agency rules. Yet following [a firestorm of protests](#) by seniors and public health advocates, including the [AARP](#), EPA Administrator Christie Whitman withdrew her support, saying, "EPA will not, I repeat, not, use the age-adjusted analysis in decision making." Graham, who enjoys close ties with AEI, soon followed suit in an agency-wide memo on May 30, acknowledging that the practice was not supported by recent data.

In fact, EPA's senior discount derived from a 1982 British survey by Michael Jones-Lee, which suggested that the elderly were less willing to pay for regulatory benefits. Yet in a [study released in April of 2002](#), Resources for the Future could not replicate Jones-Lee's results in the United States, finding no meaningful variation in an individual's willingness to pay based on age. Indeed, Jones-Lee himself recently [told the Miami Herald](#), "I certainly wouldn't argue for my 1982 figure."

"In light of these developments, I advised EPA to discontinue use of this factor as an adjustment to the economic value of a statistical life (VSL)," Graham wrote in his memo. "The VSL would thus be the same for people of all ages. I am also advising analysts at other agencies that such a factor should not be used in VSL analysis."

Graham also slightly backed off his previous [promotion of "life years"](#) in calculating regulatory benefits, which naturally skews decision-making against protections for the elderly, who have fewer life years remaining.

"OMB is concerned that a simple [value of a statistical life year] VSLY approach could underestimate benefits significantly when applied to rules that primarily or significantly benefit senior citizens," Graham wrote. "Consequently, OMB recommends that agency analysts, when performing benefit-cost analysis, present results using both the VSL and VSLY methods [instead of just VSLY, as some agencies have done]. When benefit estimates based on the VSLY method are presented, as OMB has encouraged since 1996, I recommend that agencies present analyses with larger VSLY estimates for senior citizens."

Unfortunately, this will not solve the inherent problem. Seniors have fewer life years remaining. Even if those life years are given added value, this doesn't change the fact that when life years are totaled, the lives of seniors are ultimately given less value. This result is built into the method. Indeed, the exercise would be meaningless if life years for the elderly were inflated to a point where it wouldn't matter if intended beneficiaries had 10 life years remaining or 50.

The effect is just as Hahn and Wallsten advise, setting up a system in which regulatory protections are rationed based on age. If polluted air is primarily killing our elderly, does that mean we should care any less? Does it mean we should be less willing to act? Hahn and Wallsten say yes. Graham is still clinging to this belief, despite his tactical retreat.

EPA Study Finds Water Polluters Not Penalized

An internal EPA study shows that 25 percent of major industrial facilities are in significant noncompliance with permits issued under the Clean Water Act, the majority of which receive little or no disciplinary action, [according to the Washington Post](#).

The study, which uses data from the [Permit Compliance System \(PCS\)](#), focused on major facilities, defined as those that discharge at least one million gallons per day. Out of the 6,652 facilities examined, EPA found 1,670 in significant noncompliance. For the year 2001, 50 percent of violators exceeded the limit for toxics by 100 percent, and 13 percent were over by 1000 percent. For conventional pollutants, 33 percent of violators exceeded their discharge permits by 100 percent, and 5 percent by over 1000 percent.

Given the large number of violators, EPA's enforcement has been severely lacking. In the last two years, EPA took enforcement action against only 24 percent of those in significant noncompliance, 27 percent in "repeat significant noncompliance," and 32 percent in "perpetual significant noncompliance." Less than half of these violators ended up paying fines, which averaged a paltry \$6000.

The report, completed in February by the [Office of Enforcement and Compliance](#), is the first comprehensive examination of EPA's failure to enforce the Clean Water Act, and was undertaken to develop a "performance-based" assessment of compliance. The U.S. Public Interest Research Group (U.S. PIRG) issued two reports in 2002 ([here](#) and [here](#)) that contained similar findings to the EPA report. J.P. Suarez, EPA's assistant administrator for enforcement and compliance assurance, told the Post that the agency is trying to be more aggressive in monitoring state agencies, which handle most enforcement cases.

Administration to Gut Roadless Rule

The Bush administration [recently announced](#) its intent to loosen a Clinton-era rule that bans road construction in 58.5 million acres of national forests -- opening the door to logging in wilderness areas.

Specifically, the [U.S. Forest Service](#) plans to issue an amendment allowing states to seek exemptions from the roadless rule in cases of "exceptional circumstances." Such instances would include road construction needed "to protect public health and safety or reduce wildfire risks to communities and critical wildlife habitat," according to the agency.

The Forest Service, as part of a legal settlement, also plans to issue a rule reopening 300,000 acres of Alaska's Tongass National Forest to logging. The State of Alaska, claiming that economic development had been adversely impacted, challenged the roadless rule in court in January of 2000.

Although the administration has pledged to retain the roadless rule, these forthcoming actions promise to undermine efforts to preserve wilderness areas.

"It's a sweetheart deal between the timber industry and the Bush administration," Tom Waldo of Earthjustice told the [Washington Post](#). In fact, the changes were announced by [Undersecretary of Agriculture Mark Rey](#), a former timber-industry lobbyist.

The Forest Service expects to propose the amendment to the roadless rule in the fall with the goal of finalizing it before the end of the calendar year. The agency also plans to complete the proposal opening up Tongass National Forest by September.

OSHA Unveils Unenforceable Ergonomics Guidelines for Poultry Plants

The [Occupational Safety and Health Administration](#) (OSHA) recently released [draft voluntary guidelines](#) for the prevention of repetitive stress injuries (the [most pressing health and safety issue](#) confronting the workplace today) at poultry processing plants.

The guidelines are part of the administration's feeble plan to replace mandatory Clinton-era ergonomics standards -- which were [repealed by Congress](#) at the urging of the Bush administration -- with a series of unenforceable guidelines targeted at specific industries. OSHA previously released draft guidelines for [nursing homes](#) as well as [retail grocery stores](#), and plans to target shipyard workplaces next.

OSHA will be [accepting comments](#) on the draft poultry guidelines through Aug. 4.

Right-to-Know

CIA Memo Stands Up for Secrecy

In an unclassified memorandum by the [Central Intelligence Agency \(CIA\)](#), entitled "[The Consequences of Permissive Neglect](#)", a senior official on the agency's Foreign Denial and Deception Committee, James B. Bruce, called for a targeting of the news media, making them legally accountable for leaked information that they publish.

The memo begins by declaring that "secrecy is under assault" and that the press has become an "open vault of classified information on U.S. intelligence collection sources and methods," which "pose a serious, seemingly intractable problem for U.S. national security." The proposed response to this problem is to criminalize and prosecute reporters for reporting on classified information and even for possessing classified documents. Currently, the espionage statute requires that one must have intent to damage the nation in order to be charged. Bruce proposed expanding the statute to cover the mere intent to disclose information.

While the issue of addressing leaks is certainly not a new undertaking for a government agency, this proposal is different in several ways. First, the memo comes from the CIA, which is not supposed to be involved in domestic politics. Second, instead of previous efforts to restrict information disclosure by confining access to a few within the government, it specifically proposes targeting and punishing the media. The memo also notes that current laws would be sufficient to prosecute those leaking such information, but these laws have simply not been enforced in the past.

Interestingly, the memo acknowledges that the proponents of secrecy face "an important anomaly" in that nearly all the evidence supporting the argument that leaks are causing serious damage is itself classified. The memo does note a few examples as evidence, including stories that tipped the Soviets off to monitoring of their missile tests in 1958, eavesdropping on the Soviet Politburo in 1971, and leaks that informed the Chinese about investigations at Los Alamos.

Despite a few incidents such as these, there is also plenty of public evidence that leaks and whistleblowing play an important role in halting abuses of authority. Leaks have helped reveal numerous cases of the government using secrecy laws to cover up covert wars, domestic espionage and other controversial and illegal acts. This includes the Iran-Contra affair, the Nixon administration's use of the

CIA to spy on enemies, and military tests that deliberately exposed soldiers and civilians to radiation during the 1950s. These examples, however, are not included in the memo.

It is unclear where this CIA memo may lead or which federal agencies may use it. Given the Bush administration's ongoing preference for secrecy, it seems unlikely to go ignored.

Government Increasingly Citing Privacy for FOIA Denials

A study completed for the [Investigative Reporters and Editors \(IRE\)](#) Conference last week found that federal agencies are increasingly using privacy exemptions when denying requests under the [Freedom of Information Act \(FOIA\)](#). The study, which examined FOIA annual reports from the 13 Cabinet-level departments in existence as of September 30, 2002, reported that over the past five years almost two out of three request denials cited privacy exemptions. National security claims, which might have been expected to increase over the past year and a half, were only asserted in 1 percent of all denials.

Within the nine exemptions under FOIA, two are connected to privacy issues. The first, exemption 6, prevents release of "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The next, exemption 7 (c), protects information that "could reasonably be expected to constitute an unwarranted invasion of personal privacy." Although these exemptions are clear indicators that privacy is an important issue, many believe the government is abusing the provisions in order to hide records that should be available to the public. Even privacy advocates have questioned some of the administration's actions in the name of privacy -- for example, the refusal to release the names of detainees after the September 11, 2001, terrorist attacks.

Mark Corallo, a Justice Department spokesman, has stated there has been no change in policy or Bush administration directives to account for the large number of denials. This, however, runs contrary to the fact that the [Aschcroft memo](#), issued in October of 2001, has severely affected FOIA policy and has caused a chilling effect on information disclosure. This memo instructs FOIA officers to carefully consider FOIA requests and withhold information whenever they believe necessary, in light of national security concerns. Although the number of denials based on national security has remained rather low, Corallo did say that matters sensitive to national security would be withheld for privacy reasons if those concerns were also present. Many times the national security exemption is not cited as being part of the reason for denial, although all exemptions are required to be listed. The Justice Department is the largest user of the privacy exemption with other government bodies like the Pentagon using the exemption for a large number of their inquiries.

The overuse of privacy protections for withholding information under FOIA has the potential to weaken privacy given that overuse and false claims undermine its legitimacy. Even more troubling is the glaring evidence that the government is abusing its ability to withhold information from the public and therefore is left unaccountable for its actions.

First Amendment Under Attack from Anti-Terrorist Measures

[The Constitution Project's Liberty and Security Initiative](#), launched soon after the terrorist attacks of September 11, recently released a [report](#) detailing the effects that policies adopted in response to the terrorist threat have on the First Amendment. The report, and its various signatories, clearly recognize and support the federal government's objective to protect Americans from terrorist threats, attacks, and activities. However, the Initiative members also acknowledge the vital importance of the fundamental rights and values protected by the First Amendment. Unfortunately, the report finds that those values have been infringed upon by several anti-terrorist measures.

The report first establishes the backdrop of relevant statutes and regulations before discussing the ways in which anti-terrorist measures should respect First Amendment values of openness, robust political debate, and freedom of association. The report notes four areas where anti-terrorist policies have not respected these values:

- Excessive secrecy of the Bush administration and federal agencies;
- The government's policies to preclude disclosure of information about detainees and immigration hearings;
- The weakening of Freedom of Information Act (FOIA);
- The changes in the FBI surveillance guidelines.

The Initiative proposes several specific recommendations for the executive and legislative branches of the federal government to achieve a better balance between protecting national security and preserving First Amendment guarantees. Among the recommendations:

- There should be no blanket closure of deportation hearings;
- The government should release the names of all persons it detains except under compelling circumstances as determined by a court;
- The federal government should adopt more extensive guidelines and tighter controls for investigations implicating First Amendment values;
- The federal government should consult with the communities affected by terrorist-related investigations;
- The federal government should not weaken FOIA.

The First Amendment is vital to hold our government accountable. Openness in governmental decisions and activities must exist or else citizens will not know what their leaders are doing, and they will have no way to judge them or to initiate the robust policy debates so necessary to a free society. The report also takes the position that openness is an important weapon against terrorism, dispelling misunderstandings about American government, policies, and values. It also reminds the world that the United States tolerates criticism, which in other countries might be punishable.