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Information & Access

[Battle Brewing on How to Track Contract and Grant Bucks](#)
[House Passes Right-to-Know Amendment to Save TRI](#)
[NJ Report Highlights Need for Chemical Safety Requirements](#)

Nonprofit Issues

[Treasury Will Revise Anti-Terrorist Financing Guidelines](#)
[NAACP Releases Information on IRS Audit](#)
[USAID Pledge Requirement Again Found Unconstitutional](#)

Federal Budget

[House Passes Budget, Slips in Increase to Debt Ceiling](#)
[Immigration Plan Complicates Supplemental Spending Bill](#)
[House Speeds Through the First of its Spending Bills](#)
[Who Wins With The Tax Bill? Bush Raises Taxes On Students, Expatriates](#)

Regulatory Matters

[Return of the Senior Death Discount?: Heinzerling Takes On Mannix](#)

Battle Brewing on How to Track Contract and Grant Bucks

Two bills may soon face off in the Senate on how best to provide the public with information on how the government spends taxpayer dollars.

On April 6, Sens. Tom Coburn (R-OK), Barack Obama (D-IL), Tom Carper (D-DE) and John McCain (R-AZ) introduced the Federal Funding Accountability and Transparency Act (S. 2590). The bill requires the Office of Management and Budget (OMB) to make information on federal contracts and grants publicly accessible through a free, searchable website. Meanwhile, the "Website for American Taxpayers to Check and Help Deter Out-of-control Government Spending Act" (S. 2718), called the WATCHDOGS Act, offered by Sen. John Ensign (R-NV) advertising itself as a similar effort has been introduced. The WATCHDOGS Act would establish an imbalanced set of reporting requirements, with grantees required to report more information than contractors.

Legislation to increase transparency for federal contracts and grants is needed because the public currently lacks access to timely, accurate information about individual contracts, grants, and other forms of government financial assistance. While the [Federal Procurement Data System \(FPDS\)--Next Generation](#), provides public access to some information on government contracts, it has been widely criticized for its inadequacies. The Census Bureau also provides more complete information about other forms of

federal financial assistance through the [Federal Assistance Awards Data System \(FAADS\)](#). Unfortunately, though, the system is not searchable.

The Census Bureau also publishes an annual [Consolidated Federal Funds Report \(CFFR\)](#), which puts together information from the FPDS-NG, FAADS, and other sources of information to provide summary data about federal spending. For example, using the CFFR you can learn that, in FY 2004, federal government expenditures can be broken down as follows:

Category	Amount (in billions)	Percentage
Retirement & Disability	\$667.0	30.8%
Other Direct Payments	\$469.8	21.7%
Grant Awards	\$460.1	21.3%
Procurement Contracts	\$339.7	15.7%
Salaries and Wages	\$225.6	10.4%

The CFFR does not provide information about individual contracts and grants, however, so data can not be sorted to reveal trends in government spending or to suggest ways to foster greater government accountability. The necessity of public access to information in this form was apparent in the aftermath of Hurricane Katrina, when tracking government spending on reconstruction proved nearly impossible. At the time, more than 50 organizations joined OpenTheGovernment.org in [signing a letter](#) calling on President Bush to put all information about Katrina-related spending on the Internet.

The Federal Funding Accountability and Transparency Act responds to this situation by requiring the Office of Management and Budget to ensure that the public has access free of charge to a searchable website providing information on federal financial assistance, including federal contracts, by Jan. 1, 2007. The website would allow the public to search for information about individual contracts, grants, loans, and other forms of financial assistance, including by name of company or organization, amounts, year, the place of performance, congressional districts, federal program, and more. Information would be posted to the website no later than 30 days after the financial award. The website would not contain details about credit card transactions or minor purchases. Beginning Oct. 1, 2007, the bill requires the disclosure of subcontracts and subgrants. How the OMB will implement the disclosure of subcontracts and subgrants is uncertain, since there is no established method for collecting it.

While the WATCHDOGS Act also requires OMB to ensure that there is a searchable website allowing public access to information provided by contractors and grantees about the federal funds they receive, the bill discriminates against grantees by requiring more stringent reporting requirements. For instance, under the bill, federal grantees must disclose the name, address, and social security number of each officer and employee earning more than \$50,000 per year, as well as directors of the organization. Contractors need not disclose similar information. Additionally, the bill calls for disclosure of expenditures on various activities including lobbying and, oddly, *decorating* by federal grantees, but would not require it of contractors. The bill appears less focused on accountability and more on creating a hostile environment for federal grantees, who tend to be nonprofit organizations.

Also problematic, the WATCHDOGS bill would federalize a contractor or grantee if the

entity receives 10 percent of its business expenditures or annual budget from federal funds. In doing this, the contractor or grantee would be subject to the Freedom of Information Act (FOIA) and to laws that apply to government employees regarding travel, such as the allowable per diem for housing and meals or mileage allowances.

For more information on key components of both bills, see [OMB Watch's analysis](#).

Coburn and Obama initially sought to attach their bill to lobby reform legislation, but the amendment was rejected at the last second as non-germane. Joined by Carper and McCain, the four co-sponsors now hope to move the bill either as free-standing legislation or as an amendment, possibly to budget reform legislation expected to move in the Senate this summer. As a first step, the Homeland Security and Governmental Affairs Committee, where Coburn chairs a key subcommittee, will likely mark-up the bill in June. The WATCHDOGS Act lacks the bipartisan support of the Coburn-Obama-Carper-McCain bill; it's not structured as a neutral government accountability bill.

House Passes Right-to-Know Amendment to Save TRI

On May 18, the U.S. House of Representatives voted to prevent the Environmental Protection Agency (EPA) from rolling back reporting requirements for our nation's worst polluters. By passing the Pallone-Solis Toxic Right-To-Know Amendment to the Interior Appropriations Bill, the House took an important step to preserve EPA's Toxics Release Inventory (TRI) program, by prohibiting the agency from spending any money to finalize its plans to cut toxic chemical reporting requirements.

In September 2005, EPA [proposed changes to the TRI](#) that would let thousands of large industrial facilities stop reporting their pollution emissions. The proposals would cut off public access to vital health and safety data that are used by emergency planners, community groups, researchers, and medical professionals.

The [amendment](#), introduced by Reps. Frank Pallone (D-NJ) and Hilda Solis (D-CA), was objected to by Rep. Todd Tiahrt (R-KS) who claimed that EPA's proposed rollbacks were needed to relieve small business of the expensive task of reporting. After the objection Rep. Charles Taylor (R-NC), who chairs the Interior and Environment Appropriations subcommittee, accepted the amendment with the understanding that EPA would work to reduce reporting burden on small business that had no or very small releases. After what appeared to be an affirmative voice vote, Rep. Mike Pence (R-IL) objected and called for a roll call vote. The vote was postponed until later in the evening when the amendment passed by a wide margin of [231 to 187](#). Forty-eight Republicans voted with 182 Democrats and one Independent in support of the amendment, while 15 Democrats voted with 172 Republicans against it.

More than 113,000 public comments to EPA, thousands of emails and calls to Congress, a May 17 letter to members of the House from 196 organizations, and testimony from public health professionals and emergency responders, all played a role in compelling the House to vote against EPA's scheme to relax reporting standards.

"Lawmakers have sent a clear message to the EPA that they and their constituents value the public's right to know about toxic pollution," stated Sean Moulton, director of

federal information policy for OMB Watch. "The EPA's attempts to rollback reporting on toxic pollution are unacceptable to so many Americans and their representatives have expressed that with their vote."

A [May 17 report](#) by the Commission for Environmental Cooperation (CEC) also underlies the need for more, not less, information on toxic chemical releases. The report, "Toxic Chemicals and Children's Health in North America," focuses on children's exposure to cancer-causing industrial chemicals and pollutants. The report is based on data collected under the TRI program and its Canadian counterpart, the National Pollutant Release Inventory.

The CEC, an international organization made up of Canada, Mexico and the United States, was created under the North American Free Trade Agreement (NAFTA) to address regional environmental concerns, help prevent potential trade and environmental conflicts, and promote the effective enforcement of environmental law.

"More monitoring of toxic chemical releases and exposures" is among the top recommendations made in the report. This particularly important to protecting children who "are uniquely vulnerable to many environmental threats," according to the [U.S. State Department's Bureau of International Information](#).

Now the fight to save the TRI will move to the Senate, where interest in this issue has been ongoing. A bipartisan letter from Sens. Frank Lautenberg (D-NJ), Jim Jeffords (I-VT), and Olympia Snowe (R-ME), for instance, was sent to the Government Accountability Office, requesting an investigation into whether EPA had adequately considered the impacts of reduced TRI data on communities and data users, including federal and state programs. Additionally, the same day the House voted to suspend funding for EPA's efforts to reduce TRI reporting, the Senate Committee on Environment and Public Works held a confirmation hearing in which the issue was repeatedly raised. Molly O'Neill has been nominated to be EPA Assistant Administrator for the Office of Environmental Information, which oversees the TRI program. Several Senators asked O'Neill about the EPA's proposals and expressed great concern over the potential loss of information on toxic pollution. O'Neill voiced her strong support for the program but could not provide any details on the proposals as she has been part of their development.

The Senate may take up the Interior Appropriation bill, which sets EPA's budget, sometime in late June. If a similar right-to-know amendment is attached to the Senate Interior Appropriations bill, a measure to prevent EPA from spending money to finalize its planned reporting changes would almost certainly become law.

NJ Report Highlights Need for Chemical Safety Requirements

A chemical catastrophe at any one of six New Jersey facilities could seriously injure or kill nearly one million people living in the area, according to a May 23 report by the New Jersey Work Environment Council (WEC). The report, [Safety & Security First: Protecting Our Jobs, Families, and Hometowns from Toxic Chemical Disaster](#), concludes that chemical plant security must become a top priority for federal and state

lawmakers.

New Jersey is home to 110 facilities that have the potential to harm thousands of residents in the event of an accidental or terrorism-related worst-case chemical release. A worst-case chemical release from the most hazardous of these facilities, the Kuehne Chemical Company, located in Hudson County, could harm up to 12 million people in New Jersey and New York City.

In the more than four years since the Sept. 11 terrorist attacks, the government has conducted a review of potential infrastructure vulnerabilities across the country, but has failed to act to remove these hazards from densely-populated areas. Currently, no federal law or regulation requires hazardous chemical facilities to review or use readily available alternatives to hazardous chemicals.

Several federal lawmakers have introduced bills that would encourage facilities to use inherently safer technologies to reduce vulnerabilities:

- The [Community Water Treatment Hazards Reduction Act of 2006 \(S. 2855\)](#), introduced by Sens. Joseph Biden (D-DE), James Jeffords (I-VT) and Barbara Boxer (D-CA), would require high risk water facilities to choose among safer technologies to eliminate hazards posed by chlorine and sulfur dioxide gas. The bill currently has two cosponsors.
- The [Chemical Security and Safety Act of 2006 \(S. 2486\)](#), introduced by Sens. Frank Lautenberg (D-NJ) and Barack Obama (D-IL), would require chemical facilities to thoroughly review and use safer technologies where practicable. The bill currently has six cosponsors.
- The [Chemical Facility Anti-Terrorism Act of 2005 \(S. 2145\)](#), introduced by Sens. Susan Collins (R-ME) and Joseph Lieberman (D-CT), would require high-risk facilities to develop vulnerability assessments, site security plans, and emergency response plans. Unfortunately, the bill fails to require any reporting on the use of safer technologies. The bill currently has five cosponsors.

The WEC report acknowledges the hundreds of New Jersey facilities that have moved to safer chemicals. Many of the state's wastewater treatment facilities have either eliminated or significantly reduced their use of potentially lethal chlorine gas since 1988. Some progress on the national level toward safer technologies was reported on in last April's report [Preventing Toxic Terrorism](#) from the Center for American Progress that found approximately 284 facilities in 47 states had reduced risks to nearby communities from hazardous chemicals by switching to safer chemical processes or moving to safer locations.

Many experts point out the need for a national program to encourage chemical facilities to become safer neighbors through the use inherently safer chemicals and technologies. A concerted national effort to convert high-risk facilities to safer chemicals and processes could protect millions of Americans. Effective chemical security legislation must also include public accountability provisions, so workers and fence-line communities can ensure that they are being protected.

Treasury Will Revise Anti-Terrorist Financing Guidelines

A Treasury Department official, speaking at a gathering of attorneys, announced that the department is revising its [Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities](#), based on public comments submitted last February. According to the official, the revisions are undergoing review and the department hopes to release them soon. This will be the third version of the Guidelines, since their release in November 2002; earlier versions have been criticized for hindering legitimate charity work.

The guidelines were first revised on Dec. 5, 2005. On May 5, at an American Bar Association panel on international charitable activities, Andrea Keller of the Terrorist Financing & Financial Crimes division of the Treasury Department summarized the expected changes, as follows:

- A statement will be added to the Introduction clarifying that non-compliance with the guidelines is not a violation of any law and that Treasury's best practices are not exhaustive or comprehensive.
- A lengthy footnote will explain Treasury's assertions about the danger of diversion of funds to terrorists from charities. (Charities filing comments to the previous version objected to Treasury's characterization of the extent of such diversion.) Keller said Treasury's position is justified because 41 of the 430 entities/persons on their Specially Designated Nationals list are charities, and 10 percent is significant. Five of the 41 charities are U.S.-based. However, she made no mention of the relative dollar amounts involved or of the fact that there are over 1 million charities in the U.S.
- The revision will state that charities are not arms of government.
- Treasury will state that it does not endorse the terror watch list of any other country.
- A reference to Internet searches in vetting people and groups will be deleted, but other search items will remain.

Keller also said Treasury disagrees with the charitable sector's view that diversion of funds to supporters of terrorism only occurs when funds go directly for terrorist activities, since front groups have one foot in the legal world and one in the illegal world. She said Treasury is working on a risk matrix that is intended to help charities assess their vulnerability to abuse by terrorists, but did not know whether Treasury will seek public comment on it.

Other speakers on the panel included Kay Guinane of OMB Watch and attorney Jennifer Reynoso, of Simpson Thacher & Bartlett in New York, NY. They summarized the history of the guidelines and issues raised in public comments and by the charitable sector.

The Dec. 5, 2005 version of the Treasury guidelines, which is currently operational, was widely anticipated by charities and foundations. A working group, led by the Council on Foundations, had worked with officials from the Treasury Department to make changes to the 2002 version. The resulting version was received with disappointment by many charities. The Council on Foundation's working group called for the withdrawal of the guidelines, but an official response to the call from Treasury has not given.

NAACP Releases Information on IRS Audit

Seven Republican members of Congress filed complaints with the IRS in 2004, claiming the National Association for the Advancement of Colored People (NAACP) engaged in partisan electioneering, leading to an IRS probe, according to agency documents released to the NAACP under the Freedom of Information Act (FOIA). The NAACP has asked the Treasury Inspector General for Tax Administration (TIGTA) to review the IRS's failure to fully respond to its FOIA requests.

The Internal Revenue Service (IRS) launched an examination of the NAACP on Oct. 8, 2004, claiming a speech Chairman Julian Bond made during the organization's annual convention that criticized President George Bush's education and foreign policies crossed the line from issue advocacy to partisan electioneering. On May 17, the NAACP publicly released over 500 pages of documents the IRS has gathered since it began the audit. The [documents](#) (all 85 megabytes worth) are available at the NAACP's website.

The documents include letters sent from members of Congress on behalf of their constituents, including Sens. Lamar Alexander (R-TN) and Susan Collins (R-ME), Rep. Jo Ann Davis (R-VA), the late Senator Strom Thurmond (R-SC), and former Reps. Larry Combest (R-TX), Joe Scarborough (R-FL) and Robert Ehrlich (R-MD).

Ehrlich, the current governor of Maryland, forwarded to the IRS a letter December 2000 written by Richard Hug, chief fundraiser for Ehrlich's current re-election campaign, requesting "the IRS investigate the non-profit status of the NAACP." The letter claims that "[t]his organization has become increasingly political in recent years, particularly under its present leadership, and I would suspect much of its contributed funds are being used for political purposes."

Thomas J. Miller, the technical advisor to the IRS Exempt Organizations division, responded in a letter, assuring Ehrlich that the agency would follow up: "We have forwarded the information you provided to that office of appropriate action."

Hug told [NBC4](#) that the letter was prompted by a television advertisement sponsored by an NAACP affiliate, the [National Voter Fund](#), a 501(c)(4) social action organization. In the ad, the daughter of James Byrd, a black man dragged to death by three white men in a pickup truck, faulted then-Texas Gov. George W. Bush for not instituting a hate-crime law. According to Hug, the ads were an attack on Bush from a group that is prohibited from political campaigning. While the [NAACP](#) as a charity exempt under Section 501(c)(3), is subject to the ban on partisan activity, the National Voter Fund as a 501(c)(4) organization, is not subject to this prohibition. IRS rules allow charities to be affiliated with 501(c)(4) organizations, a common practice for organizations across the political spectrum.

Once the audit was initiated, the NAACP filed three FOIA requests with the IRS in Feb. 2005, seeking information on what triggered the audit. According to a recent NAACP [press release](#), the IRS sent a partial response in March 2005, consisting of "some heavily and inconsistently redacted documents that apparently originated from files in the IRS National Office."

A fourth FOIA request was submitted to TIGTA on June 8, 2005, for information acquired in TIGTA's investigation of the IRS enforcement program. On Sept. 9, 2005 the Inspector General for TIGTA released 241 pages. Bruce Gordon, NAACP President and CEO, called it "extremely frustrating that over a year has elapsed with no sign of the documents," adding that "it seems the IRS can rush to initiate an audit but prefers to drag its feet when responding to this taxpayer's request for information to which we are entitled."

TIGTA has not yet responded to the NAACP's request for a review of the IRS handling of the information requests. But on May 23, House Ways and Means Committee Ranking Member Charles Rangel (D-NY) added his support in a [letter](#) to IRS Congressional Affairs, urging the IRS to respond to the NAACP's FOIA requests. Rangel notes, "...[T]he IRS owes the NAACP an explanation of why, if this is the case, the requested documents cannot be disclosed. Instead of acting promptly and communicating effectively with the NAACP, the IRS has left the organization under a cloud of uncertainty."

On March 29, the NAACP announced steps it has taken to force the case into court if the IRS does not close it favorably within six months. To force a resolution, the NAACP has paid what it estimates it would owe if the IRS found it has violated the ban on partisan activity. The excise tax rate is 10 percent of the cost of a prohibited communication. In this case the NAACP estimated it spent \$176.48 to disseminate Bond's speech, so it sent the IRS \$17.65. NAACP General Counsel Dennis Hayes said this in no way represents an admission of wrongdoing. Instead, the NAACP has filed for a refund of the \$17.65. If the organization does not receive the refund by September, it will go to court for a review of their claim.

USAID Pledge Requirement Again Found Unconstitutional

A second federal judge has ruled that a sweeping restriction on the privately funded speech of groups participating in the federal government's international HIV/AIDS program violates the First Amendment.

On May 18, a federal judge ruled that the United States Agency for International Development (USAID) violated the First Amendment by requiring public health groups to pledge their "opposition to prostitution" in order to continue receiving federal funds for their HIV prevention work. Under the requirement, recipients of federal funds were forced to adopt the policy when discussing the most effective ways to engage high-risk groups in HIV prevention even when privately raised dollars were used for the activity. This ruling follows on the heels of a similar May 9 decision by Judge Victor Marrero of the U.S. District Court for the Southern District of New York in [Alliance for Open Society International v. USAID](#).

In the newest [opinion](#), Judge Emmett G. Sullivan of the U.S. District Court for the District of Columbia found that the Supreme Court "has repeatedly held that the government may not compel private organizations or individuals to speak in a content-specific, view-point specific manner as a condition of participating in a government program." The court held that the pledge requirement violates the First Amendment rights of DKT International by restricting their privately-funded speech and by forcing them to adopt the government's viewpoint in order to remain eligible for funds. "By

mandating that DKT adopt an organization-wide policy against prostitution, the government exceeds its ability to limit the use of government funds," Sullivan wrote.

In his ruling, Sullivan enjoined the government from (1) requiring DKT to have a policy explicitly opposing prostitution and sex trafficking, and (2) requiring DKT to certify that it has a policy explicitly opposing prostitution. The injunction will block the government from demanding the organization take the pledge should the legal case continue. The government has 60 days to file a notice of appeal. It is currently unclear whether the government will appeal.

The ruling stems from an August 2005 lawsuit challenging a provision in the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 that required organizations to pledge their opposition to sex trafficking and prostitution or lose federal funding. DKT International sued the USAID when they were denied a \$60,000 grant to market condoms in Vietnam because the organization refused to certify that it has a "policy explicitly opposing prostitution and sex trafficking." DKT provides social marketing programs in nine countries to deliver family planning products and services.

DKT argued that following the certification would have undermined its work to reach those most at risk of contracting HIV/AIDS (i.e. sex workers who are already marginalized). The group also argued the certification requirement was an unconstitutional coercion of speech by private individuals

House Passes Budget, Slips in Increase to Debt Ceiling

In the very wee hours of May 18, the House finally succeeded in passing its version of the 2007 budget resolution, more than a month too late. Majority Leader John Boehner (R-IA) had repeatedly [postponed the vote](#), because he lacked enough support to pass the bill. The passage of the resolution carries little practical purpose, because the House and Senate are unlikely to have the time or inclination to reconcile the very different versions of the bill, and the House has already [moved forward quickly with appropriations](#).

The \$2.8 trillion budget bill, [H.Con.Res. 376](#), barely passed the House [218-210](#) after a group of moderates led by Rep. Mike Castle (R-DE) decided to support the measure. The moderates had originally proved to be a thorn in the side of the GOP leadership. They ultimately caved, however, agreeing on the day of the vote to support the resolution even though the deal they were seeking -- an additional \$3.1 billion for health and education programs -- came in the form of a promise to shift money within the budget cap rather than real changes in the resolution. To sway Castle and others, the House GOP leaders reassured them that this extra money would not come from cuts to Medicaid, Medicare, food stamps, or other programs for the needy, but instead from the Defense Department.

Rep. David Obey (D-WI), a Democrat who strongly opposed the budget resolution, voiced his disapproval of the moderate's about-face this way:

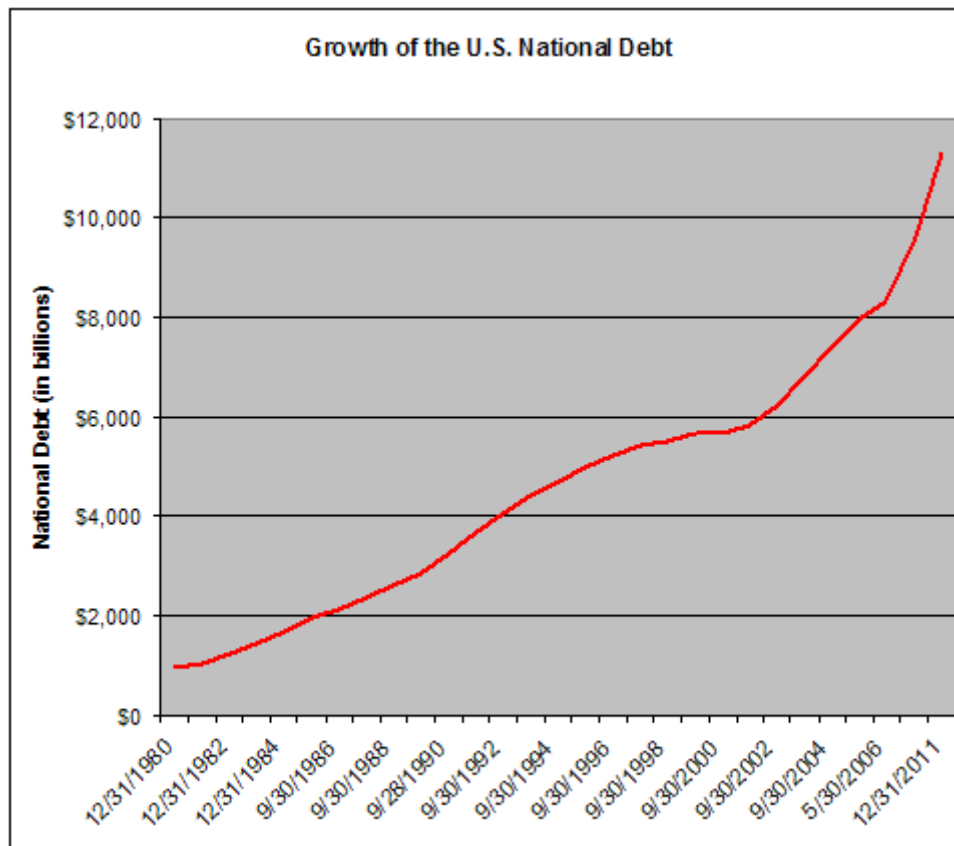
"I was wondering whether the Republican moderates were going to stick to their

guns when they said that they knew that it was wrong to pass a budget that provided \$40 billion in tax cuts for people who make a million dollars a year while you're squeezing the guts out of education and health programs. We now know the answer.... The fact is, they are now selling out for a promise that if some time in the deep dark distant future somebody does something to change this budget resolution, then there might be a table scrap or two left for additional education and healthcare."

No Democrats crossed the aisle to support the budget resolution, although three, Patrick Kennedy (D-RI), John Larson (D-CT), and Bart Stupak (D-MI), did not vote. Twelve Republicans rejected the budget. These were Peter Fitzpatrick (R-PA), Jim Gerlach (R-PA), Virgil Goode (R-VA), John Hostettler (R-IN), Tim Johnson (R-IL), Walter Jones (R-NC), John McHugh (R-NY), C.L. Butch Otter (R-ID), Jim Ramstad (R-MN), Rick Renzi (R-AZ), John Sweeney (R-NY), and Heather Wilson (R-NM).

Debt Limit Affected in Budget Resolution

In addition to misplaced spending priorities, the authors of the budget resolution slipped in easy-to-overlook yet very important [language raising the U.S. debt limit](#), which Congress [raised by \\$653 billion](#) on March 16. If this language were to pass in the final version of the resolution, it would automatically increase the debt limit to almost \$10 trillion next year, and would push it still further--to \$11.3 trillion--by FY 2011. With the national debt at \$5.8 trillion when the president took office, his policies - and those of Congress - would result in practically a doubling of the national debt in just 10 years - a truly atrocious record unmatched in the history of the United States.



Source: Office of Management and Budget, *Budget of the U.S. Government, FY2007, Historical Tables*

These automatic increases to the debt limit in the resolution would spare Congress the embarrassing task of actually voting on an increase next year, as well as the well-deserved scrutiny that would accompany the fifth debt ceiling increase in the six years of the Bush presidency. Perhaps most shocking about the president's abysmal record on the national debt has been how much of it has been financed by foreigners. [According to Senate Budget Committee Ranking Member Kent Conrad \(D-ND\)](#), the country has added more debt owed to foreign investors in five years under Bush than during the 224 years of the first 42 presidents combined.

The language to increase the debt limit can be found tucked discretely into [page 5 of the bill](#).

Immigration Plan Complicates Supplemental Spending Bill

When President Bush recently announced in his address to the nation his immediate plans for immigration reform, he didn't mention how the proposals would be paid for. A few days later, on May 18, he officially requested \$1.9 billion from Congress to spend on his border security initiative. Congress will likely approve the president's request as part of the delayed Fiscal year 2006 Supplemental Appropriations bill currently in conference between the House and Senate.

Among the five objectives of Bush's [immigration reform plan](#) is securing the border with Mexico. The president has broken down the [funding for his proposals](#) into two main parts: 1) \$1.172 billion to be spent by the Department of Homeland Security (DHS), and 2) \$756 million to be spent on activating some 6,000 National Guardsmen to patrol the

southern border. The DHS portion is further divided among several areas including customs and border protection, and immigration and customs enforcement.

Prior to his border security funding request, Bush threatened to veto the supplemental bill if it came in above \$94.5 billion - a ceiling that has brought negotiations between the Senate and House to an impasse. While the House version of the supplemental aligns closely to the president's original request, the Senate version added over \$14 billion in additional funding, bringing its total to \$109 billion.

Rather than increasing this limit by the \$1.9 billion cost of his border security measure, Bush is sticking to the veto threat and the original \$94.5 billion cap. In order to meet this goal, the Office of Management and Budget and the Pentagon have prescribed specific military line items to cut from the supplemental. These cuts to military spending would include reconstruction projects for Afghanistan and Iraq and various weapons projects and other military hardware spending. Funding for these proposals will almost certainly be added back into the next supplemental bill or to the forthcoming regular Defense appropriations bill - thereby making the president's threats to hold the line on spending rather pointless.

While the president's border initiative is debatable in its own rite, the method he's chosen to fund it is troubling but not atypical of an administration known for power grabbing. By its inclusion in the emergency spending bill currently being debated in Congress, the proposal and the funds requested for it are removed from the regular congressional oversight processes. The funds are also removed from budget enforcement mechanisms, and ultimately dissent is stifled, because in order to do so lawmakers would be forced to cast a politically difficult vote against military funding during a war.

In addition, while the \$1.9 billion price tag is small compared to the overall cost of the supplemental bill, the president's request has complicated and further delayed negotiations taking place between the Senate and the House over their respective versions. Indeed, one Senate aide partially attributed the current delays to Bush's request saying "[the border security request] pushed us beyond the brink."

The House and Senate will resume negotiations on the spending package when Congress returns to work after the week-long Memorial Day recess.

House Speeds Through the First of its Spending Bills

Immediately following the [passage of a House budget resolution](#) last week, the Appropriations Committee (and its relevant subcommittees) [got down to business](#) and passed its first four appropriations bills. Although the House is once again off to a blistering pace, the lack of a final budget resolution a jam-packed Senate calendar and a [short legislative session](#), will almost definitely delay appropriations beyond the start of the fiscal year. This situation will surely necessitate continuing resolutions and a lame-duck session after the November elections.

With four of the 11 appropriations bills already passed - Agriculture ([378-46](#)), Energy-Water ([404-20](#)), Interior-Environment ([293-128](#)), and Military Quality of Life-VA ([395-](#)

0) - the House is on schedule to finish its appropriations bills before Appropriations Chairman Jerry Lewis' (R-CA) self-imposed deadline of July 4.

While the initial bills have moved quickly, debate over contentious spending bills will likely slow the process. For example, the Homeland Security appropriations bill has been reported out of committee and is awaiting a floor vote, but there will no doubt be lengthy debates over amendments and spending levels for each program. Indeed, a bevy of amendments have already been either rejected (such as increased funding for department management and equipment, and training for first responders) or approved (firefighter grant programs and increased funding for the Transportation Security Administration) by the House. The much-maligned FEMA received \$2.6 billion less than had been requested by the president.

If the current congressional schedule holds, the House will bring the Foreign Operations appropriations bill to the floor on June 8 after completing the Homeland Security appropriations bill. The \$21 billion Foreign Operations appropriations bill is 10 percent lower than the president's proposal, but fully funds a few of his requests, including \$3.4 billion for AIDS relief and \$2.5 billion for aid to Israel. It withholds \$150 million in economic aid to the Palestinian Authority, but includes \$80 million in humanitarian aid.

Because the House and Senate have yet to agree on a budget resolution, GOP leaders are looking at alternative ways of capping discretionary spending. One approach they are considering is a "deeming" resolution that would be attached to the [hotly-debated emergency supplemental](#) currently making its way through conference - only one of [multiple additions to the bill complicating its passage](#). The lower deemed cap of \$873 billion for spending for Fiscal year 2007 is the same figure called for by the House's budget resolution but is \$16 billion less than the Senate's budget resolution. This controversial spending level will complicate and further slow the congressional appropriations process markedly this year, particularly for the large bills such as the one covering the Departments of Health and Human Services, Education, and Labor.

Who Wins With The Tax Bill? Bush Raises Taxes On Students, Expatriates

President Bush marked the culmination of a more than 15-month effort to enact new tax cuts for the wealthiest Americans last week when he signed the \$70 billion 2005 tax reconciliation bill into law. In order to keep the bill within cost limits despite the give-away to the affluent, the president and Congress enacted tax increases on [students saving for college](#) and [Americans working abroad](#).

The \$70 billion tax reconciliation bill triples taxes for teenagers with college savings funds, a provision expected to raise \$2.2 billion over ten years. Under the new law, teenagers age 14 to 17 with investment income will no longer receive lower tax rates on capital gains and dividends.

Additionally, Congress added a last-minute provision to increase taxes on Americans working overseas. The change is expected to raise \$2.1 billion over ten years, and raises taxes on Americans living abroad by about 6 percent overall. According to [The New](#)

[York Times](#), the law changes how taxes "are calculated on subsidies like housing allowances, which should push many of those Americans into higher tax brackets."

These last-minute tax increases only underscore the misplaced priorities Congress and the president have pursued since the beginning of 2005. Stopping at nothing to give more tax cuts to who the Economic Policy Institute has called "[the wealthiest of America's wealthy](#)," GOP leaders in Washington have made other Americans pay more in taxes and left us all more vulnerable by continuing to add to the skyrocketing federal deficit.

Return of the Senior Death Discount?: Heinzerling Takes On Mannix

Is the senior death discount back? It may be, if a recent speech by an Environmental Protection Agency official is any indication.

In a keynote address for an EPA workshop on economic analysis last month, Brian Mannix (associate administrator of the agency's Office of Policy, Economics, and Innovation) called for the return of a controversial way to measure the number of human lives saved by environmental regulations.

Mannix called for EPA to abandon the practice of assessing the benefits of a proposed regulation by plugging in the number of lives saved, and to replace it with a method of counting the Value of Statistical Life Years (VSLY) saved. Because VSLY focuses on life *years* saved rather than *lives* saved, benefits from saving the lives of the elderly count for less than benefits from saving the lives of the young, because the elderly have fewer life years remaining.

Accordingly, the practice is better known as the senior death discount.

EPA [proposed but then withdrew](#) the practice of using VSLY over VSL three years ago, but the threat reemerged in Mannix's speech.

Point - Counterpoint

The following is the text of Mannix's speech, with a point-by-point rebuttal from Georgetown law professor Lisa Heinzerling:

Point - Mannix

What I want to do today is step back and take a look at the metrics we use to describe the benefits of mortality reductions that we attribute to environmental regulations. In particular, I want to

Counterpoint - Heinzerling

First off, note the use of euphemistic jargon. "Benefits of mortality reductions" are, in plain English, human lives saved -- or, even more pointedly, they are the people who will be killed by pollution unless EPA acts. When you hear "benefits of mortality reductions," think: he's talking about people who are being killed by pollution. As you read the rest of the speech, try to spot the euphemistic jargon, and

raise questions about the statistical robustness of the "lives saved" metric that is now commonplace.

I should say that, years ago, I was an advocate for VSL (Value of a Statistical Life) analysis, and encouraged EPA to focus its efforts on measuring lives saved. Now that I am back at EPA, I am surprised at how much progress has been made in incorporating VSL into agency analyses and decisions. I am surprised, too, to find that I am not very comfortable with where that progress has left us. And I am most surprised to find that the most serious difficulty, in my mind, turns out not to be with the V, but with the SL. That is, the economic valuation of mortality benefits is a tractable problem analytically and politically. But figuring out the right underlying metric for mortality benefits is much more problematical.

I'll illustrate this with an extreme example. Suppose, on Monday, a hospital in a small town publishes a press release, announcing that, over the busy weekend, it had managed to save a dozen lives. The local TV station sends a camera crew, and asks if it can interview a few of the lucky survivors. The ER nurse tells them: "I'm sorry, that won't be possible. He died." "What do you mean, who died?" the reporter asks. "The man who was having the heart attacks," the nurse replies. "We managed to save him 12 times ... in 13 attempts."

try to figure out what it means.

Second, see how the relevant issues are narrowed from the start: the issue is the "statistical robustness" of the "'lives saved' metric" (more euphemistic jargon), not the moral appropriateness of cost-benefit analysis.

For years, economists have hounded EPA to come up with a monetary valuation for human life. Now that EPA has done this, they don't like it anymore. Why might this be? Note that one of the biggest decisions facing EPA today is setting a new air quality standard for fine particulate matter. Note, too, that regulation of fine particulate matter is one regulation that overwhelmingly, in analysis after analysis, has passed a cost-benefit test. In fact, in OMB's annual reviews of the costs and benefits of federal regulation, regulation of fine particulate matter puts environmental regulation "in the black" in terms of net benefits; it produces so many benefits that a lot of programs can produce more costs than benefits and still be "paid for," if you will, by the regulations for fine particulate matter. Finally, note that many of the people saved by stricter regulation of fine particulate matter are elderly.

Now you can understand why it is no longer enough to translate human life into dollars. That analysis justifies air pollution regulation that is much too stringent for the current agency's tastes. So the "V" -- the value of life -- is all right, but the focus on life -- "SL" -- must go.

Mannix also claims that setting a dollar value for life is "politically tractable." Is that so? Is the public really aware that EPA has translated human life into dollar terms, that the going value for life is between 5 and 6 million dollars, and that it's gone down in the last few years? If the issue is so "politically tractable," why is the actual value EPA uses for human life always buried deep in dense tables, in government documents almost no one reads? Why doesn't the government put out a press release: "the value of life this year: 5.5 million dollars; stay tuned for next year's (new, improved, lower) value"?

No one really talks this way about saving lives. Mannix has created an analytical problem only by acting like a visitor from another planet who doesn't understand how humans talk about life and death.

The point of the story is that, while we can easily count lives or deaths, we cannot easily count "lives saved." It is not well defined, and it is inherently unbounded. The airbag may save your life in the event that your brakes fail. But how many times did the brakes save your life when they didn't fail? The number of times my life was saved during my commute this morning is already beyond my ability to reckon.

In some narrow contexts we might be able to come up with a workable definition of a life saved. As a lifeguard Ronald Reagan would put a notch in a log every time he saved a life, and I don't doubt that it was accurate and meaningful. If he had kept a notched log during his Presidency, however, I can't imagine how we would come up with an accurate count, or interpret it if we had one. I don't believe it is possible to come up with a definition of lives saved that is robust, that can be applied to a wide variety of situations, and that can be aggregated in a statistically meaningful way.

The underlying difficulty is that "lives saved" lacks a time dimension. We know that all lives are temporary, and, while the valuation problem can be quite complex, we are generally in agreement that longer life is better than a shorter one. If we don't capture this time dimension, we are unlikely to come up with a metric for mortality that is versatile and behaves well in statistical usage.

It is hard to figure out what Mannix is trying to do here. Yes, our lives are protected in dozens or hundreds of ways every day. Does this mean we can't say something special has happened if a police officer rescues us from a kidnapper? Or a doctor gives us life-saving medicine? Here, too, it is as if Mannix has just dropped in from outer space.

Here is why Reagan was President, and Mannix is a policy analyst within a large government bureaucracy: Reagan understood that something special had happened when he saved someone from drowning.

It is not clear why Mannix is so skeptical about our ability to count how many lives are saved through government action. If we really can't do this, then cost-benefit analysis -- the decision-making framework addressed, and advocated, throughout this speech -- cannot be done for life-saving regulation, since cost-benefit analysis depends in the first instance on counting up the benefits regulation will produce. If we can't do this, we can't do cost-benefit analysis.

But wait! It turns out Mannix doesn't really believe we can't count how many lives are saved by regulation. It turns out he just doesn't think saving lives is what matters. Lives are "temporary," he reminds us; as other fans of cost-benefit analysis have often said, lives are never saved, but only prolonged. (Here the rhetoric turns dark rather than euphemistic; it doesn't sound so nice to "prolong" a life.) We have to figure out a way to account for this fact in our analysis; otherwise it won't be "well behaved." (One can only guess at the standards for "good behavior" on the part of "metrics for mortality.")

Notice the giant non sequitur. Mannix has gone from claiming that we can't come close to figuring out how many people are saved by regulation (an empirical claim) to saying that what really matters is how long we live (a normative claim). There is no connection between Mannix's confusion about how many times his car brakes have saved his life and his "solution" of taking into account the "temporary" feature of life by changing the "metric for mortality." One is an empirical conundrum; the other is a

moral judgment of the highest order.

Note, too, that if we really can't figure out how many lives are saved by environmental protection, we can't figure out how many life-years are saved, either.

Now, there is a standard statistic for measuring longevity that everyone is familiar with: the expected value of the length of life, or life expectancy. It has several advantages in communicating with the public. Everyone has a pretty good idea of what it measures. People also have a good sense of what the units mean. They may have a great deal of difficulty picturing what a 10^{-6} risk of death is, but they know how long a minute is and how long ten years is. That covers more than six orders of magnitude. This also solves the problem of divisibility: some find it difficult to think about a fraction of a "life saved" or about the same life being saved multiple times, but they have no trouble dividing time into units of arbitrary size. The public is also likely to have less difficulty in attaching a monetary value to changes in life expectancy-- even those who cannot imagine attaching a finite value to a life saved.

The real advantage of life expectancy, however, is that it is a well defined and well behaved summary statistic that reflects the mortality risks across an entire population, including risks of all kind and at all ages, without discriminating against any particular subgroup.

Let's suppose we are evaluating a range of policy options, all of which

There is a lot here, none of it sensible. But let us begin.

Mannix is right that everyone understands the concept of life expectancy. But everyone also understands the concepts of life and death. One might even be so bold as to suggest that life and death are more "tractable," "analytically," for the average person, than life expectancy is.

Mannix doesn't want to talk about life and death, though; he wants to talk about a 10^{-6} (one in a million) risk of death. This is what cost-benefit folks always do: they insist that we talk about risk of death, not death itself. This is because their analysis doesn't work if we talk about death. Cost-benefit analysis today asks how much money people are willing to pay for regulatory benefits, or alternatively, how much money they will accept to give up those benefits. If we tried to figure out these values for life and death, we'd end up either just measuring how much people were able to pay (because presumably most people would give up everything they have to avoid certain death), or we'd end up with no number at all (because most people won't accept certain death in exchange for money). But when pollution kills, it kills real people. Pretending that we're just talking about risk, not death, doesn't change this simple fact.

Even on its own terms, Mannix's analysis is nonsensical. He thinks people can understand life expectancy, but not risk. How, then, does he propose conducting cost-benefit analysis of changes in life expectancy? Are we to presume that the changes in life expectancy are certain to occur (since people won't be able to understand risk rather than certainty)? If so, how can he be so sure economic analysis here won't be doomed by the same dilemma noted above -- that is, if people are given a choice between living five more years and taking a big wad of cash, what if just won't sell?

And how much comfort are we to derive from the fact that people can divide time into units of "arbitrary size"?

Mannix's notion of non-discrimination is disingenuous. Although tersely stated here, the idea is, I think, that valuing people according to their life expectancy (with the elderly faring worse than the young) is a way of avoiding discrimination because it's a way of treating everyone's "life-years" the same. If I have 40 years left to live, and you have 4, then the only way to treat us equally is to value me more; that gives equal respect to each of the life-years each of us has left. No one I know of thinks this way other than the political appointees who have dreamed this up as a way of rescuing their beloved methodology. Officials at OMB started to talk this way, too, when the original "senior death discount" came under fire.

Here are the things we have to go along with in order to accept Mannix's hypothetical scenario:

have small marginal effects on mortality risks. If we take as our mandate to maximize life expectancy, using limited resources, we can easily solve the problem, at least on paper. We know that the solution will give us a cost-effectiveness criterion--a fixed dollar amount per incremental year of life expectancy. And the decision rule would be to adopt those measures that met the cost-effectiveness criterion, and to avoid committing resources to those that didn't.

Note that if we use another decision criterion in place of this one, we will get a shorter life expectancy for the same expenditure of resources. If we use a VSL rule, for example, we might "save more lives," whatever that might mean; but, on average, people will live shorter lives. In most cases I think the two criteria would lead to very similar outcomes. When they don't,

1. The mortality risks EPA addresses are "small." This surely isn't true for the big policy issue now on EPA's plate: the revision of the fine particulate matter NAAQS.
2. Our mandate is to maximize life expectancy. Only if Mannix's view of the world holds; that is, only if we think we shouldn't protect the elderly as much as we protect the young.

Note, too, that even if we're interested in saving lives, period, no matter how old the people who will be saved are, it may be that maximizing this value alone won't be very satisfactory. EPA is also in the business of protecting ecosystems, nonhuman species, watersheds, etc. A rigid "maximize life expectancy" mandate ignores every one of these other values.

3. We have limited resources. How could anyone argue with this idea? The counterpoint is not that we have unlimited resources, but that the people who talk about "limited resources" make two huge errors.

First, they act as though money that we refrain from spending on one program will be diverted to another program. If we set a more relaxed standard for particulate matter, for example, we'll spend the money we saved on health care programs for children. This never happens. There is not even a legal mechanism by which it could happen. The money not spent on cleaning the air stays in the pockets of the industries that pollute; the children don't get the money.

Second, the people who talk about "limited resources" act as though there is some natural limit on the amount we can or will spend on environmental protection. There is not. The amount we are willing to spend depends on, among other things, our awareness of environmental problems and our sense that something must be done about them. Perhaps if we talked about "the pollution that kills people" rather than "benefits of mortality reductions," we would be willing to spend more for environmental protection.

These claims are completely dependent on the "limited resources" idea.

however, we have to ask ourselves whether selecting a portfolio of policies that results in shorter life expectancy can really be said to be improving public health.

Similarly, if we adopt maximum life expectancy as the goal, but make adjustments to our metric for age, quality, or willingness to pay, the result will be that people live shorter lives. Better, perhaps, in some sense. But shorter.

I believe this creates a strong presumption for using life expectancy as a standard metric in evaluating regulatory decisions, using a flat VSLY as the cost-effectiveness criterion. As a first-order approximation of mortality benefits, I think this is vastly superior to the VSL approach. And I think that anyone advancing some other decision rule needs to explain how we can justify adopting policies that will lead to a shorter life expectancy. I don't rule out that such justifications may exist, but I think we should be cautious in entertaining them.

Al McGartland has pointed out to me that there is a contradiction here. I embrace the use of willingness-to-pay data in figuring out what our cost-effectiveness criterion should be. But I shrink from looking any deeper into the data to find out how it might vary from group to group or person to person. I think this is a contradiction that I can live with. Certainly an individual-- perhaps because he is wealthy--who is willing to pay, and does pay, much more than average to reduce his

We need a translation here. What Mannix is recognizing, without saying so, is that some studies have concluded that the elderly are willing to pay more to avoid risk than younger people are. If we adjust our "metric" to account for "willingness to pay" in this context, then we'll end up back where we started: we'll protect the old as much as the young. Can't have that, surely. And just in case you thought that didn't sound so bad, please know that your life will be shorter as a result -- because, as you'll recall, the amount spent on protecting the elderly is coming right out of your pocket of limited resources.

Once again, Mannix's fearmongering -- we'll all live shorter lives if we protect the elderly as much as the young -- is completely dependent on his strong assumption of limited resources. If it turns out that we, the richest country in the world and in the history of the world, can afford both to clean up the air and to vaccinate our children, then we needn't give in to Mannix's hectoring.

For those of you not familiar with EPA's organizational chart, Al McGartland is the Director of EPA's National Center for Environmental Economics.

Up until this point in the speech, I had assumed that Mannix's "cost-effectiveness criterion" was derived by simply figuring out how much money EPA had to spend and then identifying the regulatory approaches that would save the most life-years, given that amount of money. But now we learn that Mannix has somehow worked willingness-to-pay into his cost-effectiveness criterion. It's mysterious just how he has done this, or why. Cost-effectiveness analysis is often conceived of as a way of avoiding the moral and political complexities of cost-benefit analysis, since it doesn't require that we identify a dollar value for human life and other benefits of regulation. So it's not clear why Mannix has smuggled some form of cost-benefit analysis (through a focus on willingness-to-pay) into his cost-effectiveness analysis.

own mortality risks, should be able to do so. But I am not ready to concede that that same individual is entitled to tilt public health measures in his favor simply because he would be willing to pay-- but does not pay for them. When writing general rules, or spending public funds, there is an egalitarian consideration that does not apply when individuals are spending their own money. Certainly it does not seem fair for me to spend other people's money on my own health care more lavishly than they are willing to spend it on themselves.

As analysts we may feel we can improve the analysis by making adjustments for age or quality, or to incorporate the latest willingness-to-pay data. But as a government official, I am reluctant to go very far down that road. In part, that is because I question whether government has any legitimate business making such adjustments, and in part it is because, if the government did get into that business, the adjustments would likely be made according to the rules of politics, not necessarily those of economic analysis. So my final argument is this: perhaps a flat VSLY is desirable for the same reason people argue that a flat tax would be desirable; it minimizes the opportunities for special pleadings and preferential treatment.

In any event, what Mannix is saying here is that he's unwilling to take willingness-to-pay to its logical conclusion, which is that the lives of the rich are worth more than the lives of the poor -- because, after all, they're willing to pay more to avoid risk.

Many people would also resist this conclusion; that is, they would think it appropriate for EPA to treat the rich and the poor alike in developing rules. They would likely explain their conclusion by reference to principles of fairness and equality. They would also probably assume that their conclusion implied that we should spend as much to protect the poor as to protect the rich.

Not Mannix. Mannix says that the reason we shouldn't take willingness-to-pay to its logical conclusion is that we'll end up spending too much to protect the poor. This would be bad... why? Because it would be paternalistic, even presumptuous; who are we to tell the poor that they should have the same quality of air that we, the rich, can afford? Especially when they're spending "other people's money."

But remember: the "other people" who would, through regulation, be required to spend "their money" to, say, clean up the air, are the people who are killing the people whose lives are under discussion.

When did telling someone to stop killing someone else become a matter of "spending the [killer's] money"? This is the kind of moral emptiness we get when we start off by talking about not killing people as "benefits of mortality reduction."

Mannix's peroration requires some untangling. Although Mannix questions "adjustments" to economic analysis based on age, he himself has spent most of his speech defending such an adjustment: the use of life-years saved as the sole criterion for judging regulation. In addition, although Mannix clearly disdains making such judgments based on "the rules of politics," the criterion of life-years saved is hardly apolitical. It is certainly not a "scientific" choice.

One can only hope Mannix's favored methodology will suffer the same fate as the flat tax he compares it to.