
Budget Process Bills Would Result in Significant Cuts in Domestic Spending

Congress is considering budget reform proposals which would have a significant impact on domestic spending. The main proposal is comprehensive budget reform legislation sponsored by Senate Budget Committee Chairman Judd Gregg (R-NH) and endorsed by Senate Majority Leader Frist (R-TN). The bill, S. 3521, has passed the Senate Budget Committee and is pending consideration on the Senate floor.

The Gregg bill advances an agenda of cutting or eliminating spending for domestic programs, a task that would be more challenging to do if addressed clearly by Congress. The bill changes the budget rules so that the domestic budget cuts are made automatically.

The Gregg bill would impose caps on funding all domestic discretionary programs except space, science and technology. The Gregg bill would also return to the former Gramm-Rudman budget policy of automatic across-the-board budget cuts in entitlement programs if fixed deficit targets are not met. The only entitlement program to be exempt from these cuts would be Social Security. There is no mechanism to limit tax cuts.

The Gregg bill would establish new definitions of “solvency” for Medicare and Medicaid that are not related to how the programs are financed. The Center on Budget and Policy Priorities estimates that Medicaid would have to be cut by 22 percent by 2020, 36 percent by 2030 and 50 percent by 2042 in order to meet the solvency target.

The Gregg bill would also create “sunset commissions” which would examine all entitlement and discretionary programs and recommend major changes for reform. The commissions could be partisan and could result in major reforms moving through Congress quickly under a procedure that allows no amendments.

Finally, the Gregg bill includes a line-item veto provision that would allow the President to cut basic funding for appropriated programs and reject provisions of legislation affecting entitlement programs. The President could cut earmarks and other provisions that he does not like in legislation and force Congress to quickly vote on the legislation. The line item veto has passed in the House and is waiting Senate approval.

The House is expected to vote this week on legislation which would create sunset commissions. Both H.R. 5766 and H.R. 3282 would allow an unelected panel to examine federal programs and create legislation to reform important programs. For more information on sunset commissions, go to www.ombwatch.org.

For more information on comprehensive budget reform and the Gregg bill, go to www.cbpp.org.

Appropriations Bills Pass Senate Committee

Both the Transportation, Treasury, Housing and Urban Development (TTHUD) Appropriations bill and the Labor, Health and Human Services, Education Appropriations bill passed the Senate Appropriations Committee on July 20.

Overall, the Senate provided HUD with \$36.6 billion in FY 2007, an increase of \$2.5 billion above the

President's request. The Senate bill funded Section 202 elderly housing at \$750 million.

The Senate bill funded Section 811 housing for persons with disabilities at \$240 million, \$3 million above last year and \$121 million above than the President's request.

The Senate provided the Labor, HHS, Education Appropriations bill with \$605.5 billion, \$142.8 billion of which is discretionary spending with the remainder going to mandatory spending. Although the Senate bill included \$1.3 billion more than in FY 2006 and \$4.5 billion more than the President requested, many individual programs were cut.

Congress is not expected to finalize spending for the two bills until after the election, in a lame duck session in November. More information on the two bills will be provided in a future edition of *LSA Washington*.

Bush Administration Planning Changes to the Provider Tax

The Department of Health and Human Services is planning to reduce the maximum rate that states are allowed to charge for provider taxes from six to three percent. For most states, the cut in the provider tax rate would severely reduce federal Medicaid funding, which in turn would cut provider reimbursement. LSA is working with the American Association of Homes and Services for the Aging, the American Health Care Association, and ANCOR on this issue.

Congress is also acting to prevent the Administration from cutting provider taxes to three percent across the country. The House Appropriations Committee approved an amendment to the Fiscal Year 2007 Labor, Health and Human Services, Education Appropriations bill (H.R. 5647) to prevent HHS from cutting provider taxes across the country. The Senate may

consider a similar amendment from Senator Durbin (D-IL) on the Senate floor.

Advocates wishing to take action on this issue may want to use the AAHSA Contact Congress website at <http://capwiz.com/aahsa/issues>. To see the impact of this provision on your state, go to www.lutheranservices.org and click on public policy, priorities and Medicaid for a state-by-state chart that was provided by AHCA.

IRS Issues New Guidelines for Electoral Activities of Nonprofit Organizations

With the November 2006 elections quickly approaching, now is a good time to review what nonprofit organizations can and can not do during an election period. Nonprofit organizations are allowed to meet with and educate current elected officials and those seeking elective office. Nonprofit organizations are encouraged to assist citizens to exercise their right to vote.

There are some activities that nonprofit organizations should not participate in during an election period. In February 2006, The IRS issued a new fact sheet entitled "Election Year Activities and the Prohibition on Political Campaign Intervention for Section 501(c)(3) Organizations." The document states that charitable organizations that fall under Section 501(c)(3) of the Internal Revenue Code are "absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office." This prohibition applies to all campaigns, including campaigns at the federal, state and local level. Not complying with this prohibition may result in loss of tax-exempt status and the imposition of fines. Private foundations that are also 501(c)(3) nonprofit organizations are also subject to additional restrictions.

The new IRS guidance was produced because some religious organizations, particularly churches, and nonprofit organizations violated their tax-exempt status by endorsing candidates during the 2004 election cycle. Impermissible political campaign intervention occurs

when a 501(c)(3) nonprofit organization favors or is perceived to favor one candidate or political party over another. The IRS is conducting enhanced education and enforcement of Section 501(c)(3) nonprofit organizations in the 2006 election season.

Section 501(c)(3) organizations are encouraged to read the IRS Fact Sheet-2006-17 by going to <http://www.irs.gov/newsroom/article/0,,id=154712,00.html> and the IRS Publication 1828 entitled "Tax Guide for Churches and Religious Organizations." The second document can be found at <http://www.irs.gov/pub/irs-pdf/p1828.pdf>. This article should not be construed as legal advice. It is strongly recommended that organizations seek legal counsel before participating in election activities.

The following are highlights from the IRS guidance as highlighted by our partner organization, United Jewish Communities. The full memo from UJC can be found on the LSA website, www.lutheranservices.org under public policy advocacy.

There are many political activities in which nonprofits may engage:

Nonprofits may encourage voter registration, participation, and education, but cannot engage in any activity that favors or opposes any one candidate (or political party) for public office.

Nonprofits may organize nonpartisan get-out-the-vote drives so long as they are done in a candidate and party-neutral fashion.

Leaders and staff members of nonprofit organizations may engage in partisan campaigns and support or endorse candidates if done in the capacity as individual citizens. Leaders and staff members should be explicit that they are not representing their organization in any way. Note that senior leaders and those in visible roles should generally avoid campaign related activities since it may be difficult to establish, if necessary,

that they are acting solely as individuals and not on behalf of their organization.

Leaders and staff members of nonprofit organizations are prohibited from engaging in any partisan activity during work hours and from using any of the organization's resources, including phones, faxes, e-mail, mailing lists and meeting space.

Political candidates may be invited to appear before a nonprofit in their capacity as candidates, so long as equal opportunities are provided for each candidate seeking the same office, political fundraising does not occur in conjunction with the appearance, and neither support for nor opposition to any particular candidate is indicated at the event. If a panel is set-up with each candidate participating, the organization should cover a broad range of issues in the discussion and questions should be prepared and presented in a nonpartisan manner.

Nonprofits may sponsor candidate debates, but they must be convened in a way that does not suggest support or opposition to any candidate or party. If there is a debate, all legally qualified candidates for the same office should be permitted to participate, even if some candidates have virtually no chance of prevailing in the election. However, if one or more candidate decline to participate, the organization can still proceed with the event. It is permissible for the nonprofit to hold sequential sessions when only one individual candidate is asked to address the nonprofit, as long as the likely audiences, types of event, and manner of presentation of the speakers are similar.

A candidate may attend a lecture, concert, worship service, or other organizational event open to the public and convened by a nonprofit as a non-candidate, for instance in his or her official capacity as a representative of the office he or she currently holds, as an expert in the field, as a celebrity, or as someone with a distinguished military, legal or public service career. The candidate may not mention the campaign and no campaign activity may occur.

Nonprofit organizations may take positions on public policy issues and may lobby on nonpartisan issues to be

decided by voters such as ballot measures, initiatives, referenda, charter amendments, bond measures, and constitutional amendments. Nonprofits must avoid any issue advocacy that functions as political campaign intervention. According to the IRS, “even if a statement does not expressly tell an audience to vote for or against a specific candidate, an organization delivering the statement is at risk of violating the political campaign intervention prohibition if there is any message favoring or opposing a candidate. . . . All the facts and circumstances need to be considered to determine if the advocacy is political campaign intervention.” Accordingly, a nonprofit is permitted to send a message to an elected official, such as “Tell Senator X to vote against Bill 123” but cannot say “Because of Senator X’s vote for Bill 123, we encourage you to vote against him.” While a nonprofit can work to oppose or support a ballot initiative, the law is murkier when the ballot initiative is perceived to be the pet project of someone who is running for office at the same time the ballot initiative appears on the ballot. In such a case, particular care must be taken to avoid the perception that the nonprofit is engaging in political campaign intervention.

Below you will find activities in which nonprofits organizations may participate, but are likely to receive particularly close scrutiny from the IRS:

The distribution of a voter guide or short pamphlet intended to compare candidate positions on a set of issues may violate the prohibition against political campaign intervention, especially if it is released close to an election period. If your organization chooses to distribute a voter guide, each candidate must be portrayed in an equal light and the issues cannot be narrowed in scope. According to the IRS, “preparing or distributing a voter guide may violate the prohibition against political campaign intervention if the guide focuses on a single issue or narrow range of issues, or if the questions are structured to reflect bias. . . . In assessing whether a voter guide is unbiased and nonpartisan, every aspect of the

voter guide’s format, content and distribution must be taken into consideration. If the organization’s position on one or more issues is set out in the guide so that it can be compared to the candidates’ positions, the guide will constitute political campaign intervention.”

Questions sometimes arise around whether a business activity conducted by a nonprofit organization constitutes participation or intervention into a political campaign. This includes the selling of a mailing list, leasing of office space, or the acceptance of paid political advertisements if these goods and/or services are only made available to one candidate or if they are not made available to the general public with the same opportunity or at equal rates.

Websites fall under the same regulations as printed, oral, or broadcast communications, and the positing or disseminating of candidate information in a biased manner is prohibited. Additionally, a nonprofit has control over whether it establishes a link to another website. If a link connects the nonprofit only to one type of partisan or political content, the nonprofit may be engaging in impermissible political campaign intervention.

It is important to note that a single transgression into political campaign intervention may lead to a costly challenge to an organization’s tax exemption and possible loss of that status. In addition, activities that might not threaten an organization’s nonprofit status but could suggest to others a partisan preference, may be unwise from a community relations perspective. Some organizations have found it helpful to adopt policies that specify their rules with regard to political activity, and particularly whether and under what conditions certain lay and professional leaders may engage in political activity.

Lutheran Services in America will be providing further guidance on election year advocacy in the soon-to-be-released Grassroots Tool Kit. Stay tuned for more details on this exciting publication!

For further information about election year advocacy, please contact Lisa Carr, Director of Public Policy, at lcarr@lutheranservices.org or at 202-626-7945.