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House Passes Shays-Meehan Bill 240-189

A substitute bill sponsored by Reps. Chris Shays (R-CT) and Marty Meehan (D-MA) passed the House of Representatives at 2:40 a.m. on February 14 by a vote of 240-189. 198 Democrats and 41 Republicans voted for the bill.

During the debate the sponsors entered colloquy language into the record that clarifies the [Federal Election Commission's](#) role in defining exceptions to issue advocacy restrictions in the bill. Exceptions could be created for broadcasts that are "wholly unrelated to an election." The colloquy, proposed by OMB Watch and Independent Sector, makes it clear that the FEC should conduct a rulemaking and act within 90 days of the effective date of the new law.

The following amendments were made to the bill Shays and Meehan filed last summer:

1. New effective date: November 6, 2002 (the day after Election Day).
2. National parties can spend soft money through the end of 2002 to pay outstanding debts.
3. Contribution limit for House races increased from \$1000 to \$2000.
4. Provisions requiring the lowest unit rates for broadcast advertising by candidates were deleted.
5. Contribution and spending limits were raised for House candidates with self-financed opponents.
6. Parties will not be able to use soft money for building or office construction.

The next step will be a fight in the Senate over whether or not a conference committee is held. Reformers want to avoid a conference, which they feel will give opponents a chance to weaken the bill 60 votes will be needed to avoid a filibuster aimed at forcing the conference. Sen. Mitch McConnell (R-KY), who has led the fight against campaign finance reform bills in the Senate, has not yet committed to a filibuster. He said he is still reviewing the bill, but has concerns about restrictions on issue advocacy. He also noted that the House bill does not have the limits on fundraising by federal officeholders for 501(c) organizations that were in the Senate version. As passed, Shays-Meehan would allow federal officeholders to raise an unlimited amount of money for 501(c) organizations as long as the money is not earmarked for voter registration within 120 days of a federal election, get-out-the-vote (GOTV) drives connected to a federal election or ads that attack or promote a specific federal candidate. Federal officeholders could help raise funds for GOTV and voter registration drives from individuals only, and the amount raised could not exceed \$20,000.

Since the McCain-Feingold campaign finance bill passed by a 59-41 margin, McConnell may have enough votes to force the bill into a conference committee. However, one Senator who voted against the bill last year, Sen. Ernest Hollings (D-SC), announced he would vote for the bill this time around. That gain may be offset by Sen. Robert Torricelli (D-NJ), who pushed for a requirement that broadcasters provide candidates with their lowest unit advertising rate. This provision was taken out of the House bill after heavy lobbying by the broadcast industry. Sen. Ted Stevens (R-AK), who voted for McCain-Feingold last year, has raised concerns about unequal tax treatment between contributions to nonprofits and campaigns. However, a spokesperson in his office said it is premature to speculate on his cloture vote. The President has said he will not make a decision on whether or not to sign the bill until he has something in front of him. If the bill is signed into law, McConnell has promised to file a suit challenging its constitutionality.

See the [Campaign Finance Institute's summary of the bill's provisions](#).

[Read the full text of the House colloquy on issue advocacy.](#)

Civil Rights Group Sets Long Term Campaign Finance Reform Goals

The California-based [Greenlining Institute](#) released recommendations for campaign finance reform from a civil rights perspective on February 12, the day the House of Representatives started debating the issue.

Their recommendations are based on consultations with minority and low-income community leaders and a study of campaign contribution patterns in California. While some recommendations are addressed in pending campaign finance reform legislation, others are not, and will require a continued push for reform.

The recommendations are:

- Ban soft money contributions to political parties
- Regulate issue advocacy funding
- Institute a voluntary public financing system to cap campaign expenditures
- Restore public benefit mandates for TV and radio
- Allow low-income filers to participate in Presidential election funding

Both the Shays-Meehan and McCain-Feingold bills ban soft money contributions to political parties ([see related story, this issue](#)). Greenlining's proposals on issue advocacy call for regulation through disclosure and contribution limits for groups that spend over \$25,000 a year on targeted broadcasts and mass mailings that identify a federal candidate and are made within 60 days of an election. This is less restrictive than the bills pending in Congress, which ban broadcasts that identify a candidate within 60 days of an election or 30 days of a primary. The report also notes that the Federal Communications Commission (FCC) has not enforced a 1971 law that requires broadcasters to provide their lowest rates to candidates during the campaign season, and calls for closing the loophole that allows broadcasters to bump campaign ads into less desirable time slots if a higher paying customer wants to purchase prime time. This forces candidates to pay the top rate in order to assure prime-time airing. This provision is in the McCain-Feingold bill, but was taken out of the Shays-Meehan bill.

The report notes that no contribution to the Presidential Election Campaign Fund is made if a taxpayer has no tax liability, even if the filer indicates that they want the allocation made. Because 1 in every 4 tax filers has no liability, and the funds come from the Treasury and not the individual tax filer, this process excludes a significant segment of the population from participating in the Fund. The report says revising the check off system would "broaden political participation" and "enhance the future financial strength of the public funding system."

Moving in the opposite direction, Rep. J.C. Watts Jr. (R-OK) has introduced a bill ([H.R. 3709](#)) that would make such contributions "after-tax," rather than an allocation from the Treasury. These contributions could also be earmarked for a political party. Watts' statement said, "The taxpayer has no voice as to whom these funds go or where these funds will be spent," and noted that the \$200 million the Fund spent in 2000 could be better used in the Treasury.

The Greenlining Institute is a multi-ethnic coalition of nonprofits that focuses on public policy, leadership training and advocacy to promote economic development for low-income and minority communities in California.

The [report and research results can be found on the organization's website.](#)

FEC To Hold Public Hearing on Proposed Internet Rules

The Federal Election Commission (FEC) has scheduled a public hearing on its proposed rules on three Internet-related political activities.

The hearing will be on March 14 at 10 a.m. at the FEC's hearing room. Last year the FEC announced three new proposed rules regarding use of the Internet in federal campaigns. The proposal came after its 1999 Notice of Inquiry on a wide range of issues relating to Internet-based election activity by individuals, corporations, nonprofits and labor organizations. The proposed rules are largely responsive to the more than 1,300 public comments received in the 1999 inquiry.

The new rules would cover the following areas:

- **Volunteers: Proposed 11 CFR 117.1**

The rules will not regulate volunteers that use their personal computer and Internet access for federal campaign activity.

- **Hyperlinks: Proposed 11 CFR 117.2**

Under this proposed rule links to candidate and party websites from the sites of corporations, nonprofits and labor unions will not be considered campaign contributions if the link or surrounding text does not contain "vote for" or

"vote against" type language and if there is no charge or if only a nominal amount is charged.

- **Endorsement Press Releases: Proposed 11 CFR 117.3**

Current regulations limit corporate and nonprofit communications for or against candidates to their members and executive personnel and their families. However, the rules have allowed these organizations to announce candidate endorsements to the press. The proposed rule would allow posting press releases about candidate endorsements on the public portion of a group's web site if they are posted on the same basis as other press releases and limited to an announcement of the endorsement and the reasons for it.

Any party that wishes to testify should contact:

Rosemary C. Smith
Assistant General Counsel
c/o FEC
999 E Street, NW
Washington, DC 20463

Or fax to 202/219-3923 or submit electronically at internetnprm@fec.gov.

[View comments filed in this proceeding, including those of OMB Watch on the FEC website.](#)

Faith-Based Compromise Reached

After months of wrangling between the House, Senate and White House, a compromise on the Administration's Faith-Based Initiative has been reached. The CARE act of 2002 ([S. 1924](#)) was introduced on February 8, and contains several major provisions.

These provisions include:

1. Tax incentives for giving,
2. Provisions for equal treatment of nongovernmental organizations that apply for federal grants,
3. Fast-track processing by the IRS of applications for 501(c)(3) status by small organizations applying for federal funds, and
4. Funding for six new programs.

The main tax provisions of the bill include lowering foundation excise taxes, direct tax-free donations to charities from Individual Retirement Accounts for individuals over 67 years old, a higher corporate donation ceiling, and a charitable contribution tax deduction of up to \$400 (\$800 for couples) for non-itemizers. Most of the tax provisions are only in effect for FY2002-2003, so they officially cost somewhere between \$11-13 billion, but could be drastically more expensive if extended. While these provisions would have been a nice giving incentive in better times, the money the Treasury loses because of them may hurt the charitable community in the long run ([see related article](#)).

The bill does not include the controversial "charitable choice" provisions that passed in the House version ([H.R. 7](#)). The House bill would allow churches using federal money to discriminate in hiring and exempt churches from some government regulation.

Read [OMB Watch's full analysis of the bill](#).

Proposed Non-Itemizer Deduction Raises Concerns

Instead of questioning the wisdom of the tax cut enacted last summer or proposing to delay its implementation until support for key domestic investments is provided -- which is what should be done -- we now have to weigh an acknowledged valuable tax break, the non-itemizer deduction, against vitally needed federal programs.

The Lieberman-Santorum faith-based bill, the Charity Aid, Recovery, and Empowerment (CARE) Act ([S. 1924](#)), represents a positive compromise from the Bush charitable choice proposals. Yet the provision to allow taxpayers who do not itemize to take up to a \$400 deduction (\$800 for couples) for charitable contributions raises some concerns. While this sounds very good, in today's economy it may prove yet another straw that is breaking the back of spending on domestic programs. For those in the 15% tax bracket, this cut translates into a \$60 tax break for individuals giving the maximum. While the CARE act is more responsible than the charitable choice bill passed in the House last year ([H.R. 7](#)), the cost of ten years is more than \$40 billion. Because the cost is so high, the Senate bill proposes the tax incentives for only two years, or roughly \$8.4 billion, with the knowledge that the provisions will likely be extended after that.

At the same time, the President has proposed a budget that takes a huge whack out of domestic discretionary spending, the very component of the federal budget on which nonprofits are heavily dependent. According to the Senate Budget Committee, there would be a cut of 6.2% for domestic programs (other than homeland security) when compared to what is needed to maintain the current level of programs and services. While not all the cuts will materialize, nonprofits already have taken a huge hit through the tax cuts enacted last summer, such as the phasing out of the estate tax. The estate tax would have generated an average of roughly \$34 billion per year for the rest of the decade, roughly two times the size of the cuts that are proposed for domestic spending.

Against this picture of budget cuts, does the non-itemizer make sense? [Independent Sector](#), a leader in advocating the non-itemizer, points out that nonprofits will get \$1.15 for every \$1.00 the government loses in revenue. However, there are a series of questions that need to be asked:

1. **Will the non-itemizer really generate that much in new contributions, or is this a way to give those who are now contributing a way to receive a tax break?** No one knows for sure how much new giving will occur, but a number of tax experts have raised this concern and the tax-writing committees are listening.
2. **Even if it does generate new contributions, which nonprofits would really benefit from the non-itemizer deduction?** Most experts seem to acknowledge that religious congregations will benefit, but it is not clear who else will.
3. **Will the non-itemizer deduction be as difficult to administer as tax experts say?** Past IRS employees and others in the tax-writing committees argue that the non-itemizer is a prescription for fraud, and additional resources will need to be used to prevent this.
4. **Is this an appropriate substitute to direct funding of services?** Conservatives want to downsize the government and shift responsibility from Washington to local control and private, voluntary initiative. This shifting of funding from government to private donors is unlikely to compensate for diminished ongoing federal support of key programs

There are ways to approach the non-itemizer deduction that would reduce its cost and target the benefit to new or increased contributions. For example, the deduction could be limited to what is given over a set floor amount. This approach was recommended in [The Nonprofit Agenda: Recommendations to President George W. Bush to Strengthen the Nonprofit Sector](#), which was based on results of a national survey of nonprofits and developed by an Advisory Group of state and local nonprofit leaders. They recommended that, "the deduction threshold should be high enough to encourage giving but low enough to allow broad participation and benefit the 49% of households with taxable incomes of less than \$30,000 a year."

Instead of questioning the wisdom of the tax cut enacted last summer or proposing to delay its implementation until support for key domestic investments is provided -- which is what should be done -- we now have to weigh an acknowledged valuable tax break, the non-itemizer deduction, against vitally needed federal programs. The real solution is addressing the tax cuts from last summer. Until critical domestic spending issues are addressed, the non-itemizer deduction does not make sense.

Read [OMB Watch's full analysis of the trade-offs involved in the decision about the non-itemizer](#).

Legal Services Restrictions Under Review, Lawsuit Filed

An internal Legal Services Corporation (LSC) review of restrictions on legal aid programs has recommended no change in restrictions prohibiting LSC grantees from using LSC or other funds for class action litigation, legislative advocacy and community education.

This includes the "program integrity regulation," which requires physical separation between LSC-funded recipients and any organizations that engage in these restricted activities. (See 45 C.F.R. 1610)

In December four legal service programs in New York City, a private charity and pro bono attorney filed suit against the Legal Services Corporation challenging the constitutionality of these restrictions. It also challenged the bar on programs' collecting attorneys fees in successful cases. The suit, *Dobbins v. Legal Services Corporation*, follows the 2001 Supreme Court ruling in *Velazquez v. Legal Services Corporation*, which invalidated a restriction barring legal aid lawyers from challenging welfare reform laws. The plaintiffs are being represented by the [Brennan Center for Justice](#), whose legal director said, "The federal government should be encouraging, not thwarting, the generosity of communities working for equal justice for low-income people. This is a disastrous and mean-spirited policy. We are urging the court to find these laws unconstitutional and strike them down."

The LSC Task Force identified two high priority areas for the LSC Board's review: regulations governing the make-up of LSC grantee boards that make it difficult to have diverse backgrounds on them, and more flexible sanction procedures that apply to LSC grantees accused of violating LSC regulations. Low priority was given to the issue of a private co-counsel's "applications for fees."

Community Technology Programs Cut Back in FY 2003 Budget

The proposal calls for eliminating two successful community technology programs -- one at the Department of Commerce, the other at the Department of Education -- and increasing a HUD program that *allows* funds to be used for community technology programs but does not require it.

On February 4, 2002, President Bush released his FY 2003 budget request. The proposal calls for eliminating two successful community technology programs -- one at the Department of Commerce, the other at the Department of Education -- and increasing a HUD program that *allows* funds to be used for community technology programs but does not require it.

Echoing the priorities for community technology laid out in the FY 2002 budget proposal, the Department of Education Community Technology Centers program, which is currently funded at \$32.5 million, would be eliminated, in favor of an effort under the Department of Housing and Urban Development's Neighborhood Networks program, currently funded at \$20 million (divided between \$15 million under the Public Housing Capital Fund and \$5 million under HOPE VI programs). The President's FY 2003 request for Neighborhood Networks is for level funding. There has been no information available, to date, as to exactly how the program will allocate funds, or if/when funding will be available on a competitive basis for community technology center applicants.

The FY 2003 budget also calls for level-funding of \$1 billion for the Department of Education's 21st Century Learning Centers program, to establish or expand academic enrichment opportunities for students and learning opportunities for their families outside of school hours -- during the week, weekends, and summer periods -- in school districts with high concentrations of poverty and/or low-performing schools. Money would be available to the states through formula grants, which are then distributed to local school districts on a competitive basis. The Department's Educational Technology State Grants (an initiative to boost technology integration in classroom environments) into which the Department's existing Preparing Tomorrow's Teachers to Use Technology, Technology Innovation Challenge Grants, and Technology Leadership Activities would be folded, is also to be level-funded at \$700.5 million. The effort would continue to provide formula grants to the states, which in turn would distribute half to all districts by a formula, and the remainder to the most high-need districts, to acquire technology skills, expertise, and training resources. The President's request also includes level funding of \$25 million for AmeriCorps/VISTA information technology training efforts directed towards students and teachers in low-income areas.

The biggest change, however, is the outright elimination of the Technology Opportunities Program under the Department of Commerce's National Telecommunications & Information Administration, which Congress funded at \$12.4 million this year. To date, the three-year old CTC program has distributed some \$100 million in matching grants to over 200 organizations to develop or expand over 500 community technology access points and centers for information and telecommunications technology in the context of educational services and skills training for those lacking such access at home, work or school. The seven-year old TOP program has, to date, awarded 530 grants, across all 50 states, Puerto Rico, the District of Columbia, and U.S. Virgin Islands, totaling \$192.5 million grants leveraged by \$268 million in matching funds from local sources, to support public-private efforts to develop the national advanced telecommunications and information technology infrastructure for delivery of social services -- including education, health, employment, and public safety -- to underserved rural and urban areas across the country.

These programs have proved to be extremely effective as evidenced by a new Commerce Department report, "A Nation Online" released on February 5. The report found Internet use among the poorest households in 2001 increased by 25%, among blacks by 33%, and among Hispanics by 30%. Households headed by single mothers had a 29% increase in Internet usage, the highest growth rate among different types of households.

[Read more for the details on the fate of these community technology initiatives.](#)

Tax Cuts vs. Everything Else

We can either choose to pay now, or we will have to pay later -- preventing social ills is much cheaper in the long run. From a purely economic standpoint, many economists agree that a return to deficits is not a problem -- running a surplus would actually be more of problem -- and that this economic climate prescribes more government spending, not less.

With the return to budget deficits because of the combination of the added expenses of September 11th and the war, the effects of the economic recession, and the lost revenue due to the previously enacted tax cuts, Democratic leadership has focused primarily on the need to be fiscally responsible to avoid creating deeper deficits. There has been little direct criticism of the tax cut and the effect of its drain on resources, presumably because of the President's popularity and public support. Few are calling for postponing the tax cut, because the President has made it clear that, "not [sic] over my dead body" will it be rescinded or postponed. While the Democratic strategy may be to ultimately show that the tax cuts are not affordable, the current emphasis on fiscal responsibility seems misplaced. The President's budget, though cleverly crafted so as not to reveal it, would cause substantial cuts in spending for human needs programs, with domestic discretionary programs (excluding Homeland Security) facing cuts of 6.2% in 2003. (See [Sen. Kent Conrad's \(D-ND\) "Review and Analysis of the President's FY 2003 Budget"](#).)

Democrats have long championed the responsibility and role of an effective government to do what the market will not do. The country has priorities that are more important than tax cuts, and our failure to address them may create social deficits that are far graver than a few years of budget deficits. We can either choose to pay now, or we will have to pay later -- preventing social ills is much cheaper in the long run. From a purely economic standpoint, many economists agree that a return to deficits is not a problem -- running a surplus would actually be more of problem -- and that this economic climate prescribes more government spending, not less.

We think the emphasis ought to be on the trade-offs made necessary because of the cost of the tax cuts passed back in March, before our circumstances changed so dramatically. Why is our focus on the tax cuts? It would be easy to postpone tax cuts -- they are being phased in throughout the next ten years, so we could postpone cuts at any point as they are

phased in. Additionally, we can pick and chose the provisions to postpone based on the knowledge that many of the tax cuts primarily benefit wealthier taxpayers and corporations (see [Citizens for Tax Justice analysis](#)). The tax cuts, unlike the war or the recession are fully in our control. They are a source of revenue that can easily be tapped. Finally, in spite of the country's many urgent obvious needs, tax cut proponents continue to push for even more cuts and to make those tax cuts already passed -- which would otherwise end in 2011 -- permanent, thereby further limiting the resources that are available for other purposes. (For one example of this effort, see [related story](#), [this issue](#).) We ought to be fighting just as hard to see that our resources are used where they are needed most -- for education and job training, for expanded unemployment benefits, for child care and early education for all children, for affordable housing, for health care -- the list goes on and on.

A few members of Congress are calling for a change so that we take care of "first things first." Rep. Jan Schakowsky (D-IL) was first to call for such a change when she introduced "[The First Things First Act](#)" on October 2, putting on hold the parts of the tax cut that benefit the wealthy until there is an adequate response to the terrorist attacks of September 11 and its impacts on workers; until the Social Security and Medicare Trust Funds are solvent; until there is a Medicare prescription drug benefit; until school modernization and 100,000 new teachers are hired; and until there is a reduction in the number of people with worst-case housing needs. See [Representative Schakowsky's press release](#) for more information.

On January 16, 2002, [Sen. Edward M. Kennedy \(D-MA\)](#) gave a speech at the National Press Club. He specifically acknowledged the need to stand with the President on the war front, but urged us to also join together to meet the great domestic challenges we face and address "the urgent needs of our people in areas like jobs, education, health care, and equal rights." Kennedy proposed that whether it were right or wrong, the tax cut was enacted in a different time, and we should now agree to "postpone a portion of the future tax cuts that overwhelmingly benefit the wealthiest taxpayers...until we are certain that we can afford a prescription drug benefit for senior citizens, make the needed investments in education and health care, protect Social Security and fully provide for the common defense." Under Kennedy's proposal, we could save \$350 billion over the next ten years by avoiding future reductions in the tax rates paid by taxpayers in the highest income brackets and keeping the estate tax on estates over \$4 million. Kennedy argues that since these won't take effect until 2004 and 2006, and, in the case of the estate tax, 2011, they will not hinder our recovery from the recession but will insure reductions in long-term interest rates now by instilling the public with more confidence in the budget situation over the next ten years. This tax cut freeze proposed by Kennedy would keep tax cuts for everyone but the richest [according to an analysis by Citizens for Tax Justice](#).

The latest Congressperson to talk explicitly about freezing parts of the tax cut is Sen. Paul Wellstone (D-MN), who proposed on February 12, 2002, to freeze the rates of the wealthiest 1 percent of Americans where they are now, saving \$121 billion over the next ten years. Wellstone also objects to repeal of the Corporate Alternative Minimum Tax, a provision contained in the House Ways and Means Committee's first Economic Stimulus Package bill. He would invest the savings in schools and kids, especially to see that the Individuals with Disabilities Act is fully funded so that all children with disabilities can get special education.

Senators Kennedy and Wellstone have not yet introduced legislation.

If you agree that given a choice between tax cuts and meeting the needs of our people and communities, you would choose the latter, you should give your representatives your support for freezing or postponing some or all of the tax cuts. This need not be considered a choice that is disloyal or unpatriotic. Whatever your position on tax cuts before September 11 and the economic recession, times are different now and the trade-offs are starker. Are future tax cuts for the wealthy, which haven't even gone into effect yet, more of a priority than education, health care, housing, prescription drugs, and extending the solvency of Social Security?

The Game of Ping-Pong, or "The Economic Stimulus Package Debate"

Less than two weeks ago, many observers -- including OMB Watch -- were predicting that an end, at least for the foreseeable future, had come for the debate on an economic stimulus package.

Senate Majority Leader Tom Daschle (D-SD) scheduled a vote on February 6 to determine whether the Senate would stop the stream of amendments to the bill and proceed with debate on his proposed economic stimulus package (also called a "vote on cloture"). As predicted, his bill did not receive the required 60 votes (56-49, see [voting record on Thomas](#)), and Daschle removed the stimulus bill from the Senate's schedule. That same day, Senate Republicans called for a vote on their proposed stimulus package -- similar to that passed by the House late last fall -- but were also unable to secure the 60 votes (48-47, see [voting record on Thomas](#)).

The Senate was able to agree on a single measure that had been included in both stimulus proposals and, by unanimous consent, passed a 13-week extension to the current allotment of 26 weeks of unemployment benefits for laid-off workers. Many in the Senate explained that they felt that passing the unemployment benefits extension by itself would offer the most expeditious path to addressing some of the most urgent needs created by the current recession, while also enabling the Senate to move on to other issues.

When the bill reached the House, however, it became clear that the economic stimulus debate was anything but resolved. The House took up the Senate's 13-week extension bill and then amended it by tacking on just about all of the provisions from its economic stimulus package ([H.R. 3259](#)) passed in December 2001. In addition to the 13-week unemployment extension, the House passed the following provisions on February 14 (225-199) see [vote count](#)):

(Cost estimates are provided in the [Joint Committee on Taxation's February 14 report](#), "[Estimated Budget Effects of the Revenue Provisions of the 'Economic Security and Worker Assistance Act of 2002'](#)")

- "**Supplemental Stimulus Payments**" (These are the tax refunds -- \$300 for individuals; \$600 for couples -- to those who did not receive them under the Bush tax cut in June 2001.)

- **Acceleration of the creation of the 25% tax cut bracket to 2002** (Under current law this would not occur until 2006.)
- **Increase Individual AMT exemption** (The exemptions, which are an attempt to reduce the number of middle-income tax payers impacted by the Alternative Minimum Tax, will expire at the end of 2006.)
- **Various Business Tax Provisions** (Among other provisions, these include an accelerated rate of depreciation of equipment.)
- **Corporate AMT Modification** (Unlike the original bill passed by the House, this new bill does not repeal the corporate AMT and only impacts future payments -- it does not call for the refunding of past payments by corporations. Nevertheless, with a 10-year cost of \$16 billion, this provision is the second most expensive of the bill's entire \$153 billion 10-year cost -- second only to the \$44 billion cost of accelerating the formation of the 25% income bracket.)
- **Extension of Various Expiring Tax Provisions**
- **TANF Supplemental Grants for Population Increases in FY 2002 and a 1-Year Extension of TANF Contingency Funds** (Total, 10-year cost for these two provisions is \$330 million.)
- **Tax Benefits for Areas of New York City Damaged by Terrorist Attack**
- **"Displaced Worker Health Insurance Credit"** (Provision creates a 60% refundable tax credit for the purchase of health insurance -- either COBRA or private insurance -- by unemployed workers.)
- **"Employment and Training Assistance and Temporary Health Care Coverage Assistance Provisions**

It is worth noting that many of the provisions passed by the House last week fall under the [Congressional Budget Office's category, "Small Bang for the Buck,"](#) indicating that the provision would have little positive impact on the efforts to stimulate the economy relative to its costs to the federal government. This was especially true for the corporate AMT reductions, other business tax cut incentives, and acceleration of income tax bracket reductions.

Shortly after the House vote, the Senate passed its 13-week extension again, this time as a substitute to the House's original economic stimulus package, [H.R. 3090](#).

The [Center on Budget and Policy Priorities \(CBPP\)](#) pointed out that the House-passed plan was the same one that failed in the Senate last week and so the future of an economic stimulus package is now more uncertain than ever -- even as various economists report that the country's unemployed workers need help immediately. [CBPP released a report following the House vote on Thursday indicating that 11,000 workers exhaust their 26 weeks of unemployment every day](#) and predicts that by the end of the first half of this year, 2 million workers will have used up their allotment of unemployment benefits. The report also provides a state-by-state listing of the number of workers who have already, or soon will, reached the end of their unemployment benefits. Last month the [Economic Policy Institute \(EPI\)](#) issued an analysis explaining that even as many economists report the start of a recovery for the economy, many American families will not benefit from such a nascent recovery -- and will actually continue to struggle until the economy returns to a growth rate of 3.0% to 3.5%. The EPI report suggests that even if the economy recovers at the rate currently expected, unemployment could reach 6.0% or even 6.5%, further underscoring the need for assistance to unemployed workers and other low-income Americans.

It remains unclear whether any "economic stimulus" package will pass at all. If not, it is likely that the unemployment extension will become its own legislation, divorced from anything to do with "economic stimulus" since that effort seems doomed.

Estate Tax Repeal Sense of Senate Amendment Tacked onto Farm Bill

An update on the efforts of Sen. Jon Kyl (R-AZ) to repeal the estate tax.

As reported in the [last issue of the OMB Watcher](#), there are many members of the Senate determined to make repeal of the estate tax permanent, even though such a costly measure would benefit less than 2% of the country's wealthiest estates each year, further exacerbate the fiscal crises currently facing state governments, and use up federal revenue that could be used to strengthen the nation's social programs.

Estate Tax Repeal's Impact on States

A recent report from the [New Jersey Policy Perspective \(NJPP\)](#) illustrates the havoc the 2001 tax cut's repeal of the estate tax is wreaking on the already strained New Jersey budget. The report offers a state-level solution to the problem created by the federal estate tax repeal process, which actually ends the states' ability to "pickup" a portion of the federal tax for themselves earlier than the federal government's estate tax ends. The [NJPP website](#) also provides links to the 3 newspapers that have thus far endorsed its proposal, as well as an op-ed piece that ran in the New York Times New Jersey edition.

Sen. Jon Kyl (R-AZ) is one of the Senate's most avid proponents of complete repeal of the estate tax, regardless of the cost or repeal's impact on the nation's priorities. When last week's failure of the economic stimulus packages ([see related story, this issue](#)) prevented his proposal for permanent repeal (introduced as an amendment to the Daschle stimulus package) from coming up for a vote, Kyl introduced the amendment again -- this time by attaching it to the Senate's farm bill.

As the Senate worked to finalize debate and vote on the farm bill ([S. 1731](#)), which includes a reauthorization of the Food Stamps program and restoration of Food Stamps benefits to documented immigrants ([see the FRAC analysis for more](#)

information), Kyl offered an amendment expressing the "Sense of the Senate" that the estate tax should be made permanent by eliminating the sunset of the estate tax repeal in 2011. The Kyl amendment passed, 56-42 (see [vote count](#)).

This vote reinforces the need to continue calling and writing your members of Congress to remind them of the importance of the estate tax and your desire to have the money used to repeal the estate tax go to paying for the more-pressing needs of the country. For more on the estate tax and contact information for your Senators and Representatives, see [OMB Watch's Activist Central page](#)

The Bush Budget and Budget Process

President Bush's budget proposes a number of budget process changes that he believes will allow budgeting to be accomplished in a more fiscally responsible manner.

Some of the changes proposed by the President come up year after year, without being enacted. It is most difficult to change the budget process, since it often means changing the balances of power over allocating resources. Following are a few of the changes that the President proposes. In future editions of the Watcher, we will cover more:

1. Change from a concurrent budget resolution to a joint budget resolution.

CURRENT PROCESS: The President issues his budget, and Congress issues its budget resolution. Neither is binding. The congressional budget resolution is simply a blueprint for spending.

PROPOSED CHANGE: Congress would present a joint budget resolution to the President for a signature. If s/he signed it, it would be law and govern spending decisions for the year. If s/he refused to sign it, it would revert to a concurrent resolution.

PURPOSE OF THE CHANGE: To streamline the budget process by getting this major step accomplished early (in the spring). To allow for budget enforcement through the legally binding budget resolution by using across-the-board cuts to keep spending in line with the budget resolution.

ARGUMENTS AGAINST: Congress won't be able to begin considering spending bills until a resolution is in place and so, rather than speeding up the process, this could delay appropriations by adding another contentious step. It shifts power from Congress to the President. It would allow the Budget Committees and congressional leadership more power than Ways and Means and Appropriations Committees.

2. Continuation of limits on discretionary and mandatory spending.

CURRENT PROCESS: The budget enforcement measures in the Balanced Budget Amendment (BBA) to limit discretionary spending (the discretionary caps) and restrain expansions in mandatory programs and cuts in taxes (pay-as-you-go or PAYGO) ended in 2002. There is no current enforcement process.

PROPOSED CHANGE: The President proposes that enforceable limits on spending should continue either through the change to a joint budget resolution with the resolution limits enforced through across-the-board-cuts, or by legislatively extending the BBA enforcement, using the discretionary and mandatory spending levels as proposed in the President's 2003 budget.

PURPOSE OF THE CHANGE: Fiscal responsibility defined as limiting spending and avoiding budget deficits.

ARGUMENTS AGAINST: Discretionary spending continued to fall under the strict discretionary spending limits under the Balanced Budget Amendment. During the past few years when there has been a budget surplus, the limits were unrealistically low. The limits are often ignored and/or appropriators find ways around them, like using "emergency" spending that is not subject to the caps. Fiscal responsibility ought to be defined as meeting the needs of families and communities and not allowing an "investment" deficit to occur.

3. Changes in classification of programs from "mandatory" to "discretionary."

CURRENT PROCESS: Spending that is subject to yearly appropriations decisions is "discretionary" spending and spending that is mandated by law and rises or falls depending on increased or decreased eligibility or cost of living increases is "mandatory." These categories are rarely changed.

PROPOSED CHANGE: Given the rise in the proportion of spending for mandatory programs (now at 64% of the budget), the President proposes to reclassify three programs from mandatory to discretionary and to review other programs for possible reclassification.

PURPOSE OF THE CHANGE: To give the President and Congress more control by adding programs to the scrutiny and consideration of the annual appropriations process.

ARGUMENTS AGAINST: Programs that are legal entitlements should not be subject to the annual appropriations process. Included in the list for consideration are the Black Lung Disability Fund, the Civil Service Retirement Disability Fund, Social Security benefits to Disabled Coal Miners (all entitlement programs) as well as the Vocational Rehabilitation Program, the Child Care Entitlement to the States and the Social Service Block Grant. However, the only three programs the President proposes to actually switch are very limited and constitute only a tiny proportion of the budget.

4. Change from an annual budget to a two-year (biennial) budget.

CURRENT PROCESS: The budget is determined annually.

PROPOSED CHANGE: The budget would be determined every two years, on the even year.

PURPOSE OF THE CHANGE: To allow more time for oversight on the odd years. To allow time for more oversight of mandatory spending, since so much effort would not need to be devoted to getting appropriations passed every year. To simplify the budget process. To make the appropriations process less political because it occurs only in non-election years.

ARGUMENTS AGAINST: There could be unforeseen events and/or programs that need less or more money, which could not be anticipated so far ahead of time. It is too hard to foresee the needs in the second year, which would lead to the need for supplemental bills. Biennial budgeting would reinforce the status quo, since it's more likely that if a program will be funded for the same level for two years, in spite of the cost of inflation or other reasons an increase might be needed. Spending decisions are complicated by election year considerations and this biennial proposal would be done in even years. Finally, the yearly appropriations process is, itself, a form of oversight.

The President's proposals can be found in the [Analytical Perspectives volume of the budget](#), starting with page 283.

Graham Rejects Tire Safety Standard

Using his review authority as administrator of the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA), John Graham [rejected a rule](#) from the [National Highway Traffic Safety Administration \(NHTSA\)](#) that would have required automakers, by 2007, to install a system in all cars that would alert drivers when their tires are under-inflated.

Following the recall of 10 million Firestone tires, Congress ordered the agency to mandate a tire-pressure indicator in new cars. Investigators in the Firestone case found that under-inflated tires were a possible cause of the tire failure, which resulted in 271 deaths. In response, NHTSA proposed putting a pressure sensor in each tire, which would alert the driver through a dashboard indicator.

Graham, however, found this solution lacking. Instead, he argued that NHTSA should allow a cheaper "indirect" system, favored by automobile manufacturers, which works with anti-lock brakes to measure the rotational difference between the tires, determining whether the speed is slower for any one tire: unlike the "direct" system proposed by NHTSA, this would not inform the driver which tire was under-inflated, and likely would not be as reliable.

Nonetheless, Graham argues that allowing such an indirect system would actually be safer because it would serve as an incentive for manufacturers to install anti-lock brakes, which are thought to be safer than other brake systems but are not required. Indeed, in his letter to NHTSA, Graham expressed concern that manufacturers will actually stop putting in anti-lock brake systems in order to offset costs incurred from having to install direct tire pressure monitoring systems.

If Graham is so concerned about the need for anti-lock brakes, and the farfetched possibility that manufacturers may abandon them in the face of this new tire pressure requirement, then perhaps the solution is to require anti-lock brakes as well. Graham indicated to the Washington Post that this is a possibility OIRA is looking at -- which is, itself, notable, since one would think such a regulation would fall within NHTSA's domain -- but it is unclear whether even this would change his feelings on a direct tire pressure standard.

See related articles in the [Washington Post](#), [New York Times](#), and [Boston Globe](#).

Right-to-Know Update

The issue over public access has taken a new urgency after the September 11th terrorist attacks with some -- often including those who opposed public access before September 11th -- arguing that we should not be providing information that could be used by terrorists to do damage.

On December 7, 2001, the FBI's [National Infrastructure Protection Center \(NIPC\)](#) discussed terrorism and the use of the Internet in its [Highlights](#). The newsletter identified seven factors to consider when publishing information to the Internet. For example, one factor is whether the information is available elsewhere on the Internet. Following its December newsletter notice, [NIPC issued an advisory on January 17, 2002](#), warning that the Internet has made "arcane and seemingly isolated information quickly and easily retrievable" and that information useful for planning attacks on the U.S. infrastructure "is being accessed from sites around the world." The agency once again issued its seven security factors to consider before posting information to the Internet.

Also on January 17, 2002, James K. Kallstrom, Director of the Office of Public Security and James G. Natoli, Director of the Office of State Operations in New York, issued [confidential memo](#) to agency heads and commissioners on "agency sensitive information." The memo instructs agencies to review all "sensitive" information held by the agency and what information is made publicly accessible via the Internet, freedom of information, or other ways. Sensitive information should no longer be made available to the public except where specifically required by law. Logs over the past year of who has accessed sensitive information should be made available to the Office of Public Security and the Office of State Operations. All of this was to be accomplished by February 17 and certified by agency heads through a confidential report.

Since September 11, there have been fundamental shifts in public access policies and procedures. Four areas in which there have been changes include:

1. Vast amounts of information have been removed from government web sites.

The scope of what has been removed is vast and it has been done without any policy guidance or careful vetting. In most agencies it is lower-level staff that are making the decision to remove the information, mostly taking a "better safe than sorry" approach. More than five months after the terrorist attacks, the government still has no official policy with regard to what it removes from web sites or what it will restore.

Some examples of what has been removed include ([a full list is available on OMB Watch's website](#)):

- o The Nuclear Regulatory Commission (NRC) shut down its entire web site in early October. The site included detailed information such as the longitude and latitude coordinates of 103 nuclear plants, technical data on plant operations, detailed engineering schematics of plant systems and components, and aerial photographs. Immediately after the terrorist attacks, NRC was criticized for having too much information on the Internet. Then, after shutting down its Web site, the commission was criticized for having none.
- o The Environmental Protection Agency (EPA) discontinued providing Risk Management Plans, which provide information about worst-case scenarios if a major disaster occurred at a chemical plant. This is the same information that is still publicly available through OMB Watch's [RTK NET](#). The American Chemistry Council, the trade association for chemical manufacturers, and other trade associations, such as the American Water Works Association, have lobbied for years to limit or shut down public access to information about hazardous chemicals being used in the community, including through public reading rooms -- and now justify removal with the threat of terrorism.
- o The Agency for Toxic Substances and Disease Registry (ATSDR) removed a report that notes that, "security at chemical plants ranged from fair to very poor" and that "security around chemical transportation assets ranged from poor to non-existent." The report, *Industrial Chemicals and Terrorism: Human Health Threat Analysis, Mitigation and Prevention*, does not provide information about individual facilities. Moreover, a Google search found two non-government sites that provide a copy of the ATSDR report.
- o The Federal Energy Regulatory Commission (FERC) has removed tens of thousands of documents from the Internet and from public reading rooms, cutting off access to detailed information on hydropower plants, natural gas and oil pipelines, electric transmission lines and other "critical infrastructure." FERC has made public statements about the importance of public access, but has also said that the agency might require recipients of the information to register to obtain passwords, personal identification numbers or digital signatures to limit distribution to those deemed to need the information. For certain information, the agency has talked about requiring individuals to sign nondisclosure agreements. Community groups note that the maps of pipelines are essential to help residents know about pipelines that have not been checked or have weaknesses. They point to the death of children in Washington who were playing around a pipeline that was uninspected and blew up.
- o The Federal Aviation Administration (FAA) has removed data from its web site on enforcement actions. The FAA's web site allows users to download a number of different databases. This includes records of accidents and incidents, pilot and maintenance training schools, and until recently, data on enforcement actions, which is called the EIS database. This database is used to identify security breaches at airports. While the FAA has removed this information, Logan Airport has taken the opposite approach. They are supplying the public with information about security issues to assure the public that security is improving.
- o State level information has also been removed. Pennsylvania removed environmental information on issues such as water and air quality, as well as mining operations and soil conditions, from its web site. New Jersey has removed chemical information from its web site, including information on 30,000 private sector facilities that must report on chemical storage, including quantities and types of containers, for about 1,000 to 1,200 different chemicals. Florida is withholding public access to information on crop dusters and certain driver's license information.
- o A number of maps have been removed from web sites. For example, the St. Petersburg Times reported, that the National Imagery and Mapping Agency "stopped selling large-scale digital maps to the public through its Web site and turned off the search engine on its Web site that allowed customers to download maps from its archives." Another example, the Office of Pipeline Safety within the Department of Transportation has posted a note to its web site saying that they "have discontinued providing open access to the National Pipeline Mapping System."

2. Information is being destroyed.

On October 12, 2001, the Federal Depository Libraries received a request, on behalf of the U.S. Geological Survey's (USGS) Associate Director for Water, to destroy all copies of a CD-ROM publication: Source area characteristics of large public surface water supplies (19.76:99-248 USGS Open-File Report no. 99-248). This CD-ROM provides information about water sources, such as dams and reservoirs, including maps of their locations.

The destruction orders, which officially came from the Government Printing Office (GPO), was sent to librarians at 335 federal depository libraries across the country. There have been past requests to recall various information products, but only when the information was incorrect or outdated, never because of a policy decision to keep it secret.

The GPO action created great concern in the library community. But the concern barometer really jumped when FBI agents visited some Arkansas libraries to verify that the CD-ROMs had been destroyed. They also requested information on who had used the CD-ROMs when they were public information. There have been no other reports of similar FBI visits.

3. The policies underlying public access are changing.

The safety net of public access is the Freedom of Information Act (FOIA). Nonprofits throughout the country rely heavy on FOIA as a vehicle for obtaining information, holding government accountable, and more.

Attorney General John Ashcroft issued a memorandum on October 12, 2001 urging federal agencies to exercise greater caution in disclosing information requested under FOIA. The memo affirms the Justice Department's commitment to "full compliance with the Freedom of Information Act," but then immediately states it is "equally committed to protecting other fundamental values that are held by our society. Among them are safeguarding our national security, enhancing the effectiveness of our law enforcement agencies, protecting sensitive business information and, not least, preserving personal privacy."

This new policy supersedes a 1993 memorandum from then-Attorney General Janet Reno that promoted disclosure of government information under FOIA unless it was "reasonably foreseeable that disclosure would be harmful." This standard of "foreseeable harm" is dropped in the Ashcroft memo. Instead, Ashcroft advises, "When you carefully consider FOIA requests and decide to withhold records, in whole or in part, you can be assured that the Department of Justice will defend your decisions unless they lack a sound legal basis..."

Thus, the new message from the Attorney General to the agencies is to, where possible, withhold the information from disclosure. This is a fundamental reversal of past policies that emphasized, where possible, to disclose the information. Other policies are changing. In January, [OMB released "data quality" guidelines](#). These guidelines serve as a potential tool to limit dissemination of government information and to add another layer of bureaucracy that can slow down government rulemakings.

4. The procedures for using reading rooms has become more restricted.

Although public reading rooms are no substitute for the Internet, there are changes being made to procedures for using the reading rooms that limit access. For example, in many agencies, you now need to be "cleared" to enter the building. Additionally, you need an "escort" to take you to the reading room. In some agencies, the escort must stay with you in the reading room and lead you to the bathroom and to the exit when you leave. Information is not in all reading rooms. Some agencies have designated that only selected reading rooms will have certain information, making it increasingly difficult for the public to get the information.

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