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## **OMB Watch Celebrates Its 20th Anniversary by Honoring Public Interest Heroes**

OMB Watch celebrates its 20th Anniversary on October 9, 2003. In honor of our banner year event, the board of directors and staff have established two recognition efforts. The Public Interest Hall of Fame recognizes 12 "unsung heroes" whose everyday work makes a difference in pursuing government accountability, citizen participation or social justice. These were selected from more than 70 nominations. The Public Interest Rising Star Award acknowledges the outstanding, dedicated work of three younger leaders and encourages their continued participation in the public interest. The first class of inductees will be honored during OMB Watch's anniversary reception. Information on the honorees and event details are [available online](#).

## **Vote to Give OMB Watch a Donation**

Do you use Working Assets? If so, you can vote to contribute money to OMB Watch.

Working Assets has selected OMB Watch as one of 50 progressive nonprofits to receive contributions based on how customers vote. We have been informed by Working Assets that they hope to distribute more than \$3 million this year among the 50 groups in proportion to how customers vote.

Working Assets will be distributing paper ballots in its telephone and credit card bills in October and November. Additionally, you can vote online. Or you can call a Voter Hotline at 800-920-VOTE (8683).

We are very impressed by the 50 groups selected by Working Assets. All are worthy of donations. This is clearly one vote that will count!

If you're not a Working Assets member, join today by calling 800-788-8588 so you can vote for OMB Watch and other fine progressive organizations to get donations. The deadline to vote is Dec. 31.

## **Jobs Picture Still Not Looking Good**

On Friday, the Bush administration received what initially appeared to be good news on the economic front with its monthly release on employment. In September, the unemployment rate was unchanged from August at 6.1%, and there was a net gain of 57,000 jobs. The good news was that this was the first net gain in jobs in seven months. However, the jobs data continue to indicate that, in all likelihood, the Bush administration will likely be the first since Hoover's to have a net job contraction during its tenure.

Even the "good" news is not much to crow about:

- The US economy has now lost 2.6 million jobs since March 2001, the start of a recession that allegedly ended in November 2002.

- The Bush administration projected there would be 344,000 new jobs each month under their tax cut plans. They were short by 287,000 jobs in September.
- One reason the unemployment rate held steady is that a smaller percentage of the population was in the labor force. The labor force participation rate fell to 66.1 percent, the lowest since December 1991.
- There are now roughly three unemployed workers for every job opening, according to the Economic Policy Institute.
- Employment in service-producing industries rose 74,000 in September from -12,000 the previous month. However, the increase was led by a 33,200 rise in temporary-help jobs. Manufacturers cut 29,000 jobs last month, the 38th straight decline and the smallest drop since July 2002.
- Continuing claims for unemployment insurance, reported each week, have shown virtually no improvement. In fact, the number of long-term unemployed (i.e., those who have been without jobs for at least six months) rose to the highest level in over a decade.

For more information, see [the Jobs Picture](#) from the Economic Policy Institute.

## **The Deficit As a Serious Problem**

Like the Reagan administration, the Bush administration continues to describe the budget deficit as a manageable problem and presents a rosy picture in which deficits will soon diminish. But like the Reagan administration these comments are far from reality.

The Congressional Budget Office (CBO) has estimated that the deficit for this year (FY 2003) will be \$401 billion and \$480 billion next year, the highest ever in dollar terms. These numbers could go up if the President's \$87 billion request for Iraq is approved. The administration argues that in an economy as large as ours, these numbers are not a significant problem. Translated as a percentage of the Gross Domestic Product, it would be 3.7% and 4.3%, respectively. While these figures are slightly lower than several years during the Reagan administration, they still are far higher than is acceptable. In fact, when deficits reached 4% of GDP in the 1980s, Congress, the public, and news media became very focused and concerned about deficits.

To make matters worst, the deficit is actually much greater than what the CBO numbers tells us. For example, the deficit adds together the "on-budget" (e.g., controllable) and "off-budget" (e.g., Social Security) surplus/deficits. If you exclude Social Security from the calculations, the deficit is actually estimated to be at least \$644 billion in FY 04 and, according to Sen. Kent Conrad (D-ND), 6.2% of GDP or the highest since the end of World War II.

In addition, more realistic estimates of the deficit point to a \$5 trillion cumulative deficit over the next 10 years, according to a bipartisan group of prominent budget analysis organizations.

Why is the deficit soaring? There are many explanations, but two points should be clear. First, revenue, as a percentage of GDP, is declining. Our revenue, projected to be 16% of GDP in 2004, will be at the lowest level since 1950 when it was 14.4%. (See chart below.) If Social Security were excluded, it would be far lower than the 1950s.

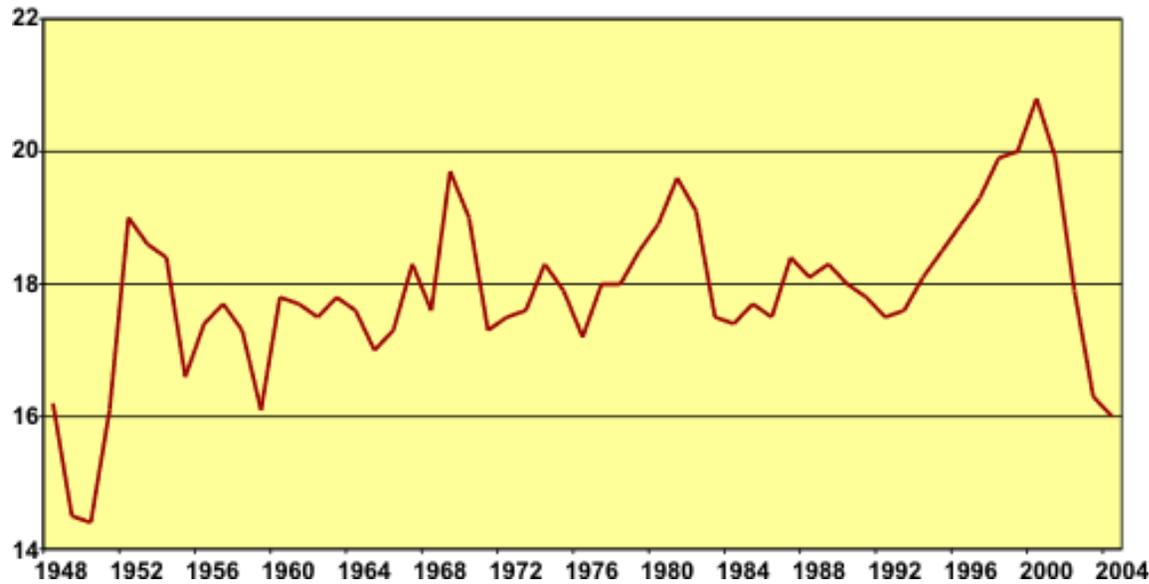
Second, spending, as a percentage of GDP, is at a lower level than any point between 1979 and 1996, projected to be 20.2% in FY 04. (See chart below.) Generally, spending as a percentage of GDP has been declining since 1992. This is even more pronounced if Social Security is excluded.

According to CBO, in FY 03, 92% of increased discretionary spending (above a baseline) has been in three areas: defense, homeland security, and rebuilding New York and providing airline relief. Other domestic spending has

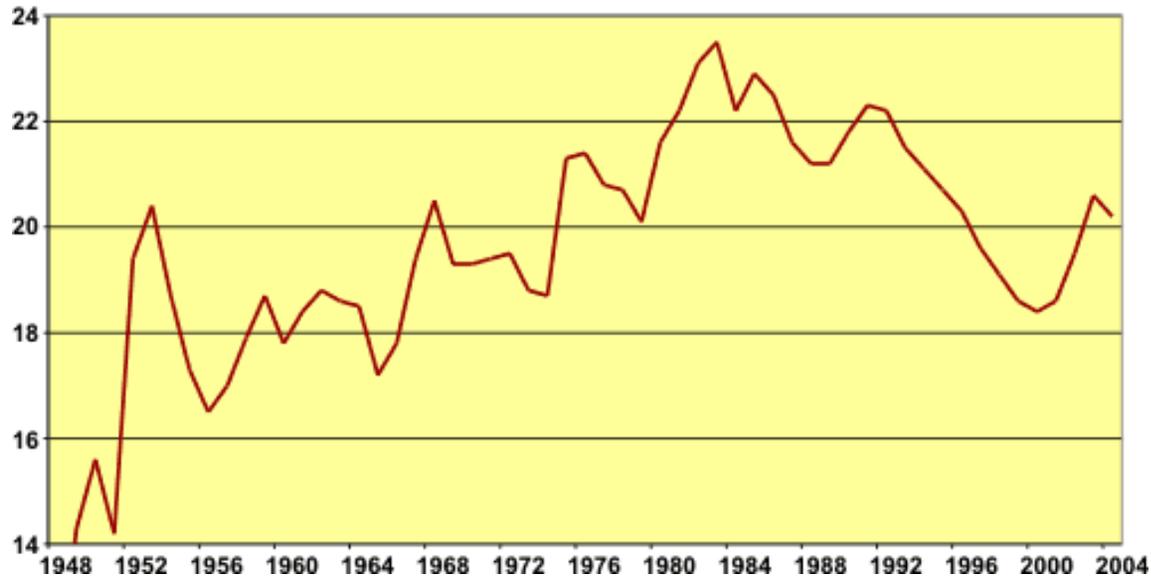
either been stable or decreased.

The point is that unless this country has a stronger revenue base, we cannot sustain existing spending priorities. The solution is not to cut spending any further, but to restore revenue to historically reasonable levels.

### Revenue as a % of GDP



## Outlays as a % of GDP



## CEI Fluffs Up Data Quality Lawsuit

The Competitive Enterprise Institute (CEI) recently amended its data quality lawsuit against the White House over a global warming study, adding violations of two statutes – the Administrative Procedure Act and the U.S. Global Change Research Act.

According to a Bureau of National Affairs' article, CEI filed the amended complaint Sept. 4 attempting to add more facts to its original argument. CEI is seeking the withdrawal of the National Assessment on Climate Change (NACC), which is the inter-agency technical document that underlies most of the federal government's recent statements about global climate change.

In addition to the original allegations of flawed data and underlying models, CEI asserts that because the Office of Science and Technology Policy (OSTP) did not correct the flaws during report formulation, or afterwards per

request, the document is arbitrary and capricious and therefore violates the Administrative Procedure Act. It is unclear how CEI believes the report violates the U.S. Global Change Research Act.

Whether agencies' data quality guidelines are judicially reviewable remains uncertain. As precaution against immediate dismissal if the guidelines are not deemed reviewable, CEI may be adding the two additional charges in an effort to ensure its allegations against the global warming study are heard in court. There are concerns that if CEI gains standing and the court elects to hear the data quality case, then the Justice Department may not fully defend the report, given the administration's recent position on climate change. The department stated they would file a response by Oct. 14.

CEI issued a press release Sept. 25 amid recent rumors that the White House may have solicited the lawsuit. Greenpeace obtained an email from a CEI employee to a senior official at the White House Council for Environmental Quality (CEQ) through a Freedom of Information Act request that describes CEI's plans to file a lawsuit to discredit an EPA climate change study. The message starts by saying, "Thanks for calling and asking our help." The press release refutes any collusion with the White House, asserting the allegations are "just an attempt to divert attention from the real issue—that junk science is being used as the basis for climate change reports..." Two state Attorney Generals have called upon U.S. Attorney General John Ashcroft to conduct an investigation into the accusations.

## **Suit Challenges Secret Service "Protest Zones"**

The American Civil Liberties Union (ACLU), representing four national advocacy groups, filed a federal suit against the Secret Service on Sept. 23.

The ACLU charges the Secret Service with a "pattern and practice" of discrimination against protesters that violates their free speech rights. The suit seeks an injunction banning the Secret Service and local police from confining protesters that disagree with administration policies to areas that are both away from view of public officials and the press. At the same time, people who support the President are allowed to roam outside of the zone and be seen. In some cases all demonstrators have been confined to "protest zones". However, only demonstrators against the President's policies have been arrested when leaving the zone.

The suit was filed on behalf of the Association of Community Organizations for Reform Now (ACORN), United for Peace and Justice, USAction and the National Organization of Women in the eastern district of Pennsylvania.

However, the suit challenges the practice nationwide, citing more than a dozen examples in eleven states. Local police have testified that the practice has been ordered by the Secret Service. These and similar incidents are also detailed in a May ACLU report Freedom Under Fire: Dissent in Post-9/11 America.

The complaint in *ACORN et. al. v. City of Philadelphia et. al.*, Civil Action No. 03-4312 can be downloaded from the ACLU website.

## **Six Agencies Act on Faith-Based Regulations**

In late September the Bush administration announced final regulations implementing faith-based grant rules that Congress could not even pass. For example, the rules place the burden of objecting to the religious nature of a service provider on the person in need, who must ask for an alternative provider. The regulations do not clearly define "inherently religious" activities that cannot be paid for with federal funds in grant programs. However, services paid for with vouchers or certificates can contain religious content. The rules also sanction discrimination based on religion in hiring for federally funded jobs. The rules apply to welfare, substance abuse and housing programs and take effect on Oct. 30. Similar new regulations were proposed by four agencies.

**See a list of new and proposed regulations and links to Federal Register versions.**

Citing charitable choice language in authorizing statutes and Executive Orders signed by President Bush as authority, the new rules require equal treatment of religious organizations, including houses of worship, in competition for federal grants. The purpose is to give people in need a greater choice of programs. However, the rules do not take diminishing funding for social services programs into account. Greater competition for fewer dollars will not necessarily result in greater choice for people in need of services.

Under the rules, religious organizations cannot be excluded from grant competition because of their religious character. This includes having religious art and icons displayed in buildings where services are provided, having a religious reference in their name or requiring religious affiliation for board members. Health and Human Services (HHS) said religious organizations must comply with Community Services Block Grant rules that require governing boards that oversee services to represent a broad cross section of the community served. The language implies the requirement applies to the board overseeing services, not necessarily the board of the entire organization.

Overall, the regulations state that religious organizations must be held to the same program eligibility conditions as other nonprofits.

All the regulations state that no federal funds can be spent on "inherently religious" activities. Any worship, prayer or similar activities must be conducted at a separate time or location from the government-funded program. A religious organization can invite program participants to religious activities if they make it clear participation is voluntary and the same level of services will be provided whether they accept the invitation or not. However, "inherently" religious should not be mistaken for "partially" religious activities, which could still conceivably be funded or supported. For example, a soup kitchen that says grace before each meal or shelters that say goodnight prayers mixed with federally funded services could claim the overall service is not inherently religious.

The regulations prohibit discrimination against program beneficiaries or prospective beneficiaries on the basis of religion or religious belief where services are provided through grants or cooperative agreements. Except for welfare programs, religious discrimination is allowed when services are paid for with vouchers or certificates.

Regulations require that service providers offer alternatives should program beneficiaries object to the religious nature of the services offered. The alternative does not have to be secular, as long as it is acceptable to the beneficiary. Nonprofits, as well as, state and local governments that receive federal funds directly, bear the responsibility for providing these alternative services. According to agency comments, states and local governments are encouraged to coordinate their plans so that alternatives are available. The agencies rejected the argument that the alternative provider requirement is an un-funded mandate on states.

The rules require all grantees to meet the same standards of program and fiscal accountability. Religious organizations are required to keep their federal funds in a segregated account, and audits of federal programs will review only that account. Other standards, including health, safety and professional qualifications for staff, must be the same for all providers. Training provided by a religious organization can be used to meet federal standards if it is comparable to training provided by nonreligious entities.

Intermediary organizations will be subject to the charitable choice regulations in making subgrants and reports. The regulations require intermediaries to ensure funded activities are carried out in religiously neutral manner, except when paid for by vouchers.

All six of the regulations permit discrimination based on religion in hiring for positions funded with federal dollars. The rules vary for substance abuse programs, which prohibit discrimination based on religion unless a religious organization certifies that compliance with the rule would substantially burden its free exercise of religion under the Religious Freedom Restoration Act.

Civil rights laws exempt religious organizations from a prohibition on religious discrimination when hiring for positions that involve religious activities funded with private dollars. The law does not directly address extension of this exemption to federally funded positions. The issue is being debated in Congress, but has not been resolved. The Senate dropped language permitting religious discrimination from the CARE Act earlier this year because it was too controversial and threatened chances for the charitable giving incentives in the bill from passing. The House is currently considering the issue in the Workforce Investment Act and Community Services Block Grant legislation. The House has dropped the discriminatory language from its charitable giving legislation (H.R. 7).

The regulations issued by the Department of Housing and Urban Development (HUD) include rules for funding construction or rehabilitation of buildings used for both worship and federally funded programs. The new rules make preservation/reconstruction grants available for multipurpose facilities that benefit a wide range of interests, but not those either owned by or serving only religious interests. Under HUD's new Community Development Block Grant rules the structure must be leased to a "wholly secular" entity in order to qualify for funding.

Similar rules will apply to programs like Home Investment Partnerships, which had barred religious organizations from receiving federal funds to rehabilitate or construct low-income housing, and restricted use of federal funds for rehabilitation/conversion of structures owned by religious organizations, including emergency shelters and supportive housing.

The rules require that inherently religious activities, including primary worship services, take place at either a different time or in a different location than government funded programs. Thus the activity can still take place in the same structure as long as it occurs in a different room away from other inherently religious activity, or at a different time, but not both.

Proposed rules for Departments of Labor, Education, Justice and Veterans Affairs are substantially the same as the new rules.

## **Offsets, Child Tax Credit Make CARE Act Fate Uncertain**

Although legislation promoting charitable giving has passed both houses of Congress this year, it could still be derailed in conference committee. There are major differences over whether or not to include offsets that pay the cost of tax breaks for charitable giving. Further complications were added last week when Sen. Olympia Snowe (R-ME) proposed attaching the child tax credit provision to the bill that House Republican leaders strongly oppose. The move could either bring the child tax credit issue back to life or bog down the charitable giving legislation. The Senate version of the child tax credit provides \$9.8 billion in tax relief that are offset through an extension of U.S. Custom user fees. The House version, which has a number of tax provisions, would cost \$82 billion and has no offsets.

Snowe has blocked the process for sending the CARE Act to conference negotiations until the child tax credit issue is resolved. She has the support of Senate Republicans, including Majority Leader Bill Frist (R-TN), who said he is committed to working out an agreement when the Senate returns from a one-week recess. He did not think the delay would prevent Congress from concluding action on the CARE Act this year.

Sen. Rick Santorum (R-PA), a co-sponsor of the CARE Act, told the Associated Press that add-on provisions are not likely to survive a conference committee, and, "If other people, for political motives or to express concern about the movement of other bills, want to tack things on for some sort of message purposes, that's all well and good."

The proposed unanimous consent agreement for the CARE Act also includes extension of welfare-to-work and work opportunity tax credits, which are currently expiring.

The conference on the CARE Act will need to address major differences between the House and Senate bills in addition to offsets, including funding for the Social Services Block Grant and fees for foundation trustees. To get to a conference, the Senate must consider the House bill since the House constitutionally must generate all revenue legislation. Thus, the Senate could consider H.R.7 and then substitute its bill that was passed earlier in the year, or it could add the Snowe amendment on the child tax credit, or it could accept H.R.7 and send the bill directly to the President.

## **Despite Efforts to Delay, DUNS Number Requirement Goes into Effect**

Don't forget that all organizations that apply for federal grants must have a DUNS number on their applications beginning last Wednesday, October 1.

If you do not have a DUNS number see our [DUNS Number Fact Sheet](#).

OMB Watch and the National Council of Nonprofit Associations wrote to the Office of Management and Budget (OMB) two weeks ago asking them to delay implementation of the DUNS number requirement. Many nonprofits have called us for information, indicating significant confusion and a number of unanswered questions. Unfortunately, OMB responded negatively to the request. However, in an attempt to clear up the confusion OMB will be developing a "Frequently Asked Questions" sheet that is to be posted on the OMB and Grants.gov web sites.

Federal grant applications without a DUNS numbers will not be considered complete. Agencies do not have the power to grant exemptions, all requests for exemptions must be directed to OMB. The contact person at OMB who is leading this effort is Sandra Swab, 202/395-5642, [sswab@omb.eop.gov](mailto:sswab@omb.eop.gov).

The DUNS number is only one of the many changes occurring to the federal grants process. OMB Watch can provide training on grant streamlining and grant rules related to advocacy activities at nonprofit conferences or gatherings. We will not charge an honorarium, but would need to have travel costs covered. If interested, contact Kay Guinane at [guinane@ombwatch.org](mailto:guinane@ombwatch.org).

So ready or not, here is the DUNS requirement- PLEASE DISTRIBUTE THIS INFORMATION WIDELY.

## **Reauthorization of Workforce Investment Act Allows Religious Discrimination in Hiring**

A Senate Committee will debate a measure that would repeal civil rights protections and allow federally funded programs to use employment discrimination measures.

The House's version of the Workforce Reinvestment and Adult Education Act gives approval to faith-based charities to discriminate based on religious affiliation when hiring staff for federal job training programs. The bill, H.R. 1261 removes Title VII language of the Civil Rights Act to allow religious discrimination in hiring for federal job-training programs. If H.R. 1261 becomes law it will be an unprecedented repeal of civil rights laws.

H.R. 1261 passed the House in the spring and now sits in the Senate Committee for Health, Education, Labor, and Pension (HELP) awaiting action. The Senate version, S. 1627 which has also been assigned to the HELP Committee will also be considered. A Sept. 24 mark-up was pushed back and no new date has been set. The Senate bill does not have the language authorizing religious discrimination, as does the House bill.

Strong constitutional objections to the House version have been raised by groups like the American Civil Liberties Union. OMB Watch sent a statement opposing religious discrimination and supporting legislation introduced by Rep. Bobby Scott (D-VA) in June that would to reinstate President Franklin Roosevelt's historic Executive Order barring discrimination in hiring for government funded positions.

## **International NGOs are Gagged From Saving Lives**

A study released on Sept. 24 reports that President Bush's ideologies are once again trumping science, this time closing down international family planning and HIV/AIDS prevention programs.

The study, Access Denied: U.S. Restrictions on International Family Planning, reports the Mexico City policy, also known as the global gag rule, has led to closed clinics, cuts in healthcare staff and dwindling medical supplies, leaving women, children and families without access to vital healthcare services. The study was a collaborative effort led by Population Action International, and examines the effects of Bush's global gag rule on the reproductive health services in Ethiopia, Kenya, Zambia, and Romania.

Hours after his inauguration, President Bush sent a memorandum to the Administrator of the United States Agency for International Development (USAID) directing that certain conditions be placed on assistance for family planning activities provided to foreign nongovernmental organizations. It was imposed on March 28, 2001, the 30th anniversary of *Rowe v. Wade*.

The gag order restricts any organization that performs abortions, provides counseling or referral about them, or those that lobby for the practice from receiving assistance (both monetary and in-kind) from USAID. NGOs worldwide had a choice to either sign the order and continue receiving USAID funds, or not sign and lose the funds. NGOs that refused to sign also lost access to U.S. donated contraceptives, which could ultimately prevent recourse of abortion and protect the community from sexually transmitted infections (STIs).

While one of the aims of the global gag rule is to prevent abortions, the report found that instead it causes women to seek them more frequently. And because these abortions are done without the proper healthcare services, many women end up dead or seriously injured. Furthermore, the study reports that many NGOs operate a family planning facility and HIV/AIDS prevention facility under the same roof. When the family planning operation loses funding the whole healthcare clinic gets shut down. Planned Parenthood of Ghana, Marie Stopes International Kenya, Family Guidance Association of Ethiopia, and the Planned Parenthood of Kenya are just a few NGOs that had to stop programs dealing with HIV/AIDS prevention because of Bush's global gag rule. Some of the de-funded programs teach youth about how to be responsible parents, protect against HIV/AIDS and other STIs, and provide services for STI screening, treatment, HIV testing and counseling, along with other basic reproductive health care.

On July 9th, the Senate voted 53-43 in favor of an amendment to the foreign aid bill that allows federal grantees doing international work to use non-grant funds to provide information about abortion or advocacy on abortion rights. A bill in the House, H.R. 2952, would repeal the global gag order but is stalled in the House Committee on

International Relations.

## **Administration Relaxes Standards on Nursing Home Feeding**

The Bush administration recently eased nursing home standards to allow workers with just one day of training help residents eat and drink. Previously, only licensed health care professionals or certified nurse aides were permitted to perform such duties.

These “feeding assistants” will be required to complete just eight hours of training -- compared to 75 hours of training required for nurse aides -- and they do not need to be trained by licensed professionals. In fact, the rules merely state that feeding assistants must attend a state-approved training course, over which the federal government will not have oversight.

Feeding assistants will not be required to complete any kind of test or demonstration of competence and will be permitted to feed residents in their rooms without any direct supervision. The proposed rule, issued in March of last year, required feeding assistants to work under the direct supervision of a nurse who was “immediately available to give help.” The final standards, however, indicate that feeding assistants will be expected to call a supervisory nurse on the resident call system when there is an emergency or a need for help.

“These regulations will allow workers who are virtually untrained to work virtually unsupervised with people who are frail, suffering from multiple medical conditions, and unable to feed themselves,” said Donna Lenhoff of the National Citizens’ Coalition for Nursing Home Reform (NCCNHR). “Read these regulations carefully. They would permit a 16-year-old on a wing without a single licensed nurse to perform the Heimlich maneuver on your 90-year-old grandmother if she choked. If she continued to choke or went into cardiac arrest? These regulations say this 16-year-old with eight hours of training in nursing care should ring the call bell for a nurse.”

Nursing homes have lauded the rule changes, claiming they will help to free up nurses and nurse aides to perform more complex tasks. But the new standards may actually exacerbate staffing problems by encouraging nursing homes to hire low-paid feeding assistants instead of nurses’ aides.

Rep. Charles Grassley (I-IA) and Rep. Henry Waxman (D-CA) sent a letter to HHS Secretary Tommy Thompson

urging him to reconsider the new standards. "Feeding an elderly resident who may be uncommunicative and may have difficulty chewing or swallowing is a complicated task that should be performed only by skilled and properly trained and supervised personnel," the congressmen wrote.

## **House Votes to Block Bush Plan to Cut Overtime Pay**

Reversing course, the House recently voted 221-203 to block changes proposed by the Bush administration that would strip millions of workers of eligibility for overtime pay. The House narrowly defeated a similar amendment in July by a vote of 213-210, but this time around Democrats picked up eight new Republican votes.

Currently, workers do not qualify for overtime if they meet three conditions. First, the employee must make more than \$155 a week (or \$170 for professionals) -- a pay rate that has remained unchanged since 1975. Second, the employee must make a salary, not an hourly wage. And third, the employee must perform work that is primarily "administrative," "professional," or "executive" in nature.

On the positive side, the Bush administration is proposing to raise the pay rate to \$425 a week, equivalent to an annual salary of \$22,100. However, this modest increase is not indexed for inflation and thus will protect fewer workers over time.

At the same time, the administration is also proposing to dramatically increase the number of workers who qualify as administrative, professional, or executive. For instance, the proposal would lower the education levels required to be considered administrative or professional. This would "deny overtime pay to paralegals, emergency medical technicians, licensed practical nurses, draftsmen, surveyors, and many others," according to a study by the Economic Policy Institute. All told, more than eight million white-collar workers would be stripped of their right to overtime pay.

In September 2003, the Senate approved an appropriations amendment, by a vote of 54 to 45, that would retain the pay rate increase but block the rest of the administration's proposal. The recently approved House motion, although non-binding, instructs House conferees to back the Senate amendment. President Bush, however, has

threatened to veto the final bill if it includes the Senate amendment.

“Both houses of Congress have now spoken -- and they have directed President Bush not to take away overtime pay from working families,” said John Sweeney, president of the AFL-CIO.

Unfortunately, even after Congress' rebuke, the Bush administration appears determined to move forward with the changes. Following the House vote, Labor Secretary Elaine Chao reiterated her support for the overtime proposal, calling the changes “long overdue.”

## **Committee Report Finds No EPA Fault After 9/11**

A Senate Environment and Public Works Committee report released Sept. 23 claims the Environmental Protection Agency (EPA) and the White House did not act inappropriately in addressing public health concerns in New York City after 9/11. The committee's report sharply contrasts an Aug. 22 EPA Inspector General's report that revealed EPA altered press releases to falsely reassure the public because of pressure from the White House Council on Environmental Quality (CEQ).

Some committee members sent Chairman James Inhofe (R-OK) a letter asking for a committee hearing immediately after the IG report's release. Inhofe called the request “strictly political” and instead initiated a review, which led to the committee report.

The committee report describes EPA's response as “phenomenal” and states that the agency exceeded its obligation to protect public health. The report acknowledges that the press releases reflected the coordinated views of EPA, CEQ and the Occupational Safety and Health Administration (OSHA). However, it asserts that the CEQ edits were not inappropriate because the president directed the agency to coordinate decisions and information between EPA and OSHA.

Committee member Sen. Hilary Clinton (D-NY) and Rep. Jerrold Nadler (D-NY) both expressed continued concerns with EPA's response after 9/11.

Read OMB Watch's previous articles on the EPA response. (Aug. 25, Sept. 08)

## **Industry Pushing for TRI Reporting Changes**

The Environmental Protection Agency (EPA) is facing increased pressure on at least two fronts to alter reporting requirements under the Toxic Release Inventory Program (TRI) for mining operations and facilities that manufacture or use lead.

EPA is in the process of developing a rule that could change how mining companies report toxics in waste rock under TRI, a program that requires industry to report on its toxic chemical releases and other waste management activities. The rule will address regulatory changes for the mining sector and aims to interpret a court decision (Barrick Goldstrike Mines Inc. v EPA) that found Barrick Goldstrikes Mines exempt from reporting toxic chemicals that make up less than one percent of waste rock.

Waste rock contains trace amounts of naturally occurring metals like lead, mercury and arsenic. Although the amounts in the rock are small, some mining operations can discard millions of tons of waste rock, compounding the amount of toxics released to the environment. Under TRI, reporting is required for substances that are processed, manufactured, or used. Industry argues that simply moving the rock does not constitute any of these actions, and therefore does not mandate reporting. It is unclear on exactly how the agency will interpret the court ruling in the new regulation as it determines how processes should be characterized in TRI reporting. EPA claims it is considering both the reporting burden on industry as well as the public benefits of accessing toxics information.

In testimony before the House Energy and Mineral Resources Subcommittee on Sept. 25 Rep. Jim Gibbons (R-NV) called on EPA to increase its collaboration with mining companies while developing the rule. Environmentalists and public health advocates expressed concern over this type of collaboration as well as scaling back requirements under TRI. Lexi Shultz of the Mineral Policy Center emphasized the importance of TRI asserting it “gives industries a chance to voluntarily control pollution and gain public good will. And it arms the public with information that they need and can use to improve their quality of life.” EPA’s list of proposed changes to the rule is currently being reviewed by OMB and should be publicly available in the next several months.

The TRI program is also facing criticism over its reporting thresholds for lead. A recent issue paper released Sept. 22 by EPA’s Science Advisory Board (SAB) could bolster industry’s claims that lead reporting is highly

burdensome. An April 2001 rule lowered the reporting threshold by over 20,000 pounds a year forcing many facilities to begin reporting lead. The SAB report says the model used to evaluate lead is incorrectly applied. In addition, a lawsuit is currently pending between a coalition of metal industry associations and EPA to stop the reporting rule (Ad Hoc Metals Coalition v. EPA).

Raising the lead thresholds to previous levels, while they might reduce burdens, would result in less information reported, undermining important right-to-know efforts. Many environmental and public health groups praised EPA for lowering thresholds in order to better protect citizens, especially children. According to the Centers for Disease Control and Prevention, nearly half a million children younger than 6 years of age in the United States have blood lead levels of at least 10 micrograms per deciliter ( $\mu\text{g}/\text{dL}$ ), a level high enough to adversely affect their intelligence, behavior and development. By requiring industry to report lead, communities can trace the presence of the metal in their communities and pressure companies to lower the amount produced and used.

Over the next few months EPA will be analyzing proposals for changing regulations and reporting requirements under TRI.

## **Journalists Decry Ashcroft's Closed Door Speeches**

U.S. Attorney General John Ashcroft has limited his exposure to journalists' questions during his around-the-country speaking tour to respond to growing public concerns about the Patriot Act.

While the American Civil Liberties Union and American Library Association have been singled out by Mr. Ashcroft and the Justice Department for criticizing the excessive secrecy and overly broad powers of the Patriot Act (see related story, "Ashcroft declassifies use of a Patriot Act power"), journalists also are expressing increased concerns about government powers expanded under the Patriot Act.

On September 13, the Society of Professional Journalists (SPJ) sent a letter, to Mr. Ashcroft asking that he make himself more available to the press. SPJ noted that Mr. Ashcroft was granting interviews at his speaking events only to local broadcast journalists. Within days of the letter, Ashcroft responded with a "slight change of heart" and allowed print reporters five minutes to ask questions, according to SPJ.

## **Ashcroft Declassifies Use of a Patriot Act Power**

In recognition of growing public distrust of the government's expanded powers under the Patriot Act, Attorney General John Ashcroft announced that the Justice Department has not used Section 215 of the Patriot Act.

Ashcroft's disclosure came as part of his effort to quell concerns that the law goes too far in giving the federal government powers to track the public's reading habits in bookstores and libraries and seize an organization's computers, files, and "any material thing" as part of an ongoing investigation. Critics are pushing to roll back the Patriot Act and calling for greater oversight of how the federal government is using what the Attorney General called "much-needed new powers."

But don't expect that the Attorney General's revelation signals a new era of transparency. In a memorandum (posted online by the Center for Democracy and Technology) to Federal Bureau of Investigations Director Robert S. Mueller, Ashcroft asserts, "it is generally not in the interest of the United States to disclose information of this nature." The Attorney General's statement raises doubts whether he plans to update the public on a regular basis, if at all again, on uses of Section 215.

The narrow construction of Ashcroft's statement also raises more questions than it answers. If Section 215 powers have never been invoked, how has it been useful in fighting terrorism? Ashcroft's statement does not address whether the Justice Department is getting greater voluntary cooperation from libraries, bookstores and other businesses in their investigations without having to formally invoke Section 215.

Confusion about the government's powers may also be making a difference. The Patriot Act forbids those hit with an order to produce documents under the Patriot Act from talking about it. This gag order does not apply to people hit with subpoenas under criminal investigations unrelated to the Patriot Act. Librarians report fewer incidents of law enforcement officials contacting librarians as part of criminal investigations. But how many times have law enforcement officials contacted libraries and bookstores without invoking the Patriot Act? We know of more than one case in which information was removed from libraries that government officials deemed "sensitive" and no longer appropriate for public dissemination. Unclear is whether these visits to libraries would have been counted as part of a criminal investigation, or how many similar visits have occurred.

The fact that Section 215 has never been invoked may give some small comfort to those who fear the Patriot Act gives government unchecked and out-of-balance powers. In the end, such questions -- and the underlying public

distrust of government -- can be put to rest only when government is less secretive, reports forthrightly on its use of the tools our laws grant it, and thereby shows a stronger commitment to the democratic process.

## **Job Announcement: Coordinator of Right-to-Know Coalition for Journalists**

A new coalition of journalism organizations is hiring a coordinator to help advance freedom-of-information issues. Applications must be submitted by October 15, 2003.

The person in this position would coordinate freedom-of-information (FOI) activities of a large coalition of news/media organizations. Tasks include: monitoring of legislation and litigation, informing coalition members and other groups of issues and developments, helping to formulate a long-term FOI strategy for the coalition, developing a public information campaign, maintaining a web site and electronic mail list, and promoting more press coverage of access and secrecy issues. Applicants should have knowledge of and experience with FOI issues. A legal or journalism background could be helpful but is not necessary. Position is full-time. Salary in the \$40,000-\$50,000 range based on experience. Office will be located in the Washington, D.C. area.

Mail cover letter explaining qualifications for the job, a resume and three references to:

Lucy Dalglish, Executive Director  
Reporters Committee for Freedom of the Press  
1815 North Fort Myer Drive, Suite 900  
Arlington, VA 22209

For more information, call the Reporters Committee for Freedom of the Press at 703-807-2100. No on-line applications will be accepted.



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1742 Connecticut Avenue, N.W., Washington, D.C. 20009

202-234-8494 (phone)

202-234-8584 (fax)

[ombwatch@ombwatch.org](mailto:ombwatch@ombwatch.org)