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United States Senate

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION
WASHINGTON, D.C. 20510

April 5, 1979

Dear Friend:

On Friday, February 9, 1979, I reintroduced the University and Small Business Patent Procedures Act, which will allow universities, nonprofit organizations, and small businesses to retain patent rights on inventions made under federally-supported research. Twenty-four of my Senate colleagues have already requested to co-sponsor the bill, indicating the bill's broad bipartisan support.

Federal law currently prevents universities and small businesses from obtaining patent rights on products of research backed in any way by federal funds. This policy has effectively removed the incentive for private firms and institutions to develop or market the products of their federally-financed research. As a consequence, untold numbers of advances, some with great medical and scientific potential, have withered on agency shelves. The end result is a significant contribution to America's productivity slump and balance of payment deficits. This bill seeks to reverse the paralyzed condition of the patent procedures and to get the resulting products out into the marketplace.

The patent issue has had a particular impact on the black colleges and minority businesses across the country, where an already low level of involvement in government-funded research is aggravated by the disadvantages of the current patent procedures. This bill will not only lower patent barriers generally but will also encourage minority universities and small businesses to seek greater participation in government-financed research and development. Hopefully, institutions such as your own will be participants in this resulting trend.

It is important that supporters of this legislation inform their representatives in the Senate and House of the problems facing universities and small businesses who want the fruits of their government-supported research delivered to the marketplace. Only then can the American people benefit from the successes of this research.

THE GREEN SHEET

News About the U.S. Department of Health, Education and Welfare

Fed. Times 10/3/77



Inderjit Badhwar

Looks Like Bedlam Ahead at HEW

THE REORGANIZATION of Health, Education and Welfare is rapidly plunging the department's personnel affairs into chaos. And if someone, somewhere, somehow doesn't get a quick handle on the situation there will be administrative bedlam accompanied by a sharp decline in employee productivity as well as a setback in the department's ability to perform its mission.

Conversations with professionals and workers at all levels lead me to believe that the HEW employee is faced with a serious identity crisis. He seems to have lost the reference point for his existence as a worker. He is in limbo. Floating in the unknown.

And the typical question he asks his boss these days is: Who am I? What is my job? Is my permanent position targeted for abolition? What is my competitive level? What is my retention status?

His boss can't answer those questions because he's asking the same questions of *his* boss. At the Social Security Administration. At the Health Care Financing Administration. At the Health Resources Administration. At the Office of Civil Rights.

This identity crisis in which the worker has been totally alienated from his workplace and his social organization — bureaucratic hierarchies are essentially social organizations — has been perpetrated by bureaucratic design.

Two turbulent cross currents are coming together and forming a dizzying whorl in which the HEW worker bobs up and down unable to grasp at the familiar straws of his union and his rights under the federal personnel manual.

The unions are in limbo, or in many cases busted, as is one which so staunchly fought for good management practices at the Social and Rehabilitation Service. Rules under the Federal Personnel Manual and the Veterans Preference Act, for all purposes, have been suspended with the active backing of the Civil Service Commission. The twin currents are: Reorganization and reclassification.

Let's take the Social Security Administration, the largest HEW agency as an example. SSA began to reorganize two years ago. The reorganization was in response to many of the agency's failures — setbacks in the Supplemental Security Income program, poor performance in the area of disability insurance. In all reorganizations, people move. New organizations come into being. Old ones disappear. Somewhere, way down the line, it's all expected to pay off in dividends of high interest efficiency bonds.

I can say with certainty that SSA's reorganization — the one that dealt with flowcharts went O.K., I'm now talking about the one dealing with *people* at headquarters — is becoming something of a nightmare for the average workers who has to bear its brunt, and a Frankenstein monster for many senior managers, one of whom said privately: "It stinks."

SSA workers are being moved about helter skelter, often into makeshift positions. They are being detailed to "special projects" or to re-engineered jobs without position descriptions — jobs which have no formal approval. In a situation like this, position descriptions become meaningless. Even the required Form 52's are not being cut.

The idea, through some perverse logic, is to "protect" people from being downgraded or RIFed. But tell that to a guy who's 60 years old with 30 years of service. Tell him he's being assigned out of his job to a special project. Do you blame him for charging that the reorganization is a convenient way of pushing people into retirement?

And matters have been further complicated because of the concurrent reclassification under way, the attendant downgrade moratorium and the compulsory placement program. I put one simple question to HEW personnelists: How in tarnation do you classify a job which is neither approved nor carries a position description?

The downgrade moratorium was one of the most brilliant pieces of management magic worked by HEW reorganizers. The unions swallowed the three-year downgrade moratorium as a pro-worker gesture when it is in fact a plan of deferred head-chopping. The moratorium so unthinkingly embraced by federal unions is no more than a time-buying scheme for management to reorganize without being bogged down in employee appeals.

Through the moratorium, HEW has won the right to undertake mass movements of employees — arbitrarily — without having to account for these actions. People who watch the federal bureaucracy closely will realize that the moratorium and placement plan is little different from the one undertaken by Housing and Urban Development under George Romney in 1972. HUD, then, created what it called a manpower reserve pool into which were shunted employee rejects who were not immediately made part of the new organizations. But these employees could not appeal because they became part of this pool at their own grade levels and were part of an "outplacement program."

The whole effort degenerated into a game of protecting favorites and casting into limbo older and "unwanted" employees regardless of their competence.

In SSA today it is impossible to determine whether a job action taken against you is because of the reorganization or the classification audit. If your job is abolished under the reorganization you should have the right to demand your rights under RIF procedures. If your job is downgraded under reclassification you should have the right to file a classification appeal. SSA and HEW workers have neither.

In SSA if a job is abolished or if an employee is reassigned because of the reorganization he is told that the job action stems from the reclassification, and under the moratorium there are no appeals. And so, minus job description, minus classified duties, minus permanent position — and minus appeal rights — the employee is expected to drift in purgatory until the end of the moratorium.

It is a stay of execution.

If the unions — particularly the American Federation of Government Employees which seems to be honeymooning with the Carter administration endlessly while its locals are running about like headless chickens — had any sense they would demand an end to the downgrade moratorium, a reinstitution of classification appeals, the declaration of RIF procedures with properly planned retention registers.

Otherwise AFGE will suffer. Its locals will suffer. And along with its computer programmers, Bureau of Retirement and Survivors Insurance employees, field operation employees, SSA will suffer. So, too, will HEW.

Inside the Administration

An Inside Washington Publication

An exclusive report on the Reagan Administration's economic, regulatory and management policies

Vol. 3 No. 5 March 9. 1984

Bowing to Defense Dept. pressure

WHITE HOUSE PATENT POLICY TO INCLUDE SEPARATE RULES FOR DOD, ENERGY, NASA

The Reagan Administration next month plans to issue revised federal patent regulations that will require federal contractors working for the Depts. of Defense and Energy as well as NASA to meet lengthy reporting requirements before they are given patents to inventions developed under government contract — with contractors for other agencies required to satisfy far fewer requirements. The reported White House decision represents a major victory for the Defense Dept., which is said to have fought hard to retain the so-called "long-form" for patent ownership, rather than have the entire federal government use the so-called short form.

The White House decision comes after months of bickering between Defense and Commerce and Vice President George Bush and Sen. Robert Dole — with Commerce and Dole urging the Administration to use the short-form uniformly.

President Reagan last year, by executive order, directed federal agencies to extend provisions of the 1980 Bayh-Dole Act — to give small businesses and non-profit organizations the patent rights to inventions developed under government contract while protecting the rights of the agencies to use the

(continued on page 10)

Fearing other groups will lobby for breaks in tax bill

ADMINISTRATION 'NERVOUS' OVER NEW TAX BREAK FOR OPTIONS TRADERS

The House Ways & Means Committee last week voted to include a provision its omnibus tax reform bill that would change the tax laws to give a significant tax break to options traders, and sources say the Reagan Administration is increasingly "nervous" about the little-known provision for fear that if it's enacted into law other interest groups — such as stock brokers and bond dealers — will

(continued on page 9)

REAGAN TO REINTRODUCE BILL TO PERMIT SUB-MINIMUM WAGE FOR THE YOUNG

The Reagan Administration plans to reintroduce legislation this session to allow industry to pay a summer wage to youths — Reagan planning to resubmit to Congress a bill to allow industry to pay 15-to-22 years-old $2.50/hour, 34% less than the current minimum wage of $3.35/hour. The Administration attached a similar proposal to the 1983 Employment Act last year only to have it defeated by the House Ways & Means Committee. Sources say the wage youth bill was discussed last week at a Cabinet Council meeting where it was decided the Administration would change its lobbying tactics and introduce the bill this session as a single piece of legislation which will fall under the jurisdiction of the Senate Labor Committee where it has better chances for passage.

The AFL-CIO is expected to launch a fierce lobbying campaign against the measure should it reach the Senate floor, with sources saying that prospects for a filibuster of the bill are likely.

Proponents of the measure, led by the fast food industry, say it will ease youth unemployment by making it easier for the young to get jobs. But opponents of the measure, led by the AFL-CIO, contend that current law already provides that full time students can be paid two-thirds of minimum wage and that the bill would throw the "working poor" out of jobs they now hold in the fast food industry.

In classified letter to Congress

IN BARTERS, REAGAN WILL GIVE EQUAL WEIGHT TO NATIONAL SECURITY, TRADE

The Reagan Administration has sent a "classified" letter to the House Armed Services Committee reportedly saying that the Administration will consider using bartering as a means to obtain strategic materials for the national defense stockpile and will give equal consideration to national security interests and trade concerns in considering bartering proposals, according to sources. The Administration also told the committee, sources say, that the Emergency Mobilization Preparedness Board (EMPB) — chaired by Robert McFarlane, assistant to the President for National Security Affairs, and comprised of officials from the Depts. of Defense, State, Commerce, Energy, Interior and Agriculture — will review Administration bartering proposals and policies.

Sources say the letter is an attempt by the Administration to avert a confrontation with the House

(continued on next page)

REAGAN WILL VETO RURAL ELECTRIFICATION BILL IF APPROVED BY CONGRESS

President Reagan will reportedly veto the Rural Electrification Act (H.R. 3050) if it reaches his desk, according to White House officials who say it was discussed by the Cabinet Council on Economic Affairs last week after the House passed the measure by a 283-111 margin. The Administration, not willing to compromise, has decided to hold firm in its opposition and veto the measure if need be, rather than make a proposal of its own, as had been discussed, sources report.

The Rural Electrification Act (REA), as passed by the House in H.R. 3050, is intended to improve the financial condition of the Rural Electrification Administration, which borrows money from the Treasury at near-market rates and lends it to rural electric and telephone systems at congressionally set discount interest rates. The Reagan Administration has tried, without congressional cooperation, to restrict the volume of loans issued by the REA. President Reagan's FY-85 budget proposes to fund administrative costs for REA with user fees (equal to 1/8% of the total loan amount) and to provide REA direct loans at the cost of Treasury borrowing (instead of the current discount rate of 5%). By contrast, the House bill proposes no volume restrictions and instead would: 1. forgive a REA debt to the Treasury of $7.9-billion as well as $307-million owed in interest on the debt since 1973; 2. retain hardship interest rates of 2% for financially troubled rural cooperatives and raise the interest rate on REA loans above the current 5% rate needed to pay the fund's interest expenses only; and 3. set up two separate accounts, one for electric and one for telephone. The Reagan Administration has opposed the bill, saying it would substantially increase federal subsidies for rural electric and telephone companies and cooperatives — which are already heavily subsidized — and would not insure solvency of the REA.

When H.R. 3050 was debated on the House floor, the Administration supported an amendment — which was subsequently defeated — by Rep. Ed Bethune (R-AR) to: 1. reduce loan subsidies to REA; 2. offer an interest rate to pay interest and principal on REA loans; and 3. allow the Administrator of REA to establish varying interest rates based on the borrower's financial condition. The Administration supported the Bethune amendment as an initial compromise, planning to make further changes in debate; however, given its defeat, Administration officials say they are now in a better position to veto the House bill.

IRS TO DRAFT RULES TO PREVENT TAX TREATY INCOME ABUSES

The Internal Revenue Service, working with the Treasury Dept.'s tax policy office, is expected to shortly begin drafting regulations to prevent income tax abuses under tax treaties that the U.S. holds with several foreign nations — abuses that sources say cost the Treasury about $142-million/year. The rules — required under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) and expected to be issued in proposed form by September — are aimed at preventing persons from fraudulently claiming they are residents of member tax treaty countries to avoid U.S. taxes.

The IRS normally imposes a 30% withholding tax on certain investment income paid to foreigners which is reduced or eliminated under U.S. bilateral income tax treaties. Officials in Treasury's tax policy office and IRS are internally debating whether to implement a system whereby persons claiming residency in treaty-member countries would be taxed at the normal rate and required to apply to the IRS for a tax refund or formally certify to the IRS that they are a resident of the treaty country and therefore eligible for the reduced tax rate. The IRS is said to favor the refund method, while Treasury's tax policy office is leaning toward a certification system and would opt for the refund method only in cases when certification is not possible.

Under current law, the IRS presumes persons with addresses in tax treaty countries are entitled to tax benefits. The IRS also allows persons to obtain tax treaty reductions by filing forms which claim, but do not verify, that they are residents of countries entitled to treaty benefits.

In testimony last week before the House Government Operations Committee (subcommittee on commerce, consumer and monetary affairs), Treasury tax chief John Chapoton said that although no final decisions have yet been made on the draft rules, Treasury is "favoring a system which would require certification by the competent authority of the other country on the basis of which the treaty rate reduction would be granted at the time the payment is made, perhaps with an exception for payments below a certain amount. In the absence of such a certification, withholding agents would be required to withhold at the full statutory rates, and increased auditing would be needed to improve compliance."

Chapoton told the subcommittee that Treasury remains opposed to the exclusive use of a refund system — as first proposed by the IRS to Treasury in 1982 — where persons claiming residency in treaty countries would be taxed at the 30% withholding rate and then file a claim with the IRS for a refund. Chapoton testified that the adoption of a refund program would involve a system "unprecedented in scope, both with respect to the items of income covered and the pure volume of cases covered." He also

National Park Service. The Administration asked Congress to "permanently terminate" the availability of $30-million in contract authority that is made available each year for use as an "anti-cost escalation measure in purchasing authorized federal recreation land" which has not been used since 1970.

Corporation for Public Broadcasting. Stockman, in proposing a $20-million rescission for CPB, stated: "It is the Administration's policy to encourage user and private support whenever possible. The Administration believes that public broadcasting can and should be supported by its audience and through private donations, allowing for the continued reduction of federal support."

Panama Canal Commission. The Administration proposes a $7.6-million rescission for this program to match the revised forecast for traffic and tolls revenue which is expected to fall below original budget estimates in 1984.

Occupational Safety & Health Administration. The Administration proposes a $1.7-million rescission for funds which were allocated to allow states to assume certain OSHA programs covering the development and enforcement of safety & health standards. Stockman said "there are no additional states prepared to assume responsibility for activities currently covered by OSHA, although a state has applied to use these resources to underwrite an ongoing program covering its own public employees. The Administration believes this is an inappropriate use of scarce federal resources."

WHITE HOUSE TO FIGHT GOVERNORS ON WEAKENING USE OF INDUSTRIAL BONDS

The Administration, having already agreed to weaken its proposal to limit the use of industrial development bonds by supporting the tax bill approved last week by the House Ways & Means Committee, plans to strongly oppose a bid by the National Governors' Assn. to water down the IDB limitation still further, with the nation's governors this week lobbying House members to overhaul the IDB proposal. The battle was being fought mid-week in the House Rules Committee where a rule is being obtained for taking the tax bill to the floor of the House. Ways & Means Chairman Daniel Rostenkowski reportedly was seeking a modified closed rule to allow only specific amendments to be brought up on the floor of the House, with one of those amendments expected to be on IDBs.

The House Ways & Means Committee last week approved a $50-billion tax bill (H.R. 4170) that included, among its many provisions, restrictions on the use of IDBs, which include bonds for student loans, airport development, sewage and solid waste disposal and pollution control. Specifically, the bill would place a statewide cap of $150 per capita on all IDBs (except multifamily housing bonds), a prohibition which the governors claim would severely limit their ability to carry out certain programs. Last year's tax bill passed by House Ways & Means contained a similar restriction on IDB use, but opposition to that provision was a major reason why the tax bill never was voted on by the House.

This year the committee modified its IDB prohibition to gain needed House Democratic support, exempting from the statewide cap those bonds used strictly for public purpose, such as bonds for parks, sewage plants and the like. But while the Administration agreed to the changes — the White House anxious to limit the use of tax-exempt bonds for private activities, saying "the revenue loss from the bonds to the federal government is alarming" — the governors continue to oppose the limitation, arguing that even the modified version would seriously hurt industrial development in their states. Accordingly, NGA proposes to amend H.R. 4170 in the following ways:

1. Per capita limit. H.R. 4170 would place a $150 per capita state limitation on IDBs, including students loans but excluding multi-family housing bonds. NGA would apply a per capita volume cap only on small issue IDBs. The state cap would be the highest of: $95 per capita; 1983 small issue volume; or $200-million. Projects in limited distressed areas would be exempt.

2. Termination of small issue IDBs. H.R. 4170 would reduce the state cap to $100 per capita to reflect termination of small issue IDBs after 1986. NGA would repeal the 1986 sunset on small issue IDBs.

3. Allocation formula. H.R. 4170 would provide a special rule for states with constitutional home rule cities, would allocate the cap 50-50 between state agencies and other issuing authorities and would create a special preference for bonds induced before October 19, 1983. NGA would strike all three provisions, saying an allocation formula should be worked out by public sector representatives.

4. Aggregate IDB financing limit. H.R. 4170 says small issue IDBs would not be available to any user which already has $40-million in aggregate IDB financing. NGA would eliminate that provision.

5. Land acquisition. H.R. 4170 says no more than 25% of bond proceeds could be used for land acquisition, unless land is acquired by first-time farmers. NGA would permit use of small issue IDBs for land acquisition up to 35% of the project costs and would redefine the first-time farmer exemption.

The Administration is expected to fight hard to retain the IDB version of H.R. 4170, having explained in a Treasury fact sheet accompanying its FY-85 budget: "The volume of tax-exempt bonds issued for non-governmental users has grown dramatically in recent years. The total volume of long-term tax-exempt bonds issued for private purposes in 1975 was $8.7-billion, constituting 29% of the total long-term tax-

the Administration introduces its bill, expected sometime this month.

Reagan's proposal drew immediate fire from five major housing and mortgage associations — American Bankers Assn., Mortgage Bankers Assn. of America, National Assn. of Home Builders, National Assn. of Realtors and the National Council of Savings Institutions — whose presidents told President Reagan in a jointly signed February 10 letter: "We would like to express our extreme dismay at the provision in the Administration's TIMs bill, [a draft of which was obtained by industry officials in early February], that would make the bill's prohibition of TIMs-like transactions effective as of the date of introduction. This provision will result in the immediate curtailment of TIMs-like activity, such as the issuance of collateralized mortgage obligations (CMOs) by FHLMC and FNMA, as well as CMOs issued by private concerns that are backed by securities guaranteed by federal agencies or instrumentalities. This moratorium would result because of the uncertainty CMO sponsors would face that at some time in the future CMO offerings made subsequent to the introduction of the bill would face extremely adverse tax consequences because sponsors would be denied a deduction for interest paid on such bonds if the Administration bill is enacted."

Added the association presidents: "The cost of this curtailment will be borne immediately by the homebuying public in the form of higher mortgage interest rates, because the better prices and lower yields CMOs enjoy have permitted lower mortgage rates for consumers than would otherwise be the case."

Industry representatives, many of whom met with members of the Administration prior to the February 23 Cabinet Council meeting on TIMs, reportedly have been assured that the Administration bill will no longer prohibit federal involvement in TIMs. Instead, per industry's request, Reagan aides would prohibit government agencies from *direct* involvement in TIMs, that is, prohibit them from issuing mortgage securities through a TIM-like organization, but would allow their paper to be used as collateral for privately issued mortgage securities. Further, the Administration is expected to propose that the prohibition become effective on the date the bill becomes law, and not be made retroactive to the date the President introduces his legislation

Congressional sources report that Sens. Jake Garn (R-UT) and John Tower (R-TX), the two top ranking members of the Senate Banking Committee, are anxious to approve a TIMs bill and are therefore encouraging the President to quickly send up his proposal. But the chances of the measure moving quickly through Congress are doubtful, largely because "the Senate Finance Committee would have to handle the bill and [TIMs] legislation is pretty far down the list for them," according to one knowledgable staffer.

House bill moving to mark-up this month

ADMINISTRATION BID TO COMMERCIALIZE LANDSAT SEEN MOVING QUICKLY

Legislation authorizing the Administration's plan to sell "Landsat" — the government's land satellite remote sensing program — appears headed for swift passage in the House, according to sources, and may reach the House floor before the spring recess. The bill would authorize the Commerce Dept. to sell the Landsat program, with federal subsidies to last for six years.

In testimony this week, the Administration enthusiastically endorsed the legislation but proposed various amendments, including: 1. the Administration does not want to require the commercial operator to continue the government's nondiscriminatory data access policy to Landsat data as required by the bill; 2. the Administration would like to retain private sector takeover of the current Landsat program — Landsat 4 and Landsat 5 — as an option rather than as a requirement, which the bill does; and 3. the Administration wants a flexible time period for the government-industry contract up to 12 years while the legislation authorizes a period not to exceed 7 years, during which capital payments would be made by the government to subsidize the development of a commercial landsat program. The Administration prefers to leave the financial payment schedule to the contractor to propose. (Neither the bill nor the Commerce Dept.'s request-for-proposal (RFP, issued in January) specify the amount of subsidy to be paid). Congressional sources indicated the House Science & Technology Committee is unlikely to make any of the substantive changes sought by Reagan, however Senate supporters indicate many of these changes may be made if and when the bill is debated in that chamber.

The Administration has sought to sell the Landsat program by simultaneously issuing a RFP on January 3 and drafting legislation with congressional staff to authorize the sale to private industry. Administration officials note that if the legislation passes with substantive differences, the lengthy and expensive procurement process may have to be repeated.

Administration and congressional staff members appear to agree that this is not likely to be

area, whether they buy 1 case of beer or 1000.

Proponents of the measure, led by the National Beer Wholesalers Association (NBWA), contend the beer bill is needed to prevent pirate transshippers — wholesalers who truck loads of beer into another wholesaler's territory and sell it at a reduced price without having to also service the retailers — from cutting into the profits of the wholesaler who services his territory. Similarly, Brooks asserts the beer bill will be good for small business and the consumer, will stabilize the beer distribution system and eliminate pirate transshippers.

Opponents of the bill include Rodino, the Federal Trade Commission, the Dept. of Justice and the National Food Wholesalers Association (NFWA), all of whom assert the bill is unnecessary, unjustified and may prove to be harmful. A substantial burden of proof for justifying an exemption to antitrust laws has not been met by the proponents of the bill in the view of Administration officials who contend the bill will hurt competition and may well result in higher beer prices for the consumer.

The beer bill, carried over from the 97th Congress where it had 280 House co-sponsors, was stalled in committee because of the Rodino-Administration opposition and widespread publicity generated by the debate. Opponents of the measure alleged the bill would result in beer monopolies, citing a study from the state of Indiana which showed beer prices decreased by 20% after a law prohibiting exclusive territories was enacted. Proponents later alleged the study never existed and the continued controversy received widespread publicity.

Brooks again introduced the bill in the 98th Congress, but has only gained approximately 150 co-sponsors. The House Judiciary subcommittee on monopolies and commercial law, which Rodino chairs, held two days of hearings on the bill last year. The Senate bill, S.1680, introduced by Sen. Barry Goldwater (R-AZ), has 35 co-sponsors and is before the Senate Judiciary Committee which conducted hearings last year. No further action is planned at this time, sources reported.

REAGAN 'NERVOUS' OVER TAX BREAK FOR OPTIONS TRADERS . . . begins on page 1

lobby for similar tax treatment which sources say would cost the Treasury millions of dollars in lost revenues. Sources say that the provision included in H.R. 4170 as introduced by Rep. Dan Rostenkowski (D-IL) would allow options traders to be taxed at a 32% capital gains tax rate versus the 50% level they are currently taxed at. Sources say that Rostenkowski included this provision in his bill so that options traders would be taxed at the same rate as commodity traders (now taxed at 32%) and therefore treated for tax purposes as buying and selling capital assets. The Reagan Administration had proposed that the present 50% tax rate now applicable to options traders be retained.

Sources say that the cost to the Treasury of the Rostenkowski provision is unknown — a key congressional source saying that the proposal would not be a revenue loser but one tax specialist contending that a tax break for options traders could cost the Treasury "millions."

Sources say that the proposal to provide a lower tax rate for a special interest group in the tax reform bill is being viewed by the Administration as a "risky move" which may invite other interest groups to lobby for similar tax breaks. Said one key source: "This is how the door gets open" for other special interest groups.

CONGRESS APPROVED HIGHER FUNDING THAN REAGAN SOUGHT FOR WOMEN'S PROGRAMS in FY-84, according to a recent analysis prepared by the Women's Research & Education Institute which compares FY-84 congressional appropriations for major programs of interest to women with the Administration's FY-84 budget request in the areas of income security and social services, health, employment and education. In matching Reagan's requests against congressional action for women's programs, the group said Congress "rejected all Administration proposals to eliminate, or to subsume in block grants categorical programs of special importance to women." The analysis shows that Congress appropriated more money than Reagan sought for 40 specific programs of major concern to women — Congress appropriated less than the President sought in just four areas: social security trust fund, Medicaid grants to states, the adolescent family life program and the college work study program.

In the area of income security and social services, the analysis says Congress appropriated $6.9-billion for the Aid to Families with Dependent Children (AFDC) program, or 17% more than the $5.9-billion sought by Reagan. The AFDC program provides cash assistance for needy children, with "four out of five families receiving AFDC headed by women." The study also shows that the FY-84 congressional appropriations was more than Reagan's FY-84 request in the following areas: child support enforcement, $607-million, or 45% more than Reagan's $416-million request; and $8.3-billion for supplementary security income (SSI), or 6% more than Reagan's $7.8-billion request.

In the area of health, the analysis says the Administration in FY-84 requested $15.6-billion for medicaid grants to states, slightly more than the congressional appropriation of $15.5-billion. But in all of

THE D.C. BAR CONTINUING LEGAL EDUCATION PROGRAM

An interview with
H. Lalla Shishkevish,
director of the D.C. Bar Continuing
Legal Education Program.

WASHINGTON LAWYER: What is the Continuing Legal Education Program?

H. LALLA SHISHKEVISH: We put together more than 80 different, high-quality, affordable training programs that meet accreditation standards in states that have mandatory continuing legal education requirements. Washington, D.C., does not have MCLE requirements, but 40 states do. Since the majority of D.C. Bar members waive in from other jurisdictions, they're very likely to waive in from a state that has requirements. If they choose to remain active in that state or have clients from that state, in most cases that state requires them to fulfill their MCLE. We're here to provide programming and training that lets them meet their credits without having to go back to another state. For D.C. Bar members who want to have really vigorous post-JD training in a practice area, or are going into a new practice area, our classes provide substantive training that can help. The courses are designed carefully, agendas are planned, and written course materials are substantive. The courses offer training for members to enhance their skills in a lot of different areas.

There's also another part of CLE programming, the mandatory course. We run the educational component of this course. We don't handle the compliance issues about when you have to take it or what you have to do. We just put the course together and administer it.

How long has the Continuing Legal Education Program existed?

The Bar has offered CLE training for many years. Our program was inaugurated in 1990 with financial support from the George Washington University Law School. By 2000 the Bar's CLE program was administered solely by the Continuing Legal Education Program. In 1994 the mandatory course was instituted.

D.C. members are not required to take CLE courses. Is that unusual, since many other states do have mandatory requirements?

Actually certain divisions of the local courts do have continuing legal education requirements for court-appointed practitioners. Of course, the D.C. Court of Appeals can always decide to impose broader MCLE requirements, but that does not appear likely at this time.

Who is required to take the mandatory course?

Everyone who is a new member of the D.C. Bar must take the mandatory course on the D.C. Rules of Professional Conduct and District of Columbia practice within a year of admission, or anyone changing status or seeking reinstatement after five years or more. If someone who has practiced for 20 years in California suddenly relocates to the firm's Washington office and becomes a D.C. Bar member, that person will have to take the course.

The course focuses on topics specific to the District. We don't teach you ethics rules in general because you have already learned those somewhere else, but we do teach what you need to know that's different in the District. What you need to focus on that's going to be a problem that you might have missed if you practiced elsewhere. Even for new members who have studied the American Bar Association's Model Rules, the D.C. ethics rules are very different. When the course was mandated, a decision was made that members need to have some familiarity with local courts and agencies, as well as with local ethics rules, D.C. Bar programs, the disciplinary system, and pro



"If you look at what has happened to the industry in Europe and Canada because of their public policies, they've really driven the industry out. There's not a lot of innovation that goes on in those countries." —Scott Lassman

involved at that level. It's price controls," says spokesperson Court Rosen. "The VA doesn't negotiate either. It sets price controls on the product."

Gottlich says Medicare would not have the power to dictate prices. "If you want to be in the Medicare market and you've got the most popular arthritis drug, and if [Medicare] doesn't cover it, beneficiaries are going to scream," she says. "People are going to complain to their congressmen and senators, who are then going to have an investigation." That gives clout to the drug companies. "Drug manufacturers," says Gottlich, "actually have more support from the beneficiary community than they think."

AARP, which endorsed the act, says it is a good start, despite Medicare's inability to negotiate. "It's clearly better than nothing. It's $400 billion better than nothing," says Rother, referring to the original price tag put on the legislation by the Bush administration. "Was it everything we wanted? Of course not. But if you wait for everything you want, generally, in Washington, you don't get anything."

The Australian Model

Although the federal government is not willing to wield its bulk purchasing power, several states are. Maine and Michigan are among the states that have tried to lower prices by using

result in fewer drugs and a sicker pop-
t you may reach in the pharmaceutical
on that you've now reached in the vaccine
ks up the wazoo, zero innovation, and [the
gging the manufacturers [to produce drugs],"
ut having price controls.

At experience with the shortage of influenza vaccine
n illustrative example. In a heavily regulated price
environment, Greve maintains, manufacturers will only
to produce drugs if the government guarantees demand,
t, and protection from liability.

omparison Shopping

onsumers might be able to enhance their purchasing power if
ey could comparison shop, the way they do with most other
roducts. But they can't because the FDA doesn't require drug
ompanies to test their new products against old ones. To get
heir drugs to market, companies must show only that their drugs work better than a placebo; a new drug can be approved even if it doesn't work as well as the old one. So consumers might be paying more for new, less effective drugs, when they could be paying less for older drugs that have gone off patent.

Rother says requiring head-to-head testing would lower prices. "Instead of having drug companies test drugs against placebos, have them test drugs against existing drugs of the same class," he says. "That doesn't mean they can't be approved. But if that kind of information were in the public realm, it would cut down on the me-too drugs, unless you really had an improvement."

> "Drug manufacturers actually have more support from the beneficiary community than they think." —Vicki Gottlich

Although most of us assume that newer, more expensive drugs are better than the older ones, recent studies show that is not always the case. In 2002 the National Institutes of Health (NIH) announced that three brand-name heart drugs—including Pfizer's blockbuster Norvasc, then the fourth top-selling drug in the world—proved less effective at preventing heart disease than a far cheaper generic diuretic. Patients who used the more expensive drugs suffered more complications, including strokes and hospitalization for heart failure.

The study, published in the *Journal of the American Medical Association*, also found that more than half of the prescriptions for high blood pressure in 1982 were for diuretics. But over the next 10 years, diuretics' share fell by 50 percent, giving way to newer, more expensive drugs. If diuretics had not lost popularity during that time, prescription drugs for high blood pressure would have cost $3.1 billion less, NIH researchers say.

In his comments to the media when the results were announced, National Heart, Lung, and Blood Institute director Claude Lenfant took pains to point out how FDA drug approval policies had contributed to increased use of more expensive, less effective drugs. "Many of the newer drugs were approved because they reduce blood pressure and the risk of heart disease, compared with a placebo," he said. "But they were not tested against each other. Yet, these more costly medications were often promoted as having advantages over older drugs, which contributed to the rapid escalation of their use."

Older, cheaper treatments for arthritis may be better too. Americans spent about $5.6 billion last year on painkillers called COX-2 inhibitors, even though some research shows that much cheaper, over-the-counter pain relievers like ibuprofen may be just as effective at reducing pain. Doctors favored the COX-2 inhibitors, saying they were less likely to cause ulcers in longtime users. But drug companies weren't allowed to advertise that benefit because they couldn't prove it in clinical trials.

Now it turns out that at least one COX-2 inhibitor presents safety problems far more serious than ulcers: clinical trials show that longtime users of Merck's Vioxx suffer double the risk of heart attack and stroke. Merck withdrew the drug in October, marking the biggest product withdrawal in pharmaceutical history. Pfizer, maker of COX-2 inhibitor Celebrex, the ninth best-selling drugs in the United States, says it is studying whether that drug presents similar problems.

Industry officials say that despite these findings, it would be a mistake to force drug companies to base FDA approval partly on proof that the new drugs are better than the drugs already on the market. "I can't argue that in some cases, when we do head-to-head [trials], we won't find that older drugs do better than a newer drug," says Lassman. If comparative trials become a condition of approval, however, he has "no doubt that's going to cut down on innovation."

Sometimes drug companies do conduct comparative tests so their drugs can be approved for an insurance plan's formulary. But these tests are generally skewed from the start, contends Peter Rost, the Pfizer marketing vice president who made headlines this summer when he joined congressional representatives in open criticism of his industry. Speaking for himself and not as a representative of Pfizer, Rost says, "The bias happens in the selection of what trials you do. There is no trial you do with the purpose of showing that a drug doesn't work, or the drug is inferior. You get to pick the competitors. If you want to win, you're going to pick the short and slow."

Marcia Angell, who spent two decades reviewing clinical trials for the *New England Journal of Medicine*, says the trials can be stacked in many different ways. Sometimes new drugs at higher doses are tested against older ones at lower doses. Or sometimes drugs intended for the elderly are tested in younger patients, who are less likely to suffer certain side effects.

Sometimes a company finds out that its drug fared no better than a placebo. But that doesn't always stop it from marketing the drug. Pfizer's Warner-Lambert unit, for instance, marketed the epilepsy drug Neurontin as a cure for bipolar disorder, even though a clinical trial showed that a placebo worked better. It is illegal for a drug maker to promote a drug for unapproved, or off-label, uses, but it isn't illegal for doctors to prescribe it that way. And there is no legal requirement that manufacturers publish negative clinical results. (But there is private pressure. Last fall several medical journals said they would no longer publish study results unless the studies were preregistered in a public database.)

Medicare Modernization Act

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 was supposed to provide a prescription drug benefit for elderly patients. For the most part, it does. At

Bar Members Must Complete Practice Course

rulemaking under the stratospheric ozone program before the D.C. Circuit; defense of a criminal environmental matter involving several industrial accidents; and negotiation of a groundbreaking settlement providing funding for multisite remediation efforts at forming mining and related locations.

Webster also advises clients on food and drug-related matters in which environmental issues are implicated, and on the development and implementation of environmental management systems.

While at the University of Virginia School of Law, Webster served as editor in chief of the *Virginia Environmental Law Journal*. After graduating he clerked for John P. Wiese in the United States Court of Federal Claims.

D.C. Bar staff writer Kerrita McClaughlyn can be reached by e-mail at kmcclaughlyn @dcbar.org.

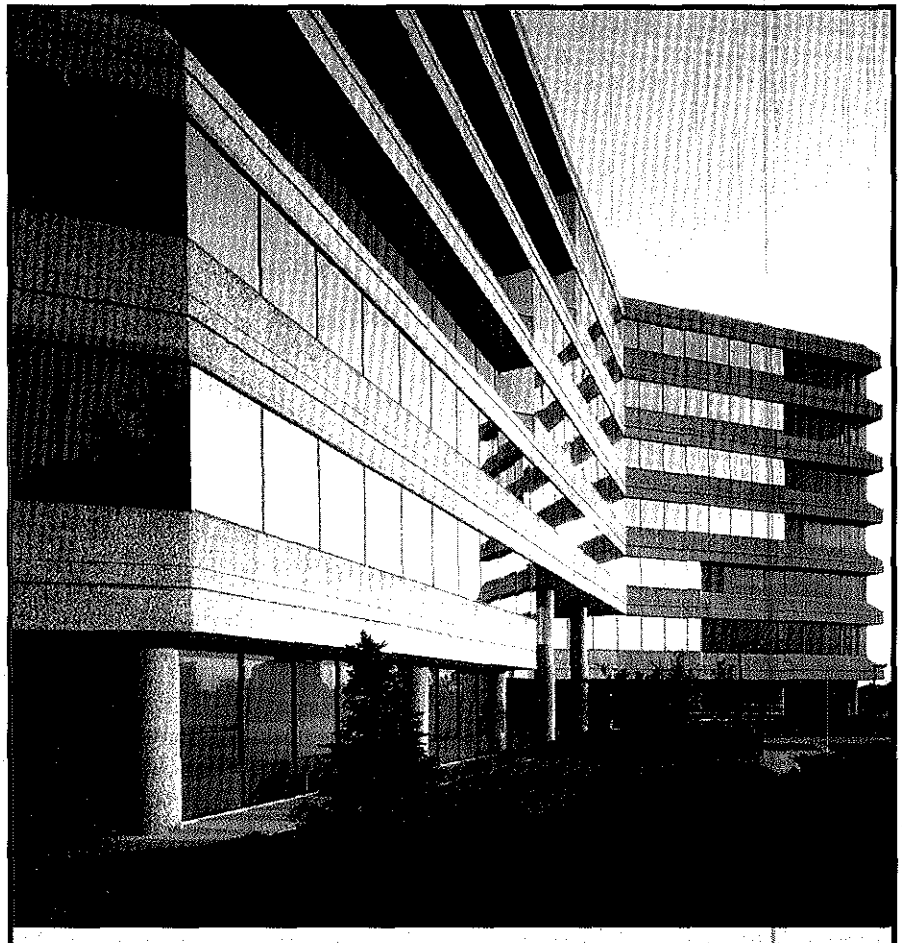
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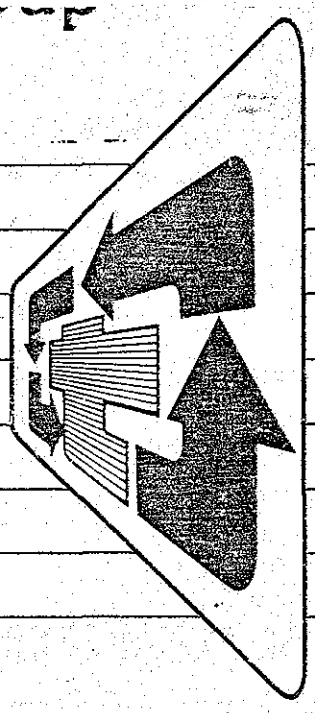
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Sources of technology

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- Universities and polytechnics
- Research councils
- Government research establishments (including defence)
- Foreign sources
- Private inventors
- Existing businesses

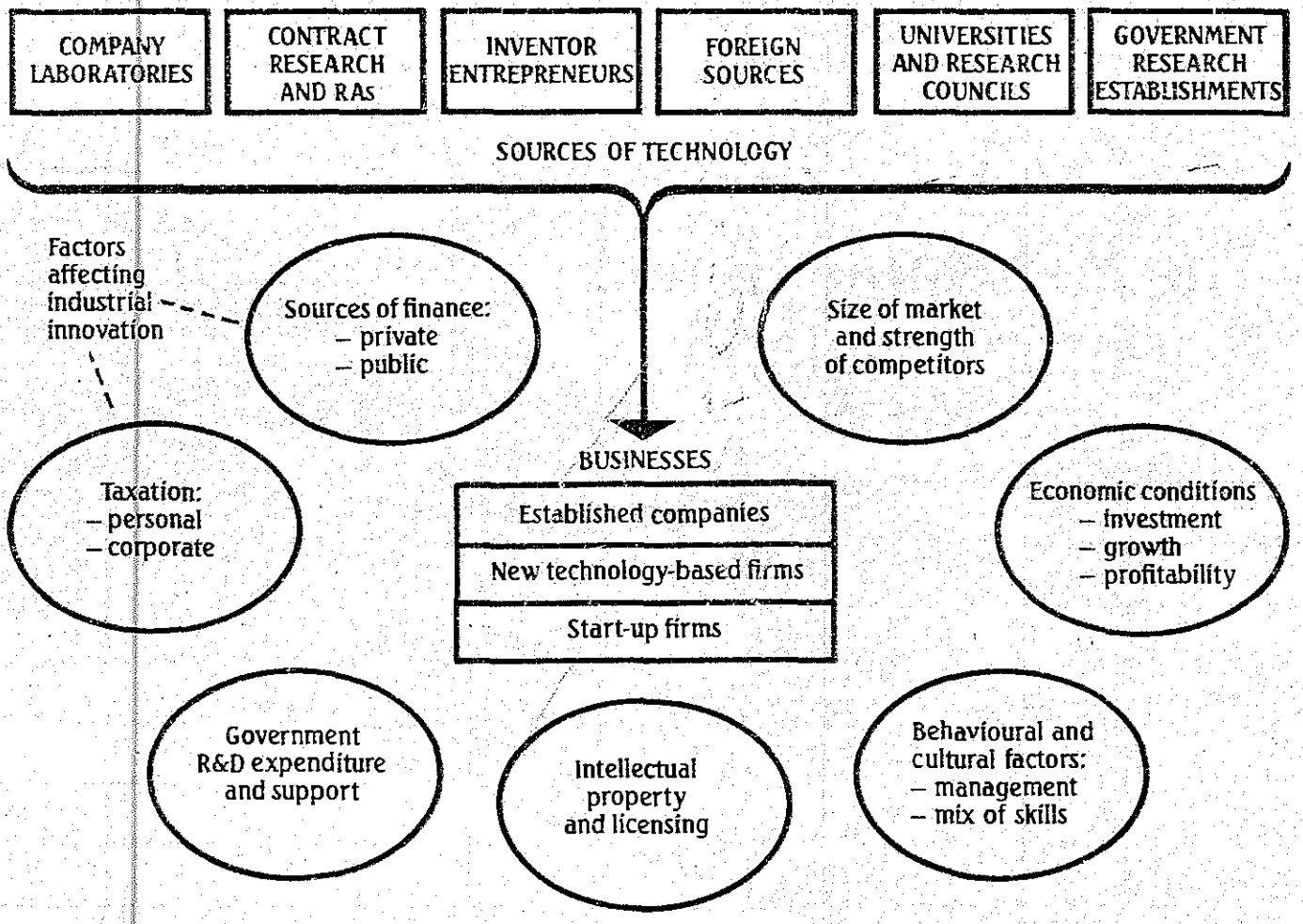
What can be transferred?

- Knowledge
- Patents
- Software (copyright)
- Knowhow
- Product licences
- Replicable businesses
- Trade names and trade marks

Methods of transfer

- Licensing
- Publications and literature
- Setting up a new business
- Acquisitions
- Franchising
- Contract R & D
- Consultancy
- Transfer of people

THE TECHNOLOGY TRANSFER PROCESS

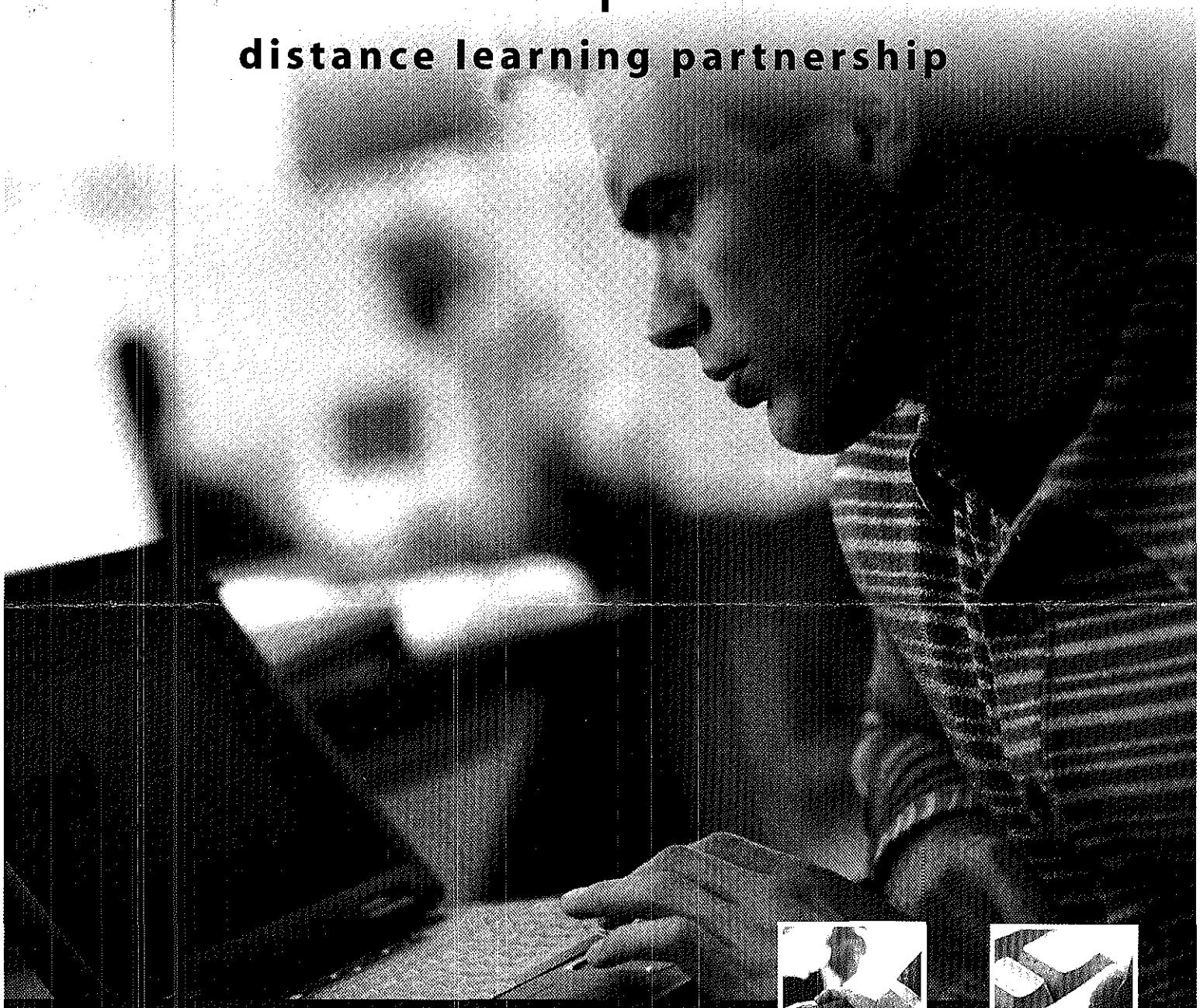


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The NTTC has developed and utilizes a comprehensive electronic tool (E-Tool) to manage and maintain IP, contacts and agreements for its clients. E-Tool is accessible to the client via the Internet to provide real-time activity information, and is a centralized system to track project data on specific clients, company contacts, technologies, agreements, licenses and patents. E-Tool also provides for flexible and complex report querying, and partnership-development monitoring, and it includes advanced security features.

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- Assess portfolio, targeting high-value applications
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- Appraise continuation of patent-maintenance fees

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- Identify appropriate associations and utilize memberships for outreach efforts
- Develop Web sites and literature to promote R&D capabilities and technology partnering opportunities

Partnership Development

- Identify potential partners and industry contacts utilizing the NTTC's industry needs database, a network of industry experts and primary market research
- Qualify companies that meet client-partnership criteria
- Provide partnership facilitation by coordinating confidentiality agreements, arranging conference calls and visits and distributing information
- Facilitate collaborative research, licensing or other agreements by developing and negotiating terms, providing contract language and offering document-support services

Why Do Prescription Drugs Cost So Much?

Legislators are beginning to feel the heat from both corporations and consumers over laws regulating the way in which drugs are sold and manufactured.

By Joan Indiana Rigdon

Imagine being the seller in this legal environment: After more than a decade and hundreds of millions of dollars in research, you invent a product. The government grants you a monopoly for 10 years. Your product is the only one of its kind; without it consumers would become sick or even die. The government has certified your product as safe and effective because your own tests show that it works better than nothing; you don't have to test against the competition. With a captive clientele, the free market allows you to raise your prices two or three times faster than inflation.

It gets better. Your biggest customer, the federal government, has just passed a major law that explicitly forbids it from using its bargaining clout to negotiate lower prices, as foreign governments do. Though price controls have forced you to sell your product at lower prices overseas, the government has declared that your overseas product is vulnerable to exploitation by terrorists and misuse, and therefore unsafe if resold back here. So it is not legal for your customers to get around your high prices here by buying your low-priced product overseas.

All of these laws, regulations, and policies have helped make your industry one of the most profitable tracked by the Fortune 500.

This, according to critics, is how the pharmaceutical industry operates in the United States.

But is it so? And what impact are federal laws and regulations having on the national health? Are they helping or hurting the elderly? The working poor? The uninsured? And why are so many Americans rushing across the border to reimport drugs from Canada?

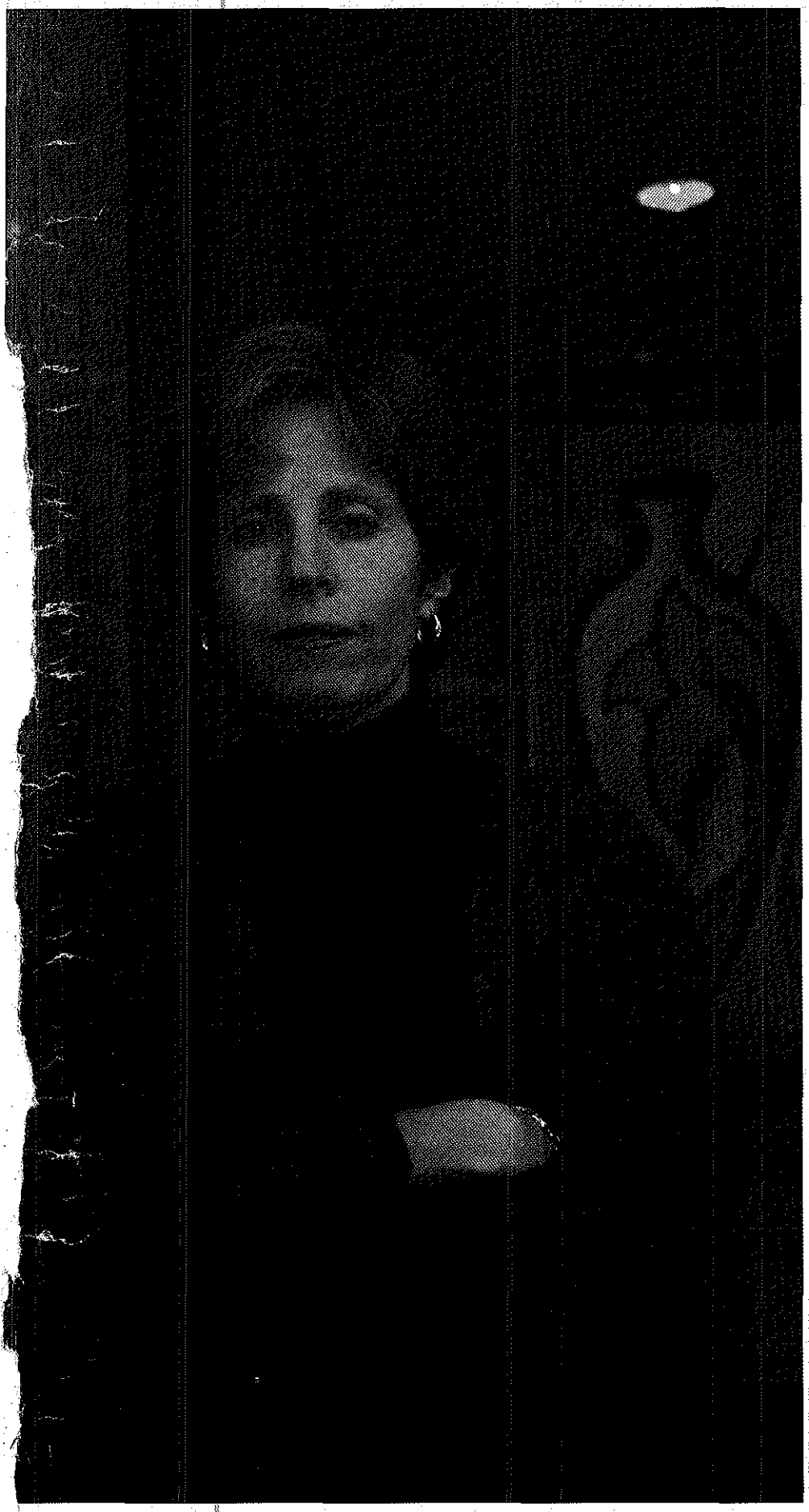
The Price Spiral

Once upon a time, drug companies were our heroes. They concocted magic pills that took away our pain, or eased our breathing, or helped us stay alive. Today cancer and AIDS patients live longer with modern drugs than they did without them. But over the past decade, the pharmaceutical industry has lost much of its goodwill as prices have risen to levels that millions say they can't afford, even as Americans are living longer.

Canada, Europe, and the European Union regulate drug prices. Canada actually forbids drug prices from rising faster than inflation. Consumers in those countries reap the benefits. Their prices are roughly half to two-thirds lower than prices here. In Washington, however, price controls are routinely denounced as socialized medicine. The result: Americans pay the highest prescription drug prices in the world.

Those prices are rising fast. According to AARP, prices for drugs that are most frequently used by older Americans rose at triple the rate of inflation last year.

Prices are "accelerating across the board," said John Rother,



a cost of up to $534 billion over 10 years, the act will help 40 million senior citizens buy prescription drugs. Seniors who pay an estimated $35 monthly premium and a $250 deductible will get 75 percent of their drug costs covered up to $2,250, and then 95 percent of their costs covered above $5,100. So seniors with the most expensive drug bills will pay a maximum of $3,600 out of pocket.

However, the legislation also makes it illegal for Medicare to use its bulk purchasing power to negotiate lower drug prices. Instead private insurers will offer prescription drug benefits to Medicare beneficiaries; those private insurers will be able to negotiate. Critics think that depriving Medicare of its negotiating power is odd because another federal agency, the Department of Veterans Affairs, uses its buying power to negotiate prices that are 50 percent lower than U.S. retail prices.

A January 23, 2004, letter from the Congressional Budget Office (CBO) to Senate Majority Leader Bill Frist contends that striking the part of the bill that forbids negotiation would have only "a negligible effect on federal spending because CBO estimates that substantial savings will be obtained by the private plans and that the Secretary would not be able to negotiate prices that further reduce federal spending to a significant degree."

Proponents of lower drug prices are outraged. Enabling Medicare "to bargain on behalf of seniors and people with disabilities would have a profound impact on the entire population," says Ron Pollack, executive director of Families USA, a national organization of health care consumers.

Rost says the ban on negotiating seems unusual. In essence, Medicare is telling the pharmaceutical industry, "Hey, we're going to pay whatever you tell us it costs," Rost says. "Imagine going into a car dealer and telling them that. It's almost un-American. . . . We are good at negotiations. Why would we not negotiate in this area?"

Gottlich questions the idea that private plans could bargain as well as Medicare, in light of the fact that some private insurers have publicly said they don't think they can obtain prices as low as those currently being offered by state Medicaid. "The proponents of having each of the private plans negotiate, rather than having Medicare negotiate, have said private plans could negotiate better prices. Now the private plans are saying, 'We can't negotiate as good prices as the state,'" says Gottlich.

PRMA says when the customer is Medicare, negotiation isn't possible. "It's not negotiation when the government gets

their bargaining clout with American drug wholesalers.

Maine's plan, which was upheld by the Supreme Court this year, is based on the Australian Pharmaceutical Benefits Scheme (PBS), which subsidizes 600 drugs for Australians. The Australian board chooses its drugs for cost-effectiveness; they are purchased in bulk by the government. As a result, Australia's prescription drug prices are almost two-thirds lower than prices here. Australia "is considered the gold standard of bargaining power," says Robert Stumberg, a professor at the Harrison Institute for Public Law of the Georgetown University Law Center.

Now Australia's drug pricing system is under attack, and by inference so are state programs that work the same way. Pressured by PRMA, the United States has inserted novel language into its new free-trade agreement with Australia. Under the pact, Australia agrees to recognize the value of research and development and innovation in the drug industry; to allow drug companies to appeal independently how their drugs are listed on the formulary; and to balance affordable access with the need for quality, safety, and efficacy. "Drug manufacturers wanted to pry open the Australian PBS program," says Stumberg.

PRMA's opposition to the Australian scheme will have a direct impact on state plans to lower prescription drug prices, according to Stumberg. Any state that models its drug purchasing program on the Australian system should beware. "The industry sought to challenge an Australian program using arguments that could be equally applied to state programs," says Stumberg.

Another possible impact is that if a state adopted a prescription drug purchasing program that was not in compliance with the trade agreement—for instance, the program doesn't strike the appropriate balance between safety and efficacy of drugs listed on its formulary—the Australian government could file a trade complaint and levy trade sanctions against the United States.

That sequence of events is unlikely in the current political climate, says Stumberg. Still, "if a governor or an administrator of [Health and Human Services] or even the president wants to stop state experimentation, there's a new argument to do so," says Stumberg. "He can say, 'I can't do it, my hands are tied,'" because the new program could result in trade sanctions. "It's an argument that is salient politically, salient in the public media forum, and also salient in a court of law."

Reimportation and Purchasing Power

Reimportation, or buying prescription drugs from overseas, grabbed a lot of headlines last summer. For a while, there was a heated debate about safety. Proponents pointed out that reimported drugs are made by the same manufacturers in the same plants, which are often outside the United States anyway. The FDA argued that sometimes the drugs were counterfeited, stored at the wrong temperature, mislabeled, or not approved for use here. Before it was over, acting FDA commissioner Lester Crawford raised the possibility that al Qaeda might attack the drug supply as it was being routed from Canada to the United States.

Ironically, Americans had more reason to be worried about drugs sold here: Merck's Vioxx withdrawal came as bad news for the 20 million individuals who have taken the drug, and half of our flu vaccine supply was yanked because of manufacturing problems at a plant in Liverpool, England, owned by the Chiron Corporation, a U.S.-based firm.

Horn says if the FDA wanted to focus on safety, it would lower drug prices. "If you're worried about safety, it's a much bigger safety issue that people aren't taking their prescriptions," he says. "Millions of Americans aren't taking their prescriptions because they can't afford it, compared to the completely unproven suggestion that some one American somewhere is going to get [injured by] a counterfeit drug."

Congress backed reimportation in the form of the Pharmaceutical Market Access Act of 2003, sponsored by Senators Byron Dorgan (D-N.D.) and Olympia Snowe (R-Maine). The bill would allow U.S. wholesalers and individuals to import FDA-approved drugs from 25 countries including Canada and members of the European Union. It had bipartisan support, but Senate Majority Leader Bill Frist refused to call it for a vote.

As Dorgan-Snowe languished, the Bush administration negotiated the Australian free-trade agreement. One of its provisions allows U.S. patent holders, including drug companies, to bar the import of their patented products without their approval.

Mathematically, however, reimportation can't work on a large scale. When most Americans think of getting cheaper drugs from overseas, they think of Canada. But there are 294 million Americans, and only 32 million Canadians. The Canadian drug supply is simply too small. "Drug companies know that and they're not going to send to Canada drugs to support 300 million people," says Pollack. Many states are now laying plans to reimport from the European Union, which has 380 million people. Still, drug companies are not willing to oversupply any market so drugs can be reimported here.

In a sense, even if the bill never passes, reimportation has already worked. It has more Americans talking about drug prices. "Importation is not a solution to our problem. It's a tactic to demonstrate to Americans that they are being cheated," says Horn. "It has helped stoke the anger to get something more meaningful," adds Pollack. Specifically, he is hoping that Medicare will be given power to negotiate drug prices.

"The corporation in itself is not good or bad," says Rost. "It doesn't have moral values. A corporation reacts to one thing, financial reward." Blaming a company for pursuing such rewards is "like saying a lion is bad because it kills other animals."

Pollack maintains that "reimportation is a very weak substitute for a system that could have been enacted in the Medicare legislation, which is to enable Medicare to bargain on behalf of seniors and people with disabilities. That would have a profound impact on the entire population. Even though seniors only compose about 13 percent of the population, they account for 43 cents of every dollar spent on drugs." Such a provision, which was struck from the final version of the Medicare bill, "would have been the most effective thing to do," says Pollack. "But the drug companies prevailed."

At least it appears they did so in the last session of Congress. But as the population ages, one fact is certain: these issues will not go away. In the months and years ahead, the legislative fights over pharmaceutical regulation are likely to be extremely contentious. As the baby boomer generation approaches retirement age, the laws regulating the way in which drugs are sold and manufactured will be the subject of an increasingly bitter struggle, with legislators feeling the heat from both corporations and consumers.

Freelance writer Joan Indiana Rigdon is a frequent contributor to Washington Lawyer.

the other health areas of interest to women, Congress' appropriation was more than Reagan requested in FY-84 as follows: Medicare 2.3%; maternal & health care block grants 19%; and nurse training programs 286.9%.

The study also shows that with respect to education programs, women fared better with Congress than with Reagan. For example, the study shows that Reagan sought to eliminate all funding for two key women's education programs — the Women's Educational Equity Act and a Title IV Training & Technical Assistance program — which the Congress funded at $5.8-million and $24-million respectively. Only in one area, a college work study program, did the Administration request more than Congress appropriated — $800-million compared to Congress' appropriation of $550-million.

ENERGY HEAD TELLS STAFF TO DRAFT PLAN FOR TEST SALE OF STRATEGIC OIL

Energy Secretary Donald Hodel has directed his staff to develop a comprehensive plan for conducting a test sale of 2-3-million barrels of oil now held in the strategic petroleum reserve (SPR), although the Energy secretary recently told the House Energy & Commerce Committee (subcommittee on fossil & sysnthetic fuels) that the Administration remains opposed to legislation drafted (but not yet introduced) by the subcommittee to require the Administration to conduct such a test.

Sources say Congress has shown an increased interest in a test drawdown of SPR oil to show that the government would have the administrative capability to move the oil to market during a crisis and prove that the oil is of good quality and refinable. One Administration source said there have been lingering "doubts as to whether the government can get the [SPR] oil out of the ground" during a crisis and charges that the oil is "bad." In the Senate, legislation (S.1678) has been introduced which would clarify the Administrtation's authority to conduct a test sale.

Administration sources said earlier this year DOE staff, in an internal paper exploring the feasibility of a test sale, argued against the idea because it would cost the government about $9-million and not produce any known benefits, according to sources. One key source explained that the test sale would result in a $9-million loss for the Treasury because in a bear market DOE would likely have to sell the oil for less than it originally paid and add on transportation costs.

Hodel told the subcommittee that a test sale of SPR oil "raises certain legal, technical and operational problems. More important, perhaps, is that such a test in current market conditions, when there is an oil surplus, would not entirely be realistic because we could not duplicate the market conditions which would exist during an oil shortage. In current market conditions, it is quite possible that the net revenues to the government from such a test might fall substantially short of the costs to be incurred when we replace the oil sold in the test."

WHITE HOUSE TO ISSUE SEPARATE PATENT RULES . . .begins on page 1

discoveries royalty free — to all federal agencies. Administration officials say the revised policy, to be issued in early April as part of the federal acquisition regulations (FAR), will contain both a short and a long-form, the latter to provide for extensive "surveillance" activity by the government and require lengthy reporting requirements by the contractor, the short form to preclude any such oversight by the government. In addition, the revised patent policy will no longer require the surrender of "background rights" — the contractor's interest in inventions and technical data that predate the government contract — as a precondition to granting the contract.

Commerce officials and Dole have been vocal opponents of the use of the long form and in recent correspondence to Vice President Bush, Dole criticized its inclusion in the FAR, saying it is unnecessary, will require excessive reporting by the contractors and is an unjustified use of manpower. At the least, Dole asked Bush to have the Office of Management & Budget revise the FAR to allow each service (Army, Navy, Air Force) to choose whether to use the short or long form, and Administration officials confirm there is some division within the Defense Dept. on which form should apply. Some sources point out that the Navy appears to be most insistent about retaining the long form, for without it, some 140 patent attorneys would lose their jobs.

Administration officials note the long vs. short-form debate could end with the passage of Dole's bill, now pending before the Senate Judiciary Committee for hearings on March 27. That bill would eliminate use of the long form by changing the statutes which govern patent policy within Defense, Energy and NASA. Specifically, Dole's bill (S. 2171) would: 1. create a presumption in favor of contractor ownership of new inventions developed under federal r&d contracts; 2. prohibit agencies from requiring the surrender of "background rights" as a precondition of a federal contract except where the agency head personally deems it necessary; 3. streamline the procurement procedures, establishing one policy for all government agencies and conforming that policy to the principles of the Bayh-Dole Act; and 4. eliminate existing provisions of law that unnecessarily complicate the procurement process.

necessary, with congressional sources pointing out that Sens. Barry Goldwater (R-AZ) and Slade Gorton (R-WA) have recently introduced a similar bill and are likely to support the Administration's proposed changes in conference.

The RFP has been criticized for its lack of specificity, which would allow a private firm to take over the program without having to commit to serving U.S. international users who currently access Landsat data. Thus, a free hand to the contractor, some argue, could endanger U.S. foreign relations.

The response from the private sector has been encouraging and sources say bids are expected from: 1. RCA and Hughes' Santa Baraba Research; 2. Space America (a conglomerate of State Service of Houston, American Science & Technology Corp. and Aerospace Data Corp.), with Bendix, Bell & Howell as subcontractors; 3. Kodak Corp. and Fairchild Industries; and 4. General Electric.

DURENBERGER INTRODUCES BILL TO SEEK MORE DATA FROM FEDERAL LOBBYISTS

Sen. Dave Durenberger (R-MN) this week introduced legislation aimed at gathering more detailed information on how much federal lobbyists spend both in lobbying members of Congress and in the public — Durenberger maintaining that the current law provides too little information on how much money is spent in these efforts. Existing law, the Federal Regulation of Lobbying Act of 1946, requires lobbyists to only report expenditures for face-to-face contacts with members of Congress. Durenberger's bill would make disclosure voluntary and would therefore eliminate existing criminal penalties for failure to disclose information. The voluntary approach is favored by the Minnesota Republican because it avoids any potential conflicts between the first amendment and mandatory disclosure.

There is strong consensus among congressional and Administration officials that the lobbying act of 1946 is not an effective tool for oversight of lobbyists activity, sources report. The Senate Governmental Affairs Committee is expected to conduct hearings on Durenberger's bill this month, the Committee having held similar hearings last November at which the Justice Dept. confirmed it had neither attempted, nor had plans to enforce the criminal provisions of the act because of the constitutional problems with it. The Supreme Court in 1954 ruled on the act's mandatory disclosure requirements, and found that: 1. disclosure of expenditures applied only to those lobbying organizations whose principal purpose is face-to-face lobbying of members of Congress; and 2. such organizations do not have to disclose expenditures for either grassroots lobbying or lobbying of congressional staff, because the act's definition of these activities are not clear enough to permit their enforcement with criminal penalties. Durenberger's bill, by making disclosure voluntary and eliminating criminal penalties, thus attempts to avoid potential conflicts with the High Court's ruling.

Legislation for mandatory disclosure has failed in the past — most recently in 1979 when Sen. Charles Mathias (R-MD) reportedly defeated legislation by Sen. Lawton Chiles (D-FL) to require mandatory disclosure of grassroots lobbying expenditures.

Rodino to mark-up bill this month

BEER INDUSTRY MAY GET ANTITRUST RELIEF DESPITE OPPOSITION FROM REAGAN

House Judiciary Committee Chairman Peter Rodino (D-NJ) reportedly has been pressured into marking up a controversial bill to exempt certain agreements between beer wholesalers and distributors from antitrust laws, according to sources who report the bill's major proponent, Rep. Jack Brooks (D-TX), has "struck a deal" with Rodino to do so. Rodino, joined by Administration officials, has vocally opposed the measure and until now has successfully blocked any effective congressional action.

The Administration and Rodino — who most times would be able to block consideration of a bill — are being thwarted by election year politics in which a powerful grassroots lobbying effort organized by the National Beer Wholesalers Association, representing over 4500 beer wholesalers, is gaining momentum, according to sources who point out that the lobby has members "in every congressman's district."

The Malt Beverage Interbrand Competition Act (H.R. 2262), commonly referred to as the "beer bill," is patterned after similar legislation, the Soft Drink Act, passed by Congress in 1980. The beer bill states that assignment by a brewery of exclusive territorial rights to a wholesaler for that brewery's brand of beer is not a per se violation of federal antitrust laws so long as substantial and effective competition among brands exists. This would allow distributors to grant exclusive territories to a given wholesaler who would then be the only outlet for that distributor's brands of beers. Currently, a distributors' brands of beer may be sold by more than one wholesaler in a given area and therefore retailers have a choice of wholesalers from whom to purchase beer. In addition, a wholesaler is required, by his contract with the brewery, to service (remove stale or damaged products) all retail outlets in his

exempt bonds issued that year. By 1982, the last year for which actual numbers are available, $49.6-billion of such bonds were issued for private purposes, representing 58% of all such bonds issued. Thus, the total volume of these private purpose bonds has grown 570% during this 7-year period. The revenue loss from these bonds to the federal government is alarming."

Saying market is best mechanism to deter 'dumb' mergers

JUSTICE'S McGRATH TO PURSUE VIGOROUS MERGER ENFORCEMENT POLICY

Paul McGrath, the Justice Dept.'s antitrust head, was expected to make a major speech this week on merger policy asserting that the market is "the best mechanism for deterring dumb mergers" but warning the business community that the Justice Dept. will pursue an "active, vigorous, and fair-minded enforcement policy — one that recognizes the contributions that mergers make to the free market system but also recognizes the economic threat posed by some mergers."

In a speech expected to be delivered before the National Assn. of Manufacturers in Washington, D.C., March 8, McGrath said that the Justice Dept. will be reviewing its 1982 merger policy guidelines to pay particular attention to "the treatment of foreign capacity and imports and to the relevance of efficiency claims." McGrath also contended that Justice — in it's so-called "fix it first" policy whereby the department agrees not to block mergers if anticompetitive aspects of them are eliminated — will take steps to ensure that parties abide by these agreements "through contempt actions if necessary." Added McGrath: "Our practice is to insist that the parties enter into binding agreements to divest or otherwise eliminate troublesome aspects of the proposed transactions."

McGrath also offered some of his own views on why the antitrust laws should proscribe mergers, though he said he recognzied the "substantial benefits of a free merger market." Said McGrath: "The reason is that in certain markets excessively increased concentration heightens the risk that practices will rise above competitive levels either through explicit or tacit collusion or through an individual firm's market power. It has long been recognized that the power of firms to raise prices unrestrained by competitive forces does not arise only when one firm has 100% of market sales. Where only a few firms account for most of the sales in a market, those firms under certain circumstances may coordinate — explicitly or tacitly — their decisions on price and output."

Amid commitment to trim federal credit

REAGAN EXPECTED TO WEAKEN MORTGAGE-MARKET BILL AT REQUEST OF INDUSTRY

The Reagan Administration, yielding to pressure from the housing and mortgage finance industries, reportedly will significantly ease its proposal for getting the government out of the secondary mortgage market, according to sources, who report the Cabinet Council on Economic Affairs is in the process of preparing legislative recommendations for review by President Reagan. Specifically, Reagan aides are said to have told housing and mortgage financing representatives that: 1. the Administration will allow private firms to use government-backed mortgage securities as collateral when they issue securities through the new investment vehicle called "TIMs," or trust for investment in mortgages, but will prohibit government mortgage agencies from directly issuing securities through TIMs (the Administration previously wanted to prohibit *any* involvement by the government mortgage agencies in TIMs); and 2. the Administration will make this prohibition effective on the day the bill is enacted, not the day the bill is introduced by Reagan, as was previously Reagan's intent.

The Reagan Administration, as a means of spurring growth in the private secondary mortgage market, is readying a legislative proposal that would call for creating a new investment vehicle, i.e. TIMs, that private firms could use to issue mortgage securities and thus better compete with the three federal mortgage agencies that dominate the secondary market — the Federal Home Loan Mortgage Corp., Federal National Mortgage Assn., and the Government National Mortgage Assn. Explained the Treasury Dept., in a February fact sheet: "The Administration has made a strong commitment to controlling the growth of federal credit, including credit of the three government-related mortgage agencies. The special advantages enjoyed by these agencies result in a less efficient allocation of this nation's limited credit resources and higher overall borrowing costs for all users of credit, including many homebuyers. Accordingly, it is crucial to encourage private sector mortgage securities issuers who do not rely on government backing to enter the market as viable competitors of the agencies."

The Administration will propose having TIMs — which may be organized under state law as corporations, trusts or associations — pay no income taxes and be limited to investments in residential mortgages and mortgage backed securities which must be held as passive investments. Further, and more importantly, the Administration proposed prohibiting the FHLMC, FNMA and GNMA from participating in TIMs, or TIMs-like transactions, either directly or indirectly, with this prohibition to take effect as of

said that Treasury is "concerned with the possibility of delays in refunding overwithheld amounts in three respects — the effect on low income individuals, the possible chilling effect on foreign investment overall, and the effect on U.S. taxpayers should more of our treaty partners adopt their own refund systems."

REAGAN LIKELY TO PRESS FOR FORMAL TRADE SECTION IN FY-85 FARM BILL

The Reagan Administration is likely to lobby for a formal agricultural trade section within the context of its FY-85 farm bill, according to Administration sources who contend there's a growing recognition within the Administration and key industry groups that U.S. domestic and international agricultural policy issues should be considered jointly so that the U.S. will have a consistent farm policy. One high-level source said that current domestic U.S. farm policies have had the effect of "cutting U.S. farm products out of the international markets" because of the rigid price-support levels set in the current bill which make U.S-produced commodities more costly in the international markets. The current farm bill contains no specific provisions on a formal agricultural trade policy. Sources say the Administration during the last farm debate in 1981 attempted to get a trade provision worked into the bill but dropped its support for the idea when the House Ways & Means Committee (which has jurisdiction over trade matters) sought sequential referral of the bill.

Sources say the Administration's newly formed Cabinet Council working group on long-term agricultural policy — which met for the first time last week — is planning to set up working groups to tackle key agricultural issues and make policy recommendations to the President in preparation for the FY-85 farm debates.

Recently, the Fertilizer Institute adopted a policy position on agriculture that supports an aggressive trade program which sources say has been received favorably by the Administration. In the policy position, the fertilizer group said that "U.S. agricultural policy should be one of identifying our foreign and domestic market potentials [and] establishing adequate long-term bilateral trade agreements to assure quantification of those export markets."

In another development, the National Agricultural Forum, a broad-based group comprised of industry, academic and farm groups created to examine key agriculture issues, has recently drafted a report on farm trade policy alternatives recommending: 1. more flexibility in the price support system so that U.S. exports "would tend to be more stable in the face of fluctuations in international demand;" 2. greater use of export subsidies to increase agriculture exports and expanded export credit availability; 3. increasing exports of high value products by negotiating "lower tariffs worldwide, which will require that we give up some of our tariff protection"; and 4. the promotion of general trade liberalization policies.

STOCKMAN PROPOSES RESCINDING $634-MILLION IN FY-84, TRIMMING EIGHT AREAS

Office of Management & Budget Director David Stockman last month proposed rescinding $634.7-million in government spending in FY-84, led by a $331.4-million rescission for public and Indian housing programs under the Dept. of Housing & Urban Development (HUD) and a $20-million rescissions earmarked for the Corporation for Public Broadcasting. The eight rescissions proposed by Stockman in February also called for budget reductions in the Dept. of Agriculture (Rural Electrification Administration), the Dept. of Interior (National Park Service Land acquisition), the Occupational Safety & Health Administration, and the Panama Canal Commission. Stockman's February request brings to nine the total number of rescissions he has requested in FY-84, having sought a $1.7-million rescission in December for funds spent by the Occupational Safety & Health Administration.

The Administration's rescission requests become law only if the Congress affirms them within 45 days. By law, the Administration is required to submit its rescission proposals to the Congress by the 10th day of each month. Following is a rundown of the rescissions proposed by the Reagan Administration in February.

USDA Rural Electrification Administration. The Administration proposes a $197.8-million rescission for this program because it claims the original appropriation was earmarked for reimbursing the rural electrification & telephone revolving fund for losses which Stockman said never materialized because "it is exempted by statute from paying $307-million in annual interests cost to the Treasury on advances totaling $7.9-billion." Added Stockman: "It is true that (when the costs to the Treasury are added to the net income of the fund) the rural electrification and telephone program has cost the federal government $1.3-billion since 1973. However, these costs have been sustained by the Treasury, not the fund. Therefore, reimbursement to the fund for losses is incorrect. The Administration is proposing legislation to set interest rates for REA borrowers at the Treasury cost of borrowing in accord with the original Rural Electrification Act in order to reduce interest subsidies and help offset these losses sustained by the Treasury."

and Senate Armed Services Committees over pending legislation (H.R. 3455 & S. 1683) which would give the Administration broad authority to barter surpluses in the Commodity Credit Corporation and the defense stockpile. The issue of whether to barter surplus commodities for strategic materials has been the subject of continuing debate within the Administration, with the Senior Intergovernmental Group on International Economic Policy (SIG-IEP) recently preparing an options paper for the President on the subject outlining five bartering options (Inside the Administration, Nov.18, p1).

Reportedly, the National Security Council, Interior Dept., General Services Administration and the Commerce Dept. are receptive to the idea of bartering for strategic materials while Agriculture, the State Dept., the Office of Management & Budget (OMB) and the the Council of Economic Advisers remain opposed to a liberal Administration bartering policy because of foreign policy and budget concerns and possible market dislocations that may result from government bartering.

The Administration also remains opposed to the bartering legislation pending in Congress, sources say, because it would create a new group — the Barter Coordination Council — to review barter proposals that the Administration believes can be handled by the EMPB.

SENATE REPUBLICANS WILL TRY TO OVERRIDE REAGAN VETO OF WATER BILL

Twenty-one Senate Republicans, led by Sens. James Abdnor (SD) and Robert Stafford (VT), are aggressively gathering support for overriding President Reagan's recent veto of a water research bill — the senators seeking signatures this week to a Dear Colleague letter, according to sources. Congressional aides report the veto attempt will be made as early as next week, following Senate debate on the school prayer issue.

Reagan earlier this year vetoed S. 684, which both authorized appropriations of $36-million/year for five years for water resources research (aimed at developing water technology) and conveyed desalting test facilities no longer in federal use to Wrightsville Beach, NC and Roswell, NM. In his veto message, the President said while he supports the two conveyances, he is strongly opposed to federally funding water resource facilities, saying such a new program "is not an appropriate federal activity." Explained Reagan: "For some 20 years, the federal government has provided 'seed money' for the type of water research that would be authorized by Title I. This federal support has produced a number of successful state water research institutes. I believe that these state institutes are now at a point where further federal involvement in their research activities is not necessary. They can stand and continue to succeed on their own." Added the President: "Moreover, the water research that S. 684 would promote can be characterized as mostly local or in some cases regional in nature. The focus of such research will of course vary from state to state because water problems and needs often differ by region. The states and private industry should be fully responsible for financing research necessary to deal with their own particular problems and needs."

Congressional staff members report that Reagan's veto "came as a surprise" given that the bill sought just $180-million over five years and that the measure passed both the Senate (last November) and the House (January) by voice vote, leading some sources to speculate that if supporting senators can generate enough interest to push for a veto override, it stands a good chance of success. One staff member pointed out that with 21 Republicans already behind an override, and likely support from most (if not all) of the Senate's 45 Democrats, the chamber is just votes away from garnering the necessary two-thirds for an override. Sources add that if the Senate moves to override, the House will almost certainly follow in kind.

Besides Stafford, who chairs the Senate Environment & Public Works Committee, and Abdnor, who chairs Senate Environment's subcommittee on water resources, the following Senate Republicans have signed the letter: Jake Garn (UT), Orrin Hatch (UT), Barry Goldwater (AZ), Malcolm Wallop (WY), Slade Gorton (WA), John Warner (VA), Paul Trible (VA), James McClure (ID), Steven Symms (ID), John Heinz (PA), Rudy Boschwitz (MN), David Durenberger (MN), Gordon Humphrey (NH), Mark Hatfield (OR), Frank Murkowski (AK), Ted Stevens (AK), Larry Pressler (SD), Charles Grassley (IA), and Alfonse D'Amato (NY).

THE ADMINISTRATION WILL OPPOSE AN AGRICULTURAL RESEARCH BILL IN THE SENATE, having lost its first battle when the House approved the measure — to provide an additional $2.1-million in research funds for the Agriculture Dept. — by a 206-184 vote in the House. The bill, H.R. 2714, would authorize a "systems approach" to agricultural research areas whereas current research is regarded by congressional sources as "fragmented." The bill will be taken up by the Senate Agriculture subcommittee on agricultural research, chaired by Sen. Richard Lugar (R-IN).

THE GREEN SHEET

News About the U.S. Department of Health, Education and Welfare



END OF YOUTH CULTURE



U.S.News & World Report, 10/3

Less crime, higher Social Security taxes, changes in jobs, foods, life styles—big adjustments are coming for business and people of all ages as part of the "graying of America," already under way.

The steady aging of America's population is bringing significant changes in the way people work, relax and raise families.

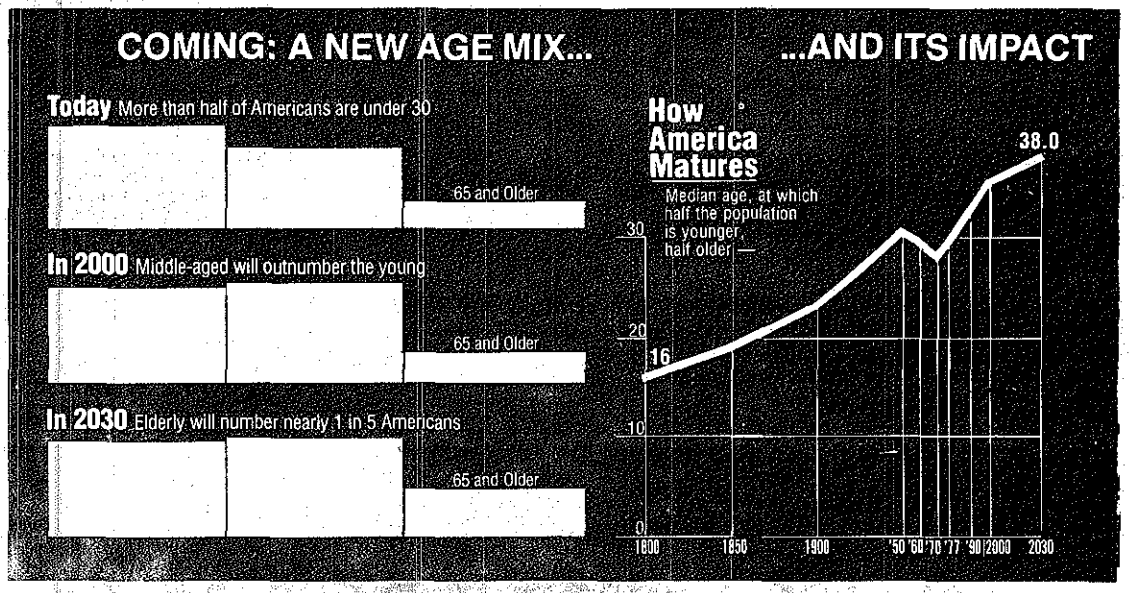
Citizens of all ages are feeling the results of this "graying of America." Effects range from grade-school closings and high unemployment in certain age groups to a threat to the solvency of the Social Security system.

Even bigger changes, many of them beneficial, are expected in the years ahead.

Crime rates may decline. Many people, less burdened by the expenses of raising large families, will have more money to spend on themselves. Prevailing tastes may change in such diverse fields as music and fashion, long dominated by young people.

In many respects, say population experts, the trend is likely to bring an end to the "youth culture."

A look at U.S. Census figures, summarized in the charts on these pages, shows the scope of this process. Since 1970, the median age of the U.S. population has risen 1½ years to 29.4



EFFECT of nation's "graying" will be felt in spending patterns, tastes, crime, medicine, taxes — all across national life. Source: U.S. Dept. of Commerce

THUS, Americans' median age has nearly doubled since early days of the Republic and will climb still higher during next 50 years. Source: U.S. Dept. of Commerce

The University and Small Business Patent Procedures Act is currently pending in the Senate Judiciary Committee. On April 11th and an undecided date in June the Committee will hold hearings on the bill, which I shall chair. With your active support I believe that we can pass this legislation and begin to remedy the problems of an ineffective patent policy.

For any additional information please call Joe Allen of my staff at (202)224-9263.

Sincerely,

Birch Bayh
United States Senator