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Economy and Jobs Update: More Weakness in GDP and Employment

Output data shows some sign of life, but the labor market continues to be weak.

Gross Domestic Product

Real gross domestic product (GDP) grew at a 2.4 percent annual rate in the second quarter of 2003 according to the Bureau of Economic Analysis. While this was the best rate of growth since the third quarter a year ago and better than projections, the economy is still below the 10-year average of 3.2 percent (see graph below). Unfortunately, if you remove national defense spending, the economy only grew at a 0.7 percent rate.

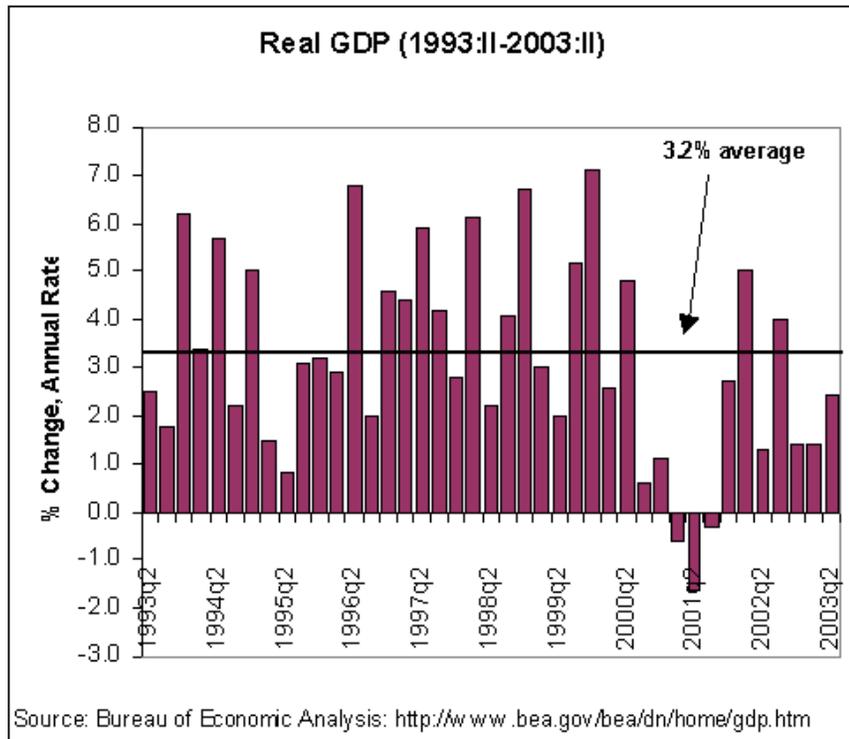
These numbers show that while the economy is seeing some growth, considerable weakness is still present. Furthermore, a growth rate of 2.4 percent is still not high enough to have a significant impact on the weak labor market.

The relation between the labor market and output growth is sometimes described using Okun's law – named after economist Arthur Okun and first formulated in the 1960's. The rule, which fit the data rather well over the past 40 years, says that it takes a GDP growth rate somewhere between 3 and 3.5 percent to keep the unemployment rate from rising. (Okun's original formulation suggested 3 percent, more recent estimates suggest it might be slightly higher.)

Unless the growth rate of the economy picks up substantially, the weak labor market will likely continue.

On August 1, President Bush remarked "... even though some of the numbers are good, there are still too many people looking for work, and so we're going to keep working on the economy until people can find a job." He then left for the start of his 35-day August vacation at his Crawford, Texas ranch.

David Letterman's comment: "See what you think of this. President Bush is leaving to go to Crawford, Texas for a 35-day working vacation. This should go over big with all the people taking a 'can't get work' vacation."



Unemployment

The unemployment rate fell to 6.2 percent in July from 6.4 percent the previous month according to the Bureau of Labor Statistics. This good news, however, is tempered by the continuing decline in labor force participation – in

July over half a million people left the labor force.

In addition, employment continued to decline with an additional 44,000 jobs lost in July. Since March 2001, which was the start of the recession, employment has declined by 2.7 million and private sector employment has declined by 3.2 million.

Since the end of the recession (and the start of the current expansion) in November 2001, employment has declined by just over one million. As the [Economic Policy Institute](#) points out, "this the weakest recovery in terms of employment since the BLS began tracking monthly data in 1939."

Disturbing Pattern Emerging on Government Budget Analyses

When it comes to federal tax and budget policy, it is essential that good forecasts and good estimates exist on the effects of policy options. Unfortunately, the current administration is showing a propensity to conceal and selectively release budget information when it suits their narrow political agenda.

Several examples illustrate this point.

- The Office of Management and Budget (OMB) releases estimates of federal revenue, expenditures, and the deficit at least twice a year. The [Fiscal Year 2002 Budget and Mid-Session Review](#) contained budget deficit estimates (which were actually surpluses) for the following 10 years. The same publications for fiscal year 2003 and 2004, however, only contain a five-year projection. The likely reason is that the numbers would show a ballooning deficit if the projections extended beyond the five-year horizon. This budget deterioration is largely due to tax cuts that were scheduled to phase-in over several years. The administration apparently wishes to mask the true costs of their legislation.
- The Department of Treasury, which employs a large number of economists and "number crunchers," routinely released so-called distribution tables – that is, tables illustrating which income groups benefit or lose under various policy proposals. Under the current administration, the Treasury Department only selectively releases this kind of analysis and the results are often misleading. In early 2001, the [Center on Budget and Policy Priorities](#) noted that a released table "departs markedly from the Treasury Department's established methodology for analyzing and providing information on the effects of tax proposals on different income groups." A [table released in May](#) offers an example of the new standard. As before, the new table provides information by individual and family income (eg. \$30,000 to \$50,000). But instead of showing how much money will be gained or lost by the income category, it only provides the percentage gained or lost. In a recent [Tax Notes](#) article, Martin Sullivan comments, "The repackaging of the distribution analysis is clearly politically motivated by the arrival of Bush administration officials in the White House and in the Treasury. This questionable and misleading practice was employed in the Bush election campaign. While almost anything goes during the heat of a political campaign, it was shocking to see the prestige of the Treasury staff compromised with the release on March 8, 2001, of a similar 'income tax only' analysis." In fact, the withholding of this information has made it necessary for an entirely new organization to independently calculate the distributional effects of policy proposals. The [Tax Policy Center](#), a joint project of the Brookings Institution and the Urban Institute, has done these calculations.
- The most recent [budget deficit estimates from OMB](#) do not include a number of significant items, including:
 - Ongoing costs of the military operations in Iraq, despite repeated requested from Congress.
 - Extension of several tax provisions in the 2001 and 2003 tax cut legislation that are set to expire, but that the President and Congress expect to continue.
 - The cost of extending reforms to the Alternative Minimum Tax, which is projected to affect 40 million tax payers by the end of the decade.
 - The cost of likely federal expenditures, including a prescription drug benefit.[One estimate](#) places these and other omitted costs at over \$4.3 trillion over the next 10 years.
- Economic assumptions that appear quite rosey, thereby lowering deficit estimates. See the last [OMB Watcher](#).

The public has a right to have all the information on the federal budget – not just the information the administration feels supports their argument. By limiting the release of information, they are limiting open debate and the foundations of a true democratic process.

When asked about the government's misleading estimate of the effects of the 2003 tax cut, the American

economist and Nobel Laureate George Akerlof noted, “there is a systematic reason. The government is not really telling the truth to the American people. Past administrations from the time of Alexander Hamilton have on the average run responsible budgetary policies. What we have here is a form of looting.”

States Struggle to Fund Medicaid

Health care for low-income and disabled people is being slashed as states face their third consecutive year of fiscal crisis. In 2003, almost every state legislature cut benefits, eligibility, or payments to health care providers, according to the National Conference of State Legislatures. In March of 2003, the Center on Budget and Policy Priorities estimated that based on proposed or recently enacted legislation, 1.7 million people would lose coverage, and many others will lose various health benefits such as prescription drugs, dental, vision, and home health care even though they remain insured.

For example,

- In Oklahoma, Medicaid coverage was terminated for 8,300 seniors and people with disabilities.
- In Colorado, 3,500 legal immigrants, including children, seniors and people with disabilities will no longer be covered by Medicaid.
- In Tennessee, the state's Medicaid program, TennCare, ended stopped coverage for nearly 200,000 people.
- In Texas, the House of Representatives has passed a bill that would set stricter eligibility criteria for Medicaid and the Children's Health Insurance Program. As a result, state officials said, 240,000 children and 17,000 pregnant women would lose coverage.

Medicaid is the states' primary health care safety net to eligible persons, including children, pregnant women, low-income adults in families with dependent children, and individuals with disabilities. The program currently serves 51 million people. Of all Medicaid beneficiaries, approximately one quarter are elderly and disabled and three-quarters are children and non-disabled adults, while the costs of Medicaid services are approximately three-quarters for the elderly and the disabled and one-quarter for children and non-disabled adults.

Cutting Medicaid spending is particularly painful for states because the program is financed jointly by state and federal governments. That means states forgo federal money with every Medicaid dollar they cut from state budgets. Medicaid is the second largest program in most states' budgets after elementary and secondary education. Medicaid now accounts for 20 percent of state spending, whereas in 1992 it accounted for 17.8 percent. Medicaid cost increases stem primarily from increased costs for pharmaceuticals as well as enrollment increases, according to the Kaiser Commission on Medicaid and the Uninsured report.

States also face serious reductions in business activity and job loss as they cut Medicaid funding.

Many state officials are pleading for federal help as they face an array of painful trade-offs, often pitting the needs of impoverished elderly people for prescription drugs and long-term care against those of low-income families seeking basic health coverage.

Current legislation appears to ease state Medicaid costs, however the offer comes with a major catch, according to a study by the Center on Budget and Policy Priorities. The Jobs and Growth Tax Relief Reconciliation Act of 2003 (TRRA) provides temporary increases to eligible states in the Federal Medical Assistance Percentage (FMAP), the federal matching rate for states' medical assistance expenditures under their Medicaid program. The catch is that states that opt for this increase would receive lower federal Medicaid payments than they would otherwise receive, beginning in 2011. They also run the risk that capped federal payments will not keep pace with the increase in costs.

Medicaid is only part of a myriad of health care structures that needs to be addressed so that the most vulnerable populations, including children and the elderly, can be assured access to quality healthcare.

State Budget Cuts - From the Ridiculous to the Tragic

A random Internet search reveals the extent of state budget cuts -- from the ridiculous to the horrific, from frugal penny-pinching to measures that may be penny-wise but are ultimately pound-foolish.

Following are some random samples of an Internet search listing some of the cost-cutting measures being taken by states now experiencing the worst fiscal crisis since World War II. Some of the cost-cutting efforts are humorous (unscrewing every third light bulb) and some are examples of reasonable frugality (reusing stationary, eliminating the gold stamp on business cards). Others show the real human cost -- from seniors who cannot afford to go to a state park, isolated rural residents who will no longer be served by the bookmobile, or kids who will no longer have the benefit of learning a foreign language from a real teacher, to stories with more tragic consequences.

- Baltimore, Maryland. Cutting drug treatment funding from \$1 million to \$400,000 for Baltimore City. Currently 26,000 people who are addicted to drugs are receiving treatment. Estimates are that 40,000 people in Baltimore could benefit from treatment. The budget cut will eliminate 500 treatment slots, even though \$1 in treatment costs saves \$7 in other costs.
- Pittsburgh, Pennsylvania. Possible layoffs of 500 city employees. This includes police officers, emergency medical technicians, and school crossing guards. Anticipating closures of swimming pools, senior centers, and city recreation centers.
- The University of Kansas. Trash from non-classroom buildings will be picked up only twice a week instead of daily, eliminating 12 housekeeping staff. Other efforts and more layoffs are in effect so the University can continue its operations.
- Minnesota Zoo. Farm animals at the Minnesota Zoo are being "downsized" due to budget cuts. They were going to be sent off to slaughter, but will now be adopted.
- Dakota County, Minnesota. Proposing to take 100 families off of day-care subsidies in spite of state objections.
- Virginia. Closures and limited services at state parks.
- Denver, Colorado. Worsening of prison conditions that are already drastically over-crowded and short-staffed. Cuts in diversion program funding. Eliminating hot lunches for prisoners.
- Hawaii. Cutting library hours and discontinuing the bookmobiles that serve rural areas.
- Oregon. A 36-year-old Portland man went into a coma after running out of his anti-seizure medicine. He was unable to renew his prescription because he was one of the people cut from the Oregon Health Plan due to budget shortfalls.
- Cherokee County, South Carolina. Replacing foreign language teachers with videotapes.
- Missouri. The governor has ordered every third light bulb in state buildings to be unscrewed.
- Indiana. The state is negotiating corporate sponsorship of state parks. How does "Coca-Cola Trail" sound?
- Utah. Eliminating free park admission to state parks for seniors.
- Illinois. Requiring Medicaid patients on the antidepressant Zoloft to get double strength prescriptions and split the pills in half.

For state-by-state samples of education cuts, see the National Education Association's [listing](#) and the Fair Taxes for All [listing](#). For accounts of the human toll of state budget cuts, see the American Federation of State, County and Municipal Employees (AFSCME) article "[Budget Cuts: The Human Toll.](#)" For a perspective from a New York City social worker, see "[The human toll of State and City Budget Cuts: Testimony from sixty social workers, colleagues and consumers.](#)" For more general information about state budget cuts see the Brookings-Urban Tax Policy Center "[Biting the Budget Bullet](#)" commentary and the Christian Science Monitor's "['Broke' States skimp on pens, lightbulbs](#)" article.

New State Information

National Priorities Project Introduces "Quick Reports"

The National Priorities Project (NPP) has a new feature on its NPP Database called Quick Reports. To get a one-page, visual snapshot of the needs in your state and how they fit into a national context, go to [Quick Reports](#). Quick Reports are now available in the areas of hunger, poverty and military spending. More issue areas will be added in the coming months.

You can also find a combined July and August [update](#). With Congress in its August recess, this month is a great time to head into your Congressperson's local office (with your Quick Report in hand!) to let them know what you think about their spending choices.

Internal Revenue Service Scales Back EITC Certification Plan

Initial Internal Revenue Service (IRS) plans to "pre-certify" certain recipients of the Earned Income Tax Credit (EITC) have come under considerable criticism by advocates during the past few months. After agreeing to allow a comment period on the process and the forms, the IRS substantially modified the program. See the [IRS press release](#).

The goal of the project remains to weed out filers who may be ineligible because they are claiming children who have not resided with them for the required six months. Concerns remain that the certification process will cause eligible filers to lose the benefits of the EITC because of confusion or the difficulty of supplying the required information.

The primary changes are:

- The IRS will reduce the number of filers required to certify in the first pilot project to 25,000, rather than 45,000 EITC recipients. The 25,000 will be drawn from the same pool of people -- primarily filers who are not the parents of the child(ren) they are claiming.
- Rather than require "pre-certification" beginning in August to be completed before the regular filing season, forms will be sent at the end of this year for completion with the 2003 tax forms (for the 2004 tax season). This will allow filers access to more sources of tax assistance and tax preparers. It is not clear whether this may cause delays in EITC payments.
- The IRS will redo the "Qualifying Children Residency Statement" form and instructions to make them easier to understand and comply with.

One of the major problems with the "Qualifying Children" form is the difficulty documenting through approved sources, who probably would not have personal knowledge that any child met the six-month residency requirement. Neighbors or relatives are prohibited from serving as an approved source, even if they were child care providers, certifying that a child had resided with the filer for six months. The IRS has not yet decided whether it will accept affidavits from neighbors or relatives.

This pilot project of 25,000 will be assessed, and the IRS will proceed with a second-year certification, but the number of affected filers has not yet been determined. The IRS has also not agreed to stakeholder involvement during the assessment process.

The IRS also announced that it would expand its efforts to reduce erroneous payments to taxpayers who underreport their income or misrepresent their filing status in order to get the EITC credit.

There is some good news and some bad. The underlying question remains an issue -- why should low-income tax filers be subject to more stringent rules to certify eligibility (before issuance of their refunds) than anyone else?

September Will be Appropriations Month

Looking forward to a hectic September...

Hopefully everyone will get a good rest in August, since September promises to be a hectic and contentious appropriations season. The Senate has only passed four of the 13 appropriations bills, and will likely consider what is always the most difficult -- Labor, HHS and Education -- first. There are sure to be fights over funding for education and the Labor Department overtime compensation rules. The House only has two more spending bills to complete. A prescription drug benefit, Temporary Assistance for Needy Families Program (TANF) reauthorization, Head Start reauthorization (with the House having passed a bill allowing block granting to eight states), and supplemental requests for the Federal Emergency Management Agency and Iraq, all remain unfinished business. With OMB's mid-session report of a record budget deficit for 2003 and continued deficits for years to come (and the Congressional Budget Office report release due August 26) there will be lots of pressure to cut spending.

With Patriot III tour planned, Congress & lawsuits challenge Patriot Act

The Patriot Act faced serious challenges recently from Congress and the courts in what some are calling a turning point in the debate over the controversial law. Meanwhile, after running into attacks for Patriot II, Attorney General John Ashcroft plans a roadshow to gather support for Patriot III, legislation being prepared by Sen. Orrin Hatch (R-UT) that would further expand the federal government's powers.

On Capitol Hill, the House voted 309 to 118 to withhold money from the government to use powers granted under Section 215 of the Patriot Act, the so-called "sneak-and-peek" provision. A total of 113 Republicans joined Democrats in the successful challenge to the controversial law. The vote essentially kept the federal government from using extra powers granted under the Patriot Act to conduct search an individuals' property without the person's knowledge or consent. It is unclear whether the Senate will act on a similar bill.

Two legal challenges to the Patriot Act also sprang up in the last few days. The American Civil Liberties Union sued over the same sneak-and-peek provision. Several days later, the Center for Constitutional Rights, a social justice legal center, argued that the Patriot Act violated free-speech protections, in a suit filed in federal court. Lawyers for the Center argued that criminalizing "expert advice and assistance" to U.S.-identified terrorist organizations is unconstitutionally vague.

Despite growing controversy over the expanded powers granted to government law enforcement agencies under the Patriot Act, Ashcroft plans to hit the road to expand Patriot's excesses. According to the New York Daily News, Ashcroft plans a 20-city, 10-day tour to drum up support for new legislation -- Patriot III -- that would grant the federal government new powers, including increasing prison sentences, expanding secret searches, interfering with Arab business transactions, and easing secret access to business records. Like the Patriot Act, the new legislation has been titled with care. Patriot III's official title is the Vital Interdiction of Criminal Terrorist Organizations Act, and the attorney general's roadshow is dubbed the "Victory Tour."

Executive Order Assigns Information Sharing Development to DHS

The President issued an Executive Order July 29 that gives Secretary of Department of Homeland Security (DHS) Tom Ridge authority to develop the information sharing functions under the Homeland Security Act of 2002.

Section 892 of the Act gives the President authority for determining how homeland security information will be identified and shared. The Act calls for procedures that "share relevant and appropriate homeland security information with other Federal agencies, including the Department, and appropriate State and local personnel" and "identify and safeguard homeland security information that is sensitive but unclassified." The President has now delegated the responsibility for developing these procedures to Ridge.

The information sharing provisions under the Homeland Security Act could result in information being hidden with little or no review or justification. The Act provides no definitions for exactly what kinds of information would fall under this classification, allowing for massive amounts of unclassified information, currently available for public scrutiny, to be drawn into this new category and withheld. OMB Watch has developed a detailed analysis of the

provisions.

It is unclear how these provisions will be developed and if any public input or congressional oversight will be incorporated. DHS has already established a mixed track record. It called for public comments on its proposed Critical Infrastructure Information (CII) rule but has shown great reluctance to allow public access to those comments.

Support for 1st amendment rights grows, poll finds

Public support for the First Amendment has returned to levels that existed prior to the September 11 attacks, a poll by the First Amendment Center finds.

The poll, conducted annually by the Center, finds that 34 percent of Americans agree or strongly agree that the rights conferred on the public under the First Amendment "go too far," down from 49 percent a year ago. In addition, the poll indicates that nearly half of all Americans believe that the public has too little information about the government's efforts to fight terrorism.

Previous polling has indicated that the public has been willing to sacrifice civil liberties if doing so will help make our country safer and more secure. In releasing the findings of this year's poll, Ken Paulson, the executive director of the First Amendment Center, said, "Two years after the terrorist attacks in New York and Washington, D.C., our nation appears to have caught its breath – and regained some perspective."

The First Amendment enumerates five freedoms conferred on the public: the freedom of religion, freedom of speech, a free press, the right to assemble and the right to petition government for the redress of grievances.

Counterterrorism Database Could Threaten Privacy

A Florida counterterrorism database is raising questions over the balance between personal privacy and homeland security. The Multistate Anti-Terrorism Information Exchange (MATRIX) system is the most recent government tool that pushes the envelope for the amount and type of information on individuals that the government uses.

Florida-based Seisint Inc. developed and then donated the MATRIX system to the state. The system combines a number of databases that include information such as criminal histories, driver's license data, vehicle registration records, photographs, and significant amounts of personal information. At least 135 police agencies in Florida have signed up for the Department of Law Enforcement database service and 12 other states have joined a coalition to develop network support across state lines.

A number of civil liberties and public interest groups have expressed concern about government snooping and abuse of the database because the information is easy and quick to access. A senior official involved with MATRIX confirmed these concerns. "It's scary. It could be abused. I mean, I can call up everything about you, your pictures and pictures of your neighbors."

Similar projects recently faced public and congressional criticism. Congress severely cut the budget for the Pentagon's domestic surveillance program, Total Information Awareness (TIA), eventually renamed Terrorism Information Awareness, which may face total shutdown. Critics believed the program could utilize too much personal information. The Department of Homeland Security (DHS) recently published a revised rule for the Computer Assisted Passenger Prescreening System (CAPPS II), which screens passengers before boarding planes, after backlash from privacy advocates. The new rule eliminates controversial provisions allowing the government to maintain detailed records on individuals for up to 50 years.

At times, the strong push to increase homeland security threatens liberties guaranteed by the U.S. Constitution. It is unclear at this point how privacy concerns and possible abuses of MATRIX will be addressed, and what the likelihood is for its expansion outside of Florida. In a possible end-run around Congress' expressed disapproval for such a program, the Justice Department has donated \$4 million to the state-developed MATRIX system and Department of Homeland Security pledged another \$8 million.

First Data Quality Lawsuit Filed

The Competitive Enterprise Institute (CEI), an anti-regulatory group, filed the first lawsuit under the Data Quality Act (DQA) against the White House Office of Science and Technology (OSTP). The suit challenges a climate change report, "National Assessment of the Potential Consequences of Climate Variability and Change." and seeks to prevent its dissemination to the public.

Filed with the U.S. District Court for the District of Columbia on August 6th, the suit contends that the National Assessment report does not meet the objectivity or utility standards of data quality. CEI claims that scientists used flawed computer models to generate the potential impacts of climate change. CEI believes the models do not provide reliable predictions and contest that "efforts to validate these two models actually exposed them as less capable at predicting climate impacts than a table of random numbers." Additionally, the suit asserts the report violates the Global Research Act.

CEI had filed administrative challenges advancing the same arguments against the report with several agencies, including the Environmental Protection Agency (EPA), the National Oceanic & Atmospheric Administration (NOAA), and OSTP. Each of the challenges sought to prevent the government from continuing to disseminate the report as the way to "correct the data." EPA's website indicates that the agency rejected CEI's argument; however, CEI has requested reconsideration. Since CEI has filed suit against OSTP, the agency must have rejected both the organization's initial petition and its reconsideration request, leaving no additional administrative options with OSTP to challenge the report.

Since the promulgation and implementation of the Data Quality Guidelines at all federal agencies, it has been debated whether it is judicially reviewable. CEI's lawsuit will be the first court test of whether the guidelines are enforceable by the courts. Several agencies stress their DQA guidelines are not rules nor are they legally binding.

This will be an extremely important information case even if CEI does not succeed in getting the global warming report de-published. If the court allows the case to go forward, determining that the Data Quality Act is judicially reviewable, then federal agencies may lose their flexibility to freely discuss breaking issues and concerns without unwarranted censorship.

Senate Denied Information, Again

The Treasury Department is following in the Bush administration's footsteps of refusing to provide Congress with requested information. The Bush administration has shown a consistent trend of refusing congressional requests for information including such matters as the energy task force; use of new powers granted under the Patriot Act; and the classified Saudi section of the 9/11 report. Now the Treasury Department joins the dance with a complete reversal on its commitment to provide to the Senate Government Affairs Committee a list of Saudi individuals and organizations that the government has investigated for possible financing of terrorist groups.

In a July 31 hearing on Saudi sponsorship of terrorism, a senior Treasury official told the committee that the list was not classified and that it would be turned over to the Senate within 24 hours. However, less than a week later the Treasury Department has declared the list classified and refuses to supply it to the Senate.

The Treasury Department now claims that the commitment was made in error and that releasing the information would frustrate efforts to disrupt terrorist financing.

Not everyone is satisfied with the agency's reversal or its explanation, including Sen. Alan Specter (R-PA). Specter explained that if the Treasury Department does not voluntarily provide the information, then he would take steps to force them to honor their commitment. "They may be looking at a subpoena," the Senator stated. "The guy made a commitment in an open hearing to produce it."

Specter also drew a sharp distinction between Treasury's list and the Saudi section of the September 11th report, "It's one thing to say that information in the 9/11 report about the Saudis is classified for national security reasons, but it's quite another when you're talking about a list of charities."

EPA Misinformation Could Pose Health Risks for the Public

The Inspector General's office at the Environmental Protection Agency (EPA) is investigating whether EPA misled the public by stating in recent reports that 94 percent of community water systems met all health-based standards in 2002. EPA data directly contradicts the claim and reveals that the actual number could be much lower – only 79 to 84 percent of systems.

The "Draft Report on the Environment" released June 18 reported the 94 percent figure, stating this number had risen from 79 percent in 1993. However, a March EPA briefing obtained by the Washington Post states, "Statistical analysis... indicates this number [in 2002] may be in the range of 75 percent to 84 percent" and "may be lower yet because of unreported monitoring and reporting violations that could be making health-based violations." The briefing suggests the estimate should be 81 percent. It also affirms that underreporting persisted over the past five years of water quality audits and could understate violations up to 50 percent.

The inflated figures that EPA released to the public reflect neither the data reporting problems, nor EPA's own internal estimates. This misleading information could have significant impacts on the health of the public – an added 30 million people could unknowingly be at risk of drinking contaminated water. The public misinformation does nothing to lessen or solve the problem – it still remains. In fact, it makes the problem more difficult to address since it promotes complacency among citizens whom assume that the problem is solved. Armed with correct information, the public could place pressure on EPA to tighten their regulation and oversight. Correct information could also generate dialogue with the water industry on reporting data and adherence to environmental standards. It is of great importance that EPA examines water industry reporting and report accurate numbers to the public.

OMB Watch Calls for Withdrawal of Anti-Terrorist Financing Guidelines for Nonprofits

The IRS is seeking comments on ideas that U.S. charities might employ to prevent diversion of charitable assets to terrorists. In seeking comments, the IRS references guidelines issued by the Treasury Department last November that were published without public comment. In submitting comments to the IRS, OMB Watch calls for the withdrawal of these November guidelines since they do not reduce the risk of diversion of charitable assets to terrorists, are inconsistent with federal and state laws and place charities in a governmental role of collecting information and assessing potential for terrorist activities.

In May, the IRS published Announcement 2003-29, dealing with "International Grant-making and International Activities by Domestic 501(c)(3) Organizations." The IRS indicated it was seeking comments on "how new guidance might reduce the possibility of diversion of assets for non-charitable purposes while preserving the important role of charitable organizations world-wide."

The IRS Announcement references "Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities," a document released by the Treasury Department's Office of Foreign Assets Control (OFAC) in November 2002. The Guidelines, issued without public comment, cover governance, disclosure, transparency and financial practices and include procedures for groups that distribute funds to foreign organizations. The agency developing the Guidelines did not consult charities and apparently did not consult with the IRS office that deals with charities.

Although labeled "voluntary best practices," the Treasury Department has authority under the USA Patriot Act to freeze or seize assets of charities. Moreover, it is likely that Treasury Department "best practices" will likely impose a standard for due diligence that U.S. charities must follow. Accordingly, the November Guidelines, which affect all U.S. charities, not just those making international grants, has enormous implications for all nonprofits.

OMB Watch, along with other nonprofit leaders, called for the Guidelines to be withdrawn, in part because they are much broader than is necessary to prevent diversion of assets to terrorists, and in part because they are have not been subject to scrutiny by nonprofits.

The Guidelines address areas generally regulated by the states or Internal Revenue Service. For example, Guideline I(B)(1) requires a board to meet at least three times a year with the majority attending in person. This would preclude the possibility of meeting via teleconference, webcasting or other alternatives used by organizations whose directors might be geographically distant. Compliance with the "in person" requirement could incur substantial travel costs, burdening the organization's budget or the personal finances of the director. And what would be achieved? If an organization intends to divert funds for terrorism, meeting in person is unlikely to

prevent it from happening."

The Guidelines are also labeled "Best Practices," and the comments object to this characterization, noting the substantial difference between government standards and "best practices." While accountability demands that nonprofits follow best practices, it is not advisable that the government agency in charge of terrorism-related actions should be establishing such practices for all U.S. nonprofits. The nonprofit sector itself is the entity which should define its best practices, not government. Groups like the Maryland Association of Nonprofit Organizations have established a Standards of Excellence Program that promote best practices for the sector.

Although the Guidelines focus on grantmaking organizations, they apply to all charities. OMB Watch's comments note the substantial difference between public charities and private foundations, and ask that any future Guidelines make a clear distinction between the two.

For more information see the full text of the OMB Watch comments. Comments were also filed by INDEPENDENT SECTOR and the Council on Foundations.

Report Documents Administration's Political Interference with Science

The Democratic staff of the House Committee on Government Reform recently released a report examining the Bush administration's handling of scientific matters -- finding in many cases, that scientific integrity has been sacrificed to further a political or ideological agenda.

The report, which came at the request of Rep. Henry Waxman (D-CA), finds "numerous instances where the administration has manipulated the scientific process and distorted or suppressed scientific findings." For example:

- Officials at the U.S. Department of Agriculture barred a staff scientist from publishing results of a study finding antibiotic-resistant bacteria in the air near hog confinements in Iowa and Missouri after industry officials complained to the agency. The microbiologist was also prohibited from reporting his findings before a meeting of the board of health in Adair County, Iowa.
- The Bush administration altered information to advance an oil and gas practice known as "hydraulic fracturing." Environmental Protection Agency (EPA) officials briefed congressional staff on the practice in August of 2002 and presented a study showing that hydraulic fracturing, which involves the injection of fracturing fluids into geologic formations, could lead to levels of benzene in underground sources of drinking water in excess of federal drinking water standards.

After congressional staff raised concerns about these environmental impacts, EPA produced a revised analysis showing that the practice would *not* result in levels of benzene above federal standards. The agency provided no scientific explanation for the change -- merely citing feedback from an industry source. Interestingly, Halliburton, the energy company previously led by Vice President Cheney, is the leading provider of hydraulic fracturing.

- Interior Secretary Gale Norton suppressed an unfavorable analysis of a U.S. Army Corps of Engineers proposal to weaken wetlands protections. The analysis, prepared by scientists at the U.S. Fish and Wildlife Service, found that the proposed standards would "encourage the destruction of stream channels and lead to increased aquatic functions." The Corps had sought to weaken the measures after the National Association of Home Builders filed suit. Norton failed to submit the comments to the Corps and the agency subsequently issued the watered-down rules.

OMB Watch previously reported on administration efforts to doctor findings on global warming and children's health, as well as the practice of screening nominees for federal scientific advisory committees based on their political views rather than their scientific qualifications.

Waxman's staff has established a web site to track the Bush administration's meddling with scientific matters on an ongoing basis, covering the manipulation of scientific committees, as well as the distortion of scientific information, and interference with scientific research.

Court Rejects Tire Pressure Monitoring Rule as Too Weak

A federal appeals court recently rejected a weak standard, issued by the National Highway Traffic and Safety Administration (NHTSA), to guard against under-inflated tires, calling it “contrary to the law and arbitrary and capricious.”

The rule, issued in June of 2002, allowed manufacturers to choose between installing a “direct” system or a less reliable, yet cheaper, “indirect” system. A direct system relies on a pressure sensor in each tire that can alert the driver of an under-inflated tire through a dashboard monitor. An indirect system works with anti-lock brakes to measure the rotational difference between the tires, determining whether the speed is slower for one tire compared to the others.

Public Citizen, New York Public Interest Research Group, and the Center for Auto Safety challenged the measure in court -- arguing that NHTSA, under pressure from the auto industry, failed to comply with the spirit of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act in adopting the less safe standard.

The court agreed, noting that the indirect system would fail “to warn drivers in approximately half of the instances in which tires are significantly under-inflated,” while the direct system “would prevent more injuries, save more lives, and be more cost-effective.” The three-judge panel instructed NHTSA to develop new standards.

“This decision will block the pro-industry, anti-consumer, deregulatory campaign of the Bush Administration,” said Clarence Ditlow, executive director of the Center for Auto Safety.

The ruling comes as a rebuke to OMB’s Office of Information and Regulatory Affairs (OIRA), which insisted that NHTSA include the less stringent monitoring systems as an option under the rule. As OMB Watch pointed out at the time, OIRA forced NHTSA to make these changes based on what appeared to be a willful misinterpretation of the evidence.

FDA Rolls Back Olestra Labeling Requirements

The Food and Drug Administration (FDA) recently lifted requirements that food containing olestra, a zero-calorie fat substitute, bear a statement informing consumers that the additive may cause gastrointestinal problems.

FDA approved olestra for use in 1996 but required foods containing the fat substitute to be labeled with the following statement in a boxed format: "THIS PRODUCT CONTAINS OLESTRA. Olestra may cause abdominal cramping and loose stools. Olestra inhibits the absorption of some vitamins and other nutrients. Vitamins A, D, E, and K have been added."

“[W]ithout an adequate warning label, olestra-containing chips may inadvertently find their way into shopping carts and lunchboxes of even those consumers who are trying to avoid olestra,” said Michael F. Jacobson of the Center for Science in the Public Interest.

FDA will continue to require food manufacturers to add vitamins A, D, E and K to products containing olestra to compensate for the additive’s effects on these nutrients.

Rule Allows Timber Projects to Avoid Environmental Assessments

The Forest Service recently issued standards allowing timber projects to eschew environmental assessments and impact statements -- normally required under the National Environmental Policy Act (NEPA) -- provided that the affected area poses a risk of wildfire or contains insect-infested or diseased trees.

The measures outline three categorical NEPA exemptions that would allow the harvesting of up to 70 acres of live trees (up from 50 in the proposal), the removal of up to 250 acres of dead or dying trees, and the removal of up to 250 acres of insect-infested or diseased areas.

The Forest Service recently conducted a review of 154 similar forest management activities and claims to have found no significant effect on the environment from these kinds of projects. "These new categorical exclusions will save the Forest Service time, energy, and money in preparing small, routine timber harvest projects that contribute to healthy forests and healthy economies," Forest Service Chief Dale Bosworth said. However, the public will no longer be able to initiate administrative appeals -- which are provided for under NEPA -- to block unneeded and destructive projects in such cases.

The move is the latest in a series of actions by the Bush administration eliminating requirements for environmental review and public participation when considering logging projects.

Senate Puts Aside GOP Energy Bill, Passes Last Year's Version

Senate Republicans recently agreed to set aside their energy bill (S. 14) after negotiations had reached a standstill and instead passed last year's Democratic version (formerly H.R. 4) by a vote of 84 to 14 on July 31.

"I look forward to chairing the conference on this bill," explained Senate Energy Chairman Pete Domenici (R-NM). "I promise you we will write many of this year's energy provisions into the bill at conference. The final bill will look more like what I produced in committee this spring than it will the bill we are passing tonight. Tonight's bill is just a vehicle to get us to conference."

For the most part, the bills are largely similar -- each contains a renewable fuels package that would double the use of corn-based ethanol and both fail to require increases in corporate average fuel economy (CAFÉ) standards. Just before Republicans suggested the bill substitution, the Senate rejected an amendment, by a vote of 65 to 32, that would have mandated a 40 miles-per-gallon fuel economy standard for passenger cars by 2015.

Unlike the Republican version, the revived bill, which died in conference committee last year, does not contain hundreds of millions of dollars in subsidies for the nuclear power industry, according to the Washington Post.

Republicans, eager to pass the legislation before the August recess, also agreed to hold a vote on a bill (S. 139) that would establish a cap-and-trade program to reduce greenhouse gases. The bill's sponsors, Sens. John McCain (R-AZ) and Joseph Lieberman (D-CT), were considering tacking key provisions of their climate change plan onto the Republican energy bill in the form of an amendment.

Senators and Secretive Saudis Ask US to Declassify 9/11 Report

Pressure is mounting on Capitol Hill to declassify the blanked out 28-page section of the congressional joint report on intelligence failures before and after the events of September 11, 2001.

Nearly half of the members of the U.S. Senate called on the administration to declassify more of the report. According to the Federation of American Scientists' *Secrecy News*, 46 senators signed a letter asking the Administration to declassify the 28 pages. This letter comes after Sens. Bob Graham (D-FL) and Richard Shelby (R-AL) vocally pushed to make more of the report available to the public.

In perhaps a sign of how close to the chest this administration holds its cards, the government of Saudi Arabia, not known for being a leader on open government within its own borders, publicly asked the Bush administration to be less secretive in handling the Joint Committee's report.

Read the public report: [Joint Inquiry into Intelligence Community Activities before and after the Terrorist Attacks of September 11, 2001](#)

