

Addressing the Regulatory Vacuum

Policy Considerations Regarding
Public and Private Sector
Service Off-Shoring



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Introduction

The loss of U.S. jobs to other countries – known as off-shoring – has become a very hot political issue in the 2004 election. The public and policy makers are coming to realize that something dramatic has occurred that cannot be explained by prevailing economic theories and models.¹ The Dow Jones Industrial Average has topped 10,000. An economic “recovery” was heralded as early as November 2001,² yet people are still not finding jobs and many have stopped trying. Despite impressive economic growth data, President George W. Bush is the first president since Herbert Hoover to preside over the nation with fewer jobs than when he started. Economists ponder whether a “paradigm shift” has occurred – meaning that underlying economic structures and realities have shifted in a manner that invalidates long-held assumptions and models. The American public simply sees the new situation as big trouble for them and is demanding solutions.

Public Citizen’s Global Trade Watch has produced this “white paper” with the goal of focusing the growing public anxiety and policymaker concern about the shift of U.S. service sector and professional work abroad on policies needed to ensure that basic consumer privacy rights and quality of service guarantees are maintained. Ironically, some off-shoring is profitable – or even possible – only in the absence of basic consumer regulations. Many of the sectors in which off-shoring is now most prevalent are strictly regulated in the United States on the federal and/or state levels. Overseas contractors are currently outside of the jurisdiction of federal consumer privacy laws that protect medical and financial information here in the United States. Professional qualifications, including licenses, continuing education and insurance requirements are legally mandated for U.S. doctors, lawyers, CPAs and engineers. If a radiologist based in a foreign country interprets X-rays for a U.S. hospital, unless the doctor holds a license from the state in which the hospital is located, such activity would constitute an illegal practice of medicine without a license. How can these standards be ensured when such work is sent overseas? And, even if these (and other) regulatory vacuums were filled, should some areas of work be off-limits to off-shoring for national security or infrastructure security reasons? To date, these vital privacy, professional qualification and security matters have been left solely to the discretion of the private-sector businesses that are sending this work offshore. Action to ensure that these basic consumer protections cover offshore operations would probably also stem this latest tide of job losses.

The shift in what types of jobs now are being off-shored – from manufacturing work to professional and service work – has resulted in a broad U.S. public demand for policy responses to the downside of globalization which cuts across economic and regional demographics. A recent survey by the Program on International Policy Attitudes (PIPA) at the University of Maryland, for example, found that support for free trade fell in most income groups between 1999 and 2004. It also showed a huge drop in support for policies that actively promote free trade among Americans making more than \$100,000 a year (the group that has long been the staunchest supporters of trade liberalization) from 57 percent to 28 percent between 1999 and 2004.³

In Congress, Sen. Chris Dodd, (D-Conn.), who voted in favor of establishing the World Trade

¹ For example, see David R. Francis, “In Age of Outsourcing, Do the Old Rules Apply?” *Christian Science Monitor*, March 5, 2004.

² Don Lee, “Jobless Recovery Too Long to be Fluke,” *Los Angeles Times*, March 14, 2004.

³ This finding comes from follow-up analysis done by researchers at the University of Maryland to their January 2004 poll, “Americans on Globalization, Trade and Farm Policies,” copy on file with Public Citizen.

Organization (WTO), which included rules promoting off-shoring, offered legislation to forbid off-shoring of work done under government contract.⁴ Other WTO supporters, including Sen. Charles Schumer (D-N.Y.) and former Reagan administration senior Treasury official Paul Craig Roberts, have publicly re-examined previous notions of free trade.⁵ Republican Rep. Donald Manzullo (R-Ill.), Chairman of the House Small Business Committee and an ardent proponent of Fast Track trade legislation in 2002, declared at a June 2003 hearing: “I’ve heard over and over again from pretty well-educated people that we shouldn’t worry about manufacturing since we have such a strong service economy; as though services has some sort of hedge of protection from foreign competition. There was a false sense of security. It’s foolish to think that way.”⁶

The Bush administration has faced widespread criticism about its handling of the off-shoring issue, including from Speaker of the House Dennis Hastert (R-IL).⁷ The Bush administration has chosen to create a wedge issue with President Bush defending off-shoring and attacking Democrats seeking to counter the trend as “economic isolationists.”⁸ Republicans in Congress are increasingly worried about the political consequences of this strategy.⁹ Administration officials, including the chief White House Economic Adviser, the Treasury Secretary, the Commerce Secretary and the U.S. Trade Representative, continue to laud off-shoring as beneficial for the U.S. economy.¹⁰

The current public anxiety about off-shoring of service sector and professional jobs is driven by a decade of the real- life results of corporate globalization under NAFTA and the WTO. The presidential and congressional candidates who offer answers to the anxious American public – and policies to ensure the future of good jobs in the United States – will gain ground this fall.

Current Public Outrage Over Off-shoring Has Roots in 1993 NAFTA Debate

The raging debate about service-sector off-shoring is a foreseeable continuation of the debate in the early 1990s about globalization’s effects on U.S. jobs. This began when Congress was faced with two transformational “trade” agreements: the NAFTA and the Uruguay Round of the General Agreement on Tariffs and Trade (GATT), which established the WTO. The issue then was the future of U.S. manufacturing jobs. NAFTA contained a unique set of new rights and protections for foreign investors that provided them with preferential treatment relative to the treatment of domestic companies and citizens under domestic law. These foreign investor protections and preferences, combined with guaranteed preferential access for products made in other NAFTA countries, provided a powerful incentive for U.S. manufacturing companies to

⁴ Sen. Christopher Dodd (D-Conn.), who voted in favor of U.S. accession to the World Trade Organization in 1994, offered an amendment (S2094) to the bill that amends the tax code to comply with the World Trade Organization rulings on the Foreign Sales Corp./Extra-Territorial Income (FSC/ETI) benefit, that prohibits giving federal contracts to companies that use foreign workers to fulfill such contracts.

⁵ Sen. Charles Schumer (D-N.Y.) and Paul Craig Roberts, “Second Thoughts on Free Trade,” *New York Times*, Jan. 6, 2004. Schumer, when serving as a congressman from New York’s Ninth District, voted in favor of U.S. accession to the World Trade Organization in 1994.

⁶ Rep. Donald Manzullo (R-Ill.), “Opening Statement of Committee Chair; The Globalization of White-Collar Jobs: Can America Lose These Jobs and Still Prosper?” House Committee on Small Business, June 18, 2003.

⁷ Mike Allen, “Hastert Rebukes Bush Adviser,” *Washington Post*, Feb. 12, 2004.

⁸ Paul Blustein, “Trade Chief, Democrats Spar Over ‘Isolationist’ Label,” *Washington Post*, March 12, 2004.

⁹ Jonathan Weisman, “Hill GOP Seeks to Limit ‘Off-shoring’ Fallout,” *Washington Post*, April 1, 2004.

¹⁰ Brent Hunsburger, “Cabinet Caravan Touts Successes in Northwest Swing,” *The Oregonian*, Feb. 18, 2004; N. Gregory Mankiw, “Economic Report of the President,” February 2004; Paul Blustein, “Trade Chief, Democrats Spar Over ‘Isolationist’ Label,” *Washington Post*, March 12, 2004; Martin Crutsinger, “Snow Reignites Fight Over Job Outsourcing,” *Associated Press*, March 30, 2004.

relocate production.¹¹ We now know that over three million net U.S. manufacturing jobs, one out of six in this sector, have disappeared during the decade of NAFTA and the WTO.¹²

During the NAFTA and WTO debates, the agreements' most forthcoming proponents admitted that the United States would lose some manufacturing work to lower-wage countries. But they argued that only low-tech, low-value-added manufacturing jobs would leave. (This has since been proven false.) Their sales pitch – that NAFTA and WTO would lead to a better future – reassured Americans that displaced manufacturing workers would be absorbed into a U.S. economy dominated by high-tech, professional and high-wage service jobs. The argument was made that while the transition might be difficult for some and programs should be offered to help with the transition, in the end people would be better off with a “clean” job employing their brains and education rather than a “sweat” job requiring their manual labor.

The broad anxiety regarding service-sector off-shoring is rooted in the broken promises, fearful hopes and ugly realities of that decade-old national policy battle. First, Americans realize that the people whose NAFTA and WTO sales pitch they bought have directly and clearly betrayed them. Now, many of the brand-name major corporations who promised the pacts would create good new U.S. jobs are among the companies shipping the most manufacturing jobs overseas since NAFTA and WTO. These same corporations are among those leading the way in moving professional and other service jobs once performed in the United States to lower-wage countries.

Many large U.S. corporations started relocating service sector jobs in the mid-1990s by off-shoring their “back office” operations – call centers, reservations, and some accounting functions.¹³ Now it is professional and other high-wage service sector occupations, such as computer programming and architecture, that are being sent abroad. The growing list of occupational categories most at risk for increased overseas outsourcing includes accountants and tax professionals, architects and drafters, legal and investment research, technical writers, diagnostic support services and medical transcriptionists.¹⁴ Extrapolating from 2001 statistics on total U.S. employment in these areas, a recent study by two University of California Berkeley economists estimates that some 14 million jobs with an average annual salary of almost \$40,000 are vulnerable to being sent overseas.¹⁵

Second, panic is setting in among the American middle class as people face a horrifying question: What decent jobs will remain here in the United States for me and my children? Declarations from various administration officials and economists that trade theory guarantee that better new jobs inevitably will be created are not comforting. The fact remains that 18-24 months of recovery have still not generated sustained levels of job growth.

At stake is whether over the next several decades the standard of living will continue to decline for the majority of Americans, with only a tiny U.S. elite enjoying economic prosperity. Over the

¹¹ Lori Wallach and Patrick Woodall, Public Citizen, *Whose Trade Organization? A Comprehensive Guide to the WTO* (New York: The New Press, 2004).

¹² U.S. Department of Labor, Bureau of Labor Statistics National Employment series ID CEU3000000001.

¹³ Wallach and Woodall, Public Citizen, *Whose Trade Organization?* 120-21.

¹⁴ Kris Maher, “Next on the Outsourcing List,” *Wall Street Journal*, March 23, 2004.

¹⁵ Ashok Deo Bardhan and Cynthia A. Kroll, “The New Wave of Outsourcing,” Research report from the Fisher Center for Real Estate and Urban Economics, UC Berkeley, Fall 2003, at Table 4. Available online at: <http://repositories.cdlib.org/cgi/viewcontent.cgi?article=1025&context=iber/fcreue>, copy on file with Public Citizen.

past decade, U.S. income inequality has grown at a rate unprecedented since the robber baron age.¹⁶

As was the case with the off-shoring of U.S. manufacturing jobs over the past decade, massive wage differentials are now pulling a wide range of white-collar jobs to overseas locations. The average senior software engineer in Silicon Valley earns \$130,000 while a senior programmer in India makes \$41,600.¹⁷ Computer programmers that would cost \$56 per hour in the United States are available in China for \$12.50 per hour.¹⁸ U.S. law firms are employing legal assistants and paralegals in India for a third of the \$18-24 per hour that they typically pay U.S. workers in these positions.¹⁹ These enormous disparities inevitably have an impact on the wages of U.S. workers in these positions. For example, average U.S. salaries for application developers, database engineers and system administrators – positions identified by *Business Week* as vulnerable to off-shoring – fell by 17.5 percent, 14.7 percent and 5.4 percent between 2002 and 2004.²⁰ The engineering sector (also generally identified as at risk for increased off-shoring) faces unusually high levels of unemployment, with electrical engineers facing 7 percent and software engineers facing 7.5 percent unemployment in 2003.²¹ An array of policies is needed to reverse that trend and to ensure the future maintenance and creation of good jobs in the United States.²²

I. Background on Job Off-shoring

A. Distinguishing Between the Off-shoring of Public and Private Sector Work

It is important to distinguish between outsourcing (typically used to describe the generic contracting-out of government work) and off-shoring (U. S. companies sending work overseas), and between outsourced government work being sent overseas and purely private sector work going offshore. Different policy considerations apply to these different circumstances.

The off-shoring of government work is a government procurement policy issue. Countering such off-shoring could require, for instance, legislation forbidding the use of tax dollars on contracts for services to be performed by workers outside of the United States.

Private sector off-shoring is a different matter that must be addressed in the context of the terms under which certain kinds of private sector work can or cannot be moved offshore. Thus, legislation could establish large penalties against U.S. companies if they offshore work that *must* be performed by a licensed professional in the United States (doctors, engineers, accountants) to individuals in other countries who do not possess the required U.S. professional qualifications and licenses. Or, legislation could require that activities involving the handling of information that is protected under U.S. privacy laws (medical, banking, attorney-client privileged

¹⁶ Paul Krugman, "For Richer," *New York Times Magazine*, Oct. 20, 2002.

¹⁷ Pete Engardio, Aaron Bernstein, Manjeet Kripalani, "Globalization's White Collar Job Shift," *Business Week*, Feb. 3, 2003.

¹⁸ William Bulkeley, "IBM Documents Give Rare Look at Sensitive Plans on 'Off-shoring'," *Wall Street Journal*, Jan. 19, 2004.

¹⁹ Paul McDougall, "Legal Research and Back Office Work To Go Offshore Next," *Information Week*, Dec. 9, 2003.

²⁰ Stephen Baker and Manjeet Kripalani, "Software: Will Outsourcing Hurt America's Supremacy?" *Business Week*, March 1, 2004.

²¹ Amy Yee, "Indian-Americans in Two Minds Over Outsourcing of U.S. Jobs," *Financial Times*, March 4, 2004.

²² See e.g. Public Citizen's Global Trade Watch, Trade Policy Recommendations for Presidential Candidates, <http://www.citizen.org/trade/issues/Off-shoring/articles.cfm?ID=11365>.

information e.g.) cannot be outsourced, or that if such work is outsourced, extremely high penalties could be applied to the outsourcing U.S. company if any privacy violations occur. Legislation also could forbid private sector off-shoring of work that could threaten U.S. security or infrastructure, such as design work on the electric power grid or maintenance of domestic commercial aircraft. Finally, numerous bills have been already introduced in the U.S. Congress to change provisions in the U.S. tax code that provide incentives for U.S.-controlled companies to send jobs overseas.

B. How Many Jobs Are Involved?

The figures that are really driving this debate are the projections. Most analysts see the current situation as the beginning of what is expected to be a rapidly escalating trend. The most widely cited projection is by a group called Forrester Research, which has predicted that 3.3 million U.S. jobs and \$136 billion in wages will be moved overseas by 2015.²³ A Goldman- Sachs study estimates that as many as 6 million jobs could move overseas in the next decade.²⁴ More specialized projections include the Gartner Group's estimate that 10 percent of U.S. technology jobs will have moved offshore by 2005,²⁵ and that, despite the brewing political backlash, up to 25 percent of traditional IT jobs will be relocated from developed to developing countries by 2010.²⁶ AT Kearney predicts 500,000 financial services jobs (8 percent of all U.S. jobs in banking, brokerage and insurance) will be shipped overseas by May 2008.²⁷ Almost 5 percent of U.S. human resources jobs had been sent offshore by mid-2003, a figure that is expected to rise to at least 15 percent by 2007.²⁸ A survey by the Chicago consulting firm DiamondCluster International, Inc. found that 86percent of corporate executives polled expect to send more technology jobs abroad in the next year, compared with 32 percent two years ago.²⁹

A recent Goldman-Sachs report estimated that U.S. producers moved 300,000-500,000 manufacturing jobs to overseas affiliates between 2000 and 2003 alone – not including the use of third-party foreign contractors.³⁰ It also estimates that some 200,000 service jobs (mostly in information technology) were lost across the same period.³¹ Mark Zandi at Economy.com estimates that 995,000 U.S. jobs across all sectors have been moved overseas since March 2001.³² These losses have been concentrated in the manufacturing sector, but about 15 percent (150,000) have been among college-educated professionals.³³

There is no reliable data on the total number of U.S. jobs that have already been lost to off-shoring.³⁴ Measurement issues and other methodological problems have generated a confusing array of estimates of how many U.S. jobs have been sent abroad in recent years. The key problem for many analysts has been defining and systematically linking domestic job losses with positions

²³ Cited in Stacy Teicher, "White-collar Jobs Moving Abroad," *Christian Science Monitor*, July 29, 2003.

²⁴ Bill Dudley, Jan Hatzius, Ed McKelvey, "US Economics Analyst," *Goldman-Sachs newsletter*, Issue No. 03/3 8, Sept. 19, 2003, copy on file with Public Citizen.

²⁵ Cited in Jonathan Krim, "Grove Says U.S. is Losing Edge in Tech Sector," *Business Week*, Oct. 10, 2003.

²⁶ Paul Taylor, "Developing Nations to Soak Up 25percent of IT Jobs," *Financial Times*, March 17, 2004.

²⁷ Karen Krebsback, "Outsourcing: Fighting a Giant Sucking Sound," *Bank Technology News*, 2003.

²⁸ Jay Whitehead, publisher of *HRO Today* magazine, quoted in Teicher, "White-collar Jobs Moving Abroad."

²⁹ Ken Brown, "Offshore Outsourcing Will Increase, Poll Finds," *The Wall Street Journal*, March 26, 2004

³⁰ Dudley, Hatzius, and McKelvey, "US Economics Analyst," at 5.

³¹ *Ibid.* at 6.

³² Cited in Marla Dickerson, "'Off-shoring' Trend is Casting a Wider Net," *Los Angeles Times*, Jan. 4, 2004.

³³ *Ibid.*

³⁴ Louis Uchitelle, "A Missing Statistic: U.S. Jobs that Went Overseas," *New York Times*, Oct. 5, 2003.

created overseas by U.S. companies. For example, Intel and the computer company Dell, Inc., have each been adding significant numbers of jobs at their offshore locations while maintaining a relatively steady proportion of their workforce in the United States.³⁵ The work being done overseas is not exclusively for overseas customers and might otherwise have led to increased U.S. hiring – but such shifts are not usually included in estimates of off-shoring. Another problem has been that researchers have not stated clearly whether their figures include all service workers, only technology or professional workers, or some combination of these three overlapping groups.

In terms of the exact amount of government contract work that is off-shored, the picture becomes even murkier. State and federal governments usually do not track where the work is done by the private contractor after the contract has been awarded. In many cases involving off-shored government work, the contract was awarded to a U.S. firm that then subcontracted with an overseas affiliate or third-party service provider. Thus, while there are now many well-known anecdotal examples of state government work being sent offshore, no data have been collected on the extent of the practice.

Several state governors recently ordered their procuring agencies to review and report back on the amount of contract work that is shipped abroad.³⁶ In August 2003, four members of Congress requested a General Accounting Office (GAO) study on overseas outsourcing and various issues surrounding it in both the private sector and among federal and state government contractors. GAO researchers are expected to meet with the congressional requesters (Reps. Adam Smith and Jay Inslee (both D-Wash.), Ike Skelton (D-Mo.) and Tammy Baldwin (D-Wis.)) in April to report on their initial findings and to discuss the methodology and scope of their ongoing work.

Whatever the exact numbers, most analysts now agree that this new wave of overseas outsourcing is gaining steam.

II. Policy Considerations

A. Private Sector Off-shoring

A significant portion of the service-sector off-shoring occurring in the private sector is profitable – and indeed is only possible – because technological change has allowed many service-sector companies to take advantage of the same international trade rules that have long encouraged manufacturers to move their production facilities overseas in search of ever-lower wages. The off-shoring of U.S. service-sector jobs also has been greatly facilitated by the near-total absence of regulation regarding basic privacy protections, professional qualifications and national security safeguards.

Many of the sectors in which off-shoring is now most prevalent are strictly regulated in the United States on the federal and/or state levels. Overseas contractors are currently outside of the jurisdiction of federal consumer privacy laws that protect medical and financial information here in the United States. Professional qualifications, including licenses, continuing education and insurance requirements, are legally mandated for U.S. doctors, lawyers, CPAs and engineers. If a radiologist based in a foreign country interprets X-rays for a U.S. hospital, unless the doctor held a license

³⁵ John Pletz, “Cheaper Labor Drawing High-Skilled Tech Jobs from United States to India,” *Austin American-Statesman*, Oct. 21, 2002.

³⁶ States where such reviews have been ordered include North Carolina, Washington, Vermont and Connecticut.

from the state in which the hospital was located, such activity would constitute an illegal practice of medicine without a license. How can such licensing standards be ensured when such work is sent overseas? And, even if these (and other) regulatory vacuums were filled, should some areas of work be off limits to off-shoring for national security or infrastructure security reasons? To date, these vital privacy, professional qualification and security matters have been left solely to the discretion of the private-sector businesses that are sending this work offshore.

1. Ensuring Federal Privacy Protections for Data Sent Abroad

Serious privacy issues surrounding off-shored work have been highlighted through numerous high-profile incidents and accusations. While these privacy concerns unquestionably also plague outsourcing of government work to private companies in general, they are particularly problematic with regard to overseas providers. U.S. law does not apply overseas and obtaining redress in the U.S. civil justice systems in cases of abuse involving overseas companies is very difficult. Even though increased off-shoring by U.S. companies means that an unprecedented amount of sensitive personal data is being shipped overseas, U.S. privacy protections effectively end at our borders. In sharp contrast, European consumers are afforded considerably greater protection by a European Union (EU) law that permits personal data to be sent offshore *only* to countries whose privacy laws have been deemed to provide equivalent privacy protections and that have been found to have strong enforcement capabilities.³⁷ Because most countries cannot meet these “safe harbor” requirements, European jobs that involve the handling of confidential information have been off-shored at a far slower rate than in the United States.

There are already numerous examples of confidential information being mishandled in offshore situations. In Ohio, allegations that citizens’ birth records had been sent to a facility in Sri Lanka led to the U.S. company that had off-shored the work (and thus exposed the confidential information) being barred from state contract work for 15 months.³⁸ Soon afterward, similar allegations arose that confidential information from the records of hundreds of thousands of Ohio veterans had been sent to a data-processing company in India.³⁹

In 2003, a medical transcriber in Pakistan threatened to post patients’ records online unless the University of California San Francisco (UCSF) Medical Center paid the wages owed to her by the U.S. subcontractor that had sent the work to her.⁴⁰ The hospital’s transcription work had already been subcontracted from a Sausalito-based transcription firm to two U.S. sources before being subcontracted a third time to the transcriber in Pakistan.⁴¹ Heartland Information Services, an Ohio-based company that off-shores medical records work to India, received a similar threat from a group of its disgruntled employees in Bangalore, India.⁴² The Indian workers said that they would release confidential records unless they received a cash payoff from the company. The disgruntled workers were soon apprehended with company training documents - but no patients’ files were in their possession.⁴³

Such a threat and act of extortion also could have come from a medical transcriber in the United

³⁷ The European Commission on Data Protection (EU Data Directive), Oct. 24, 1995 (95/46/EC).

³⁸ Jim Woods, “County Using Banned Firm,” *Columbus Dispatch*, March 24, 2003.

³⁹ Jon Craig, “Ohio Checks on Veterans’ Records,” *Columbus Dispatch*, Oct. 18, 2001.

⁴⁰ David Lazarus, “A Tough Lesson on Medical Privacy,” *San Francisco Chronicle*, Oct. 22, 2003.

⁴¹ *Ibid.*

⁴² David Lazarus, “Extortion Threat to Patients’ Records,” *San Francisco Chronicle*, April 2, 2004.

⁴³ *Ibid.*

States. However, a U.S.-based transcriber would be highly unlikely to issue such a threat given the legal recourse available in the United States to patients if their privacy is violated. In contrast, the only liability in the Pakistani transcriber case would reside with the U.S. companies which have created no disincentive for the bad conduct by the overseas provider. As a result of the above incident, the UCSF Medical Center is revising its contracts with transcription firms to require up-front notice of all subcontracting.⁴⁴ It also effectively has precluded the future off-shoring of transcription work by requiring vendors to provide social security numbers of subcontractors to allow them to identify the individuals doing the work.⁴⁵ That remedy, however, is being applied at only one hospital – while patients at other facilities remain unprotected in the absence of broader requirements concerning the outsourcing of such work.

The American Association for Medical Transcription (AAMT) is advocating full disclosure of outsourcing – presumably to help protect its members from liability in situations where privacy violations do occur.⁴⁶ Medical transcription is a roughly \$20 billion business, and patients’ full medical histories often are included in transcribed reports. The AAMT estimates that about 10 percent of all U.S. medical transcription is now being done abroad.⁴⁷

In 2001, the federal Department of Health and Human Services adopted nationwide privacy protections for medical information in the “Privacy Rule,” mandated by the Health Insurance and Portability and Accountability Act (HIPAA) of 1996.⁴⁸ This law prevents health care companies from selling information to third parties, such as telemarketing firms. However, the protected health information of a patient can be processed internally by a HIPAA-regulated “Covered Entity.” These entities can transfer protected health information to certain third-party service providers, such as insurance companies, research facilities, transcriptionists or radiologists, with no requirement that the patient’s prior consent be obtained. The off-shoring of such information was most likely not contemplated when HIPAA was designed; nothing in the statute forbids the transfer of information to overseas locations for third-party services - as occurred in the above example of the Pakistani transcriber.

Other work that involves sensitive personal information has also been off-shored in financial sectors, most prominently accounting. An estimated 150,000-200,000 individual tax returns, both federal and state, will be prepared in India in 2004.⁴⁹ Tax returns contain personal information including Social Security numbers, addresses, employer information, stock holdings and credit information. In response to questions about security, some firms such as Massachusetts-based Datamatrix have established self-enforced security measures such as not permitting writing materials, printers, or even e-mail access in offshore offices where tax preparation is done.⁵⁰ But none of these measures are required of firms that offshore work – or are necessarily sufficient to prevent violations of consumer privacy.

Tax preparation, and any consumers’ financial transactions and information are afforded some

⁴⁴ Written testimony of Clifton Louie, Associate Director of Clinical Services at the UCSF Medical Center, to the California Senate Select Committee on International Trade Policy and State Legislation, “Outsourcing California: Our Jobs and Privacy at Risk,” March 9, 2004, copy on file with Public Citizen.

⁴⁵ Ibid.

⁴⁶ Lazarus, “A Tough Lesson on Medical Privacy.”

⁴⁷ Ibid.

⁴⁸ Pub. L. 104-191, 42 U.S.C. §§ 1320d *et seq.*

⁴⁹ Rachel Konrad, “Foreign Accountants Do U.S. Tax Returns,” *Associated Press*, Feb. 22, 2004.

⁵⁰ Lynnley Browning, “Your Taxes; Outsourcing Abroad Applies to Tax Returns, Too,” *New York Times*, Feb. 15, 2004.

protection in the United States under the Title V of the Gramm-Leach-Bliley Act, the 1999 law that protects personal financial information held by banks, securities firms and insurance companies, as well as non-traditional financial institutions such as credit reporting agencies.⁵¹ As with HIPAA protections, Gramm-Leach-Bliley does not prevent financial institutions from sending customers' personal information to overseas vendors. This omission is particularly troublesome in light of the large number of major financial institutions that already have outsourced a significant proportion of their operations overseas. Recent press reports also indicate that two of the three major credit-reporting agencies in the United States are planning to outsource operations abroad.⁵²

2. Off-shoring and Privacy: Legislative State of Play

Bills are pending in several states that would prohibit overseas outsourcing where personal information is involved. Personal information is typically defined as including, but not limited to, Social Security numbers, medical and financial information, dates of birth, and names of relatives. A proposal by Missouri State Sen. Chuck Gross (R-St. Charles) would prevent the state from contracting with a foreign company that intends to gather personal information (beyond the name, address, and phone number) of a Missouri resident for use in the performance of the contract.⁵³ The prohibition also extends to subcontractors. Another bill is pending in the Arizona Senate that would prohibit health professionals from contracting with any person or entity that would send or permit the sending of patients' records for transcription out side the United States.⁵⁴

At the federal level, Rep. Edward Markey (D-Mass.), co-chair of the congressional Privacy Task Force, has been a prominent advocate of extending privacy protections to off-shored service contracts. On February 24, 2004, Markey sent letters to nine federal agencies (Health and Human Services, Federal Reserve, the Securities and Exchange Commission, the Federal Trade Commission, the Federal Communications Commission, the Internal Revenue Service, the Department of Defense, the Department of Homeland Security and the Central Intelligence Agency),⁵⁵ raising questions about the reach and enforcement of U.S. privacy law and the jurisdiction of regulators as it relates to the increased off-shoring of work that contains sensitive consumer financial and medical information.

In the Senate, an amendment submitted by Sen. Hillary Clinton (D-N.Y.) to the "Jumpstart Our Business Strength" (JOBS) Act on March 23, 2004, would regulate the transmission of personally identifiable information (including bank account information, Social Security numbers, addresses, phone numbers, passwords, mother's maiden name and age) to foreign affiliates and subcontractors both before and after a customer relationship is established.⁵⁶ The amendment would require businesses and private, nonprofit organizations to obtain prior consent from an existing customer or potential customer *before* their information is sent to a foreign affiliate or subcontractor. Second, such entities would be held liable for any misuse of a customer's personal information by a foreign affiliate or subcontractor. In addition, the amendment requires that the Federal Trade Commission certify countries and make available to the public a list of countries

⁵¹ Pub. L. 106-102, tit. V, 113 Stat. 1338, 1436. 15 U.S.C. §§ 6801 – 6809.

⁵² Jay Fitzgerald, "Known Around the World; Private Records May be at Risk," *Boston Herald*, Nov. 30, 2003.

⁵³ Missouri Senate bill number 853, 2004.

⁵⁴ Arizona Senate bill number 1080, 2004.

⁵⁵ Rep. Edward Markey (D-Mass.) letters, dated Feb. 23, 2004, to federal agencies, copies on file with Public Citizen.

⁵⁶ Sen. Hillary Clinton's (D-NY) amendment was Senate Amendment 2918. The underlying bill amends the tax code to comply with the World Trade Organization rulings on the Foreign Sales Corp./ Extra-Territorial Income (FSC/ETI) benefit.

that have adequate privacy laws. Sen. Clinton also introduced this proposal as a separate bill on April 9, 2004.⁵⁷

On March 3, 2004, Sen. Diane Feinstein (D-Calif.) sent letters of concern to the Office of the Comptroller of the Currency (OCC) and financial corporations with offshore contractors, including Bank of America, Citigroup, Equifax and TransUnion. In her letter to the Comptroller of the Currency, Feinstein noted how third-party vendors abroad technically are subject to U.S. privacy laws but expressed concern over the “unique regulatory challenges” involved in overseas enforcement. She asked the Comptroller numerous questions about outsourcing practices and specifically requested that he identify the number of foreign vendors who have gained access to private personal information by banks under the OCC’s jurisdiction.⁵⁸ She is expected to introduce legislation to address some of these regulatory shortcomings in early April 2004.

On the state level, bills are pending in North Carolina, South Carolina and Tennessee that would require written consent for a call center to send any financial, credit or other personal information overseas.⁵⁹ A proposal in Washington State would ban employees at foreign call centers from soliciting any personal information, unless the employee first informs the party that disclosing that information to the employee is optional and receives the affirmative consent of the party to whom the information relates.⁶⁰

3. Ensuring Professional Standards on Off-shored Work

Currently there is no federal oversight ensuring that professionals overseas doing outsourced work have a specific professional license (medical/engineering/ accounting, etc.) if such a license is required for work performed in the United States. These professionals are regulated at the state level. No matter where they are located, employees working for companies in any state who do not have the required licenses would be in violation of state law. However, enforcement of professional standards and requirements with respect to off-shoring is a serious problem. State regulatory agencies do not have the resources to fully monitor and enforce professional standards abroad and consumers cannot realistically be expected to conduct their own investigations before doing business with the growing number of providers that are sending specialized financial, medical and engineering work overseas. The ability to issue and revoke licenses has been critical in helping U.S. authorities maintain professional standards among domestic providers. The lack of licensing control and enforcement capability overseas invites abuse in a setting in which consumers have virtually no legal recourse after an injury or loss has occurred. Thus, there is a regulatory gap that has truly worrisome consumer safety and economic implications. The practice of professional off-shoring clearly has gotten ahead of consumer protections. The only current regulatory system is a silent assumption that professional qualifications are assured by the private company that is off-shoring the work – which does not have a strong incentive to spend a lot of time or money on enforcement.

For example, Massachusetts General Hospital (MGH) has off-shored some MRI and X-ray work

⁵⁷ Senate bill number 2312.

⁵⁸ Letter from Sen. Diane Feinstein (D-Calif.) to Comptroller of the Currency John Hawke, quoted in “Feinstein Questions Privacy Protections in Outsourcing,” *Congress Daily*, March 4, 2004.

⁵⁹ North Carolina Senate bill number 991, 2003; South Carolina House bill number 4434, 2003, and Tennessee House bill number 2340, 2004.

⁶⁰ Washington House bill number 2351, 2004.

to India.⁶¹ If the doctors in India are not board-qualified in Massachusetts, then what work can these doctors in India do legally, and who can ensure that the limits are being followed? If a doctor in India, who is not licensed in Massachusetts, were reading and interpreting the MRIs and X-rays and this information was being relied upon by patients in Massachusetts, this would be an illegal practice of medicine without a license. In at least one press report, MGH says that, currently, the radiologists in India are not board-qualified but that they are limited to processing the information into more readable forms for U.S. doctors to analyze.⁶² This processing work is work done in the United States by technicians, not doctors. Yet who can ensure the strict separation of these different roles? Even assuming that MGH is being incredibly scrupulous in overseeing this process, absent specific regulation of professional outsourcing, consumers will remain at the mercy of less scrupulous and ultimately unaccountable businesses.

Regarding accounting, large firms interested in facilitating off-shoring are seeking to establish a unified global accounting professional standard at the WTO – an effort that many consumer groups fear will be used to undermine existing domestic standards. Arthur Andersen was among the industry giants lobbying for the WTO standard, a process that slowed considerably when that company imploded. Currently, there is no requirement that off-shored U.S. accounting work is done by someone with a CPA. As stated earlier, tax experts report that Indian accountants will prepare 150,000-200,000 returns in 2004 – compared to only 1,000 in 2002 and 20,000 in 2003.⁶³ Ernst and Young customers must sign a document acknowledging that a foreign accountant may work on their tax return, but most U.S. firms do not make such disclosures.⁶⁴ Ensuring that work done offshore is performed by individuals with the proper qualifications and licenses is necessary for safety and quality reasons. Filling this regulatory void would also mean that more of these jobs would remain in the United States. But of course, many high-wage professional jobs – from computer jobs to many aspects of engineering – do not require licenses.

4. Protecting National Security and Infrastructure

Most defense-related national security government work (such as designing or building missile systems) that is contracted out typically requires a certain level of security clearance (only available to U.S. citizens) that effectively precludes the possibility of sending military-related work to a foreign subcontractor.⁶⁵ But since September 11, 2001, it has become more apparent that many aspects of our domestic economy and national infrastructure are potential targets for attack and there are no restrictions on the off-shoring of work related to vulnerable services or infrastructure facilities.

For example, the massive blackout through the Northeast and Canada in the summer of 2003, though brief, caused \$5 billion in economic damage. Although terrorism was ruled out as a cause, the East Coast blackout revealed a hole in national security and led to increased awareness about vulnerabilities within aging power grids across the country – including California’s enormous power grid which has been undergoing extensive repair for at least three years. Pacific Gas and Electric Company (PG&E), in repairing California’s power grid, has outsourced about \$2 million worth of design, drawing and engineering work to Thailand since 2001.⁶⁶ As the world’s fifth

⁶¹ Fitzgerald, “Known Around the World; Private Records May be at Risk.”

⁶² Andrew Pollack, “Who’s Reading Your X-Ray?” *New York Times*, Nov. 16, 2003.

⁶³ Konrad, “Foreign Accountants Do U.S. Tax Returns.”

⁶⁴ Lynnley Browning, “Your Taxes,” *New York Times*, Feb. 15, 2004.

⁶⁵ See Perri Capell, “Defense Jobs Go Begging Due to Clearance Issues,” *Wall Street Journal*, March 25, 2004.

⁶⁶ David Lazarus, “Crucial PG&E Design Information Goes to Thailand,” *San Francisco Chronicle*, Nov. 5, 2003.

largest economy, California's infrastructure is an obvious target for terrorists.

A PG&E spokesman says "sufficient steps" have been taken to ensure security of sensitive infrastructure information and that engineering contractors must sign confidentiality agreements.⁶⁷ Yet off-shoring infrastructure engineering work increases the chances of sabotage, according to energy experts, as well as PG&E's own employees. For instance, Irving Joe, a PG&E designer, told the *San Francisco Chronicle*, "Going overseas, the chances of it [sensitive security data] getting into the wrong hands increases dramatically."⁶⁸

National security concerns have been raised over off-shoring in other areas – including commercial U.S. aircraft maintenance work. The ease and speed with which much of this maintenance work has been moved overseas provides a curious contrast to the strict controls on foreign ownership of domestic airlines that the United States has long maintained. Northwest Airlines has laid off hundreds of U.S. mechanics and shifted maintenance to Singapore (where terrorist cells are known to operate) and to the People's Republic of China.⁶⁹ Post-September 11 Federal Aviation Administration (FAA) regulations require all airport-based airline employees in the United States to submit to a "Fingerprint-based Criminal History Background Check" that probes the past ten years of the employee's past.⁷⁰ No such checks are required of employees at off-site contractors here in the United States – nor of mechanics working on U.S. commercial aircraft – a particularly troublesome fact in cases where work is sent to countries that are not known for their pro-U.S. sympathies.

Additionally, as increasing amounts of sensitive personal information are handled outside the reach of U.S. privacy law, the potential for those seeking to use it for identify theft also increases. The National Commission on Terrorist Attacks Upon the United States ("the September 11 Commission") has found that two of the September 11 hijackers manipulated passports in order to enter the United States, while two other hijackers had passports with "suspicious indicators."⁷¹ The Michigan State University Identity Theft Crime Lab found that more than half of 1,037 identity thefts studied involved personal information that had been stolen in the workplace by employees or by people impersonating employees.⁷²

5. Consumer Right-to-Know Protections

A key factor that helps make off-shoring profitable for U.S. companies is that consumers are typically unaware of where the work is being done. Sen. John Kerry (D-Mass.) has proposed legislation to require workers at call centers to reveal the location from which they are working.⁷³ The Communication Workers of America (CWA) has called for similar disclosure laws in several states and bills have been introduced in Colorado, Georgia, Hawaii, New Jersey, Tennessee and Washington.⁷⁴

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Jeff Horwich, "An 'Outside' Job: External Aircraft Repairs Raise Concerns," *Minnesota Public Radio*, Aug. 3, 2003.

⁷⁰ FAA Regulation 108.229.

⁷¹ 9/11 Commission, "Entry of the 9/11 Hijackers Into the United States," Staff Statement No. 1, copy on file with Public Citizen.

⁷² Judith Collins, "To Root Out Identity Theft, Set Restrictions in Workplace," *Detroit Free Press*, Sept. 3, 2003.

⁷³ "The Call Center Consumer's Right to Know Act of 2003", U.S. Senate bill number 1873, 2003.

⁷⁴ Colorado House bill number 1289; Georgia House bill number 1218; Hawaii House bill number 1922; New

Other reports indicate the complicity of government agencies in maintaining the secrecy that often surrounds off-shoring. In Michigan, for example, one source reported that much of the work on a \$25.2 million contract to upgrade the computer system used by the state employee retirement system would be done overseas, but the state “won’t allow the company to release any details about the workload.”⁷⁵ This kind of secrecy regarding how taxpayer dollars are spent is unacceptable. Legislation or regulations requiring that state and federal governments track and publish statistics regarding the use of foreign-based subcontractors is a vital step in understanding the amount of government work that is being sent overseas and in permitting taxpayers to hold their elected representatives accountable for such policies. The federal government already tracks contracts that are awarded to foreign contractors, but there is no tracking or disclosure requirement on where the work is being done on contracts awarded to notorious outsourcers such as IBM, Boeing and Dell, Inc.

6. Tax Policy Proposals

Concern is growing over the fact that the U.S. tax code strongly encourages U.S. companies to create new jobs or move existing positions overseas. U.S.-controlled corporations can defer tax payments on income earned abroad until such earnings are “repatriated” to the United States. Currently, by establishing more foreign “subsidiaries” a U.S.-controlled company can avoid paying U.S. taxes on a greater proportion of its earnings. A sizeable majority of U.S.-based corporations pay *zero* U.S. taxes⁷⁶ and the deferral option is one of the rules that help them maintain this remarkable record. Not surprisingly, most of these funds never return to the United States and thus, are never taxed. Instead, they are used to expand or otherwise invest in overseas operations or they are “parked” in a holding company set up to avoid U.S. taxes in such offshore havens as Bermuda, Luxembourg or the Cayman Islands. Two years ago, the Treasury Department promised to issue new regulations to address some of the loopholes that permit this activity, but to date, even draft changes have not been forthcoming.⁷⁷

Under the deferral rule, companies are permitted to accumulate untaxed foreign earnings indefinitely. Hewlett-Packard’s 2003 SEC filings show the company has “indefinitely” deferred taxation on \$14.4 billion of foreign earnings.⁷⁸ Intel Corp.’s showed \$7 billion, and pharmaceutical giant Merck & Co.’s filings reported \$18 billion.⁷⁹ In total, it is estimated that U.S. companies have amassed some \$639 billion in untaxed foreign earnings.⁸⁰ From 1995-2001, U.S. multinationals increased their employment overseas by 39 percent, while expanding domestic payrolls by only 10 percent.⁸¹

The presumptive Democratic presidential nominee, Sen. Kerry has proposed a plan under which U.S.-controlled companies would be required to pay taxes on all profits earned overseas that are not taxed by another country. The Kerry proposal still would allow corporations that produce for

Jersey Assembly bill number 840/ New Jersey Senate bill number 370; Tennessee House bill number 2340; Washington House bill number 3186.

⁷⁵ Chad Selweski, “Warren Lawmaker Fights Loss of Jobs to Foreign Workers,” *The Macomb Daily* (on-line edition), July 31, 2003.

⁷⁶ U.S. General Accounting office, *Tax Administration: Comparison of the Reported Tax Liabilities of Foreign and U.S.-controlled Corporations, 1996-2000*.

⁷⁷ Martin Sullivan, “The Right Target on Corporate Taxes,” *The Boston Globe*, April 1, 2004.

⁷⁸ Jonathan Weisman, “U.S. Firms Keep Billions Overseas,” *The Washington Post*, April 2, 2004.

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ Sullivan, “The Right Target on Corporate Taxes.”

foreign markets to defer taxes. Deferral would not be permitted, however, for U.S.-controlled companies that are producing goods overseas for the U.S. market. Further, the Kerry plan includes a one-year 10 percent “tax holiday” rate to encourage companies to repatriate their overseas profits, and a cut in the corporate tax rate from 35 to 33.25 percent.⁸²

A number of bills pending in Congress that propose other tax policy changes intended to combat off-shoring. While the number and range of these proposals extend well beyond the scope of this report, the most prominent include a 10 percent tax cut for U.S. manufacturing companies that have retained production facilities in the United States⁸³ and a proposal to make the research and development tax credit permanent.⁸⁴ The notion underlying the research and development tax credit is that this will help ensure that U.S. companies create the next wave of technological innovation and the job creation attached to it.

7. Potential Conflicts between WTO Rules and Prudent Domestic Policies

Depending upon the specific sector, some existing U.S. commitments in the General Agreement on Trade in Services (GATS), one of the “Uruguay Round” agreements enforced by the WTO, arguably could be used to attack some of the vital policy proposals described above.⁸⁵ The GATS sets international rules that limit signatory governments’ ability to domestically regulate the operation and ownership of services, including both essential public services and private sector service providers. The breadth of GATS has been illustrated most recently by the WTO’s preliminary ruling that the United States must allow Internet gambling from offshore service providers, which has been illegal in the United States under federal laws that restrict the cross-border supply of gambling services.⁸⁶

Some proponents of deregulation, privatization and off-shoring have raised the specter of U.S. obligations under GATS to criticize recent off-shoring policy proposals. In fact, the GATS provisions in question are quite vague, making it unclear whether the proposals outlined above would be in conflict with GATS rules.⁸⁷

However, a real threat *is* posed by what the Bush administration might do very shortly in the WTO GATS expansion talks now under way in Geneva. Called “GATS 2000,” these negotiations are designed to expand GATS commitments to more sectors of the service economy. A core element of these negotiations is establishing new disciplines that limit

⁸² Deborah McGregor, “Kerry Pledges Corporate Tax Policy Reform,” *Financial Times*, March 27, 2004.

⁸³ This provision appears in the Democratic alternatives to the majority’s bills to amend the tax code to comply with the World Trade Organization rulings on the Foreign Sales Corp./ Extra-Territorial Income (FSC/ETI) benefit: U.S. House of Representatives bill number 1769; U.S. Senate bill number 970. The majority proposal currently under consideration on the floor of the U.S. Senate includes a 9percent cut.

⁸⁴ This provision has been proposed in several bills, including U.S. House of Representatives bill number 463 and U.S. Senate bill number 664.

⁸⁵ Under GATS, a country makes commitments to subject different service sectors to different levels of market access with all of these specifics listed in a country’s GATS schedule. Efforts to regulate off-shoring could clash with what is called ‘Mode 1’ market access (selling a service across border). Bringing high tech workers into the U.S., for instance, under the H1-B and L-1 visa programs or under the specific visa grants in the U.S.-Chile and U.S.-Singapore Free Trade Agreements, is GATS Mode 4 (providing a service by moving the worker across borders).

⁸⁶ Scott Miller and Christina Binkley, “U.S. Ban on Web Gambling Breaks Global Trade Pacts, Says WTO,” *Wall Street Journal*, March 25, 2004.

⁸⁷ Public Citizen’s Global Trade Watch, “Background on WTO and FTAA Service Sector Liberalization and Deregulation,” 2003, available on-line at http://www.citizen.org/documents/Gats_Backgrounder.pdf, copy on file with Public Citizen.

domestic regulation of professional qualifications and other service-sector matters. This proposal must be closely examined by members of Congress who champion accessible health care, public education or protection of Social Security, because under the proposed new WTO limits, many major domestic programs in service sectors could be undermined by expanded GATS disciplines. Congress should forbid the Bush administration from agreeing to such new commitments in GATS 2000.

B. Government Services Off-shoring

On both the federal, state and local levels, the next step in the privatization and out sourcing of government work has been the off-shoring of service and technology contracts. Taxpayer funds are paying for these off-shored services. Thus, in policy terms, at issue is a procurement policy problem related to the qualifications of suppliers (who can get these contracts) and, what are called “technical specifications” of the service for which a contract is offered (i.e., what terms are set for the service being sought).

1. Federal Procurement and Off-shoring

In terms of specific proposals at the federal level, there has been much discussion, but so far only three legislative proposals have been introduced that would directly restrict overseas outsourcing by the federal government. Government employee unions led by the American Federation of Government Employees (AFGE) worked with Sen. Barbara Mikulski (D-Md.) on an anti-off-shoring amendment to the omnibus appropriations bill in January 2004. When it appeared this amendment might pass, a weaker alternative was offered by Sens. George Voinovich (R-Ohio) and Craig Thomas (R-Wyo.), which forbids private contractors that win contracts through the A-76 bidding process from sending the work overseas.⁸⁸ The Voinovich-Thomas amendment passed, but only a very small proportion of contracts are awarded through the A-76 process and the prohibition will expire with this Omnibus Appropriations bill at the end of the 2004 fiscal year.

Currently, only two bills would broadly prohibit overseas outsourcing on government contracts; one in the U.S. Senate and one in the House of Representatives. A bill introduced by U.S. Sen. Chris Dodd’s (D-Conn.)⁸⁹ passed in the Senate by a 70-26 margin as a (modified) amendment to the “Jumpstart Our Business Strength” (JOBS) Act on March 4, 2004.⁹⁰ The Dodd amendment would make the appropriations language sponsored by Voinovich and Thomas permanent. But it also expands the prohibition against giving federal procurement contracts to companies (or their subcontractors) that would use foreign workers in fulfilling such contracts. The amendment does not address the considerable enforcement issues that such a ban would raise, such as penalties for violations or how to ensure compliance. It would require states to certify that federal funds would not be used to contract for services performed outside the United States.

The Dodd amendment, as finally passed, included a presidential waiver from these requirements on national security grounds. It also was weakened significantly by a second-degree amendment by

⁸⁸ The “Circular A-76” refers to a process through which private sector organizations can bid for work that is currently done by government employees but is not “inherently governmental” in nature. The process was established by the executive-level Office of Management and Budget (OMB) in the 1960s to facilitate competitive bidding between government workers and private sector providers (revised most recently in 1999).

⁸⁹ U.S. Senate bill number 2094, 2004.

⁹⁰ The underlying Senate bill number 1637, amends the tax code to comply with the World Trade Organization rulings on the Foreign Sales Corp./ Extra-Territorial Income (FSC/ETI) benefit.

Sens. Mitch McConnell (R-Ky.) and Bill Frist (R-Tenn.) that would make all provisions dependent on a certification by the Secretary of Commerce that they would not “result in the loss of more jobs than [they] would protect and will not cause harm to the U.S. economy.” While this amendment was agreed to by unanimous consent (no vote taken), its ultimate fate remains uncertain as the underlying bill is currently stalled following a failed cloture vote on March 24.

Other Senators known to be considering legislation regarding government service off-shoring issues include Charles Schumer (D-N.Y.) and Edward Kennedy (D-Mass.).

The original Dodd amendment was picked up by Rep. Rosa DeLauro (D-Conn.) in the House.⁹¹ DeLauro offered it in the Budget Committee as a “sense of the House” amendment to the FY2005 federal budget resolution, where it was defeated along party lines by a 20-16 vote on March 17, 2004.

Other opportunities to offer this amendment in the House are currently limited, partly because there is no FSC/ETI repeal bill under active consideration and, even if there were, Republican control of the chamber’s rules system means that only amendments allowed by the GOP leadership are considered on the floor. Thus any end-game on the Dodd amendment would most likely occur in House-Senate conference proceedings (where differences between their respective FSC/ETI bills would have to be reconciled). The Senate’s March 24 rejection of cloture on the FSC bill, however, has once again stalled the bill for the time being.

2. Policy Tools and Challenges

Stopping the off-shoring of government work requires changes to both the technical specifications (to be clear the service must be provided by a worker operating in the United States) and the supplier qualification language (to require a company to show that it can perform the government contract with U.S.-domiciled workers). Further, Congress could create a strong incentive against all off-shoring by requiring that to be qualified for federal bids a company cannot conduct *any* off-shoring – including in its nongovernmental work.

An issue to be aware of is that in 1993, the United States pushed and then signed a plurilateral⁹² WTO procurement agreement that only 27 other WTO countries (28 including the U. S) of the current 148 WTO member nations signed. Formally called the Agreement on Government Procurement (AGP), it requires “national treatment” for all procurement of signed-on governments regarding goods and services. This means that a government that signed this WTO agreement must treat foreign suppliers from the other 27 countries the same as their domestic suppliers. The agreement also forbids non-performance-related conditions in product or service technical qualifications and supplier qualifications. Thus, countries that signed the agreement are forbidden from setting procurement rules that give preferences or set conditions on anything except the ability to perform the contract.

The AGP was designed to handcuff governments from adopting most policies intended to ensure that government spending policies reflects taxpayers’ values or interests, including the use of preferences for domestic goods, services or workers to ensure that tax dollars are recycled back

⁹¹ U.S. House of Representatives bill number 3820, “The United States Workers Protection Act of 2004.”

⁹² Unlike almost all major WTO agreements, not all member countries are required to participate in the WTO procurement agreement.

into the local economy. The Office of the U.S. Trade Representative (USTR) and assorted business associations that slipped the AGP rules into the WTO are now using them to undercut anti-off-shoring proposals. Few in Congress have any notion that the AGP exists, much less how it ties their hands – which is why legislators considering anti-off-shoring of government jobs legislation are generally ignoring the WTO rules, though ultimately, Sen. Dodd did accept an amendment to his proposal on the floor of the U.S. Senate that excluded the other 27 WTO AGP countries from any new restriction.

These WTO rules only apply *vis-à-vis* 27 other countries – plus, due to the U.S.-Chile Free Trade Agreement, the prohibition also covers procurement bids from Chilean companies. The Central America Free Trade Agreement (CAFTA) would extend these limits to six more countries. Indeed, if the full list of countries with which the United States seeks new bilateral trade agreements were to be realized, 38 additional countries could attack U.S. anti-off-shoring policies. Avoiding such future constraints is vital if Congress is to have effective means to counter the off-shoring of government jobs. By ignoring these arguments and passing legislation, Congress would buy time – and face a later choice to either conform to an adverse WTO ruling or call a disputing country's bluff on sanctions. The WTO process takes two years-plus to run its course, meaning that even blatantly WTO-illegal policies can remain in place without threat of sanction for that time. Further, Congress has been increasingly hesitant to comply with WTO rulings regarding what it perceives to be Congress' domestic policy prerogatives (including the 1916 Antidumping-Countervailing Duty (AD-CVD) law, Byrd Amendment and FSC rulings.) Given that the world imports more to the United States than it exports, there is growing fear about imposing (versus threatening) WTO sanctions against the United States, in case it unilaterally decides to retaliate by limiting access to its prized market.

Interestingly, India is not a signatory to the AGP.⁹³ The Bush administration has already used the backlash against off-shoring jobs to press India to open its government procurement rules to the WTO, arguing that if India signs the WTO procurement pact (and slashes its agricultural and industrial tariffs and quotas) the country will be better able to fight any limits on off-shoring that the U.S. Congress passes. India's government has rejected this proposal.⁹⁴

Unless India signs the WTO procurement agreement, neither it nor other non-signatories – including China and Russia, can attack U.S. anti-off-shoring legislation at the WTO. One prominent Silicon Valley venture capitalist and ardent off-shoring proponent has argued that India needs to sign the AGP so that it can effectively attack anti-off-shoring policies.⁹⁵ In the meantime, India has increased its presence on Capitol Hill, retaining a Washington lobbying firm for \$600,000 annually. India's National Association of Software and Service Companies (NASSCOM), which represents 850 international companies, has also hired Washington lobbying and public relations groups, although not to increase India's visibility in the U.S. media, but to maintain a low profile.⁹⁶

⁹³ World Trade Organization, Committee on Government Procurement, http://www.wto.org/english/tratop_e/gproc_e/memobs_e.htm, copy on file with Public Citizen.

⁹⁴ Michael Schroeder and Jay Solomon, "Bush Seeks to Use Backlash on Jobs as Lever on India," *Wall Street Journal*, Mar. 8, 2004.

⁹⁵ Narayanan Madhavan and Anshuman Daga, "Use WTO to Bolster Outsourcing, Says Pro-Bush Tech Guru," *Reuters*, Feb. 23, 2004.

⁹⁶ Michael Schroeder, "India Aims to Calm U.S. Outsourcing Fears," *Wall Street Journal*, Nov. 13, 2003.

3. State Procurement

According to our latest tracking, legislation has been introduced in some 31 states to deal with state procurement off-shoring.⁹⁷ States were required to adopt electronic benefit systems by the 1996 welfare “reform” bill and much of this work was outsourced, often with little attention paid to where the work ultimately was performed. Most states outsourced welfare help lines and benefits systems to major U.S. companies – many of which then sent the work overseas. Some states found out about it only when service users or unions, representing the former state employees whose jobs had been privatized, noticed the accents of those answering their calls.

When New Jersey State Sen. Shirley Turner (D-Mercer) learned in 2002 that the telephone hotline for New Jersey welfare recipients was staffed by workers in Mumbai, India, she introduced a bill that required state contracts to be performed by U.S. citizens or legal aliens, unless the service could not be performed by those workers.⁹⁸ The bill cleared the New Jersey Senate 40-0 but died in the state Assembly after various information technology (IT) firms and the powerful Washington, D.C. public relations firm Hill & Knowlton came to Trenton to lobby in opposition.⁹⁹

Although the welfare call center examples are the most well-known, many states either have been suspected of – or confirmed to have been – sending work overseas more broadly. A recent report by report by Input Research estimated that the market for state and local government information technology outsourcing will more than double (from \$10 billion to \$23 billion) by 2008.¹⁰⁰ Rishi Sood at Gartner Research has estimated that 5 percent (\$190 million) of the total \$3.8 billion in tech spending by states went offshore in 2002.¹⁰¹ In Washington state, the governor’s budget office recently reported that a preliminary survey of the extent of state contract work being off-shored found that 24 of the 36 state agencies that responded to the office’s questions said they issued contracts for which all or part of the work was done overseas.¹⁰² Many agencies reported that they did not keep track of where their vendors performed contracted work. Commenting on this finding, Washington State Rep. Steve Conway (D-Tacoma) predicted that the final list would be much larger. He believes the total value of state contracts completed partly or entirely overseas is in the hundreds of millions of dollars, potentially even approaching \$1 billion.¹⁰³ None of the legislative proposals to restrict or ban overseas outsourcing has been approved to date, although a bill cleared North Carolina’s state Senate in 2003 and an Indiana Senate bill (SB4) was approved on a 39-10 vote February 2, 2004, and sent to the House.

Some states also have had some moderate success in stemming the flow of contracting work overseas by specifying in their bid requests that the work be done in-state. Some even reportedly stipulate that work must be done within fifty miles of the state capital.¹⁰⁴ Florida recently

⁹⁷ Bills have been introduced in the following states: Alabama, Arizona, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Maryland, Michigan, Minnesota, Missouri, Mississippi, Nebraska, New Jersey, New Mexico, New York, North Carolina, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, Washington, West Virginia and Wisconsin.

⁹⁸ New Jersey Senate bill number 1349, 2002.

⁹⁹ Khozem Merchant and Demetri Sevastopulos, “U.S. States May Ban Contract Outsourcing,” *Financial Times*, Feb. 21, 2003.

¹⁰⁰ Cited in Jessica Guynn, “Lawmakers Work to Limit Cheap Overseas Labor,” *Contra Costa Times*, Jan. 12, 2004.

¹⁰¹ Cited in Dean Foust, “Calling New Jersey Via New Delhi,” *Business Week*, Sept. 29, 2003.

¹⁰² Kenneth P. Vogel, “Ban on Overseas Work Urged,” [Tribnet.com](http://tribnet.com) (*The News Tribune*, Tacoma Washington), Feb. 27, 2004.

¹⁰³ *Ibid.*

¹⁰⁴ Vandana Sinha, “States, Feds Eye Restrictions on Offshore Outsourcing,” *Washington Technology*, Sept. 15, 2003.

outsourced its human resources operations and specified on the bid request that the work be done in-state. Even though the winning company (Cincinnati-based Covergys Corporation) has extensive overseas operations, it hired about 525 people to do the work in Florida.¹⁰⁵

There are also WTO considerations for states. Over the nine years of WTO's existence, 37 U.S. states have been "signed on" to the AGP – often on grounds no stronger than an informal note from the state governor to the president saying "that WTO procurement agreement is interesting, tell me more." States that are listed as signed on to the WTO AGP rules are expected to conform their domestic policies to the constraints put forth in the AGP agreement noted above. There are *major* legal and policy issues about states being bound to these rules: It is unclear if a state can be signed on without a vote of the state legislature – which did not occur in any state. Documents obtained through a Freedom of Information request show that Montana was signed on after its governor sent a letter noting that the state's laws did not conform to the WTO rules and the state did not want to be added. Yet, probably the 24 states that were signed on before the 1994 congressional vote approving the Uruguay Round agreements and the creation of the WTO are now bound under federal law pre-emption theory. But the other thirteen states may not be bound at all under domestic law even as they now comply with the rules.

III. Who Is Saying What About Off-shoring?

A. The Corporate and Bush Administration Defense

In February 2003, a casual remark by President Bush's chief economic advisor helped ignite already simmering political tensions about America's jobless recovery. In releasing the annual Economic Report of the President, the chairman of President Bush's Council of Economic Advisers, N. Gregory Mankiw, called the off-shoring of U.S. service jobs "just a new way to do international trade."¹⁰⁶

The annual Economic Report of the President does not include much detail on off-shoring, but generally argues that the benefits from unfettered "trade" in services are the same as those that economists argue exist around the flow of goods. "When a good or service is produced more cheaply abroad, it makes more sense to import it than to make or provide it domestically," the report states.¹⁰⁷

Outraged Democrats issued statements criticizing Mankiw and the White House, but even loyal Bush Republicans were upset. Speaker Dennis Hastert (R-Ill.) rebuked Mankiw for his remarks. "We can't have a healthy economy unless we have more jobs here in America."¹⁰⁸ Rep. Donald Manzullo (R-Ill.) called for Mankiw's resignation, and in a speech to manufacturers in Illinois, called Mankiw a "clown."¹⁰⁹

Although the White House did not publicly criticize Mankiw, initially it did back away slightly from his stark statement. Three days after Mankiw's remark, in Pennsylvania, a state President Bush lost in 2000 and has visited 25 times since taking office, the president acknowledged the

¹⁰⁵ Stella Hopkins, "States' Contracts Ship Work to India," *Charlotte Observer*, Aug. 10, 2003.

¹⁰⁶ State Dept. Press Releases and Transcripts, "Current Account Deficit Not a Problem, Bush Adviser Says," Feb. 9, 2004.

¹⁰⁷ Council of Economic Advisers, "2004 Economic Report of the President," at 229.

¹⁰⁸ Allen, "Hastert Rebukes Bush Adviser."

¹⁰⁹ "Manzullo Rips Bush Adviser," *Rockford Register Star*, Feb. 19, 2004.

importance of the off-shoring issue. “There are people looking for work because jobs have gone overseas. We need to act to make sure there are more jobs at home and people are more likely to retain a job,” Bush told a full high school auditorium in Harrisburg.¹¹⁰

With media attention to outsource off-shoring at unprecedented levels, and even traditionally solid “free trade” allies splitting on off-shoring issues, representatives from over 200 ideological and corporate pro-off-shoring organizations launched a public relations campaign in its defense.¹¹¹ These defenders of off-shoring have held up their sound bite antennas, often invoking themes of history, change, adaptability and faith. Economist Catherine Mann of the Institute for International Economics, a Washington, D.C.-based think tank funded by corporations, foundations and other sources, has reassured the media that off-shoring is part of a “cycle of change.”¹¹² Mann produced a new study, which focuses on how off-shoring will spawn a “second wave” of economic growth.¹¹³ The Mann report has been used as the de facto empirical reinforcement for the corporate campaign. In discussing off-shoring, Federal Reserve Chairman Alan Greenspan warned against protectionist impulses and said that “we need to discover the means to enhance the skills of our work force and to further open markets.”¹¹⁴ Other defenders of trade liberalization theory have hit the op-ed pages in abundance. Jagdish Bhagwati, an economist who advised the founding staff of the WTO, has argued that the practice of off-shoring “only adds to the overall economic pie and improves the competitiveness of American companies. In a world economy, firms that forgo cheaper supplies of services are doomed to lose markets, and hence production. And companies that die out, of course, do not employ people.”¹¹⁵

Much has been made of CNN evening host Lou Dobbs’ “Exporting America” series, which includes a nightly update of U.S. companies that have sent jobs offshore. Writers at *The Wall Street Journal*¹¹⁶ and economists at American Enterprise Institute¹¹⁷ are among those who have lamented a respected, mainstream news anchor for actively investigating the loss of jobs to off-shoring and illustrating its effects on American communities. Meanwhile, Dobbs is continuing to attract increasing numbers of viewers with his anti-off-shoring perspective.

While the Democratic primary season has all but ended and a brief calm exists before the general election storm, the media’s investigation of the politics and economics of off-shoring continues. Despite the groundswell of opposition and criticism, the Bush administration recently revised its initial strategy of distancing itself from Mankiw’s remarks toward a more vocal defense of off-shoring. In recent days, the administration has reinforced its commitment to the policies that have decimated manufacturing and made off-shoring of jobs and capital “just a new way to do international trade.” It has also escalated its campaign to attack all critics of off-shoring as “isolationists.”

In his annual report to the House Ways and Means Committee, U.S. Trade Representative Robert Zoellick arrived ready to condemn Democrats opposing the CAFTA on the grounds of inadequate

¹¹⁰ Jennifer Loven, “Bush Acknowledges Problem of Jobs Going Overseas,” *Associated Press*, Feb. 12, 2004.

¹¹¹ “U.S. Chamber, Others Form a Coalition to Fight Attack on Outsourcing,” *Inside U.S. Trade*, March 5, 2004.

¹¹² Bruce Stokes, “And Away They Go,” *National Journal*, March 27, 2004.

¹¹³ Catherine L. Mann, “Globalization of IT Services and White Collar Jobs: The Next Wave of Productivity Growth,” Institute for International Economics, Dec. 2003, copy on file at Public Citizen.

¹¹⁴ Jyotti Thottam, “Is Your Job Going Abroad,” *Time*, March 1, 2004.

¹¹⁵ Jagdish Bhagwati, “Why Your Job Isn’t Moving to Bangalore,” *New York Times*, Feb. 15, 2004.

¹¹⁶ Daniel Henninger, “Lou Dobbs Takes on the World,” *Wall Street Journal*, March 5, 2004.

¹¹⁷ “Lou Dobbs Tonight,” Interview with James Glassman, CNN Transcripts, Feb. 12, 2004.

worker and environmental protections, as “economic isolationists.”¹¹⁸ In Ohio, Treasury Secretary John Snow was asked by a local newspaper if he thought off-shoring made the U.S. economy strong. Snow affirmed, “It’s one aspect of trade and there can’t be any doubt about the fact that trade makes ... America strong.”¹¹⁹

B. Pressure Mounts on Middle-class Wages

While economists argue over the theoretical benefits of “free trade,” the U.S. middle class is struggling to cope with the real-life costs of U.S. trade policies. While outright job loss has the most direct and devastating cost for millions of manufacturing, service and now white-collar workers, many millions more U.S. workers are being hurt by the downward pressure that off-shoring exerts on the wages of those jobs that remain in the United States. Corporate proponents argue that the benefits of trade liberalization in lower costs for consumers outweigh the costs to individuals of losing jobs and being paid lower wages. However, as job losses have spread from manufacturing to “back office” and service-sector jobs, and now into the information and telecommunications and other professional fields, this free trade cost-benefit assumption is once again being called into question. Even if cheaper imports create a broad welfare gain in the form of lower prices, if a large number of people lose a greater amount in wages due to increased inequality, the net result is broad losses. It does not matter how much cheaper a product is if consumers do not have sufficient income to buy it. Furthermore, a significant drop in disposable income could trigger a “crisis of demand,” where there are too few buyers for too many goods.

Economists Mark Weisbrot and Dean Baker, co-directors of the non-partisan Center for Economic and Policy Research, have shown that the increases in income inequality that are both predicted by trade liberalization theory and now an empirical reality have cost the three-quarters of U.S. workers who do not have college degrees as much as 12.2 percent of their current wages.¹²⁰ For a worker earning \$25,000 a year, this loss would be slightly more than \$3,000 per year.¹²¹ As the range and volume of jobs sent overseas continues to expand, a growing number of workers will see their wages stagnate, thus increasing the costs of trade liberalization relative to the benefits. For a middle class that is struggling under the weight of child care, health care and college costs, further stagnation of wages could slow the high levels of consumer spending that have been fueling both the U.S. and the global economy – with potentially disastrous results for both.

C. Dissenters and Reversals

Both in cases of state government overseas outsourcing and private sector off-shoring, adverse publicity has caused a few high-profile reversals.

Public attention generated by New Jersey Sen. Turner’s bill prompted the company that had off-shored the welfare hotline operation to India, eFunds of Scottsdale, to move its call center jobs back to Camden, New Jersey.¹²² Similarly, in Indiana, the state cancelled a contract with computer

¹¹⁸ Blustein, “Trade Chief, Democrats Spar Over ‘Isolationist’ Label.”

¹¹⁹ Crutsinger, “Snow Reignites Fight Over Job Outsourcing.”

¹²⁰ Estimates vary depending on assumptions made regarding the degree to which trade liberalization has directly or indirectly contributed to growing wage inequality *and* to increased total income through GDP growth. Dean Baker and Mark Weisbrot, “Will Gains From Trade Make Us Rich?” Center for Economic and Policy Research report, Oct. 3, 2001, copy on file with Public Citizen.

¹²¹ *Ibid.*

¹²² Stella M. Hopkins, “States’ Ship Contract Work to India,” *Charlotte Observer*, Aug. 10, 2003.

services firm TCS America, which had managed to submit a bid \$8 million *below* than that of its closest competitors by proposing to bring into the United States more than 65 engineers from India on L-1 visas to do the work.¹²³

In November 2003, the computer company Dell Inc. stopped routing technical support calls from corporate customers on certain kinds of lap-tops to India after “an onslaught of complaints,” mostly concerning difficult-to-understand accents and scripted responses.¹²⁴ The New York-based investment bank, Lehman Brothers Holdings Inc., also moved some call center jobs back to the United States in December 2003 in response to customer complaints.¹²⁵ General Electric moved some of its call center jobs back to the Phoenix area in May 2002 after finding that U.S. workers could handle more calls faster than their counterparts in India, many of whom struggled to relate to questions about appliances that they did not own themselves.¹²⁶ Capital One cancelled a contract with Wipro Spectramind, India’s largest call center, after it was discovered that workers had conducted an organized campaign to mislead the credit card company’s customers with false offers of credit.¹²⁷

The switch to overseas locations often has generated strong criticism and calls for boycotts of the company involved in communities where the jobs were previously located. For example, county commissioners in Broward County, Florida, called for a boycott of Hewlett Packard after the local call center with which they previously had contracted was replaced by an Indian facility.¹²⁸ Thus, some of the governmental efforts currently under way to gather more comprehensive data on jobs that have been sent overseas, combined with greater public awareness (from news coverage or through mandatory disclosure requirements) may help slow the exodus, as companies respond to the unfavorable publicity.

The case can be made that U.S. companies have been too quick to jump on the off-shoring bandwagon; a few companies have concluded that sending jobs overseas is not worth their while. Although wages may be one-tenth of those for similar jobs in the United States, by the time administrative and other costs are factored in, first-year savings may not exceed 20 percent.¹²⁹ And these are expected to dwindle as costs begin to rise in these labor markets – wage surveys in India have already found 15-30 percent annual increases.¹³⁰ In the United Kingdom, internal research at the Royal Bank of Scotland PLC concluded that using domestic labor would be better for staff, shareholders and customers. The bank is known for having the lowest cost-income ratio of any of its major competitors.¹³¹

In the wake of the backlash against off-shoring, some U.S.-based companies have advertised that they do not outsource work offshore. These include TaxBrain, an online tax-preparation outfit that assures customers that all their employees work in the United States,¹³² and E-Loan, a home equity

¹²³ Louis Uchitelle, “A Missing Statistic: U.S. Jobs That Went Overseas,” *New York Times*, Oct. 5, 2003.

¹²⁴ April Castro, “Amid Complaints, Dell Closes Overseas Call Centers,” *Associated Press*, Nov. 24, 2003.

¹²⁵ Sarah Spikes, “Shifting Financial Services Jobs Abroad Doesn’t Always Pay Off,” *Wall Street Journal*, Jan. 28, 2004.

¹²⁶ *Ibid.*

¹²⁷ Khozem Merchant and Dan Roberts, “Indian Call Centre Deal Cancelled,” *Financial Times*, March 25, 2004

¹²⁸ Crayton Harrison, “Some View Overseas Call Centers as Threat to U.S. Jobs,” *Dallas Morning News*, Sept. 15, 2002.

¹²⁹ Bulkeley, “IBM Documents Give Rare Look at Sensitive Plans on ‘off-shoring.’”

¹³⁰ Spikes, “Shifting Financial Services Jobs Abroad Doesn’t Always Pay Off.”

¹³¹ *Ibid.*

¹³² Stephanie Armour, “Companies Crow About Keeping Jobs in the USA,” *USA Today*, Mar. 12, 2004.

lender that off-shores some work to India but lets customers choose where their work is done.¹³³

IV. Conclusion

An Array of Feasible Policy Options to Address Off-shoring

The current Bush administration has fully dedicated itself to the principle that market forces unfettered by government regulation can most efficiently meet basic human needs and rights. Yet the devastating consequences of a deregulation crusade that was set in motion over twenty years ago, from the 1990s Savings and Loan debacle to the growing number of Americans left without health coverage, the Enron and Worldcom-crested corporate crime wave to the California electricity crisis, have shown that markets and corporations do not and cannot meet even the basic needs of the vast majority of Americans.

The growing public anxiety over the latest wave of off-shoring has led to renewed debate over the proper role of government in regulating markets and corporations to ensure that the needs of consumers, taxpayers and workers are also met. The strongest critics of the WTO or of off-shoring do not advocate an end to trade nor economies planned and run by governments. However, we do advocate for new rules for the global economy and new policies in the United States that restore basic consumer rights and economic security that has been undermined by the 1990s push for corporate-led globalization and the establishment of the WTO.

Far from addressing the growing concern about off-shoring, outrage over government contract work being sent abroad and the risk to consumer privacy protections, this White House has sought, in Congress and in international trade negotiations, only to further roll back the legitimate policies that serve the public interest. For instance, even as concerns are growing over the absence of basic privacy, quality and security safeguards on off-shored work, this administration is pushing to establish additional limits on governments' ability to regulate the service sector and to set policies ensuring that our tax dollars are spent in the public interest.

This is occurring in the context of the ongoing WTO GATS negotiations – which focus on establishing a new agreement explicitly limiting domestic service sector regulation. The administration is passionately pushing the same service sector privatization and deregulation agenda in regional and bilateral free trade agreements, including CAFTA and the FTAA. The administration is even seeking to undermine state regulations by lobbying governors to bind their states to new procurement rules that would outlaw the very policy options presented here, many of which have been introduced in various forms in over 30 states' legislatures across the country.

It is not surprising that these latest trade deals such as CAFTA, are not being brought to Congress for consideration. Instead, many in Congress and in state legislatures are focusing on the policy vacuum that has been caused by the absence of basic public interest regulations required by the renewed off-shoring of U.S. jobs. The trend towards off-shoring service sector and professional work is accelerating rapidly and is forecast only to increase in the coming years. It demands immediate policy responses from elected officials.

¹³³ Ibid.

Private sector off-shoring and the shipping of government contract work abroad are clearly related phenomena but they require quite different policy initiatives. To date, Congress and state legislatures have paid most attention to issues regarding off-shoring of government work. However, urgent attention also is required to develop policies addressing significant problems posed by this latest wave of private sector off-shoring. Congress and state legislatures should give careful consideration to the following options to address private sector off-shoring:

- Forbid the sending of financial, medical and other information that is covered by domestic privacy protections to offshore entities operating in countries that do not provide similar privacy safeguards. This is the model that was adopted and currently is operating in Europe regarding the private and public sectors. Because neither domestic laws nor systems of enforcement can ensure privacy guarantees offshore, the European policy requires a government determination that another country's policies provide a "safe harbor" for secure information before European companies or governments transfer information covered by privacy laws to an offshore entity.
- Provide consumer right-to-know guarantees by requiring semi-annual public reporting by private sector companies conducting off-shoring that involves the handling of information protected by U.S. consumer privacy safeguards. Such reports could include information on where the work is being performed and what actions have been taken to guarantee compliance with U.S. laws by offshore entities. Government entities also could require the reporting of similar information about all foreign subcontractors to whom the U.S.-based entity has released privacy-protected information.
- Set significant fines for each overseas privacy violation and provide an individual consumer cause of action for each violation. The threat of such penalties would force U.S.-based companies to take measures to guarantee that U.S. privacy protections are not violated regardless of where work is performed. Large fines could be set for U.S.-based companies if U.S. consumer privacy guarantees are violated by offshore entities to which the U.S.-based company has transferred protected information. The creation of an individual cause of action would permit individual consumers and classes of injured consumers to sue the U.S.-based company for damages, set by statute for each violation.
- Establish consumer right-to-know guarantees by requiring semi-annual public reporting by private sector entities conducting off-shoring of professional service work that is subject to licensing and regulation in the United States so that consumers can make informed choices. Such reports would include information on where the work is being performed and actions companies have taken to guarantee compliance with U.S. licensing, liability insurance and quality control requirements by offshore entities. They would also be required to include similar information regarding any and all foreign subcontractors with whom the U. S.-based professional service entity has contracted.
- Create incentives that would strongly encourage U.S.-based companies to take measures to guarantee that offshore professional workers meet all U.S. licensing, liability and quality standards. This would ensure that U.S. licensing, liability insurance and quality control requirements for professional services, including medical diagnostics, accounting, engineering and the like, are fully met by all offshore workers performing professional work. Compliance with such standards could be ensured by establishing substantial fines for U.S.-based professional service entities that offshore such work to entities where these

requirements are not met. These fines could be backed up by a cause of action that would allow individual consumers and classes of consumers doing business with the substandard U.S.-based providers to sue for damages, set by statute for each violation.

- Require advance consumer consent for professional service work to be done by offshore workers.
- Establish new national security and infrastructure protections that include a ban on the off-shoring of certain categories of sensitive private service sector work that exposes vulnerabilities in our national infrastructure, such as relating to electricity grids, water systems, power plants, airliner repairs and servicing, and the like. Currently, U.S. law requires government approval to send “dual use” products and technologies (those that have peaceful and military uses) offshore. On the grounds of domestic security, it would be logical to extend this principle in regulating off-shoring in areas that might increase U.S. exposure to the risk of infrastructure sabotage.
- While the full range of the proposed tax incentives to encourage U.S. businesses to keep and hire additional workers here instead of overseas are beyond the scope of this report, Public Citizen encourages legislators to fully investigate the changes needed to U.S. tax policy to eliminate incentives to relocate jobs overseas.

This report has also described an array of policy options that Congress and state legislatures should consider to ensure that tax dollars are spent in the public interest, including:

- Amend procurement statutes to require semi-annual public reporting of any subcontracting on government contracts and the location where the subcontractor employees are performing the work. At the federal level and in those states that already collect and make available government contracts data (not including subcontractors) this information could be added to those databases. States that currently neither collect nor publish such data should consider more comprehensive reporting requirements that include both contractor and subcontractor information.
- Add provisions to federal and state procurement policies requiring that service sector work affecting sensitive public information, such as engineering, design and computer programming relating to electricity grids, public water systems, power plants and the like, be performed only by workers operating in the United States.
- Forbid the off-shoring of federal and state work that involves contact with consumer information that is subject to U.S. privacy protection laws, including financial and medical information.
- Require that services being outsourced by governments be provided by a worker operating in the United States by changing the technical specifications of procurement statutes – either by amending existing statutes one-by-one or by passing broad legislation along the lines of the original Dodd Amendment and by forbidding subcontracting to any entity that does not itself meet the qualifications that work be performed by workers operating in the United States.

- Require that to qualify to bid on a government contract, a company must certify that it will perform the government contract only with U.S.-domiciled employees.
- To create a broader incentive for companies to hire U.S. workers, amend supplier qualification terms in procurement statutes to require that to be qualified for federal bids, a company cannot conduct any off-shoring, including of its non-government work.

The last policy option would provide the strongest possible disincentive to both the off-shoring of government contract work and purely private sector work. The other options would ensure that tax revenues are spent on services in a way that better protects and serves the public interest. We believe that the citizens of any country should expect that their tax payments are used in ways that serve their collective interests. This includes governments' use of tax revenues to provide the security, infrastructure and basic services upon which residents rely. It also should ensure that when governments operate directly in the market as consumers that they do so in a manner that promotes the public interest.

Existing procurement policies at the federal and state levels already involve numerous requirements including a certain percentage of recycled content in some products to promote conservation, the payment of a prevailing wages for construction projects to ensure workers earn a living wage, and setting aside a portion of government spending for minority, women-owned and small businesses to foster their development. Policies – such as those described in this report – to require that tax dollars be spent to employ workers who pay those taxes, thus disbursing these funds back into the domestic economy, are equally reasonable. This principle is also why Public Citizen has opposed adding new constraints on procurement policy to the WTO. Taxpayers in all countries have the right to decide how their tax payments are used.

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Public Citizen is a national, nonprofit consumer advocacy organization based in Washington, D.C. For more information on trade and corporate globalization, please visit www.citizen.org/trade.