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In This Issue

More of the Same: Import Safety Panel Leaves Business in Charge

The Bush administration's cabinet-level Interagency Working Group on Import Safety released its final report Nov. 6 on ways to improve the safety of food and consumer products imported into the U.S. The report calls for limited increases in some federal agencies' responsibilities but does little to change the current voluntary regulatory scheme that governs some $2 trillion worth of products, 800,000 importers and more than 300 ports-of-entry.

President Bush created the Interagency Working Group (IWG) on Import Safety by

Executive Order 13439 (E.O.) on July 18 in the midst of recurring recalls and safety warnings about imported food, toys, pet food and toothpaste. According to the E.O., the mission of the IWG "shall be to identify actions and appropriate steps that can be pursued, within existing resources, to promote the safety of imported products." The message from Bush was clear that no additional budget resources would be forthcoming for improved safety. One of the report's "points of clarification" underscores the lack of urgency on the part of the administration:

> Resources — To implement the Action Plan to its fullest extent will require resources. Federal departments and agencies will coordinate, plan effectively and meet these goals by submitting additional funding needs through the normal budget process.

The *Action Plan for Import Safety: A Roadmap for Continual Improvement* contains fourteen broad recommendations and fifty specific action steps. The recommendations are grouped under the principles of prevention, intervention and response. Some of the fourteen recommendations include recognition that improvements to the import safety system are necessary. For example, the report recommends that new and existing standards need to be created and strengthened, certification programs need to be used to improve safety compliance, and enforcement needs to be stronger. Under the enforcement recommendation, one action step is a call for an increase in the Consumer Product Safety Act's civil penalty cap for violators, from $1.8 million to $10 million.

Underlying the *Action Plan*, however, are two philosophical choices that indicate that this is not an urgent attempt to improve the safety of the millions of imported products that reach U.S. shores. First, it is clearly written that these import safety reforms need to be accomplished without disrupting the flow of commerce. For example, a text box in the action plan that precedes the recommendations states, "The recommendations in this Action Plan are designed to promote safety while avoiding restrictions on the flow of international trade." The Plan creates an explicit private-public partnership where government is a business partner rather than a regulator protecting the public.

The *Action Plan* calls for a series of incentives such as an information network and technical assistance programs. Incentive programs can be effective if industry knows that there is a threat of direct regulatory action. However, the incentives in the Plan are coupled largely with voluntary approaches that encourage self-regulation by industry and the development of industry-wide standards.

Second, the *Plan* emphasizes a "cost-effective, risk-based approach" that relies on using market-based and regulatory incentives and deterrents. Risk-based systems require the identification and ranking of risks assuming nothing changes with regard to the business practices and processes employed. Under this approach, the agencies are to identify the points of highest risk and divert resources to intervening and responding to potential dangers. So, for example, the U.S. Food and Drug Administration (FDA), to prevent the intentional contamination of the food supply, would "issue regulations to require companies to implement practical food defense measures at specific points in the food supply chain

where the potential for intentional adulteration resulting in serious adverse health consequences or death to humans or animals is the greatest."

The problem with this risk-based approach is that it is a static analysis and doesn't consider the question of how we might change the existing system that causes the damage in the first place. Are there better ways of producing goods so that the dangers from lead exposure, for example, are prevented? Instead, the *Plan* acknowledges that "the recall process is the principal tool in the arsenal of response mechanisms to protect consumers from exposure to hazardous products." This is an implicit acknowledgement that the prevention approaches outlined in the *Plan* are not capable of preventing hazardous products from reaching U.S. markets, so the agencies need to have mechanisms to respond to accidents.

The *Action Plan* falls short of congressional proposals to improve import safety. As OMB Watch has recently described in a series of articles (for example, here and here) on product safety, Congress is explicitly proposing budget and personnel increases for the major regulatory agencies with jurisdiction over food and consumer products. And there have been consistent calls for banning lead in children's toys.

In a Consumers Union press release issued Nov. 6, the organization criticized the Action Plan. "Furthermore, we see no recommendation about reducing lead in children's products. We support getting toxic lead out of all consumer products, but especially children's toys and other products they use. With lead-tainted products flooding the market, we are disappointed the Administration appears to have missed an important moment to support eliminating this health threat," said Jean Halloran, Director of Food Policy Initiatives.

Bush Fuel Economy Measure Rejected by Court

A U.S. court of appeals has overturned a recent National Highway Traffic and Safety Administration (NHTSA) rule that revised a national standard for fuel economy. Environmentalists hailed the ruling as a victory and framed it as condemnation of the Bush administration's record on fuel economy and global warming.

The Ninth Circuit Court of Appeals in San Francisco announced the ruling on Nov. 15. The suit was brought by the Center for Biological Diversity on behalf of a number of states, cities and public interest groups. Judge Betty Binns Fletcher wrote the opinion of the court.

The decision overturns a NHTSA regulation that would have raised the fuel economy standard for so-called light trucks — pickup trucks, SUVs and minivans — to 23.5 miles per gallon (mpg), from 22.2 mpg, by 2010. The standard for other passenger cars is 27.5 mpg.

Petitioners argued the NHTSA rule was too weak in light of evidence that increased fuel economy can lead to a reduction in the greenhouse gas emissions responsible for climate change. David Doniger, Policy Director of the Climate Center at the Natural Resources Defense Council (NRDC) and an attorney on the case, said in a statement, "This is another

court rebuke to the Bush administration's policy of ignoring global warming."

The court invalidated NHTSA's revision of the standard for light trucks largely because it found NHTSA did not adequately account for the adverse effects of greenhouse gas emissions from tailpipes.

In preparing a cost-benefit analysis for the rule, NHTSA did not evaluate the benefits of reduced greenhouse gas emissions associated with increased fuel economy. The court opinion states, "[NHTSA] cannot put a thumb on the scale by undervaluing the benefits and overvaluing the costs of more stringent standards. NHTSA fails to include in its analysis the benefit of carbon emissions reduction in either quantitative or qualitative form. It did, however, include an analysis of the employment and sales impacts of more stringent standards on manufacturers."

Because the benefits calculation was underestimated, the basis on which NHTSA made its decision was not accurate. Subsequently, the court found the rule to be "arbitrary and capricious" under the Administrative Procedure Act, which requires agencies to make decisions based on reasonable rationale and factual assertions.

By not accounting for a reduction in greenhouse gas emissions, NHTSA also violated the National Environmental Policy Act (NEPA), the court found. NEPA requires agencies to assess the "cumulative impact" of a rule on the environment in either an environmental assessment (EA) or a more detailed environmental impact statement (EIS).

For the revision to the light truck standard, NHTSA chose to prepare the less detailed EA, claiming the rule would have no significant impact on the environment. "We conclude that the EA's cumulative impacts analysis is inadequate. While the EA quantifies the expected amount of CO2 emitted from light trucks [model years] 2005-2011, it does not evaluate the 'incremental impact' that these emissions will have on climate change or on the environment more generally," the court opinion states. The court also instructed NHTSA to prepare the detailed EIS when revising the rule.

The court also found fault with NHTSA's definition of "light truck." By law, vehicles designed to hold no more than ten passengers and not intended for heavy work or off-road use are to be considered "passenger vehicles." However, NHTSA has excluded SUVs and minivans from the passenger vehicle category and placed them in the light truck category, a decision critics call the "SUV loophole." The court found NHTSA did not adequately provide rationale for excluding SUVs and minivans from the passenger vehicle category. NHTSA will now have to reevaluate its existing policy.

The ruling is a rebuke to the Bush administration's fuel economy policy but also to the work of senior White House officials, including Vice President Richard Cheney. A recent Public Citizen investigation found the NHTSA revision to the light-truck standard was the product of an intense campaign by the vice president's office to weaken the proposal. According to Public Citizen, "Records show that NHTSA played a subservient role to White House and

vice presidential higher-ups. Some meetings appear to have excluded NHTSA staff altogether."

President Bush has also used the NHTSA standard as a sign of his commitment to energy conservation and environmentalism. In his 2007 State of the Union address, Bush said, "We need to reform and modernize fuel economy standards for cars the way we did for light trucks."

The court instructed NHTSA "to promulgate new standards consistent with this opinion as expeditiously as possible and for the earliest model year practicable." The Bush administration has yet to give word on whether it will appeal the decision.

OSHA Issues Personal Protective Equipment Rule

Eight years after proposing it, the Occupational Safety and Health Administration (OSHA) has finalized a worker safety rule. The final rule mandates employers pay for worker personal protective equipment (PPE). OSHA published the rule in the *Federal Register* on Nov. 15, and it is to take effect Feb. 13, 2008.

Currently, 95 percent of worker PPE is paid for by employers, according to OSHA. The new rule would mandate the remaining five percent of covered equipment be paid for by employers. Although the rule would expand employer pay of PPE only marginally, the impacts of the rule will be significant. According to an OSHA assessment, the rule will prevent more than 21,000 injuries. OSHA estimates compliance costs to be $85.7 million annually.

Unions welcomed the rule. In a statement, AFL-CIO President John Sweeney said, "America's working men and women deserve the proper equipment to keep them safe on the job, each and every day."

Representatives from National Association of Manufacturers (NAM) and the U.S. Chamber of Commerce voiced their opposition to the rule to White House officials. On Oct. 23, officials from the White House Office of Management and Budget (OMB) met with representatives from NAM and the Chamber to discuss the rule while it was being reviewed by OMB's Office of Information and Regulatory Affairs (OIRA). According to material submitted to OMB during the meeting, the groups opposed the standard, claiming, "Through employee-employer negotiations, employers already pay for the majority of personal protective equipment used in the workplace. But to mandate that they pay for all of it is pure economic regulation and well beyond the Secretary [of Labor]'s authority."

No official from OSHA or the Department of Labor was present at the meeting. According to Executive Order 12866, Regulatory Planning and Review, a representative of the issuing agency must be invited to review meetings such as the one OMB held on Oct. 23. On Oct. 29, Reps. George Miller (D-CA) and Lucille Roybal-Allard (D-CA) wrote to OIRA Administrator

Susan Dudley expressing concern with the conduct of the meeting. Since then, OSHA officials have indicated a scheduling conflict prevented them from attending.

In advance of OSHA's announcement of the PPE rule, labor groups and occupational health advocates were critical of the length of time OSHA had spent on the rulemaking. The proposed rule was issued in March 1999. A lawsuit from AFL-CIO and the United Food and Commercial Workers International Union, filed in January 2007, prompted OSHA to act. Celeste Monforton, an occupational health expert at the Project on Scientific Knowledge and Public Policy at the George Washington University, said the rule had been in "perpetual limbo" until the unions filed suit. Sweeney, of the AFL-CIO, said, "It is unfortunate that nine years have passed since the rule was proposed."

The delay fit into a pattern of OSHA inaction during the Bush administration. The PPE rule is only the second significant standard issued by OSHA during the Bush administration. (The other concerned exposure to hexavalent chromium.) OSHA has published 25 final rules since Bush took office, most of which have been non-significant.

White House Rejects Krill Protection Rule

The White House has rejected an effort by the National Oceanic and Atmospheric Administration (NOAA) to protect krill, an important marine species abundant in the Pacific Ocean. NOAA's proposed rule is a precautionary measure aimed at protecting krill in the future but was rejected by White House officials for failing to identify a need for the regulation.

On Feb. 26, NOAA announced its intent to amend its Fisheries Management Plan (FMP) for waters in the Pacific Ocean off the west coast to include krill. The amendment, which would take the form of a regulation, would prohibit the fishing of krill up to 200 nautical miles off the coast of California, Oregon and Washington.

Krill are small shrimp-like crustaceans abundant in the Pacific Ocean. Krill are a vital link in the marine food chain and serve as a food source for a variety of marine animals including whales, salmon and some sea birds.

NOAA chose to pursue the krill protection rulemaking at the behest of its Pacific Fishery Management Council (Council). The Council is one of several councils that make recommendations on fishery management for various bodies of water adjacent to the U.S. The Council is comprised of representatives from federal and state government agencies, commercial and recreational fisherman groups, and fishery-dependent businesses.

At its March 2006 quarterly meeting, the Council adopted the amendment to the FMP. NOAA generally follows the advice of the fishery management councils, which regularly recommend amendments to FMPs in order to protect marine ecosystems.

The Council's recommendation and NOAA's ensuing proposed rule were an attempt at a proactive step toward preserving an ecologically and economically valuable marine ecosystem. According to NOAA, krill is not currently fished in U.S. waters off the west coast. However, because of krill's importance in the food chain, "The Council has agreed it is critical to take preventive action at this time to ensure that a krill fishery will not develop that could potentially harm krill stocks, and in turn harm other fish and non-fish stocks."

However, the White House Office of Information and Regulatory Affairs (OIRA) took exception to NOAA's rationale. In a letter returning the rule to NOAA for reconsideration, OIRA Administrator Susan Dudley complained NOAA did not adequately identify the need for regulation since krill is "completely unexploited" and "there are no known plans for exploitation." Dudley also chided the agency for not adequately assessing alternatives to its proposal and for failing to include performance objectives.

The issue is representative of a larger tension between those believing government has a responsibility to intervene to prevent problems and those believing government's role should be reactive or even nonexistent. The Council recognizes "the proposed action would be preemptive and precautionary" but also that the importance of the species warrants government action at an early stage. On the other side, OIRA's rejection is a strong statement of how advocates of limited government view environmental protection: short of outright exploitation, the need for natural resource management does not exist.

OIRA's rejection of the krill rule is also consistent with the views of its administrator. Prior to joining OIRA, Dudley worked for the industry-funded Mercatus Center, an anti-regulatory think tank at George Mason University. Dudley is ideologically opposed to government intervention. Dudley's nomination to head OIRA faced opposition from public interest groups including OMB Watch, Public Citizen, the Natural Resources Defense Council, and the United Auto Workers, which forced Bush to resort to installing her by recess appointment in April.

Under Executive Order 12866, Regulatory Planning and Review, OIRA reviews agency proposed and final regulations before they are released to the public. Usually, OIRA reviews "economically significant" rules (those expected to have an economic impact of $100 million or more) and "other significant" rules (those that interfere with the actions of other agencies, materially alter budgetary impacts, or raise novel legal or policy issues).

The krill rule does not meet any of those criteria. In fact, because krill is not currently fished in the U.S., NOAA believes no economic impact would result. It appears OIRA chose to review this rule for other reasons.

The krill protection rule is the first rule OIRA has rejected during Dudley's tenure. The last time OIRA returned a rule to an agency for reconsideration was December 2005. OIRA does not often resort to outright rejection of an agency rule. Generally, the White House works with agencies early in the development of a rule to ensure the president's priorities are met or during the OIRA review process to make changes. During the Bush administration, OIRA

has returned 28 rules to agencies for reconsideration, many of which were Clinton-era proposals rejected by OIRA in the early days of the Bush administration. OIRA rejected nine rules from Sept. 30, 1993, when President Clinton signed E.O. 12866, to the end of the Clinton administration.

The rejection comes after a protracted OIRA review period. NOAA submitted the proposal to OIRA on May 29. Under E.O. 12866, OIRA is to complete its review within 90 days of receiving the rule from the agency. In consultation with the agency, OIRA may extend the review period once for 30 days. Since OIRA did not complete its review until Oct. 30, the office had exceeded its time limit by more than a month.

OIRA is also delaying the completion of another NOAA rule that would protect the North Atlantic right whale, a critically endangered species, by setting limits on ship speeds in certain areas of the Atlantic Ocean during certain seasons. NOAA submitted its draft of the final rule in February.

Congress Reforming Government Surveillance Authority

Legislation to reform expansive surveillance authority moved forward in both the House and the Senate recently. The House passed the RESTORE Act (H.R. 3773), which would reform the Protect America Act (PAA), passed in haste before Congress's August recess. The Senate Judiciary Committee narrowly passed the FISA Amendments Act of 2007 (S. 2248) without telecom immunity provisions that were included in the Senate Intelligence Committee bill, setting up a confusing situation that makes it unclear which version will be sent to the Senate floor for consideration.

PAA granted the government the authority to wiretap anyone, including U.S. citizens, without court approval as long as the "target" of the surveillance is reasonably believed to be located outside the country. The bill is scheduled to sunset in less than three months, but the House and Senate leadership agreed to reform the bill before then.

The Responsible Electronic Surveillance that is Overseen, Reviewed, and Effective Act of 2007 (RESTORE Act) was introduced by Reps. John Conyers (D-MI), chairman of the House Judiciary Committee, and Silvestre Reyes (D-TX), chairman of the House Intelligence Committee.

The RESTORE Act would require a finding of probable cause for surveillance targeting American citizens, including Americans located overseas. The legislation would also permit a blanket order for surveillance of multiple foreign targets to be granted by the Foreign Intelligence Surveillance Court. However, the Justice Department Inspector General must regularly report on the use of blanket orders and the number of U.S. persons' communications collected in the orders' use. The Justice Department Inspector General would also be required to audit the Terrorist Surveillance Program and other warrantless

surveillance programs.

The bill faced resistance from House Republicans when it was pulled from the floor in October but passed with bipartisan support on Nov. 15 with a 227-189 vote. The White House immediately issued a statement saying, "This evening House Democrats passed legislation that would dangerously weaken our ability to protect the Nation from foreign threats."

Chairman Reyes, however, characterized the RESTORE Act as helping to "restore the balance between security and liberty." In a statement issued after the vote, Reyes explained, "The RESTORE Act puts the FISA Court back in the business of protecting Americans' constitutional rights — after the President and Vice President put that court out of that business six years ago."

The Senate Judiciary Committee voted S. 2248 out of committee on a narrow 10-9 party-line vote. When the Senate Intelligence Committee passed the same bill in October, it included a provision that would provide immunity for any telecommunications company that assisted in illegal counterterrorism operations after Sept. 11, 2001. The Senate Judiciary Committee rejected an amendment by Sen. Russ Feingold☼ (D-WI) to strip out the immunity provision by a vote of 10-7, with two Democrats, Sens. Dianne Feinstein (D-CA) and Sheldon Whitehouse (D-RI), joining the Republicans. In a quick turnabout, Sen. Patrick Leahy☼ (D-VT), chairman of the Judiciary Committee, offered a motion to move the bill to the Senate floor without the immunity provisions. It passed on a 10-9 vote.

Senate Majority Leader Harry Reid (D-NV) will now have to decide which version of the FISA bill to bring to Senate floor, the Judiciary Committee version without immunity for the telecommunications companies, or the Intelligence Committee version with immunity. Since there will inevitably be an amendment to either strip immunity or add it, Reid also needs to decide whether this type of amendment will require 60 votes to kill a potential filibuster or a simple majority.

Recently confirmed Attorney General Robert Mukasey and the Director of National Intelligence Mike McConnell issued a statement opposing the bill and said that they would recommend that President Bush veto it. They stated that the Senate Judiciary Committee bill "would not provide the intelligence community with the tools it needs effectively to collect foreign intelligence vital for the security of the Nation."

The battle over telecom immunity is likely to occur on the Senate floor. Sen. Arlen Specter☼ (R-PA) is already drafting a compromise which would substitute the government for the telecommunications companies as defendants in the forty-plus lawsuits currently moving through the courts. This would allow the cases to be heard but would hold the government liable for damages if any of the plaintiffs prevail. The Senate is expected to vote on S. 2248 before the close of session.

Secrecy for Farm Animals

The Senate Agriculture Committee approved a bill in late October that would create a Freedom of Information Act (FOIA) exemption for records in the National Animal Identification System (NAIS). Open government advocates strongly oppose the exemption and see it as a violation of the public's right to access information regarding food safety.

Following the 2004 mad cow scare, the NAIS, a voluntary registry to track food animals, was created in case of another outbreak. The Agriculture Committee's Farm Bill includes a provision in Section 10305 of Title X (Livestock), added during markup, that would exempt information from this system from disclosure in response to any FOIA requests. The provision would also impose criminal sanctions on anyone who does disclose information from the system. Only the Secretary of Agriculture would have the authority to share the information with the owner of the farm animal, the state agriculture department, the Attorney General, the Secretary of Homeland Security, the Secretary of Health and Human Services, and affected foreign governments. Despite the clear public interest in information about food safety, these provisions would block the public from ever having access to these records.

Sen. Tom Harkin☼ (D-IA), chairman of the Senate Agriculture Committee, added the provision to bill and defended it as being necessary to ensure the cooperation of farmers in the voluntary program. Open government advocates, on the other hand, requested in a letter to the Senate that the provision be removed and claimed that the provision would "create an unnecessary bar to public disclosure." Harkin staff are reportedly working on "mutually agreeable language that will reassure producers and allow our government to be transparent and open."

The Senate was not able to consider the bill before the Thanksgiving recess, but the legislation may be voted on in December before the close of session.

Toxic Chemicals R Us

All 35 participants tested positive for three toxic chemical groups in a study conducted by the Commonweal Biomonitoring Resource Center and the Body Burden Working Group. The report on the study, *Is It In Us?: Chemical Contamination in our Bodies*, released Nov. 8, is the first multi-state, multi-organizational effort to evaluate the presence of this particular combination of chemicals in Americans.

The study tested for chemicals from the following three categories — phthalates, polybrominated diphenyl ethers (PBDEs) and bisphenol A (BPA). These are all common industrial chemicals found in everyday products. Uses of the chemicals include the following:

- Phthalates — make plastics flexible and are used in everything from shower curtains

and vinyl flooring to IV bags and toys. They are also used in detergents, adhesives and personal care products such as soap, deodorant and nail polish. Phthalates have been connected to reproductive, developmental and respiratory problems. They do not bioaccumulate (build up in bodies over time), but humans are constantly exposed.

- PBDEs — used as flame retardants, common in TVs, computers, couches, cars and airplanes. They do bioaccumulate and are associated with reproductive and developmental problems and endocrine disruption. North Americans have PBDE exposure levels up to 40 times higher than Europeans, and it is speculated that this is due to the greater use of PBDEs in American products.
- BPA — mainly known for its use in #7 plastics for food and drink containers but is also used in metal can linings. A recent Centers for Disease Control and Prevention (CDC) survey of more than 2,500 people found BPA in 95 percent of urine samples. Studies have shown BPA to be an endocrine disruptor that may also cause reproductive and other developmental problems.

The results of the study indicate that the chemicals of concern are virtually impossible to avoid. Of the 20 chemicals tested, at least seven were found in all the participants, including six types of PBDEs. Almost all of the participants, 33 of the 35, tested positive for at least 13 of the 20 chemicals. Three types of phthalates and BPA was present in every participant who provided a urine sample (33), and 25 participants were above the CDC median level for BPA.

Disturbingly, participants conscientious to avoid chemicals had some of the highest levels — likely due to exposures beyond their control. Heather Loukmas, executive director of the Learning Disabilities Association of New York State, has worked to link learning disabilities and toxic chemicals. Loukmas had the highest level of a certain PBDE flame retardant in the study, probably from an accidental grain contamination event in the 1970s in Michigan, when she was two years old.

The purpose of the small study was to add to the growing awareness and research about toxins in our bodies, highlight the lack of knowledge about these toxins and their health implications, and to advocate for updated laws and policies that will adequately protect public health. Due to its small size, the project is not a health impact study and should not be used to generalize about the entire U.S. population. The detection of such ubiquitous toxic contamination in any sample group, however, adds to growing concerns about the use of dangerous chemicals in common products and the current policies that trigger government action only after confirmed harm.

The lack of information about new chemicals and their impact on humans is a major problem, and legislation has been introduced to address this knowledge gap. Sen. Barack Obama☼ (D-IL) introduced the Healthy Communities Act of 2007 (S. 1068) to specifically identify gaps in research and provide biomonitoring project grants. Another bill, the Coordinated Environmental Public Health Network Act of 2007, has been introduced in the Senate (S. 2082) and House (H.R. 3643) by Sen. Hillary Clinton☼ (D-NY) and House Speaker Nancy Pelosi (D-CA), respectively, to increase funding for CDC biomonitoring

projects.

While there has been little to no effort on the federal level to take action against these chemical exposures beyond increased testing, states have begun to be more proactive in their effort to protect citizens. Some states — California, Hawaii, Illinois, Maine, Maryland, Michigan, Minnesota, New York, Oregon, Rhode Island, and Washington — have started efforts to either ban phthalates and/or BPA in children's products or phase out PBDEs. It remains to be seen if similar federal legislation will follow.

States Average a D-Minus on Disclosure

A new report by Good Jobs First finds that states have not kept up with technology in creating certain disclosure systems, and in some cases actively resist advances. *The State of State Disclosure* analyzed state websites for publicly available data on economic development subsidies, state procurement contracts and lobbying activities. Connecticut scored the highest, with an average of 84 percent, but more than half of the states received failing grades, placing the average score at 60 percent, a D-minus.

Using a 100 percent scoring system, the report reviewed each state's government websites, judging them on availability of information, level of detail, and navigability in the three areas covered by the report (economic development subsidies, procurement contracts, and lobbying activities). Information accessible through informal or formal records requests was not considered. Websites were then rated according to the following criteria:

- Ease of finding the site
- Level of detail, including grant/subsidy type, grantee name and dollar value
- Thoroughness in terms of providing other information and/or linking to other related data
- Depth, including archival years available
- Timeliness, in terms of how current the data is

Though every state either had information on procurement contracts and lobbying available or had plans to make the information available, fewer than half the states devoted any part of their websites to development subsidies. Some states also varied widely on their scores across sectors, with an exceptional site for one issue but no available information on another area. Results of the report included the following:

- States scored best on procurement contracts, averaging a B-, with 16 states at or above 90 percent.
- Despite the strong trend for procurement contracts information, Minnesota and Wyoming scored the lowest, below 50 percent, in this area, and four other states also received failing grades.
- Five states received a near perfect score on lobbying information: Colorado, Nebraska, New York, Wisconsin and Washington.

- Only 23 states had online disclosure programs for economic subsidies, and 11 of those received failing grades.

The State of State Disclosure recommends states take advantage of online programs to enhance public information access. Specifically, the report emphasizes the importance of the user's ability to search databases for specific entities with access to the full data set; to provide the data in a variety of forms to appeal to a diverse audience; to include outcomes and past performance data on subsidy and contract databases; and to overlay the information with campaign contributions.

Government transparency is crucial in providing accountability, controlling corruption and enabling constituents to be active partners in democracy. The Internet has emerged as a powerful tool for storing and disseminating information, providing an unparalleled forum for open access, and Philip Mattera, co-author of the report, sees evidence that "states are improving."

Republicans Keep Obstructing Common-Sense Investment Initiatives

Over the past few months, an intransigent president and a conservative coalition in Congress have waylaid a host of common-sense, progressive spending initiatives, including the reauthorization of the nutrition section of the Farm Bill, the State Children's Health Insurance Program (SCHIP), and funding for domestic priorities in the Departments of Labor, Health and Human Services (HHS), and Education.

Conservative Republicans Barely Sustain President's Labor/HHS Veto
The House and Senate agreed to a $150.7 billion appropriations bill for the Departments of Labor, Health and Human Services, and Education, which includes funding for programs like Head Start, the National Institutes of Health, and energy assistance for low-income families (see this Center on Budget and Policy Priorities paper for more on what's in the bill). But the president vetoed that bill on Nov. 13. The House then attempted to override the president's veto but failed by a margin of 277-141, only five votes short of success.

Democratic leadership has since offered to cut $11 billion out of all of the appropriations bills — about half of the difference between their entire spending proposal and the president's. Under this plan, programs funded in the Labor/HHS bill would take sizable cuts. Specifics about how the cuts would be distributed across specific programs have not been announced.

House Republicans and the president have told the media they rejected this compromise and demanded that all budget bills meet the president's requests. It is unclear how effective they will be in keeping moderate House Republicans from accepting that compromise or any other offered by the Democrats. But Republican leaders have had success so far in rejecting anything but the president's budget requests, which call for even deeper cuts to human

needs programs and public investments, while drastically increasing funding for the Department of Defense and the wars in Iraq and Afghanistan.

As the budget conflict continues, more continuing resolutions (CRs), which temporarily fund government services at the previous year's levels, may be necessary. The current CR will last through Dec. 14 and has already been extended once since the beginning of the fiscal year on Oct. 1. The current CR was passed as an amendment to the $459.3 billion Defense appropriations bill. The president signed that bill on Nov. 16.

Senate Republicans Obstruct Farm Bill

The House-passed 2008 farm bill contains a small but important $4.2 billion increase for nutrition programs like Food Stamps over the next five years. These increases are especially important in light of reports that food insecurity continues to rise, while food banks across the country are experiencing shortages of food supplies to give to people struggling with hunger.

Perhaps realizing the significant need across the country, the president has issued a somewhat muted veto threat against the farm bill.

While the House has passed its version of the farm bill, the Senate has had more difficulty, as Senate Republicans filibustered the first proposal on Nov. 16 (roll call). The Food Research and Action Center has predicted if the Senate does not pass a bill, the funding increases for nutrition programs will be wiped away, perhaps causing cutbacks in these important supports.

SCHIP Negotiations Going Nowhere

Since House Republicans sustained the president's veto of the $35 billion SCHIP reauthorization bill on Oct. 25, bicameral and bipartisan negotiations have been taking place to craft a bill that would receive veto-proof support. Despite strong support for reauthorizing and expanding SCHIP, no agreement has been reached.

Indeed, chances of reaching an agreement appear to decrease by the day. Conservatives were asking for restrictive changes, particularly regarding immigrants and minority participation in the program, that many minority Democrats have strenuously objected to.

If no agreement is reached, the SCHIP program will continue under a temporary extension. But the net result of the House Republicans' vote to sustain the president's veto will be to deny health insurance to the four million uninsured children who would have received it had the bill been passed into law.

Estate Tax Repeal No Longer on the Table

On Nov. 14, the Senate Finance Committee dedicated time to a hearing to investigate uncertainty in estate tax law, despite a plethora of more pressing fiscal issues facing the

current Congress.

In their opening statements, both Sens. Max Baucus (D-MT) and Charles Grassley (R-IA) expressed their personal support for estate tax repeal, but Baucus went on to acknowledge repeal is not part of the discussion any more in the Senate. Most outside observers rule out estate tax repeal as well. Mark Bloomfield, president of the American Council for Capital Formation, who has lobbied for repeal, told Bloomberg News, "I don't think complete repeal has the votes, has not had the votes for a few years and won't have the votes in the future."

The hearing featured a star witness, billionaire Warren Buffett, whose fortune from business and investments is estimated at $100 billion dollars, making him the third-richest man in the world. Buffett made clear his belief the estate tax should not be repealed or drastically reformed. Such changes, Buffett said, would help the richest Americans who have seen their wealth take off like a "rocket ship" in the last two decades while lower-income workers have "been on a treadmill," not improving their standing. Buffett also believes the estate tax is an integral part of our country and our government system, saying "a meaningful estate tax is needed to prevent our democracy from becoming a dynastic plutocracy."

Some familiar hyperbole surrounding the estate tax was expressed at the hearing. Grassley asserted at one point that "As most people are not privy to exactly when they will hand over half of everything they own to the government, the death tax is fundamentally not fair." Mr. Buffett reminded the Committee the vast majority of people will not hand *anything* over to the government upon death, noting that of 2.4 million Americans who died last year, roughly 12,000 paid estate tax. "You'd have to attend 200 funerals to be at one" where an estate tax was owed, he said. Mr. Buffett also pointed out the vast majority of families who are not subject to the estate tax benefit from a step-up in basis for the assets they inherent. This means the appreciation of any asset is inherited tax-free.

Mr. Buffett also addressed the contentious claim the estate tax might bankrupt a farm or small business at some point. A business large enough to owe the estate tax, Buffett said, could readily borrow against the value of the farm or business, use operating revenues to pay off that debt and still generate plenty of income. "[Those farms and businesses] may not prefer to pay the tax, but they have the resources, ample resources to pay the tax."

Buffett proposed adjusting the estate tax exemption levels slightly, but increasing the tax on extremely large estates to arrive at a revenue neutral reform option. He thought the money generated by the estate tax should be dedicated to funding a tax credit for the 23 million households who live on $20,000 or less a year in income, to help make their lives easier.

In a sign most committee members hold the estate tax as a very low priority, some senators could not resist taking the opportunity to ask Buffett his views on other tax matters that may come before the Finance Committee. Buffett was quizzed by Grassley on his position on the carried interest tax loophole (he supports closing it despite having benefited from it himself for a dozen years), and the tax-exempt status of philanthropic foundations and university endowments (he believes those institutions should pay out more each year than they

currently do). He was also asked about a consumption-based tax system by Sen. Ron Wyden☼ (D-OR), responding, "I don't see how we get there from here."

The table below shows why the only bipartisan consensus on the estate tax issue is that *something* should be done in the next couple of years. The 2001 Bush tax cuts put in place an annually changing schedule for the estate tax, creating uncertainty and unnecessarily high planning costs for a few large estates. In 2007 and 2008, $4 million per couple ($2 million for individuals) will be exempt and only assets above that exemption will be taxed, up to a top tax rate of 45 percent. In 2009, the exemption level will rise to $7 million for couples ($3.5 million for individuals). In 2010, the estate tax is to be fully repealed for one year at a cost to the government of roughly $20 billion. The tax is scheduled to return in 2011 to the way it was prior to the 2001 tax cuts, with a top rate of 55 percent on estates worth more than $2 million per couple.

Calendar year	Estate and GST tax deathtime transfer exemption	Highest estate and gift tax rates
2001	$675,000	55%
2002	$1 million	50%
2003	$1 million	49%
2004	$1.5 million	48%
2005	$1.5 million	47%
2006	$2 million	46%
2007	$2 million	45%
2008	$2 million	45%
2009	$3.5 million	45%
2010	N/A (taxes repealed)	top individual rate under the bill (gift tax only)
2011	$1 million	55%

Source: Joint Committee on Taxation

While no legislative action is expected on the estate tax for the rest of the year, Baucus said he plans to introduce a bill reforming the tax for markup sometime this spring. It will be interesting to see what Baucus proposes, if anything, in view of the deep divide within the Senate on the issue. In 2006, the Senate rejected GOP proposals to end the estate tax as well as an amendment by Sen. Jon Kyl☼ (R-AZ) to reduce the estate tax rate to 15 percent. At the same time, a Democratic proposal to bring the rate down to 30 percent was also rejected.

White House Attempts to Entrench PART at Federal Agencies

The White House issued an executive order (E.O. 13450) on Nov. 13 that would attempt to entrench the administration's controversial Program Assessment Rating Tool (PART) within federal agencies long after President Bush leaves the White House. The order would create a

point person within agencies responsible for program performance, allow the Office of Management and Budget (OMB) more leverage over specific aspects of program implementation and solidify the PART program review process as *the* evaluator of government programs.

The PART mechanism has significant limitations to thorough and unbiased program evaluation, introducing biases and a skewed ideological perspective into a model claiming to present consistent and objective performance data and evaluations of government programs. Oftentimes, the PART actually decreases the efficiency and effectiveness of government through increased administrative burdens, distracted managers and compliance costs.

This somewhat redundant executive order re-emphasizes the need for agency staff and programs to "spend taxpayer dollars effectively and more effectively each year," and requires agency heads to establish clear annual and long-term goals that can be assessed by "objectively measured outcomes." Agency heads are also required to develop specific plans for achieving program goals and the means to measure program progress toward those goals. All of these requirements, in some form, are present in a previous government performance initiative, the Government Performance and Results Act (GPRA), and on the surface are worthwhile and commendable goals.

Reaction to the order from public management experts was somewhat quizzical (see this *Washington Post* article), as many thought the order failed to break new ground — repeating many of the requirements agencies already operate under in the GPRA law. An anonymous source at the U.S. Environmental Protection Agency told *Inside the EPA* this order was unlikely to "result in major changes in agency practice" because agencies already follow most of the requirements contained within the order. Others were surprised at the timing of the order, coming late in tenure of this administration. OMB has stated it would like to have the E.O. fully implemented by September 2008, just four months before the end of the Bush presidency.

The timing has led many to conclude this is an attempt to extend the influence of the Bush administration's performance management initiative. Clay Johnson, the deputy director for management at OMB, confirmed that objective. "There should be no dropped batons going from this administration to the next administration," he told the *Washington Post*. "The next administration will come in knowing what every department is committed to do. It will help ensure there is continuous attention to these goals."

The crucial aspect in this executive order that attempts to extend influence is the requirement that the heads of agencies — including all government corporations and sponsored entities (i.e., Corporation for Public Broadcasting, Fannie Mae) and all independent agencies (i.e., Federal Communications Commission, Federal Election Commission) — appoint a senior executive to serve as a "performance improvement officer" to oversee all performance management activities of the agency, including development of strategic plans, annual performance goals, and performance reports. These performance improvement officers would also be required to advise the head of agencies as to the

sufficient aggressiveness of program goals and realistic chances of achieving those goals given resource constraints.

This structure, in and of itself, is not a terrible proposal. A more formalized, streamlined, and hopefully accountable structure within each federal agency that reports to the agency head (and not OMB) that would focus on improving program performance and spending money wisely is certainly needed. This structure may even help to make strategic plans developed under GPRA more tangible within agencies and create an atmosphere that boosts staff productivity and morale.

Unfortunately, these results are not guaranteed by the structure of the proposal, and using current Bush administration performance management tools, particularly the PART, would seriously damage the ability to develop objective and reliable program evaluations and recommendations.

Further decreasing the potential of this proposal, the executive order creates a narrowly-populated "performance improvement council," consisting of the Deputy Director of Management at OMB, who would act as the chair of the council, a selection of performance improvement officers, and other full or part-time agency staff as determined by the chair of the council and relevant agency heads. This council would, among other duties, submit to the director of OMB current or proposed performance management policies and criteria for evaluation of program performance, as well as update the director or the president on the progress of performance improvement across the government. While the E.O. states the program improvement officers are responsible to agency heads, the structure of this council cuts out agency heads and has the potential to be the conduit for infusion of political directives and biases into program operations.

On the whole, this executive order continues the Bush administration focus on narrow, White House-centered performance evaluation. This is significantly different from GPRA, which was supposed to be agency-driven in creating long-term goals, developed in consultation with outside stakeholders and Congress. It is likely Congress will meet this executive order with as much skepticism as they give to the PART. In a recent attempt to increase the relevance of PART in Congress, an amendment offered by Sen. Wayne Allard☼ (R-CO) was soundly defeated 68-21.

Because the performance improvement council consists of high-level OMB staff and senior executives, both of whom are unlikely to have extensive programmatic experience in the programs they are to evaluate, this order is sure to make PART the de facto metric for determining program performance.

It is possible the performance improvement officers will create another window through which OMB and the White House can attempt to control specifics of program policies and implementation within the agencies. Even worse, this structure further separates career agency and OMB personnel from the very performance accountability standards the administration has attempted to impose. Appointing an agency representative who oversees

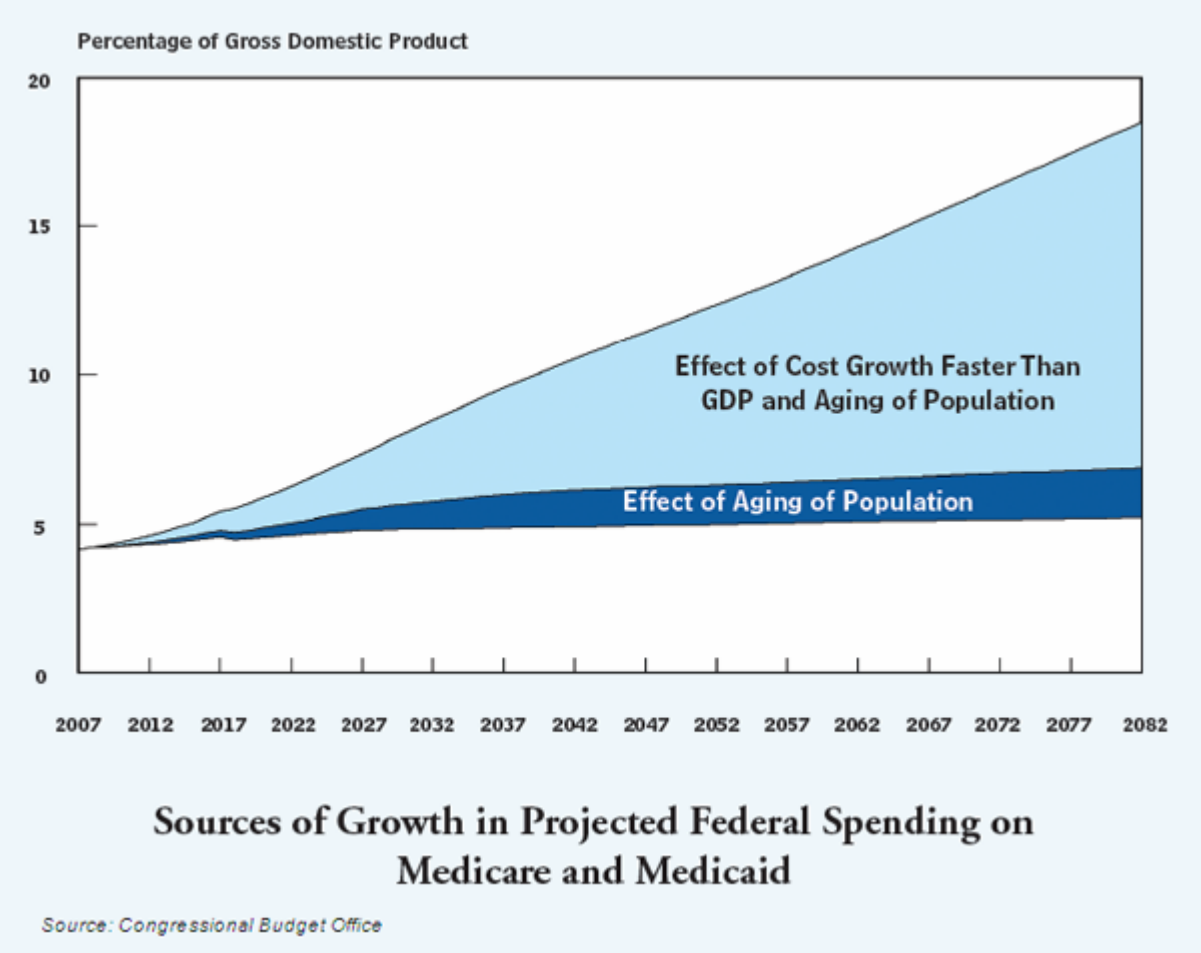
all performance evaluation and reports directly to the head of the agency and high-level OMB staff, but who will likely have little to no experience with specific programs they are supposed to be evaluating, will exacerbate the severe limitations of the PART.

The E.O. also leaves open some issues. Will the process described in the E.O. be an add-on to the existing PART process? How will the requirements of the E.O. be reconciled with legislative requirements under GPRA? Will this add more paperwork requirements for agency staff? These types of questions will need to be answered before the civil service staff embrace the intent of the E.O.

Despite the limitations of this executive order, OMB has continued its commitment to increasing transparency and access to government information. This order requires agency websites to contain regularly updated and accurate information on program performance in a useable and searchable form and makes an effort to make agency Inspector General reports more accessible on the web. This requirement builds upon many improvements OMB has made to its ExpectMore.gov website, which displays the PART review information for all programs. Unfortunately, this commitment to transparency is not enough to make up for the fact that the information being provided is of limited value.

The Real Long-Term Health Care Challenge

Recently, the Congressional Budget Office (CBO) has been issuing a reports challenging the conventional thinking about the long-term fiscal problem facing the nation, which was once believed to be primarily related to the influence of demographic changes on Social Security and Medicare. These reports draw on the results of other researchers and writers who found that long-term fiscal challenge is almost entirely unrelated to demographics and Social Security, and it is mostly confined to inefficiencies in the private and public health care system.



Sources of Growth in Projected Federal Spending on Medicare and Medicaid

Source: Congressional Budget Office

The new thinking expressed in the CBO reports goes like this: most of all, the health care cost issue is about *rapidly rising prices*. Spending on health care, both by the government and in the private sector, has been growing faster than the economy for many years and is projected to increase to unsustainable levels in the near future. On average, health care consumers are purchasing more than in the past, and what they purchase has increased in cost.

It would be one thing if all of this spending was valuable. But a growing body of research suggests a great deal of this spending has not been worth it. Researchers at Dartmouth Medical School have found extreme variation in the price of health care by region within the

U.S. Overall, the variation in spending does not correlate with health outcomes, meaning spending more does not necessarily make a person healthier.

Many observers have concluded that the price of health care (in 2006, we spent over $2 trillion annually on it) does not reflect its value. A 2007 McKinsey & Company study estimated around $480 billion of total annual health care spending could be eliminated, with no adverse impact on health outcomes for individuals. About half of that inefficient spending may be subsidized by public programs, the biggest being Medicare and Medicaid.

Causes and Solutions

At the root of the problem, says Arnold Relman, editor emeritus of the *New England Journal of Medicine*, in his book *A Second Opinion*, is that markets are bad at providing health care. For markets to be efficient, buyers and sellers need good information about products. But in health care, that information is too often unavailable to doctors and patients. As a result, people are spending money on treatments that are not the best deal.

When a patient is buying a health care service, they rarely know if they're getting a good deal and therefore are unable to choose health care efficiently. Doctors, too, are often in the dark about what options are best. CBO Director Peter Orszag has found insufficient research on the "comparative effectiveness" of different options for treating patients. Some doctors choose options that might be more expensive than necessary or less effective than other available procedures. If competition and additional choices are not having an impact on the bottom line of health care costs, the additional overhead and administrative fees charged by companies will make long-term costs significantly higher.

Orszag has further concluded that "comparative effectiveness" findings would probably have to be factored into how doctors are paid to bring down costs. Medicaid and Medicare pay doctors on a "fee-for-service" basis, meaning they are reimbursed for services they provide. Government health plans could use financial incentives through the fee-for-services system to encourage the use of treatments research has proven most effective.

Relman, as opposed to Orszag, believes the "fee-for-service" system is only a part of a health care system that has been too commercialized. Reforming it is not enough to fix the significant problems facing it. Relman identifies the profits and overhead expenses, made necessary by the competition endemic in the marketplace, as expenses that have not had a substantial return in health outcomes. He advocates reorganizing the system on a not-for-profit basis, which should reduce the competition and race-to-the-bottom mentality that contributes to inefficient health outcomes.

Similarly, in her book *Overtreated*, Shannon Brownlee, a health care journalist, identified a trend in health care provision where patients' consumption is driven by the supply of health care products. Brownlee has found that in regions where there are more hospital beds, for example, patients tended to use them more, but are no healthier. She concludes that greater regulation of the supply of health care services may be appropriate to control costs

throughout the system without sacrificing health care outcomes.

What's Insurance Got to Do with It?
The proliferation of insurance has also likely increased health care costs by enabling people to purchase health care, and through administrative and profit-related cost excesses. But high insurance costs are mostly the result of inefficiencies in the delivery system, and changing the insurance system may have a limited effect on health care spending.

Government insurance programs that pay for health care, like Medicare, Medicaid and tax exemptions, have to a large extent financed the long-term increases in health care costs that began in the 1960s. Much of that investment has been in efficient medical care, but most observers, including Princeton economist and *New York Times* columnist Paul Krugman, believe the U.S. health insurance system itself generates significant inefficiencies on its own. Private insurance companies are forced to take profits and spend considerably on competition with other insurers (advertising, promotions, incentives, discounts, etc.), which drives up costs for consumers.

However, there is significant disagreement over whether insurance encourages wasteful behavior by consumers, a tendency economists call "moral hazard." According to Orszag, a landmark RAND study showed when consumers pay higher co-payments, they consume less health care, with little or no adverse effects on health.

Increasing co-payments and deductibles might reduce overspending by a small percentage. This reduction would be small for a variety of reasons. The majority of health care expenditures are directed at chronic illness near the end of life, and financial incentives may not discourage buying in life-or-death situations. As noted above, in most situations, patients (and doctors) would still lack the knowledge and expertise to make efficient purchases even if cost concerns forced them to, while overhead in the delivery and insurance system would be unchanged by higher patient costs. What's more, a plan to discourage health care spending would have to take equity into consideration and not discriminate against low-income families, further limiting the extent to which such a plan could reduce costs through discouraging consumption. This point has been made by health care journalist Merill Goozner.

The new reports by the CBO give credence to and help to underscore the findings of a growing number of health care experts who have found the long-term fiscal challenge is almost entirely due to rising health care costs due to inefficiencies in the entire health care system.

Nonprofits Object to Poison Pill Amendment in Senate Campaign Finance Disclosure Bill

A long-standing effort to require campaigns for the U.S. Senate to file their campaign finance reports electronically has hit a new roadblock. An amendment offered by Sen. John Ensign☼

(R-NV) would infringe on contributor privacy rights by requiring donor disclosure by groups that file Senate ethics complaints. An ideologically diverse group of nonprofits sent a letter to Senate leadership voicing opposition to this proposal, saying the amendment's clear intent is "to discourage organizations from taking action to keep government accountable."

Since 2001, candidates for the House and the presidency, as well as federal political action committees, have been required to file campaign finance reports online with the Federal Election Commission (FEC). Voters can immediately view this information and see who supported each candidate. The Senate Campaign Disclosure Parity Act (S. 223), introduced by Sens. Russell Feingold (D-WI) and Thad Cochran (R-MS), would require that Senate candidates do the same. Currently, the Senate's paper campaign finance reports have to be entered into a computer before the information can go online. This time-consuming process delays public release of the information for months after the contributions are made and weeks after they filed. In the case of reports due at the end of October, the information is not available until after the election. S. 223 would change this by requiring Senate campaign reports to be filed electronically, creating a more cost-effective, transparent, and timely process.

The bill passed out of the Senate Rules Committee on March 28, and since then, Sen. Dianne Feinstein☼ (D-CA), the Rules Committee chair, has fought to pass the bill unanimously. The issue has been raised in the last two sessions of Congress but has never been passed by the Senate because holds have been put on the bill in order to block it.

Ensign's hold is designed to force consideration of his amendment, which would require any charity, religious organization or civic group filing a complaint with the Senate Ethics Committee to disclose the identity of donors giving more than $5,000. This would, in effect, discourage groups from filing ethics complaints against senators, which is why supporters of the bill call the non-germane amendment a "poison pill."

In response to the Ensign amendment, OMB Watch coordinated an effort by a broad group of nonprofits and coalitions to write to Senate Majority Leader Harry Reid (D-NV) and Minority Leader Mitch McConnell (R-KY) urging them to drop the Ensign amendment. The letter states, "This proposal contravenes and runs counter to the letter and spirit of well-established tax law policies, rules and regulations protecting the identity of donors that were enacted in recognition of the Supreme Court's decision in *NAACP v. Alabama*. If adopted, this provision would have the effect of changing existing tax law without the benefit of a full and open public debate, including involvement of Congressional tax-writing committees, and without a change in the Supreme Court's decision."

A few days after the letter was sent, Feinstein asked Ensign to withdraw his amendment, and in seeking a compromise, proposed to hold a Rules Committee hearing on the subject of the amendment. Referencing the groups' letter, Feinstein's press release stated, "[A] large group of conservative and liberal non-profit organizations wrote to express their belief that the amendment is obstructionist and retaliatory, and runs counter to donors' privacy, free speech, and association rights. In addition, they charge that the amendment would have an

effect on existing tax laws."

Why such a straightforward, good government bill that has bipartisan support (forty co-sponsors, including sixteen Republicans) cannot easily pass is perplexing. Most states, in fact, require easy access to campaign finance reports. A new report by the Campaign Disclosure Project found that 30 states require statewide candidates to file disclosure reports electronically. Ensign should drop his amendment to allow for the quick passage of a bill that has no public opposition and simply requires the electronic filing of campaign reports.

Scrutiny of Anti-Terrorism Watchlists Increases

Stirring up controversy and resentment, the United Nation's terrorist watchlist has led to the release of a critical report from Europe's leading human rights watchdog organization. U.S. watchlists have also caused controversy, including the massive no-fly list and the Specially Designated Nationals (SDN) list used to shut down charities. A recent hearing in the House Homeland Security Committee examined the extent to which U.S. watchlists infringe on the rights of innocent persons by maintaining inaccurate records and not addressing current security vulnerabilities.

The report from the Council of Europe, coupled with the House and Senate hearings, demonstrates the many shortcomings of relying on nontransparent watchlist methods. Both in the U.S. and in the EU, procedures for getting on or off government watchlists are often unclear. The draft report, published by the Council of Europe's legal committee, maintains that the methods used for sanctioning individuals and organizations do not include any "procedures for an independent review of decisions taken, and for compensation for infringements of rights." The 47-nation council said, "If one adds to this picture the practice of abductions (extraordinary renditions), of secret detention centers and the trivialization of torture, this provides a worrying, devastating message: Principles that are as fundamental as the rule of law and the protection of human rights are optional accessories applicable only in fair weather." Most of the council's criticism focuses on inefficient redress mechanisms and non-transparent designation processes.

Specific grievances include the following:

- Individuals/organizations should be adequately informed of the charges held against them.
- Individuals/organizations have the right to defend themselves against charges which restrict travel, freedom of movement, right to health, freedom of religion or access to economic resources (i.e. instances of frozen assets).
- Individuals/organizations should have the merits of their cases heard and speedily reviewed by an impartial and independent body, which has the authority to modify or annul blacklist designations.

The report calls for specific reforms, including:

- Adequate notice of charges and decisions
- A right to be heard and adequately defend oneself
- The ability to have decisions "affecting one's rights speedily reviewed by an independent impartial body" with authority to annul or modify it
- Compensation for wrongful violations of rights

The report calls for an overhaul of current international regulations on blacklisting, saying it is both regrettable and worrisome that "important and prestigious international organizations, founded on the protection of human rights, the rule of law and democracy, have chosen to forego these values."

This characterization might readily apply to U.S. watchlists. In recent months, Congress has been paying increased attention to problems within the watchlist system. The House Homeland Security Committee held a hearing entitled "The Progress and Pitfalls of the Terrorist Watch List" on Nov. 8. The hearing was similar to the Senate Homeland Security and Governmental Affairs Committee hearing held on Oct. 24. Opening comments from the House committee's chairman, Rep. Bennie Thompson☼ (D-MS), expressed concerns about the quality of watchlist data and the overall growth in the number of watchlist names. He said, "We can do better — and we have to do better..."

One key difference from the Senate hearing was the testimony of Kathleen Kraninger, Director of Screening Coordination for the Department of Homeland Security (DHS). Her comments highlighted actions DHS can take to further improve watchlist matching efforts. According to Kraninger, the DHS is preparing to take over the No Fly and Selectee watchlist-matching processes for both international and domestic flights. It will use Secure Flight, a program that is supposed to significantly enhance watchlist matching capabilities in several ways. As a result, she said:

- DHS will have access to real-time watchlist information for quicker identification of potential matches prior to airport arrival.
- Quicker calibrations will allow the Secure Flight system to increase/decrease the number of potential matches depending on the level of threat assessed.
- DHS will have more time to coordinate appropriate law enforcement responses before known/suspected terrorists arrive at passenger screening checkpoints.
- Matching will be performed in one process that will be consistently applied across airlines.

While these improvements are welcomed, they may take longer than expected if critical funding shortfalls are not overcome. Kraninger said, "The lack of funding will severely delay rollout of the program and increase costs and risks."

Given the lack of transparency in watchlist designations, Kraninger said it is important for agencies to have robust information for checking against watchlists. Kraninger stated,

"Different screening opportunities present different challenges." Customs and Border Protection has access to many different types of information, to identify and screen individuals entering the U.S., while domestic airline personnel currently rely most heavily on name-matching capabilities. Recognizing the limitations of using name based matches, Kraninger spoke of DHS efforts to begin using US-VISIT biometric information during screenings. According to Kraninger, in FY 2007, CBP encountered 5,953 positive watchlist matches. However, that number could increase substantially if biometrics were used.

The current number of unajudicated redress requests further highlights current inefficiencies in DHS counterterrorism efforts. Of 15,954 redress requests, approximately 7,400 have not been addressed. With nearly half of all cases being addressed, DHS is reportedly refining the concept of operations for redress requests. Other systems that might further enhance current screening efforts include the Western Hemisphere Travel Initiative (WHTI) and REAL ID. Both recommended by the 9/11 Commission, these two systems would make it much harder for known/suspected terrorists to use fraudulent credentials.

During the hearing, Kraninger also addressed key recommendations from GAO's October 2007 report. In response to GAO's recommendation that the Secretary of Homeland Security develop guidelines for using watchlist records to support private sector screening processes, Kraninger said DHS is currently drafting guidelines to establish and support private sector screening. List checking by private companies, such as banks and lenders, has led to problems for individuals with names similar to people on the list. In a March report, the Lawyer's Committee for Civil Rights of the San Francisco Bay Area showed that many Americans are being denied jobs and various services because their names are similar to others who are designated.

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