

FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR FISCAL YEAR 2008

WEDNESDAY, APRIL 11, 2007

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 3:12 p.m., in room SD-192, Dirksen Senate Office Building, Hon. Richard J. Durbin (chairman) presiding.

Present: Senators Durbin, Nelson, Brownback, and Allard.

OFFICE OF MANAGEMENT AND BUDGET

STATEMENT OF ROBERT J. PORTMAN, DIRECTOR

ACCOMPANIED BY ROBERT SHEA, ASSOCIATE DIRECTOR FOR MANAGEMENT

STATEMENT OF SENATOR RICHARD J. DURBIN

Senator DURBIN. Welcome to this meeting of the Senate Appropriations Subcommittee on Financial Services and General Government. We continue our budget hearings today with the Office of Management and Budget (OMB).

We welcome Director Rob Portman to the hearing along with his staff and associates.

I welcome my colleague, Senator Nelson of Nebraska, who has joined me and others who may arrive.

This budget request is for OMB, which serves as the President's eyes and ears on the budget. It's the executive branch agency responsible for putting together the President's budget, and all agency budget requests come through OMB.

It operates no programs of its own, but has great influence over programs as to how they're funded. OMB is responsible for preparing the President's budget, examining agency programs, analyzing legislation, preparing the Government's Financial Management Status Report and 5-year plan, reviewing and coordinating agency plans to implement or revise Federal regulations and information collection requirements, and providing overall direction of Government-wide procurement and outsourcing.

OFFICE OF MANAGEMENT AND BUDGET REQUEST

The administration's fiscal year 2008 request is for \$78.8 million, an increase of \$2.1 million, or 2.7 percent over fiscal year 2007 lev-

els. No additional personnel are requested, but additional funds are needed to annualize the costs of Federal pay adjustment. The current number of personnel is 489, down from previous years.

PRESIDENT'S BUDGET

With respect to the overall budget, the President's budget documents indicate that you plan to hold nonsecurity-related spending growth to 1 percent in fiscal year 2008. To do that, you're proposing terminations and reductions in discretionary programs totaling \$12 billion.

Since the President's budget came out before the fiscal year 2007 spending levels were finalized, we believe that you are essentially proposing level funding in fiscal year 2008 for nonsecurity-related spending.

The budget assumes dramatic reductions in many programs. The Center on Budget and Policy Priorities estimates that your budget for 2012 implies a cut of nonsecurity funding of nearly 8 percent in real terms below the 2007 level.

So-called mandatory spending, or entitlements, represent about two-thirds of the budget. These programs don't require congressional action on an annual basis. We'll be interested in discussing with you what proposals are in the President's budget regarding entitlements.

I look forward to discussing your budget proposal, exploring a few other areas, and I turn to Senator Nelson, if you'd like to make an opening statement.

Senator NELSON. Thank you, I'll just turn to questions, Mr. Chairman.

Senator DURBIN. Thank you. Mr. Director, the floor is yours.

OPENING STATEMENT OF ROBERT J. PORTMAN

Mr. PORTMAN. Thank you, Mr. Chairman, very much, and I appreciate your taking the time to have me here with you today. Also, thank you, personally, for being willing to meet with me and talk about some of the issues that are of concern to you and the subcommittee. Mr. Brownback, the ranking member, also agreed to meet with me, which I appreciate.

As you noted, OMB has submitted a disciplined fiscal year 2008 budget request. When rent and other costs are included, the total budget—as you noted—amounts to about \$79 million, which is a 2.7 percent increase, compared to 2007.

As the subcommittee knows well, we've been operating under relatively tight budgets, annual increase of about 1.8 percent per year since 2001. Our budget, as you know, is almost entirely made up of salaries and expenses, so the only significant means to achieve savings is through reductions in staffing. And we've done that, to accommodate our funding levels, we've reduced OMB staff from 527 positions in fiscal year 2001 to 510 in 2004, and today, 489.

The budget we proposed to you, as the chairman and I had a chance to discuss, does allow us to maintain our high-caliber workforce of 489 employees going forward, incidentally, over 90 percent of whom are career civil servants, not political appointees.

We believe OMB can continue to deliver high-quality performance, and fulfill our many core responsibilities at these staff levels, or full-time equivalents (FTE), of 489.

The best known of our responsibilities is the preparation of the budget, but as the chairman has noted, we also have responsibility for a lot of other things, including oversight of the agencies regarding budgets, management, legislative proposals, regulatory reforms, procurement policies, and other issues. I believe our dedicated staff are performing their responsibilities in an outstanding manner, within the constraints of a tight budget.

If I could, just briefly, draw your attention to the management side of our responsibilities, because I know the subcommittee has an interest here—we are focused in making Government more effective through five specific initiatives: strategic management of human capital, competitive sourcing, improved financial performance, enhanced and expanded electronic governance, or e-Gov, and finally, budget and performance integration.

And that last one, integrating budget and performance, we've made some interesting progress recently to ensure greater Government accountability. Last year, we launched a website called ExpectMore.gov. It provides information on programs that have been assessed for effectiveness, using what we call the PART, the program assessment rating tool. With this website, Congress and the public now have an unprecedented view into which agencies and programs are working, which are not, what steps are being taken to improve them—it's part of an ongoing effort to provide greater transparency, hold ourselves accountable, and demand results.

With the new and improved version of this website launched with the 2008 budget a couple of months ago, we now have program-level information on about 1,000 Federal programs, representing about 96 percent of Federal spending, \$2.5 trillion worth of spending.

It's a really great resource. And, I encourage members and staff who haven't already checked it out to do so, ExpectMore.gov.

Unfortunately, in recent years, Congress has included provisions in appropriations bills that slow our ability to make continued progress on the President's management agenda, particularly in the area of competitive sourcing, and in e-Government. Next week, Mr. Chairman, we plan to submit to you and others who have an interest, a report that updates you on how competitive sourcing is working from our perspective, I'll give you a couple of highlights of the report.

One, new efficiencies and performance improvements that have resulted from competitive sourcing are expected to produce more than \$6 billion in savings over the next 5 to 10 years. Second, we have only competed activities considered commercial, and not inherently governmental, and incidentally, we've only competed about 3 percent of governmental activities. Third—and this surprises some folks who have not kept up to speed on how this works, Federal employees have fared well in these competitions. If you look at the 2003–2006 data, 83 percent of the work competed, Federal employees have received, they've won the competition. This last year, the number's even a little higher than that. So, for the

most part, it's Federal employees who are winning these competitions, and again, we've only competed about 3 percent of governmental activities.

With regard to the overall budget, the chairman talked about, the President's fiscal year 2008 budget shows how working together with Congress, we can continue to reduce the deficit, in fact, we reduce it every year in our budget, balancing the budget by 2012, while keeping taxes low, and meeting our Nation's top priorities. It builds on the progress we've made the last couple of years where, as you know, we've actually had a \$165 billion reduction in the deficit—working with Congress on restraining spending, and continuing to have a strong economy.

One part of the 2008 budget, I think is particularly interesting to this subcommittee is its jurisdiction, which is a very interesting jurisdiction as I've looked at it, is in the tax gap area. I know this is something the Finance Committee is also looking at, but, if you're interested, I would be pleased to talk to you more about enhanced compliance efforts, and legislative changes that we put in our budget this year to deal with the tax gap.

A balanced budget by 2012 would be a major accomplishment, but it would be short-lived without addressing the long-term budgetary challenge. And, the chairman just mentioned it, and that's the unsustainable growth in entitlement programs. As appropriators, you are well aware that mandatory spending is overwhelming the rest of the budget. In the space of four decades, mandatory spending has grown from about 25 percent of our budget, to over one-half the budget. And again, the chairman used the figure of two-thirds, when you include interest on the debt, it's getting up toward that level, so it's the fastest growing part of our budget, and it's an area we need to focus on, as Republicans and Democrats.

PREPARED STATEMENT

So, Mr. Chairman, thank you very much for having me before this important subcommittee. I believe OMB is staffed with some of the highest quality and most dedicated people I've ever worked with, and the most dedicated professionals in the Federal Government. As noted, we are recommending a disciplined budget for OMB that continues to provide the necessary resources to serve the President and meet our duties to Congress and to the American people. I look forward to working with members of the subcommittee as we move forward with the appropriations bill. Again, I thank the subcommittee for its time, and I look forward to your questions.

[The statement follows:]

PREPARED STATEMENT OF ROBERT J. PORTMAN

Chairman Durbin, Ranking Member Brownback, and distinguished members of the Subcommittee, I am pleased to be here today regarding the President's fiscal year 2008 budget request for the Office of Management and Budget.

OMB'S BUDGET

The Office of Management and Budget has submitted a disciplined fiscal year 2008 request for our agency. When rent and other costs are included, OMB's total

budget request amounts to \$78.8 million—a 2.7 percent increase compared to the fiscal year 2007 continuing resolution.

To achieve spending restraint, I have asked OMB to pursue cost savings wherever possible. As the subcommittee is aware OMB has been operating under very tight budgets. Over the past 6 years, our budget has increased by an average of 1.8 percent per year and over the past four years it has increased by an average of only 1.2 percent. Our budget is nearly entirely comprised of salaries and expenses and our only significant means to achieve savings is through reductions in staffing. To accommodate lower funding levels, we have reduced OMB staff from 527 positions in fiscal year 2001, to 510 positions in 2004, to 489 positions in 2007.

The budget we have proposed for OMB will allow us to maintain a workforce of 489 positions, well below the levels we had in 2001. We believe OMB can continue to deliver high-quality performance and fulfill our many important responsibilities at these staff levels.

The best known of OMB's responsibilities is the preparation of the President's annual budget. In addition, our responsibilities include oversight of the other agencies regarding budgetary matters, management issues, the Administration's legislative proposals, regulatory reforms, procurement policies and other important matters. We work to ensure that all the Administration's proposals in these areas are consistent with relevant statutes and Presidential objectives. I believe our dedicated staff are performing their responsibilities in an outstanding manner within the constraints of a tight budget.

MANAGEMENT/EXPECTMORE.GOV

I want to briefly draw your attention to one of our important responsibilities, implementing an aggressive management agenda. This effort, led by the OMB deputy for management, Clay Johnson, is making the government more effective by focusing on five initiatives. Those initiatives, all launched in 2001, are (1) strategic management of human capital, (2) competitive sourcing, (3) improved financial performance, (4) expanded electronic government (e-gov), and (5) budget and performance integration.

To ensure greater government accountability, last year we launched a new website: ExpectMore.gov. This site provides information on programs that have been assessed for effectiveness using the Program Assessment Rating Tool, commonly referred to as the PART. With this website, Congress and the public now have an unprecedented view into which programs work, which do not, and the steps being taken to improve them. It's another way we are providing greater transparency, holding ourselves accountable—and demanding results.

With the new and improved version of this website launched with the 2008 budget, we now have program-level information about the performance of nearly 1,000 Federal programs representing about 96 percent of government and \$2.5 trillion of federal spending. I urge Members and staff to check out ExpectMore.gov.

Unfortunately in recent years, Congress has included provisions in appropriations bills that slow our ability to make continued progress on the President's Management Agenda, particularly in the area of the competitive sourcing and E-government. We would like to work with you to address your concerns and to avoid provisions that would restrict the progress of the management reforms.

FISCAL YEAR 2008 BUDGET

I would also like to take a moment to review the President's entire fiscal year 2008 budget, which we submitted for your review five weeks ago. Our 2008 budget proposal shows how working together we can reduce the deficit every year and balance the budget by 2012, while keeping taxes low and meeting our nation's priorities. It builds on the progress we've made over the past two years, which has led to a \$165 billion reduction in the deficit.

We have been able to make progress for two primary reasons: first, because we have been blessed with a strong economy that has generated record revenues and, second, because the Congress, working with the President, has done a better job of restraining spending, especially keeping non-security spending under inflation for the past three years. It is exactly these elements—a solid economy and restraint on spending—that can now lead to balance.

The 2008 budget continues to support growth, innovation, and investment by making permanent the President's tax relief, which would otherwise expire in 2010. Since the tax relief took full effect in 2003, we have seen strong and steady job growth—with the creation of more than 7.6 million new jobs. After 2003, Federal revenues also surged—hitting record levels over the past two years. With solid economic growth, our total receipts are now slightly above the historical average of 18.3

percent—as a share of the economy—and we project receipts remain at or above the historical average for the five-year period.

The 2008 budget demonstrates we can achieve balance by 2012 without raising taxes. In addition, we plan to more effectively and efficiently collect the taxes owed through new initiatives to address the tax gap. First, we improve the effectiveness of the IRS' activities with a \$410 million package of new initiatives to enhance enforcement and taxpayer service and to improve the IRS' information systems. Second, we include in the budget 16 carefully targeted tax law changes that promote compliance while maintaining that important balance between the burden being imposed on taxpayers and our shared interest in collecting taxes owed. The budget also includes other investments in program integrity efforts to generate additional savings.

While restraining spending overall, the President's budget also provides new resources for key priorities. It increases funding for our national security to combat terrorism and protect the homeland. It includes new policies to address issues of concern to America's families, including educating our children, access to affordable health care, and reducing energy costs. The 2008 budget also proposes to hold the rate of growth for non-security discretionary spending below the rate of inflation. We believe we can address our nation's top priorities at this level of funding.

A balanced budget by 2012 will be a major accomplishment, but will be short-lived without addressing our long-term budgetary challenge: the unsustainable growth in Medicare, Medicaid, and Social Security. Mandatory spending is overwhelming the rest of the budget. In the space of four decades, mandatory spending has grown from 26 percent of our budget in 1962 to 53 percent of our budget in 2006. We must begin the reform of these programs now in order to protect those commitments. Addressing entitlement spending is the right thing to do because small changes now have a big impact later.

CONCLUSION

Mr. Chairman, thank you for having me before this important subcommittee today. As noted, we are recommending a disciplined budget for OMB that still provides the necessary resources for this agency to serve the President and meet its duties to the Congress and the American people. I look forward to working with the members of this Subcommittee as we move forward with the appropriations bills.

I thank the Committee for its time, and I look forward to your questions.

STAFFING

Senator DURBIN. Thank you, Mr. Director, and let me ask you a few questions about staff. Have you had any difficulties recruiting, hiring or retaining staff at OMB?

Mr. PORTMAN. We have not had a difficult time recruiting. As you may know, OMB was determined by a magazine entitled Partnership for Public Service, as one of the best places to work in the Federal Government. And, I sometimes wonder about that, since the hours are long, and the work is hard. But, it's a good place to work, people like working at OMB—

Senator DURBIN. Is that your brother-in-law's publication, or is that—

Mr. PORTMAN. Actually, I've told people it really is reviewing the year before I got there, because I've been there for 1 year. We'll see what happens next year.

But, our FTEs are down a little bit right now, which is typical. After the budget cycle, we tend to have a drop off. We're about 5 percent down right now, from our budgeted FTE level, that enables us to do our work. We're down to about 470, instead of 489. So, we're down a little bit.

We just finished our recruiting, we broadened our recruiting this year, as you and I talked about. We had very good luck, so we're hoping to be able to, once again, attract a lot of high-caliber young people to OMB.

Senator DURBIN. What percentage of your employees are eligible to retire in the next 5 years?

Mr. PORTMAN. It's growing. I don't know what the percentage is. We do have our baby boom generation, of which I am a part, and I think you are, Mr. Chairman. Our workforce is getting to that point where they can look at retirement. We'll get you that number.

[The information follows:]

There are a total of 101 OMB employees eligible to retire by December 2012.

Mr. PORTMAN. It concerns me, though. And, again, we're not having trouble recruiting good people. I'm very impressed with the young people we've brought in over the last year since I've been there, and we've had good luck on the college tour and graduate school tour, most recently, but it does concern me we're going to lose a lot of great talent.

Senator DURBIN. Does your agency use student loan repayment programs for recruiting and retention?

Mr. PORTMAN. We don't—we haven't had to. But, because of the prodding by a certain Senator from Illinois, we are now looking into that and that may well be something that I'll be able to report to you on very soon.

Senator DURBIN. It is a program to use if you need it. The point was, we feel that we can attract and retain many young people who are burdened with student debt to public service and to the Federal Government. We use it in the Senate, pretty extensively, so, I don't want to impose this on you, this is not a requirement to get approved budgets through this Appropriations subcommittee, but—

Mr. PORTMAN. We think it's an interesting option, and we are looking at it very seriously.

CONSOLIDATION

Senator DURBIN. There's a proposal in the President's budget to consolidate a number of appropriation accounts within the Executive Office—the actual number of accounts to be consolidated is eight—into one large account called, The White House. This was proposed last year and was not accepted by Congress.

Why do you think it's a good idea to eliminate the separate accounts, and consolidate funding in one large account? Wouldn't Congress lose budgetary control and transparency? And, I might add, the Executive Office of the President has appropriations transfer authority in the annual appropriations bill, that allows transfers up to 10 percent. So, would you retain authority? In your 2008 bill proposal?

Mr. PORTMAN. Well, we—as you know—this has been a difference we've had with Congress. I think it's a good idea just for the efficiency and the best practices you can get by consolidating functions. I don't know how to answer your question in terms of the congressional impact, because I don't think—from what I know about it, and I must confess, I have not had the ability to talk to you or others about what you view as your current ability to influence some of these functions, but I don't think it will make a key difference. And, I think, the key difference is, your level of interest,

and oversight. And, I think the White House Executive Office of the President would be very responsive to you.

But, it's an effort to consolidate, it's an effort to gain efficiencies, and again, to focus on best practices, and all of the different elements within the Executive Office of the President.

Senator DURBIN. My colleague, and ranking member Senator Brownback of Kansas has arrived. I know he had a bill pending on the floor, so I'm going to give him an opportunity now if he would like to either make a statement or ask a question, if it's all right with Senator Nelson.

Senator BROWNBACK. Thank you very much, Mr. Chairman for doing that, thank you for allowing that.

Thank you to my colleague from Nebraska for allowing me to step forward.

BALANCED BUDGET

Mr. Director, thanks for being here at the subcommittee today. We've had a chance to visit on some of these issues in the past. I do want to get a thought on record from you, if I could. Your comments would be helpful about ways to be able to get us to a balanced budget, and change the system in a way that will produce more balanced budgets in the future.

You and I have both been in the House of Representatives, and working on these issues in previous times, and we were able to get to a balanced budget in the past. It seems like to me, we were able to do that mostly by producing growth in the economy, and less by restraining spending. Yet, now we're at a time, we're getting some growth in the economy, although that economy appears to be slowing, we certainly don't want to increase taxes at this point in time. But, how would you systematically put in place programs or systems that would restrain the growth of Federal spending? If you had a chance to look at that as OMB Director, and I'd really like to get your thoughts on how you view that, and then I want to run an idea by you that I've been pushing on this issue as well.

Mr. PORTMAN. Well, thank you, and again, I—before you got here, I said that I appreciate the fact that you and the chairman were willing to meet with me and talk about some of the subcommittee issues individually. This is one of the issues you raised then, and you and I talked a little about your legislation, which I'm happy to address in a moment.

Let me make a bigger point, if I could, though. You and I also talked about the growth of the entitlement programs, and the fact that they are becoming a bigger part of our overall budget, and to get to balance, in my view, it's necessary—not so much short term—where we can get to balance, working together, restraining domestic discretionary spending, looking at the economic pro-growth policies. But, over the longer haul, 10, 15, 20 years, the way to stay in balance, as you say, must include looking at the unsustainable growth rate, because it is 6, 7, 8, 9 percent growth rate of these important programs, like Medicare, Social Security, and Medicaid. Otherwise, it's very difficult to imagine us being able to stay in balance without huge tax increases which would result, I think, in a detriment to the economy.

Within the roughly 19 percent of the budget that is the discretionary spending on the domestic side, particularly, there are things we can do. And, I think, looking at the performance measures that I talked about before you arrived that we're doing now with ExpectMore.gov, which is our website where we put up the assessments of 1,000 Federal programs, about 96 percent of our spending. We're making progress, we think, in determining which programs work, which don't, and spending the Federal dollar in the most efficient way possible.

We also have, as you know, proposals for a commission that would look at waste, fraud, and abuse in our budget, and then we have a commission called the Sunset Commission, which actually has a lot in common with your CARFA proposal, the Commission on Accountability and Review of Federal Agencies.

Senator BROWNBACK. If I could, the CARFA bill was included in the budget resolution that the Senate approved before the Easter break, and I hope it's something that the administration could come out supporting in an official position. It takes the BRAC process—the military base closing commission process—and applies it to the rest of Government. And it's my conviction that we will not be able to restrain the growth of Federal spending if we use the current system, and just keep the current system in place. So, we need a systems change.

You have a sunset proposal that you put forward—and I think that's a good idea, and a good way to go as well, so that there regularly is a sunset of bills.

And, Mr. Chairman, I might note, I think this is a Republican and a Democrat proposal. Under either scenario, either party in control, we really need to be able to cancel programs that aren't performing. And, we've not been able to find a successful way of doing that. And, it's a great frustration to all Americans—whether you're liberal or conservative—I get people raising a number of programs that have been seen as conservative programs that they're saying, "Well, they're not producing."

Well, here would be a systems way that you could cancel programs that aren't producing results on an objective basis, and then force the Congress to vote.

And, that's what I'm after, is getting that systems change, because I think we're just showing that the system is built to spend, and we need it to be built to save, particularly in entitlement programs.

MEDICARE AND MEDICAID

Before my time runs out—on Medicare and Medicaid, in particular—what is it that you want to target to be able to get into more sustainable growth patterns, as you look at those two big entitlement expenditure programs?

Mr. PORTMAN. It's a great question, and probably the most critical budget question is healthcare and the entitlements, that combination. Not that Social Security isn't a priority, it is, but the fastest growth is actually in the healthcare side, and that's where—as you and I talked about—you see the greatest unfunded obligation, \$32 trillion in Medicare alone over the next 75-year period.

Two things, I guess, one is the cost of healthcare. Because, we know more and more about how healthcare drives Medicare and Medicaid, and vice versa, that's such a big part of our healthcare system. And this—as you know, the President's proposed in the budget some changes, with regard to the standard deduction, with regard to litigation in the healthcare area, and other things that are focused on getting the costs down, and keeping the quality up, in terms of healthcare.

Second, is with regard to the programs themselves. We have some specific proposals in our budget, they tend to focus on two things. One is rightsizing the amount of Federal reimbursement to providers, the so-called market basket change that we have, a 0.65 percentage point change—it's relatively small—but it has larger out-year impacts.

And then, second, is more income relating, which is a technical term for means testing. Telling seniors that if they are in part B or part D, that their subsidy under those programs, if they make over a certain income, would be, over time, effectively reduced. Right now, if you make over \$80,000 a year, \$160,000 as a couple, you begin in part B to see that Federal subsidy reduced. We would like that in place under our budget proposal, and also apply it to part D.

This has been a controversial proposal in the past—I'm sure it still is controversial—but actually, I've found in talking to Republicans and Democrats alike—that Members are willing to look at this, to listen to come of these ideas. These are our ideas, we're eager to hear ideas from other folks. By the way, those two proposals alone reduce that unfunded obligation by \$8 trillion over the 75-year period. And again, we do not have a monopoly on good ideas, here, they're tough to come by. It's a difficult area politically, as well as substantively.

But, we look forward to working with Congress on that, because you're right—those are key elements to not just getting to balance, which I believe we can do, working together, and I think we can do it in the next 4 or 5 years. But how do you sustain that over time without a huge tax burden on the economy?

Finally on CARFA, your proposal, we do share your goals on this, and we want to work with you to get it enacted, we think it's good policy.

Senator BROWNBACK. Thank you.

Thank you, Mr. Chairman.

[The statement follows:]

PREPARED STATEMENT OF SENATOR SAM BROWNBACK

Good afternoon. I want to thank you, Chairman Durbin, for your leadership of this new subcommittee. I look forward to working together with you during this coming year as we make funding decisions and provide oversight to the various agencies within this subcommittee's jurisdiction.

Director Portman, thank you for appearing before our subcommittee today. I look forward to hearing the details of your fiscal year 2008 budget request and the key efforts that your agency will be undertaking this year.

Looking at the President's budget, I am pleased that it assumes the continuation of the recent tax cuts, which have helped our economy rebound from recession to its current robust health. I am also encouraged that the President is projecting a balanced budget by 2012. I believe that the only way we can continue on a course toward balanced budgets is by growing the economy through lower taxes and by restraining federal spending.

Lower taxes spur economic growth, which means more jobs, healthier businesses, and a better fiscal outlook for all Americans. Although the economy is strong and jobless numbers are down, I believe we have more work to do. We should continue to reduce the deficit and make the recent tax cuts permanent, especially the death tax which overly hurts small businesses and family farms.

Mr. Portman, you note in your testimony that the Administration plans to direct additional resources to close the so-called "tax gap." Certainly, we must ensure that taxes which are owed are collected. However, I remain concerned that our tax system is overly complex, complicated, and burdensome. Americans spend roughly \$157 billion each year in tax preparation to ensure they do not run afoul of the IRS. The system is in desperate need of reform. And as tax day is right around the corner, I must reiterate that I support a flat tax concept which simplifies tax preparation, applies a low tax rate to all Americans, and respects the special financial burden carried by American families raising children. One reason we have a "tax gap" may be that our tax system is so complex and convoluted that taxpayers cannot even figure out what they owe.

Mr. Portman, I look forward to hearing your testimony this afternoon. Your agency has a key role in prioritizing how federal discretionary funds will be allocated. This is no small task. There are many programs and activities worthy of federal support. But we must always temper those funding needs with the goal of a balanced federal budget. We must be prudent stewards of American's tax dollars and not pile up debt for our children and grandchildren to pay. Just as American families must make difficult budget decisions about their hard-earned dollars, we must ensure that we are spending the people's money wisely. I will have some questions for you about how the federal government is spending taxpayers' dollars and how we can improve efficiency in government. From personal experience, I can tell you that few things are more upsetting to my Kansas constituents than to see wasteful government spending. Kansans often say to me, "I don't mind paying the taxes I owe, but it is infuriating to see my hard-earned money being wasted. If I am going to work hard to earn money, I want what I have to pay in taxes to be spent wisely."

So thank you for appearing before this subcommittee today, Mr. Portman. And thank you, Mr. Chairman, for your leadership of this subcommittee. I look forward to working with you this year.

Senator DURBIN. Senator Nelson.
Senator NELSON. Thank you, Mr. Chairman.

ADMINISTERING EARMARKS

Director Portman, thank you for coming before the subcommittee today. Earlier we talked about the earmark issue, and the way in which they are administered by agencies. And, as you know, I am interested in this, and more than 1 month ago, before the database was finalized, I communicated with you, my ongoing interest in collecting information on the degree to which agencies assess fees on congressionally directed funds before they're allocated to the congressionally direct recipient. In which I stated my desire to see this information posted on OMB's website.

I think the information would be useful, not only to OMB, but to Congress and the American taxpayer, in the spirit of transparency, to provide the full picture of exactly how this money is expended. Unfortunately, I only received a short response to my letter 2 months after I sent it, and I know we just visited about that, but the sense I got from your letter is that it hasn't really come down before others, other decisionmakers at OMB for consideration, and I'm wondering if you can give me your thoughts about developing information about what the agency's charge for the administering of earmarks, and where they have authority to do it, and where they don't have authority to do it, but they just have assumed authority.

As a former Governor, I can tell you, my agencies never assumed any authority they didn't have, and get by with it. But, we're see-

ing agency after agency, ostensibly, based on the information they've reported to us, skimming or marking down earmarks before they are actually directed out to the congressionally mandated recipient. Earmarks being skimmed or marked down to the tune of 1 percent, up to 5 percent, or who knows what percent? Department of Defense said they couldn't even give us an answer. This is unacceptable. You cannot run a Government if you can't control the Government, and these appear to be—at least to me—in many cases, absolutely outside the budget, off-budget, if you will. And, it's unacceptable. I wonder if you might give me a response.

Mr. PORTMAN. Well, first, as I have said to you, I think it's a very helpful addition to the transparency that we're now providing in terms of earmarks. Also, as you know, we're in the process of working with the agencies on another challenge, which is implementing what we strongly support, which is the Coburn-Obama transparency on grants and contracts. In theory, I think, the difference between our earmark database, which has just gone up recently, and the new database we're working on, which would be the grants and contracts, should be the administrative expenses, there may be some other issues there, technical issues we have to work through. But, that should be very interesting information, we're eager to work with you to supply that information.

As you know, some of these agencies have a statutory requirement to provide for some administrative expense as they deliver the funds. So, for instance, in the research area, it's a 4 percent number. I don't know that that's inappropriate—that's something Congress has determined is appropriate. I don't know what the right number is, but for an agency not to take on any administrative expenses when there's a number of earmarks in an area, does provide a hardship for them and in fulfilling their other responsibilities Congress has given them.

So, there probably is, in some cases, a number that is appropriate, that is statutory. In other cases, that may be something Congress wants to look at. And, in some cases, as you say, there is no statutory requirement. So, agencies have used, past practice has been to, for certain agencies to establish a certain number for a certain type of program, that's something that we would like to look at. So, I'm glad you brought it to our attention.

Senator NELSON. Well, I might bring something to your attention too, just, in one case, the administration on aging program innovations, said that they withheld up to 1.3 percent to cover costs related to grant peer reviews, as well as unexpected costs—whatever those would be—payments for cancelled obligations, secretarial transfers, cited statutory authority left blank, other explanation of authority or reasons for a fee assessment, left blank. Food and Drug Administration (FDA), food technology evaluation—they say there's none by the FDA, the Army, which handles the payment for FDA, charges a 6-percent administrative fee. I think we really do need to get a handle on this. As I say, you can't really budget effectively, if you don't know what your agencies are charging, and/or if they don't have any authority—statutory authority, or as part of the earmark, receive authority for withholding some amount for the administration of that earmark.

This is something that, generally, is budgeted, because a number of the agencies went through and said they don't—they budget this in their overall budget, and they don't take anything for the administration of earmarks. And, it's skimming, if there's no authority, well-intentioned as it may be, or it's marking down, well-intentioned though it may be, but it's without apparent control, or under the authority or control of OMB. And yet, their budget comes out for a lower amount than what they're actually receiving in terms of money coming in. And, I don't know that that would create a slush fund within an agency, but one has to wonder how they match their expenditures to what they charge for that fee for administering the earmark.

Mr. PORTMAN. No, I think it's a very good point, the agencies, as you know, over the last 10 years have had almost a quadrupling of earmarks. And, so probably for some of these agencies, this was not a very big deal, in terms of their overall budget, 10 years ago, and they are making that adjustment. The House and Senate have come forward with new rules for increased transparency. Chairman Obey has proposed that earmarks be cut in half. There will be fewer earmarks, I believe, just as there were this year as compared to last year, and 2006 as compared to 2005. But this is an issue that I do want to get on top of, try to figure out, again, as we're asking the agencies to go to this next level on the Coburn-Obama grants and contracts, if we can also get this very specific information. And, thank you for your willingness to share the Congressional Research Service (CRS) report that was provided to you. I think that'll be very helpful to us, as well.

Senator NELSON. Well, thank you. It sounds like things happen a little faster if there are a couple of names on a bill, so I'll get one of my colleagues, and we'll get something "Nelson-so and so" to help you have the authority to do it. And/or the urgency might be expressed.

Thank you very much, Director Portman.

Thank you, Mr. Chairman.

Senator DURBIN. Thank you, Senator Nelson.

EARMARKS

Director, let me ask you about earmarks. You sent out a memorandum to agencies and departments on February 15 about earmarks and how they were to be treated. Would you tell us what you were trying to accomplish with this memo, and what is your policy going to be about congressional earmarks in the future? Do you plan on maintaining an ongoing database on earmarks, and tell us a little bit about your new website, FederalSpending.gov.

Mr. PORTMAN. Well, thank you, Mr. Chairman. Let me distinguish, if I could, between the February 15 instruction, and the January instruction—I believe it was on January 25, so it preceded Senator Nelson's letter to me. We gave instructions to the agencies to compile earmarks for the purpose of the database, that was to be sure that the cut in half goal had a basis that was fair, frankly, that we were accountable, so that when Congress came to us with future appropriations bills, we had a basis that people could agree upon. It's also an opportunity for Congress to look at our definition, which it turns out, is very close to your definition in the Senate-

passed bill and the definition in the rules in the House, and to look at the individual earmarks, to see if you think they're appropriate or not.

So, that is up—that database is based on the January guidance that we sent out to the agencies. To your question as to whether we plan to continue the database, the idea was to establish a database as a benchmark. We chose 2005. We thought that was the fairest year. It happened to have been the peak of earmarks. It also happened to be the year in which all of the agencies were represented. As you recall, in 2006, the Labor/HHS bill did not include the earmarks it had previously included. From a congressional appropriations point of view, we thought 2005, frankly, was the fairest and the most comprehensive benchmark to use.

We'll continue to monitor this, now, going forward. With regard to the guidance on February 15, that was with regard to the 2007 spending. And, what we were trying to do there, was not to establish any new guidance from OMB over and above what was in your 2007 continuing resolution. That was an attempt on our part, simply to take your 2007 guidance that you had provided us, through your continuing resolution, and make it very clear to the agencies what it meant in terms of their interaction with Congress for 2007. And, I think that's been fairly well-received by the agencies. Incidentally, I think the agencies have done a pretty good job on the earmarks. They didn't get everything into us on a timely basis, but it was a huge project, and we think this transparency will be helpful going forward.

Senator DURBIN. So, what is this new website?

Mr. PORTMAN. FederalSpending.gov is the name of the site where the Coburn-Obama database will be posted, so that's a third transparency issue, in addition to ExpectMore.gov and the database on earmarks, that will be up and going, by law, by the end of this year. We're making pretty good progress on it, and we're hoping to be able to have some preliminary data available before that time. But we believe at this point, Mr. Chairman, and you should hold us accountable for this, that we will be able to do this in a timely manner, per the statutory requirement.

The database on earmarks is on OMB.gov and if you go to OMB.gov, and then you go to "earmarks" that's where you will find that database.

OFFICE OF INFORMATION AND REGULATORY AFFAIRS

Senator DURBIN. One of my favorite agencies in OMB is the Office of Information and Regulatory Affairs (OIRA). This is kind of like freakenomics to the 10th power, and it apparently holds a very high place in the pantheon of your administration. So much so, that the President would make a recess appointment of Ms. Susan Dudley to follow, I believe, John Graham, who was one of the earlier people appointed.

It seems that, from an outsider's point of view, that you're attempting to take away the regulatory authority of agencies, or circumscribe it, by vesting that authority in this office. That regulatory authority was created by legislation in each of these agencies, and it would seem that your goal is to supersede, or at least monitor, that authority, as it's being exercised.

It also seems that there's—God forbid—politics involved here. I'm wondering if you could explain to me why it's a good idea to put a political appointee in charge of a regulatory office in each agency, as you have proposed. Why do you want to further centralize regulatory power in OIRA, and shift it away from individual agencies?

Mr. PORTMAN. First of all, with regard to OIRA, you're right, it's a very important entity, they have an important responsibility, because they do look at the regulations and rules—this has been true in previous administrations, as you know, as well as this one. They apply a benefit/cost analysis, ensuring that the agencies have gone through the proper process that Congress, incidentally, has asked them to do. In some cases, a risk assessment, depending on the kind of regulation or rule.

When I first got to OMB, as you know, there was no Administrator of that Office, because John Graham had left, and it was open. We then nominated Susan Dudley who, I believe, is very well-qualified for this position. She has worked, among other places, at OMB, other agencies, and has a good background. I think six of the former OIRA Administrators, Republican and Democrat alike, had very kind things to say about her in their letter to you as someone who was professional, and someone who could do the job in a fair, nonpolitical way.

We did try to go through the normal process, she was not able to be confirmed. So, for the first time in 1 year, since I've been there, we do now have, as of the recess appointment, a head of the Office who is a political appointee. I think she'll do a very good job, and I hope you get a chance, Senator, to meet her and look at her work. I think you'll find, as you look at it objectively, that she will do a fair, balanced job. That's certainly our idea.

In the meantime, Steve Aiken, who is a career civil servant at OMB, who previously was in the General Counsel's Office, served in an acting role there, and he did a terrific job. And, so it's my hope that the good work Steve was doing continues. In other words, I don't view this as a political responsibility, I view it as OMB's role to look at regulations and rules, and make sure they are consistent with both the congressional dictates that we live under, including coming up with the right analysis of their impacts on both the benefits side and the cost side, but also consistent with the President's policies.

Senator DURBIN. Are you familiar with Ms. Dudley's background? Spending the last 3 years as director of regulatory studies for the Mercatus Center on the campus of George Mason University? Mercatus Center, founded by corporate interests, endowed by large corporations, free market-oriented foundations, and leaders of the corporate world?

Mr. PORTMAN. Yeah, I'm familiar with her background, generally, and her résumé. Again, she was actually nominated about 1 year ago to Congress. I think the formal announcement to Congress was a little more than 8 months ago.

Senator DURBIN. And were you aware of the fact that in that capacity she opposed improved standards for airbags in passenger vehicles?

Mr. PORTMAN. I'm not aware of that specific issue.

Senator DURBIN. This is where this obscure little agency starts worrying me. Because someone from her background is now going to judge issues about health and safety. And, make calculations on cost benefits that seem like they're very scientific and very mathematic, which time and again always tend to hurt the consumer and help those who are, frankly, pretty well off in this country. It's a mindset that seems to drive this view toward regulation. So, I hope you'll understand why some of us were a little bit upset that she was put in by recess appointment, into this critical area and we're going to be watching it carefully.

Senator Brownback.

Senator BROWNBACK. Thank you very much, Mr. Chairman.

SOCIAL SECURITY

Director, I want to ask a couple of specific questions on areas of funding that portend on big policy issues coming up. We're considering a major immigration bill. I hope we're going to be able to move one forward. The President talked a lot about it. My colleague and I are both serving on the Judiciary Committee and hopefully this is one we're going to be considering, and moving forward with.

There was an article that appeared March 29 this year in the Washington Times talking about uncredited earnings into Social Security. And, they put a big number on the amount of money going into Social Security from uncredited, or what would probably be undocumented people working in the United States. They said, "In 2004, uncredited earnings Social Security tax payments that can't be matched to valid Social Security numbers totaled \$65 billion or about 10 percent of the programs' total income."

They lead the story by saying, "Uncredited contributions to Social Security grew by nearly \$300 billion, from 2000 to 2004." The article says, "A giant increase attributable mostly to illegal aliens using erroneous Social Security numbers."

I wanted to ask you about this because if these numbers are accurate, there's a significant policy issue, financially, that's going to be happening to the country. Either we get the situation under control on undocumented workers, or nothing happens. Either way, you've got a big number that's involved here in Social Security and Social Security's future.

Are you able to put your finger on these numbers? Are you looking at these, in particular, relative to the policy debate we're having on immigration?

Mr. PORTMAN. It's an interesting question and there has been analysis by the Congressional Budget Office (CBO), as you know, of the costs of the program and it takes into account some of these payroll tax potential surpluses as well as the fees that would be paid and what the impact on the budget's going to be. And, in some cases it's been analyzed to be close to a wash. In other words that there be additional income coming in to the Government through fees and yet maybe some increase in some social service costs or some changes in some of these Social Security earnings.

On the specific report you're talking about, which I think is the Senior Citizen's League. Is that the group?

Senator BROWNBACk. It's a private group and I just, when I saw, these are eye-popping numbers and I wondered if these, if this is accurate or not?

Mr. PORTMAN. We don't know. You and I talked about this briefly at a previous meeting and I am trying to get more information about it. What I do know, at this point, is that the estimate is probably not accurate as to undocumented work. And, why do we say that? We say it because there are a lot of reasons that the name and the Social Security number (SSN) may not match SSN's file, the Social Security Administration's files, which is how they base the \$65 billion figure.

My own sense is, there are probably a lot of undocumented workers in that group. But, to be able to determine which are undocumented workers, which are there because there's a typographical error, a name change due to marriage or divorce, or some other issue, is just impossible for us to determine with precision.

But, we are looking at it thanks to your raising it with me. I think it should be an important part of this debate. I tend to share your sense that this is, in large measure, due to undocumented workers who aren't claiming their Social Security.

Senator BROWNBACk. Well, it's a big number and it's going to have a big impact on this policy debate because it's a key part of the future funding of Social Security. And so, I would hope we could get tied down what that actual number is and what the amount there is.

WAR SUPPLEMENTAL

Mr. Portman, the President has stated that he will veto the supplemental if it contains a deadline for pulling out of Iraq. I'm curious to get your comments on the additional funding in this supplemental. Would you recommend that the President veto the supplemental over the level of additional funding that's in the bill?

Mr. PORTMAN. Yes, I would. And, the President has actually—in regard to the Senate bill as it came to the floor and the House bill—that the excessive and extraneous spending that's not related to the war effort would be the basis for a veto.

That number is, as you know in the Senate bill, I think just under \$20 billion and the House bill over \$20 billion. Some of that funding is nonemergency domestic spending that is not related in any way to security. Other aspects of the additional money is related to security in the broadest sense at least, because it has to do with returning war veterans, some of the Veterans Administration (VA) funding or DOD health money. Still other spending is related to Katrina where we do have, in our proposal as you know, a \$3.4 billion request for the DRF, the Disaster Relief Fund, which is necessary for our ongoing commitment to Katrina.

So, there are various categories of funding in here, Mr. Brownback, but I do believe that it is excessive and extraneous. And, I believe that it is troubling, in the sense, that it is a big increase in domestic spending on top of the budget proposals from the majority in the House and the Senate, which have now been passed in their respective Chambers, which also increase spending in some of these same areas.

Senator BROWNBACK. Well, I agree. I think it's too much and it's something that the President should stand his ground on. Both on the amount as well as on the war timetable. That's not a wise decision and not a move that should be put in the supplemental bill, but I wanted to get your specific view.

MEDICARE PART D

Finally, and just if you have the quick numbers on this I would appreciate it, on the cost of Medicare part D. There was a lot of discussion when this policy issue passed that it was going to cost \$400 billion and then there was some discussion that the numbers were cooked, and it actually should have grown to \$600 billion and some even projecting it would be \$800 billion. What has been the cost to the Government of this Medicare part D, the drug benefit program? I think in my State it has been very well received by senior citizens and people that are receiving this benefit. There was some problems in getting the program up and going, but overall it's been a very positive benefit. But, I want to know what the cost figure has actually come in at.

Mr. PORTMAN. It's good news. And, incidentally, to your customer satisfaction, looking here at a number of 80 percent customer satisfaction with part D, that's an average number, which is relatively high for Federal programs, as you might imagine. The actual costs are far lower than we thought they'd be. You recall when you and I were both serving in the House that there was dispute between the actuaries at Health and Human Services (HHS) and the Congressional Budget Office. And, we were relying on the Congressional Budget Office estimate. Others were saying, that in fact, HHS actuaries were more accurate and that number was far higher. It turns out the costs are a little below CBO's estimates. So the actuary estimate, I think it was \$634 billion over the 10-year period, was relatively high. It's come in at closer to \$445 billion, we believe, and that number shifts. In fact, it's gone down a little in the last year, that estimate. So, not only is the cost of the drug program down about 30 percent from our estimates when the President signed the Medicare Modernization Act, but it is even below where CBO was at the time.

Second, and I think this is more significant to your constituents, is that the beneficiary premiums are lower, about 40 percent lower than we projected. I remember at the time we said it would be \$39 a month. Right now, we're at about \$23 a month on the average monthly premium cost.

So, this is some good news. It's good news for taxpayers and the budget. From my perspective as OMB Director, it's good news in terms of our outlays, but it's also good because, as you say, most importantly it's a program that people are finding meets their needs and their costs are lower than projected.

Senator BROWNBACK. Thanks for mentioning that. And, it seems like it's one too, that we don't need major policy design changes at this point in time, that some of the cost control features are working, generally.

Mr. PORTMAN. The competition model seems to work because it's forced companies to compete for the business of millions of seniors.

Senator BROWNBACK. Thank you, Mr. Chairman.

WAR SUPPLEMENTAL

Senator DURBIN. Mr. Director, let's take a little walk through the supplemental. Because I think the standard that you wanted to use was whether or not the supplemental spending request supported the war effort. Is that what you said?

Mr. PORTMAN. What I was trying to do is be balanced in my response, saying that I would advise the President to veto over the excessive and extraneous spending. Some of the spending is purely domestic. You've heard about a lot of this. If you listen to the media, they talk about the peanut storage and they talk about the spinach growers and so on. It's hard to justify any of that either as an emergency, in my view, or certainly as related to the war. Other spending is though, at least broadly defined, security spending in the sense that it relates, for instance, to VA.

Senator DURBIN. So, let's take peanuts and spinach off the table and take a little walk through the supplemental, as I can remember it. I don't have the litany here, but I can remember a lot of it.

We put in \$2 billion over what the President requested, directly for the troops. And, a vote on the floor, an amendment offered by Senator Biden, supported on a bipartisan basis for the procurement of new vehicles that are safer for our troops when it comes to these improvised explosive devices (IEDs) and mines. So, would you consider that \$2 billion to be extraneous and a reason for the President to veto the bill?

Mr. PORTMAN. I don't know. I'd have to look at the specific request. We, as you know, included funding for that in the original request and then in our amendment, which came about 3 weeks after the February 5 request, we actually amended it to include more funds for the so-called MRAPs, which are the vehicles that have been more successful in avoiding injury to our troops with roadside bombs.

So, we do think there's a need for more of those armored vehicles. The question has been how many can be produced, as I understand it. And, DOD has come up with their estimate of what the production possibility would be.

Senator DURBIN. But, would you call that wasteful pork-barrel spending, \$2 billion for safer vehicles for our troops in Iraq?

Mr. PORTMAN. Not if it can be spent productively to provide the vehicles for our troops.

Senator DURBIN. Good. And, about \$2 billion in there for the Veterans Administration, to put more people processing the paperwork for some of the veterans who are waiting over 1 year for disability evaluations. Put more money into hospitals for traumatic brain injury units, upgrade the para-trauma units, poly-trauma units across the board, more money for post-traumatic stress disorder (PTSD) for returning veterans where one out of three are suffering from this. Would you consider that \$2 billion, roughly \$2 billion for the Veterans Administration a reason for the President to veto the bill?

Mr. PORTMAN. Well again, I'd have to answer it by saying that we have worked closely with the Department of Veterans Affairs to come up with what is a fair number in our supplemental request.

And, with regard to our amendment, we actually added more for DOD health after the Walter Reed incident because—

Senator DURBIN. Well, there's another line item for that.

Mr. PORTMAN. Yes, we believe that there might be a need for additional funding even in this 2007 emergency supplemental and pending the results of the commission, wanted to be sure that funding was available.

But, I will refer you to VA's own analysis. And, their analysis is that the additional funding we're providing already is adequate to meet the very needs that you address. We have, as you know, about a 7-percent increase in VA funding for health, again, in our 2008 budget, over an 80 percent increase since 2001.

Senator DURBIN. I'm afraid the VA is notorious and the OMB is complicitous in low-balling the amount of money they need. It wasn't that long ago we came up with an additional \$1 billion, after we'd been assured over and over again, it was unnecessary. It turned out it was necessary. I spent the last 10 days visiting VA hospitals, three separate hospitals. I can tell you what they need. They need resources and they need them now. These soldiers are pouring through the doors. They need help. They need specialists who aren't there. There's a lot more that we need to do. So, I hope you'll take a look at it.

Now, we have about \$1 billion or more for military hospitals like Walter Reed. And, do you think that that \$1 billion add-on to the President's budget request is reason for the President to veto this bill?

Mr. PORTMAN. Again, what we've done with regard to DOD health is added more funding, I think about \$1 billion in our own request and then in the amendment added another \$50 million, in relation to the Walter Reed issue to be sure that was, there was adequate funding available.

And, I would simply say, again, we need to have the adequate amount of funding to meet the needs of our returning veterans, our returning warriors. We're now in the process of an inter-agency group, that I happen to be part of, looking at this very issue. We're also, as you know, working with a commission co-chaired by Donna Shalala and Bob Dole. And, then finally DOD has started their own internal process. So, we do have some additional information coming forward that may change the administration's view on this. But, we have looked at this and that's why we included additional funds.

Senator DURBIN. You're very busy, and I don't want to hold you to this, but I've taken the time to visit these hospitals, in fact, Walter Reed within the last 10 days, to meet with the people there who I think are doing a wonderful job in their in-patient care. But, then to meet with some of these veterans, soldiers who've been there for long periods of time. And, I will tell you, if you want to go to war with Congress over whether we need more money for Walter Reed, we're ready. I think we need it for Walter Reed and military hospitals across this country. We are not prepared for what this war is sending back home.

Now, there's \$3.1 billion in there for the Base Realignment and Closure Commission (BRAC). Do you think we should use the

money in this supplemental to pursue the stated goals and objectives of the Base Realignment and Closure Commission?

Mr. PORTMAN. Well, as you know, we felt strongly that should have been included in the 2007 bill and that's why we proposed it, and Congress chose not to deal with that in the long-term continuing resolution. In fact it's, really when you think about it, the only exception that was made. As a result, when we saw that it was reemerging as part of the emergency supplemental, and we don't believe that was the appropriate place for it, because it's not an emergency, it's something that should be handled in the regular course. We did send, as you know to you all, some offsets that totaled \$3.1 billion to be able to cover that expense and to have it be within the emergency supplemental, but paid for. And, that's our hope. We think it's very important that it be done. In fact, we think it should have been done in the 2007 process.

Senator DURBIN. So, now I'm up to about \$10 billion out of the \$20 billion, and I've never mentioned peanuts and spinach.

We've talked about additional spending for the troops, to keep them safe, Veteran's Administration to deal with the hospitals, military hospitals, and BRAC. So, taken as a package, that \$10 billion, do you think that's a good reason for the President to veto the supplemental appropriation?

Mr. PORTMAN. Again, it would depend on what the funding was for; we believe that we have funded a lot of these priorities already. We believe with regard to BRAC, it ought to be offset, we don't believe it's appropriate as an emergency. I don't think most Members of Congress do, either, incidentally, including the Appropriations Committees.

Senator DURBIN. Veteran's Administration is not an emergency?

Mr. PORTMAN. I'm talking about BRAC.

Senator DURBIN. Oh, okay.

Mr. PORTMAN. I'm talking about the BRAC funding.

On those other issues, we'd want to look at them. We'd want to look at, again, where we have already addressed those issues, what has changed in the interim time period. As I said, there is an ongoing commission on the DOD health, VA health issue because that is—as you know—an issue where there's overlap, and there's a legitimate concern about the handover from DOD to VA.

Senator DURBIN. There's about \$1 billion in there for the 9/11 Commission recommendations for security at chemical plants, communications systems and the like—is this what you consider peanuts and spinach?

Mr. PORTMAN. Some of that, as you know, is in our 2008 appropriations request, in other words, it's in our budget request that we would hope you would deal with in the regular process. We don't view that as appropriate to be part of the emergency supplemental—

Senator DURBIN. Homeland security, not an emergency?

Mr. PORTMAN. Huge priority, and a huge priority for the President. And that's why we've increased funding fairly dramatically. The question is, whether this is the time and place to add to the needed funding for the troops for their protection, for their equipment, for their training. Frankly, items that are more appropriately handled through the normal process—where you have

oversight, where we have the ability to work through with other priorities, and where we have some rules applied.

Emergency spending—as you all know—is something that this Congress has, and the new majority indicated, they wanted to avoid, because it is not paid for, it is not subject to the rules, including the caps on domestic discretionary spending that you may well want to enforce. And the only question is, you know, why should this be done as part of this emergency funding request for the war?

Senator DURBIN. So, the President—

Mr. PORTMAN. I'm not saying it's a bad idea to proceed with pandemic funding for HHS for flu, or to proceed with funding for BRAC—we think these are all good things. They're actually in our budget. In the case of pandemic, I think we have roughly the same number you do—which is \$100 million less than the House. But, we think this is an appropriate expenditure to be in the budget, and part of your normal appropriations process.

Senator DURBIN. So, the President has asked for funding for this war as an emergency spending item each year, which kind of belies the argument that we need more congressional oversight, but let's step aside from that.

Can you tell me, in previous years when these emergency spending requests for the war have been submitted to Congress, whether the Congress has added things that the President didn't include in his original request?

Mr. PORTMAN. I'm familiar—having come to this job about 1 year ago with last year's supplemental from an administration perspective. When I served on the Budget Committee prior to that, I'm also familiar with the fact that there's always additional pressure from Congress to add to any emergency supplemental—whether it's connected with, in this case, Afghanistan and Iraq, or not.

I'm also aware—as you know—that last year, by threatening a veto, as the President has done again this year, we were able to reduce the amount—in that case—by almost \$15 billion under Republican majority. And, many of the items that were taken out of the bill were items that we're spending that the administration didn't oppose, but didn't believe were appropriate to be in an emergency supplemental, and were later dealt with in the regular appropriations process, that would be our hope.

This year, as you know, we submitted our war supplemental request earlier, and with far more detail, in response to the concern that you, and others, had expressed to us about timeliness and level of detail. So, with the budget itself, we sent a supplemental request—not just for 2007, but for 2008—we also provided account-level detail and for the first time, provided the justifications with that, hoping that 65 days ago when we did that, that Congress would have the ability to do the kind of oversight that I believe the Appropriations Committee has done.

Senator DURBIN. In previous years, has Congress added more money to the President's requested supplemental for the war in Iraq and Afghanistan?

Mr. PORTMAN. Has the—

Senator DURBIN. Congress added?

Mr. PORTMAN [continuing]. Added additional funding? Yes.

Senator DURBIN. And has the President signed the bill?

Mr. PORTMAN. Last year the President refused to sign it over his level, as you know. And his negotiations with Congress were successful, in the sense that the \$15 billion in addition to what he requested was not included.

Senator DURBIN. So, you're saying the President has never signed an emergency supplemental bill for the war in Iraq that included any congressional add-ons?

Mr. PORTMAN. I think the situation last year was that the level of funding the President requested was maintained, and not a penny more. I'm not sure about the year before, or the year before.

In terms of the quality, you know, what was in the bill, the substance of the bill, I'm sure there were some changes, as there would be any year, in terms of the President's request that came from the Appropriations Committees.

Senator DURBIN. The administration's opposed to the additional funds for Hurricane Katrina that are included in the supplemental?

Mr. PORTMAN. We included additional \$3.4 billion, which we think is adequate to make good on our commitments, in addition to the roughly \$110 billion that you all have already appropriated for Katrina and Rita and the aftermath. We think that's adequate to meet the needs.

Some of the additional funding, in fact, the biggest part of it, as you know, is for levees—we do believe there's a need there, and a concern. We think it can be handled in the normal process. Most of that funding we don't believe can be spent in 2007, in fact, we don't think much—if any—of it can be spent in 2007. So, it would be more appropriate for us to deal with that as part of the regular appropriations process, but we're going to work with Congress on that.

Senator DURBIN. So, you would recommend the President veto the bill if there's additional Hurricane Katrina relief?

Mr. PORTMAN. Well, again, I don't know that I can answer that question without knowing which parts of that—there are three general parts of the Katrina add-ons as we look at it with regard to the levee funding. We don't think it's appropriate in the emergency context. Again, if Congress were to offset that funding with other reductions elsewhere, we would certainly be much more likely to be supportive.

Senator DURBIN. And as far as agriculture disasters, we haven't had an agriculture disaster bill for 2 years, and—as you know, having served in Congress—it was a traditional program, funded program, it was a program that was used whenever something happened of a disastrous nature, affected farming across America. So, do you believe that adding agriculture disaster funds in this bill is a reason for the President to veto it?

Mr. PORTMAN. Well, you were much more involved in the 2002 farm bill than I was, Senator. But, my recollection was that we were going to try to avoid these emergency supplementals by putting in place, not just the programs—marketing loan counter-cyclical programs—but also the Crop Insurance Program. And, I know you've heard from Secretary Johanns on this, but, you know, we believe that it is working, as intended, and we believe it is being re-

sponsive to the concerns in farm country, and that would be the preferred approach for us.

Senator DURBIN. Senator Allard.

Senator ALLARD. Thank you, Mr. Chairman.

PROGRAM EVALUATION

You've had an opportunity to show up before me a couple of times, I think, already this year, Director Portman, and I have complimented you on your efforts on implementing the legislation we passed from the Government Performance and Results Act (GPRA). In fact, as the various agencies show up in front of us, I look at your scorecard and ask about the programs that are rated ineffective, and ask them about those programs that are rated as "results not demonstrated."

I think it helps add to budget transparency, at least as far as I'm concerned, when we ask these questions. Sometimes it's legitimate reasons, perhaps, that they're terminating the program, and they just started in the process, and it's understandable. They've recognized the problem, so they're getting rid of it.

And then, in other instances, they just seem very defensive, and so, we kind of pick up on that, too.

Do you feel that this has added to the transparency in the budgeting process?

Mr. PORTMAN. I do, I feel strongly about it, and I know you've made a decision to leave the Senate, I hope you will pass along your GPRA and your scorecard interest to some of your colleagues, because it's an important part of the transparency that leads us to better Government.

I talked earlier with the chairman and other members who are here about the website, that I know you're very familiar with—ExpectMore.gov—and the fact that we now have 1,000 programs up that are subject to this scorecard, and we're looking at 96 percent of Federal spending now, which is an amazing resource, and so I thank you for raising it with the agencies. I do think it adds to the transparency. I think, as you say, sometimes there's a good reason for not scoring well on the scorecard, getting a red rather than a yellow or a green. Sometimes there's not. And one thing that we do is try to determine not just, whether they have met the standards—which we lay out, by the way, we ask the Agency, "What are your goals?" And then we judge them based on their goals. And that's all transparent.

As we develop the proposed funding level for the budget, we look at whether it's an appropriate governmental activity. In some cases the program could get all greens, but it isn't an appropriate Federal governmental expense or activity.

In other cases, you could have a lower score, but it's such an important program that we want to re-double our efforts to make sure it's working well for your constituents.

Senator ALLARD. I found it fascinating to look down through that ExpectMore.gov and I asked my question, well, what agencies are not on there? And, I notice there's nothing on OMB. Do you apply the assessment that you give to the—

Mr. PORTMAN. That surprises me, actually.

Senator ALLARD [continuing]. Other agencies to yourself, and do you have measurable goals and objectives?

Mr. PORTMAN. The ExpectMore.gov website includes PART analyses of programs. OMB does not have programs, which the chairman noted at the outset, so we don't have programs that are up there, but we do apply the President's management agenda to ourselves, which you can find on results.gov.

Senator ALLARD. But, you do spend taxpayer dollars.

Mr. PORTMAN. We do. And we apply all five categories of the President's management agenda to ourselves.

Senator ALLARD. But they're not public?

Mr. SHEA. Yes, they're public.

Senator ALLARD. Okay, so can we get a report from OMB?

Mr. SHEA. We grade ourselves on the scorecard—

Mr. PORTMAN. All right, I'm going to ask the Associate Director for Management, Robert Shea, to answer your question, if that's all right.

Mr. Chairman, is that okay if I have Mr. Shea—

Mr. SHEA. Yes, sir. OMB is assessed on the President's management agenda scorecard each quarter. So, we're assessed on our personnel management, financial management, information technology (IT) management, competitive sourcing, and performance management. We do have annual goals that collect data on and use to manage the agency. We don't manage programs, so we haven't assessed ourselves with the program assessment rating tool.

Senator ALLARD. So, how—if you were under that rating tool—how would you grade yourselves?

Mr. SHEA. We'd have to do that assessment first.

Senator ALLARD. Okay.

Mr. SHEA. And, we could show you how we're performing against our goals, and using the President's management agenda, how well we're managed.

Senator ALLARD. Well, Director Portman is liable to show up before me again. Will you have an answer when I ask that question?

Mr. SHEA. Yeah, we can give you a much detailed report on the quality of our management.

[The information follows:]

Executive Branch Management Scorecard

	Current Status as of Dec 31, 2006					Progress in Implementing the President's Management Agenda				
	Human Capital	Competitive Sourcing	Financial Perf.	E-Gov	Budget/Perf. Integration	Human Capital	Competitive Sourcing	Financial Perf.	E-Gov	Budget/Perf. Integration
AGRICULTURE	G	G	R	Y↑	G↑	Y	G	G	Y	G
COMMERCE	G↑	Y	G	Y	G	G	G	G	G	G
DEFENSE	Y	Y	R	Y↑	Y	G	Y	Y	G	G
EDUCATION	Y	G	G	Y↓	G	Y	Y	G	G	G
ENERGY	G	G	R	Y	G	G	Y	G	G	Y
EPA	Y	G	G	G	Y	G	G	G	G	G
HHS	G	G	R	R	Y	G	G	G	R	G
DHS	Y	R↓	R	R	Y	G	R	R	G	G
HUD	Y	Y	Y↑	G	Y	G	R	G	G	G
INTERIOR	G	G	R	Y	Y	G	R	G	G	G
JUSTICE	G	G↑	R	G↑	G	G	G	G	G	G
LABOR	G	G	G	G	G	G	G	G	G	G
STATE	G	G	G	G	G	G	G	Y	G	Y
DOT	G	G	R	Y↓	G	G	Y	Y	Y	G
TREASURY	G	G	R	Y	Y	G	Y	G	R	G
VA	G	R	R	R	R	G	R	Y	Y	Y
AID	Y	R	Y	Y	G	G	G	G	G	Y
CORPS	G	Y	R	R	Y↑	G	Y	G	G	G
GSA	Y	G	G↑↑	Y	G	G	G	G	Y	G
NASA	G	G	R	R	G	G	G	Y	R	G
NSF	G	R	G	G	G	G	R	G	G	G
OMB	Y	R	R	Y	R	G	G	G	G	G
OPM	G	G	Y	Y↑	Y	G	G	G	R	G
SBA	Y	G	R	G	G	G	G	G	G	G
SMITHSONIAN	Y	R	G	G↑	G	G	G	Y	G	G
SSA	G	G	G	R↓	G	G	G	G	R	G

↑↓ Arrows indicate change in status since evaluation on Sept 30, 2006

Program Initiatives Scorecard

	Current Status	Progress in Implementation
Faith-Based and Community Initiative:		
• Agriculture	G	G
• Commerce	Y	G
• Education	G	G
• HHS	G	G
• HUD	G	G
• Justice	G	G
• Labor	G	G
• VA	Y	G
• AID	G	Y
• SBA	Y ↑	G
Real Property Asset Management:		
• Agriculture	Y ↑	G
• Defense	Y	G
• Energy	G	G
• HHS	Y	G
• DHS	Y	G
• Interior	Y	Y
• Justice	Y	G
• Labor	Y	G
• State	G	G
• DOT	Y	G
• VA	G	G
• AID	Y	G
• Corps	Y	G
• GSA	G	G
• NASA	G	Y

Program Initiatives Scorecard

	Current Status	Progress in Implementation
Eliminating Improper Payments:		
• Agriculture	(Y)	(G)
• Defense	(Y)	(G)
• Education	(Y)	(G)
• HHS	(R)	(G)
• HUD	(G)	(G)
• DHS	(Y)	(Y)
• Labor	(G)	(G)
• DOT	(Y) ↑	(G)
• Treasury	(R)	(Y)
• VA	(Y) ↓	(Y)
• EPA	(G)	(G)
• NSF	(G)	(G)
• OPM	(Y)	(G)
• SBA	(Y) ↓	(G)
• SSA	(Y)	(G)
Privatization of Military Housing	(Y) ↓	(G)
R&D Investment Criteria	(R)	(Y)
Housing and Urban Development Management and Performance	(Y)	(G)
Broadening Health Insurance Coverage Through State Initiatives	(Y)	(G)
A "Right-Sized" Overseas Presence	(G)	(Y)
Coordination of VA and DoD Programs and Systems	(Y)	(Y)

Senator ALLARD. Well, I think that—we want to make sure that everybody applies under that. Are there other programs that we are not evaluating that perhaps we should?

Mr. PORTMAN. The PART we're using to assess all programs over time—we've assessed 96 percent and we're making progress assessing the rest.

Senator ALLARD. Okay, well, if you happen to pick up on any that we're not assessing, I'd like to know why, if you would, please. Maybe the subcommittee would be interested in that, as well. I will be anxious to get your own evaluation back on this, Director. Thank you.

Mr. PORTMAN. One of the things I'm doing as Director is ensuring that we are meeting what we ask other agencies to do. And, I can tell you it's sometimes difficult, and, you know, we are going

for the green like everyone else is. So, it's something we do drive through the agency, just as other agency heads, too. Even though we do not have programs, we assess ourselves based on those five categories.

Senator ALLARD. I think it's helpful for other agencies to know you're doing the same, you know, everybody's living under the same rules, and what you expect of others, you're willing to live under, too.

Mr. PORTMAN. Right. I agree.

Senator ALLARD. I think that helps add credibility, and I just ask that question in a positive vein, by the way.

And, also, Mr. Chairman, that concludes my questions, I'd just ask that my introductory remarks be made part of the record.

Senator DURBIN. Without objection.

[The statement follows:]

PREPARED STATEMENT OF SENATOR WAYNE ALLARD

I would like to thank Chairman Durbin and Ranking Member Brownback for holding today's hearing to review the fiscal year 2008 budget request for the Office of Management and Budget (OMB). This is a very important agency, and I appreciate having the opportunity to review the agency's budget.

OMB's primary role is to prepare the federal budget and to supervise its administration in Executive Branch agencies. So although the size of their actual budget might be somewhat small in Washington terms, the agency has enormous power and influence. This has been especially true over recent decades as OMB has taken a much stronger role in policy coordination.

The federal government has thousands of programs designed to meet various needs. Yet, while the needs in this country might be virtually limitless, the resources to meet those needs aren't. We can never forget that each dollar we spend as a federal government is a dollar that was taken from a taxpayer in this country. Accordingly, we must exercise great care in choosing how to invest those dollars. I say "invest" rather than "spend" quite deliberately. To spend simply indicates an outflow of resources. By contrast, to invest indicates that the outflow was made strategically with the expectation of a return on the investment.

To help make determinations between the many competing priorities, OMB has devised the PART assessment, which is a result of the Government Performance and Results Act (GPRA). The PART assessment holds agencies accountable for devising meaningful, outcome based measures for their programs. Programs that provide a good investment for taxpayer dollars should see that reflected in their budget, whereas inefficient programs should also see the status reflected in their budget.

I have been a bit puzzled recently by those who are increasingly resistant to the PART program. As I said earlier, given that taxpayer dollars are much more limited than needs, we must view allocations as investments. Would those same critics invest in a stock, bond, mutual fund, hedge fund, or other investment vehicle without ever asking about the return it has produced? Of course not. It would be irresponsible for us to not ask similar questions of federal programs.

I am pleased that we have Director Portman here with us today. I always enjoy hearing from him as part of the Budget Committee, but I look forward to this opportunity to delve more into the workings of OMB as an agency.

Director Portman, I know you have a very busy schedule, so I sincerely appreciate your time today, and I look forward to your testimony.

ADDITIONAL COMMITTEE QUESTIONS

Senator DURBIN. I'd like to say that there are other questions for the record that will be submitted for your consideration, I hope you can provide us with prompt responses. The hearing record will remain open for a period of 1 week until Wednesday, April 18 at noon for subcommittee members to submit statements and/or questions for the record.

[The following questions were not asked at the hearing, but were submitted to the Office for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY RICHARD J. DURBIN

COMPETITIVE SOURCING: INHERENTLY GOVERNMENTAL VS. COMMERCIAL ACTIVITIES

Question. Circular A-76 states that agency personnel shall use the circular's definition of "inherently governmental" in preparing their justifications. Is any other guidance provided to agencies as to what type and scope of information constitutes sufficient justification?

Answer. Since the Circular was revised in May 2003, OMB has not issued additional guidance regarding the development of justifications to explain the inherently governmental nature of an activity. We expect justifications to include sufficient information about the function performed to enable a reasonable person to understand why the function was categorized as inherently governmental.

Question. What happens if OMB does not agree with an agency's justifications for inherently governmental activities? Who has final authority over the agency's list of inherently governmental activities and accompanying justification?

Answer. Pursuant to the requirements of the Federal Activities Inventory Reform Act, OMB reviews agency inventories prior to their publication. OMB may offer comments on the inventory during the consultation process, but does not make final determinations on whether specific agency positions are inherently governmental or commercial. All final determinations regarding the classification of activities are made by the agency.

Question. Have consultations between OMB and agencies ever resulted in shifting activities from an inherently governmental list to a commercial inventory or vice versa? How many functions and FTEs have been shifted, for each agency and each year, from one list to another? What has been the net result government-wide?

Answer. Over the years, there has been some shifting between the inherently governmental and commercial lists as agencies gain a clearer understanding of their activities and make incremental improvements to more clearly and accurately identify the functions performed by their workforce. In 2005, 43.1 percent of activities were identified as inherently governmental and 57.9 percent of activities were identified as commercial. In 2004, the figures were nearly identical—i.e., 42.5 percent inherently governmental and 57.5 percent commercial. We expect the same general figures for 2006.

Since 2003, there has been a slight shift in overall figures with an increase in commercial activities. However, this shift has had only a negligible impact in terms of work being shifted from agency to contract performance. After revisions were made to Circular A-76 in 2003, no work has been converted from public to private sector performance unless a public-private competition was conducted, and competitions have been applied only to a small fraction of the entire workforce—less than 3 percent of all activities since fiscal year 2003. Moreover, Federal employees have won 83 percent of all competitions conducted during this time period.

Equally important, agencies have carefully tailored their use of competition to highly commercial support activities that the private sector is well equipped to perform. According to agencies' 2005 inventories, a substantial number of commercial activities (more than 40 percent of all commercial activities) are excluded from consideration for competition. These exclusions are largely based on a need to preserve in-house core capabilities. Some commercial positions are excluded from consideration for competition for other business reasons (e.g., private sector interest unlikely).

Question. Currently, OMB devises for agencies competitive sourcing plans that cover three out-years. It is my understanding that OMB has now determined to devise competitive sourcing plans that cover eight out-years.

Is this true? If so, why is a longer period necessary? What would this mean practically for agencies? Would agencies, for example, be required to review for privatization additional employees? What does this mean for the current "green" plans? Will they all have to be revised?

Answer. Agencies—not OMB—develop competitive sourcing plans that are tailored to the mission and workforce needs of their agencies. OMB has not asked agencies to develop new plans or significantly modify their existing plans. However, since 2003, when OMB first developed guidance on "green" competition plans, we have asked agencies to continually update plans based on changed conditions, improved insight into their programs, and results achieved in conducting competitions. This approach has helped agencies focus their attention where competition makes the best sense. As a result, projected savings are significant despite the small percentage of the workforce competed. In fiscal year 2006, for example, agencies competed only 0.4 percent of the workforce. Yet these competitions are expected to generate savings of \$1.3 billion for taxpayers over the next 5–10 years.

STAFFING

Question. How is your staff allocated among the various offices and organizational units within the agency? How many are in each?
Answer.

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET—PERSONNEL
 SUMMARY

[Distribution by Program Activity for Full-time Equivalent Positions]

Program Activity Structure	Fiscal year 2006 FTE actual	Fiscal year 2007 FTE estimate	Fiscal year 2008 FTE estimate	Fiscal year 2007 to fis- cal year 2008 dif- ference
National Security Programs	62	65	65
General Government Programs	51	64	64
Natural Resource Programs	57	61	61
Human Resource Programs	66	67	67
Office of Federal Financial Management	17	18	18
Information and Regulatory Affairs	50	50	50
Office of Federal Procurement Policy	11	14	14
OMB-wide Offices	152	150	150
Total Direct Program	466	489	489

Question. What is the percentage of OMB employees who will be eligible for retirement over the next five years?

Answer. As of 2012, 21 percent of OMB's current employees will be eligible for retirement.

ENTERPRISE SERVICES INITIATIVE

Question. Within the Executive Office of the President (EOP), there is an initiative known as the Enterprise Services Initiative. This involves EOP agencies, including yours, transferring their space rental costs and some other costs to the Office of Administration to be paid by that office.

Why is this a good idea?

Answer. The intent of the Enterprise Services Initiative is to gain administrative efficiencies by having only one single manager and payer for common services that cut across the EOP, thereby making more efficient use of the OA financial staff, component financial managers, and representatives from supporting servicing agencies. Specifically, the net result will consolidate over 28 relatively small service agreement accounts into six service agreement accounts with a corresponding significant reduction in the processing of over 180 payment transactions between multiple staffs. Further, agencies outside the Executive Office of the President will have a single point of contact in coordinating and negotiating service agreements vice having to work individually with each of the separate EOP components included in the fiscal year 2008 Enterprise Services Initiative.

Question. What are the benefits?

Answer. Specifically regarding the consolidation of space rent, most EOP components have already successfully consolidated space rent costs in the OA appropriation. Completing this consolidation initiative for OMB and ONDCP will provide consistency in managing rent across the EOP while facilitating the oversight of office space allocation. Currently, managing space rent allocation and corresponding rent costs between OA, ONDCP and OMB is complex, especially in light of the ongoing EEOB modernization program entailing frequent office moves within the EOP complex. (Note: OMB rent was included in the Enterprise Services initiative in fiscal year 2005 but was subsequently returned to OMB's appropriation in fiscal year 2006.)

Question. How much of your budget would be transferred to the Office of Administration?

Answer. OMB's fiscal year 2008 budget request proposes to move \$7.903 million to the Office of Administration as part of the Enterprise Services Initiative.

Question. The Office of Administration budget includes about \$12 million for a Capital Investment Plan. Does OMB benefit from those funds?

Answer. Yes, OMB benefits. The Capital Investment Plan is used for system lifecycle replacements for OMB's desktop computers, printers, and laptop replace-

ments. Additionally, these funds support the Executive Office of the President's network infrastructure upgrades. This includes e-mail upgrades, HSPD-12 implementation, network and server regular upgrades, network storage upgrades, enterprise software licenses, and server "virtualization." These are improvements made to the systems supporting the entire EOP, as such OMB is a beneficiary.

Question. Do you receive funds from that source for IT projects?

Answer. No, the Office of Management and Budget does not receive funds from the Office of Administration's Capital Investment Plan.

PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

Question. The Privacy and Civil Liberties Oversight Board was established by the Intelligence Reform and Terrorism Prevention Act of 2004. It consists of five members appointed by and serving at the pleasure of the President. The Board advises the President and other senior executive branch officials to ensure that concerns with respect to privacy and civil liberties are appropriately considered in the implementation of all laws, regulations, and executive branch policies related to efforts to protect the Nation against terrorism. This includes advising on whether adequate guidelines, supervision, and oversight exist to protect these important legal rights of all Americans.

What is the current 2007 budget for the Privacy Board and what is the request for 2008?

Answer. For fiscal year 2007, the Privacy and Civil Liberties Oversight Board (PCLOB) budget is \$1.5 million. As for fiscal year 2008, funding for PCLOB is funded within the White House Office program as are other offices within this program.

Question. In which account in the Executive Office of the President is the Board funded?

Answer. The Privacy and Civil Liberties Oversight Board is funded within the White House Office program.

Question. Why shouldn't this Board be funded through its own account?

Answer. The Privacy and Civil Liberties Oversight Board operates similarly to other offices within the White House Office program where staff and supporting infrastructures are routinely shared and networked within the White House as they provide direct support to the office of the President. Accordingly, it would be impractical and add additional administrative costs to segregate and track responsibilities between the Board and other offices operating within the White House Office program.

Question. How many staff members does the Board have?

Answer. The 5 member, part-time board, as appointed by the President, is in place with the exception of one member who recently resigned. Additionally, there are 3 staff members supporting the Board.

Question. Many civil libertarians and others believe that this Board lacks the independence it needs to do its job and believe that it should be removed from the Executive Branch and be independent.

What are the Administration's views on this?

Answer. As the Administration has recently explained in its Statement of Administration Policy (SAP) on S. 4, Improving America's Security Act of 2007, "The Board's present structure is in full accord with not only the spirit but also the letter of the 9/11 Commission's recommendation." In addition, the SAP explained that the Board "has integrated itself into the Administration's policy formulation and implementation processes and has moved to integrate its operations with those of the many other privacy and civil liberties offices that exist within the Executive Branch." Therefore, the Administration "supports the work and structure of the existing Privacy and Civil Liberties Oversight Board." To change the structure of the Board, as S. 4 proposed to do, "would thrust unwarranted disruption onto a structure that is operating effectively to fulfill its statutory mission."

In addition, the Board recently issued its first annual report to Congress in which it detailed its stand-up activities and advisory and oversight initiatives. The report further outlines the Board's plans for the year ahead and demonstrates its commitment to fulfilling its statutory responsibilities. As explained in the report, "By empowering the Board with broad access to records, the Intelligence Reform and Terrorism Prevention Act of 2004 has created a Board that can offer a distinctly independent perspective to the President, along with oversight of executive agencies."

PROGRAM ASSESSMENT RATING TOOL (PART)

Question. Can you tell the Committee how you can ensure the objectivity of PART so that it is not influenced by political considerations?

Answer. The Program Assessment Rating Tool (PART) is designed to provide credible, objective assessments of program performance to inform resource decisions and actions to improve program effectiveness. The PART asks basic questions about program design, management, and execution and requires evidence to document affirmative answers. The explanation for each question and the supporting evidence are made available to the public at www.ExpectMore.gov, making them subject to public scrutiny. The PART is a comprehensive assessment of a program that draws from available data; reports from the Government Accountability Office and Inspectors General are common sources of evidence for PART answers.

In addition, the process for completing the PART—a collaborative one where agency and OMB staffs cooperate to review the program—also helps ensure the assessment is fair. A key aspect of this collaboration is identifying appropriate performance measures for the program that focus on the outcomes that are important to the American people. Each year there is a centralized review of all PARTs to ensure they are being completed consistent with the guidance and to review the quality of performance measures. Finally, agencies have the opportunity to appeal any disagreements to high level interagency panel of deputy secretaries.

While these controls are meant to ensure PART questions are answered objectively, users of the instrument can and should make their own judgments by assessing the evidence on which answers to PART questions are based, all of which is available at www.ExpectMore.gov.

Question. If a program has a low PART score, does that automatically mean that its budget will be cut?

Answer. Program performance, as assessed with the PART, is an important factor in budget decisions, but it is not the only factor. We should work to invest taxpayers' dollars into programs that produce the greatest results, but we also need to meet all the nation's priorities, including improving the performance of key programs. A good PART rating does not guarantee a specific level of funding. A program may be effective, but if it has completed its mission, if it is unnecessarily duplicative of other programs, or if there are higher priorities, its funding may be reduced. Likewise, an Ineffective or Results Not Demonstrated (RND) rating does not guarantee decreased funding. An program rated Results Not Demonstrated may receive additional funding to address its deficiencies and improve its performance.

PART is a factor, though rarely the only factor, in determining a program's funding.

Question. How is a program's PART score determined? What is the process?

Answer. With the PART assessment, agencies and OMB answer approximately 25 common-sense questions about each program's performance and management. These include:

- Is the program's purpose clear and is it well designed to achieve its objectives?
- Does the program have clear, outcome-oriented goals?
- Is the program well managed?
- Does the program achieve its goals?

The answers to specific questions in the PART translate into section scores which are weighted to generate an overall score. Because reporting a single weighted numerical rating could suggest false precision, or draw attention away from the very areas most in need of improvement, numerical scores are combined and translated into qualitative ratings: Effective, Moderately Effective, Adequate and Ineffective. Regardless of overall score, programs that do not have acceptable performance measures or have not yet collected performance data generally receive a rating of "Results Not Demonstrated."

The Results Not Demonstrated rating suggests that not enough information and data are available to make an informed determination about whether a program is achieving results. On the other hand, a program earns an Ineffective rating when there is clear evidence that is not achieving its intended outcomes. For instance, there may be data showing the program has failed to meet its goals and has external evaluations documenting its ineffectiveness.

Ineffective programs have been unable to achieve results due to a lack of clarity regarding the program's purpose or goals, poor management, or some other significant weakness.

Once each assessment is completed, the agency and OMB develop a program improvement plan so we can follow up and improve the program's performance.

Assessing and improving how programs are working is a key part of OMB's statutory mission. Our conclusions about program performance and management are based on the Program Assessment Rating Tool (PART), a diagnostic tool that helps us make budget decisions, but also drive program improvements.

Question. GAO has recommended extending the Program Assessment Rating Tool to tax expenditures, many of which are just programs run through the tax side.

What are your plans for moving forward to develop a framework and set a schedule for conducting performance reviews of tax expenditures?

Answer. The PART has been used to assess tax expenditures, like the New Market Tax Credit and the Earned Income Tax Credit. Although there are no plans to examine tax expenditures with the PART this year, we will look for opportunities to apply this assessment to other tax expenditures in the future.

Question. I would ask that for the record you provide examples of programs in the fiscal year 2008 budget that: (1) received additional funding due to strong PART scores; (2) received additional funding to correct deficiencies, as measured by PART; and (3) received less funding due to poor PART scores.

Answer. While PART and other performance information are an important factor in developing the President's Budget, these proposals are not based just on the overall PART rating. Instead, resource allocations consider specific aspects of program performance that suggest how taxpayer dollars could be most effectively invested.

Refugee Transitional and Medical Services (rated Effective) in the Department of Health and Human Services is recommended for additional funding in the fiscal year 2008 President's Budget for additional caseload support. A PART review conducted by HHS and OMB found that the program is focused on achieving meaningful performance outcome goals, works well with its partners, including State Refugee Coordinators, voluntary agencies, and ethnic organization partners; and has demonstrated improved efficiencies since fiscal year 2000. In addition, the program is working with grantees to improve data collection and monitoring.

The fiscal year 2008 President's Budget recommends an increase in funding for the National Parks Service Facility Maintenance (rated Adequate) so that it can continue improvement the quality of park facilities. The condition of park facilities has not been at acceptable levels, but the Parks Service now has a comprehensive inventory and is working systematically to improve its facilities and monitor results using a Facility Condition Index.

The fiscal year 2008 President's Budget proposes to eliminate the Supplemental Education Opportunity Grants (rated Results Not Demonstrated) in the Department of Education. Program funds are distributed using a formula that benefits more established institutions and results in proportionally less funding going to institutions that educate the largest proportion of low income students. In addition, a higher proportion of program funds support administrative costs, as compared to Pell Grants. The savings from this termination and other student aid reforms are directed to better-targeted programs, such as Pell Grants.

E-GOVERNMENT INITIATIVE

Question. For the past several years, you have had an initiative that you call e-government, or "egov". This is an attempt to make government more efficient through the increased use of information technology to perform some of the basic functions of government.

Can you give us a status report on the e-gov initiative? How much progress has been made?

Answer. Marking the 4th anniversary of the E-Government Act of 2002, OMB recently released a report highlighting the progress and future goals of the Administration to make government more effective and citizen-centered through improved utilization and management of information technology. The report identifies the successes and aggressive goals set by agencies under the President's Management Agenda (PMA) E-Government Initiative to improve information resources management, enhance customer service, and for the first time, measure the impact, utilization, and effectiveness of programs on the users of these services.

Also, in February 2007, OMB submitted to Congress the second annual "Report to Congress on the Benefits of the E-Government Initiatives". The report outlines the purpose of the E-Government and Line of Business Initiatives and highlights the benefits agencies receive from the initiatives to which they provide funding contributions. The report is available at www.egov.gov.

Five years ago, OMB and agencies launched the Presidential E-Gov Initiatives for improved government services. Operated and supported by agencies, these Presidential initiatives are providing high-quality and well-managed solutions throughout the Federal government. In 2005, the Lines of Business (LoB) task forces were initiated with the intention of identifying common solutions and methodologies to increase operational efficiencies, improve services and decrease duplication. During fiscal year 2006, agencies successfully completed major development milestones and are showing greater adoption and use of these services from citizens, businesses and government agencies.

In the past few years, we have worked with agency managing partners of the E-Gov initiatives to specifically identify clear and measurable goals to achieve the maximum use and benefit. The metrics with descriptions and type to address adoption/participation, customer satisfaction and usage are now available on our website, <http://www.egov.gov>.

Highlights include:

- Government to Citizen Portfolio*.—To date, GovBenefits.gov receives more than 301,875 visits per month by citizens and provides more than 118,579 referrals per month to agency benefits programs. In the 2006 tax filing season, over 3.9 million citizens filed taxes online for free using IRS Free File.
- Government to Business Portfolio*.—As of August 2006, the Expanding Electronic Tax Products for Businesses initiative made electronic forms available for business to electronically file Employment Taxes, Corporate Income Taxes, Employer Identification Number and Wage Reporting, with these 9 percent of corporate income tax forms were filed electronically.
- Government to Government Portfolio*.—Since 2006, all 26 grants making agencies use Grants.gov to post the over 1,000 grant programs they make, with an overall customer satisfaction of 56 percent.
- Internal Efficiency and Effective (IEE) Portfolio*.—Federal job seekers have continued to use USAJobs.gov to look for employment opportunities and create résumés online, with an overall customer satisfaction of 77 percent.
- Lines of Business (LoB) Efforts*.—Federal agencies continue to work on implementations in the areas of Financial Management and Human Resources. The other LoBs; Health, Case Management, Grants Management, Cyber Security, Infrastructure, Budget Formulation and Execution and Geospatial, continue to facilitate collaboration amongst agencies.

Question. What are the main functions of government that lend themselves to an e-gov approach?

Answer. E-Government uses policy and technology to ensure security and privacy of data within the Federal government while working to improve government efficiency and effectiveness supporting the delivery of citizen-centric services. With the increasing use of technology throughout all aspects of the public and private sectors, the “E-Gov approach” is applicable government-wide. For example:

- Grant Management*.—There are many agencies in the government that perform this functionality. Working as a group the grant making agencies can save money by investing in technology solutions together and foster interoperability by using joint standards.
- Geospatial*.—There are many emerging technologies in this area. Agencies can work together to evaluate and select technologies that are best suited for the federal government, rather than independently doing evaluations duplicating the process and cost to the federal government.

Question. What is OMB’s role in the e-government initiative?

Answer. OMB works with agencies and the CIO Council to establish strategic direction and performs ongoing oversight to assist agencies in achieving results through government-wide solutions including the E-Gov initiatives and the Federal Enterprise Architecture (FEA). This oversight includes ensuring the E-Government initiatives follow their agencies’ capital planning and investment control (CPIC) processes and adhere to all applicable policies and law, including privacy, security, and earned value management. Also, OMB has provided leadership in the area of governance processes to assist agencies in working collaboratively.

Question. How much money is budgeted for e-gov initiatives in fiscal year 2008?

Answer. In fiscal year 2008, agencies will contribute \$150 million towards E-Gov initiatives.

Question. Do you have any new e-gov initiatives planned for the coming year?

Answer. Currently, there are no new E-Gov initiatives planned, however, as an opportunity/need arises we will certainly consider the addition.

INFORMATION TECHNOLOGY

Question. The Management Watch List and the High Risk List are tools used by OMB to help agency officials monitor agency Information Technology (IT) planning, as well as improve project performance. These lists are updated quarterly to ensure that agencies are effectively managing their IT investments and improving the ability of the Federal government to deliver information and services to the public.

First, tell us specifically what the Management Watch List is and how it is used.

Answer. The President’s fiscal year 2008 budget reported 263 major investments representing about \$10 billion on the “Management Watch List.” Investments on the “Management Watch List” need overall improvement in capital planning and invest-

ment activities—including, but not limited to: performance measurement, earned value management or system security. Before the start of the fiscal year, agencies were directed to remediate the shortfalls identified prior to expending additional funds. The agencies work to remediate the weaknesses and monitor the progress of the IT investment. If an investment is still on the “Management Watch List,” agencies must describe their plans to manage or mitigate risk before undertaking or continuing activities related to that investment, and the investment is placed on the High Risk list.

Question. How does it differ from the High Risk List?

Answer. The Management Watch List (MWL) is based on planning documentation presented in the exhibit 300 (or “business case”). The High Risk List is based on agency execution of IT projects. The Management Watch List is for the upcoming fiscal year while the High Risk is based on the current fiscal year. Therefore, items on the High Risk List are not necessarily based on past performance—rather, they are projects requiring additional monitoring due to the size and complexity of the project, or the nature of the risk for the project. Conversely, items on the Management Watch List appear to require additional planning and/or implementation of controls based on documentation available. Finally, the Management Watch List is based on IT investments while the High Risk List is based on IT projects.

Question. What are the criteria that are used to decide whether to put an IT project on one of these lists?

Answer. Investments are placed on the Management Watch List if their investment justification needs improvement in various stages of the capital planning and investment control process, including, but not limited to areas such as: project management, performance measurement, earned value management or system security.

A project is placed on the high risk if it meets the following criteria per OMB memo, M05-03, “Improving Information Technology (IT) Project Planning and Execution,” <http://www.whitehouse.gov/omb/memoranda/fy2005/m05-23.pdf>. High risk projects as defined in OMB Circular A-11 include those requiring special attention from oversight authorities and the highest levels of agency management because—

- the agency has not consistently demonstrated the ability to manage complex projects;
- of the exceptionally high development, operating, or maintenance costs, either in absolute terms or as a percentage of the agency’s total IT portfolio;
- it is being undertaken to correct recognized deficiencies in the adequate performance of an essential mission program or function of the agency, a component of the agency, or another organization; or
- delay or failure would introduce for the first time unacceptable or inadequate performance or failure of an essential mission function of the agency, a component of the agency, or another organization.”

Question. Is the number of projects on these lists increasing each year?

Answer. The number of projects for the High Risk List and the number of investments on the Management Watch List are dynamic.

The High Risk List OMB published in April 2007, includes 549 projects determined to be high risk due to different factors, such as the complexity, risk, or the level of importance. The President’s budget reported in February identified 477 projects on the High Risk List. The increase on the High Risk List is attributable to increased management oversight reported by agencies.

The number of investments on the Management Watch List varies. While an investment might be initially placed on the Management Watch List, agencies have an opportunity to remediate these planning documents prior to the fiscal year. When the President released his fiscal year 2007 budget, there were 263 investments initially placed on the Management Watch List; however, by the end of the fiscal year 2006 there were just 84. When the President released his fiscal year 2008 budget there were 346 investments placed on the Management Watch List. However, agencies are able to continue to remediate these deficiencies and as of March 31, 2007, there are 183 investments on the Management Watch List. OMB continues to work with agencies to remediate the deficiencies in the remaining investments.

Question. Does OMB have the resources to adequately follow up on the Management Watch List projects? If not, what plans, if any, do you have to seek assistance from others (e.g. IG offices and other oversight bodies) in tracking the resolution of projects with weak business cases?

Answer. Yes, OMB has the resources to adequately follow up on the investments on the Management Watch List. Additionally, OMB works with the President’s Council on Integrity and Efficiency (PCIE), as well as agency Inspector Generals (IGs), to assist with independent verification and validation for areas of concern.

OMB also works in partnership with agencies and GAO to address deficiencies in several high-risk programs.

The so-called exhibit 300s are essentially business cases that OMB requires agencies to develop to justify funding requests for their major IT projects.

Question. In a review conducted about a year ago, GAO found that agencies' exhibit 300s were not always reliable or accurate. What actions have OMB and agencies taken since that time to address this issue?

Answer. OMB and agencies took a number of actions to address this issue. OMB made significant changes to both the guidance and the actual exhibits 53 and 300 for agencies' fiscal year 2008 IT Budget request. The changes were intended to improve the quality and accuracy of the data. OMB met with agencies to discuss the changes to the exhibits and answer questions from the agencies. As part of this year's budget review, OMB also increased its requests for the underlying documentation referenced in the exhibit 300. At OMB's request, the PCIE and Executive Council on Integrity & Efficiency (ECIE) also conducted an assessment to ascertain the reliability of agencies' Exhibit 300s. This review was completed in March, 2007. OMB will continue to work with the PCIE and ECIE on areas identified for improvement. Finally, OMB continues to work with the agencies and the CIO Council to help improve agency employee understanding of their IRM responsibilities including the planning for information technology projects.

REGULATORY POLICY

Question. On January 18, President Bush issued amendments to Executive Order 12866, which further centralize regulatory power in the Office of Information and Regulatory Affairs (OIRA) in OMB and shift it away from the federal agencies given this power by legislative enactments.

Three aspects of the amendments seem troubling: (1) the identification of "market failure" as the first principle in promulgating regulations, (2) the designation of a presidential appointee as the Regulatory Policy Officer in each agency covered by the Executive Order, and (3) the requirement that significant guidance documents undergo nearly the same OIRA review process required of significant regulations.

Why were these changes made in the Executive Order?

Answer. The primary purpose for the issuance of Executive Order (EO) 13422 was to amend EO 12866 in order to establish an interagency review process for significant guidance documents, which would serve as a complement to OMB's issuance of the Final Bulletin on Agency Good Guidance Practices (the Bulletin). The Bulletin and EO 13422 are aimed at ensuring that significant agency guidance documents are developed through procedures that ensure quality, transparency, public participation, coordination, and accountability. As EO 12866 was being amended to establish the interagency review process for significant guidance documents, this provided an opportunity to make additional (non-guidance) amendments to EO 12866 that reflect good-government practices.

The review process for guidance documents is quite different from that of regulations. First, pursuant to EO 12866, OIRA reviews an agency's significant regulations. Pursuant to EO 12866, as amended, however, agencies will provide advance notice of significant guidance documents to OIRA and OIRA will notify the agency if additional consultation will be necessary before the issuance of the significant guidance document; OIRA will not review all significant guidance documents. Second, under EO 12866, an agency must prepare a formal cost-benefit analysis for an economically significant regulation. By contrast, under EO 12866, as amended, while agencies must make basic estimates to determine if a guidance document is economically significant, there is no requirement for the agency to prepare a formal cost-benefit analysis. Accordingly, guidance documents will not undergo the same review process as do regulations.

EO 12866, as amended, provides that agencies must identify in writing the specific market failure or other specific problem that they intend to address. As an initial matter, the reference to market failure is not a new concept; it was referenced in the "Statement of Regulatory Philosophy and Principles" in the first section of EO 12866 as it was issued by President Clinton in 1993. It was also discussed extensively in other OMB documents issued under President Clinton (in then-OIRA Administrator Katzen's 1996 "Memorandum re: Economic Analysis of Federal Regulations Under Executive Order No. 12866") and President Bush (in the 2003 proposed and final versions of OMB Circular A-4 for Regulatory Analysis). EO 12866, as amended, includes reference to the classic examples of market failure including externality (environmental problems being the classic example), market power, and inadequate or asymmetric information. Second, EO 12866, as amended, does not make the identification of a market failure the only basis on which a Federal agency

can justify regulatory action. The revised section also encourages agencies to identify any “other significant problem that it intends to address.” Finally, this revision does not impose a new requirement on rulemaking agencies as agencies should already have been identifying in writing the precise nature of the problem that the agency is seeking to remedy through regulatory action to demonstrate to the public, Congress, and the courts that the agency has exercised its regulatory authority in a reasonable and well-considered manner.

EO 12866, as amended, provides that each agency head shall designate one of the agency’s Presidential Appointees to be its Regulatory Policy Officer and advise OMB of such designation. However, many of the Regulatory Policy Officers had already been Presidential appointees (and most of these Presidential appointees held Senate-confirmed positions) prior to the issuance of EO 13422. The chief advantage of having a Presidential appointee serve as the Regulatory Policy Officer is that it ensures accountability with respect to this role.

Question. Have you estimated the number of guidance documents OMB will be expected to review in fiscal year 2008?

Answer. Under EO 12866, as amended, after agencies provide advance notice of significant guidance documents to OIRA, OIRA will notify the agency if additional consultation will be necessary before the issuance of the significant guidance document. As EO 13422 was issued in January of 2007, OMB does not yet have much experience in its implementation, and OMB has not determined how many significant guidance documents it will review in fiscal year 2008. The number of significant guidance documents selected by OIRA for additional consultation will likely vary from year to year, depending on a variety of factors, one of them being the types and number of significant guidance documents that agencies develop from one year to the next.

Question. How many additional staff, with what sets of skills, will be needed to accomplish these reviews? Were the revised regulatory review requirements considered in formulation of OMB’s budget request for fiscal year 2008? If not, why not?

Answer. It is not expected that additional staff will be necessary as it is OMB’s plan to utilize OIRA’s existing staff in the implementation of EO 12866, as amended, and the Bulletin. OIRA staff currently review draft rules pursuant to EO 12866, draft information collections pursuant to the Paperwork Reduction Act, and some drafts of guidance documents. These same staff will review significant guidance documents selected for review by OIRA pursuant to EO 12866, as amended. The submitted budget request documents do not contain requests for additional funding because it is expected that EO 12866, as amended, and the Bulletin can be implemented with existing resources.

OUTSOURCING—“COMPETITIVE SOURCING” OMB CIRCULAR A-76

Question. Recently, OMB Associate Administrator Matthew Blum was reported to have said that the Administration would soon publish new guidance relating to the public-private competitions that federal agencies conduct. (Government Executive article, dated 4/4/07)

Can you tell me more about what you will be proposing and why?

Answer. On April 13, 2007, OMB issued a memorandum to the President’s Management Council providing guidance to help agencies substantiate that savings are achieved and performance is improved through public-private competition. The guidance includes a requirement for all PMA agencies to develop plans for the independent validation of a reasonable sampling of competitions. The guidance is available at http://www.whitehouse.gov/omb/procurement/comp_src/cs_validating_results.pdf.

Question. Do you expect this guidance to result in more federal employee jobs being privatized?

Answer. No. The purpose of the guidance is to ensure agencies and taxpayers receive the expected benefits from competition. OMB hopes these efforts will further strengthen accountability for results—irrespective of who the selected provider is—and reinforce public trust and confidence in the competitive sourcing initiative.

Question. Currently, federal employees do not have the same rights that contractors possess to appeal contracting-out decisions to GAO and the Court of Federal Appeals. A senior procurement official whose job is not among those being considered for contracting-out can appeal on behalf of affected employees in very narrow circumstances. In order for there to be any confidence in the integrity of the “competitive sourcing” process, it is understood that both sides should have the same appeal rights.

What approach would the Administration prefer the Congress to take to rectify this imbalance: giving appeal rights to federal employees actually being reviewed for

privatization or taking away appeal rights from contractors, so that there can be a level playing field?

Answer. OMB believes protest rights are more balanced than described above. For example, contractor employees, like federal employees, do not have an independent right to protest to the GAO. Although the law limits the representative for agency protests to the agency tender official (ATO), the law also requires the ATO to notify Congress whenever the ATO fails to pursue a protest to the GAO on grounds requested by a majority of the employees engaged in the performance of the competed function. There is no similar reporting requirement for companies that do not pursue protests requested by their employees.

ARE POLITICAL ACTIVITIES BEING ENCOURAGED AT FEDERAL AGENCIES?

Question. Recent reports have discussed potential improprieties by the GSA Administrator and the activities of the top aide to political advisor Karl Rove. That aide and the GSA Administrator apparently met with GSA political appointees about the 2006 election results and Republican goals for 2008.

To what extent are the White House and OMB engaged with the political appointees at federal agencies about election outcomes?

Answer. OMB regularly circulates Hatch Act guidance to its employees. First, OMB includes Hatch Act information in its annual mandatory ethics training for employees. OMB senior staff receive live ethics training each year, in compliance with Office of Government Ethics regulations; other OMB staff receive live ethics training every third year and paper ethics training in the ensuing years. All training sessions, whether live or paper, include Hatch Act guidance. Secondly, OMB circulates specific Hatch Act guidance to all employees every two years, which coincides with the federal election cycle. OMB last circulated its specific Hatch Act guidance on September 25, 2006.

PRIVACY AND SECURITY OF PERSONAL INFORMATION ROLE OF OMB IN GOVERNMENT COMPUTER DATA BREACHES

Question. Personal data security breaches are being reported with increasing regularity. These breaches occur not only because of illegal or fraudulent attacks by computer hackers, but often because of careless business practices, such as lost or stolen laptop computers, or the inadvertent posting of personal data on public websites.

Federal agencies are not immune from this unsettling problem. In May 2006, 26.5 million veterans and their spouses were in danger of identity theft because a Veterans Affairs data analyst took home a laptop computer containing personal data which was later stolen in a burglary. Other incidents of potentially compromised data in 2006 involved the Departments of Agriculture, Commerce, Defense, Energy, State, and Transportation, the Federal Trade Commission, the Internal Revenue Service, the Government Accountability Office, the National Institutes of Health, and the Department of the Navy.

Director Portman, it appears some steps have been taken to address this disturbing problem of data breaches involving personal and sensitive information in government computers, but are they the right ones?

Answer. Yes, and we are continuing our efforts in this area. As recommended by the President's Identity Theft Task Force in their interim recommendations issued by Clay Johnson on September 20, 2007 titled, "Recommendations for Identity Theft Related Data Breach Notification" (www.whitehouse.gov/omb/memoranda/fy2006/task_force_theft_memo.pdf), agencies use a risk-based approach when analyzing and responding to data breaches of sensitive information.

Question. Are we doing enough?

Answer. Although there is continued progress toward the establishment of appropriate safeguards, most Federal agencies are still at risk for improper access and disclosure of personally identifiable information and other sensitive information, as described by the IGs evaluations completed in October 2006. There is continued need for agencies to identify and properly categorize sensitive information; refine organizational policy, and implement comprehensive solutions to protect sensitive information being transported or stored offsite, or remotely accessed.

Question. Can we achieve "zero tolerance" in this arena? What tools and resources would it take?

Answer. A significant factor in data breaches is human error, which results from failure to successfully implement security and privacy policies. "Zero tolerance" would only be possible when agencies focus beyond compliance and manage the risk through the use of an integrated and comprehensive privacy and security awareness training of all personnel, responsibility-specific training when appropriate, and suc-

successful implementation of privacy and security policies. However, we cannot guarantee these incidents will not happen, but rather the agencies will have the ability to properly respond to minimize the risk of our citizen's data.

Question. In addition to the directives on encryption, access, timely reporting, and management response issued last year, what other initiatives is OMB considering to help resolve this problem or mitigate the risk?

Answer. OMB is focused on implementing existing law and policies, and following the recommendations identified in the report submitted to the President by the Identity Theft Task Force on April 23, 2007.

Question. Are you contemplating issuing any further directives that compel agencies to enhance IT inventory controls, including the creation of comprehensive databases for all departmental property?

Answer. We rely on the information agencies provide in the annual report on security under the Federal Information Security Management Act (FISMA) and the assessment by the agencies' Inspectors General for the quality of agency system inventories. Additionally, the E-Government Act requires agencies to report on their privacy program, and agencies report to us on the number of completed privacy impact assessments (PIAs) and system of records notices (SORNs).

Question. Are there special or unique challenges that Federal departments and agencies face when it comes to tackling this problem?

Answer. The public and private sectors are faced with similar security and privacy issues, and would benefit by exchanging lessons learned and best practices. Because Federal agencies provide the public services requiring we maintain significant amounts of information concerning individuals, we have a special duty to protect that information from loss and misuse.

Question. Are the funding amounts agencies are requesting sufficient?

Answer. The budget submitted by the President requests the appropriate funding amount to address the Administration's initiatives for security and privacy.

Question. How do you know whether agencies are complying with your July directive to timely report within one hour? Are there any consequences for delays or failures to report?

Answer. We have seen an increase in the amount of reports submitted through US CERT, which would suggest increased compliance with the directive. Individual agencies are responsible for establishing consequences for failure to follow agency policies. However, it is important to recognize reporting in and of itself is not a failure, but rather, a necessary procedure to help agencies respond to incidents in a timely and effective manner, and protect citizens to the maximum extent possible when a situation does arise.

Question. Did all agencies meet the August 7, 2006 deadline for encryption requirement as directed in OMB's Memorandum issued last June? If so, how do you know? If not, why not?

Answer. Memorandum 06-16 presented four recommended actions for agencies to implement to provide better protection for information accessed remotely—one of which is to encrypt all data on mobile computers/devices which carry agency data unless the data is determined to be non-sensitive, in writing, by the agency's Deputy Secretary or designee—to be implemented through the existing framework provided within current law and policy. As of October 2006, most agencies were still in process of implementation. The public results of the Inspectors General assessment of Departments' and Agencies' status in meeting the recommendations of OMB memo 06-16, as of October 2006, are published on Internet at www.ignet.gov/pande/faec/summaryiiireport.pdf. We have been working with the PCIE IT Committee to formulate an additional evaluation to measure agency progress.

Question. Should OMB play a stronger role in checking on agency compliance with your directives to date?

Answer. OMB provides the appropriate amount of oversight to the federal agencies; however, it is the responsibility of the agencies to manage the risk of their services and data in accordance with existing laws and policies.

Question. Should we heighten employee accountability standards? Is there a need to expand training?

Answer. Agencies provide employees with clearly defined policies addressing expected rules of behavior and accountability for failure to follow those rules, reinforced with training to ensure employees understand the standards and practices for which they will be held accountable. To help agencies administer effective training programs, the Information Systems Security Line of Business (ISS LoB) identified three agency training programs to serve as a common baseline for other agencies to use.

Question. Are there any legislative reforms that would be beneficial?

Answer. Legislative reform is not necessary at this time. We are focused on moving agencies towards better implementation of existing laws and policies and managing their risk levels—so that we can move “beyond compliance” to achieve improved security and privacy outcomes for our citizens to ensure trust in our services.

PRIVACY AND SECURITY FOR INFORMATION SYSTEMS: OMB DIRECTIVES ON BUDGET REQUESTS

Question. Privacy and security of data are important elements of planning, acquisition, and development of Federal information technology systems. The E-Government Act of 2002 and the Federal Information Security Management Act (FISMA) provide significant privacy and security responsibilities for federal information technology system operators.

Seven years ago, OMB issued instructions to agencies on how to integrate security into the funding for information technology (“Incorporating and Funding Security in Information Systems Investments,” Memorandum M-00-07, issued 2/28/00 and incorporated in OMB Circular A-11 on budget preparation policy).

Under OMB’s guidance requirements, agencies are required to: (1) Integrate security into and fund it over the lifecycle of each system undergoing development, modernization, or enhancement; and (2) Ensure that steady-state system operations meet existing security requirements before new funds are spent on system development, modernization, or enhancement.

Last July, OMB’s Administrator of E-Government and Information Technology reminded agencies of the requirement to incorporate and fund security and privacy requirements within their IT investments as part of the fiscal year 2008 budget process. Agencies were specifically directed to provide additional detail on resources they devote to fixing security weaknesses. Furthermore, agencies with significant isolated or widespread weaknesses identified by the agency Inspector general or GAO were directed to identify the specific funds they were requesting to correct the security weaknesses.

Did all agencies comply with the directive on incorporating security funding in submitting their fiscal year 2008 budget requests?

Answer. Yes. All agencies submit an Exhibit 53 identifying the percentage of the agency’s IT spending used for security. In addition, the Exhibit 300 submitted as part of the budget submission includes details on IT security spending.

Question. How can we be assured that all agencies across the federal government are adhering to this directive?

Answer. As part of the budget process, agency CIOs and IGs, as well as OMB, review agency Exhibit 53s and Exhibit 300’s. These documents show agencies are planning for, and incorporating, security spending over the course of the investment lifecycle.

Question. What did OMB’s review of the agency submissions show? Did all agencies identify the funding needs to address system security vulnerabilities as expected?

Answer. We review agency budget requests to ensure agencies identify the costs for securing their investments. When agencies submit budget requests without information about the costs for securing their investments, the Investments are placed on the Management Watch List. We also analyze agency FISMA reports and other information to help determine whether agency budget requests are justified.

Question. Can you cite some examples of budget submissions for fiscal year 2008 in which a federal agency identified specific funding requirements to address privacy and security vulnerabilities?

Answer. All agency budget submissions identify the costs for securing their investments to address privacy and security vulnerabilities.

Question. Has OMB ever substantially reduced or denied an agency’s request for funding to address security weaknesses?

Answer. Agencies identify the costs for securing their investments as part of their budget request, and we use this information when determining whether agency requests are justified.

Question. Do you believe all agencies have adequate resources to address this problem of information security? Why or why not?

Answer. We believe that agencies have adequate resources to address information security. They request the funding they need in their annual budget submission, based on their assessment of security control needs and remediation of weaknesses. To determine this amount, we rely on agencies to use their plan of action and milestone process, capitol planning, and the associated information to prioritize and determine the adequate amount of resources to request in order to mitigate any weaknesses that exist.

Question. What checks are in place to assess agency systems acquisition projects to ensure that security is an integral part? Are there any consequences for non-compliance, or for proceeding to spend new funds despite not meeting existing security requirements?

Answer. The Federal Acquisition Council published a Federal Acquisition Register clause outlining the requirement for agency acquisitions to follow the requirements of federal security policies. FAR clause 52.239-1(b) includes a broad reference to programs, including security, which includes FISMA. Compliance with this clause is enforced through the FAR process. On April 25, 2007, OMB issued a memorandum regarding the Federal Acquisition Certification for Program and Project Managers. This memorandum establishes a structured development for program and project managers that will improve the partnership and collective stewardship of taxpayer dollars.

Question. What role does OMB play in reviewing IT spending plans to ensure that the security and privacy components are appropriately addressed?

Answer. Besides oversight from reviewing Exhibit 300s and Exhibit 53s, and other budget documents, OMB works with agencies throughout the year to assist in their project planning and implementation.

Question. Has OMB (or any agency head that you are aware of) ever halted a systems procurement due to the failure to include IT security funding in the project?

Answer. OMB views this activity as an internal agency procurement matter, and therefore, we would not necessarily know of any specific projects that have been halted. However, information related to procurement and security is submitted to OMB through the budget process in Exhibit 300 planning documentation, and it is considered as we review agency budget requests. It is important to also note agencies apply a methodology called "Earned Value Management" to regularly assess whether IT project implementation is on schedule, and within cost and performance expectations. When projects deviate significantly from established expectations, agencies have to determine whether the project should be halted, adjusted, and/or terminated.

QUESTIONS SUBMITTED BY SENATOR SAM BROWNBACK

Question. Mr. Portman, I have introduced a bill that would establish a "Commission on the Accountability and Review of Federal Agencies."—CARFA.

CARFA would: (1) evaluate executive agencies and their programs; and (2) submit to Congress a plan recommending agencies and programs that should be realigned or eliminated.

Are you supportive of this bill?

Answer. Yes. The Administration is strongly supportive of legislation that would enhance scrutiny and improve performance of programs.

Question. Do you believe that it would eliminate wasteful government spending and improve government agencies' performance?

Answer. Yes.

Question. Could you help me analyze taxpayers' savings that this legislation could realize by reducing government waste?

Answer. I cannot now give an accurate estimate of the amount of waste, fraud, and abuse that inflicts government today. The President's Council on Integrity and Efficiency reported \$9 billion in potential savings that could result from recommendations Inspectors General made in fiscal year 2006. While eliminating government waste is a priority of the Administration, even more can be gained by making programs more effective and efficient. We are using the PART process to identify and pursue opportunities for agencies to get the taxpayers more for their money and eliminate unnecessary duplication of services. Based on agency and OMB assessments of program performance, we can say that proposed fiscal year 2008 spending on programs rated Ineffective or Results not Demonstrated exceeded \$140 billion.

Question. What is the current level of uncredited contributions to Social Security by undocumented persons working in this country?

Answer. The Social Security Administration (SSA) does not know how much undocumented workers are contributing to Social Security. Uncredited contributions to Social Security are captured in the Earnings Suspense File. Employers report wages to SSA, and SSA uses the SSN to record the employees' earnings histories. The Earnings Suspense File captures all wage reports where SSA cannot verify the name and SSN of the worker against SSA's records. If SSA later resolves the mismatch, SSA removes the item from the suspense file and credits the wages to that person's record.

There are many reasons that a name and SSN may not match Social Security's records, including typographical errors and name changes. A mismatch may also occur if a worker is using an SSN obtained fraudulently, and their name does not match the SSN in SSA's records.

SSA has no way of estimating the percentage of the Earnings Suspense File that represents work done by undocumented workers using fraudulent SSNs. The primary challenge in producing such an estimate is that SSA does not have a basis for estimating how many of the undocumented workers currently in the United States are paying payroll taxes.

Question. What would be the effect on Social Security if illegal aliens were to gain legal status?

Answer. The effect on the Social Security Trust Funds would depend on the number of undocumented immigrants receiving an adjustment in their status, and whether they were paying payroll taxes prior to that time. Under current law, individuals illegally present are not eligible to receive Social Security benefits. The effect on Social Security would also depend on how work completed prior to receiving legal status is treated for benefit eligibility and benefit calculation purposes.

The 2007 Social Security Trustees Report provides some illustrative figures regarding the effect of immigration on the Social Security program. The Trustees Report intermediate assumptions assume that net immigration will total 900,000 people per year. When net immigration is increased to 1.3 million a year, the long-range outlook improves. The 75-year actuarial balance as a percentage of taxable payroll would improve from -1.95 under intermediate assumptions to -1.70 under the higher immigration scenario. In general, increasing the number of net immigrants by 100,000 would increase the 75-year actuarial balance by .07 percent of taxable payroll.

Question. You express concern about the level of mandatory spending in the budget, how do you propose to reduce this?

Answer. While the near-term outlook in the President's 2008 budget of smaller deficits and a surplus starting in 2012 is encouraging, the current structure of the Federal Government's major entitlement programs will place a growing and unsustainable burden on the budget in the long-term. Currently, spending on Medicare, Medicaid, and Social Security is approximately eight percent of the Nation's GDP. With the first of the baby boom generation becoming eligible for Social Security in 2008, Social Security spending will accelerate. Three years later, the problem will become more pronounced as these individuals become eligible for Medicare, under which program costs rise even faster due to health care inflation. By 2050, spending on these three entitlement programs is projected to be more than 15 percent of GDP, or more than twice as large as spending on all other programs combined, excluding interest on the public debt.

The President's budget proposes a number of reforms in mandatory programs, particularly in Medicare, resulting in savings of \$66 billion over five years and growing to \$252 billion over 10 years. These proposals will not solve the Government's long-term fiscal challenges, but they are an important and meaningful step, producing a significant improvement over the long term. Under the President's budget policies, the deficit in 2050 is projected to be 4.7 percent of GDP. In contrast, if the Congress fails to adopt the President's mandatory proposals and permits current law to remain in force, the deficit in 2050 is projected to be 7.5 percent of GDP.

Question. Director Portman, in your testimony you have requested \$410 million for enhanced income tax enforcement, how much increased tax revenue would this yield?

Answer. The budget proposes to improve the effectiveness of the IRS' activities with a \$410 million package of new initiatives to enhance enforcement and taxpayer service and to improve the IRS' technology. Budget scoring rules do not permit CBO and OMB to "score" the estimated revenue increase from IRS enforcement efforts. The IRS collects \$51 billion per year (2007 estimate) in direct enforcement revenue, and its enforcement program helps maintain the more than \$2 trillion in taxes voluntarily paid each year. The budget's proposed funding levels for the IRS will help maintain the base revenue, and the proposed enforcement initiative should boost revenue further.

Based on historical realization rates, the IRS estimates there is a 4:1 return on expanded enforcement activities once new staff is fully trained. During 2008, the proposed enforcement initiatives are estimated to yield more than \$300 million in new enforcement revenue, and once new staff are trained and become more experienced, the enforcement revenue impact of the work they complete each year is estimated to increase to approximately \$700 million. However, this Return on Investment (ROI) estimate is likely understated because it does not reflect the indirect im-

pact enhanced enforcement has on deterring non-compliance. Research suggests this indirect impact is at least three times as large as the direct impact on revenue.

Question. Competitive sourcing is an integral part of the President's Management Agenda, as such, what is the expected benefit of this concept?

Answer. The reasoned and strategic application of competition is helping agencies achieve greater efficiencies and better performance. By making commercial services that support programs more efficient, agencies have more resources to spend directly on their missions. Competition motivates agencies to become more efficient through the development of improved performance standards, the adoption of new technologies, workforce realignments, the consolidation of operations, and lower contract support costs. Projected savings are significant for the small percentage of the workforce competed. In fiscal year 2006, for example, agencies competed only 0.4 percent of the entire civilian workforce. Yet these competitions are expected to generate savings of \$1.3 billion over the next 5–10 years. Competitions completed since 2003 are expected to produce almost \$7 billion in savings for taxpayers over the next 5–10 years. This means taxpayers will receive a return of about \$31 for every dollar spent on competition. Annualized expected savings are around \$1 billion.

Question. What is precluding the full application of competitive sourcing?

Answer. Despite impressive results, a number of legislative provisions limit agencies from taking full advantage of competition where it makes sense. Some restrictions prohibit agencies from competing certain activities or conducting competitions at certain organizations while others limit agency resources for competition or marginalize the consideration of quality, forcing agencies to choose between the government and the private sector solely based on lowest cost.

Many legislative restrictions appear to be rooted in concerns that competitive sourcing will be used to weaken the workforce. In fact, agencies have carefully tailored their use of competition and given federal employees a full and fair opportunity to demonstrate their value to the taxpayer. Federal employees have fared well, receiving 87 percent of the work competed in fiscal year 2006 and 83 percent of the work competed between fiscal years 2003–2006. OMB would welcome the opportunity to work with members of Congress to eliminate statutory restrictions so that competition may be used, where appropriate, to improve government operations and deliver the best results for the American taxpayer.

Question. How much has the deficit declined the past two years and do you expect it to decline again this year?

Answer. The size of the deficit and the debt is best assessed in relation to the economy as a whole, as measured by GDP. In his 2005 budget, the President set a goal to cut the deficit in half by 2009 from its projected peak in 2004. The President achieved his goal in 2006, three years ahead of schedule. The deficit in 2006 was 1.9 percent of GDP, or \$248 billion. This was a reduction from the actual 2004 deficit of 1.7 percent of GDP, or \$165 billion. The 2006 deficit was below the 40-year historical average of 2.4 percent of GDP, and was smaller than the deficit as a percent of GDP in 18 of the previous 25 years.

In the 2008 budget, we project the deficit to decline even further for 2007 to 1.8 percent of GDP, or \$244 billion. OMB will update these projections in the Mid-Session Review.

Question. Would you recommend that the President veto the supplemental over the level of additional funding in the bill?

Answer. The President vetoed this bill on May 2 based on the inclusion of an artificial deadline for troop withdrawal from Iraq, and the addition of billions of dollars in unrelated spending.

Question. Last year OMB had its lowest staffing levels in over 30 years, how are you able to complete the important work you do under such tight budget constraints?

Answer. We have reduced staff levels over the past 6 years and attempted to be more productive with these lower staff levels. OMB has an extraordinarily dedicated and talented team of career professionals. OMB is consistently rated as the best or one of the best places to work in the federal government. We strive to recruit, train and retain the best staff we can at OMB. While the request for fiscal year 2008 is a disciplined budget, we believe it provides the resources necessary for OMB to maintain a staff of 489 and fully meet its mission.

QUESTIONS SUBMITTED BY SENATOR WAYNE ALLARD

Question. What are OMB's scores on the management scorecard?

Answer. OMB's current progress score for Human Capital, Competitive Sourcing, Financial Performance, and Budget and Performance Integration is green. While our

progress score for E-Gov is red, we are taking steps to improve that score. OMB is currently yellow in status on Human Capital, but red in status on Competitive Sourcing, Financial Performance, E-Gov, and Budget and Performance Integration.

All current and past scores for all agencies on the President's Management Agenda can be found at results.gov.

Question. Why hasn't OMB undergone a PART review?

Answer. Early in the development of the PART, the Administration made a decision to focus our evaluation efforts on programs that most directly impact the government's services to the American people. We excluded from the PART process policy functions (e.g., Office of the Secretary), central administrative functions that are not associated with specific programs, and programs and activities with a limited impact. The central administrative functions are evaluated using the President's Management Agenda scorecard.

OMB has not been assessed with the PART primarily because it serves in a policy role. This does not mean OMB has escaped oversight or scrutiny. In fact, OMB management has been held to the same standards as every other major agency with the President's Management Agenda Scorecard. That scorecard assesses the quality of OMB's personnel, financial, information technology, procurement, and performance management. Each quarter, OMB's progress and status on each of these initiatives is made available on Results.gov.

SUBCOMMITTEE RECESS

Senator DURBIN. Director Portman, I thank you for your testimony.

Mr. PORTMAN. Thank you, Mr. Chairman.

Senator DURBIN. This meeting of the subcommittee stands recessed.

[Whereupon, at 4:19 p.m., Wednesday, April 11, the subcommittee was recessed, to reconvene subject to the call of the Chair.]