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Federal Budget

A Dismal Outlook for Domestic Spending

Congress officially adjourned last Friday, after passing its seventh Continuing Resolution (CR) of the year. This CR, [H.J. 124](#), was necessary to provide the funding to keep government running because Congress was unable to pass 11 of the 13 appropriations bills for FY 2003, which began on October 1, 2002. This CR funds departments and programs at their FY 2002 levels through January 11. It appears there will be an effort to pass the FY 2003 appropriations before the President's State of the Union address, so at least one more CR will be necessary.

It is important to keep in mind that this continuing resolution for the eleven appropriations bills that have not yet been passed is a CUT in appropriations, since funding at last year's levels does not take into

account population growth, increased need, or programs or services that were authorized by Congress but are dependent on new appropriations decisions. This will affect almost every aspect of government, including anti-terrorism programs. For example, the \$3.5 billion in grants to local “first responders,” including firefighters, police departments and emergency services will not be funded until the resources are officially appropriated. Besides facing cuts in funding, agencies cannot properly plan their activities for the coming year since they don’t know how much money will be appropriated. They will be apt to err on the side of caution, cutting spending as much as possible over the next few months until appropriations are passed. For instance, according to a recent [New York Times article](#), the National Nuclear Security Administration has imposed a hiring freeze because of budgetary restraints, in spite of current reports that nuclear facilities are potential terrorist targets.

It could be worse. Many observers were concerned for some time that Congress might eventually give up entirely on the FY 2003 budget process and pass a long-term CR that would keep the government running until October 1, 2003, when FY 2004 officially begins. It now appears that Congress will, instead, write one or more omnibus bills that will lump the remaining appropriations together. While omnibus bills offer the potential for a great deal of secrecy and obfuscation of the budget process, they usually offer an important advantage over a long-term CR in that the latter would not allow for increased funding for federal programs. An omnibus bill, by comparison, offers at least the possibility that appropriators and other Members of Congress will fight for the increased funding necessary for programs to be able to at least keep up with inflation.

However, passage of the FY 2003 appropriations bills, whether by one or more omnibus bills or one by one, is not likely to result in increased funding. Earlier this year, Republican members of the Senate Appropriations Committee joined Democrats in a unanimous vote to provide \$395 billion for non-defense federal departments and agencies (\$10 billion over the President’s bottom line of \$385 billion). The election results seem to have nixed that deal. It now appears that Senate Republican leaders have agreed to the \$10 billion cut in this year’s domestic spending bills. This would result in cuts in funding for education, including the Pell grant program, veterans’ medical care, community law enforcement, low-income programs, and many other services that are important to most Americans.

While the argument is being made that domestic (nonmilitary) spending last year was \$373 billion, excluding emergency funding connected with the September 11, 2001, terrorist attacks, and funding for FY 2002 is \$12 billion more, most of the increase in spending goes to homeland defense, narrowly defined. Real homeland security, however, requires adequate funding to insure the domestic security of all Americans, including the opportunities for a good education, food on the table, housing, health care, safe and healthy communities—a range of domestic priorities without which we cannot be a strong and secure country.

Looking beyond the coming appropriations process for FY 2003 and 2004, the social conservative movement that is being promised will almost certainly bring more cuts. Conservatives want to shrink government. Reducing revenue by cutting taxes for the wealthy, and then calling for cuts in domestic spending in the name of “fiscal responsibility” is an effective way to accomplish that goal. Equally of concern are the efforts by conservatives to channel funding for government supported programs to particular groups, like religious organizations, or for particular purposes, like promoting marriage, which will further reduce funding for other government funded efforts and goals.

The budget reflects our values. While it won’t be easy, it is vital to champion the values of fairness, equal opportunity, and concern for those who are most insecure and at risk in the forthcoming budget battles.

Congress Says "No" to Extending Unemployment Benefits

The 107th Congress officially adjourned on Friday, November 22, and, in doing so, squashed the last chance unemployed workers had this year to secure a needed additional extension of their unemployment benefits. The extension of these benefits will expire on December 28.

During a healthier economy, unemployment benefits are usually provided for 26 weeks. Through a provision in this year's economic stimulus package, however, Congress extended these benefits for an additional 13 weeks. When this provision expires on December 28, 830,000 unemployed workers will immediately lose their benefits, according to estimates provided by the [Center on Budget and Policy Priorities \(CBPP\)](#).

Despite the entreaties of many advocates, unemployed workers and economists, the House and Senate were unable to reach agreement on their different proposals for extending the benefits. The Senate's plan, which passed in a unanimous vote, would have provided the extended benefits for an additional 3 months. The House plan would have extended benefits for only 5 weeks, and even then only to workers in a handful of states with the highest unemployment rates. Since no agreement was reached, the current extension of unemployment benefits will expire next month and there will be no chance to reinstate this extension until Congress reconvenes January 7.

[See CBPP for more on this issue.](#)

Information Policy

President Signs Homeland Security Bill with Troubling Provisions

During the recent lame duck session, Congress passed the Homeland Security bill that creates the cabinet-level Department of Homeland Security, and President Bush signed it into law today. Unfortunately the bill contains several troubling provisions addressing the Freedom of Information Act (FOIA) and Federal Advisory Committee Act (FACA).

OMB Watch released a statement, "[All Aboard the Homeland Security Express: Bill Creates Dangerous New FOIA Exemption](#)" describing the shortcomings of these provisions and expressing its disappointment in Congress' decision to include them in the bill. OMB Watch had worked with a broad coalition of organizations including libraries, environmentalists, and reporters to either remove or improve these provisions.

House, Senate Pass E-Government Act

On November 15, the House and Senate unanimously passed a modified version of the [E-Government Act](#), which President Bush is expected to sign.

While the bill remained mostly intact as it moved through the House and Senate, there were a few significant changes from the original Senate version, which the Senate passed on June 27:

- The Office of E-Government within the Office of Management and Budget will be run by an administrator appointed by the president, but will not require Senate confirmation, as in the original Senate version of the bill. (Title I)
- The new bill sets up an "exchange program" between public and private sector employees who specialize in information technology. Under this program, an employee of a federal agency may temporarily -- from 3 months up to a year -- work for a private sector organization, without losing his/her position at the agency; and a private sector employee may work temporarily at an agency. (Title II, Sec. 209)
- The modified bill adds language from the Federal Information Security Management Act of 2002 (FISMA), which is the House version of the Senate's Government Information Security Reform Act (GISRA). (The same language was included in the National Defense Authorization Act for 2001, but is set to expire in 2002) The new FISMA language adds several requirements to the bill, including the designation of a senior agency information security officer in charge of overall

information security. Each agency must also develop and implement an agency-wide information security program. (Title III)

- Title V of the bill is entirely new. The "Confidential Information Protection and Statistical Efficiency Act" protects the confidentiality of statistical information collected from the public by the government.

For a full summary of the original Senate version, [click here](#).

OSHA May Face Data Quality Complaints Soon

At a U.S. Chemical Safety and Hazard Investigation Board (CSB) public meeting held November 20, lawyers representing Georgia Pacific (GP) and the American Forest and Paper Association (AFPA) raised the possibility of questioning a CSB report's compliance with the newly issued Data Quality Guidelines.

The report covered an investigation into the root causes of a hydrogen sulfide gas leak at GP's Naheola pulp and paper mill in Pennington, AL, which killed two and injured eight workers. The [Occupational Safety and Health Administration \(OSHA\)](#) does not currently regulate hydrogen sulfide and other "reactive chemicals," but has been considering doing so. The CSB investigation report contained a long list of recommendations for GP including applying OSHA's Process Safety Management (PSM) standard to handling. The report also called upon OSHA to include reactive chemicals in its PSM standard.

Robert Buckler, an attorney representing GP stated, "We're concerned this report will not satisfy the Office of Management and Budget's data quality guidelines that came out recently dealing with the factual accuracy of reports such as this one." Buckler cited four changes he requested in the final report that were not made. The disputes range from facts Buckler wanted added, to points he wanted placed earlier in the report, to a quarrel over one of CSB's recommendations.

Buckler confirmed that the report contained no factual errors he wanted deleted and that the CSB staff had already made "a few" of the changes he had requested – he could not recall just how many, according to a report in [Occupational Hazards](#).

Despite vigorous industry objections, the CSB voted 5-0 to approve the investigation report.

Nonprofit Issues

Welcome to NPAction.org!



OMB Watch announces the pilot launch of [NPAction](#), a new online resource for nonprofit advocacy. NPAction is being developed as a vibrant central advocacy hub that provides nonprofits access to information about rules governing policy participation, examples of successful and unsuccessful efforts, and identification of key resources.

Our goal is to increase the awareness of groups already engaged in public policy participation, and to, thereby, enhance opportunities for building communities of interest among new and emerging and existing public policy participators. We are working live behind the scenes to continuously improve our offerings. Nonprofits are therefore encouraged to actively explore what's available, suggest their own ideas for resources to add, and provide comments on our work to date. Visit [NPAction](#) today!

Lame Duck CARE Act Vote Attempt Fails

On November 14, Sen. Rick Santorum (R-PA) attempted and failed to secure unanimous consent to bring the CARE act up for a vote. This effectively killed the bill, which has been mired in controversy and compromise for almost two years, in the 107th Congress. The most controversial point, allowing churches to discriminate based on religion when hiring for government-funded programs was supported by House Republicans, but strongly opposed by several Democratic Senators, including Jack Reed (D-RI).

Adjournment of the Senate, however, has not daunted supporters of the administration's plans to increase government funding to faith-based and community organizations. An aide for Santorum told Congressional Quarterly that the Senator is "sure to revive the legislation next year" and that it will "be high on the agenda." Republican control of both chambers could mean that next year's version of the legislation will be more like the White House-backed House version, [H.R. 7](#), which passed this year, rather than the compromise language contained in the Senate's CARE Act. James Towey, head of the White House Office of Faith-Based and Community Initiatives, quoted in a [November 25 Washington Post article](#), said, "We're hopeful the new [congressional] leadership might bode well for faith-based" initiatives.

[Read more about action on the CARE Act.](#)

Treasury Department Issues Anti-Terrorist Financing "Voluntary Best Practices"

The [Office of Foreign Assets Control](#) of the U.S. Treasury Department has issued [voluntary best practice guidelines](#) for U.S. charities that cover governance, disclosure, transparency and financial practices for all charitable activities. In addition, special procedures for groups that distribute funds to foreign organizations are listed.

While the guidelines are labeled voluntary, it is not clear to what degree the Internal Revenue Service, another agency of the Treasury Department, will expect charities to adopt them to show they exercise "control and discretion" over funds. Normally the Tax Exempt & Government Entities Operating Division of IRS develops guidelines affecting charities. However, in this case, the Office of Foreign Assets Control developed them. It is unclear how much consultation occurred with the TE/GE division.

The guidelines include issues generally governed by state law, such as the contents of governing instruments, composition and meetings of boards of directors and solicitation of funds.

Its conflict of interest rules exceed IRS requirements by recommending charities not "engage in transactions with entities in which a board member has a conflict of interest." IRS rules allow charities to engage in "reasonable transactions" where someone with a conflict of interest may receive an economic benefit, but prohibits the individual from voting or participating in debates relating to the transactions. In addition, the guidelines take the view that an organization that compensates 20% of its board is not independently governed. IRS rules require that no more than 35% of voting board members be "disqualified persons" -- those who have substantial influence over the organization, or family members of these disqualified persons.

The area of public disclosure is the most problematic section of the guidelines, duplicating information that must be made public in IRS reporting in Form 990 (the annual information return filed by nonprofits), without the definitions and protections included in the IRS disclosure regulations. In other cases the guidelines exceed current disclosure rules by saying charities should "provide upon request an annual report" and maintain records of "all decisions made" that are made available for public inspection.

No opportunity for public comment on these "best practices" has taken place. If charities will be expected to follow these guidelines, or face questions about why they do not, an opportunity for input and comment should be provided so that the final product does not create inconsistent standards, infringe on the privacy of internal charity operations, and preempt state law.

In related action, Treasury asked the United Nations Security Council to block assets of the Benevolence International Foundations (BIF) and two affiliates. BIF, an Illinois-based nonprofit, had its assets blocked in December 2001 and its CEO has been indicted for racketeering and providing material support to terrorism.

FEC v. Beaumont Goes to Supreme Court

The Supreme Court has granted a request by the Justice Department to review a ruling that allows direct campaign contributions from nonprofit organizations, based on a legal theory that nonprofits are inherently different from for-profit corporations, and do not pose the same threat of corruption. Arguments are expected to be heard in March 2003.

Earlier this year, in *Beaumont v. FEC* (No. 01-1348), the U.S. Court of Appeals for the 4th Circuit upheld a Federal District Court ruling finding the ban on corporate contributions to federal candidates in the Federal Election Campaign Act unconstitutional as applied to nonprofit organizations. The court distinguished between nonprofits, which serve as vehicles for citizen participation in the political process, and for-profit corporations, which are concerned with "aggregation of capital or the issuance of equity shares." The court pointed out that "nonprofit advocacy organizations play a distinctive role in the political scheme," and "through their expressive activities, groups such as NCFL and NCRL help empower citizens to make informed political choices.... That the functioning of these groups is vital to our democratic political process is abundantly clear from looking at the types of activities in which they engage." Activities cited by the court include public education activities, conferences and debates, grassroots fundraising, membership participation, legislative lobbying and media programs.

The case arose from a challenge by North Carolina Right to Life, a 501(c)(4) organization. It does not affect the IRS ban on partisan electioneering by public charities, exempt under Section 501(c)(3).

New Resources on Campaign Finance Law for Nonprofits

The Internal Revenue Service (IRS) has published a fact sheet for PACs (Section 527 organizations) detailing new exemptions and filing requirements in order to comply with this fall's Congressional amendments to the Stealth PAC law of 2000. The [amendments](#) were designed to eliminate duplicative reporting for PACs that work on state and local elections, and to improve the usefulness of information on federal elections by making it available on the web in searchable form. See the [outline of the new rules](#) and the [detailed IRS Fact Sheet](#).

Nonprofits that use broadcast media for issue advocacy can get information on the FEC's new "electioneering communications" rule from the [Campaign Finance Institute](#). The guide includes the new rule and a summary of the positions taken by nonprofits, reform groups and sponsors of campaign finance reform legislation.

Regulatory Matters

EPA Rolls Back Clean Air Protections

The Bush administration [announced on November 22](#) that it is rolling back protections to limit air pollution from factories, refineries and power plants as part of a [long-expected overhaul of EPA's New Source Review program](#).

Specifically, EPA issued [a final rule](#) that:

- Allows plants to avoid pollution-control upgrades in specific equipment by meeting plant-wide targets for pollution reduction. This plant-wide applicability limit (PAL) “will last 10 years, allowing pollution decreases that occurred nine years ago to purportedly ‘offset’ actual and significant pollution increases today, thereby avoiding cleanup today,” [according to the Natural Resources Defense Council](#).
- Exempts plants from updating pollution controls if government has reviewed those controls during the last 10 years.
- Allows facilities to set a high “pollution baseline.” NSR requires cleanup actions if a change at a facility results in significant pollution increases (e.g., 40 tons per year), which is determined through a baseline comparison, as NRDC points out. EPA’s rule allows a facility to base its pollution baseline on the highest amount of emissions released over a two-year period within the last 10 years.

EPA also issued [a proposed rule](#) that would expand the definition of “routine maintenance” -- which is exempt from NSR -- allowing older facilities to make more extensive upgrades without having to install new anti-pollution equipment required of a “new source.”

In writing the Clean Air Act, Congress exempted older plants from compliance with new emissions standards because it was generally thought they would be phased out -- an assumption that turned out to be wrong. Yet instead of pushing these plants to clean up their act, the Bush administration seems intent on giving them a permanent free pass.

OMB to Launch Centralized Online Rulemaking Portal

The Office of Management and Budget (OMB) is planning to launch a web site on December 18 that will allow users to view and submit comments on any federal regulation.

Using this centralized web portal, located at <http://www.regulations.gov>, citizens will be able to find a rule and comment on it without needing to know which agency is handling the regulation, or the exact name or ID number of the rule. Public input will be critical as OMB develops the site to make it more responsive to citizens' needs. OMB Watch encourages anyone who uses the site to give OMB feedback on how it could be improved.

Online Rulemaking is one of 24 "E-Government Initiatives" outlined in the [E-Government Strategy](#) that implements the [President's Management Agenda](#) for e-government. OMB is carrying out the online rulemaking initiative with EPA, in a recent switch, facilitating as the lead agency. Previously, the administration announced DOT as the lead agency.

OMB's development of a single portal that allows citizens to access all federal regulations is a key first step to a successful online rulemaking process, as OMB Watch [noted in a recent article assessing the status of e-rulemaking](#). As it moves forward to facilitate online rulemaking, the administration should, among other things, ensure that public participation in the rulemaking process is simple and easy for all citizens and that agency systems are able to accept and incorporate an increased number of public comments.

Mark Forman, OMB's Associate Director for IT and E-government, addressed these and other issues at the November 21 Interagency Regulatory Forum on "Citizen Centered E-Government," which OMB Watch attended. Forman pointed out that there were 65 million downloads from the Federal Register last year and 100 million downloads from the Code of Federal Regulations web site. He made clear that if millions of people want to get involved in the federal rulemaking process, OMB should make sure it is possible. Forman also stressed that the appropriate integration of the rulemaking process and e-government should yield better regulations, increased compliance with existing regulations, and a decreased reporting burden on the regulated community.

Not only is online rulemaking in the President's Management Agenda, it just became law in the recently passed [E-Government Act of 2002](#). The bill instructs regulatory agencies to provide online "electronic dockets for rulemakings," including any notices published in the Federal Register, supporting materials, as well as public comments, which agencies are to accept through electronic means (e.g., email) "to the extent practicable." OMB is also to establish a timeline for implementation of agency e-dockets.

OMB Watch will continue to monitor agencies' online rulemaking systems, as well as OMB's implementation of the E-Government Strategy and the E-Government Act.

Right-to-Know

EPA Releases Enforcement Data Online

The Environmental Protection Agency (EPA) will be accepting [public comments](#) for the next 60 days on its newly released pilot website -- [Enforcement and Compliance History Online](#) (ECHO) -- that allows the retrieval of enforcement and compliance information for over 800,000 regulated facilities, as announced in the [Federal Register](#) on Nov. 20th.

Enforcement and Compliance History Online (ECHO) is a web interface that pulls information from the [Integrated Data for Enforcement Analysis](#) (IDEA) database, which consists of many different databases of enforcement information that EPA's Office of Enforcement and Compliance Assurance (OECA) collects and maintains.

EPA held a briefing before ECHO was launched in order to preview the site for representatives from industry, environmental and public interest groups, as well as other interested parties. EPA officials, including OECA Administrator J.P. Suarez, made it clear that they view ECHO as an important tool for the public to access environmental information, and hope to enhance it in the future to better suit the public's needs. For this reason OMB Watch encourages interested users to explore the site and provide comments to EPA.

EPA worked with the States through the Environmental Council of the States (ECOS) to ensure the accuracy of the data. However, within the ECHO system EPA includes an easy error correction process for those who wish to contest the accuracy of the data. Once an error correction claim is filed, it will be sent to one of 125 EPA data stewards across the country who have agreed to conduct the error correction process. Each data steward will look into the alleged error and communicate directly with the filer to resolve any errors, hopefully within 30 to 60 days.

For facilities regulated under the Clean Air Act (CAA), Clean Water Act (CWA), and the Resource Conservation and Recovery Act (RCRA), ECHO includes the following types of data:

- Name and address of each facility,
- Facility characteristics (type of permit, latitude, longitude, etc.),
- Inspection History (two year history),
- Compliance Status/Violations (two year history by quarter),
- Formal enforcement actions (two year history),
- EPA enforcement cases (two year history),
- Environmental conditions,
- Demographic profile of surrounding area (up to 5 miles) compiled from census data for environmental justice concerns.

From the [ECHO homepage](#) a user may choose to search by zip code, city and state, media (air, water, soil), facility name, facility standard industrial classification code (SIC), permit identification number, EPA Region number, inspection/enforcement history, compliance information, or by demographic profile. The

information on ECHO will be updated monthly through the IDEA system. IDEA has been available to the public since 1990 for registered users but it is not very user-friendly and does not compile data across databases – which led to the need for a system like ECHO.