

Strengthening Government Accountability

<http://www.ombwatch.org/article/articleview/3442/1/1?TopicID=1>

Prepared May 24, 2006

On April 6, Sens. Tom Coburn (R-OK), Barack Obama (D-IL), Tom Carper (D-DE) and John McCain (R-AZ) introduced the Federal Funding Accountability and Transparency Act (S. 2590). The bill requires the Office of Management and Budget (OMB) to make information on federal contracts and grants publicly accessible through a searchable website. Such legislation is needed because the public currently lacks access to timely, accurate information about individual contracts, grants, and other forms of government financial assistance. The Federal Procurement Data System (FPDS)--Next Generation, the management of which has been contracted out to a private company by the General Services Administration, is where citizens can now go for information on contracts. This system, however, has been widely criticized for its inadequacies. The Census Bureau provides information about other forms of federal financial assistance through the Federal Assistance Awards Data System (FAADS). FAADS provides data submitted by federal agencies, a job it does quite well. Unfortunately, though, the system is not searchable. Coburn and Obama initially sought to attach their bill to lobby reform legislation, but the amendment was rejected at the last second as non-germane. Joined by Carper and McCain, the four co-sponsors now hope to move the bill either as free-standing legislation or as an amendment, possibly to budget reform legislation expected to move in the Senate this summer. Meanwhile, another bill advertising itself as a similar effort has been introduced, the unwieldy "Website for American Taxpayers to Check and Help Deter Out-of-control Government Spending Act" (S. 2718), called the WATCHDOGS Act. Offered by Sen. John Ensign (R-NV), the WATCHDOGS Act lacks the bipartisan support of the Coburn-Obama-Carper-McCain bill, nor is it structured as a neutral government accountability bill. It remains to be seen if Ensign genuinely intends to promote his bill as a viable alternative to the bipartisan effort, and, if so, whether it will derail the process toward greater transparency.

Key Elements of the Coburn-Obama-Carper-McCain Bill (S. 2590) The bill requires the OMB to ensure that the public will have access free of charge to a searchable website providing information on federal financial assistance, including federal contracts, by Jan. 1, 2007. The website would allow the public to search for information about federal:

- Contracts;
- Grants, including block grants, formula grants, and project grants;
- Cooperative Agreements;
- Loans, including direct loans, guaranteed loans, and insured loans;
- Direct payments for specified (e.g., financial aid) and unrestricted use (e.g., pensions, veterans benefits);
- Insurance; and
- Indirect financial assistance.

The website will not contain details about credit card transactions or minor purchases. Beginning Oct. 1, 2007, the bill requires the disclosure of subcontracts and subgrants. How the OMB will go about this is uncertain, since there is no established method for collecting such information. Within 30 days of awarding federal funds, the following information is to be posted to the website:

- The name of the entity receiving the federal funds, excluding individuals receiving federal assistance and federal employees;
- The amount of federal funds the entity has received in each of the last 10 fiscal years;
- A list of each transaction with the entity receiving federal funds, including funding agency, program source, and a description of the purpose. The intent appears to link the funding to information found in the Catalog of Federal Domestic Assistance;

- The location of the entity and primary location of performance, including the city, state, congressional district, and country. Since the recipient entity may be in a different location than where the service is performed, such information is important;
- A unique identifier for each recipient and parent entity.
- This unique number will be vital to illuminating our system of contracts, since company mergers and acquisitions are frequent. It will also help ensure the accuracy of searches. (Federal contractors and grantees are currently required to have a Dunn & Bradstreet (DUNS) number, the standard for business identification used by companies worldwide to link information about suppliers, customers and trading partners. So an entity's DUNS number could easily be used to satisfy this requirement.)
- Any other relevant information determined by the OMB director.

The bill specifically indicates that a website with a link to the FPDS (<https://www.fpds.gov/>), FAADS (<http://www.census.gov/govs/www/faads.html>), or other web sites, such as Grants.gov, will not satisfy the requirements of this bill unless those sites allow for the public to search by:

- Name of entity, parent entity, or type of industry;
- Geography, including location of the entity and the primary location of the performance;
- Amounts and types of federal funding;
- Program sources and type of activity being performed;
- Time factors such as fiscal years or multiple fiscal years; and
- Other relevant information.

The bill requires the public be allowed to download data from searches that are conducted on the website. Although not specified, this would presumably allow the public to download data in formats compatible with common programs, such as spreadsheet applications, for further analysis. The bill also requires that the website provide an opportunity for public input about the utility of the site and recommendations for improvements. OMB would report annually on its implementation of this effort both to Congress and on the new website. The report is to include data about usage and public feedback on the utility of the site, including recommendations for improvements. Key Elements of the WATCHDOGS Act (S.2718) The WATCHDOGS Act requires the OMB to establish an application process for contractors and grantees to obtain a "Federal funds application number" before receiving federal funds. The bill also requires OMB to ensure that there is a searchable website allowing public access to information provided by contractors and grantees about the federal funds they receive. The bill establishes different reporting requirements for grantees and contractors as described below. The bill would also federalize a contractor or grantee if the entity receives 10% of its business expenditures or annual budget from federal funds. In doing this, the contractor or grantee would be subject to the Freedom of Information Act (FOIA) and to laws that apply to government employees regarding travel, such as the allowable per diem for housing and meals or mileage allowances. OMB Watch has four key concerns with the WATCHDOGS Act.

1. Accountability vs. An Ideological Attack On Nonprofit Grantees. This bill appears less interested in accountability and more in creating a hostile environment for federal grantees, who tend to be nonprofit organizations. Under the bill, federal grantees must disclose the name, address, and social security number of each officer and director of the organization, but contractors need not. The federal grantee must disclose the name, address and social security number of any employee making more than \$50,000; again, contractors need not. Additionally, the bill calls for disclosure of expenditures on various activities including lobbying and, oddly, decorating by federal grantees, but would not require it of contractors.

2. While some of the information is similar to that which nonprofit organizations already disclose in the annual IRS Form 990, most is new and would add yet another reporting burden to grantees. That SSN information would be collected and disclosed is surprising given the all-too-common problems of identity theft and computer fraud. Not only is it unclear how such information might be useful, collecting it may very well violate the privacy rights of individuals subject to the requirement. Dating back 25 years now, efforts continue to spring up to cut off the advocacy voice of nonprofit federal grantees; each time they failed. This bill, unfortunately, appears to fall in among those efforts.
3. Requiring recipients of federal funds to report does not make sense. The bill requires the recipient of the federal grant or contract to report not later than 45 days before the end of the fiscal year on money it got from the federal government over the past 5 years. First, recipients of federal funds should not report to the government on what they have received from the government when the government should obviously already have that information. Second, the timing outlined in the bill would never provide a complete picture of any given fiscal year since grants and contracts can still be awarded in the last 45 days of that fiscal year. Moreover, the bill requires reporting "not later than 45 days," so if a recipient reports earlier even more information is lost for that fiscal year.
4. Why apply to OMB for a Federal funds application number? The bill requires contractors and grantees to apply to OMB for the number. First, OMB is not the most appropriate agency to manage this process, as it is a political White House office with little experience handling such tasks. Second, since 2004, contractors and grantees have already been required to use a common identifier, the Dun and Bradstreet (DUNS) number. There is no need to create a new unique identifier. Third, since the bill requires an entity to "apply" for a number, it appears that the government would have the authority to reject an application. On what basis? Moreover, allowing OMB, a political office, to manage that would be far too susceptible to misuse and abuse.
5. Federalizing and extending federal agency rules, albeit in a limited way, to grantees and contractors is wrong. Any grantee or contractor that receives 10% or more of its revenue from federal funds would suddenly be federalized in certain respects. First, the bill would make these recipients subject to the Freedom of Information Act (FOIA), dramatically changing the application of FOIA, which was intended to apply, and has always applied, only to government agencies. This bill hardly seems the place to make unprecedented changes to FOIA policy. Second, Congress has no business dictating the level of travel and per diem reimbursements that businesses and nonprofits are allowed to provide for their employees with their private, non-federal funds.

Text of Bill S. 2590, the Federal Funding Accountability and Transparency Act
<http://www.ombwatch.org/pdfs/S2590.pdf>