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Free Market Ends as Washington and Wall Street Merge

Following a string of guarantees, buy-outs, and bailouts for various financial firms, Congress is now [rushing](#) to authorize the Treasury Secretary to spend \$700 billion to bail out the rest of Wall Street. Since its role in the [sale](#) of investment bank Bear Stearns to rival J.P. Morgan in March, the federal government has intervened three times in the nation's financial markets by using taxpayer dollars to prop up the value of various private banking and mortgage entities. While taxpayers ought to be concerned about the sums of money involved in these transactions, a more fundamental problem exists: the bottom-line cost is anybody's guess.

The current crisis in the financial markets is rooted in the basic problem of bad debt. Since the housing bubble burst, millions of homeowners have been unable to pay off their mortgages, ultimately surrendering to foreclosure. Unfortunately, the repercussions of these foreclosures extend beyond just the individual homeowners who default. The mortgages for these homes

were bundled, sliced and diced, and sold by and to Wall Street investors in the form of mortgage-backed securities (MBS). Investment banks, using borrowed money, bought up trillions of dollars of these securities in a bid to enlarge their profit margins. But, as the housing market collapsed, the values of these MBSs became unknowable as good debt — mortgages whose holders maintain payments — was mixed in with the bad. And because these banks cannot properly estimate the value of the outstanding bad debt or identify which MBSs contain those bad debts, banks have significantly reduced their lending to each other to minimize their risk. Recognizing the potential depression-magnitude effects that this failure to lend might have on the economy, the Federal Reserve Bank and the Treasury Department have initiated several extraordinary measures over the past six months.

On March 16, investment bank J.P. Morgan [agreed to purchase](#) competitor investment bank Bear Stearns. But the sale was at a substantial discount and was premised on the condition that the Federal Reserve lend J.P. Morgan \$29 billion, with \$30 billion in MBSs used as collateral. If J.P. Morgan defaults on the loan, the Federal Reserve will be left holding a pile of MBSs worth substantially less than the \$29 billion it loaned the investment bank. And because the Fed transfers its profits to the Treasury, a \$29 billion loss will result in \$29 billion less revenue for the federal government — to be made up by taxpayer-financed debt. An estimate for [potential costs to taxpayers](#) remains unknown, however, as the value of Bear Stearns's MBSs are unknown. Yet, a few months later, the Bush administration requested, and Congress granted, the authority for the government to own even more risky assets.

When the president [signed into law](#) the Housing and Economic Recovery Act of 2008 ([H.R. 3221](#)), he gave the Treasury Department the authority to takeover Fannie Mae and Freddie Mac — the two government-sponsored entities (GSEs) that own or guarantee some \$5 trillion in mortgage debt. The measure also gave Treasury the authority to purchase "any amount of obligations and other securities" issued by these GSEs. When the Bush administration proposed these provisions, the Congressional Budget Office (CBO) estimated that the cost to the federal government would be about \$25 billion. CBO's explanation for its estimate, however, turned out be based on [little more than speculation](#).

Although CBO [asserted](#) that "there is a significant chance — probably better than 50 percent — that the proposed new authority for the Secretary would not be used before it expired at the end of December 2009," the Treasury Department took Fannie and Freddie into conservatorship (essentially taking over ownership and operations) in September. Explaining the necessity for such a move, Jim Lockhart, director of the new independent regulator of the GSEs, the Federal Housing Finance Agency (FHFA), [stated](#), "Our economy and our markets will not recover until the bulk of this housing correction is behind us. Fannie Mae and Freddie Mac are critical to turning the corner on housing." As part of the takeover, the Treasury Department extended a \$200 billion line of credit to the GSEs to ensure their continued operation. It also implemented a plan in which the GSEs would expand their ownership of MBSs up to \$850 billion, with the goal of ultimately reducing the inventories of these securities to \$250 billion. Like CBO's initial estimate, the ultimate cost to taxpayers remains in a murky realm of speculation.

About a week after taking over Fannie Mae and Freddie Mac, the federal government intervened in financial markets once again when it took an 80 percent stake in AIG (American International Group). Like the GSEs and recently bankrupted investment bank Lehman Brothers, AIG had trouble meeting its debtor obligations. [Believing](#) that "a disorderly failure of AIG could add to already significant levels of financial market fragility and lead to substantially higher borrowing costs, reduced household wealth, and materially weaker economic performance," the Federal Reserve Board [loaned the massive insurance firm \\$85 billion](#). The loan is to be repaid as AIG sells off its assets, and Fed staffers believe that the loan will be paid in full. It is not certain, however, that the current value of AIG's assets will be maintained over the two-year life of the loan.

Following the Fed's purchase of AIG, the Bush administration began maneuvering to intervene in the market yet again. Treasury Secretary Henry Paulson asked Congress to provide even more authority to the executive branch to take on more bad debt. Released this past weekend (Sept. 20), the Paulson request calls for a [\\$700 billion blank check](#) from Congress. The [initial text of legislation](#) would have given the Treasury Secretary virtually unchecked authority to purchase \$700 billion more in toxic MBSs. And like the other instances in which the federal government took securities onto its books, the ultimate cost to taxpayers remains totally unknowable. What is clear, however, is that the administration projects a \$700 billion increase in the national debt, as the draft legislation included a provision to increase the debt ceiling from \$10.6 trillion to \$11.3 trillion.

The administration is seeking quick approval of its plan from Congress during this last week before a scheduled adjournment to head out on the campaign trail on Sept. 26. But both Democrats and Republicans appear hesitant to write the blank check without significantly more transparency, oversight, and accountability mechanisms in place. Sen. Chris Dodd (D-CT) has begun drafting [changes](#) to the Treasury proposal he hopes will bring increased transparency and oversight, as well as direct assistance for homeowners with mortgages in danger of default.

The upshot of these market interventions, for better or ill, is that the federal government has added to its balance sheet potentially hundreds of billions, perhaps even trillions, of dollars in bad debt. And while economists and policymakers may argue the importance of bailing out Wall Street, they can carry out only the most rudimentary of cost-benefit analyses, because they are working in such an information void. It is precisely this dearth of information that is cause for concern: A crisis in the nation's long-term finances is looming, and now the federal government may or may not be piling on more than a trillion dollars in future obligations. The knots of federal budgeting have just gotten tighter, although by how much is difficult to determine.

Commentary: On Bailouts, Congress Should Move with Great Care

The pace at which Congress is considering the largest intervention into financial markets in the

history of the United States, if not the world, is shocking. Over the weekend, the Bush administration proposed legislation that would grant it the authority to buy up toxic financial assets in an amount equal to five percent of gross domestic product (GDP). The magnitude of the funds requisitioned is matched only by the administration's requested level of unchecked power and opacity in how it would execute this historic market intervention. Congress has responded with uncharacteristic haste, setting the stage for passage of monumentally flawed legislation that purports to fix a yet-undiagnosed problem in roughly one week.

We do not pretend to know whether a bailout is needed or, if one *is* needed, what size and scope it should be. But most assuredly, rushed actions will result in quick fixes without resolving underlying problems. If economists and financial experts are correct in their assessment of the economy, Congress would be well advised to take a collective breath, slow down, and begin the process of study and deliberation that legislation of this historic magnitude deserves. If the economic crisis is as severe as Treasury Secretary Henry Paulson now indicates, Congress can wait an extra week before adjourning or return during the final weeks of the election season to address this issue. That Democratic leaders Harry Reid (D-NV) and Nancy Pelosi (D-CA) have neglected to mitigate the hysteria induced by an impending adjournment date that could easily be postponed is baffling and frustrating. After all, addressing national priorities is precisely why they were elected.

Paulson's initial request to Congress would have hid the actions of the Treasury from the sight of not only the public, but also from Congress and the courts. Sec 2(b)(2) of [Paulson's legislative text](#) would give his department authority to enter into contracts "without regard to any other provision of law regarding public contracts." Sec. 8 would make "[d]ecisions by the Secretary pursuant to the authority of this Act ... non-reviewable and committed to agency discretion, and may not be reviewed by any court of law or any administrative agency." Paulson has agreed to modify these provisions, but it is a clear indicator that the administration has its sights set on virtually unchecked authority — much like what happened after the 9/11 terrorist attacks.

Congress would be wise to ensure that significant oversight and accountability structures are in place. If Paulson or his successor can make unilateral decisions about contracts, for example, it will likely raise conflicts of interest. The firms most able to help the government dispose of toxic assets are likely the firms that are seeking the government bailout. Congress must be wary of ceding authority to a unilateral actor with no assurances of safeguarding the public from conflicts of interest.

Paulson's proposal would do what advocates and watchdogs of all ideological stripes abhor: it would socialize the risks (and bad decisions) of capitalism while privatizing the rewards. The Bush administration's toxic asset buyout program would purchase from financial firms and individuals assets that are now worth significantly less than the original purchase price. The plan calls for the government to relieve the financial industry of hundreds of billions (potentially trillions) of dollars of bad debt without receiving anything in return from these firms. Nothing. No one knows what the size or value of these debts will be. Progressives complain the taxpayers get no equity in the companies that created the bad debt; conservatives

complain about government interference in the free market. This issue is at the crux of a major philosophical debate about the role of capitalism as this country moves into the 21st century.

Without attaching strings to a bailout, Washington would place an additional \$2,000 of debt on the shoulders of each man, woman, and child in the country while encouraging the foolish and greedy decisions of Wall Street. It was the poor decisions of investment bankers that put the nation's entire economy at risk; it would be nothing less than immoral to enable and reward their reckless behavior as millions of Americans find themselves unemployed, losing their homes, and struggling to pay for food and electricity.

With nary a witness heard nor public forum entertained, the chair of the Senate Banking Committee, Christopher Dodd (D-CT), working with his counterpart in the lower chamber, chair of the House Financial Services Committee Barney Frank (D-MA), had started circulating the outline of the legislation his committee is likely to offer. However, Republican ranking member on the Senate Banking Committee, Richard Shelby (R-AL), sensing the imprudent manner under which Congress is responding to the administration, believes "Congress must immediately undertake a comprehensive, public examination of the problem and alternative solutions rather than swiftly pass the current plan with minimal changes or discussion." Dodd's contribution is substantively promising, and Shelby's warning is well warranted and should be heeded. While things are shifting quickly, if a bailout is to occur, the legislation must adhere to the principles outlined in [a letter co-authored by ACORN and the Campaign for America's Future](#), to which OMB Watch has signed on.

These guidelines include the set of principles that should be followed whenever Congress intervenes in the market:

- Ensure proper oversight will be conducted over the intervening agency
- Protect the taxpayer by ensuring that the federal government not only assumes the risks of a bailout, but also shares in the benefits
- Maintain a sensible regulatory framework under which assisted firms and individuals conduct business
- Hold individuals accountable for their irresponsible behavior

In addition to these guidelines, consideration should be given to aiding individual citizens who continue to struggle to stay in their homes. Above all, Congress must conduct its deliberations transparently and be wary of potential conflicts of interest of those that seek to influence the legislative outcome.

It was only four days ago that Paulson asked Congress to pass legislation that would allow his department to use \$700 billion to purchase mountains of bad debt. That's five percent of the nation's total economic annual output, or to put it another way, that's even more than what has been spent on the war in Iraq. With so much riding on the decisions and actions that our leaders are about to make at this pivotal moment in our history, every American deserves more than five days of Congress's time. Perhaps now, more than any other time, elected officials, particularly Congress, need to do more than prop up our expectations with short-term

solutions. Instead, they should develop a clear understanding of all the components that led to this crisis. Only then will proposed reforms have lasting impact and ensure this type of problem is not allowed to happen again. Let's hope our leaders make the prudent decision to slow the process down and devise a wise policy solution that benefits our entire society.

Senate Clears Contracting Reforms after Resolving Earmark Dispute

The Senate passed important contracting reforms Sept. 17 when it approved the FY 2009 Defense Authorization Act (S. 3001) by an [88-8](#) vote. Among other measures, the legislation included a provision to create a national contractor misconduct database.

The Senate had been debating the legislation behind the scenes for months, and majority Democrats had attempted to pass the authorization bill multiple times since the House passed its version in late May. The upper chamber was unable to garner 60 votes to limit debate on the bill throughout the summer because of a variety of objections from the Republican minority, including a desire to first address energy issues and transparency of earmarks.

After Senate Republicans dropped their filibuster of the bill over unrelated energy policy concerns in early September, progress was then held up because of another round in the fight over earmark policy. The Defense Authorization bill contains over \$5 billion in earmarks that are listed in the committee report for the bill rather than within the text of the legislation. In addition, the text of the bill instructs that earmarks included in the report language should be considered part of the bill — in direct opposition to an [executive order](#) issued by President Bush in January.

Sen. Jim DeMint (R-SC) — one of the Senate's head earmark hawks — attempted to offer an amendment to effectively remove the earmarks in the committee report. This amendment would have deleted the section in the bill instructing that the report language on earmarks be followed. Sen. John Warner (R-VA) attempted to strike a compromise between DeMint and Armed Services Committee Chairman Carl Levin (D-MI) by proposing that an eventual conference committee bill list the earmarks in the legislative text. Neither DeMint's amendment nor Warner's compromise were considered by the full Senate. Although these and many other amendments were not considered, a good number of those proposals could be added to the bill in a conference with the House.

One area where transparency and accountability advocates are hoping for further improvement is in the scope and access of a proposed contractor misconduct database. The database would be a compilation of information regarding integrity and performance of entities awarded federal contracts and grants, including details about contractors that have defrauded the government, violated laws and regulations, had poor work performance, or had their contracts terminated for default. Much of the information required in the database is already publicly available from other government sources.

As originally proposed in separate legislation by Rep. Carolyn Maloney (D-NY) and Sen. Claire McCaskill (D-MO), the database was designed to apply to all large government contractors and be accessible both to government employees and the public. In the final version of the Senate authorization bill, however, the database only applies to Department of Defense contractors and is accessible only to government employees, not the public. These restrictions on the database would greatly limit both its value and its effectiveness.

The Project on Government Oversight [organized](#) more than 30 national organizations in May to urge Congress to structure the database as originally conceived — covering all types of contractors and being open to the public. Although the effort to keep the database transparent has yet to be successful, the passage of language requiring the database is still a significant [accomplishment](#) and, if used correctly, should be a powerful tool for preventing risky contractors from receiving federal contracts.

Congress is currently working furiously to reconcile the House and Senate versions of the authorization bill in the hopes of sending a final bill to President Bush by the target adjournment date of Sept. 26. Conference committee negotiations will have to take into consideration a [staggering number of objections](#) to the legislation from the president, including disagreements over the misconduct database and two smaller restrictions on using private contractors for security functions in combat zones and allowing contract employees to participate in detainee interrogations.

Key Tax Policy Items Remain Unresolved

Congress is scheduled to adjourn for the election season on Sept. 26, but a set of what many consider must-pass tax cut bills have yet to be sent to the president's desk. As differences between the House and Senate remain over offsets, and as a massive Wall Street bailout bill has grabbed the spotlight, final congressional approval of these measures before adjournment remains less than certain.

The House has already passed a variety of tax cut bills, all of which are fully offset, and is awaiting Senate action. Earlier in 2008, the House passed a fully paid-for Alternative Minimum Tax (AMT) "patch" ([H.R. 6275](#)), a fully paid-for set of alternative energy tax cuts ([H.R. 6899](#)), and a fully paid-for set of miscellaneous expiring tax cuts ([H.R. 6049](#)). On Sept. 23, the Senate will be considering three different tax cut proposals. The Senate will use H.R. 6049 as a vehicle to move its tax provisions, striking the language of the House's bill and replacing it with the Senate's version. This is because all revenue legislation technically must originate in the House.

The first proposal would provide tax incentives for renewable energy production, including solar and wind power. The \$17 billion in tax cuts would be fully offset by ending tax cuts for fossil fuel production. The second proposal would provide AMT tax relief to some 22 million families, extend almost \$60 billion in expiring non-energy tax cuts, and provide disaster relief for hurricane and flood victims. This proposal is fully offset, but chances of passage in the

Senate are considered slim, as the Senate has little appetite for approving legislation that is offset. A third amendment would be similar to the second amendment, but it would be only partially offset and is more likely to pass.

Tax Package to be Considered by Senate, Week of Sept. 22, 2008		
Provision	Cost	Offset
<i>Proposal 1</i>		
Energy tax provisions	17.0	17.0
<i>Proposal 3</i>		
AMT relief	64.2	0
Tax extenders and disaster relief	67.5	25.2
<i>Tax extenders</i>	<i>59.3</i>	
<i>Disaster relief</i>	<i>8.2</i>	
<i>Net Cost of Package</i>	<i>123.5</i>	

If the Senate approves any of the measures above — it's likely that the first and third proposals will pass — the House will take up the amended bill before Sept. 26. Getting the non-energy, non-offset extenders language approved in the House will prove difficult, however, as House Democrats strongly favor offsetting the tax cuts. Plainly stating their position on approving tax cuts that add to the deficit, Rep. Earl Pomeroy (D-ND) [said](#), "We're not going to accept this." But, if House Democratic leadership breaks up the Senate bill into three individual bills, there is a possibility that an unpaid-for AMT patch may be approved, as Congress would prefer to keep millions of families from paying higher taxes through the AMT.

With details still awaiting finalization and only one week left for Congress to finish its work, there is little time remaining for debate on these tax cuts. If Congress leaves town without enacting these provisions, particularly a "patch" for the AMT, the chances of a lame-duck session after the elections will increase dramatically.

Veterans Administration Again Reverses Itself to Allow Some Voter Registration Drives

Over the past several months, support has been growing to allow voter registration efforts at Department of Veterans Affairs (VA) facilities. In a reverse of policy, the VA will no longer ban voter registration drives for veterans living at federally operated nursing homes, shelters for the homeless, and rehabilitation centers across the country. A week after this change, the House passed the [Veterans Voter Support Act](#) to legislatively protect such activity and to ensure that the VA allow voter registration drives by nonpartisan groups. However, the VA told a Senate committee that it opposes the legislation in its current form.

On Sept. 8, the VA [announced](#) a change in its voter registration regulations. "The Department will welcome state and local election officials and non-partisan groups to its hospitals and

outpatient clinics to assist VA officials in registering voters at VA facilities. Such assistance, however, must be coordinated by those facilities in order to avoid disruptions to patient care." The VA did not, however, decide to designate VA facilities as voter registration agencies under Section 7 of the National Voter Registration Act (NVRA). Also known as the Motor Voter Act, Section 7 requires states to offer voter registration opportunities at all offices that provide public assistance. Given that the early September decision marked the third time in five months that the VA had revised its voter registration policy, many in Congress were skeptical and moved ahead with legislative action.

The new VA [policy](#) only covers in-patients and only requires that voter registration information be posted on the wall, rather than specifically allowing someone to directly ask veterans if they want to register to vote. The ability of third parties to assist in voter registration is left to the discretion of local VA officials with no precise criteria for approving or denying a request.

In the House, hearings were held on [H.R. 6625](#), the Veterans Voter Support Act, sponsored by House Administration Committee Chair Robert Brady (D-PA). Subsequently, the House passed the legislation by voice vote on Sept. 17.

The bill would allow states to designate VA facilities as voter registration agencies and require those facilities to provide information about absentee ballots and to make sure that such ballots are available upon request. It also would allow nonpartisan organizations and election officials to enter VA property and provide veterans with information on registering.

On the House Floor, Rep. Chris Murphy (D-CT) made remarks in support of the measure, [stating](#), "While the VA has acted wisely in withdrawing their directive, they still retain the ability to reinstate it at some future date. The VA's recent policy shifts on voting registration have been sudden and unpredictable, and there is precious little assurance that they will not undergo another change of heart."

The companion bill in the Senate, [S. 3308](#), has yet to move out of the Senate Rules and Administration Committee. The committee held a [hearing](#) on the bill on Sept. 15. Witnesses included Paul Hutter from the VA Office of General Counsel; Paul Sullivan, Executive Director of Veterans for Common Sense; and Lisa Danetz, Senior Counsel at Demos.

Hutter stated clear opposition to the bill in his [opening statement](#), specifically because the legislation allows a state to designate the VA as a voter registration agency under the NVRA. "This would establish a competing use for VA facility space beyond the needs of the veterans who rely on that facility for its primary mission."

Hutter continued, "Voter registration activities, particularly those that invite in the broader community, would be highly disruptive to the services offered, which are often of a very sensitive and personal nature. The additional traffic brought to the Vet Centers may also adversely impact the treatment of individual veterans and may discourage others from seeking services." Hutter was concerned that the proposed legislation could be read as requiring the VA to allow any nonpartisan group that wanted access, without giving the VA any discretion over

the number or type of nonpartisan organizations that would be able to provide such services. "VA facilities are not the equivalent of public sidewalks or the courthouse steps," he noted, "and reasonable and viewpoint neutral restrictions on speech are lawful."

According to Hutter's testimony, the VA had only recruited 173 volunteers to register voters at its 1,400 facilities and has only registered 414 inpatients and outpatients, out of [more than 5 million](#) veterans who receive care at VA facilities.

Voting rights advocates said news that the VA has not substantially changed its policy further confirms that Congress should move forward with legislation. [For example](#), members of the nonprofit organization Veterans for Peace were denied access to register voters at the Fort Miley medical center in San Francisco. According to an [AlterNet](#) article, "VA officials said Veterans for Peace members had to be screened and approved as volunteers, which included being tested for tuberculosis. That response by the VA prompted litigants who have sued the VA over the registration drives to return to court seeking an order to force the VA to allow those efforts."

Nonpartisan nonprofit organizations are skilled at increasing the number of Americans registered to vote, and veterans may benefit from such efforts. Despite the fact that the 2008 election is only weeks away, voting rights groups will likely continue to call for a federal law that will allow veterans to have access to voter registration opportunities at VA facilities. Ensuring that veterans can participate in the democratic process through access to voter registration should be standard policy.

Voter Purging Allegations Arise as November Election Nears

As the November elections near, more allegations of voter purging are cropping up. Michigan, a closely watched swing state in the presidential election, has been a hotbed of voter purging issues in recent weeks. Florida, another swing state, also finds itself in the midst of voter purging issues. Nonprofit organizations, individual citizens, and political parties have recently filed lawsuits alleging that voters are being unlawfully removed from the eligible voter pools.

The United States Student Association Foundation, the American Civil Liberties Union Fund of Michigan, and the American Civil Liberties Union of Michigan filed [suit](#) on Sept. 17 against the Michigan Secretary of State, the Michigan Director of Elections, and the City Clerk for the City of Ypsilanti to prevent the state from implementing two voter removal programs.

According to an ACLU [press release](#), one of the voter removal programs "immediately cancels the voter registrations of Michigan voters who obtain driver's licenses in other states instead of issuing the appropriate confirmation of registration notices," and it fails to follow voter removal procedures mandated by the National Voter Registration Act.

The other voter removal program "requires local clerks to nullify the registrations of newly-registered voters whenever their original voter identification cards are returned by the post

office as undeliverable."

There are also allegations in Michigan that Republican leaders may try to take advantage of a recent spate of foreclosures to challenge voters at polling places. According to the [*Michigan Messenger*](#), James Carabelli, chairman of the Republican Party in Macomb County, MI, is "planning to use a list of foreclosed homes to block people from voting in the upcoming election as part of the state GOP's effort to challenge some voters on Election Day."

The *Michigan Messenger* alleges that Carabelli told them, "We will have a list of foreclosed homes and will make sure people aren't voting from those addresses." Carabelli and Michigan Republican officials have denied the claims.

In Florida, the "No-Match, No-Vote" law is causing voting rights advocates to fear that thousands of voters will be disenfranchised. Under Florida's "No-Match, No-Vote" law, individuals who have registered to vote and who display valid ID at the polls may still have their votes invalidated. On Sept. 8, Florida's Secretary of State decided to enforce the controversial law.

The "No-Match, No-Vote" law requires that a person's driver's license number or Social Security number be verified before they are registered to vote. According to an [article](#) on AlterNet, "State officials admitted in a recent challenge to the law, [*Florida NAACP v. Browning*](#), that typographical errors by election workers are responsible for most of the failures." The same article states that the law "previously blocked more than 16,000 eligible Florida citizens from registering to vote, through no fault of their own, and could disenfranchise tens of thousands more voters in November."

According to voting rights advocates, many voters will not realize that there is a problem with their voter registration until they show up to vote and are forced to cast provisional ballots. Florida voters must show photo ID at the polls to cast the provisional ballot. After casting the ballot, they must send a photocopy of their driver's license or Social Security card to election officials within 48 hours of the election or their votes will not count.

Organization's Election-Related Activities Raise Questions

The [American Issues Project](#) (AIP) has aired an [ad](#) in several swing states questioning Democratic presidential nominee Barack Obama's ties to a controversial professor. The group claims a single \$2.9 million donation for the ad does not violate federal campaign finance laws, but many legal experts have questioned this logic and AIP's claimed status as an issue advocacy organization.

The AIP ad, aired in Michigan, Ohio, Pennsylvania, and Virginia, links Obama to University of Illinois at Chicago professor William Ayers, co-founder of the Weather Underground Organization, which bombed government buildings in the 1970s. The ad is the only activity thus far by the previously unknown AIP. The ad is funded by a single donor, Harold Simmons,

the Texas billionaire who funded the "Swift Boat" ads against 2004 Democratic presidential nominee John Kerry.

AIP is tax-exempt under Section 501(c)(4) of the Internal Revenue Code (IRC). According to [National Public Radio](#), it was incorporated as Citizens for the Republic (CFTR) (also as a 501(c)(4) organization) in May 2007. CFTR changed its name to Avenger Inc. earlier in 2008. The group again changed its name, this time to the current American Issues Project, when different leadership took over. AIP assumed CFTR's 501(c)(4) tax-exempt status at that time.

[Legal experts](#) question whether the ads violate federal campaign finance law. As a 501(c)(4) organization, AIP cannot make influencing elections its "primary" purpose. Since it does not appear that AIP has engaged in any activities other than the Obama ad, it seems the group may be operating outside proper activities for a 501(c)(4) organization and be acting more like a 527 organization (where influencing elections can be the major or primary purpose of a group's activities). Ed Martin, president of AIP, told the [Wall Street Journal](#) that the group plans to engage in issue advocacy, such as lobbying or other non-electoral activities, in the future and that "part of our plan is that the issue advocacy will better fit around the time when the new Congress is coming in."

Many experts argue that the AIP ad is aimed at influencing a federal election and, as a result, Federal Election Commission (FEC) rules that apply to 527 organizations should also apply to AIP. Those rules limit contributions to \$5,000 annually per contributor. If the 527 rules are enforced against AIP, Simmons' \$2.9 million contribution would appear to violate that limit.

Former FEC attorney Larry Noble told the [Huffington Post](#) that "there's a question about how it's funded." However, there is an exception to this rule for "qualified nonprofit corporations" (QNCs). The U.S. Supreme Court decision in [FEC v. Massachusetts Citizens for Life Inc.](#) (MCFL) held that organizations that expressly promote "political ideas" and do not take corporate money are exempt from campaign finance contribution limits. The FEC adopted an exemption to its rules to comply with the Supreme Court decision.

AIP claims that it is a QNC and is thus exempt from the \$5,000 contribution limit. However, the *MCFL* decision also notes that if the "major purpose" of an organization is to influence federal elections, it should be considered a political committee subject to FEC rules.

In a [letter](#) to the U.S. Department of Justice, AIP compared itself to NARAL Pro-Choice America, a 501(c)(4) organization and QNC that engages in political activities. "NARAL reported spending more than \$3 million on political activities related to federal elections in 2006, more than any other of its program areas, but presumably not a majority of its expenditures," the letter said. Although the IRS has not ruled specifically on percentages, a general rule of thumb is that 501(c)(4) organizations should use at least 60 percent of their funding on issue advocacy, with the remaining 40 percent on other activities, including advocating for or against a candidate.

Allison Hayward, an Assistant Professor of Law at George Mason University, argued in a

[Weekly Standard](#) article that the issue is not as clear as many believe. "AIP is a new name for an older tax-exempt group. Do the activities of its former incarnation count when assessing its present purpose? You might argue that new name equals new group. Or you might argue that the name change is immaterial." Hayward goes on to say that "[t]he FEC has attempted several times to write a 'major purpose' rule, but has never produced language that would satisfy a majority on the commission."

Any FEC investigation of AIP is not likely to be completed before the November election.

EPA Failing on Children's Environmental Health Issues

The Government Accountability Office (GAO) told a Senate oversight committee Sept. 16 that the U.S. Environmental Protection Agency (EPA) has ignored recommendations from an advisory committee established to assist the agency in creating policies to protect children's health. For example, in developing three recent air quality standards on particulate matter, ozone, and lead, EPA either rejected the committee's recommendations or treated them as one of many public comments, according to GAO.

The Senate Committee on Environment and Public Works held the oversight hearing because of the concern that EPA has rolled back or not acted on standards for dangerous chemicals, such as perchlorate, mercury, and lead, all at the expense of children's health, according to [the opening statement](#) of Sen. Barbara Boxer (D-CA), chair of the committee. Boxer and Sen. Hillary Clinton (D-NY) asked GAO to review EPA's efforts. GAO's John Stephenson [testified](#) on the interim findings of a longer-term study the office is conducting and expects to complete in 2009.

In April 1997, President Clinton issued [Executive Order 13045](#), *Protection of Children from Environmental Health Risks and Safety Risks*, directing federal agencies to make a concerted effort to address children's health issues because of children's increased susceptibility to toxic chemicals and air pollutants. The order established an interagency task force co-chaired by the heads of EPA and the U.S. Department of Health and Human Services (HHS). In addition, EPA created an Office of Children's Health Protection (OCHP) and the Children's Health Protection Advisory Committee.

According GAO's testimony, the advisory committee was "to provide advice, information, and recommendations to assist the agency in the development of regulations, guidance, and policies relevant to children's health." Committee members include public health officials from government, nonprofits, academia, industry, and health care organizations. OCHP and other EPA officials have met with the advisory committee regularly, as have outside groups. Nevertheless, GAO concluded that in more than 30 meetings of the advisory committee in the first ten years, "EPA has rarely sought out the committee's advice and recommendations to assist it in developing regulations, guidance, and policies that address children's health."

EPA requested advice from the committee on regulations only three times, on guidance three

times, and only once on developing a policy. Fourteen other times, EPA asked for advice on other issues such as developing plans and evaluating pilot programs. Yet over the period GAO reviewed, the committee sent to over 600 recommendations for action EPA should take on a wide variety of issues, ranging from mercury regulation and farm worker protections to pesticides and air pollution. GAO concluded, "EPA has largely disregarded the advisory committee's recommendations."

The task force created by the executive order was intended to provide federal leadership and interagency coordination of children's health issues. Nine cabinet officials and several White House policy directors were part of the task force that met regularly between October 1997 and October 2001. Although senior staff of the task force continued to meet until the task force expired in 2005, the last meeting of high-ranking members was in October 2001.

GAO concluded that EPA and HHS no longer have the mandate or infrastructure to coordinate federal activities regarding children's health since the task force expired. One consequence of this retreat from a coordinated federal response is that

"the task force could have helped the federal government respond to the health and safety concerns that prompted the 2007 recall of 45 million toys and children's products, 30 million of them from China. Furthermore, since the provision of the executive order expired in 2005, the task force no longer reports the results of its efforts to the President. Those reports collected and detailed the interagency research, data, and other information necessary to enhance the country's ability to understand, analyze and respond to environmental health risks to children."

[Other witnesses at the hearing](#) testified about the rapidly increasing rates of chronic disease in children and various efforts and studies underway to document the scientific connections between exposure and disease. One notable research effort being assembled is the [National Children's Study](#), an epidemiological study that will track more than 100,000 children from the womb to age 21. The study "will examine the effects of environmental influences on the health and development" of children, according to the study's website, with the goals of identifying preventable environmental causes of disease and developing preventative actions to improve children's health and health care. The first preliminary results are expected in 2011. Congress appropriated \$200 million between 2000 and 2008 to set up the study, according to Dr. Leo Trasande of Mount Sinai Medical Center, one of the hearing witnesses. Trasande urged Congress to include funds in its FY 2009 appropriations so the study will not be abandoned.

Lobbyists, Allies in Congress Work to Derail Greenhouse Gas Limits

With the support of special interest lobbyists, congressional Republicans are pushing legislation to hinder the federal government's ability to address climate change. Proposed legislation would halt early efforts by the U.S. Environmental Protection Agency (EPA) to place

new limits on greenhouse gas emissions.

[H.R. 6666](#) would prevent the EPA from issuing new rules to curb greenhouse gas emissions. Specifically, the bill would amend the Clean Air Act to read, "The term 'air pollutant' shall not include carbon dioxide." Rep. Marsha Blackburn (R-TN) introduced the bill July 30.

Blackburn introduced the bill in response to an EPA notice announcing plans to regulate greenhouse gas emissions under the Clean Air Act. The so-called Advanced Notice of Proposed Rulemaking (ANPRM) is not a binding policy proposal. Instead, it solicits public comment on a variety of options for regulating emissions. Environmentalists criticized the ANPRM for [not going far enough](#), while special interest lobbyists complained of potentially large compliance costs.

EPA issued the ANPRM after the U.S. Supreme Court found that greenhouse gas emissions could be considered an air pollutant under the act. As a result of the decision in [Massachusetts vs. EPA](#), EPA decided to begin a rulemaking to curb emissions. Previously, EPA held that greenhouse gases were not a pollutant, thereby preventing the agency from using air quality rules to cut emissions.

Massachusetts vs. EPA is considered a landmark case and was hailed by environmentalists and others concerned about the effects of greenhouse gases on climate stability. H.R. 6666 would effectively render moot the high court's decision.

Blackburn and the bill's 22 Republican co-sponsors are receiving high-powered support from the U.S. Chamber of Commerce. The Chamber, a national organization representing business interests, is lobbying Congress in support of H.R. 6666.

On Sept. 9, Chamber Vice President R. Bruce Josten [wrote](#) to lawmakers announcing the beginning of an intensive lobbying campaign: "Over the next month, the Chamber will educate members of Congress and the public about the different options EPA is weighing and the impact those options would have on businesses."

Part of the Chamber's education efforts includes a [new report](#) on the number of businesses and other entities that may be subject to regulation under EPA's tentative plans. In the report, the Chamber portends that bakeries, pet supply stores, and places of worship, among others, will fall under EPA's regulatory purview if new rules are finalized.

However, compared to [EPA's own estimates](#), the Chamber report grossly overstates the potential impact. For example, the Chamber estimates one million "commercial" sources — offices, food service businesses, and schools, among others — would be subject to EPA's proposal. However, EPA estimates only 88,000 sources would have to institute new pollution control measures.

Frank O'Donnell, president of the nonprofit advocacy group Clean Air Watch, [told BNA news service \(subscription\)](#), "I don't think any rational person believes the EPA would even consider

placing limits on churches or donut shops." On his blog, O'Donnell said the Chamber is using "ugly scare tactics" in its lobbying campaign.

[In the ANPRM](#), EPA acknowledges that new regulations may need to be tailored to avoid imposing burdens on small businesses. Although the Clean Air Act sets emission thresholds, EPA used the notice to propose several legal options for potentially exempting small sources.

While the Chamber calls the costs of greenhouse gas regulation "devastating," American businesses are already taking steps to limit emissions in advance of federal requirements. In a new report by the [Carbon Disclosure Project](#), 32 percent of companies surveyed have instituted emissions reduction programs. "Given their historically heavy carbon footprints and extended global supply chains, manufacturing companies are often on the leading edge of carbon emissions management, tracking and reporting," the report says. The Project surveys S&P 500 companies about their emissions habits.

Other sources of greenhouse gas emissions are clamoring for greenhouse gas regulation at the federal level. A spokesman for a New Jersey power plant, which will be subject to a new regional emissions reduction compact for northeast states, [told The Wall Street Journal](#), "We need to remove the imbalance as quickly as we can...We need to transition quickly to a national program."

The Chamber's efforts are the latest in a series of campaigns that corporate and anti-government lobbyists have waged to prevent EPA from taking meaningful action to address the growing threat of climate change.

In late 2007, EPA had been prepared to issue an official rulemaking proposal which would have placed new limits on greenhouse gas emissions from both vehicles and stationary sources. However, the proposal was scuttled at the behest of ExxonMobil and the American Petroleum Institute, according to congressional investigators. The oil industry lobbyists funneled their concerns through officials at the White House Office of Management and Budget and the Office of Vice President Dick Cheney.

The Heritage Foundation, an anti-regulatory think tank, also opposed EPA's initial plan. In March, [The Los Angeles Times reported](#), "Edwin Meese III and fellow attorneys at the Heritage Foundation, a Washington-based think tank, spent months sending detailed legal analyses and memos to 'everyone we could think of' at the White House and in Congress, said Michael Franc, the foundation's vice president of government relations."

Despite the Chamber's support for H.R. 6666, the legislation is unlikely to move in a Congress facing a constrained calendar and pressing economic issues. The 110th Congress is expected to adjourn for the year by the end of September so members can focus on the November elections.

FBI to Increase Secret Powers in the Near Future

The Department of Justice (DOJ) plans to finalize secret changes to a secret rule that sets guidelines for the Federal Bureau of Investigation's (FBI) work. The changes will reportedly lower intelligence-gathering standards and could pose a significant threat to individual rights. Several senators have voiced strong concerns about the changes.

Previously, the FBI had three different sets of guidelines for allowable activities depending on the type of investigation being conducted. First were guidelines on [General Crimes](#), which were last revised in May 2002 without any public review. The other two sets of [guidelines](#) for National Security Investigations and Foreign Intelligence Collection were produced in 2003, but only heavily redacted versions were released publicly.

The guidelines met with [strong criticism](#) that the powers granted would have a negative impact on civil liberties and investigatory effectiveness. The 2002 revision allowed for data-mining of commercial databases for personal information and attendance at public meetings of domestic groups with no prior suspicion and little internal control.

According to a Sept. 12 [DOJ briefing for department officials](#), the FBI contacted DOJ leadership over a year ago and requested that the three guidelines be combined. The request was made in part because the FBI found that some of the restrictions interfered with its ability to investigate, and in part because the agency "didn't see the public policy rationale for the differences and what could be done under one set of guidelines versus the other."

Following the briefing, the American Civil Liberties Union (ACLU) reiterated [concerns](#) that the revised guidelines would give "unparalleled leeway to investigate Americans without proper suspicion, and that will inevitably result in constitutional violations." The revised guidelines would reportedly allow FBI agents to collect information on Americans through physical surveillance, soliciting informants, and interviewing friends of people they are investigating, all without the approval of a supervisor or reasonable suspicion. Additionally, racial profiling would be permitted.

Sen. Patrick Leahy (D-VT), chair of the Senate Judiciary Committee, has complained that DOJ has refused to provide copies of the new guidelines to the committee despite an August request from him and Sen. Arlen Specter (R-PA), ranking minority member on the committee. Leahy and Specter held a [Sept. 17 hearing](#) on the guidelines despite not receiving the documents. Attorney General Michael Mukasey has [stated](#) that the new standards are scheduled to take effect Oct. 1.

Additionally, Sens. Dick Durbin (D-IL), Russ Feingold (D-WI), Edward Kennedy (D-MA), and Sheldon Whitehouse (D-RI) [challenged](#) the guideline changes after being briefed on the rule in August. The senators expressed concerns about the broad authority to investigate American citizens with little or no basis of suspicion and the fact that new powers include authority to racially profile individuals.

However, in [testimony](#) before the Senate Judiciary Committee, FBI Director Robert Mueller argued that the existing guidelines are inadequate to meet the contemporary threat of terrorists operating within sophisticated networks. Mueller further claimed, "We know that if we safeguard our civil liberties but leave our country vulnerable to terrorism and crime, we have lost."

The FBI has a poor track record when it comes to exercising increased powers in a responsible manner. Last May, the FBI was [forced](#) to withdraw an unconstitutional National Security Letter (NSL) and in March [admitted](#) to improperly accessing telephone records, credit reports, and Internet usage of American citizens. Further, in a report to Congress, it underreported the number of NSLs it had issued by 4,600.

EPA's Assessments of Chemical Dangers -- Too Slow

A government investigation of the U.S. Environmental Protection Agency's (EPA) process for assessing dangerous chemicals concludes the agency is so slow and lacking in credibility that the system is in "serious risk of becoming obsolete."

The Government Accountability Office (GAO) completed a new extensive review of EPA's Integrated Risk Information System ([IRIS](#)), a publicly searchable database for studies and information on the human health effects of chemical substances. The GAO investigation concluded that recent EPA changes to the IRIS assessment process had made a bad situation worse.

This database is a significant tool to protect public health and the environment. Health risk assessments made using IRIS data directly influence the development of [public health policies](#). The EPA's IRIS program is supposed to assess more than 540 chemicals now in the IRIS database, but from 2006 to 2007, it finalized evaluations of only four chemicals. At that rate, it will take almost three centuries to complete the assessments, assuming no new chemicals will require evaluation between now and then. The agency is also supposed to reevaluate old decisions to incorporate new scientific data.

EPA has a significant backlog of chemical assessments and a growing number of outdated assessments. The GAO reports that assessments of certain, especially dangerous chemicals, such as dioxin and trichloroethylene (TCE), the most frequently reported contaminant in groundwater, have been in progress for over 17 years and over 10 years, respectively. Unlike many other EPA programs that have statutory requirements, the IRIS program has no required deadlines.

In April, EPA [released](#) its new assessment process. The new process was not made available for public comment. This lack of transparency and public feedback occurred despite Office of Management and Budget (OMB) assurances that EPA would circulate a draft to the public before moving forward with the final process. Changes included one apparently demanded by OMB, which allows other agencies, including OMB, to comment on IRIS assessments. The

comments from OMB and other federal agencies about the scientific assessments will not be made public nor be noted in any peer review process. Additionally, EPA changed the definition of the scientific assessment process to include policy considerations, where previously, science and policy were distinct.

GAO's [Sept. 18 testimony](#) before the House Committee on Energy and Commerce Subcommittee on Oversight and Investigations indicated that EPA's new procedures have failed to improve the program. Several factors contributed to the failure, including the fact that OMB and several other federal agencies now have an even larger role in evaluating the EPA's work, slowing down the process.

Under EPA's current IRIS procedures, OMB, as well as several other federal agencies, may intercede in the scientific assessment process multiple times. The comments and changes to the IRIS assessments made by these interceding agencies are not revealed to the public. In the GAO's analysis, this lack of transparency violates the principles of sound scientific analysis. Moreover, these federal agencies are often affected by IRIS assessments, which poses an apparent conflict of interest.

Another IRIS problem identified by GAO is that EPA management decisions to postpone completion of assessments to wait for more scientific analyses compound existing delays. Several of EPA's assessments are essentially stuck in a loop where the evaluation process stretches out over several years, during which time the scientific research used in the initial assessment becomes outdated, and the agency starts a new evaluation to incorporate more recent information. This cycle, combined with the new, longer evaluation process, is largely responsible for the significant delays in finalizing risk assessments, according to GAO. Without risk assessments, policymakers at the federal and state levels — and even in other countries — are not able to make informed risk management decisions.

For instance, in 2005 in the aftermath of Hurricane Katrina, the Federal Emergency Management Agency (FEMA) provided trailers to those without housing, which caused health problems because of high levels of [formaldehyde](#). FEMA officials cited the lack of a standard for formaldehyde exposure in mobile homes as one of the problems [that delayed action](#). Apparently, EPA had initiated an assessment of formaldehyde in 1997 to update the data in IRIS, but the process had not been completed by 2005 when FEMA took action. Instead, EPA chose to rely on an industry-funded assessment of formaldehyde, which projected the risk from the chemical to be 2,400 times lower than that determined in studies by the National Cancer Institute and the National Institute of Occupational Safety and Health, according to the GAO analysis.

At the hearing, EPA officials defended the program. Dr. George Gray, EPA's assistant administrator for research and development, cited increased staff levels and funding for the IRIS program. He also stated that there would be no way to conduct "scientific shenanigans" with the IRIS process because of existing independent peer reviews. Marcus Peacock, EPA's deputy administrator, also proclaimed that EPA "[does not] tolerate political interference with

science."

Senate and House Take Legislative Swings at Secrecy

The Senate introduced new legislation that would make it more difficult for the executive branch to establish secret policies. This effort followed the House's passage of legislation to reduce overuse of classification by security agencies.

On Sept. 16, Sens. Russ Feingold (D-WI) and Dianne Feinstein (D-CA) introduced the Office of Legal Counsel (OLC) Reporting Act of 2008 ([S. 3501](#)), a bill that would require the Attorney General to notify Congress when the Department of Justice (DOJ) determines that executive branch actions are not covered by particular statutes, such as criminal laws.

Legal opinions issued by the OLC are incredibly important to the executive branch because they create policies that effectively become new laws and can amend existing laws that bind the entire branch. Often, OLC opinions have been withheld from Congress, causing a breakdown in the system of checks and balances vital to maintaining an accountable political system.

A prominent example of this is the March 2003 DOJ [memorandum](#) authored by John Yoo, which became public in April 2008. The OLC memo took the position that the executive branch was not bound by criminal statutes prohibiting torture when interrogating detainees. Feingold [argued](#) that this practice creates an environment where "the executive branch is no longer operating according to the rules that are on the books, and there is truly a separate ... regime of secret law." The public has a clear interest in knowing when the executive branch claims to be above the laws established by their elected officials in Congress.

The Senate bill is supported by former members of both the Clinton and Bush administrations. Dawn Johnsen, a head of the OLC during the Clinton administration, and Bradford Berenson, former counsel to President Bush, wrote a joint letter in support of the bill. They said, "We believe [the bill] strikes a sensible and constitutionally sound accommodation between the executive branch's need to have candid legal advice, to protect national security information, and to avoid being overburdened by overly intrusive reporting requirements and the legislative branch's need to know the manner in which its laws are interpreted."

The House also took action against excessive secrecy in the executive branch with the Sept. 9 passage of the Over-Classification Reduction Act ([H.R. 6575](#)). The legislation would require the Archivist of the United States to establish regulations for the prevention of over-classification. The bill mandates that agency Inspectors General conduct periodic audits of classification activity to ensure agencies comply with those standards. A system of incentives and penalties that would reward compliance and discipline abuse of classification authority would also be established.

Over-classification is a well documented problem within government. According to the [2008 Secrecy Report Card](#) issued by [OpenTheGovernment.org](#), \$195 is spent on classification for

every \$1 spent on declassification. Since 2001, the government has been shrouded in a darkening veil of secrecy that has resulted in increasing numbers of classification decisions and requests for information, all creating massive costs to the taxpayer.

While transparency advocates agree that over-classification is a problem, there is some doubt that government-wide solutions are realistic. Steve Aftergood of the Federation of American Scientists [asserted](#), "Over-classification at the CIA is not the same as over-classification at the Pentagon or the State Department. Not only do these agencies have different institutional cultures, their classification policies revolve around different sets of security concerns, and they are implemented through distinct sets of procedures." For instance, the Information Security and Oversight Office's 2003 implementation [directive](#) concerning classification duration, training, and marking was not successful at reversing the ever growing problem of over-classification.

S. 3501 has been referred to the Senate Judiciary Committee, and H.R. 6575 awaits action in the Senate. Between Congress's attention to the urgent economic crisis and the dwindling session calendar, neither bill appears likely to be enacted this year.

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