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Economy and Jobs Watch: Employment Positive, But Still Weak

October's unemployment rate remains essentially unchanged from September's 6.0 percent rate, the Bureau of Labor Statistics (BLS) announced last week. The labor market has improved slightly in recent months, posting employment gains of 126,000 jobs in October, and 125,000 in September.

However, employment growth at these levels still fails to meet the amount of available supply coming into the labor market. In October alone, for example, the BLS's household survey showed an increase in the labor force of 248,000 workers. The Economic Policy Institute says that it would take "150,000 jobs a month ... to prevent the slack in the labor market from worsening."

At this pace, there will be only 1.8 million jobs created over the next year – which is well below the 2.4 million jobs lost since the beginning of the 2001 recession. Moreover, the labor market has failed to keep up with the growth in the working age population – an additional 2.3 million jobs would be necessary to fill this gap. (For more details see Understanding the Severity of the Current Labor Slump.)

In addition, the employment situation across the country varies widely. Some of the harder-hit states are still seeing unemployment rates above 7 percent, including Illinois, Michigan, Washington, Oregon, and Alaska. Since the start of the recession, Massachusetts has lost nearly 5 percent of the jobs in the state; and North and South Carolina have together lost over 200,000 jobs.

Even if the overall labor market strengthens, there will still be significant unemployment across the country for the foreseeable future. Addressing the needs of unemployed workers ought to be a top priority – but the administration seems to be content to highlighting recent strength and ignore the past two and a half years of economic weakness.

Economy and Jobs Watch: Taking the Long View

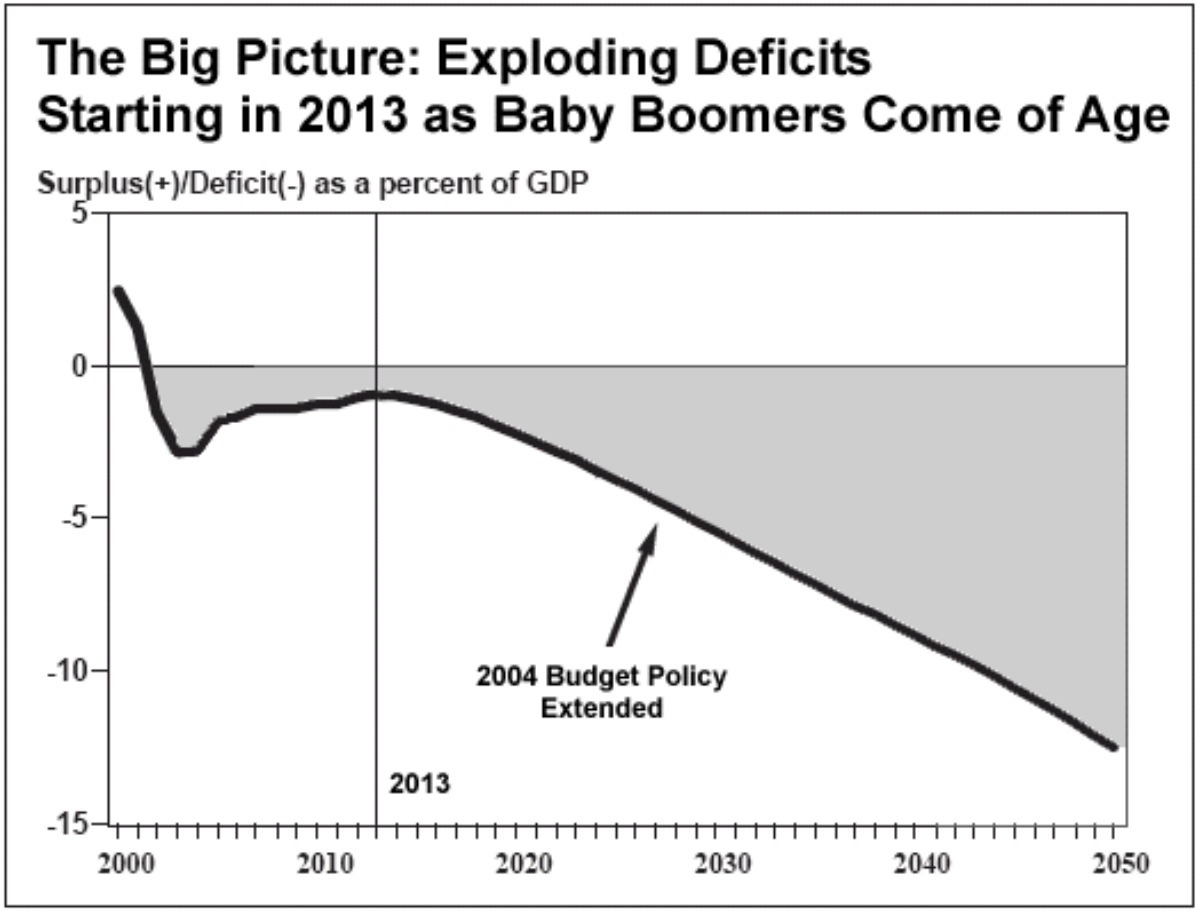
Current economic policy is becoming unsustainable. Current and projected federal deficits are reaching the point where many economic commentators worry about the long-run viability of current policy.

Here is what we know now.

- At just over 16 percent of Gross Domestic Product (GDP), federal revenue is at its lowest level since 1959.
- The federal government deficit for 2004, including the war supplemental, is expected to be above $500 billion. This is a tremendous drop from a $236 billion surplus in 2000.
- Excluding the social security surplus, the deficit for 2004 is expected to be 6.2 percent of GDP, which would be the largest deficit since the Second World War.
- Over the next 10 years, under current policy, nearly $6 trillion will be added to the federal debt.

And this is the good news. Once we begin to look farther out – beyond the usual 10-year horizon – things look

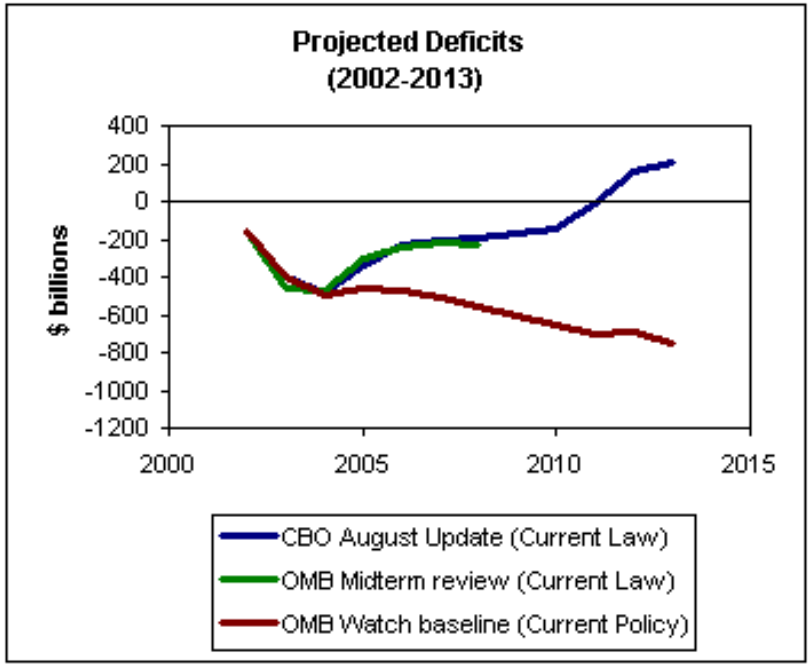
much bleaker. Under current law (see graph below), as projected by the Bush administration, the budget situation is projected to slightly improve until 2013, and then it begins a steep decline as the baby boomer generation starts to retire.



Source: OMB, The Budget for Fiscal Year 2004, Historical Tables; U.S. Department of Treasury

Even this scenario is optimistic. Once you extend expiring tax cuts, reform the alternative minimum tax, reform Medicare, and account for realistic growth in discretionary spending; the next 10 years show only continuing

declines (see graph below). In addition, both scenarios assume that there will be no recession or major unforeseen expenses over the next 10 years.



Source: OMB Watch: Beyond the Baseline: 10 Year Deficits Likely to Reach $5.9 Trillion

Much is being made of a strong quarter of growth and the insignificant drop in employment numbers; however, under current policy, we are simply borrowing this mild success from our future – and the bill will come due before too long. Now is the time to address the issue by strengthening the revenue base and fixing the tax system to ensure the financial health of the country.

Report from the Treasury Department "Death Tax" Roundtable

On Nov. 6 the Treasury Department hosted a “Roundtable on Jobs, Growth, and the Abolition of the Death Tax." There was surprisingly little substance discussed at this one-sided event – most participants opted to rehash old rhetoric opposing the estate tax. There was no new serious research discussed and no new data presented.

The "invitation only" event was held in the aptly named “cash room” at the Treasury Department, and featured Treasury Secretary John Snow, Council of Economic Advisors

Chair N. Gregory Mankiw, Assistant Secretary of the Treasury Pamela Olson, and Nobel Laureate Vernon Smith. There were two panels - one on the “economics” of the tax, the other on the "reality" of the tax. The later panel consisted of representatives from a farm group and a small business group.

All the speakers were very pro-repeal. The "questions" were strongly pro-repeal as well. Most of the speeches prepared to address the economics of the estate tax centered on the work and/or savings disincentive of the tax. There was a willful ignorance of the fact that lower taxes on multi-millionaires means higher taxes or fewer services for the rest of us, and that this would reduce or eliminate any overall economic benefits of a repeal.

In additions, there was a general feeling that the repeal would benefit everyone -- not just millionaires -- by creating more savings, a greater capital stock, stronger businesses, higher growth rates, etc. The speakers and crowd seem to be very out of touch with the reality of the economic situation for the majority of Americans -- there was even moaning about the “burden” of having to deal with, or plan for, the estate tax. Trickle down and supply side theories were pervasive, and there was no realization that people are indeed left behind -- even in a growing economy.

Overall, the event looked very much like a pep-rally for the anti-estate tax forces. Even so, attendance was not heavy: just over half of the 150 seats were filled at the start, and only about one third were filled at the end. Even the Treasury Secretary didn’t think much of it -- he left after his 10-minute speech.

See also

- TaxWire’s Story on the roundtable

- Secretary Snow's Remarks
- Greg Mankiw's Remarks were virtually identical to a speech given two days before at the National Press Club.

Spending Cuts? What Spending Cuts?

The long-term picture for discretionary domestic spending looks grim.

The Congressional Budget Office released its Monthly Budget Review on Nov. 7.

In FY 2003 spending (outlays) increased by $146 billion over FY 2002. The rate of spending growth in FY 2003 was 7.2 percent, slightly below the 7.9 percent rate of spending growth in FY 2002.

Nevertheless, the positive percentage increase in the rate of spending does not take into consideration the important points below.

- While the Monthly Budget Review paints a broad picture that cannot easily be disaggregated into categories like "discretionary" and "non-discretionary," the rate of growth of spending was not evenly distributed. The rate of growth in military spending (a discretionary spending category) was 17.1 percent. The rate of growth in Medicare was 8.2 percent and in Medicaid (entitlements) was 8.9 percent. The rate of growth in "other programs and activities," was 8.5 percent, but that category includes homeland security, which saw the creation of an entire Cabinet Department, and emergency non-military spending. The emphasis has been on how discretionary spending is growing well beyond Bush's promised 4 percent growth rate, massive cuts have not been happening, and government is growing, not shrinking, at an unprecedented rate. The Washington Post reported on November 12 that according to congressional budget panels, discretionary spending was up 12.5 percent in FY 2003. However, the real picture must take into account the war and our continued presence in Iraq and Afghanistan and the attack of September 11, 2001, which have guaranteed

that military and homeland security spending have been behind much of that growth in discretionary spending.

- Second, there is considerable evidence of state cuts in programs and services, and increased demand for social services provided by nonprofit service providers. State budgets, unable to run deficits, have been hard hit during the past year, and things are not expected to get better for several years.
- Finally, and most alarmingly, are the inevitable and truly draconian tax cuts that are yet to come. In FY 2003 tax revenue fell for the third year in a row by $71 billion, 3.8 percent below revenue in 2002, and a whopping 12 percent below 2000. Deficits are rising and the national debt is growing. The deficit for FY 2003 is $374 billion, or about 3.5 percent of GDP (gross domestic product). The "on-budget" deficit that does not include Social Security trust funds or Postal Services transactions was $535 billion. When the big demographic change of massive baby-boomer retirement occurs, and Social Security revenue no longer runs a surplus or is unable to cover Social Security payments to beneficiaries, deficit figures will start looking much worse.

In conclusion, the only way to avoid huge future cuts in domestic programs and services will be tax increases, which are never politically popular. Things may not look so bad right now, but the federal government's ability to fulfill its basic social services and healthcare obligations to citizens is only at the beginning of a long downhill resolution.

Internet Tax Moratorium Expires

Legislation that prohibits states and localities from taxing the fee a user pays to an Internet Service Provider (ISP) to connect to the Internet expired Nov. 1, 2003.

There is considerable confusion about the Internet tax ban: it has nothing to do with charging a tax on purchases made over the Internet, or charging a tax every time someone dials into the Internet. It is a prohibition against taxing the charges a user pays to an ISP to connect to the Internet, as well as taxes that would discriminatorily apply only to Internet technology and use.

In contrast to the prohibition of taxes on Internet service, charges a user pays to a company for telephone service are taxed, and have been since the federal tax was first imposed as an "excise" or "luxury" tax during the Spanish-American War. That tax on telecommunications services has also become an important source of revenue for state and local governments, amounting to more than $20 billion a year in revenues.

The underlying reason for banning taxation of Internet access was to encourage the growth of the Internet and to prohibit "discriminatory" taxes that single out the Internet for special taxation. Some have suggested that banning the tax also makes it easier for low-income people to access Internet services.

"The Internet Tax Non-Discrimination Act of 1998" has already been temporarily extended once. Even though the ban has already expired, it is considered unlikely that there will be a rush to impose taxes on Internet access. A vote in the Senate to extend the moratorium on Internet access (S. 150) scheduled for Friday, Nov. 7 was postponed. Congressional action on extending the ban will probably take place this week. There is general agreement that an extension of the moratorium on taxing access to the Internet should be extended. There are currently two major points to this argument:

- The proposed legislation would not just extend the moratorium, but make it permanent.
- As it is worded, the proposed legislation broadens the definition of Internet access to possibly include the underlying telecommunications services used to supply Internet access.

The rapid development of alternative forms of telecommunications, like DSL, broadband, cable, satellite and wireless means that broadening the ban on Internet access taxes could extend to traditionally taxable

telecommunications, if those services include Internet access. For instance, if a consumer gets both telephone service and Internet access through a DSL line, the argument could be made that neither could be taxed. Broadening the ban to extend to new technologies could lower state and local revenues to almost $9 billion a year by 2006, according to the Multistate Tax Commission.

Since Internet access has become more complicated than the original "dial-up" connection, and the technology for Internet and telephone access is rapidly changing, a permanent ban on taxation of Internet access, without more careful study and consideration, is a bad idea. Care should be taken to exempt from taxation only the Internet service provision. The possibility of depriving states and localities of long-standing telecommunications revenue, especially given the fiscal crises in most states, by broadening the definition of Internet access, is not a good idea.

Consideration over whether taxes on Internet access really would inhibit growth of the Internet, and exacerbate the so-called "digital divide" must ensue. Why should telephone service be taxed, and Internet service not? Perhaps there should be a tax on Internet service with the proceeds going to efforts extending Internet access (the monthly charges themselves are likely prohibitive to many) to low-income families and schools?

Appropriations, the Only Legislation Congress Must Pass Every Year

An omnibus appropriation bills seems all but inevitable, since Congress still hasn't passed eight of the thirteen appropriations bills that fund government.

Many people are finding it harder and harder to understand why Congress keeps pulling all-nighters and marathon sessions, but seems unable to pass the only legislation that it is mandated to pass every year. Congress has failed to pass the appropriations necessary to fund the government for the 2004 fiscal year, which already started on Oct. 1, 2003. The fourth continuing resolution extends funding for all appropriations that have not yet been passed until Nov. 21, which is when Congress hopes to begin its recess for the holidays.

There are thirteen appropriations bills. NOTE: "Homeland Security" is a new appropriations category, but there are still thirteen appropriations bills since the Treasury-Postal category is now included in the Transportation category (now the Transportation-Treasury appropriations bill). For more details on the bills and links, see Thomas Status of FY 2004 Appropriations Bills.

The following bills have been passed and signed into law by President Bush:

· Defense
· Homeland Security
· Legislative Branch
· Interior

The following bill is awaiting the President's signature:

· Military Construction

Two conference reports have been completed, but still need to be voted on by the House and Senate:

· Energy and Water
· Transportation-Treasury

Three bills are currently in conference:

· Labor-HHS
· Foreign Operations
· Agriculture

Three bills have passed the House and have still not passed the Senate:

· Commerce-Justice-State
· District of Columbia
· VA-HUD

It appears that an omnibus spending bill is inevitable and will include Commerce-Justice-State, DC, and VA-HUD, and probably at least a couple of the three bills in conference, most likely Labor-HHS (stalled over the Labor Department's proposed over-time rule) and Agriculture (stalled because of a proposed one-year delay in country-of-origin labeling of meat).

An omnibus bill makes passage of disputed appropriations bills easier -- an objectionable provision in one bill may get ignored in the effort to pass the remaining appropriations. Also, an omnibus bill is often a vehicle for other legislation, which may have nothing to do with appropriations. This omnibus bill will likely be used for a number of non-spending provisions, including authorization bills that have not been passed.

Omnibus bills do not make good legislation. Many will not know what is in the bill, including members of Congress who will be voting on its provisions. Dumping a bunch of disparate appropriations into one bill, adding extraneous provisions, and voting on the whole thing is no way to thoughtfully and carefully make appropriations for various departments.

Whether Congress will get its legislative business done by Nov. 21 is unknown, and it is entirely possible that they will be back after Thanksgiving.

EPA Sheltering Information Under Gag Order

A recently leaked internal memo from the Environmental Protection Agency (EPA) orders agency employees to refrain from discussing information regarding enforcement actions. The gag order came a week before the Bush administration revealed it would drop pending investigations of 70 power plants accused of violating the Clean Air Act (CAA).

The Oct. 28 memo from J. P. Suarez, the assistant administrator for the Office of Enforcement and Compliance, instructs staff to refrain from discussing "sensitive enforcement information" with external parties. These third parties include:

- Congressional members and staff;
- State or local government representatives that do not enter into a joint prosecution agreement with the Federal government;
- The media;
- Industry, trade associations, environmental groups, public interest groups; and
- The public.

The information the memo lists as restricted is:

- Information regarding the status of an investigation, negotiation, litigation, or settlement discussion;
- Sensitive information that may affect how a case proceeds, even though the information may not be

privileged;
- Non-public information that was inadvertently or otherwise disclosed; and
- Draft press and communication documents, such as press releases or advisories.

This memo follows a troubling precedent of attempting to silence EPA employees on controversial or embarrassing issues. Last year the Bush administration issued a similar gag order to EPA after perchlorate, a rocket fuel ingredient, was found in the nation's drinking water and lettuce supply. The gag order prevented EPA scientists from discussing two studies that show lettuce absorbs large amounts of perchlorate. The Pentagon and defense contractors opposed EPA's risk-assessment and are resisting efforts to require testing groundwater.

Data Quality Lawsuit Settled Out of Court

A controversial lawsuit challenging global warming was recently settled out of court; thereby leaving the issue of whether federal agencies' data quality guidelines are judicially reviewable unanswered.

The suit, brought by the anti-regulatory group Competitive Enterprise Institute (CEI) against the White House Office of Science and Technology (OSTP), challenged the underlying data of the inter-agency "National Assessment of the Potential Consequences of Climate Variability and Change" (NACC). The government bases its global climate change statements on the NACC. CEI asserts that scientists used flawed computer models to generate the impact of global warming. The suit also challenged the document's compliance with both the Global Change Research Act and the Administrative Procedure Act.

An out of court settlement was reached Nov. 6 between CEI and OSTP. The agency posted a notice stating that the NACC was not "subjected to OSTP's Information Quality Act Guidelines." The notice appears on the U.S. Global Change Research Program's website where NACC is available. In a press release by CEI that announces the settlement, the organization proposes that its next data quality targets are the EPA Climate Action Report (CAR) and any upcoming NACC reports. Since CEI exhausted all administrative options for data correction with EPA for the CAR, it is unclear if and how the organization will pursue this claim.

Since the promulgation and implementation of the data quality guidelines at all federal agencies, it has been debated whether the guidelines are judicially reviewable. CEI's lawsuit would have been the first test of whether

the guidelines are enforceable by the courts. Several agencies stress their data quality guidelines are not final rules nor are they legally binding. If it is determined 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. While it appeared that this lawsuit would answer the question of the ability to review data quality guidelines in court, the settlement has delayed that precedent setting decision.

It has been rumored that the next data quality petition that has potential to turn into a lawsuit is to the National Heart, Lung and Blood Institute from the U.S Chamber of Commerce and the Salt Institute. The petition challenges information that claims or suggests that reduced sodium consumption will result in lower blood pressure in all individuals. See OMB Watch's analysis on this challenge.

To see more data quality challenges and view the full lawsuit analysis, visit http://www.ombwatch.org/article/articleview/1419.

Energy Provision Helps Whistleblowers

A small provision sponsored by Rep. Edward Markey (D-MA) in the new Energy Policy Act (H.R. 6) would prohibit the Energy Department from reimbursing contractors defending themselves from wrongfully terminated or persecuted whistleblowers.

Currently the government can reimburse contractor companies for their legal fees while whistleblowers must pay all expenses on their own. This encourages extended court battles where even after winning in court, a whistleblower could face appeal after appeal with the taxpayers footing the contactor's bill the entire way.

According to the Project on Government Oversight (POGO), a whistleblower advocacy group, reimbursing contractor legal fees in wrongfully terminated whistleblower cases currently costs taxpayers millions annually. Apparently, the Los Alamos National Laboratory alone spent over $6.6 million from 1991 to 2001 to reimburse contractors defending themselves in 37 employee cases.

Unfortunately, the Senate version of the bill does not contain a similar provision and the bill is still tied up in House-Senate negotiations.

High Court Asked to Lift Secrecy in Habeas Corpus Proceedings

The Reporters Committee for Freedom of the Press has asked the Supreme Court to hear a case in which the plaintiff is identified only by his initials and 63 of 65 motions are kept secret.

The existence of the case (M.K.B v. Warden) was discovered when a court clerk mistakenly inserted files related to the case in a public docket and a reporter discovered the misfiled papers, according to news reports.

In its friend-of-the-court brief, the Reporters Committee argues that the U.S. District Court judge who ordered the records be kept secret never provided a justification for the need to establish such secrecy, thereby violating the First Amendment's guarantee of press access to court proceedings.

FOI Advocates Get Mixed Results from Defense Authorization Bill

Open government advocates scored what optimists might call a minor victory when Congress granted the National Security Agency (NSA) a narrowly-tailored exemption from the Freedom of Information Act (FOIA), according to Secrecy News.

The exemption as included in the recently passed Defense Authorization Act for FY 2004 keeps historical documents accessible under FOIA and includes language clarifying Congress' intent to apply the exemption only to information that reveals how the NSA collects intelligence. While the Central Intelligence Agency collects and analyzes information through public and human sources, the NSA specializes in intercepting signals and other electronic communications.

The authorization bill also includes language that provides public disclosure of no-bid contracts for the reconstruction of infrastructure in Iraq. Federal agencies that enter into contracts for Iraq reconstruction without

going through a competitive bidding process are required by the bill to make public:

(a) The amount of the contract,
(b) A description of the scope of the contract,
(c) A list of those approached to enter into a contract,
(d) A justification for the need to avoid an open and competitive process.

House Members Object to Conservation Measure in CARE Act

Another contentious issue has been added to the list of items that must be worked out before the CARE Act can go to conference committee. Last week 27 Republican House members signed a letter opposing a conservation tax incentive included in the Senate version of the bill.

Section 107 of the CARE Act gives property owners a 25 percent capital gains tax break if they sell land or water rights to nonprofits or governmental units that will use it for conservation purposes. Reps. Wally Herger (R-CA) and Steve Pearce (R-NM) are leading the effort, calling it “inherently unjust,” since faith-based organizations would not have a similar incentive for property purchases, and conservation groups “do not perform charitable acts.” However, conservation groups like The Nature Conservancy are also public charities under Section 501(c)(3) of the tax code. There is nothing in either the House or Senate bills that limit giving incentives to religious organizations.

Majority Whip Roy Blunt has expressed opposition to the measure. The American Land Rights Association is also asking that this measure be dropped from the bill in conference.

Two weeks ago Senate Democrats were objecting to their exclusion from conference-committee meetings on a number of bills by refusing to add the child tax credit and extension of several tax provisions to the CARE Act. There has been no change, despite the urgings of Sen. Rick Santorum (R-PA), a sponsor of the bill. In a Nov. 4 statement on the floor he called on Democrats to use another vehicle for voicing their objections to the way conferences are being handled and put emphasis on the fact that the CARE Act is a bipartisan bill. Santorum also said, “This isn’t going to necessarily be an easy conference.” He noted that Senate bill pays for the tax incentives and the House bill does not.

On Nov. 4, a group of religious organizations on both sides of the charitable choice debate sent a letter to the Senate asking that the bill move forward noting, "There is broad agreement that the increase in resources promised by these measures is urgently needed." They also asked that the Senate ensure that $1.375 billion in funds for the Social Services Block Grant be included in the final bill. The House bill does not provide funds for this program.

New Developments on Nonprofit Issues

The Supreme Court won't hear the case of a nonprofit shut down under the PATRIOT Act – the IRS ends its special process for reviewing revocation of tax exempt status – Parties settle lawsuit in Georgia over religious discrimination in hiring for state funded jobs – and a new website promotes electronic filing of IRS Form 990. More details below:

Supreme Court Won't Hear Appeal of a Nonprofit Shut Down Under PATRIOT Act
On Nov. 10, the Supreme Court decided not to consider the case of Global Relief Foundation, which was shut down by the Treasury Department in Dec. 2001, because of alleged ties to terrorism. The 7th U.S. Circuit Court of Appeals rejected Global Relief's claim that the asset seizure was unconstitutional. For background on the history of the case see the September issue of OMB Watch's Executive Report.

IRS Ends Special Review Process
The Internal Revenue Service (IRS) has abolished a little known "special review" process that was used last year to reinstate the tax-exempt status of two groups tied to former Rep. Newt Gingrich. The Abraham Lincoln Opportunity Foundation and the Howard H. Callaway Foundation had lost their 501(c)(3) status because of partisan political activities.

The IRS said it used the process in "very, very few cases," and that the Gingrich groups were not the only ones. However, confidentiality laws protect the identity of the other groups. The IRS said the special review process is being eliminated because it caused "undue and unanticipated confusion," rather than increasing public confidence in IRS decisions. For more details on the ALOF and Callaway case see April article in the OMB Watcher.

Parties Settle Lawsuit on Religious Discrimination
The state of Georgia, the United Methodist Children's Home and two of its employees have settled lawsuits

stemming from religious discrimination in hiring and firing for publicly funded positions. On Nov. 5 Lambda Legal, which represented plaintiffs Aimee Bellmore, Alan Yorker and several state taxpayers, announced that the state and children's home had agreed to new policies that forbid religious discrimination against current or prospective employees or program beneficiaries. The state of Georgia's constitution prohibits any "direct or indirect" taxpayer support for religious congregations. Georgia Governor Sunny Perdue has called for an amendment to the state constitution that would relax this standard.

New Website Promotes Electronic Filing for IRS Form 990

The Electronic Data Initiative for Nonprofits (EDIN), a consortium of nonprofit groups working for improved accountability, launched a website on Oct. 31 that provides information about electronic filing of IRS Form 990, the annual information return for nonprofits. The IRS is scheduled to make electronic filing of 990 available next year. The site includes information about software and subscription to a free monthly newsletter.

HHS Proposes Survey of Head Start Salaries

On Nov. 13, the Dept. of Health and Human Services (HHS) published a request for comments in the Federal Register stating their intention to survey all 2,700 Head Start grantees in the country about salaries and benefits of their employees. The survey is in response to a request from members of the House Education and Workforce Committee, which asked for a "review of the financial management of Head Start grantees nationwide."

In order to identify the top 25 salaries and benefits of Head Start Executives, HHS is proposing to mail a survey to all programs. They estimate it will take each agency 9 hours to complete the survey, including retrieving information from each grantees' IRS Form 990, SF 424 (application) and PIR data. The total estimated time drain on Head Start programs is 24,300 hours nationwide.

HHS has asked the Office of Management and Budget (OMB) to approve the survey under emergency powers, within 30 days. No justification is offered to explain why this is an emergency. The real "emergency" may be that the President's proposed restructuring of Head Start has met with stiff opposition from the Head Start community. Earlier this year HHS threatened grantees with sanctions for lobbying against the proposal, even with private funds. The National Head Start Association sued, and was successful in forcing HHS to send a corrected letter. For details see the July 14 OMB Watcher.

The announcement did not include the survey form or other supporting documentation. OMB Watch has requested copies and will update this information when we receive it. The information can be requested by sending an email to rsargis@af.hhs.gov, or by calling Robert Sargis at OMB at 202/690-7275. Comments are due by Dec. 8.

Greenpeace under Ashcroft Attack

The unusual federal prosecution of Greenpeace poses a threat to first amendment rights.

Greenpeace is being prosecuted by John Ashcroft's Justice Department because of the protest actions of two of its supporters. Last year, two Greenpeace activists climbed aboard a ship carrying Amazon mahogany wood into the Port of Miami. The two activists posted a banner that said, "President Bush: Stop Illegal Logging" and were arrested and charged with misdemeanors. Now Greenpeace has been indicted in Miami with violating an obscure 19th century law meant to keep boarding house owners from boarding arriving ships to recruit sailors. The trial is set for December in Miami, Florida. If convicted, Greenpeace could be fined up to $10,000, placed on probation and required to report to the government on its activities. It could also lose its tax-exempt status.

Greenpeace lawyers say this is the first time an organization has been prosecuted for the actions of its members. Legal experts point out that southern prosecutors harassed the National Association for the Advancement of Colored People (NAACP) in the 1950's and 1960's, but note this case is also unusual and questionable. Bruce S. Ledewitz, a law professor at Duquense University who has studied the history of dissent in America told the New York Times "there is not only the suspicion but also perhaps the reality that the purpose of the prosecution is to inhibit First Amendment activities."

The ship that was boarded by the two activists was illegally importing mahogany wood from Brazil. Greenpeace has been working with the Brazilian government against the trade because the tree is an endangered species, and its logging results in widespread deforestation on indigenous land. Greenpeace said they marked the illegal mahogany on the ship, but the government has not seized it. Instead, prosecutors are saying their information was mistaken. At the end of October, Greenpeace's ship, Esperanza, was denied access to the Port of Miami on the grounds that it is a security risk.

Holding an entire organization liable for the actions of a couple of its supporters sets a dangerous precedent. From the Boston Tea Party to the civil rights movement, direct action in public protest has helped to bring positive change throughout the history of the United States. Direct action is often an effective and legitimate form of

advocacy, along with legislative lobbying, litigation, regulatory proceedings, rulemaking, action before administrative agencies, public education, and organizing.

Like a beaver, Ashcroft keeps chipping away at our civil liberties. If the prosecution of Greenpeace succeeds, it will leave behind a chilling effect on all organizations with members who may engage in any form of direct action. Greenpeace is asking the public to write a letter to John Ashcroft asking him to end the prosecution of Greenpeace and prosecute illegal loggers instead. For more information see Greenpeace USA's web site.

Church Electioneering Bill Gains Opposition

Opposition grows to church electioneering bill.

Rep. Chet Edwards (D-TX) sent a "Dear Colleague" letter to all members of the House of Representatives last month urging them to withdraw their names as co-sponsors to H.R. 235, the Houses of Worship Free Speech Restoration Act. Edwards, like many others, fear that H.R. 235 would turn the sanctuaries and pulpits of America's houses of worship into partisan political rally halls, soft money conduits, and a vehicle for tax-deductible donations for candidates. Edwards' action prompted a host of civil rights and religious organizations to also write letters to their members of Congress. See OMB Watch's fact sheet on H.R. 235 for information on the bill and who supports and opposes it.

Contrary to Bush's Belief: Faith-based Organizations are Not Better Social Service Providers

The first academic study comparing the effectiveness of faith-based and secular providers of social services was released this month. It showed in one area – job training – secular groups were more effective than faith-based groups. But the research notes that broad conclusions can not be reached yet.

Researchers from the Center for Urban Policy and the Environment, a part of Indiana University's School of Public and Environmental Affairs and Indiana University-Purdue University Indianapolis, have begun work on the Charitable Choice Research Project. With funds provided by the Ford Foundation, the Charitable Choice Research Project is an effort to study the long-held assumptions of charitable choice supporters that faith-based organizations are more effective in providing social services than their secular counterparts.

Government agencies have a long history of contracting with faith-based organizations to provide social services. President Bush has highlighted and focused public debate on expanding these grants and contracts through his "Faith Based Initiative." Bush argues that greater participation by faith-based organizations in providing government funded services is necessary because religious social service providers are more effective than secular providers.

Contrary to the President's belief, after three years of study this new research found that faith-based organizations operating job-training programs placed 31 percent of their clients in full-time employment, compared to 53 percent by the secular-based organizations. Moreover, clients who received job training from faith-based providers were substantially less likely to receive health insurance.

This study concedes that its research is limited and broad conclusions should not be made. However, the study did find that states are not monitoring constitutional violations and did little to educate grantees about constitutional compliance. The Charitable Choice Project recommends that faith-based grantees look at the settlement in Bellmore v. United Methodists Children's Home and Department of Human Resources Georgia for guidance.

Restrictions Lifted on Cooperative Nonprofit Mailings

On Nov. 13, the United States Postal Service (USPS) lifted a ban on commercial mailers profiting from charity appeals sent at discounted postal rates.

New rules, issued on October 9, 2003, allow commercial mailers to receive funds from the production and distribution of fundraising mail sent on behalf of charities at cheaper nonprofit postal rates. Such contractual relationships are known as cooperative mailing arrangements. Other nonprofit mailings sent through commercial mailers -- including newsletters and solicitations for goods and services -- will still be subject to the cooperative mailing rule.

Nonprofits voiced concern that rule changes were a concession to commercial interests by a cash-strapped postal service, which would lead to increased junk mail, and exploitation of legitimate charities by unscrupulous commercial mailers. A number of nonprofit and commercial services -- including the Alliance for Nonprofit Mailers, Independent Sector, and the Alliance for Fundraising Professionals -- urged USPS to instead adopt a set of safeguards aimed at curbing potential abuses. These included ensuring that nonprofit leadership and management not overlap in any way with that of the commercial mailer; guaranteeing that control of the actual donor list and donated funds themselves go directly to the nonprofits; and preventing commercial services from laying intellectual property claims on any aspect of distributed materials.

USPS adopted none of the suggested alternatives. The final rule, however, does require commercial mailers to provide nonprofits with copies of donor lists, as well as contact information and the amount contributed for each donor. This submission can be waived in writing by the nonprofit. USPS also suggested that nonprofits, fundraising associations, and government agencies consider providing training and education for groups, and that nonprofits themselves review their current and proposed mailer contracts to see if they are operating under the most advantageous terms.

In a letter dated November 7, 2003, four congressional Democrats called upon both the Postmaster General and USPS Board of Governors to reconsider the impact of the rule changes in light of abuses by commercial mailers. Sen. Joseph Lieberman (D-CT), ranking member on the Senate Governmental Affairs Committee; Rep. Henry Waxman (D-CA), ranking member of the House Government Reform Committee; Rep. David Obey (D-WI), ranking member of the House Appropriations Committee; and Rep. John Oliver (D-MA) ranking member of the House Appropriations subcommittee on Transportation, Treasury, and Independent Agencies requested that greater protections against fraud and abuse be adopted. The letter warns of future violations similar to the recent

$4.5 million settlement from a Boston-based commercial mailer that distributed 78 million pieces of mail solicitations for charities under nonprofit mailing rates illegally, while pocketing 76 percent of donations.

Administration Halts Investigations of Clean Air Violations

The Bush administration has decided to stop investigating 70 power plants suspected of violating clean air standards, and will consider dropping 13 other cases that were referred to the Justice Department, according to the Washington Post.

This follows EPA's recent decision to substantially weaken its New Source Review (NSR) program, which governs power-plant emissions. Under this change, plants can perform more extensive upgrades without having to install the latest anti-pollution controls (as they were previously required to do) -- even if upgrades result in new emissions. Specifically, anti-pollution controls must be added only if upgrades within a single year exceed 20 percent of the value of all equipment used to produce electricity. Upgrades below this high threshold are now considered "routine maintenance," which is exempt from NSR.

In 1999, the Clinton administration uncovered evidence that the previous "routine maintenance" standard was being widely abused, and moved to compel compliance by launching a host of lawsuits. The Bush administration half-heartedly committed to move forward with these lawsuits, most of which are still pending, but has now decided not to initiate new litigation even where violations are found. Instead, past violations are being judged by the new, weaker standard -- even though it was not the law at the time.

"I don't know of anything like this in 30 years," an EPA enforcement lawyer told the New York Times, adding, "If you say, 'I'm not going to enforce the law at all,' that is doing rulemaking without a rulemaking process."

EPA had already notified roughly two dozen plants under investigation that it had uncovered environmental violations, an agency official told the Times. However, these cases will now be dropped.

"Just weeks ago, we were assured that the administration would continue to prosecute polluters who violated clean air rules in the past," said Sen. James Jeffords (I-VT), the ranking member on the Environment and Public Works Committee. "Now they're saying let's just pretend nothing bad ever happened. That is like saying, 'Let's

pretend that the thousands of lives shortened by increased pollution from those illegal activities don't matter.' The combined effect of the change in rules and the evisceration of enforcement cripples the Clean Air Act."

This rollback originated with the Cheney energy task force. In March 2001, a lobbyist for utility-giant Southern Co. -- which was being sued by the Justice Department for illegally upgrading 10 of its plants -- e-mailed a Department of Energy official suggesting changes to NSR for inclusion in the administration's energy plan.

The Cheney task force responded by calling for a review of the program, along with ongoing NSR enforcement actions, which included the litigation against Southern Co., the leading polluter among utilities. (Southern Co. forked over $3.4 million in campaign contributions for the 2000 and 2002 elections, with 70 percent going to Republicans.)

Needless to say, the subsequent changes to NSR have severely undercut the Clinton-initiated lawsuits, recently forcing the Justice Department to backpedal in the middle of a case against a Baldwin, Ill., plant owned by Dynegy Midwest Generation Inc. "In light of EPA's change of position as to its interpretation of the Clean Air Act," the Justice Department stated, "the United States does not rely on any prior statements it has made to this Court that a very narrow construction of the 'routine maintenance' exemption is required by the Clean Air Act itself."

Toxic Waste Cleanups Decline

The number of toxic waste sites cleaned up under the Superfund program declined for the third straight year, according to a recent EPA report.

In fiscal year 2003, EPA completed work at just 40 toxic waste sites, compared with 42 in FY 2002 and 47 in FY 2001. In the last four years of the Clinton administration, EPA completed an average of 87 cleanups per year.

"We just have fewer dollars to start new projects," Marianne Horinko, an EPA associate administrator who oversees toxic cleanup, told the New York Times.

The Superfund program, which was established to locate, investigate and clean up the nation's worst toxic waste sites, is funded primarily by an industry-financed trust fund. This fund -- after which the program is named -- was created through a tax imposed mainly on chemical and petroleum companies, the idea being that they should have to cover the costs of cleaning up their own pollution.

Since the tax expired in 1995, the program's funds have dwindled. Yet contrary to its predecessors, the Bush administration has opposed reauthorization of the tax, leaving Superfund strapped for cash. In fact, the trust fund was scheduled to run out of money last month, according to recent projections by the General Accounting Office.

"We teach our children that they are responsible for cleaning up the messes that they make," said Carl Pope, executive director of the Sierra Club. "The Bush administration should demand no less of corporate polluters."

Proposals to Lighten TRI Burden Likely to Reduce Information

The Environmental Protection Agency (EPA) recently initiated Phase II of a stakeholder dialogue to develop options for reducing the burden associated with reporting under the Toxic Release Inventory (TRI). EPA is seeking reactions and comments on several burden reduction options outlined in an online white paper.

The EPA's burden reduction white paper details five specific options that the agency appears to be considering, as well as a vague catch-all sixth option that encourages comments on ideas not detailed in the paper. Unfortunately, each of the burden reduction options described in the paper also represents a significant loss of information for the public.

EPA's five ideas detailed in the paper include:

- Raising reporting thresholds for small businesses so that fewer toxic releasers would be required to report under the program;
- Raising reporting thresholds for certain classes of facilities or chemicals so that fewer facilities would have to

report on fewer releases;
- Reducing the eligibility requirements for allowing more facilities to file the simpler and less informative TRI Form A;
- Allowing facilities that meet certain criteria to simply file a “no significant change” report if the facility’s toxic releases are not significantly different from a baseline; and
- Allowing facilities to report toxic releases in ranges rather than specific amounts.

The range of burden reduction proposals is disappointing. Reporting industries would most likely support any and all of these proposals. While each proposal would certainly reduce the reporting burden, they do so by sacrificing either the amount or the accuracy of data collected under TRI. The TRI program has been a flagship-reporting program for EPA, demonstrating the usefulness of environmental data to the public and the power of information in producing change.

Given the importance of the TRI program and demonstrable progress it has spurred, it is surprising that EPA did not include at least one proposal preserving the level of information and suggesting greater education and use of electronic reporting. In a period when the government is continually advancing use of the Internet through e-government and e-rulemaking policies, this seems like an obvious option to explore. The agency is also using this opportunity to solicit comments on possible enhancements to its TRI-ME reporting software, but any proposals for the software would only aim to further reduce reporting burden.

EPA is accepting comments through Jan. 5, 2004 and has posted online both the white paper and federal register notice explaining how to submit comments.

White House Grants Limited Access to 9/11 Information

Last week, the White House agreed to grant the 9/11-investigation commission limited access to portions of classified presidential briefings. The commission will have some degree of access to briefings from both the Bush and Clinton administrations.

The decision comes after the chairman of the panel threatened the White House with a subpoena if the documents were not released. While the willingness of the White House to grant some access is a positive gesture, many feel that the agreement is not enough.

The White House will be able to remove information from the Presidential Daily Briefings before the panel sees the transcripts. This could amount to pages of redacted information. Additionally, only a four-person subcommittee would review these portions with restrictions on what they could share with the entire 10-person commission. In fact, any notes the subcommittee takes can also be reviewed and censored by the White House to remove "sensitive" information.

Two Democratic members of the commission voiced disapproval on the agreement, arguing that less than full access compromises the investigation. Former Representative Timothy J. Roemer believes that the terms would allow the White House to hide any politically embarrassing "smoking guns."

Ironically, the commission is not publicly releasing the full details of the compromise. This has sparked further frustration among those looking for answers about 9/11. The Family Steering Committee, a victims' family group, has deemed any agreement that does not allow full access to presidential briefings unacceptable.

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