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The Backup Budget

A bizarre ritual is going on in Congress in advance of fiscal year (FY) 2012. Appropriators are doing their job, writing and passing bills setting the year's discretionary spending levels, but their efforts might be wasted. With the budget becoming tightly entwined with [the looming debt ceiling deadline](#), all of the recent appropriations activity is probably for naught.

The Republican-controlled House has so far passed or is debating nine out of the twelve yearly appropriations bills, a fast pace considering the relative inaction that has [characterized recent appropriations cycles](#). What is stunning is how quickly dramatic cuts are speeding through the House. All but one of the nine appropriations bills are below the relevant FY 2011 levels, which were in turn a reduction from the FY 2010 budget numbers.

In formulating these bills, the House Appropriations subcommittees have largely stuck to the so-called "[302\(b\) allocations](#)" set forth earlier in 2011 in [the House's budget resolution](#), authored by House Budget Committee Chairman Paul Ryan (R-WI). The resolution, which creates budget caps for Congress, [gained notoriety for its drastic cuts to Medicare](#), but it included spending cuts across the board.

For the appropriations bills, the Ryan budget essentially calls for a continuation of the previous year's budget cuts. The FY 2011 budget agreement cut base discretionary funding by about \$40 billion, from \$1.089 trillion to \$1.049 trillion (how much the agreement cut actual spending, or outlays, [is a whole other discussion](#)). The Ryan budget continues this trend, setting discretionary spending at \$1.019 trillion, \$30 billion below FY 2011 levels.

So far, the amount of spending approved by House appropriations subcommittees is a bit higher than the corresponding FY 2011 levels (\$791.9 billion now versus \$788.8 billion in FY 2011), but more cuts are coming. The House has already passed one bill with spending increases and has yet to consider [three bills with massive cuts](#).

The only area to escape cuts is Defense. The Defense appropriations bill is by far the largest of the spending bills, representing about half of total discretionary spending. Despite the rhetoric about cuts being unavoidable, Defense appropriations have been increased by \$17 billion – three times larger than FY 2011's increase.

The House has yet to consider the three bills with the largest proposed cuts: State; Transportation and Housing and Urban Development; and Labor, Health and Human Services, and Education. These three bills account for \$34.5 billion worth of cuts in the Ryan budget, with State being cut by 18 percent from last year, Labor 12 percent, and Health 14 percent.

The cuts to these bills more than offset the Defense bill increases. The bottom line: Ryan's budget slashes health, labor, and State Department budgets while increasing defense spending.

On the other side of the Hill, the Senate is just beginning its appropriations process, despite not having a budget resolution to guide it (the House doesn't have an actual budget resolution either, since both houses must pass it before the resolution is official; instead, the House just made up its own 302(b) allocations based on the budget resolution that only passed the House). Two weeks ago, the full Senate Appropriations Committee passed its first appropriations bill of the fiscal year, [the Military Construction-Veterans Affairs bill](#). Commonly considered the least controversial of the appropriations bills, both the House and the Senate versions of the Military Construction bill agree on an overall spending level – \$617 million below FY 2011 levels, a clear sign of the Senate's endorsement of austerity rhetoric.

At its current rate, Congress could conceivably have two or three appropriations bills completed by the start of the new fiscal year on Oct. 1. While that may not sound impressive, Congress has not approved three appropriations bills on time for seven years.

But all this appropriations activity could be rendered moot by the debt ceiling negotiations. It looks like congressional Republicans have succeeded in forcing the president and Senate Democrats into agreeing to significant budget cuts as part of the debt ceiling negotiations, and any budget agreement that comes from these negotiations is likely to upset the appropriations being made in both houses.

Even the relatively modest budget negotiations led by Vice President Joe Biden had settled on [about \\$1 trillion worth](#) of discretionary cuts over a ten-year period. That would translate into cutting some \$100 billion each year, more than three times the budget cuts the House is currently working on (the cuts will be even deeper if reductions in defense spending are not an integral part of the final agreement). Thus, a spending agreement that comes out of the debt negotiations will likely mean that the current appropriations battles in Congress are just the beginning of cutting back the federal budget.

FY 2012 Appropriations Status (in billions)				
Subcommittee	FY 2010 Enacted	FY 2011 Enacted	FY 2012 House 302(b)	FY 2012 Senate Subcommittee
Agriculture	\$23.3	\$19.9	\$17.3	N/A
Commerce-Justice- Science	\$64.3	\$53.3	\$50.2	N/A
Defense	\$508.1	\$513.0	\$530.0	N/A
Energy & Water	\$33.5	\$31.7	\$30.6	N/A
Financial Services	\$24.2	\$22.0	\$19.9	N/A
Homeland Security	\$42.5	\$41.7	\$40.6	N/A
Interior & Environment	\$32.2	\$29.6	\$27.4	N/A
Labor-HHS-Education	\$163.6	\$157.4	\$139.2	N/A
Legislative Branch	\$4.7	\$4.5	\$4.3	N/A
Military Construction- VA	\$76.6	\$73.2	\$72.5	\$72.5
State-Foreign Operations	\$48.8	\$48.2	\$39.6	N/A
Transportation-HUD	\$67.9	\$55.4	\$47.7	N/A
Total	\$1,089.7	\$1,049.8	\$1,019.4	N/A

Campaign to Cut Waste Uses Recovery Tools to Improve Performance, but Challenges Remain

On June 13, President Obama signed an executive order (E.O.) initiating the "Campaign to Cut Waste." The E.O., titled "[Delivering an Efficient, Effective, and Accountable Government](#)," builds on many of the administration's previous reforms while borrowing some of the better tools developed to execute and oversee the American Recovery and Reinvestment Act (Recovery Act). However, its impact may be reduced due to recent budget cuts to a key government transparency fund.

Over the course of the last two and a half years, the Obama administration has presided over a series of good government and anti-fraud, -waste, and -abuse measures. These measures include the [Open Government Initiative](#), which Obama began in 2009, as well as the [Improper Payments Act](#) and the [Government Performance and Results \(GPRA\) Modernization Act](#), both of which passed Congress in 2010.

The president's latest initiative, which is another broad effort to cut waste and streamline the government, builds on previous successful reforms – including the [Accountable Government Initiative](#), which imposes cost-cutting goals on federal agencies – while making use of some of the Recovery Act's more effective oversight tools. The administration tasked Vice President Joe Biden with overseeing the new program.

The most notable aspect of the initiative is the creation of a Government Accountability and Transparency Board (GAT Board). Similar to the Recovery Act's Recovery Accountability and Transparency Board (Recovery Board), the GAT Board will provide "strategic direction" to enhance spending transparency and "advance efforts to detect and remediate fraud, waste, and abuse in Federal programs" throughout the government. Drawing from "agency Inspectors General, agency Chief Financial Officers or Deputy Secretaries, a senior official of OMB" and others, the president will appoint all 11 members of the new board and designate one as chair.

Recovery Board Chairman Earl Devaney has been a vocal advocate for the [technologies](#) he put in place during implementation of the Recovery Act to target potential fraud that enjoyed high success rates, and it's likely that the GAT Board will begin applying the lessons from the Recovery Act to the rest of the government. The aspiration is that the Board will apply the Recovery Act's more detailed reporting and disclosure requirements to all of federal spending.

Some observers believe it would be easier to mandate the reforms through legislation and are championing Rep. Darrell Issa's (R-CA) [Digital Accountability and Transparency Act](#) (DATA Act). The DATA Act would create a powerful independent board to oversee all federal spending transparency and mandate important reforms, such as instituting ultimate recipient reporting and setting data standards government-wide. However, the DATA Act suffers from some important shortcomings, which include a sunset provision that could eliminate progress on federal spending transparency and would disband the independent board if Congress fails to reauthorize the legislation after seven years.

Under the E.O., although the vice president is tasked with convening periodic meetings with agency heads to review progress toward improving performance and cutting costs, the real work will occur below the cabinet level. The federal government's chief performance officer (CPO) will

work with the president's management council (PMC), a reform group made up of high-ranking administrative officials, to act as a clearinghouse for agency best practices to increase efficiencies and reduce costs.

Chief financial officers (CFO) will also work with the PMC to identify savings, such as the elimination of "the programs and subprograms that have the lowest impact on [each] agency's mission," in line with the president's [fiscal year \(FY\) 2012 budget](#).

Each agency will designate a senior official as the individual responsible for implementing performance reform efforts. The government will post this information on Performance.gov. However, the Obama administration has yet to make the site publicly available, and congressionally driven cuts to the Electronic Government (E-Gov) Fund threaten to derail the president's effort. In fall 2010, the administration [planned to release](#) Performance.gov to the public, rightly championing it as a simple way for people to access basic data on the federal government's performance. The site is up and running and accessible to government employees, but OMB is having problems making the site public.

A tug of war between OMB and federal agencies over the proper amount of disclosure has ensued over the last several months with no solution in sight, but OMB is [still promising](#) that it is just a "few weeks" away from the launch of a publicly available performance website. Proposed cuts to the E-Gov Fund could push that release back indefinitely.

Cuts to the E-Gov Fund for FY 2011 have already forced the federal government to temporarily [shut down](#) several websites.

Agency Rules Could Undermine CUI Reforms

A proposed Department of Defense (DOD) rule has the open government community concerned that agencies may try to undermine the Obama administration's emerging controlled unclassified information (CUI) system before it is even formally in place.

Background

In November 2010, President Obama signed a new [executive order on CUI](#), reforming the system of safeguarding information that is not classified but is still considered "sensitive." The new system allows agencies to "safeguard" information only where justified by law, regulation, or government-wide policy.

Previously, agencies had established methods for controlling unclassified information on an *ad hoc* basis, without standards or oversight. The result was an opaque and confusing jumble of practices, which stymied public access and inhibited information sharing – even between federal agencies.

Under the executive order, agencies can only use CUI categories that have been approved by the National Archives and Records Administration (NARA) and listed in a public registry. The order gives NARA some authority to amend and combine CUI categories to create consistency across agencies. However, the order also states that NARA cannot reject categories with a solid basis in law, regulation, or government-wide policy.

Open government advocates had hoped that requiring a justification in law, regulation, or government-wide policy would limit the kinds of information that could be categorized as CUI and thus withheld from public scrutiny. However, if agencies adopt regulations that create new loopholes, it is unclear if NARA would have the authority to deny or modify the category. If every agency proposes regulations that create overly broad and vague CUI categories, the chaos of the earlier system would be recreated.

Proposed Rule

On June 29, DOD [proposed a rule](#) that would purportedly institute new requirements for defense contractors to safeguard the extremely broad category of "Unclassified DOD Information," consisting of all unclassified information that has not been made public or received approval to be disclosed to the public.

DOD published an [advance notice](#) of the proposed rule in March 2010, before the new executive order was issued. Though the executive order dramatically changes the framework for CUI, the proposed DOD rule has not substantially changed.

The proposed DOD rule would establish basic safeguarding responsibilities for any "nonpublic information," that is, any information that has not been publicly released. However, in comments on the advance notice, contractors noted that such an approach is problematic because they would have no way of knowing whether particular information had been cleared for public release.

This uncertainty could easily result in a presumption of control, causing nearly all DOD information to be treated as *de facto* CUI. This would contradict the purpose and spirit of President Obama's [freedom of information memorandum](#), which called on agencies to "adopt a presumption in favor of disclosure."

In addition, the proposed rule would require enhanced safeguarding for certain types of information, including notifying DOD of breaches to systems storing such information. Rather than defining the specific information to be controlled, however, the proposed rule simply refers to internal DOD policies.

This would have the effect of enshrining the previous DOD "sensitive but unclassified information" categories that the executive order was supposed to limit and narrow, instead creating a catch-all category. As internal policies, these categories have never been subject to public comment or regulatory review. The proposed rule does not describe the scope or

definition of these categories, leaving them poorly understood and impossible for the public to comment on in any significant way.

Information subject to enhanced safeguarding includes categories such as the much-maligned "For Official Use Only (FOUO)," which are so vague as to be meaningless. Again, the uncertainty about what information is subject to such controls would likely cause undue restrictions to be placed on government information, far beyond those authorized by law.

Reactions

Open government advocates [are concerned](#) that the proposed rule would restrict public access to information, while defense contractors are concerned about the difficulty of complying with the proposed rule. Scott Amey of the Project On Government Oversight called the proposed rule "an effort to restrict access to public information." Patrice McDermott of OpenTheGovernment.org was concerned the rule would "open a floodgate for other agencies" to seek similar loopholes.

The *Federal Times* [editorialized](#) against the proposed rule, writing, "The Pentagon's proposal needs to be squared more explicitly with Obama's stated goal of government openness. It needs more clarity on what information deserves more control and what should be presumed open to the public."

Steven Aftergood of the Federation of American Scientists [wrote](#) that the proposed rule "establishes secrecy, not openness, as the presumptive status and default mode for most unclassified information," which would have "breathtaking implications."

More on the Horizon?

Although the new CUI system instituted by the executive order will not be functional until at least November, agencies have continued to propose revisions to existing CUI policies and information categories that could restrict rather than open up information.

The FAR Council, which manages the Federal Acquisition Regulation dictating government-wide procurement policy, on July 1 submitted a proposed rule on [Basic Safeguarding of Unclassified Government Information Within Contractor Information Systems](#) to the Office of Management and Budget (OMB). The full proposal is not available for public review until OMB approves it, at which point the proposed rule will be published in the *Federal Register* for public comment.

DOD has also announced its intent to further revise its CUI policies. According to the *Unified Agenda* published on July 7, the Defense Contract Audit Agency intends to publish a proposed rule in July [revising its FOUO policies](#).

Open government advocates are waiting to see whether the White House will intervene and direct DOD to withdraw or narrow its proposed rule in order to preserve the intent of the

executive order.

EPA Proposes New Expansions to the Toxics Release Inventory Program

The U.S. Environmental Protection Agency (EPA) recently announced its plans to expand the industry sectors required to report to the [Toxics Release Inventory \(TRI\)](#) program and to require electronic reporting for all TRI data. These steps are part of EPA's ongoing efforts to improve and reinvigorate the TRI program.

TRI was established as a part of the [Emergency Planning and Community Right-to-Know Act \(EPCRA\)](#) of 1986, requiring the EPA to make publicly available the releases and transfers of toxic chemicals above a certain threshold. The database of chemical releases became a flagship example of the impact of public transparency. The regular disclosure of chemical releases generated enormous public pressure for companies to reduce the waste they produce, and as a result, the amount of toxic wastes reported has been dropping for years.

The EPA's recent actions are the latest step in the agency's initiative, announced in 2010, to disclose more chemical information to the public. For instance, last year, the EPA added 16 new chemicals to the list of toxic substances that must be reported to TRI, the first time chemicals had been added since 1999.

The agency's initiative is a welcome break from previous efforts to weaken the TRI program. Under the Bush administration, the EPA weakened the TRI program in 2006 by raising the threshold of chemicals that a facility could release before having to report at all. With the Omnibus Appropriations Act of 2009, Congress and the Obama [administration restored the program](#) and reversed the changes.

Environmental and public health organizations welcome EPA's efforts to expand the TRI program. In [An Agenda to Strengthen Our Right to Know](#), endorsed by more than 100 organizations and released on May 10, recommendations were made to add new reporting industries to the program and require electronic reporting of TRI data.

Expanding Industry Sectors

For the first time in over a decade, the EPA announced, in the agency's [May 2011 Action Initiation List](#), its plans to consider expanding the industry sectors covered by TRI. The EPA's aim is to "provide comprehensive toxic chemical release and other waste management information to communities."

This rule could add or expand coverage to the following six industry sectors: Iron Ore Mining, Phosphate Mining, Municipal Waste Incineration, Industrial Dry Cleaning, Petroleum Bulk Storage, and Steam-Only Production from Fossil Fuels. In a statement to OMB Watch, EPA explained that "though still in the early stages of the action development process, this action is

aimed at broadening communities' right to know, advancing transparency, and generally furthering the purposes of EPCRA section 313." The agency expects to release a proposed rule in late 2012 and finalize the rule by late 2013.

An *Inside EPA* article (subscription required) reported that the expansion of TRI to include additional mining comes as the agency "is still weighing clarifications to the TRI reporting requirements for the metal mining industry." The 2001 *National Mining Association v. Browner* case and the 2003 *Barrick Goldstrike Mines v. Whitman* case challenged the EPA's definitions of "manufacturing" and "processing" in the mining context. The cases questioned the reporting requirement for toxic releases of naturally occurring substances brought to the surface by mining activities. The courts ruled in favor of the companies on several points, and the agency has been trying to adjust ever since.

As a result of the court cases, the EPA was to issue a rule to clarify the reporting obligations under TRI. On June 17, the EPA withdrew from consideration [a final rule](#) that clarified exemptions to its TRI reporting requirement.

Requiring Electronic Reporting

On May 19, the EPA announced its plans to issue a proposed rule requiring that TRI data be reported electronically. Though facilities may currently submit TRI reporting forms either electronically or by paper, electronic filing has been gradually increasing under agency encouragement.

The proposed rule would require facilities to use the TRI's web-based application, called the TRI Made Easy Web (TRI-MEweb), to report TRI data to EPA. This requirement would be significantly stronger than the agency's prior notice on Jan. 14, which only [strongly recommended](#) that facilities report TRI data electronically via the TRI-MEweb. In the notice, EPA reported that 94.6 percent of TRI submissions for reporting year 2009 were made electronically, using the TRI-MEweb application. It offered to assist facilities that do not file electronically by providing them with forms that could be filled out on a computer and then printed and mailed.

In its May 19 announcement, the EPA invited the public to make comments in [an online discussion forum](#) on its plans to issue a TRI electronic reporting rule. In particular, the EPA expressed an interest in receiving comments on the benefits and impact of using TRI-MEweb and facilities' experiences using the application. Though the public comment period closed on July 1, the comments are still accessible via the discussion forum's website. The EPA plans to include the discussion forum, including comments, in the docket labeled EPA-HQ-TRI-2011-0174, which will then be accessible on Regulations.gov.

Part of a Burden Reduction Initiative, TRI-MEweb is a web-based application that enables facilities to file TRI reports electronically. Among the benefits of electronic reporting, according to the agency, is that it significantly reduces data errors and allows instant receipt confirmation of [submissions](#). Moreover, the application requires no downloads or software installs.

In the online discussion forum, OMB Watch emphasized its support of EPA's plans to require electronic reporting of TRI data, stating, "Electronic reporting improves the accuracy of data and eases public access to the information, leading to environmental and public health gains." Additionally, the electronic reporting system will reduce the processing burden on EPA and allow the agency to more quickly release the TRI data. Electronic reporting has been shown to substantially reduce administrative costs and burdens.

Though electronic reporting would be easier for facilities, there have been complaints about the web-based application and calls for the agency to make improvements to it. In several comments on the online discussion forum, users [complained](#) that the web-based application is not intuitive and there are difficulties getting new validating officials approved.

EPA has the authority to require electronic reporting of TRI data under the [Government Paperwork Elimination Act \(GPEA\)](#) and the agency's [Cross-Media Electronic Reporting Regulation \(CROMERR\)](#). The GPEA requires federal agencies to provide for the "option of electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper." The CROMERR provides the legal framework for electronic reporting for all EPA environmental regulations. EPA already moved to electronic reporting for new chemical notices under the Toxic Substances Control Act (TSCA) on April 6.

ExxonMobil's Pipeline Spill is a Revelation

On July 1, an estimated 42,000 gallons of crude oil poured out of ExxonMobil's Silvertip pipeline and into the Yellowstone River in Montana. Significant accumulations of oil have been found more than 40 miles downriver, and traces of oil have floated twice as far. While the cause of the spill has not been determined, speculation has [centered](#) on high river waters that could have exposed the pipe to damage.

In spite of numerous events like the BP oil spill and the Massey mine explosion, incidents like the Yellowstone River spill seem to be required to make clear the need for oversight of industry. "We need to figure out how this happened and take steps to make sure it doesn't happen again. Our water is our most precious resource and we've got to take every reasonable precaution to protect it," Rep. Denny Rehberg (R-MT) [said](#) July 5 about ExxonMobil's oil pipeline accident. It seems it took an oil spill to change Rehberg's attitude toward regulation. It was only six weeks ago that he offered [an amendment](#) that would weaken the regulatory authority of the Food and Drug Administration.

The Silvertip pipeline, a 20-year-old underground pipe, had recently drawn the attention of federal regulators. The U.S. Department of Transportation, which oversees pipelines, cited seven safety violations in a December 2010 letter and more "probable violations" in an additional [letter](#) in February. The problems included "inadequate pipeline markers in a housing development, a section of pipeline over a ditch covered with potentially damaging material and debris, vegetation in housing area covering a portion of line that prevented aerial inspections, and a line over a canal not properly protected against corrosion." ExxonMobil says that it had

corrected all the violations and, in a statement issued less than 48 hours after the pipeline burst, the company [said](#) that its pipeline "met all regulatory requirements."

Over the past ten years, there have been eight "major" [accidents](#) along the more than 6,500 miles of pipeline that stretch across the state of Montana.

A congressional inquiry into the Yellowstone River spill will begin July 14 with a [hearing](#) before the Subcommittee on Railroad, Pipelines and Hazardous Materials, part of the House Committee on Transportation and Infrastructure. The day before, two other Transportation and Infrastructure Subcommittees will hold a [hearing](#) entitled "Reducing Regulatory Burdens, Ensuring the Flow of Commerce, and Protecting Jobs: A Common Sense Approach to Ballast Water Regulation."

The tension between these two hearings is clear: as soon as one subcommittee finishes investigating the "burden" of an effective regulatory system, another will begin investigating how damage to the Silvertip pipeline went unaddressed until disaster struck.

House leadership has made "regulatory reform" a centerpiece of the agenda for this Congress, holding dozens of hearings across several committees. These anti-regulatory bills and amendments have filled the calendar – and perhaps none is more prominent than the [Regulations from the Executive in Need of Scrutiny \(REINS\) Act](#), which is expected to be marked up soon.

The REINS Act would require both the House and the Senate to approve every new agency rule with an estimated economic impact (either cost or benefit) of \$100 million or more or any rule with a "significant effect" on prices, competitiveness, productivity, or other economic factors. It would cover nearly every aspect of government operations: not only health, safety, and environmental protections, but also many rules covering civil rights, Medicaid, Head Start, taxes, and even subsidies to industry. The bill would give a congressional veto to agencies' safeguards.

If Rehberg meant what he said at the end of his [statement](#) ("the better approach is to make sure nothing like this can ever happen again"), he would be opposing legislation like the REINS Act and fighting to ensure that agencies like the [Pipeline and Hazardous Materials Safety Administration](#) have the resources they need to establish and enforce a system of public protections that helps keep national resources like water, air, and food safe.

OMB Publishes List of Upcoming Regulations

The Office of Management and Budget (OMB) published its spring *Unified Agenda* on July 7. The agenda is a compilation of regulations that agencies expect to advance between now and April 2012, as well as rules the agencies have completed in the past six months.

OMB releases the *Unified Agenda* twice a year, in April and October. While the release is [habitually late](#), it is unusual for OMB to be almost three months behind schedule in publishing the document. As a result, agencies have completed many of the actions included in the agenda. But the agenda also provides a preview of the many regulations expected to be released in the coming year. Highlights of the agenda are discussed below, organized by agency.

U.S. Environmental Protection Agency (EPA)

EPA indicated it would finalize in July its [transport rule](#), which regulates emissions from power plants that cause pollution in neighboring states. The rule was finalized on time on July 6. The Cross-State Air Pollution Rule (CSAPR) requires more than 20 states to reduce power plant emissions that contribute to ozone and fine particle pollution in other states.

EPA and the National Highway Traffic Safety Administration (NHTSA) will continue to work together on fuel efficiency and greenhouse gas emission standards for cars and light trucks manufactured in 2017 and beyond. In the fall of 2010, the two agencies published a [Notice of Intent](#) (NOI) indicating they were working on a proposal to raise emission standards to between 47 and 62 miles per gallon (mpg) by 2025. In meetings during the week of June 19, the Obama administration [announced](#) that it was considering requiring these emission standards to improve by five percent every year starting in 2017, with a final standard of 56.2 mpg for passenger vehicles manufactured in 2025. The administration now [indicates](#) it intends to publish a proposal in September and issue a final rule in the summer of 2012.

EPA and NHTSA have also recently finished a [final rule](#) that would set emission standards for heavy-duty vehicles. The rule was submitted to the Office of Information and Regulatory Affairs (OIRA) on July 7 for review. OIRA has 120 days to complete its review of the rule and return it to the agencies for publication in the *Federal Register*.

EPA has once again revised its timeline for the regulation of coal ash, likely due to intense pressure from industry. In December 2010, EPA indicated that it would not undertake coal ash regulation in 2011. However, on July 7, the agency [submitted](#) to OIRA for review a Notice of Data Availability (NODA) to provide industry, environmentalists, and others with new data EPA has available on coal ash. EPA originally released a NODA on coal ash in 2007 at the start of the rulemaking process, so advocates are hopeful that this indicates the process is moving forward.

Coal ash is a byproduct of coal combustion that can contain harmful chemicals such as arsenic, lead, and other heavy metals. It has been linked to cancer and other health problems. In June 2010, the agency released a highly contentious [proposed rule](#) that sought to determine whether coal ash should be regulated as a hazardous waste or treated as conventional waste. Along with the proposal, EPA [released](#) the original draft the agency submitted to OIRA and the subsequent

markup. This markup, along with the stark differences between EPA's original draft and the proposal, may indicate significant industry interference in the rulemaking process.

Consistent with a [court order](#) from 2008, EPA proposed in March changes to its [air toxics rule](#) that regulates mercury emissions from coal and oil power plants. While EPA regulates mercury emissions from a wide variety of sources, power plants had not been subject to this regulation. The state of New Jersey, along with others, sued EPA, requesting that it not exclude power plants from the mercury standard. In 2008, the D.C. Circuit Court of Appeals vacated EPA's exemption rule and required the agency to regulate power plant mercury emissions. EPA extended the public comment period to accept input through Aug. 4 but still expects to release the final rule by the mid-November deadline.

Occupational Safety and Health Administration (OSHA)

OSHA is moving forward slowly with its [Injury and Illness Prevention Program](#) (I2P2). First mentioned in the *Unified Agenda* in the fall of 2010, the I2P2 regulation would require employers to create and implement an injury prevention program to help protect workers from dangerous situations and health hazards in the workplace. OSHA indicates that it has begun an analysis of the effect of such a rule on small businesses. If finalized, this rule will be an important step toward protecting workers. The current injury and illness prevention regulation is a voluntary program that has come [under scrutiny](#) in recent months for being insufficient to protect workers.

In January 2010, OSHA published a [proposed rule](#) to add a column to its injury reporting form for employers to report work-related musculoskeletal disorders (MSD). One year later, OSHA pulled the proposal due to industry complaints that the column would create an undue reporting burden on small businesses. In the new agenda, OSHA lists the [MSD regulation](#) as a proposed rule but provides no timeline for a revised proposal. Instead, it has reopened the rulemaking record, allowing the public to submit more comments on the proposal. The agency hopes to analyze the newly submitted comments by the end of July.

In February, OSHA submitted to OMB a long-awaited [crystalline silica](#) rule that would protect workers, in industries like concrete and glass manufacturing and a variety of construction activities, from exposure to crystalline silica (through dust inhalation or in mineral form). Long-term exposure to the substance is linked to debilitating illness and death. OSHA's proposal should have been released for publication by May 15, but it has been under review at OIRA for almost 150 days, significantly exceeding the 120-day window for review. According to the agenda, the agency expects to hold hearings on its proposal in October. OSHA first put crystalline silica on the agenda in 1997.

Mine Safety and Health Administration (MSHA)

Coal miners are also adversely affected by exposure to crystalline silica. Coordinating with OSHA's efforts to regulate exposure to the substance, MSHA anticipates issuing a proposed rule as soon as August to update its exposure standards.

In February, MSHA published a proposed rule that would clarify the criteria by which mine operators' patterns of health and safety violations are assessed. As proposed, this rule would take steps to prevent blatant violations of mine safety regulations in order to catch delinquent operators such as Massey Energy, whose [neglect caused](#) the Upper Big Branch disaster in April 2010 that killed 29 miners. However, MSHA is moving slowly with the regulation. The comment period was extended through April and no final rulemaking is planned for the coming year.

Food and Drug Administration (FDA)

Two proposed rules listed in the *Unified Agenda* were published by FDA in April. The [first](#) would require chain restaurants to provide patrons with nutrition labeling on standard menu items. The [second](#) would require nutrition information to be provided for certain vending machine items. These rules are part of FDA's roll-out of the Affordable Care Act of 2010 and would provide consumers with more accurate information on the food they purchase. FDA has not listed a date for the finalization of either rule.

[FDA intends](#) to propose in October a rule that will outline efforts to protect the public from intentional food contaminations. The proposal is expected to lay out ways to identify hazards and protect the food supply chain at vulnerable points, restrict the distribution of contaminated food, and target food products that are vulnerable to contamination. According to the [Food Safety and Modernization Act of 2010](#), FDA must publish a final rule on intentional contamination by July 2012.

Federal Motor Carrier Safety Administration (FMCSA)

Two proposals out of FMCSA intend to ensure drivers of commercial vehicles do not create hazards on the road. First, FMCSA released in December 2010 a proposed rule to restrict cell phone use while driving a commercial vehicle. Numerous studies have indicated that talking on a cell phone is linked to increased accident rates. Second, FMCSA intends to issue a proposed rule in December that will create an online database for positive alcohol and substance tests performed on drivers of commercial vehicles. Prospective employers will be able to access the database to see if a driver has tested positive in the past on an alcohol or substance abuse test and to ensure the driver has completed the Department of Transportation's return-to-duty process before hiring the driver.

The full [Unified Agenda](#) is available online. Some agencies will hold web conferences or other public discussions on their plans. For example, the Department of Labor is holding [web conferences](#) July 11-15 to allow the public to weigh in on its agenda. Visit an agency's website or look at its agenda [preamble](#) for more information on how to comment on its plan for the coming year.

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Commentary: Why Congress Needs to Pass a Clean Debt Ceiling Bill

Washington is embroiled in a massive debate over raising the debt ceiling, the statute that sets a limit on the amount of money the federal government can borrow. If the ceiling is not raised before Aug. 2, the nation could default on its debt, which could create immediate and long-term damage to an economy already beset with problems.

Austerity Budgets are Counterproductive

The debt ceiling debate has spiraled far from where it started, with both parties now focused on using the issue as an opportunity to force deficit reduction plans through Congress. Republicans are demanding trillions of dollars of spending cuts. Democrats are acceding to trillions of dollars of spending cuts and a few hundred billion dollars of revenue increases.

The last thing the nation needs is more budget cuts. Unemployment is at historic highs across the nation, the public sector [is shedding jobs](#), and the private sector is growing [at a snail's pace](#). Cutting federal spending now will exacerbate this trend, adding hundreds of thousands of federal, state, and local employees to unemployment rolls and undermining anemic growth in the private sector. Testifying before the Senate Banking Committee, Federal Reserve Chairman Ben Bernanke [warned](#) that "sharp and excessive cuts in the very short term would be potentially damaging to that recovery."

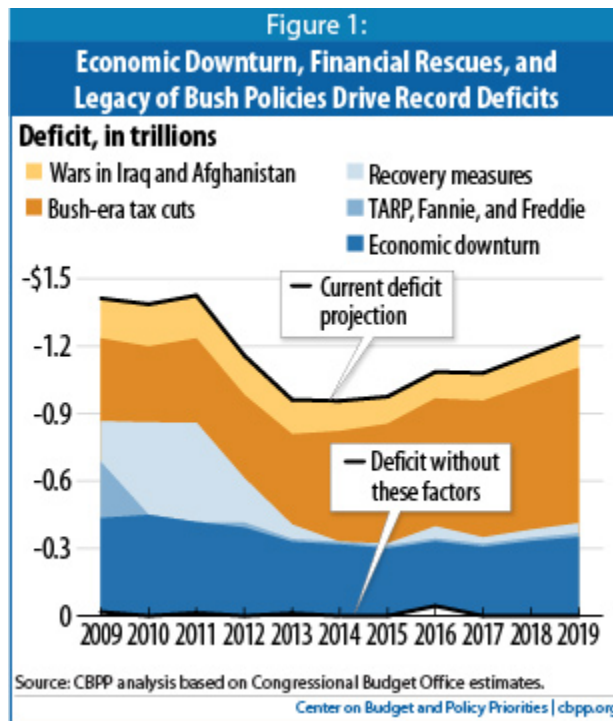
The Wrong Diagnosis Equals the Wrong "Solution"

Insisting that "out of control federal spending" is the source of our budget and economic ills is the wrong diagnosis. The Great Recession that began in 2007 resulted in a loss of 7.5 million jobs and pushed the unemployment rate to over 10 percent. It was the worst economic contraction since the Great Depression. Such mass unemployment causes federal spending to increase through so-called automatic stabilizers. Programs like unemployment insurance and Medicaid see funding levels rise in response to increased utilization during economic downturns. The severity of the Great Recession saw commensurate increases in these programs, which not only provided a vital safety net for struggling families, but also boosted economic activity, somewhat mitigating the depth of the recession.

While the recession technically ended in 2009, only corporations have seen their incomes bounce back. In fact, by the third quarter of 2010, American firms recorded [record-breaking profits](#) and [continue](#) to see their earnings increase. At the same time, households have seen their incomes virtually stagnate since the beginning of the recession while unemployment remains stuck around nine percent with some 14 million people unable to find work. The result has been a precipitous decline in federal revenue.

The tax cuts enacted in 2001 and 2003 under President George W. Bush have driven revenues even lower. The result of the economic downturn and these tax cuts is that currently, taxes as a share of the nation's gross domestic product (GDP) are at [the lowest level in generations](#). Any "deficit reduction" plan should focus on raising an appropriate amount of revenue to meet responsible levels of federal spending.

Fortunately, the Bush tax cuts, first passed in the early 2000s and extended in December 2010, are set to expire in 2012. Allowing this to happen will do a great deal to close the budget deficit. Over the next ten years, [the Congressional Budget Office estimates](#) that the nation will face close to \$7 trillion in deficits. Extending the package of cuts agreed to in 2010 would add about \$2.5 trillion to that deficit. Extending the cuts again is an exorbitant expenditure, one that we cannot afford to make if we're serious about finding a solution to the deficit issue. The American people understand this fact: faced with a choice between drastic cuts to services or ending the tax cuts for upper income people, [Americans have consistently preferred the latter option](#). Ending all of the tax cuts from the Bush era, of course, would have an even greater impact.



Taking a Balanced, Responsible Approach to Deficit Reduction

As the economy improves in the coming years, Congress can and should begin to balance its books and pay down the debt. Extending the Bush tax cuts, especially those for the super-wealthy, will make it much harder to balance the budget in a responsible, equitable way. However, allowing only the tax cuts for the wealthy to expire will still leave a large funding gap. On the spending side, Congress must turn toward cutting spending in the largest portion of the discretionary budget. At \$714 billion, national defense composes over 50 percent of discretionary spending and is replete with opportunities for significant reductions without compromising national security. Additionally, the wars in Iraq and Afghanistan are projected to add \$1.7 trillion to the deficit should current funding levels continue over the next decade.

In the end, with respect to both the tax cuts and the budget, Congress should let this opportunity for rushed "reform" pass it by. Congress must resist the urge to immediately "fix" the budget and instead pass a clean debt ceiling bill. Once we've averted default, we can then move on to a robust, systemic discussion about spending, taxes, and the national priorities that are important to the American people.

Army Report Highlights Need for More Contracting Officers

A [recently released review](#) of the U.S. Army's acquisition process reveals that the service must invest in more acquisition personnel and better training to help address failed weapons programs and their associated costs. Arresting staggering cost increases is an important objective for the Army, but Congress's current obsession with deficit reduction may become the greatest impediment to saving taxpayer dollars.

Ordered by Secretary of the Army John McHugh, the "2010 Army Acquisition Review" (the review) tasked Gilbert Decker, a former assistant secretary of the Army for research, development and acquisition, and retired Army Gen. Louis Wagner, formerly of the Army Materiel Command, to chair the six-member panel. The group's charge was to provide "a blueprint for actions" achievable in the near term "to improve the efficiency and effectiveness of the Army acquisition process."

Reforming the service's contracting process is essential, as the Army's ability to design, construct, and field vital weapons has steadily broken down over the last two decades. Indeed, the Army has terminated 22 major weapons programs over the last 20 years, with 15 of those terminations occurring since 2001. Since 1996, the Army has spent at least \$1 billion per year on programs that it has eventually cancelled; that number spiked to at least \$3 billion annually in 2004.

Like the Department of Defense's (DOD) inefficient contracting process, as well as the other service branches' acquisition troubles, one may trace the Army's contracting problems to the end of the Cold War and the Pentagon's attempts to cash in on the era's [so-called peace dividend](#). Not only were defense contractors encouraged to merge in an effort to increase efficiencies among the nation's industrial base, but DOD also dismissed large portions of its contracting staff and encouraged the service branches to do the same – all while eying a world without the Soviet Union.

Fast forward two decades and the anticipated contracting efficiencies have never materialized, as six industry giants have gobbled up most of the competition within the world of defense contracting, increasing costs and creating a vicious cycle of dependency where contractors are ["too big to debar."](#) The dramatic loss of acquisition personnel, as the review observes, has caused erosion among "requirements and acquisition core competencies," which are in "urgent need of repair." This has forced the Pentagon, along with the service branches, to turn back to contractors to perform tasks that either military or civilian government personnel used to perform.

The review tersely notes, "The Army needs a critical mass of analytical talent," and, specifically, must increase the number of qualified "systems engineers, operations and cost analysts, and contracting officers, particularly those in uniform." The panel also noted with concern "the growing number of contractors performing 'gray area' and what would appear to be inherently governmental jobs" because of this lack of internal talent.

Much of the increased use of contractors has occurred since 2001 with the introduction of the so-called "Global War on Terror" (GWOT) and the associated explosion of both defense spending and overall government contract spending. As the review points out, during this time, the Army has not seen a "significant increase in the number of authorized civilian analysts" and has witnessed "a decrease of 55 [percent] of authorized military analysts." More work for a decreasing acquisition labor force has translated into an increased reliance on contractors.

One risk to the proposed reforms are the current wars in Iraq and Afghanistan and the Army's resultant focus on what the review refers to as "force generation," which means that top brass are less concerned with making long-term investments in contracting staff than with funneling resources toward immediate combat-related functions. Former Secretary of Defense Robert Gates' [2010 announcement](#) of the Pentagon's goal to convert as much as three percent of spending from "tail" to "tooth," or from support services to combat forces, in an attempt to forestall defense cuts, does not bode well for the review's recommendations.

That focus will only intensify, as Congress' current fascination with austerity – despite repeated efforts to protect defense spending – will likely affect the Army's acquisition reform objectives, even if overall defense spending is not reduced. As the review notes, "If the past is any prologue, Army research, development and acquisition budgets will be reduced as force structure, training and quality of life are given higher priority." The Pentagon's [statement](#) in 2010 that it would end an insourcing initiative undertaken for less than a year, despite [perennial evidence](#) that bringing acquisition functions in-house is less costly, only bolsters this assumption.

In response to the review, the Army [announced](#) that it would hire an additional 1,885 contracting personnel. It is unclear, however, whether the announced additions were wholly new or simply part of the already planned 5,385 acquisition personnel DOD slated for the Army to receive through the [aforementioned abandoned plan](#) to add 20,000 contracting staff through a combination of insourcing and new hires by 2015.

It is important that the Army, and to a larger degree the Pentagon and federal government, take this study seriously, because, as the review mentions, "[t]he overall military acquisition workforce ... has declined by 19 [percent] since 1994 despite the acquisition budget more than doubling," which is indicative of the entire federal contracting process. Unless overall contract spending significantly decreases – and there is no indication that it will – the Army, Pentagon, and federal government need to adequately plan for how to shore up their insufficient acquisition staffs.

In the Dark on Drinking Water Violations and Contaminants

In July, the Government Accountability Office (GAO) released two reports that evaluated the U.S. Environmental Protection Agency's (EPA) performance on protecting America's drinking water. The reports highlight EPA's long-standing problems with collecting accurate data on violations and identifying and regulating dangerous contaminants. Should EPA fail to address these issues, Americans' health could be in jeopardy.

Though drinking water in the United States is among the world's safest, threats to public health, including waterborne disease, still occur. Moreover, contaminants such as chlorine, arsenic, lead, and copper are often found in drinking water. Long-term exposure to these substances can cause stomach discomfort, eye or nose irritation, anemia, liver or kidney damage, cancer, and even death. Among infants and children, the threats include delays to physical and mental development and a serious illness known as blue-baby syndrome, which may lead to death.

States are Underreporting Drinking Water Violations to the EPA

In [*Drinking Water: Unreliable State Data Limit EPA's Ability to Target Enforcement Priorities and Communicate Water Systems' Performance*](#), released on July 19, the GAO found that states are significantly underreporting drinking water violations to the EPA. The resulting incomplete and misleading information hinders the agency's ability to effectively enforce rules aimed at protecting human health.

The GAO reviewed EPA audits from 2007 and 2009 for its report. The 2009 data revealed that states either failed to report or inaccurately reported 26 percent of health-related violations and 84 percent of monitoring violations of the Safe Drinking Water Act (SDWA). The 2007 data underscored similar missing and inaccurate reporting, indicating that the problem is not just a single year of poor performance. The report also notes that "state-reported data underreported the percentage of water systems with violations against which the states have taken enforcement actions."

According to the GAO, numerous factors contributed to the underreporting, including "inadequate training, staffing, and guidance, and inadequate funding to conduct those activities." The study confirms that, in the past, the EPA has conducted audits, identifying state inefficiencies, but that the EPA discontinued those audits in 2010 due to fiscal constraints.

The GAO offered four recommendations to improve states' compliance with the SDWA:

1. Resume routine data verification audits
2. Work with the states to establish a goal, or goals, for the completeness and accuracy of data on monitoring violations
3. Evaluate EPA's performance measures for community water systems to more clearly communicate the public health risk posed by noncompliance
4. Work with the EPA regions and states to assess the progress and any barriers in implementation

EPA partially agreed with the first and fourth recommendations, disagreed with the third, and neither agreed nor disagreed with the second recommendation.

The GAO report was compiled in response to a request from Reps. Henry Waxman (D-CA), Edward Markey (D-MA), and John Dingell (D-MI) of the House Energy and Commerce Committee. Following the report's release, Markey [stated](#):

They say that if it ain't broke, don't fix it – but when it comes to drinking water, it turns out that all too often, EPA has no idea whether it's broke. To add to the problem, House Republicans have just proposed to cut \$134 million dollars from the Drinking Water State Revolving Fund Program, which provides money to states and public water systems to comply with the law and increase public health protection.

EPA Isn't Adequately Regulating Drinking Water Contaminants

Released on July 12, the second report, [*Safe Drinking Water Act: EPA Should Improve Implementation of Requirements on Whether to Regulate Additional Contaminants*](#), focused specifically on unregulated contaminants. The study found "systemic limitations" with the EPA's ability to regulate contaminants. The GAO concluded that the EPA does not have criteria, including internal guidance and policies, to identify and regulate contaminants of greatest risk to public health.

A major, long-term problem uncovered by the study was the agency's failure to properly assess the risks of contaminants on children's health. For example, in 2003 and 2008, EPA examined 20 contaminants and decided that drinking water regulations were not needed for any of the 20. In 11 out of those 20 decisions, the agency's Office of Water failed to consider separate risks to children's health. The report also notes that the Office of Water had not developed any guidance on considering the risks of drinking water contaminants on children.

The study also noted how long it took EPA to regulate perchlorate. Perchlorate, which has been found in water, soil, and sediment in 45 states, is a component of rocket fuel. When it contaminates drinking water and is ingested, it can affect the thyroid gland, leading to neurological problems in fetuses and delays in physical and mental development in infants. In 1998, the agency warned that perchlorate could require regulation, but it was not until 2008 that the agency made a formal decision on the chemical, opting not to pursue regulation. The EPA reversed this decision and finalized a perchlorate standard in February 2011, making it the first contaminant regulated under the SDWA since it was amended in 1996. The GAO found that EPA's process and analysis of perchlorate were "atypical" and "lacked transparency." Further, the agency lacked independence in developing and using scientific data.

Democratic members of the House and Senate, as well as environmental groups, blamed the Bush administration for manipulating science to justify its 2008 decision not to regulate perchlorate. Waxman [*stated*](#), "GAO's report raises serious questions about whether the Bush administration manipulated scientific findings and downplayed the risks of perchlorate exposure on sensitive subpopulations, including pregnant women and children." Also, having obtained documents from FOIA requests and lawsuits against the White House, the Department of Defense, and EPA, the Natural Resources Defense Council (NRDC) [*discovered*](#) that the Bush administration downplayed the chemical's risks to public health in efforts to prevent the EPA from regulating perchlorate in drinking water in 2005.

The actions of the previous administration notwithstanding, the GAO found that systemic faults contribute to the weakness in EPA's testing program for unregulated contaminants, including poor management decisions and program delays. The GAO provided 17 recommendations to address these long-term problems at the EPA, including:

1. Developing criteria to identify contaminants that pose the greatest health risk
2. Improving its unregulated contaminants testing program
3. Developing policies or guidance to interpret broad statutory criteria

The report notes that the EPA has only agreed with two recommendations, contending that "developing guidance and taking the other recommended actions are not needed." GAO maintains that the EPA needs to adopt all of the recommendations to better ensure safe drinking water for the American people.

The report was [highlighted](#) by Waxman and Markey, along with Sen. Barbara Boxer (D-CA).

House Questions Future of Government Printing Office

On July 22, the House passed an appropriations bill that makes deep cuts and policy changes to the Government Printing Office (GPO), an agency that plays an important role in current information dissemination for all three branches of the federal government. The bill raises troubling questions about Congress's understanding of and commitment to GPO's primary responsibility for making public documents available to the American people.

What is GPO?

Despite its name, GPO's responsibilities are not limited to printing: the agency is the official publisher of documents including the *Congressional Record*, bills, and laws, as well as the U.S. Code and the Code of Federal Regulations. GPO also maintains [FDsys](#), a website that provides online access to many of these documents, and manages the [Federal Depository Library Program](#), which distributes government publications to libraries nationwide. In addition, GPO undertakes projects to digitize historical government publications for free public access, including a recently approved [joint project](#) with the Library of Congress (LOC). These publications and programs provide the public with access to information about core functions of the federal government, including legislation and regulation.

Budget Cuts

The House Legislative Branch appropriations bill for FY 2012, [H.R. 2551](#), [passed](#) on July 22. The bill cuts \$27.3 million from the FY 2011 funding level for the agency – a 20.2 percent annual decrease, \$40.4 million less than the agency's request. These cuts, which are considerably deeper than other legislative branch agencies face, would constrain GPO's ability to publish, digitize, and disseminate important public records. For example, GPO requested \$5 million specifically to continue the development of FDsys, but the entire line item was cut from the bill.

Policy Changes

The bill also imposes several policy changes meant to limit costs and reduce GPO's responsibilities:

- Prohibits distributing printed copies of the *Congressional Record* to member offices
- Prohibits distributing printed legislation to member offices unless requested

- Reduces the publication frequency of the *Congressional Record Index* from semimonthly to monthly
- Removes responsibility for printing for the [Architect of the Capitol](#)

What Congress may have missed is that GPO's printing revenue subsidizes the agency's other activities, including preparing information electronically, so without additional funds for digital projects, a cut to the printing budget could make information more difficult to obtain. Indeed, instead of increasing funds for online public information, H.R. 2551 specifically targets cuts to GPO's online projects. The net result is that the public will have less access to government information and documents.

The Future of GPO

Certain provisions of H.R. 2551 suggest that some members of Congress seriously question whether GPO is needed at all. Rather than simply reducing the agency's roles and capacities behind the rubric of cost savings, Congress needs to discuss how we are going to build and support the capacity to disseminate public information and data in the 21st century. Open government advocates argue that modernization and oversight of this function – a key element of enabling citizen engagement with government – should be resolved prior to making significant funding reductions that reduce GPO's capacity to meet its responsibilities.

Modernization: According to GPO testimony, up to 70 percent of its costs are incurred before printing begins, including activities such as editing and layout. GPO is surveying congressional offices about their needs for printed documents in an effort to reduce its printing requirements. The House is also examining ways to reduce its printing requirements, but this will require significant changes in the way the chamber conducts its business or revisions to the relevant provisions of the public printing and documents statutes of Title 44, United States Code, to reduce the volume of congressional printing. Logically, these changes should have been made before funding cuts were proposed.

Oversight: As a legislative branch agency, GPO is subject to unique oversight requirements. GPO is overseen by the Joint Committee on Printing (JCP), a joint House-Senate committee that has been ineffective and opaque; for instance, the committee does not have a website. Proposals to abolish JCP and transfer its responsibilities to each chamber's administration committees date back at least as far as 1995, when then-Rep. Jennifer Dunn (R-WA) and others proposed [a bill to do so](#). While such a shift could result in more active oversight of agency activities, it could also create inconsistent policy and implementation between the Senate and House, as well as risk subjecting the dissemination activities to partisan battles.

A central repository of public information: The centralized publishing and dissemination responsibilities of GPO have allowed the agency to develop expertise and standards to ensure that government information will continue to be accessible for years to come. However, the decreasing costs of print and decreasing hurdles to electronic information dissemination have allowed agencies to operate increasingly independent of GPO. In addition, LOC has played an increasing role in the dissemination of congressional information, particularly through its

[Thomas](#) system. Public access advocates are concerned that fully transferring and decentralizing responsibility for information publication to multiple agencies will result in inconsistent standards and formats, fragmented performance by agencies, and increased difficulty for citizens and researchers in tracking down activities and information generated from different sources.

H.R. 2551 previews the possibility of eliminating GPO entirely. Noting that "the Committee has some concern about the future of the GPO as a viable printing operation for the Federal Government," the [report](#) on the bill directs the Government Accountability Office (GAO) to study "the feasibility of Executive Branch printing being performed by the General Services Administration, the transfer of the Superintendent of Documents program to the Library of Congress, and the privatization of the GPO" – options nearly identical to those [proposed](#) by former Rep. Scott Klug (R-WI) in 1995. The committee asks GAO to report back by January 2012.

The American Library Association (ALA) is [asking to be consulted](#) as that study proceeds. The ALA passed a resolution urging Congress to reaffirm GPO's mission and fully fund the office. The association seems concerned that eliminating the GPO could impact the agency's mandate to disseminate public information to public libraries around the country. The Sunlight Foundation's Daniel Schuman [writes](#) that the real question is not what to do about GPO, but "how to improve how electronic information is distributed."

The core question of the GAO study should be whether moving GPO's responsibilities to GSA and LOC would strengthen the policy, oversight, and expertise needed for effective citizen access to public information or reduce the amount of information available to citizens seeking to engage government officials. These are the questions that need answers – before key funding decisions are made that could undermine the capacity of government to report its activities to the American people.

New Open Government Partnership Could Drive U.S. Commitments

A new global initiative could drive additional improvements to U.S. transparency policies. Launched on July 12, the [Open Government Partnership](#) (OGP) asks participating countries to make concrete commitments to increase transparency within the next year. Initial participants, including the U.S., are scheduled to announce their commitments in September.

President Obama launched the initiative in a speech at the United Nations in September 2010, during which he called on countries to make "[specific commitments to promote transparency; to fight corruption; to energize civic engagement; \[and\] to leverage new technologies.](#)" Seven countries have since joined the initiative, including Brazil, which is a co-chair of the partnership. The other six partner countries are Indonesia, Mexico, Norway, the Philippines, South Africa, and the United Kingdom. An eighth country, India, joined but [subsequently withdrew](#) from the partnership.

OGP is overseen by a steering committee consisting of the eight initial governments and a group of civil society representatives, including the [National Security Archive](#), a U.S. nonprofit organization focused on government openness. The [Transparency and Accountability Initiative](#), a group of donor organizations, provided funds for staff for the partnership and travel funds to support civil society participation. This unique role for civil society groups in a multilateral initiative reflects OGP's recognition of the importance of civil society in effective democratic governance.

The U.S. State Department hosted the July 12 meeting that formally launched the partnership. Representatives from more than 50 countries attended and were invited to join the partnership, along with more than 40 civil society organizations from around the world. Candidates for membership must meet certain eligibility criteria, including a minimum baseline of performance on basic open government. Those countries eligible and interested can join the partnership at its September event. Participants will endorse a declaration of open government principles at that time, which has not yet been released.

Each of the initial partners will also release their open government action plans. Countries that join in September will present their plans sometime in 2012. The action plans are meant to drive voluntary, innovative commitments to improve upon the foundation for open government that already exists in each country and in international law, including human rights instruments and the Convention Against Corruption.

The action plans will address the themes of transparency, participation, accountability, and innovation. The commitments are to "stretch government practice beyond its current baseline" and to contain "timeframes and benchmarks" to allow evaluation of progress. Plans will be organized around one or more of five "grand challenges": improving public services, increasing public integrity, effectively managing public resources, creating safer communities, and increasing corporate accountability. In addition to soliciting feedback from their domestic publics, countries will engage in peer consultation while developing their plans.

Countries will publish a self-assessment of their progress in the first year after adopting their action plans. Civil society organizations in each country will also produce an independent review of their government's performance.

In addition to the action plans, OGP includes a networking mechanism for governments to exchange ideas and solicit expertise from other governments and private experts worldwide. This mechanism could be a valuable source of new ideas for transparency improvements, which could allow countries to essentially import best practices and proven innovations from abroad while sharing knowledge in areas where they are leaders.

U.S. Action Plan

The American open government community is hopeful that the Obama administration will continue its transparency leadership by developing a robust OGP action plan. The emphasis on

concrete commitments achievable within one year will mean the administration's plan likely will not contain comprehensive reforms but could include innovative and meaningful steps forward.

With the short timeline between the launch and the September meeting, questions remain about the U.S. government's public consultations in developing its action plan. A July 12 White House [blog post](#) stated that "we look forward to your input and ideas as we develop our action plan going forward," and the administration has begun [invited meetings with select organizations](#), but it has not yet announced its plans for public consultation. If handled well, the consultations could be a powerful way for citizens to bring their ideas for transparency to the administration, including not just D.C. groups but grassroots organizations from across the country.

Open government groups also are eager to see the administration carry forward the momentum from its previous transparency commitments, build on these advances, and expand proactive disclosure of information across agencies. Advocates hope that Obama's personal commitment to OGP will motivate the administration to find creative ways to navigate resource constraints and political obstacles to achieve real improvements on delivering the open government that the American people deserve.

Studies Show Regulation Protects Health and Safety, Encourages Job Creation

Three recently published studies discuss the relationship between regulations and economic development. One study focuses on the job-creation potential of an individual environmental rule, and another touts the economic benefits of clean energy investments. The third study debunks a widely quoted but inaccurate report on the economic costs of regulations. All three reinforce an argument that public interest advocates have made for decades: government standards and public investments in clean energy protect health and safety and encourage job creation.

A study published July 14, [*Why EPA's Mercury and Air Toxics Rule is Good for the Economy and America's Workforce*](#), describes the economic benefits of the U.S. Environmental Protection Agency's (EPA) proposed [air toxics rule](#). Author Charles J. Cicchetti of Navigant Consulting finds that the air toxics rule would create more than 115,000 jobs by 2015 – eclipsing EPA's conservative estimate by nearly 80,000.

Cicchetti argues that the EPA's own cost-benefit analysis was scientifically sound but failed to account for possible inaccuracies in industry-supplied data and left out some secondary benefits of the rule, such as reduced health care and insurance costs. Sponsored by the Clean Air Council, the Environmental Law & Policy Center, the Conservation Law Foundation, and others, the study echoes [one published by the Economic Policy Institute \(EPI\)](#) in June. The EPI study estimated the rule could prompt the creation of up to 158,000 new jobs in the next four years.

A second report, this one peer-reviewed and published by the Union of Concerned Scientists, takes a close look at the economic impacts of clean energy investments in the Midwest. Entitled

[*A Bright Future for the Heartland: Powering the Midwest Economy with Clean Energy*](#), the July 19 report finds that if Midwest states invest in a [clean energy strategy](#) produced in 2009 by the Midwestern Governors Association (MGA), it could save the average household \$78 per year on electricity and natural gas bills, create 85,700 new jobs in the region, and bring \$1 billion in new income to farmers and clean energy companies. The Midwest was hit hard by the recent recession, and the study's authors indicate that the region has a "great renewable energy potential, a strong manufacturing base and the skilled workforce needed to realize that potential."

Also on July 19, [EPI released](#) a critique of a controversial [study](#) by Nicole and Mark Crain, which was commissioned by the Small Business Administration's (SBA) Office of Advocacy in 2010. Corporate interests and their allies in Congress have been incessantly repeating the Crains' faulty conclusion that regulations cost the U.S. economy \$1.75 trillion per year.

In its critique, EPI noted that "[a] substantial majority of these costs—\$1.2 trillion or 70 percent—are based on the author's use of an econometric regression analysis to determine the costs of 'economic' regulations, such as those rules affecting the financial industry." This means that, by EPI's assessment, the costs of health, safety, and environmental regulations would be a much smaller portion of overall regulatory costs than critics claim. These important social regulations are smart investments because the burden they place on the economy is minor while their far-reaching economic and quality-of-life benefits are great.

Because of its limited focus, Crain and Crain did not calculate the benefits of regulations – just their costs – making it difficult for the authors to accurately determine the true value of regulations. Furthermore, EPI found that the study relied on flawed methodology and incomplete data to reach its conclusions. Setting the record straight on Crain and Crain is important because congressional Republicans and business organizations like the U.S. Chamber of Commerce have been using the controversial estimate to support their attacks on critical air, water, food safety, and workplace safety standards that protect Americans from harm.

Independent studies that look at the costs and benefits of regulations are important because they double-check agency numbers and often consider additional factors that are outside of the agency's purview. When agencies perform their own cost-benefit analyses, they usually rely on industry-supplied cost numbers, and industries tend to overstate the potential costs of a new regulation. There is [substantial evidence](#) that once implemented, regulations do not cost nearly as much as anticipated. Therefore, independent studies help to inform agencies of the true expected costs of regulations. They also document the often overlooked benefits of public protections, offering yet more evidence that the American people do not have to – and should not be asked to – choose between job creation and safeguarding the health and safety of their families and communities.

CPSC Approves Lower Lead Limit for Children's Products, but Divided Commission Faces Hurdles

The U.S. Consumer Product Safety Commission (CPSC) recently adopted a new standard that reduces the amount of lead allowed in children's products, providing a clear health benefit to American families. In voting July 13 to implement the lowest limit prescribed by statute, the 3-2 majority drew hostile objections from minority members. Such clashes are familiar to CPSC and could have implications for product safety in the future.

The [Consumer Product Safety Improvement Act](#) (CPSIA), enacted in 2008 in response to the recall of millions of toys and products, set new limits for the total lead content in children's products. The CPSIA required the commission to decrease the maximum amount of lead in children's products in phases between February 2009 and August 2011. By statute, the CPSC is required to lower the lead content limit to 100 parts per million (ppm) unless the commission determines that the limit is not technologically feasible. Beginning Aug. 14, manufacturers, importers, retailers, and distributors of products designed or intended primarily for children 12 and younger must comply with the new limit. The commission agreed, however, to hold off enforcing a third-party testing requirement for total lead content until the end of 2011.

Decades of research has shown that ingestion of lead, even at extremely low levels, can [cause](#) severe developmental delays in children, especially those under the age of six, as well as myriad other health problems. In 2006 and 2007, a rash of lead-contaminated toys and jewelry designed for children plagued the marketplace, prompting multiple product recalls.

Commissioners Nancy Nord and Anne Northup opposed the lower limit, [but Chairman Inez Tenenbaum](#) declared the CPSIA orders the CPSC to implement the lower limit if the statutory definition of technological feasibility is satisfied. Staff research identified products in the marketplace that are already in compliance with the 100 ppm limit, demonstrating that technologies and strategies exist to help manufacturers achieve the standard.

Tenenbaum commended the commission for fulfilling its statutory duty and protecting children from lead exposure. Because of the lower lead limit and "other protective provisions of the CPSIA," she said, "parents can have confidence that we should not have a repeat of the leaded toy scares of years past."

Though the commission was successful in developing the new lead standard, CPSC commissioners have struggled to carry out Congress's mandates, often citing problems with the underlying legislation. The Democratic commissioners have shown support for legislation that would provide more flexibility to the CPSC, such as allowing existing products to stay on the market past the August effective date. They emphasize, however, that such amendments must not override the mandate to significantly and adequately limit child lead exposure. Meanwhile, Nord and Northup, both highly critical of the CPSIA, continue to [push an agenda](#) that includes legislatively lowering the age range for determining what constitutes children's products and eliminating third-party testing and certification requirements in many cases.

Although the CPSC is making progress in executing the requirements of the CPSIA, future implementation of the law remains uncertain. The debate over allowing exemptions and enforcement stays for products or product categories will continue. Some of the commission's own members echo sentiments of [the anti-regulatory community](#), focusing exclusively on the costs of regulations while ignoring or downplaying their health, safety, and quality-of-life benefits. In addition, funding cuts and [legislation aimed at "fixing" the CPSIA](#) could significantly impact the commission's authority and ability to act.

Product safety advocates assert that any changes to the CPSIA should not weaken CPSC's role in protecting families from dangerous products. Clear authority to develop such safeguards is necessary to prevent faulty cribs, toxic toys, and other hazardous items from reaching consumers.

Witnesses at Senate Hearing Examine Regulatory Change Proposals

On July 20, a panel of experts and advocates told the Senate Homeland Security and Governmental Affairs Committee their views on the many proposals to alter the regulatory process. Disagreements revolved around the economic impacts of public protections and whether legislative action on regulation is necessary.

The hearing was the second in a series called "Federal Regulation: A Review of Legislative Proposals" that took a broad look at regulatory reform legislation. The [first hearing](#) was held June 23, at which senators introduced various bills to reform parts of the regulatory process, and Cass Sunstein, the administrator of the Office of Information and Regulatory Affairs (OIRA), told the committee [the reforms were unnecessary](#).

The proposals aired in the first hearing would erect more procedural hurdles in a rulemaking process that is already staggeringly complex. The bills would, among other things, duplicate analyses federal agencies are already legally required to perform and expand the list of analyses to include requirements that government produce even more studies attempting to estimate the potential *indirect* costs of any new rule. Other proposals call for allowing judicial review of individual parts of the regulatory process and expanding OIRA's reviews of agency rules to include independent regulatory commissions. While cast as procedural reforms, these changes could completely transform the prospects for enforcing current and future standards. This could lead to increased litigation and even greater delays of crucial public protections needed to safeguard the public health and safety of the American people.

At the second hearing, Sen. Sheldon Whitehouse (D-RI) was the lone senator to [propose legislation](#). He introduced two bills ([S. 1338](#) and [S. 1339](#)) that focus on the "capture" of agencies by regulated entities (private industry). When this happens, agencies stop making the public interest their prime concern and instead see themselves as serving the interests of regulated industry.

Other witnesses included Sally Katzen, former OIRA administrator during the Clinton administration; Susan Dudley, former OIRA administrator during the George W. Bush administration; David Goldston, Director of Government Affairs at the Natural Resources Defense Council; and Karen Harned, Executive Director of the Small Business Legal Center at the National Federation of Independent Business.

Katzen and Goldston argued there was no need for additional legislation that would cause more delay by requiring duplicative assessments of costs and benefits of rules. They criticized the reform proposals as one-size-fits-all legislative solutions in search of a problem and argued against expanding judicial review of specific parts of the regulatory process, like agencies' cost-benefit analyses. The courts are ill-prepared to deal with these kinds of highly technical tools, they argued, and the result would be more opportunity for delay. Dudley and Harned supported most of the regulatory reform bills that are before the committee as a way of reducing the "burden of regulation" on business and ignored the bills' potential negative effects on public health and safety.

This split in opinions occurred over a range of issues raised during questions from committee members: codifying elements of regulatory executive orders, including so-called indirect costs of regulations in cost-benefit calculations, and including guidance documents (a wide range of materials used by agencies to clarify or further explain regulatory requirements and to help regulated industries to comply with rules).

On the question of whether the centralized power of OIRA should be extended to allow it to review rules generated by independent regulatory commissions (such as the Securities and Exchange Commission and the Consumer Product Safety Commission), only Goldston argued that the agencies should remain independent of such executive branch control.

Sen. Joseph Lieberman (I-CT), chair of the committee, and Susan Collins (R-ME), ranking member, indicated the members would try to craft a bipartisan bill from the many proposals for a potential markup, though the contours and timeline of such a bill remain vague.

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Debt Ceiling Deal Erodes Public Protections, Government Services

The debt ceiling deal signed into law Aug. 2 will remake the federal budget process in the years to come. The procedures put in place by the new law are complex, and the final budgetary outcome will depend on a variety of factors. With \$841 billion in immediate budget cuts, and with up to \$2.5 trillion in total deficit reduction over the next 10 years, the law, known as the Budget Control Act (BCA), will have a profound effect on everything from public and environmental protections to education to federal information transparency.

Overview

The first part of the law is relatively simple. It mandates hard limits on total discretionary spending for the next ten fiscal years (FY), and if Congress allocates more funding than the budget caps allow, the amount of the overrun will be cut across all discretionary programs

equally. Underneath the caps, Congress can allocate spending to federal programs however it wants, meaning some programs might be cut to allow for the growth of other programs. The Congressional Budget Office (CBO) [estimates](#) that these caps will cut \$841 billion over ten years compared to its baseline, which grows the federal budget at the pace of inflation.

[For a complete run-down of how the new debt deal works, see OMB Watch's FAQ.](#)

In addition to the discretionary budget caps, the law calls for the creation of a special joint committee of Congress, made up of 12 members. The majority and minority leadership of both houses have chosen three members each, leaving this so-called Super Committee with six Democrats and six Republicans, three from each house. This group will have until Nov. 23 to produce a proposal to reduce the deficit by at least \$1.2 trillion over the next ten years. The Super Committee can raise revenue or cut any program, including Social Security, Medicare, and Medicaid, in creating a deficit reduction plan. Nothing is off the table.

If the Super Committee plan isn't enacted, a set of automatic, across-the-board cuts are triggered, starting with the FY 2013 budget. In addition to lowering the original discretionary spending caps, this process would also cut mandatory spending for the next nine years. All of these cuts are equally split between defense and non-defense spending, while certain programs, such as programs for low-income families, Social Security, Medicaid, and most of Medicare, are protected.

Spending Caps

The first spending caps in the law go into effect for the coming fiscal year, FY 2012, the budget that Congress is currently debating. Compared to the FY 2011 budget, the first year's cuts are relatively small, only \$7 billion. A cut this small will effectively freeze federal programs at their current levels, meaning fewer new programs and limitations on the services they currently provide to the American people. However, compared to the CBO baseline, which accounts for inflation, the budget cap for FY 12 is far below – about \$44 billion – where federal spending is projected to be. In essence, then, a budget cap that seems to be holding federal spending constant is, in fact, slowly eroding its value.

Table 1. Initial Discretionary Spending Caps (billions of dollars)						
Fiscal Year	CBO March Adjusted Baseline	Budget Control Act				
		Total Discretionary Cap	Security Cap	Non-security Cap	Amount Cut from Baseline	Percent Cut from Baseline
2012	1,087	1,043	684	359	44	4
2013	1,109	1,047	686	361	62	6
2014	1,134	1,066	N/A	N/A	68	6
2015	1,159	1,086	N/A	N/A	73	6
2016	1,186	1,107	N/A	N/A	79	7
2017	1,218	1,131	N/A	N/A	87	7
2018	1,251	1,156	N/A	N/A	95	8
2019	1,285	1,182	N/A	N/A	103	8
2020	1,319	1,208	N/A	N/A	111	8
2021	1,353	1,234	N/A	N/A	119	9
Total	12,101	11,260	N/A	N/A	841	7

The FY 12 budget cap represents an increase over the budget level the Republican-controlled House set earlier in 2011. Since the House has already completed work on about half of the yearly appropriations bills that make up the annual budget (at levels about \$30 billion lower than the spending cap), House and Senate legislators will have to negotiate how and where to add money back to the deep cuts passed in the House. For instance, the House had slated the Labor-Health and Human Services-Education appropriations bill to be cut by almost 12 percent, a reduction of \$18 billion. If Congress adheres to the debt ceiling agreement, this funding should be restored before that spending bill sees the president's desk.

However, while the BCA sets the upper limits of overall discretionary spending, it does not prevent spending below those levels. House Republicans will likely push for cuts below the already agreed-to spending cap in an effort to bring spending closer to their budget. The debate over the FY 12 funding level, with Democrats arguing for keeping spending as close to the cap as possible and Republicans demanding more cuts, [will be the next big budget fight](#), and it has the potential to be just as dramatic as recent battles, with a similar potential for a government shutdown.

How Automatic Cuts Could Be Triggered

If the Super Committee cannot agree on at least \$1.2 trillion in deficit reduction measures, then automatic, across-the-board cuts will be triggered. Beginning in FY 2013, spending cuts will be remarkably more drastic than those in FY 2012. Approximately \$109 billion more will be cut from the budget, with half coming from defense spending and half from non-defense. In total, FY 13 discretionary spending will be reduced by \$156 billion below the CBO baseline, an amount equal to the budgets for the Departments of State, Interior, and Transportation. Non-defense discretionary spending will see approximately an eight percent cut from the previous year's funding level, but when compared to the CBO baseline, or what the spending level would be if it kept pace with inflation, the cut is close to 13 percent.

Table 2. Estimates of Revised Discretionary Spending Caps Following Failure of Super Committee Proposal (billions of dollars)						
Fiscal Year	CBO March Adjusted Baseline	Budget Control Act				
		Total Discretionary Cap	Security	Non- security	Amount Cut from Baseline	Percent Cut from Baseline
2012	1,087	1,043	684	359	44	4
2013	1,109	953	492	461	156	14
2014	1,134	973	502	471	161	14
2015	1,159	993	512	482	166	14
2016	1,186	1,015	523	492	171	14
2017	1,218	1,040	536	504	178	15
2018	1,251	1,065	549	517	186	15
2019	1,285	1,092	562	530	193	15
2020	1,319	1,119	576	543	200	15
2021	1,353	1,146	590	556	207	15
Total	12,101	10,439	5,523	4,916	1,662	14

These deep and sweeping cuts will affect everything from education, employment programs, environmental protections, food safety programs, weather tracking, transportation, and renewable energy research. The result will be a noticeable deterioration of those public structures that support the economy and most Americans' daily activities.

These cuts will also have important ramifications for citizens' access to the government. Staff to handle Freedom of Information Act requests; the Government Printing Office, which, as we highlighted in an [earlier *Watcher* article](#), provides access to congressional bills, the U.S. Code, and the Code of Federal Regulations; and maintenance of websites that provide federal spending information will all see cutbacks.

If non-defense discretionary spending is decreased by 13 percent under such automatic cuts, almost every program is likely to see funding reductions. Few, if any, programs will see budget increases, since any increase in funding must come out of another program. These cuts will likely result in heavy staff reductions in every agency, which would mean fewer meat inspectors policing the nation's slaughterhouses and packing plants; fewer personnel reducing waste, fraud, and abuse in government contracting; fewer staffers monitoring Wall Street; and fewer FBI and CIA agents tracking down terrorists.

Paradoxically, the automatic cuts could be the lesser of two evils. The BCA allows the Super Committee to target *any* program for spending cuts, including Social Security, Medicare, and Medicaid. No programs are untouchable through a Super Committee deficit package.

What the BCA Doesn't Say Could Pose a Risk to Crucial Public Protections and Services

There's another feature of the debt ceiling deal that should trouble those who value the services and protections provided by the government: the BCA does not forbid the Super Committee from inserting provisions into its proposal that do not directly affect the deficit.

The likelihood of this occurring should not be underestimated, and one recent example of such behavior is illustrative. House Republicans mounted [a considerable effort](#) earlier in 2011 to insert some [80-plus "policy riders"](#) to FY 2011's budget, despite the fact that most of these provisions were policy-related and had little or nothing to do with the budget. The representatives' wish list included undoing health care reform, defunding Planned Parenthood, gutting a slew of environmental protection rules, and prohibiting the Federal Reserve from using money to create a new consumer finance protection bureau.

The BCA mandates an up-or-down vote on any committee-approved package in its entirety, with no amendments allowed. This means that any policy riders that survive the committee process would be attached to the package, and Congress would have no opportunity to remove them. With a \$1.2 trillion trigger set to go off, Congress will feel the urgency to approve the deal, greatly enhancing the prospect that a raft of conservative special interest provisions become law.

Democracy Demands High Level of Super Committee Transparency

During the past week, leaders of the House and Senate [announced](#) the members of the debt ceiling deal's Super Committee. Now, all eyes are turning to the committee's co-chairs, Sen. Patty Murray (D-WA) and Rep. Jeb Hensarling (R-TX), to see if they will institute basic transparency standards that many [within](#) and [outside](#) government are calling for. With so much decision making power concentrated in the hands of just 12 members of Congress, the country deserves the maximum possible level of transparency in the committee's operations.

The Super Committee

According to the 2010 census, the current population of the United States is just over [308 million people](#). The voting-age segment of this population selects 535 individuals to represent the people's interests in Congress. The average number of constituents represented by one of the 435 House representatives is approximately 647,000; a senator can represent anywhere from 563,626 people (WY) to more than 37 million people (CA). By contrast, each of the 12 members of the Super Committee will be representing their own constituents and up to 25 million other Americans.

The members of the Super Committee are:

- **House**
 - Rep. Dave Camp (R-MI)
 - Rep. Jeb Hensarling (R-TX)
 - Rep. Fred Upton (R-MI)
 - Rep. Xavier Becerra (D-CA)
 - Rep. Jim Clyburn (D-SC)
 - Rep. Chris Van Hollen (D-MD)

- **Senate**
 - Sen. Max Baucus (D-MT)
 - Sen. John Kerry (D-MA)
 - Sen. Patty Murray (D-WA)
 - Sen. Jon Kyl (R-AZ)
 - Sen. Rob Portman (R-OH)
 - Sen. Pat Toomey (R-PA)

A first glance at some demographic information related to the Super Committee members is available on [The Fine Print](#).

The Potential for Special Interest Influence

Giving so few individuals the authority to make decisions that will affect every area of government activity makes them targets (or recipients) of [special interest largesse](#).

A recent Associated Press (AP) [examination](#) of the committee members' campaign finance reports finds that the "six Democrats and six Republicans ... have received more than \$3 million total during the past five years in donations from political committees with ties to defense contractors, health care providers and labor unions." In fact, each of the 12 members have "received more than \$1 million overall in contributions from the health care industry and at least \$700,000 from defense companies," according to the AP.

According to Bloomberg News, the defense industry will likely [seek help](#) from committee co-chair Murray. She is one of the [few unabashed congressional advocates](#) of defense contractors, especially Boeing Inc., which does significant business in the legislator's home state of Washington.

The Center for Responsive Politics (CRP) notes that Hensarling, the Republican co-chair, has [pulled in](#) hundreds of thousands of dollars from the banking and insurance industries.

The potential conflicts between the Super Committee members' parochial interests and the nation's interests are a further reason for consternation. The Sunlight Foundation's *Party Time* blog recently [noted that](#) legislators and their supporters have already planned fundraisers that take advantage of the members' positions on the Super Committee: "At least five members of the congressional Super Committee tasked with reducing the nation's deficit are scheduled to hold or host fundraisers just as the panel will be beginning its work" in early September. Though it is legal for committee members to pursue these fundraisers, the appearance of impropriety should give them pause.

Super Committee Transparency Is Essential

In light of [the high stakes involved](#) and the striking potential for a number of special interest-driven problems, the open government community is calling for super-disclosure and transparency by the Super Committee. A dedicated website should be created and the

committee's activities should be posted on it in real time. Any documents, proposals, or testimony the committee receives should be posted immediately. All witness lists and hearing agendas should also be posted. The committee should develop ways to collect, aggregate, and display public commentary on the various proposals that come before the group. To prevent conflicts of interest, real or perceived, all committee members and staff should post their financial holdings online, along with information on all campaign contributions to members.

The challenge facing the Super Committee, coupled with the barrage of special interest lobbying that is sure to commence when Congress returns to Washington in September, demands an incredibly high level of transparency throughout the committee's deliberations. If the American people are to trust the decisions the committee reaches, the process must be open, it must be accessible, and it must offer opportunities for meaningful public participation and feedback. Anything less would be a great disservice to our nation.

Administration Fumbling Toward Scientific Integrity

The Obama administration's efforts to protect scientific integrity moved forward recently with the submission of five finalized agency policies and 14 draft policies, but progress has been slow and haphazard. The administration recognizes that sound, uncensored science is critically important to protecting public health and the environment. The administration also understands that agencies should foster a culture of scientific integrity that includes effective policies and oversight to protect science from political manipulation and research misconduct. However, it has yet to undo the damage wrought by the previous administration.

Background

The George W. Bush administration was widely criticized for abuses of scientific integrity, including political manipulation of scientific findings and suppression of the free flow of scientific information. These policies undermined the effectiveness of the public structures that protect our health, economy, and environment by delaying decision making and weakening public trust that government policies were based on the best available scientific and technical information.

As a candidate and in his [inaugural address](#), President Obama pledged to restore scientific integrity. Shortly after taking office, he issued a [memo on scientific integrity](#), which stated that "political officials should not suppress or alter scientific or technological findings and conclusions."

The memo directed the White House Office of Science and Technology Policy (OSTP) to develop guidelines to protect scientific integrity within 120 days. However, those [guidelines](#) were not released until December 2010, more than a year past the deadline. Despite the delay, OMB Watch [praised the guidelines](#) as a step forward and called for agencies to aggressively implement them.

In May, OSTP [asked each agency](#) to submit a draft scientific integrity policy within 90 days. In the interest of transparency and accountability, OMB Watch called for agencies to [publish their proposed policies](#) for public comment before finalizing them. However, OSTP did not formally instruct agencies to solicit public feedback.

Agency Policies

On Aug. 11, OSTP [posted](#) information about the progress (or lack of progress) each agency had made in meeting the most recent deadline. Several agencies have adopted final scientific integrity policies, while others have released draft policies for public comment. Advocates have criticized both the content of some of the policies and the closed process that produced them.

Of the five agencies with final policies, only the Department of the Interior undertook visible public consultation. The [Department of Commerce](#) and the [National Aeronautics and Space Administration](#) (NASA) have published their final policies but do not appear to have solicited public comment at any point in the process. The Justice Department and the intelligence community do not appear to have publicly published their final policies nor solicited public comment on those policies.

Fourteen other agencies have submitted draft policies to OSTP, and several have published drafts for public comment, including the [U.S. Environmental Protection Agency](#) (EPA), the [National Oceanic and Atmospheric Administration](#) (NOAA), and the [National Science Foundation](#) (NSF). Of the remaining agencies, [some are reportedly considering public consultation](#) before finalizing their policies, while others do not plan to solicit public comment.

The Department of the Interior example demonstrates the value of consulting with the public before finalizing a scientific integrity policy. The department's draft policy was criticized [by OMB Watch and other groups](#) for failing to address political interference with science and lacking protections for scientists who blow the whistle on misconduct. After receiving public comment, however, Interior made revisions, and the final policy was [significantly improved](#).

What's in the Policies?

The OSTP guidelines directed agency policies to address four areas: foundations of scientific integrity, including appropriate whistleblower protections; communications policies; federal advisory committees; and professional development of scientists, including opportunities to present research and serve in professional organizations.

While the available plans make some progress on those topics, the issue of scientists communicating with the media has been especially contentious. Public Employees for Environmental Responsibility (PEER) called EPA's proposed policy ["pathetically weak"](#) for failing to ensure that public affairs staff don't become gatekeepers restricting communication between scientists and the media.

The available policies are also thin on details of how political manipulation of science will be prevented. For instance, the Union of Concerned Scientists (UCS) said NOAA's policy ["has raised the bar for scientific integrity policies."](#) but also said it was "critical for the agency to establish specific practices to protect the integrity of agency scientific findings to prevent manipulation."

Next Steps

OSTP has not set a hard deadline for final policies, but the Aug. 11 blog post states that the office "will be working with [agencies] this fall as they finalize their policies."

We invite readers to submit their comments on the proposed plans to:

- [NOAA](#) (by Aug. 20);
- [EPA](#) (by Sept. 6); and
- [NSF](#) (by Sept. 6).

Recommendations

OMB Watch continues to call for stronger commitments to public participation and more public accountability by all federal agencies. OSTP should direct agencies to publish draft policies for public comment at least one month before finalizing them and to finalize their policies before the end of the year.

Agencies should ensure their policies establish clear expectations that science will be free from political manipulation, with procedures to insulate science from inappropriate influence and to redress the problem if it does occur. The first component should be a policy that makes clear that non-science officials do not have the authority to alter findings or explanations without approval of the scientific personnel that produced the information. The second component should be a mechanism through which scientific and research personnel can submit concerns about possible political manipulation and receive an independent review. Complaints could be reviewed by an agency's inspector general's office or a scientific review board.

Agency policies should also protect the free flow of information, in particular safeguarding scientists' freedom to communicate with the media without public affairs staff acting as censors or gatekeepers. While public affairs officials often coordinate and disseminate information to the media and the public, factual scientific findings should not proceed through the same message machine that oversees speeches and press releases. Otherwise, the risk is too great that a public affairs review will mutate into a political review and that findings will be delayed or changed to suit the goals of an administration.

Protecting scientific integrity also requires a culture change within federal agencies. To achieve this, leadership from the top of the agency; adequate training and communication of new policies and practices to personnel; and effective enforcement and oversight mechanisms, including appropriate involvement of agency inspectors general, will be crucial.

Finally, OSTP should take needed actions to regain its leadership position on scientific integrity, including communicating more openly with stakeholders and the public.

Obama Administration Issues Environmental Justice MOU

On Aug. 4, 17 federal agencies signed a memorandum of understanding that aims to address and reduce the disproportionate harm from environmental degradation that affects indigenous, low-income, and minority communities. The "[Memorandum of Understanding on Environmental Justice and Executive Order 12898](#)" (MOU EJ) is the most recent step taken by the Obama administration to address the environmental burdens facing these communities and to encourage people from affected communities to participate in public processes designed to improve environmental health and safety.

The MOU EJ lays out agency responsibilities and formalizes commitments, processes, and procedures outlined in Executive Order (E.O.) 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," issued by President Bill Clinton in 1994. The MOU EJ expands the scope of the Interagency Working Group on Environmental Justice to include agencies not originally named in E.O. 12898. It also adopts an Interagency Working Group charter, providing the working group with more structure and direction.

By signing the MOU EJ, agencies agree to develop environmental justice strategies, ensure public input into those strategies, and collaborate with other agencies on environmental justice issues. Each agency is required to review, update, and post online its existing or draft environmental justice strategies by Sept. 30. Agencies must get public input on their strategies, though no specific process for encouraging participation is required. Final environmental justice strategies will be posted online by Feb. 11, 2012.

The MOU EJ also requires participating agencies to provide annual progress reports on their efforts to address environmental justice issues. These reports will include progress on implementing environmental justice strategies and performance measures identified by each agency, as well as responses to any questions or recommendations provided by the public.

Agencies must focus on particular problems afflicting the environment and health of minority and low-income communities, including the impacts of climate adaptation and commercial transportation, as well as implementing the National Environmental Policy Act and Title VI of the Civil Rights Act of 1964.

Background

Environmental justice, as defined by the U.S. Environmental Protection Agency (EPA), is the

fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and

enforcement of environmental laws, regulations, and policies.... It will be achieved when everyone enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making process to have a healthy environment in which to live, learn, and work.

The issue emerged as a concept and movement in the early 1980s by indigenous, minority, and low-income community groups subject to a growing number of hazardous and polluting industries located within their neighborhoods. According to the 2007 environmental justice report, [*Toxic Waste and Race at 20*](#), more than nine million people are estimated to live in neighborhoods within two miles of 413 hazardous waste facilities nationwide. Neighborhoods that host commercial hazardous waste facilities average 56 percent minority populations, whereas areas without such facilities average just 30 percent minority populations. Neighborhoods within two miles of waste facilities are typically economically depressed, with poverty rates 1.5 times greater than communities beyond the two-mile radius. The struggle to defend local communities from environmental hazards became closely linked to the civil rights and other social movements and is predominantly led by grassroots minority groups.

The environmental justice movement was surprisingly successful in drawing attention to this disparity over the years. The EPA, under President George H.W. Bush, established an Office of Environmental Justice. President Clinton further advanced the movement by enacting E.O. 12898, which directed federal agencies to develop a strategy for implementing environmental justice, but many advocates feel little has been done to implement the order.

Environmental Justice under President Obama

The Obama administration has undertaken several environmental justice initiatives. In September 2010, EPA Administrator Lisa Jackson and White House Council on Environmental Quality Chair Nancy Sutley reconvened the Interagency Working Group on Environmental Justice for the first time in more than a decade. In December 2010, the White House organized the Environmental Justice Forum, where cabinet secretaries and senior administration officials met with more than 100 environmental justice leaders from across the country to discuss environmental and public health issues affecting their communities. At the meeting, the administration recommitted to advancing the mandate of E.O. 12898.

The Obama administration also launched the [*Partnership for Sustainable Communities grant program*](#), which awards grants each year for "livable and sustainable communities" around the country. The EPA also developed [*Plan EJ 2014*](#), a roadmap that will help the agency integrate environmental justice into all programs, policies, and activities.

Environmental justice, environmental, and public health organizations welcome the administration's efforts to elevate environmental justice issues and increase interactions with environmental justice communities. The recommendations in [*An Agenda to Strengthen Our Right to Know*](#), endorsed by more than 100 organizations, included full implementation of E.O. 12898 and expanding its coverage to include additional agencies. Additional recommendations involved improving the scope of equity-based data collection, identifying sources and methods

for obtaining and analyzing environmental justice data, widely disseminating this data, and improving capacity-building in affected communities.

In a press release announcing the MOU EJ, Jackson states, "All too often, low-income, minority and Native Americans live in the shadows of our society's worst pollution, facing disproportionate health impacts and greater obstacles to economic growth in communities that can't attract businesses and new jobs.... Expanding the conversation on environmentalism and working for environmental justice are some of my top priorities for the work of the EPA, and we're glad to have President Obama's leadership and the help of our federal partners in this important effort."

However, with the EPA in the crosshairs of House Republicans and an across-the-board attack on all federal regulatory agencies, it seems that a lack of funding may hinder the realization of these goals.

The following agencies signed the EJ MOU: EPA; White House Council on Environmental Quality; Department of Health and Human Services; Department of Justice; Department of Agriculture; Department of Commerce; Department of Defense; Department of Education; Department of Energy; Department of Homeland Security; Department of Housing and Urban Development; Department of the Interior; Department of Labor; Department of Transportation; Department of Veterans Affairs; General Services Administration; and Small Business Administration.

Clean Air Rules Draw Support from Scientists, Industry Groups, and Public Health Advocates but Are Still Questioned by Powerful Interests

The U.S. Environmental Protection Agency (EPA) has drafted several new rules designed to reduce emissions of harmful air pollutants and improve public health, but some of the standards still await final approval. Environmental and public health advocates have applauded the tougher standards, and a number of industry groups have said they are well positioned to comply with the new rules. The rules will provide businesses with the regulatory certainty that firms say they need to invest in modern pollution-control technologies. Moreover, major power and energy companies [say](#) that these new standards will yield important economic benefits.

On July 6, EPA finalized the [Cross-State Air Pollution Rule](#) (CSAPR) requiring states to reduce power plant emissions of air pollutants that contribute to ozone and fine particle pollution in other states. The agency is also under a court-ordered deadline to finalize proposed [Mercury and Air Toxics Standards for Power Plants](#) (MATS) by Nov. 16. The MATS rule, also known as the "Air Toxics Rule," would set national emissions standards for mercury, arsenic, and other toxic air pollution from power plants. The tougher standards would save between 6,800 and 17,000 lives and prevent 11,000 heart attacks per year.

In [comments](#) submitted to EPA on the proposed MATS rule, the Clean Energy Group, a coalition of electric utilities and power companies, including PG&E, Calpine, Exelon, and Consolidated Edison, Inc., wrote that overall, "the proposal is reasonable and consistent with the requirements of the Clean Air Act." The comment stated "that the electric sector is well-positioned to comply" with the new standards and encouraged EPA to complete the rule as scheduled. Exelon Corp., in [separate comments](#), urged the agency to implement the rule as quickly as possible, arguing that "delaying or weakening [the rule] will harm our health and economic well-being." According to Exelon, the rule "will provide the certainty that industry desperately needs to modernize and improve" and will encourage "investment in a clean, modern, efficient generation fleet, thus promoting long-term economic health for both the electric industry and the nation as a whole." These national emissions standards will also help level the playing field between companies striving to meet modern emissions standards and competitors that have failed to adapt to technological advances.

In fact, a Congressional Research Service review of evidence [illustrates](#) that the primary impacts of EPA rules will be on inefficient units "more than 40 years old that have not, until now, installed state-of-the-art pollution controls." These are units that can and should be modernized or replaced. For those plants that are retired, a [study](#) released Aug. 10 by the American Clean Skies Foundation finds that communities can repurpose retired coal-fired power plant sites and capitalize on opportunities to create healthier environments, foster new business activity, and encourage job development.

"By spurring entrepreneurs who have good ideas and the drive to work hard, the EPA has helped give rise to countless small businesses in clean energy, advanced lighting, pollution control and more, which in turn are creating jobs," [wrote](#) David McKinney, CEO of Clean Light Green Light, a manufacturer of high-power LED lighting solutions.

Nonetheless, the American Chemistry Council, the U.S. Chamber of Commerce, and the Business Roundtable are attacking the new EPA rules and predicting devastating impacts on the power sector. However, the CRS review showed that recent reports by the North American Electric Reliability Corporation (NERC) and the Edison Electric Institute (EEI) overstated the costs of environmental and health standards and ignored the benefits.

Anti-environmental industry groups are also stepping up their pressure to delay implementation of a new ozone rule until 2013. In the meantime, several of these groups [are scheduled to meet](#) with President Obama's pro-business chief of staff, William Daley, in what looks like an attempt to bypass established practices and the president's executive orders on regulatory compliance and open government, as well as a Clinton-era executive order that attempts to shield the regulatory review process from undue industry and political influence.

On the other side, nine senators [have written](#) to Obama expressing "disappointment at the Administration's continued delay in setting a health-protective ozone air quality standard." The new ozone rule has been delayed four times, despite the fact that the current standard allows emissions that exceed scientific recommendations. The Aug. 11 letter faulted the opponents for "ignoring 40 years of data demonstrating that clean air investments are good for public health

and the economy."

Neither Death Nor Certainty for the 501(c)(4) Gift Tax

Anyone keeping tabs on the efforts of the Internal Revenue Service (IRS) to assess gift taxes on major donations to 501(c)(4) organizations should be wondering if the old adage regarding the certainty of death and taxes needs to be updated in the post-*Citizens United* era.

In February, the IRS warned five major donors to 501(c)(4) organizations that they might owe gift taxes on their contributions. These examinations had raised interest in both legal and political communities – both for their nearly unprecedented nature and for their potential implications for the 2012 elections.

On July 7, the IRS [announced](#) that it would drop the examinations until it had determined "whether there is a need for further guidance" regarding whether the gift tax can be applied to large contributions to 501(c)(4) organizations. Deputy Commissioner for Services and Enforcement Steven T. Miller cited the "significant legal, administrative, and policy implications with respect to which we have little enforcement history" as the reason behind the decision.

501(c)(4) organizations are often called "social welfare organizations" because the [tax code](#) says they may be "[c]ivic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare." While nonprofits organized under section 501(c)(4) must have a "primary purpose" that does not relate to elections, they are nevertheless free to collect unlimited contributions from donors who may remain anonymous. After *Citizens United* enabled for-profit and nonprofit corporations to make independent expenditures to advocate for or against particular candidates, major political donors began looking to 501(c)(4) organizations as a way to influence the political process.

It is an understatement to say that "[\[t\]he use of undisclosed funds has skyrocketed](#)." In 2010, a total of \$4 billion, or \$45 for every vote cast, was spent. Outside groups trying to influence federal elections spent \$266.4 million, with [at least \\$135 million](#) coming from groups that do not publicly disclose their donors.

Even before voters went to the polls in 2010, it was clear that the role of 501(c)(4) organizations in our electoral system was changing and deserved serious examination. On Sept. 29, 2010, Senate Finance Committee Chairman Max Baucus (D-MT) sent the IRS a [letter](#) requesting an investigation into whether 501(c)(4) organizations' "political activities reach a primary purpose level" and "whether they are acting as conduits for major donors advancing their own private interests regarding legislation or political campaigns, or are providing major donors with excess benefits."

By May, five donors had been notified by the IRS that they were being audited with an eye toward determining whether they owed gift taxes on their contributions. The gift tax is currently assessed at 35 percent of gifts over \$13,000 – except for certain protected transactions,

including donations to 501(c)(3) and 527 organizations. Since 1982, the IRS has [maintained](#) that contributions to 501(c)(4) organizations are different and could be subject to the tax.

Nevertheless, news reports and practitioners' anecdotes suggest that the IRS has generally not sought to enforce this position. In fact, even the [one publicly available letter](#) to a donor under investigation suggests only that an examination is beginning – not that the donor owes any back taxes or penalties.

Even though the IRS insisted that the investigations were being managed by career civil servants and that they were not part of a larger review of the activity of 501(c)(4)s, the investigations still drew vociferous critiques. In a letter dated May 18, Republicans on the Senate Finance Committee [accused](#) the IRS of targeting conservative political activists. The announcement that the examinations had been suspended did little to quell the controversy because it left potential donors with no guidance as to what the IRS might do about future contributions to 501(c)(4) organizations.

While some practitioners assert that "tax lawyers as a whole have not changed their views" about whether contributions to 501(c)(4)s are subject to the gift tax, others are [advising](#) both donors and 501(c)(4) organizations themselves to "consider carefully the possible gift tax implications of contributions."

Perhaps even more concerning than tax uncertainty, however, is the appearance of political interference. "The clear implication left by the I.R.S. action on July 7 is that I.R.S. enforcement activity can be curtailed by intervention from a handful of members of Congress, whatever their party affiliation, when political contributions are at risk," Marc Owens, a lawyer who used to head the division of the IRS which oversees nonprofits, [wrote](#) in a letter on behalf of four clients.

If such political interference has, in fact, caused the IRS to suspend its investigations into large donors to 501(c)(4) organizations, Americans are left with little to be certain about as the 2012 elections approach. Will groups without a true social welfare purpose continue to be allowed to spend unlimited, undisclosed amounts of money to influence elections with no tax implications for the organizations or their donors, or will the IRS move beyond congressional complaints and other criticisms to ensure that 501(c)(4) organizations are following the law while engaging in electoral politics?

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Despite Debt Ceiling Deal, Future Budget Road Looks Bumpy

Although the recent debt ceiling deal theoretically brings Republicans and Democrats into agreement on spending levels for the next 10 years, the two parties remain miles apart on key budgetary issues. These fissures are likely to become apparent as Congress comes back into session and legislators begin work on a stop-gap [continuing resolution](#) over the coming weeks to stave off a government shutdown at the beginning of the next fiscal year, which starts Oct. 1.

The House passed [six of the requisite 12 appropriations bills](#) before the summer recess, a record for recent Congresses. But since coming back from break, there has been action in only one subcommittee. House appropriators seem to be waiting for an omnibus bill from the Senate, which would combine all the remaining legislation into one large budget bill.

By contrast, the Senate passed only one bill before the recess, but the Senate Appropriations Committee has passed three bills since and will be working on another six in the coming weeks. The debt ceiling deal set an overall spending level for FY 2012, and this seemed to get the Senate moving, as it had been unable to reach consensus on spending levels before the recess. Without

a target number, the individual appropriations subcommittees were unwilling to hold public hearings or politically tough votes on their bills.

The debt ceiling deal set a spending cap slightly below the spending level for the current fiscal year (\$1.050 trillion in FY 2011 vs. \$1.043 trillion in FY 2012, a difference of less than a percentage point). As a result, the Senate is working with budget levels higher than the House levels, since the House budget [slashed](#) more than \$30 billion from the budget.

Some conservatives are trying to [rally support](#) for the House to demand the lower levels in the House budget resolution, but House leadership is publicly supporting the budget levels set out in the debt ceiling deal.

A potentially bigger difference between the two houses is how the funding is allocated below the overall cap. The Senate holds [defense spending](#) flat from last year, while the House budget increased defense spending significantly. This means cuts to non-defense spending are much smaller in the Senate budget; by increasing defense spending by three percent, the House budget forces drastic cuts in other areas.

With many pro-defense conservatives already up in arms over the defense cuts in the debt ceiling deal, it is not clear that Republican members of the House will agree to the Senate's proposal to keep defense spending flat (the debt ceiling deal caps "security" spending, which is defined as the Departments of Defense, Homeland Security, Veterans Affairs, and several other budget areas, meaning Congress could grow Pentagon spending at the cost of the other security programs while staying under the cap).

Even if the House agrees to the Senate's general budget levels, there are multiple opportunities for the two parties to clash. Congress had been debating short-term extensions of both [the surface transportation bill](#), which funds hundreds of billions of dollars worth of transportation projects over a five-year time period, and the [reauthorization of the Federal Aviation Administration](#) (FAA). Republicans have delayed both bills. They refused to reauthorize the FAA unless anti-union measures were attached and then demanded the transportation bill be cut by half. Over the weekend of Sept. 10-11, congressional leaders agreed to [punt both issues](#) into early 2012, temporarily defusing the situation. The weekend agreement also temporarily renews [the gas tax](#), which pays for a great deal of the transportation bill; this delays a fight on that issue until 2012.

Perhaps the most contentious short-term fiscal issue before Congress is disaster relief. Thanks to a spate of costly natural disasters – an earthquake, Hurricane Irene, Tropical Storm Lee, and subsequent flooding, the Federal Emergency Management Agency (FEMA) is running out of funding, and the White House [is seeking \\$5.1 billion](#) in disaster aid for FY 2011 and FY 2012. While Republicans agree that more funding is needed to help rebuild communities across the country, House leaders [are insisting](#) that any new funds be offset by cuts elsewhere, outraging Democrats who accuse the GOP of essentially [playing politics](#) with natural disasters. House Appropriations Committee Chair Hal Rogers (R-KY) [announced on Monday, Sept. 12](#) that

disaster relief will be a part of the continuing resolution later in September, but he did not say how it would be integrated.

Of course, all of this is just a precursor to the premier budget fight to come, by way of the debt ceiling deal. The so-called Super Committee created by the deal is charged with releasing a massive \$1.2 trillion deficit reduction package by Thanksgiving, and the committee may consider incorporating pieces of President Obama's recently announced jobs bill into it (which would require deeper cuts to other programs). With a highly public fiscal fight looming in the future, Congress may decide to clear the decks by quietly wrapping up or postponing contentious issues in the FY 2012 budget.

CWC's Final Report: Make Investments in Contracting Oversight

On Aug. 31, the Commission on Wartime Contracting (CWC) released its [final report](#) to Congress, detailing contracting issues in Iraq and Afghanistan. Although most media outlets [focused](#) on the sensational estimates of funds lost through waste and fraud over the course of the wars – possibly totaling \$60 billion – the report makes a much broader and compelling argument for systemic contracting reforms and better contractor oversight. With the current atmosphere of austerity on Capitol Hill, Congress should heed these recommendations.

Congress created the CWC in 2008 by including language in that year's defense authorization. Tasked with examining the extent of reliance on and the performance of private contractors in Iraq and Afghanistan, the commission held 25 hearings over the course of three years, made repeated fact-finding trips to the Middle East, and published several reports to Congress. The CWC has established itself as a remarkably influential source for nonpartisan information on war-related contingency contracting. The commission will wind down and cease operations at the end of September.

The commission makes several broad recommendations, providing details on how to improve contract planning, expand competition, improve interagency coordination, and jettison unsustainable foreign projects abroad, and, most importantly, strengthen the federal government's capacity to provide effective contract management and oversight. Without developing their own capacity for oversight, agencies can get trapped in a vicious cycle of continued dependence on the services of the private sector, as the government is never able to develop the capacity to perform the functions on its own.

Without adequate management and oversight, contractors may [overstep their authority](#) and engage in [behavior](#) that puts the U.S.'s mission or U.S. personnel at risk. And when the government overrelies on some contractors, it may [find it difficult to cut off the offending parties](#) because alternative service providers are not available.

The federal government will only be able to improve contract management and oversight by increasing the number of oversight personnel, according to the commission. Currently, agencies do not have the number of staff needed to oversee the number of contractors working in war

zones. A recent [U.S. Army report](#) found a similar deficiency of oversight staff in domestic contracting, as well.

Of course, for the federal government to hire more oversight staff, Congress would have to provide the relevant agencies – such as the Department of Defense (DOD), the State Department, and the U.S. Agency for International Development (USAID) – with additional funds. This seems unlikely, though, in light of looming budget cuts that are likely in either outcome provided by the debt ceiling deal.

The CWC report argues that additional upfront investments in contractor oversight [will pay off in the end](#) by saving money lost to corruption and fraud.

Even though military personnel are scheduled to begin transitioning out of Iraq at the end of this year and Afghanistan in the near future, the costs of moving out of the arena and the continuing U.S. presence in these countries will be large enough to warrant these immediate investments in oversight personnel.

For instance, the State Department will soon [take over responsibility](#) for Iraq from DOD and will have to begin performing many tasks the Pentagon has been carrying out for the last eight years. To perform these tasks, State will rely on a large number of private security contractors (PSCs). In addition to the current small army of roughly 19,000 PSCs in Iraq right now, the agency estimates it will need another 6,000 to 7,000 contractors to carry out its responsibilities.

For over a year now, the CWC [has been pointing](#) to the potential challenges of this handoff. State does not have the personnel to oversee the numerous contractors that will soon flood into the country. A similar situation is likely to occur in Afghanistan some years down the road as the U.S. military draws down its forces in the country.

At least some members of Congress recognize the significance of the CWC's recommendations. In September, Rep. John Tierney (D-MA) [introduced legislation](#) that would create a permanent special inspector general for overseas contingency operations, an idea [originally proposed](#) by Sen. Claire McCaskill (D-MO) and endorsed by the CWC in its final report.

EPA Both Increases and Delays Public Access to Critical Greenhouse Gas Data

In August, the U.S. Environmental Protection Agency (EPA) made several changes to the Greenhouse Gas (GHG) Mandatory Reporting Rule that will improve, but also delay, public access to critical air pollution data. The EPA will launch an electronic tool to collect and make public GHG pollution data from companies. However, the agency allowed firms in several industries to delay disclosing the factors used to calculate their GHG emissions.

Launched in 2009, the [EPA's GHG Reporting Program](#) requires facilities to annually report GHG emissions data. The first round of data will be submitted electronically by Sept. 30. EPA

will make non-confidential GHG data publicly available by the end of 2011, while deferring – until 2013 and 2015 – reporting requirements for certain data elements used to calculate emissions.

GHG Electronic Reporting Tool

On Aug. 22, the EPA launched a new electronic tool to enable 28 industrial sectors – equal to approximately 7,000 large industrial GHG emitters and suppliers – to submit their emissions reports to the EPA via the Internet. This includes power plants, petroleum refineries, and landfills. Prior to the launch, the EPA tested the electronic GHG Reporting Tool (e-GGRT) with more than 1,000 stakeholders, including industry associations, states, and non-governmental organizations (NGOs), to make sure it was clear and easy to use. A summary of the testing is [publicly available](#) via the EPA's GHG Reporting Program's website.

The tool marks yet another move by the EPA toward electronic reporting. In the past six months, the EPA has required electronic reporting for new chemical notices under the Toxic Substances Control Act (TSCA) and announced its plans to require electronic reporting of all Toxics Release Inventory (TRI) data. Electronic reporting comes with numerous benefits, such as significantly reduced data errors, easier public access, and faster identification of environmental and health risks. In addition, electronic reporting reduces costs for both the reporting facilities and the agencies associated with collecting and disseminating national data.

We hope that when the GHG tool produces public data, it will also provide tools that allow users to easily analyze large sources of GHG pollution in their areas, compare performance, and track industry averages. If the data is presented properly, the public will be able to use the information to ensure that emitters take responsibility for the way they are contributing to climate change. Industries can use the data to compare their performance against other companies in their sector, help decrease their carbon pollution, increase efficiency, and save money.

Public reporting of pollution has proven a powerful tool in fostering public awareness of environmental problems and generating significant reductions in emissions. For instance, the Emergency Planning and Community Right-to-Know Act created TRI, a national database of toxic emissions reported by industrial sources, in 1986, and the EPA began taking data a year later. Since that time, the private sector has reduced the amount of toxins it releases by more than half.

Deferring Certain GHG Data

In a final rule published on Aug. 25, just days after the electronic reporting tool was launched, the EPA deferred reporting requirements for certain data elements used to calculate GHG emissions. The elements covered by the rule include production and throughput quantities, product compositions, raw materials used, and other process-specific information.

The agency set two deadlines for reporting these data elements, depending on the data involved. The EPA deferred one set of inputs to March 31, 2013, despite the fact that the agency claimed such inputs could be quickly evaluated; the reason for the delay is unclear. This deadline applies to electric transmission systems, stationary fuel combustion, underground coal mines, municipal solid waste landfills, industrial wastewater treatment, electric equipment manufacturers, and industrial waste landfills.

The agency delayed the second set of inputs, which require longer assessment, until March 31, 2015. This affects several data elements that must be reported by stationary sources that combust fuels, [including](#) petrochemical production, iron and steel production, industrial wastewater treatment, petroleum refineries, lead production, and more than 20 other sectors.

The agency delayed this reporting requirement to further examine industry concerns that the data elements contain confidential business information (CBI) and should not be disclosed. Pursuant to the Clean Air Act, "emissions data" cannot be classified as CBI. On July 7, 2010, the agency proposed that all GHG emission equation inputs are considered "emission data" and therefore, under the Clean Air Act, must be made available to the public.

The EPA received extensive industry input in response to its July proposal, raising concerns that many GHG emissions inputs may include CBI. To resolve industry concerns about CBI, EPA released a proposed rule in December 2010 deferring the input reporting requirement until March 31, 2014.

In [comments](#) submitted to the EPA regarding the proposed 2014 deferral, environmental organizations stated, "The deferral would seriously degrade the reporting system's data quality, deny the public its legal right to this vital emission data, and disrupt other reporting programs."

The EPA will have difficulty designing new GHG limits for industries without data on emissions input, the groups argued. "The delay proposed for reporting the verification data elements means that no one will be looking over industry's shoulders," they asserted

Several states share similar concerns about the deferral, stating that the data is crucial to designing effective policies to address climate change. As a result, some states have begun limiting GHG emissions on their own. For example, Washington State is creating its own greenhouse gas inventory, and California has started its own cap-and-trade program. Both states had planned to coordinate their plans with the federal program. Additionally, the six New England states, along with New York, New Jersey, Maryland, and Delaware, have joined a Regional Greenhouse Gas Initiative's cap-and-trade program for carbon dioxide.

Despite these concerns about the initial deferral decision, the EPA not only left the deferral in place, it extended it for an extra year. This appears to be in direct contradiction of the agency's stated goal to minimize the use of CBI claims and other gamesmanship that industry uses to hide crucial environmental health information from the American people.

Commentary: Progress, Pitfalls in Addressing Government Secrecy 10 Years after 9/11

Sunday marked the 10-year anniversary of the 9/11 terrorist attacks. This is an appropriate time to look back on what happened to government openness and access to information in the aftermath of the attacks. It seems that after 9/11, government officials stopped believing that Americans could be trusted with information – about their communities, about risks and dangers they could face, and about government actions on their behalf. Withholding information from citizens is a slippery slope for any democracy, yet over the past decade, government secrecy has expanded under the misguided belief that sacrificing citizen access to government information would somehow make us more secure.

Fears that terrorists would exploit our openness and use public information to find new targets to attack weaknesses in our security systems led us to start locking away huge amounts of information almost immediately after 9/11.

For example, access to Environmental Impact Statements (EIS) for Department of Energy facilities was eliminated. Under the National Environmental Policy Act, EISs are produced specifically to allow the public to understand the possible impacts of government facilities and activities on communities in the area and to engage in debate.

In another instance, communities that faced the prospect of new pipelines running through their backyards lost access to the Pipeline Mapping System. The system allowed users to better understand the risks associated with pipelines so people could help ensure the safety of their communities.

The government scrambled to take down information from the Internet that discussed dangers or risks in even the most cursory way. Pilots were blocked from getting the information they needed to avoid new no-fly zones. Online maps replaced government buildings with blurred-out images. Public officials ordered that safety notices on hazardous materials be removed as labels. Information on environmental risks such as groundwater pollution was no longer available. An alphabet soup of new "secure" information categories emerged – For Official Use Only, Sensitive Homeland Security Information, and so on – replete with confusing guidance on who could see this newly restricted information and how it could be used.

In hindsight, many of these decisions weren't logical or sensible. For example, first responders argued that they needed to know if hazardous materials were in containers in the event of an accident. Pilots inadvertently flew into restricted areas. Communities were not allowed to see potential industrial contamination of their water supplies. The benefits derived from using public information to make our lives and our communities better was lost.

However, with distance and experience, public officials appear to have gained some perspective. Much of the information that was hastily removed or blocked has been re-posted. Even more encouraging, the commitment to information sharing and democratic participation is back on the federal government's radar – in an extremely positive way.

The Obama administration promised to be the most transparent in history and is trying to make good on this pledge. In the past two years, all federal agencies have developed plans to share more information with the American public and to increase public participation in policymaking. Federal agencies are cataloguing and examining restricted information categories in order to better share information with state and local authorities and the public. The federal government is using interactive websites and other tools to communicate with the public and open up large amounts of official information on a wide variety of issues and activities.

Nonetheless, the United States still has a long way to go to undo official reactions to 9/11. For example, the Transportation Security Administration (TSA) rule that requires airline passengers to show identification remains a so-called "secret rule," the text of which has never been published in the *Federal Register*, posted on the TSA's website, or otherwise made publicly available (this is ironic, since all passengers know of and are required to adhere to this rule). Additionally, though the 9/11 Commission found that over-classification and the resulting difficulty in sharing information between agencies and others significantly contributed to our failure to detect and deter the 9/11 attacks, we have not significantly reduced the amount of information mistakenly classified or sped up the process of declassifying information that can be released.

The unfortunate reality is that we live in world full of dangers – terrorists, economic instability, toxic pollution, natural disasters, failing bridges, recalled consumer products, and more. The public not only has a need to know about these dangers, but a fundamental right to know as much about them as possible so that they might protect themselves and their communities. Of course, there will always be top secret and sensitive information that cannot be shared, but in a democracy, we should make nondisclosure the exception, not the rule, even during wartime. In a democracy, citizens have a presumptive right to know what their government knows and what actions it is taking on the public's behalf. With wholesale secrecy, people won't even know what they don't know. This negates the basic premise of an effective, accountable democracy: an informed citizenry.

Building a 21st Century FOIA System

The Obama administration is seeking to use technology to better support the Freedom of Information Act (FOIA) system. The effort could improve access to government information, empower Americans, and strengthen democratic accountability.

Background

Fifteen years after the Electronic Freedom of Information Act Amendments (E-FOIA) were signed into law in October 1996, the law's vision of technology improving public access to government information is still under construction. Here are the elements envisioned:

Proactive Disclosure: Although typically considered a request-and-response system, FOIA has almost always required the proactive disclosure of some information. Seizing on new technology

to broaden public access, E-FOIA expanded the information that agencies are required to proactively disclose and required agencies to post such information on their websites.

E-FOIA thus began to move the FOIA system toward greater proactive disclosure, shifting government toward more effectively and efficiently embodying openness. President Bill Clinton embraced this shift in his [signing statement](#), noting, "As the Government actively disseminates more information, I hope that there will be less need to use FOIA to obtain government information."

Despite fifteen years of intense technological progress since E-FOIA, however, Congress has not updated the proactive disclosure standards. In addition, compliance has fallen short, as noted in a 2002 General Accounting Office (now the Government Accountability Office) [study](#) and a [2007 National Security Archive survey](#). As a result, vital opportunities to bolster openness through proactive disclosure have been missed.

Requests and Processing: Although Clinton hoped that proactive disclosure would lessen the need for FOIA requests, processing public requests for information remains an essential tool for democratic accountability. But an effective FOIA system can be undermined by confusing and unhelpful customer service, as well as long delays collecting information from poorly designed IT systems.

E-FOIA clarified that electronic records, like those on paper, are subject to FOIA. But the law still allows agencies to use IT systems that require expensive and lengthy manual processing in order to make their information available to the public. For example, a recent [House Oversight and Government Reform Committee survey](#) found that agency financial systems frequently require manual processing to provide information to other government systems or the public.

Poor technology also often hampers requesters' interaction with agencies. For instance, although agencies generally accept requests via e-mail, many do not provide a web form for requests. Such forms could make filing and processing requests much easier. In addition, while the [OPEN Government Act of 2007](#) required agencies to assign tracking numbers to requests, most agencies do not provide an automated system to check the status of a request using such information. As a result, requesters often have to wait days for a manual reply to their status inquiry.

New initiatives

On Sept. 6, the Department of Justice's Office of Information Policy (OIP) [announced](#) that it would focus on using technology to strengthen the FOIA system. OIP oversees FOIA administration across the government.

Specifically, OIP announced that it would convene a technology working group in fiscal year 2012, which begins Oct. 1, to focus on improving FOIA processing, such as document searches, reviews, and consultation between offices.

The OIP working group could complement the efforts of the Office of Government Information Services (OGIS) within the National Archives and Records Administration. OGIS, which was created in 2007 by the OPEN Government Act, has focused on improving the experience of FOIA requestors. As a result, OGIS has developed a set of [best practices](#) for agencies to follow in their FOIA implementation, most recently published in February. Many of the best practices involve more effectively using technology to expand proactive disclosure and improve customer service.

The OGIS best practices include:

- Establishing categories of records that can be proactively disclosed regularly
- Posting online documents that have been released under FOIA
- Posting a case log online that allows requesters to search by tracking number to see their status
- Posting more information online about the agency's FOIA process, such as the agency's FOIA regulations, contact information for the agency's public liaison, and information about the requestor services offered by OGIS
- Communicating with requesters by e-mail or phone where it would be more efficient than mail

In addition, the administration has repeatedly emphasized the importance of proactive disclosure. For example, in March, the White House [announced](#) that it would require agencies to post their staff directories online, as well as their congressional testimony and reports to Congress. Unfortunately, a July [audit](#) by OpenTheGovernment.org found that most agencies had not yet done so.

Finally, the administration's in-progress [reform of federal websites policy](#) could support improvements. In August, the White House [asked for feedback](#) on revising a 2004 Office of Management and Budget (OMB) memo that establishes information to be included on federal websites. In response, OMB Watch [recommended](#) significantly expanding the categories of information to be disclosed from those currently listed in the memo. OMB Watch's comments also recommended that agencies allow the public to submit and track FOIA requests, and to receive responses, online.

Further recommendations

The OIP working group should solicit ideas on improving the FOIA system from the public. In addition, the OIP working group should consult with the intergovernmental Open Government Working Group.

In addition to developing short-term guidance to agencies, the OIP working group should address the longer-term question of how IT systems facilitate or impede FOIA. In [recent comments](#) on the administration's Open Government Partnership national plan, OMB Watch called for agencies to consider full-circle transparency, including responding to FOIA requests, in making IT investments. More thoughtful planning up front in the design of IT systems could

save enormous amounts of staff time if systems were designed with a presumption of automatic disclosure. The OIP working group should begin to consider this topic, along with the Federal Chief Information Officers Council and the Federal Records Council. With a good, long-term IT strategy, the effectiveness and efficiency of the FOIA system could easily be transformed.

Agencies should comply with the OGIS best practices. Additionally, agencies should revise their FOIA regulations to embrace greater use of technology to improve customer service and expand proactive disclosure.

Finally, OIP should update its reporting guidelines to agencies in order to better assess the use of technology in the FOIA system, including compliance with the OGIS best practices.

Federal Agencies Release Retrospective Review Plans

On Aug. 23, federal agencies released their final plans for conducting retrospective reviews of regulations as directed by a January executive order from President Obama. Overall, the final plans closely reflect the preliminary plans released by agencies in May. Agencies stuck to their missions and did not cave to political or industry pressure to undermine their responsibilities to establish and enforce standards to protect the public.

The release of final plans for federal agencies' retrospective reviews of rules is the culmination of eight months of work. The process began with Obama's Jan. 18 Executive Order 13563, "Improving Regulation and Regulatory Review" ([E.O. 13563](#)), which instructed federal agencies to develop plans for the ongoing review of existing regulations to identify rules that are "outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them."

On May 26, 30 executive branch agencies submitted draft plans that reflected internal assessments of rules that might need to be revisited, along with suggestions from the public about the regulations that should be reviewed. The four independent agencies that submitted preliminary plans in May (the National Labor Relations Board, the Railroad Retirement Board, the Surface Transportation Board, and the Office Thrift Supervision) did not publish final versions in August. These and all other independent agencies are expected to release plans in November. The Securities and Exchange Commission (SEC) announced Sept. 6 that it is accepting public comment through Oct. 6 on its plan to conduct retrospective reviews.

The plans of the 26 federal agencies that report directly to the president contain the list of rules that will be revised in accordance with the executive order, as well as descriptions of how the agencies intend to incorporate ongoing retrospective review processes into their administrative procedures. Many of the agencies found inefficiencies in paperwork submission procedures, approval processes, or outdated technology requirements that can be fixed through minor changes to existing regulations. Others found that better coordination between departments or among agencies could eliminate redundancies and streamline procedures.

In finalizing their plans, some agencies integrated specific cost savings and burden-reduction benefits in their estimates of overall savings. Others added or subtracted rules to be reviewed. Many agencies also added information about the results of their requests for public comment. Most of these changes can be traced to a June 14 Office of Information and Regulatory Affairs (OIRA) [memorandum](#) that provided guidelines for what should be part of the plans. In the memorandum, agencies were encouraged to include "specific reforms and initiatives that will significantly reduce existing regulatory burdens and promote economic growth and job creation." The memo also reiterates the importance of public participation and requests that agencies include cost savings and burden reduction estimates and timelines for implementation of the changes in their plans.

OMB Watch reviewed the plans produced by six agencies that are most commonly involved in protecting public health and safety: the U.S. Environmental Protection Agency (EPA), the Food and Drug Administration (FDA) (in the Department of Health and Human Services (HHS)), the U.S. Department of Agriculture (USDA), the Department of the Interior (DOI), the Department of Labor (DOL), and the Department of Transportation (DOT). The plans were reviewed under various criteria including their impacts on health and safety protections, public participation, and transparency. (See our [webpage](#) for highlights, detailed analyses of three plans (EPA, FDA, and DOL), and background materials.)

Impact on Health and Safety Protections

Given industry pressure for deregulation and the fact that E.O. 13563 and subsequent guidance stressed cost savings and reducing paperwork requirements for regulated entities, the public interest community was concerned that the look-back process would have a chilling effect on agencies and cause them to repeal or weaken health and safety regulations. However, the analysis suggests that agencies worked to protect their primary missions while looking for cost savings.

For example, the HHS plan states, "This Department has a mission and responsibility to protect public health and safety and this mission and responsibility must take priority. It is only by maintaining a robust and healthy workforce and citizenry that the nation's economy will grow and prosper. This Department will continue to be sensitive to the need to promote the economic health of the nation without sacrificing the health and welfare of the American people."

However, the effects of some of the regulatory changes may not be clear for many years. Although agencies listed the rules that they will be revising, and in some cases estimated the effects the changes will have on industry and the public, the specific changes intended were not always made clear. For example, many agencies indicated they will reduce paperwork requirements by switching to electronic reporting. This seems like a reasonable, efficient change, but if the electronic reporting system does not collect all of the same information as the current system, it could deprive regulators and the public of vital industry data.

Public Participation

OIRA's guidance indicated that agencies should seek public input on specific rules to be reviewed and on the retrospective review process. Of the agencies analyzed, all six published notices in the *Federal Register* requesting public comment on the reviews. All except USDA had two separate comment periods: one prior to the release of the preliminary plan to suggest rules to be included and one after the preliminary release, during which the public was encouraged to comment on both the rules proposed for review and on the integration of a periodic retrospective review into agency procedures.

Each agency had its own approach to requesting public input, with mixed results. EPA had the longest comment period – a total of 77 days over two comment periods – and received more than 800 responses. USDA had the shortest public participation window, only accepting comments in the 30 days before the preliminary plan was released. Nevertheless, USDA received the most comments (about 1,100). Conversely, DOI, which accepted comments both before and after the release of the preliminary plan, for a total of 61 days, received suggestions from only about 40 commenters.

In addition to using *Federal Register* notices, some agencies reached out to the public in other ways. EPA held twenty public meetings and listening sessions before the release of its draft look-back plan. DOT held one meeting that participants could attend in person, over the Internet, or by phone. DOT and DOL also created interactive websites through Ideascale, a program similar to a message board or comment section of a blog that allows participants to post suggestions, respond to others' posts, and "agree" or "disagree" with submissions.

Inclusion of Public Suggestions

Public input is only useful if the agencies incorporate the suggestions into their plans. As with the rest of the review process, each agency took a different approach to including and reacting to public comments. DOT attached an appendix to its plan that listed every comment it received. For each rule that a commenter suggested revisiting, DOT provided an explanation for why it was or was not including it in the retrospective review. Other agencies, such as FDA, also had clear descriptions of comments and explanations for action or inaction where appropriate. The Food Safety and Inspection Service (FSIS) in USDA and DOI, on the other hand, summarized common suggestions from the public but did not explain why certain rules were selected for review while others were not.

The vast majority of comments were from industry members and associations. The industry comments tended to recommend two types of revisions: eliminating or easing regulations they saw as burdensome and standardizing or clarifying rules in which compliance was redundant or confusing.

The Institute for Policy Integrity at the New York University School of Law submitted comments to both EPA and DOT. The authors suggested that the retrospective review process should be used to identify lapses in regulation and cautioned that instigating reviews based on the "extent

of public complaints," one of DOT's criteria for determining reviews, could lead to agencies caving to the demands of special interests instead of creating good policies.

Continuing Concerns

Despite certain agencies' efforts to make as much information as possible available to the public, significant parts of the review process still lacked transparency. Notably, the E.O. and subsequent guidance specifically asked agencies to list rules to be "modified, streamlined, expanded, or repealed." None of the plans analyzed included specific breakdowns of which rules fell into which categories. In addition, agencies often wrote vague and overly technical descriptions of the proposed revisions to rules. As a result, the full impact of the retrospective review process will not become clear until the scheduled revisions are completed.

Despite instructions that the reviews should cover only "existing significant regulations," many agencies included proposed rules in the review process. Approximately one of every four rules in the plans of DOL, DOI, and FDA were in the proposal stage. While DOI and FDA acknowledge the inclusion of proposals in their plans, the Labor "Scope of Plan" section incorrectly states that the reviews will only include existing regulations.

The inclusion of these proposed rules in the review process is problematic because the purpose was to find inefficiencies in the existing regulatory system, not to allow special interests to have another opportunity to influence the rulemaking process or cause delay in the implementation of new safeguards.

Creating an Ongoing Retrospective Review Process

In addition to this initial retrospective review, the executive order directed agencies to set procedures for the periodic review of existing rules. The Regulatory Flexibility Act (RFA) already requires agencies to review all rules that have a "significant economic effect upon a substantial number" of small businesses every 10 years. During an RFA review, the agency must consider whether or not the rule is necessary, public complaints about the rule, the complexity of the regulation, whether it conflicts with or duplicates other federal or state regulations, and the extent to which the climate (technology, economic conditions, etc.) of the regulated entities has changed since the rule was last revised.

To comply with the RFA, the Small Business Regulatory Enforcement Fairness Act, and Executive Order 12866 on regulatory review, most agencies have regulatory review procedures in place. Agencies also annually list the rules they intend to review in the fall regulatory agenda. Most of the final plans stated that the retrospective review process demanded by E.O. 13563 will be integrated into the agency's existing system. For example, DOI requires each bureau within the agency to review every section of the Code of Federal Regulations under its purview every five years. In order to incorporate a retrospective review into the larger review process, DOI is adding a requirement that each bureau include a retrospective review of one major rule in its regulatory agenda each year.

This approach seems to be a good compromise. With so many existing review requirements already in place, imposing additional backward-looking review demands on agencies could divert dwindling agency resources from addressing new health, safety, and environmental challenges; from completing rules to implement existing laws; or from critical enforcement activities.

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Obama's Deficit Reduction Plan Has Room for Improvement

The nation is less than two months away from what could be a seminal moment in its fiscal history. In late November, the new "[Super Committee](#)," formed by the recent debt ceiling deal, will release its set of recommendations to cut the federal budget deficit by \$1.2 trillion. In an effort to influence the hectic debate the committee's recommendations are sure to start, President Obama released on Sept. 19 [a \\$3.3 trillion deficit reduction plan](#) as a package of recommendations for the committee to adopt.

While the president's recommendations are probably more progressive than any plan the committee will produce, they leave room for improvement, especially on the revenue side. The president's recommendations include [28 separate tax provisions](#), totaling \$1.6 trillion, with many only accruing a few billion dollars over the next ten years.

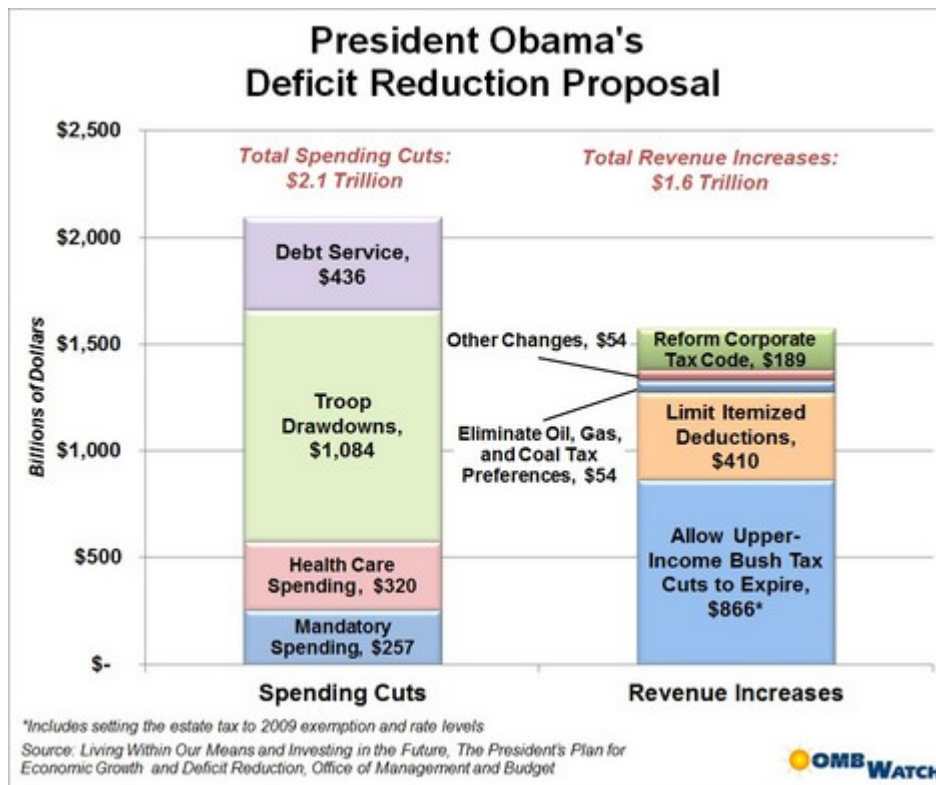
By far the largest tax provision in Obama's plan is the expiration of the upper-income Bush tax cuts (including returning the estate tax to 2009 levels). This reduces the deficit by \$866 billion over ten years, more than half of the total revenue that the plan would collect. The president's

proposal would return the top two tax brackets to their [late-1990s levels](#) of 36 percent and 39.6 percent, an increase of about three percentage points for each bracket. These changes would only affect families earning about \$250,000 per year or more. The middle-income tax cuts, however, would remain untouched, making the entire tax code more progressive overnight.

Another quarter of the president's revenue comes from limiting the benefit of itemized deductions on upper-income taxpayers. This is a broad change that would affect many well defended tax breaks, including the home mortgage interest deduction, the charitable giving deduction, and certain medical expenses, but without specifically targeting any particular item. Currently, the deductions are worth whatever a taxpayer's top marginal tax rate is, since itemized deductions simply lower a taxpayer's taxable income. (For example, someone in the 35 percent bracket who gives \$100 to her favorite charity would see a \$35 tax benefit, whereas someone in the 28 percent bracket would see a \$28 benefit.). The recommendations limit the benefit of these deductions to 28 percent of a taxpayer's income for taxpayers in the top two brackets, essentially "leveling off" the benefit after the third-highest bracket, but it would not cap the total amount of itemized deductions a taxpayer can claim. In other words, taxpayers who currently see a deduction of 35 cents of every donated dollar would receive only a 28-cent benefit, or a 20 percent decrease. This change, while seemingly small, would bring in \$410 billion over the next ten years.

The president's recommendations generate another \$110 billion over ten years by closing three complicated corporate tax loopholes. [Two of the loopholes](#), the so-called "last-in, first out" (LIFO) and "lower-of-cost-or-market" (LCM) loopholes, are accounting maneuvers that businesses can use to game the costs of their inventories in order to inflate their deductions. By closing these two loopholes, the president's plan would save about \$60 billion over ten years. The third loophole involves the foreign tax credit, which Obama proposes to determine on a ["pooling" basis](#), or based on the consolidated earnings and profits and foreign taxes of all of a company's foreign subsidiaries. Changing the credit to a pooling basis would save the nation about \$53 billion over the next decade. (Note that these three provisions are a subset of the green bar labeled "Reform Corporate Tax Code" in the accompanying chart.)

Notably absent from the list of revenue provisions is reference to the "[Buffett Rule](#)," which is named after billionaire financier Warren Buffett and which holds that households making over \$1 million a year should not pay a smaller share of their income in taxes than middle-class families. While this rule has received a great deal of attention in the news, the president's plan only includes this as a principle, not a specific policy provision. Instead, Obama hopes that his changes will help make the tax system fairer and closer to complying with the Buffett Rule.



(Click to enlarge)

While a great deal of the president's deficit reduction comes from tax increases on high-income earners, Obama's plan would also cut \$1.7 trillion in spending. The plan assumes \$1.1 trillion in savings from troop reductions in Iraq and Afghanistan and \$600 billion in spending reductions from almost 60 different health care and mandatory program policy changes. Of the \$600 billion in domestic spending cuts, the president recommends saving some \$257 billion from assorted mandatory programs, such as eliminating direct payments to farmers (\$30 billion over ten years), and another \$320 billion would come from health care programs, most prominently Medicare and Medicaid. About \$135 billion of the health savings comes from allowing Medicare Part D low-income beneficiaries to benefit from the same rebates Medicaid receives for name-brand and generic drugs.

Although a good portion of the health care savings avoids reducing benefits, the billions of dollars in benefit reductions that are proposed would impact low-income families and retirees. The Super Committee could mitigate these impacts by generating a plan that produces additional revenues instead of proposing cuts. One popular alternative is a financial speculation tax, which would charge a small fee on each stock transaction in an effort to discourage short-term, high-volume speculation. Many other countries, even some with flourishing financial centers such as Great Britain, have a similar tax, and the United States had one until the late 1960s. Two polls from 2010 suggest that a majority of Americans [would support some kind](#) of a financial speculation tax.

The organization Our Fiscal Security estimated in 2010 that a 0.5 percent tax per transaction would raise about [\\$77 billion per year](#). Others have estimated a broad financial speculation tax could raise \$130 billion per year. Over ten years, a financial speculation tax would decrease the deficit far more than any of the mandatory savings proposed in the president's plan, and the tax has the added incentive of having a positive policy outcome (less volatility in trading).

Taxing capital gains and dividends as ordinary income could be another source of revenue. Currently, these forms of income are taxed at a lower rate than some wages, creating preferential treatment for a source of income derived from wealth. By repealing the 15 percent rate for capital gains and dividends, and instead taxing it according to the normal income tax rates, the nation could bring in [\\$918 billion](#) over the next decade while making the tax code fairer.

The president could also recommend instituting a wealth surtax instead of the mandatory cuts. A wealth surtax, such as a tax bracket for millionaires, would make the tax code more progressive. The past decade has seen [a marked increase in wealth in the upper reaches of society](#), while low- and middle-class wages have stagnated. Creating a wealth surtax could raise as much as [\\$750 billion in the next ten years](#), ensuring that any deficit reduction is balanced and fair.

Any of these three options would make the president's recommendations to the Super Committee more progressive. They would more than replace the mandatory and health care cuts in Obama's current plan. The extra funding could even help undo some of the harmful discretionary cuts agreed to as part of the recent debt ceiling deal.

Study Shows Private Contractors Usually Cost More than Public Employees

Conventional wisdom in Washington dictates that the private sector can always provide services at a lower cost than the federal government. A [new study](#) from the [Project On Government Oversight](#) (POGO), however, turns conventional wisdom on its head, demonstrating that the government rarely reaps the purported benefits of lower costs through the outsourcing of service work. In fact, POGO found that, on average, the government pays service contractors more than 1.8 times the amount it pays federal employees with the same education, doing the same job and performing similar tasks.

From the beginning of the Republic, politicians have debated about the size of government. As the federal government became a larger, more expansive social welfare institution, President Dwight Eisenhower became the first modern president to establish a policy of outsourcing federal services if a commercial equivalent was available for less.

In the 1980s, President Ronald Reagan, guided by his conservative ideology, expanded the outsourcing of government services. The approach reached its zenith with the "[yellow pages test](#)," prescribing that the government contract out any service found in the phone book. Since

the Reagan administration, Republican and Democratic presidents alike have promised to reduce duplication and inefficiencies in government, which is often code for reducing the size of the federal workforce.

As the total U.S. population has grown, the number of federal civilian workers as a share of the population [has declined](#). However, since work still needs to be done, the government has turned to contractors to perform public work, creating an expensive and expanding "shadow government." POGO notes that the size of the federal workforce has remained relatively constant over the last decade at about 2.5 million, but "the contractor workforce has increased ... from an estimated 4.4 million to 7.6 million in 2005." Additionally, the government now spends over \$320 billion on service contracts annually, representing roughly one-quarter of all discretionary spending.

Conservatives have argued that "privatizing" public sector work will save costs because of the "overgenerous" pay and "lavish" benefits of public employees. This argument, as POGO indicates, relies "on the theory that the government pays [prevailing] private sector compensation rates when it outsources services."

As POGO's study reveals, this is rarely the case. Rather, service contractors charge more than twice the going private sector compensation rate for comparable tasks; to be more specific, private contractors are, on average, paid more than 1.8 times the amount the federal government pays its own employees to perform similar functions.

POGO's study examined 35 different occupational classifications and compared the "full costs of federal employee annual compensation" with the "average annual contractor billing rates" for those tasks. In 33 out of the 35 classifications, service contractors charged more than it would cost for the federal government to perform the task in-house; in the most egregious examples, service contractors charged more than three times the cost of a federal employee to perform a similar task in one case and almost five times as much in another. In over a third of the jobs studied, service contractors charged the government more than twice what federal employees earned to perform similar work.

The occupational classifications [span](#) routine services like grounds keeping and quality assurance to functions like budget analysis and language specialization – "frequently used to perform intelligence functions" – that can fall between legitimate work the government can outsource and [inherently governmental tasks](#) that only a federal employee should perform.

POGO limited its investigation to the General Service Administration's (GSA) 35 occupational classifications because the federal government does not provide accurate data on "contractor employees who perform government functions at a particular department or agency at any given time."

POGO calls on Congress to require federal agencies to use a standard coding system when awarding contracts, "the collection, reporting, and oversight of life-cycle costs associated with government services," and "greater transparency and improved pricing on GSA Schedule service

contracts." Lack of transparency will continue to limit the ability of the government and the public to determine how much money the government saves or wastes through outsourcing, or to correct any excessive costs incurred. However, the report does not make the case that the federal government should never utilize contractors to perform the examined functions. POGO's investigation simply found that *on average*, federal employees perform the vast majority of the given tasks for less than a comparable contractor employee.

In addition to collecting and reporting lifecycle costs and greater accuracy and transparency of service contractor numbers, Congress should eventually require the posting of all federal contracts online – with appropriate redactions of any proprietary information – and the creation of a more accessible [Federal Awardee Performance and Integrity Information System](#) (FAPIIS), which provides contractor performance information. While the cost of contractor services and the raw numbers of contractors are important to determining whether the government is getting value for its dollars, the public deserves a full accounting of what contractors are getting paid and how they perform.

This is particularly true today, as the nation debates how to reduce government spending. Members of the [Super Committee](#) should think about reducing the amount spent on service contracts before considering funding cuts for important public programs that help keep Americans safe and healthy, like food inspection, child nutrition, and low-income housing.

Administration and Global Partners Forge Ahead with Open Government Agenda

The launch of the [Open Government Partnership](#) (OGP) on Sept. 20 marks a new era for open government in the United States and abroad. The national action plans released by the OGP founding countries offer the potential to create more responsive governments that better serve the needs and aspirations of their peoples.

President Obama envisioned the partnership a year ago in his address to the United Nations, when he [called on countries](#) to make "specific commitments to promote transparency; to fight corruption; to energize civic engagement; [and] to leverage new technologies." The initiative was introduced to the world as the OGP [in July](#), with seven partner countries agreeing to develop plans to strengthen open government in their nations.

At the formal OGP launch on Sept. 20, the U.S. and its seven partners released their plans and endorsed a joint [Open Government Declaration](#) outlining their principles. In addition, 38 additional countries joined the partnership and will endorse the declaration and release their own plans in March 2012.

Obama Administration Embraces Open Government

The Obama administration's leadership in the partnership reaffirms the administration's commitment to open government. In his [remarks at the inaugural OGP event](#), Obama called

open government "the essence of democracy." Obama also noted the partnership in his [address to the UN](#) the following day.

The [declaration](#) signed by the U.S. and partner countries states, "We accept responsibility for seizing this moment to strengthen our commitments to promote transparency, fight corruption, empower citizens, and harness the power of new technologies to make government more effective and accountable."

New U.S. Commitments

The administration's plan laid out specific goals and commitments for 26 issues. It included a number of important new commitments that will improve open government, such as:

- *Improving fiscal transparency*, including publishing more information on revenue the government receives from companies extracting natural resources and on foreign aid paid by the U.S. to developing countries
- *Expanding the use of technology in Freedom of Information Act (FOIA) administration* in order to [build a 21st century FOIA system](#)
- *Reforming the failing records management system*, which too often results in delays in providing information to the public or the improper loss or destruction of information
- *Strengthening citizen engagement*, including redesigning [Regulations.gov](#), launching the [ExpertNet system](#), and developing best practices for agencies to follow in public participation
- *Increasing access to data* by launching new user-oriented communities on [Data.gov](#) and establishing guidelines for greater sharing of scientific data

The plan also includes the continuation of several important initiatives previously announced by the administration, such as the ["We the People"](#) petition platform; the Government Accountability and Transparency Board, which is developing recommendations to improve spending transparency; expanding access to regulatory compliance information; publishing more information to help consumers make informed decisions; and making federal websites more useful for the public.

The open government community praised the plan. Katherine McFate, President and CEO of OMB Watch, [said in a statement](#), "This bold, ambitious plan will push the U.S. toward fully realizing the president's goal of making our national government as transparent as possible and fully open to citizens."

International Commitments

The action plans for the other seven founding OGP countries also contained innovative and bold commitments that help raise the bar for open and accountable government programs. For instance, Brazil, the co-chair of the OGP along with the U.S., committed to holding a national conference on transparency and participation in 2012 to highlight the issues and gather broader input on additional steps. Brazil also plans to establish a pro-ethics company registry to give

visibility to those corporations that invest in corruption prevention. The United Kingdom's plan included a commitment to create sector-specific Transparency Boards to challenge government to make more data public. The U.K. also agreed to development of a central data warehouse, similar to the U.S.'s Data.gov.

Improving citizen participation was a major focus of other countries such as the Philippines, which included commitments to create an empowerment fund to support civil society groups to organize communities to engage in implementation and oversight of poverty reduction programs. The country also pledged to increase the level of consultation with civil society organizations on the government budget by expanding its participatory budgeting process to 12 departments and six government corporations by the end of 2012. The Norway plan emphasized improving opportunities for women to participate in civic life. Among the commitments the country pledged to address are equal pay for equal work, ensuring women apply for top posts in the private sector, and tackling gender stereotypes through schools, the labor market, and the media.

Next Steps

Having committed to these advances, the Obama administration will now turn to implementing them. The U.S. plan contained few details on the vehicles or timeline for accomplishing each goal. Under the OGP [roadmap for participation](#), the administration will need to continue to consult with the public as it implements the plan.

The administration is also required to report on progress toward realizing the plan within one year. In addition to the self-assessment report, the partnership will also publish an independent assessment of the administration's progress, written by civil society groups.

Improving the Public's Right to Know at Rio+20

On Sept. 2, 30 U.S. public interest groups joined civil society organizations around the globe in demanding that their national governments [improve access](#) to environmental and public health information and increase public participation in environmental policymaking. These organizations are calling on their governments to make such commitments at the United Nations Conference on Sustainable Development (UNCSD) in order for people around the world to be able to effectively use environmental information to protect themselves, their families, and their communities from pollution, toxic chemicals, and other hazards.

The UNCSD will convene in Rio de Janeiro, Brazil, in June 2012 to discuss the institutional framework for sustainable development and how to build green economies. Rio+20, as the conference is being called, is a follow-up to the 1992 Rio Conference on Environment and Development. At the 1992 conference, 178 governments confirmed that active involvement and participation of citizens and non-state actors at all levels was a prerequisite for successful environmental policies.

Although public access to environmental information has improved over the past two decades, in many countries, citizens – especially the poor and marginalized – still lack adequate information to protect themselves, their families, and their communities from environmental harm. Thus, the need for Rio+20 is clear, and participating nations must be prepared to take additional steps to address the shortcomings in people's environmental right to know that still exist today.

Three Demands (3Ds) Campaign for Rio+20

To prepare for Rio+20, [The Access Initiative](#), a global network that promotes access to information, participation, and justice in environmental issues, launched a campaign to encourage public interest organizations from various countries to present their governments with a list of three next steps to improve environmental decision making. The focus of the [Three Demands, or "3Ds", Campaign](#) is to improve the thrust and implementation of [Principle 10 of the 1992 Rio Declaration](#), which asserts:

Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

In other words, in 1992, the framers of Principle 10 recognized the fundamental truth that better environmental decisions are made when all interested citizens are fully informed and involved. Furthermore, information on environmental issues should come from all branches of government, and citizens should be able to take environmental problems to administrative agencies and the courts to be resolved.

So far, organizations from [26 countries](#) have each generated and delivered their three demands to improve access and participation in environmental decision making. The most frequent demands made by public interest organizations in these countries include:

- Create regional conventions on Principle 10 in various areas around the world. Many groups, especially in Latin America, felt that international agreements with neighboring countries would help fortify weak enforcement of their existing requirements to grant access and encourage participation.
- Improve access to information and public participation in environmental assessment practices. For instance, Indian groups demanded that the public be consulted earlier on environmental impact assessments of proposed projects and urged that the public consultation process be brought to other environmental issues such as forest conservation, biodiversity, and clean air and water.
- Establish broad legal reforms to ensure access to information, including stronger right-to-know laws, freedom of information protections, and more.

- Create central government databases for environmental data.
- Form environmental courts to settle environmental cases more quickly and less expensively.
- Implement citizen enforcement clauses of major environmental laws. For example, the Jamaican demands included a call for legislation that would allow citizens to take direct legal action against polluters, even if those polluters were government facilities.

The Three U.S. Demands

While the U.S. has made more progress on environmental protection and access to information than many other countries, the system is far from perfect, and many communities still struggle to understand and engage in the environmental issues impacting their air, water, and land. To address these problems, the 30 U.S. public interest groups, including OMB Watch, submitted three requests that largely mirrored themes and recommendations advanced in the environmental right-to-know report, [*An Agenda to Strengthen Our Right to Know*](#), which was endorsed by more than 100 organizations and released on May 10.

Specifically, the organizations requested that the federal government:

- Initiate a process to review and evaluate environmental and public health information holdings in every major federal agency.
- Identify and adopt a set of best practices on public participation for federal agencies to follow. Once developed, these documents and web-based information services should be made publicly available by posting on agency websites, Regulations.gov, and any other venue that will promote widespread availability of the information.
- Direct federal agencies to develop and implement a component of their open government plans that focuses on priorities for regional and state offices. The component should establish the most important open government issues and set specific goals for the regional or state offices to complete milestones, with target deadlines included.

Next Steps

The UN Second Preparatory Committee is collecting comments from countries, organizing partners, and the public as it prepares for Rio+20. The compiled inputs will be used in the development of the initial version, or "zero document," of the conference's outcome document. Comments on expectations of the conference, reviews of existing proposals the conference will consider, how to close the implementation gap, and possible mechanisms for cooperation can be submitted [online](#) and are due by Nov. 1. The "zero document" is expected to be released to the public in January 2012.

Prior to the November deadline, U.S. groups will hold meetings with the U.S. State Department, U.S. Environmental Protection Agency, and the White House to encourage the United States government to lead by example.

On the international level, the Access Initiative first presented results of the 3Ds campaign at the UN Department of Public Information's 64th NGO (non-governmental organization) Conference, which occurred Sept. 3-5 in Bonn, Germany. The goal of the conference was to provide public interest input on sustainable development goals for the Rio Conference. By the end of the conference, 1,500 NGOs and other stakeholders agreed to a [Declaration](#), which will be submitted to the zero document process by the November deadline. The declaration calls on Rio+20 to establish an international convention that deals specifically with access to information, public participation, and environmental justice.

Small Business Owners: Clean Energy Economy Will Increase Prosperity

A poll of small business owners conducted by the Small Business Majority reveals strong support for clean energy solutions as one important element leading to innovation, economic growth, and job creation. Huge majorities support "bold" environmental initiatives to increase fuel efficiency and support the U.S. Environmental Protection Agency's (EPA) regulation of carbon emissions.

The poll was conducted in July and released on Sept. 20. The report on the findings, [*Small Business Owners Believe National Standards Supporting Energy Innovation Will Increase Prosperity for Small Firms*](#), illustrates the clear disconnect between the Capitol Hill rhetoric about business support for reducing regulations and the real problems facing small business owners. Among the notable findings:

- An overwhelming majority, 86 percent, "believe Washington doesn't understand how small business works and doesn't provide them help."
- "Economic uncertainty and rising costs are hurting small business more than taxes and regulation." Only 13 percent agree with the notion that regulations were the biggest problem for small businesses, while only 23 percent think that taxes are the main problem. Instead, the real problems are economic uncertainty (46 percent) and the rising costs of doing business (43 percent).
- Innovation and efficiency are the keys to small business survival. Eighty-seven percent of respondents believe that innovation, fuel efficiency, and energy efficiency are good ways to stimulate economic growth and create prosperity. The poll asked specific questions about fuel efficiency and changes in the automotive industry and by wide margins, the respondents believe the government and the auto industry should be doing more to increase efficiency and drive innovation.

Reinforcing the points they made in the survey, many business owners are countering rising costs by embracing energy efficiency with actions such as installing efficient lighting, reusing materials, and more.

The report comes on the heels of other recent reports that debunk the political rhetoric about the causes of the economic problems the country is facing. For example, the National

Association for Business Economics (NABE) found in an [August survey](#) that a large majority of business economists have a positive perspective on the regulatory environment, contradicting the overheated, anti-regulatory rhetoric coming from Big Business lobbyists.

According to these NABE respondents, many of whom work hands-on in the business world, the watchword "uncertainty," when used by many businesses, refers to anxieties over the weak economy, not so-called "regulatory uncertainty." Nearly 75 percent of survey respondents said that "once the economy starts to improve, such anxieties will go away." Eighty percent of survey respondents felt that the current regulatory environment was "good" for American businesses and the overall economy. NABE also noted, "The majority of survey respondents indicated that while uncertainty might be a concern, it is not a major one."

The Political Economy Research Institute (PERI), affiliated with the University of Massachusetts, Amherst, in conjunction with CERES, published in February a [report](#) analyzing the job creation impact of two new EPA clean air rules. (CERES is a coalition of investors, environmental groups, and other public interest organizations that invest in sustainable economy projects.) The two rules PERI examines in the analysis are the Clean Air Transport Rule (finalized in July as the Cross-State Air Pollution Rule) and the National Emissions Standards for Hazardous Air Pollutants for Utility Boilers (known as the "Utility MACT" rule).

According to the report, investments in pollution control and generating capacity could result in nearly 1.5 million jobs over five years, from 2010 to 2015. The report breaks down by 36 eastern states the numbers of jobs in new construction, operating and maintenance, and from retirements. The economic benefits from these jobs are substantial; the report does not include calculations of the benefits from better health and cleaner air.

A Sept. 19 report by the Economic Policy Institute (EPI), entitled [*The Combined Effect of the Obama EPA Rules*](#), also debunks anti-regulatory rhetoric by showing that new EPA rules "will be of tremendous benefit to public health, and the combined compliance cost of the rules – both finalized and proposed – amounts to only about 0.1 percent of the economy, and thus are not a significant factor in the overall economy's direction," according to EPI's [press release](#). The report analyzes several proposed rules targeted by the House in coming weeks and, as EPI showed in earlier reports, the benefits of these rules far outweigh the costs imposed on polluting industries.

The evidence is clear: the American people do not have to choose between job creation and protecting their families and communities from environmental, workplace, and consumer product hazards. American businesses can adapt to new standards; they've been doing it for decades. They know they have to continually evolve to survive and grow. Attempts by Congress to dismantle the regulatory system will do nothing to create jobs now and would very likely cost American businesses the jobs and industries of the future.

Time to Take Regulations Seriously: How Legislative Sleight-of-Hand is Being Used to Undermine Public Protections

When the 112th Congress convened, it agreed to a [rule](#) that, barring emergencies, no bill would be voted on until its text had been publicly available for three days. Recently, however, anti-regulatory legislators have become adept at using amendments and seemingly innocuous provisions to attempt to undercut long-standing safeguards without providing sufficient time for debate and discussion of the implications of their actions. These tactics threaten public protections and the legislative process itself.

The Transparency in Regulatory Analysis of Impacts on the Nation (TRAIN) Act, passed by the House on Sept. 23, would require that an interagency panel of non-experts review U.S. Environmental Protection Agency (EPA) regulations before they are issued. The panel would be asked to consider costs of proposed regulations and issue a report. The panel's report amounts to nothing more than bureaucratic red tape: not only do EPA and the Office of Management and Budget (OMB) already perform this function, but the TRAIN panel's report would necessarily be less useful because the panel is directed to consider cumulative costs of proposed and final regulations, a highly speculative analysis that would serve only to artificially inflate costs. This type of analysis stacks the deck against issuing safeguards in a process based on net benefits.

The bill would also eliminate deadlines for action on two rules – the Mercury and Air Toxics Standards and the Cross-State Air Pollution Rule (CSAPR) – both of which are required by the Clean Air Act (CAA). The Mercury and Air Toxics Standards, which is a proposed rule, restricts the amount of mercury and toxins that utilities can emit. The CSAPR, which has been finalized by EPA, limits the amount of air pollution that crosses state lines.

Last-Minute Floor Amendments Avoid Debate

Not satisfied with the anti-regulatory slant of the TRAIN Act, Reps. Ed Whitfield (R-KY) and Bob Latta (R-OH) each introduced amendments that would make even greater changes to the CAA and the current regulatory process. The House approved both the Whitfield and Latta amendments when passing the TRAIN Act, providing only 10 minutes of floor debate for each.

The [Whitfield amendment](#) negates the effect of both the Mercury and Air Toxics Standards and the CSAPR. The amendment requires EPA to set standards for air toxics emissions based on a complicated formula that produces an "in the aggregate" standard for all toxic pollutants rather than separate standards for each pollutant. According to the Energy and Commerce Committee Democratic staff, "[t]his would require EPA to make completely subjective decisions about whether a plant that emits more carcinogens but less neurotoxins is better or worse performing than a plant that emits fewer carcinogens but more neurotoxins. There is no known methodology for making these decisions, which would be impossible to defend in court."

In short, the Whitfield amendment represents a fundamental shift in EPA policy – something that most members of the public think should be subject to debate and consideration. On Sept. 19, Education and Commerce Committee Ranking Member Henry Waxman (D-CA) and Energy

and Power Subcommittee Ranking Member Bobby Rush (D-IL) sent a [letter](#) to committee chairman Fred Upton (R-MI) and subcommittee chairman Whitfield that made this point. They specifically objected to Whitfield's floor amendment, which they called an "egregious abuse of process." The letter emphasized that the amendment "makes radical changes in the Clean Air Act provisions that address toxic air emissions . . . [that] have never been considered in hearings or debated in Committee." Because "[m]embers are being asked to vote on major changes to the Clean Air Act without any idea what they would do," Waxman and Rush asked the chairs to withdraw the amendment "from consideration and hold hearings on it, so that members and the public can understand the effect of [the] proposal before it is brought to a vote."

Latta's amendment requires EPA to consider feasibility and cost when setting National Ambient Air Quality Standards (NAAQS) for air pollutants. The Clean Air Act specifically prohibits such considerations, and the U.S. Supreme Court affirmed in 2001 that costs to polluters should not be considered when setting health-based air quality standards that are required to protect the public.

"The Latta amendment will reverse 40 years of clean air policy, allowing our national goals for clean air to be determined by corporate profits – not public health," Waxman [said](#). Like the Whitfield amendment, the Latta amendment comes without the honest debate commensurate with the seriousness of its effects. According to [Energy and Commerce Committee Democrats](#), "The process for consideration of the Latta amendment is as objectionable as its substance . . . This proposal has never been considered in hearings or debated in Committee. No legislative record exists to evaluate the amendment."

When "Study" and "Deadline Extension" Become Avoidance

Proponents of the TRAIN Act, like Rep. Rob Bishop (R-UT), [contend](#) that the bill requires additional study of EPA rules but does not actually stop or cut any regulation. These characterizations of the bill have been countered by opposition from public interest and environmental groups, members of the Senate, and even the White House. The Executive Office of the President released a White House [Statement of Administration Policy](#) on Sept. 21. "While the Administration strongly supports careful analysis of the economic effects of regulation," it said, "the approach taken in H.R. 2401 would slow or undermine important public health protections." The statement concluded that senior advisors would recommend a veto of H.R. 2401.

Like the TRAIN Act, the EPA Regulatory Relief Act of 2011 ([H.R. 2250](#)) and the Cement Sector Regulatory Relief Act of 2011 ([H.R. 2681](#)), passed through the House Energy and Commerce Committee during the week of Sept. 19, have been opposed on both substantive and procedural grounds. The bills' sponsors contend that they merely provide additional time for EPA to establish, and for industry to comply with, new emissions standards for boilers, incinerators, and cement plants. However, they would actually make substantial alterations to the Clean Air Act and EPA's long-standing practice for establishing emissions standards for hazardous air pollutants.

John Walke, the clean air director for the Natural Resources Defense Council (NRDC), denounced the sponsors' characterization of the bills' impacts in testimony given at a [Sept. 8 hearing](#) before the Energy and Commerce Committee. "Let me emphasize in the strongest possible terms that these bills are not mere 15 month delays of the rules as EPA itself has requested, as some have misrepresented the legislation. Instead the bills reflect the complete evisceration of the substantive standards for achieving reductions in toxic air pollution, coupled with the elimination of any statutory deadlines for EPA to re-issue standards to protect Americans."

Although the versions of H.R. 2250 and H.R. 2681 that were reported out of committee require that EPA issue the rules after the 15-month delay period, they retain the provisions making substantive changes to the CAA. Both bills would force EPA to impose the "least burdensome" regulatory alternative from a range of options, including less stringent work practice standards, even though section 112 of the act allows EPA to impose such standards only "in cases where it is not feasible to prescribe or enforce an emission standard" such as an achievable control technology standard. "These changes would radically distort the Clean Air Act's twenty-year approach to controlling toxic air pollution and would have enormous health impacts," Walke said.

When the committee [marked up](#) H.R. 2250 and H.R. 2681 on Sept. 20 and 21, Rep. John Dingell (D-MI) stated that the bills failed to meet the goals of having "good legislative process and good legislative product." Dingell urged the committee to recognize the need to proceed under the proper procedures before taking steps to alter the CAA, and to "ensure [that EPA] can function in a proper and transparent process." Rep. Joe Barton (R-TX), however, expressed confusion over the controversy around the bills, which he said were "basically extension[s] of compliance deadlines."

If the contentious debate in the House Energy and Commerce Committee is any indication, the current political climate surrounding regulations, especially environmental protections, may continue to test the integrity of the legislative and committee processes. The public expects and deserves a transparent and thorough discussion of the implications of any congressional action that would substantially alter an important statute like the Clean Air Act.

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Financial Taxes Can Raise Revenues, May Help Stabilize Markets

The congressional [Super Committee](#), tasked with forging a \$1.2 trillion deficit reduction package by Thanksgiving, is currently deliberating [on which revenues – if any – to raise](#) and to include in its plan. With Wall Street at the center of the 2008 economic collapse, the committee should look to a pair of revenue options that would fulfill the dual roles of addressing risks to the economy posed by Wall Street and raising much needed revenue: a financial speculation tax and a financial crisis responsibility fee on large financial institutions.

A financial transactions fee, or financial speculation tax, would affix a small fee to purchases and sales of certain financial products. The fee is based on the price of the product, and generally, the buyer and seller split the cost of the fee equally. The tax can focus on stock and stock options trading, or it can cover the vast array of financial transactions, including bonds, derivatives, foreign exchange, futures, and swaps trading.

Advocates of a financial transactions fee generally propose a tax of between 0.1 and 0.5 percent on stock and stock options trading, and much smaller taxes – between 0.002 and 0.005 percent – on other transactions. Taxing all transactions and taxing both sellers and buyers would produce a high-end estimate of \$1.3 trillion over 10 years, according to Dean Baker, founder of the Center for Economic and Policy Research. This tax on Wall Street would fill the aggregate gap between state budgets and state revenues across the country in 2012.

On the lower end, Rep. Peter DeFazio (D-OR) [introduced](#) the Let Wall Street Pay for the Restoration of Main Street Act in 2009. The bill would have imposed a 0.25 percent tax on stock transactions and a 0.02 percent tax on futures, swaps, and credit default swap transactions, excluding investments made by retirement accounts and mutual funds. It would also provide a credit to taxpayers for the first \$100,000 of stock transactions per year, helping to shield the middle class. These exemptions would have reduced the revenue raised by a third (\$100 billion a year rather than the \$130 billion from the Baker proposal). DeFazio proposed that half the funds be used for a Job Creation Reserve linked to transportation funding, and the other half for deficit reduction.

A financial transactions tax could also cut down on the amount of speculative trading that occurs and help stabilize financial markets. Over the last several decades, the financial sector – narrowly defined as security and commodity trading and investment banking – has accounted for [an ever-increasing share](#) of the private economy, and questionable transactions helped to drive the financial collapse of 2008. The immediate impact of a transactions tax would be to lower trading volumes in markets, thereby tamping down an inefficient use of resources, freeing them up to "be employed in a sector where [the resources] can have measurable economic benefit."

A financial transactions tax would also raise the cost of trading, making short-term trading, which serves little to no productive purpose, less profitable. This would force "actors in financial markets to focus on more long-term investment opportunities rather than opportunities for short-term gains," helping financial markets "more effectively allocate capital in ways that support growth" in the productive economy. What's more, technological advancements over the last few decades have made the transactions tax one of the easiest and cheapest taxes to collect. The United Kingdom's transactions tax, which costs 0.05 percent of revenue collected to manage, is thrifty compared to the administrative costs of the UK's income tax, which costs 0.7 percent of personal income tax collected.

A second tax on Wall Street – the financial crisis responsibility fee, or systematic risk fee – would apply to financial institutions with assets above \$50 billion. A 2010 Congressional Budget Office (CBO) [study](#) estimated that the tax would affect roughly 60 bank holding and insurance companies. Originally proposed by President Obama in his fiscal year (FY) 2011 [budget](#), the responsibility fee would apply a tax of 0.15 percent to the total liabilities of these financial institutions each year, less any banks' deposits assessed by the Federal Deposit Insurance Corporation (FDIC) and any insurance companies' insurance policy reserves.

Proposed by the president in the wake of the financial collapse and the use of public funds to rescue some of the nation's largest financial firms through the Troubled Asset Relief Program (TARP), the responsibility tax attempts to recoup taxpayer losses due to the bailout. The tax would run until the covered financial firms repay the costs associated with TARP – currently estimated at \$117 billion – likely taking about 12 years. The Office of Management and Budget (OMB) projected the responsibility fee to raise \$9 billion in 2015 and \$90 billion over 10 years.

The CBO observed that because the fee would represent "a small fraction of the rate charged on an average bank loan to businesses, which currently is in excess of 3 percent," the tax "would not have a significant impact on the stability of financial institutions or significantly alter the risk that government outlays will be needed to cover future losses." Also, "[b]ecause of its modest size, the fee would probably not have a measurable impact on" economic growth.

For these reasons, both financial taxes enjoy significant support within political and economic communities. Noted conservative economists Greg Mankiw (President George W. Bush's chair of the Council of Economic Advisers) and David Stockman (a director of OMB under President Ronald Reagan) [have supported](#) the responsibility tax. The transactions tax is also widely supported within the economics community; a 2009 [letter](#) calling on Congress to adopt the tax drew the signatures of over 200 highly respected economists. Moreover, nearly half of the deficit reduction plans released by nonprofits and think tanks over the last year in reaction to the president's fiscal commission included one or both of the taxes.

The public also supports both the speculation and crisis responsibility taxes. A January 2010 Lake Research poll [found](#) that 8-in-10 Americans supported a transactions tax. Similarly, the *Wall Street Journal* [reported](#) around the same time that nearly 6-in-10 voters supported a "responsibility fee" that would "discourage big bonus payouts and ensure big banks that caused the crisis [to] pay for the bailout."

Detractors of these financial taxes exist, however. Ken Rogoff, former chief economist at the International Monetary Fund (IMF), recently [opined](#) against a financial transactions tax for the European Union (EU), arguing that the tax would significantly reduce market liquidity with "no obvious decline in volatility" and "increase the cost of capital, ultimately lowering investment."

Baker [counters](#) that because "[c]omputerization and deregulation has led to a sharp decline in transactions costs over the last three decades," the small fees the EU is considering charging would only raise transactions costs and liquidity back to levels seen in the early to mid nineties.

Congress Should Streamline Budget Process

Along with all the attention the federal budget is receiving these days, the budget process itself is coming under greater scrutiny. Both the [House](#) and [Senate](#) budget committees held hearings recently to discuss how to reform the budget process. The panels featured former budget directors and academics, but curiously, there was little talk of fixing the immediate problem of budgetary gridlock.

The primary objective of federal budgeting is to ensure that national priorities, like education and food safety, are adequately funded. But in the recent House hearing, witnesses instead focused on inventing new ways to *restrict* funding, as if the purpose of the federal budget process is, first and foremost, to reduce the debt and deficit. The witnesses before both committees suggested that Congress should reform the budget process by placing arbitrary caps on federal spending and cutting mandatory spending.

In the Senate hearing, witnesses focused on moving to a two-year budgeting cycle. In principle, biennial budgeting would allow lawmakers to focus on budgeting for one year and then spend the second year performing oversight of federal programs. This seems unlikely.

Each budget would be subject to more intense political battles under biennial budgeting, as the stakes of victories and defeats would be doubled, with double the money on the table to fund programs for twice as long. Under such a process, there would be even less motivation to compromise, as program funding levels would be locked in longer. (It should be noted that there is nothing in the current budget process that prevents appropriators from funding the government in two-year increments should they choose to do so.) Moreover, since social needs change with economic ups and downs and events like natural disasters occur unexpectedly, federal appropriators sometimes need to revise spending levels outside of the normal budget process. A biennial budget process would only increase the instances in which Congress would have to circumvent budget rules and hastily assemble spending packages that might not receive proper scrutiny from Congress or the public.

Biennial budgeting would do little to increase oversight; oversight is handled by other (non-budget) committees. Congress's concerns about the effectiveness and efficiency of federal programs can be addressed under the current process. [For more on biennial budgeting, see our article [here](#).]

1994 marked the last time the budget process followed a regular schedule and all twelve spending bills were approved before the end of the fiscal year. In the past seven years, only four budget resolutions were approved by conference committees. This has prompted observers ideologically opposed to higher spending to blame the process for an outcome they don't like (more spending) and to advocate for more spending restrictions, such as caps, supermajorities, and automatic spending cut triggers, or biennial budgeting.

However, it would be a mistake to permanently reshape the federal budget process in an effort to fix a short-term problem. The nation's debt and deficit problems, as shown in [a chart](#) by the Center on Budget and Policy Priorities, are primarily caused by the Bush tax cuts (which are currently set to expire at the end of 2012), two wars financed by debt, and lower revenues due to the recession. When the wars end and the tax breaks expire, the "budget crisis" will disappear (although the need to contain medical costs will remain).

Indeed, much of the current national debt is the result of instances when Congress decided to ignore the rules (like paying for two wars through supplemental appropriations). Congress routinely votes to extend the Bush tax cuts, to delay the expansion of the alternative minimum

tax, and to refuse to reduce payments to doctors under Medicare, all of which cost the government hundreds of billions of dollars. Fixes for the underlying problems require reforms in the tax code and mandatory spending programs; neither of these problems can be addressed through a modified appropriations process.

Also important to consider: the budget process is slow because of the checks and balances built into the process – which requires (at least on paper) budget resolutions, authorizations, and appropriations, any one of which can hold up funding for federal programs. In addition, the president can veto any budget Congress produces. As [Alice Rivlin](#), the first director of the Congressional Budget Office, said in the House Budget Committee hearing, “Our Constitution was not designed for efficiency.”

The current budget process may be broken, but not in the ways described by hearing witnesses. The budget process does not work because it is not open and does not support citizen participation. When the budget “process” becomes a series of continuing resolutions that are crafted at the last minute behind closed doors, democracy is frustrated. Outside public interest stakeholders have little chance of having their voices heard in the final stages of debate, while campaign contributors and high-priced lobbyists are always available to guard their special interests. If we are going to change the budget process, let’s create one that is more transparent, more democratic, and more reflective of the investments that the majority of Americans say they want.

Despite Delays and Threats, EPA Finally Classifies TCE as a Cancer-Causing Chemical

After more than 20 years, the U.S. Environmental Protection Agency (EPA) has finally determined that trichloroethylene (TCE), a chlorinated solvent used primarily for removing grease from metal, causes cancer. The assessment was finalized by the EPA’s [Integrated Risk Information System](#) (IRIS), an important but troubled program that is tasked with providing the public with critical information about dangerous chemical exposures.

During the George W. Bush administration, the program released only two assessments annually; under the Obama administration, the number climbed to nine annually, leaving the program with an accumulated backlog of at least 255 chemicals to assess. The delays keep dangerous chemicals in commercial use much longer than warranted, without warnings to the public about their health risks. The risks from many of these chemicals, which the public comes in contact with everyday, remain unknown.

The Findings

The EPA’s long-anticipated assessment, released on Sept. 28, formally classified TCE as a known human carcinogen. Specifically, the report found that exposure to TCE can lead to kidney and liver cancer and non-Hodgkin lymphoma; to a lesser extent, it may also be linked to bladder, esophageal, prostate, cervical, and breast cancers, as well as leukemia. TCE easily evaporates

from water into the air and contaminates groundwater and land. According to the agency's findings, any route of exposure can be carcinogenic to humans.

The greatest use of TCE has been as a degreaser for metal parts, including aircraft. The chemical is also found in household products, such as paint removers, glues, correction fluid, electronic equipment cleaners, rust removers, adhesives, and gun-cleaning fluids. Until 1977, TCE was even used as a general anesthetic, and until the 1980s, it was used in pharmaceuticals and food. Given the widespread usage, it is not surprising that TCE is one of the most common man-made chemicals found in the environment and is often found among the pollutants at Superfund sites, military bases, and industrial sites across the country.

Communities React to the TCE Assessment

EPA's announcement came as a bittersweet victory for communities that have long suffered from TCE contamination, confirming long-held suspicions about the chemical. An estimated 750,000 people were exposed to TCE contamination at North Carolina's Camp Lejeune (a Marine Corps base) from the 1950s to the 1980s. Several expressed relief at the EPA's final assessment. Mike Partain, who survived male breast cancer nearly four decades after his birth at Camp Lejeune, [said](#), "This is confirmation of what we've known all along."

For Jerry Ensminger, who lost a daughter to childhood leukemia in 1985, "This was 20-plus years in the making. . . . It's a crying shame that it takes that long for our regulatory agencies to finally getting around to protecting public health and the environment."

The TCE findings may assist in passage of the [Caring for Camp Lejeune Veterans Act of 2011 \(S. 277\)](#), which would provide hospital care, medical services, and nursing home care for veterans and family members who suffered effects from contamination. The bill was approved by the Senate Committee on Veterans' Affairs with bipartisan support in June 2011.

For parents of elementary school children in the North Bronx, New York City, the assessment is bone-chilling. The Bronx New School was closed in August after tests showed that the building was contaminated [at levels far in excess](#) of TCE limits, determined by state health department standards. The industrial plant that previously occupied the school building used TCE.

Victims of TCE exposure have leveled strong accusations at the federal government and industries for covering up TCE contamination of military bases and local communities. The victims from Camp Lejeune have created a website called [The Few, The Proud, The Forgotten](#) to inform everyone about the betrayal of trust that occurred at the base. TCE exposure victims from Beaverton, OR, established a nonprofit organization called [Victims of TCE Exposure. A Lasting Legacy](#) to assist other victims and fight the TCE contamination from a View-Master plant.

The Delay in Finalizing TCE Assessment

EPA's long and arduous process to review TCE began in 1987, when the agency issued an initial assessment classifying the chemical as a "probable" human carcinogen. Almost 15 years later, in 2001, the agency issued a draft assessment, finding that the chemical was "highly likely" to cause cancer, identifying children as a vulnerable group.

According to the [Natural Resources Defense Council](#), the 2001 draft triggered a 10-year assault by the chemical industry, the Department of Defense, and the Department of Energy. Together, the three entities are responsible for about 750 TCE-contaminated sites throughout the country.

Though peer reviewed by independent scientific experts from the Science Advisory Board, the George W. Bush administration forced the EPA to put the 2001 draft assessment on hold. The Pentagon further delayed the report by requesting a review by the National Academies of Science (NAS) – a request that cost more than \$1 million in taxpayer money. The Bush administration followed these delays with a 2007 rule that exempted the military and certain industries from having to limit air emissions of TCE. The Obama administration agreed to reconsider the exemption in 2009, but an outcome has yet to be reached.

The IRIS Program

Created in 1985, IRIS is a publicly searchable database containing scientific assessments of the human health effects of industrial chemicals and chemical substances. The assessments can form the basis of standards, safeguards, and agency actions, such as Superfund site clean-ups.

A key factor in EPA's difficulty in finalizing the TCE assessment is the ongoing assault on the IRIS program. The Bush administration added several bureaucratic steps to the rulemaking process, which enabled the Office of Management and Budget (OMB) and other federal agencies, such as the Department of Defense, to influence and delay the EPA's findings. The Government Accountability Office (GAO), in a 2008 report, admonished the Bush administration's "restructuring" of IRIS, since the result was a dramatic slowing of chemical assessments.

Since 2009, the Obama administration has taken action to improve and reinvigorate the program. Based on the GAO's 2008 recommendations, the EPA proposed measures to make it more difficult for other federal agencies to influence or delay the chemical review process. A [June 2009 GAO report](#) concluded that, if implemented effectively, these new reforms would "represent a significant improvement" by restoring EPA's control and establishing transparency.

In June, the EPA announced further [improvements](#) to increase transparency and address criticisms in the program. The improvements, based on recommendations by the NAS, include providing more transparent, easy-to-understand, concise, and visual assessments. In addition, the methods, data, and decision criteria used to assess chemicals will be more transparent and will include a discussion of strengths and weaknesses behind the assessments' scientific

rationale. The GAO expects to finalize an analysis of EPA's proposed improvements for the program by the end of 2011.

The Future of the Chemical Risk Assessment Program

The EPA has several high-profile assessments still pending, including hexavalent chromium, formaldehyde, and styrene. The chemical industry and congressional Republicans seem intent on preventing the EPA from finalizing those assessments or at least in delaying the assessments for years. Billions of dollars and the health of millions of Americans are at stake.

Industry has [attacked](#) IRIS assessments as "overly stringent" and selective in their use of data. It wants EPA's assessment of hexavalent chromium to be halted until new industry-sponsored studies can be completed. In addition, industry has sued the National Toxicology Program, which concluded, based on current studies, that styrene is "reasonably anticipated to cause cancer in humans."

In the most recent congressional assault on the IRIS program, Sens. James Inhofe (R-OK) and David Vitter (R-LA) sent letters to the EPA, calling for the agency to suspend all current chemical reviews "where serious concerns have been raised." The letters were sent on [May 10](#) and [Sept. 26](#), respectively, to EPA Administrator Lisa Jackson and Paul Anastas, EPA Assistant Administrator for the Office of Research and Development. In their letter to Anastas, Inhofe and Vitter assert that they "do not think the agency should be proceeding with controversial IRIS assessments at this time." Additionally, in an [Oct. 6 hearing](#) of the House Committee on Energy and Commerce, Republicans further attacked the assessments in a hearing entitled, "Chemical Risk Assessment: What Works for Jobs and the Economy?"

In the meantime, the final TCE assessment will enable the EPA (or states) to move forward with setting more health-protective TCE standards for drinking water, air emissions, and clean-up of contaminated soil. Public interest advocates have hailed the assessment, calling it a testament to Jackson's determination to protect human health and push for expedited assessments of high-risk chemicals.

Libraries Can Connect the Public to Open Government

In recent years, government has increasingly embraced the proactive disclosure of information and created online tools to increase transparency. But how do Americans discover that information? Who helps them learn how to use complex government databases and tools? The answer may be a surprisingly familiar one: libraries.

Libraries have traditionally played a leading role in helping the public discover and use government information. However, the rapid expansion of e-government creates new opportunities and challenges for empowering the public with such information. The Government Printing Office (GPO) is now considering a proposal that could help libraries around the country to modernize and expand their government information services, supporting

equitable public access to information and amplifying the impact of open government initiatives.

Government information services in libraries

Even as government information is increasingly available online, libraries continue to play an important role in supporting public access. [One in four American adults does not have Internet access at home](#), and [in almost two-thirds of communities](#), libraries are the only source of free Internet access. Moreover, libraries are well practiced at assisting the public in discovering and using government information, through reference services, information literacy training, and curation.

However, government services in libraries have typically focused on providing assistance with government programs, such as applying for unemployment benefits or filing taxes, or traditional information sources, such as statutes and congressional records. These limitations have been kept in place by libraries' resource constraints: public library budgets in particular have suffered throughout the most recent economic downturn, even as demand for library services has grown.

Many Americans might be interested in exploring information from new government websites, such as the Consumer Product Safety Commission's [SaferProducts.gov](#) complaints database or the U.S. Environmental Protection Agency's [MyEnvironment](#) tool. It's unclear, though, to what extent libraries are helping connect their patrons to such tools.

Federal Depository Library Program

A proposal under consideration at GPO could change that. The proposal arises from a review of the agency's Federal Depository Library Program (FDLP). FDLP distributes free copies of government publications to participating libraries that agree to provide public access to and preservation of those documents, helping to ensure equitable access to government information.

GPO commissioned a study to explore and recommend reforms to the program, which was completed by consulting firm Ithaka S+R in May 2011. GPO rejected the Ithaka report, but nevertheless [released it for public consideration](#), stating, "The models proposed by Ithaka are not practical and sustainable to meet the mission, goals, and principles of the FDLP. Nonetheless, GPO believes that the final report has some value." In addition, GPO [solicited comments](#) responding to the Ithaka report and will host a day-long [public meeting](#) to discuss potential reforms on Oct. 20.

The report paints a picture of a program that is struggling to fulfill its core responsibility of ensuring equitable public access to government information in the light of technological changes. The number of participating libraries in FDLP has declined in recent years – [more than 1,200 today](#), down from about 1,400 in 1992 – as libraries question the relevance of the traditional FDLP collection and preservation activities in today's digital environment. Libraries' formal responsibilities under the program do not include the user services and outreach needed

to support the public's use of government information, and the program has lagged in its inclusion of new e-government tools.

Supporting a new generation of government information services

In [its comments on the Ithaka report](#), OMB Watch argued that a change in strategy is necessary to fulfill the FDLP's core mission in a digital age, echoing many of the report's recommendations. In addition to modernizing the program's collection and preservation activities, OMB Watch recommended three priority reforms:

- *Create a services role.* The new role would identify key opportunities for libraries to connect patrons with federal government information. For instance, the program would promote resources available to help libraries train patrons on the use of information tools, such as the [training resources under development for GPO's FDsys](#). In addition, the program could promote innovative outreach strategies that libraries could use to increase patron awareness of government information tools, thus extending their reach.
- *Broaden the information sources supported.* The program should seek to modernize the materials supported by library services, adding new databases and online tools. GPO should leverage its vantage point as the government's publisher to keep abreast of agencies' newest online information services. The need for coordination between agency e-government services and libraries was recognized in the Federal Communications Commission's 2009 [National Broadband Plan](#). The Institute of Museum and Library Services (IMLS) is currently funding a [pilot project](#) to develop partnerships between libraries and federal agencies in delivering e-government, which could inform these collaborations.
- *Expand the libraries participating.* More than 1,200 libraries currently participate in the FDLP, many of which are academic libraries. By comparison, there are [more than 9,000 public libraries](#) in the U.S., many of which have multiple branches. By expanding the number of libraries participating in the new services role, FDLP could make it easier for many Americans to access expert assistance with using government information. A marketing campaign could make more Americans aware of the services available to them.

Although many of these changes could be implemented administratively, the reforms would be more effective if enacted through legislation. In particular, Congress could require agencies to coordinate with the program, ensuring that new information tools would be supported.

In addition, Congress would need to provide adequate resources in order to ensure the program's success. Increased funding will be difficult to find amidst the deep federal budget cuts that Congress is pursuing. Tight budgets at the state and local level already have libraries across the country limiting hours, cutting staff, and closing branches, so Congress would likely also need to allocate additional resources to IMLS to support libraries in implementing these new services. However, even modest investments in these areas could pay big dividends in expanding

the use of open government tools, thus strengthening the relationship between citizens and their government and supporting a flourishing of civic imagination.

Ongoing Listeria Outbreak Illustrates the High Stakes of Food Safety Regulation

The multistate outbreak of listeriosis, linked to cantaloupes from Colorado-based Jensen Farms, is the deadliest foodborne disease outbreak in a decade. Infections caused by listeria have taken 23 lives, caused at least one miscarriage, and sickened over 100 people in 24 different states. The grim effects of recent foodborne illness outbreaks illustrate the need for continuous improvements to our food safety programs. Public health depends on agencies having the authority and resources to issue necessary safeguards, conduct adequate inspections, and enforce food safety rules.

As the number of dead and ill from this recent outbreak continues to climb, the totals near the most fatal *listeria* outbreak in U.S. history, the [1985 listeria cheese outbreak](#) that caused 29 deaths.

Listeria outbreaks are particularly alarming because symptoms can take up to three months to appear. In addition, *listeria* poses the greatest risk to the most vulnerable – pregnant women; people with weakened immune systems, cancer, diabetes, or kidney disease; and the elderly. On Sept. 14, Jensen Farms voluntarily recalled its whole cantaloupes produced from the end of July to Sept. 10, but infections and outbreak-related fatalities are still being reported. The Food and Drug Administration (FDA) is conducting a root-cause investigation, which it says can lead to preventative practices in the future.

On the same day Jensen Farms announced the recall, FDA launched the Coordinated Outbreak Response and Evaluation ([CORE Network](#)), “created to manage not just outbreak response, but surveillance and post-response activities.” One of the goals of CORE is to enhance preventive food safety practices by utilizing all of FDA’s field resources. Prevention is also an integral part of the 2011 [FDA Food Safety Modernization Act](#) (FSMA), which “aims to ensure the U.S. food supply is safe by shifting the focus of federal regulators from responding to contamination to preventing it.”

House members are also calling for an investigation into the outbreak, along with a hearing to better understand how to prevent similar foodborne illness outbreaks. Reps. Henry Waxman (D-CA) and Diana DeGette (D-CO), ranking members of the House Energy and Commerce Committee and Subcommittee on Oversight and Investigations, respectively, requested an investigation and hearing in an Oct. 3 [letter](#) to Energy and Commerce Committee Chairman Fred Upton (R-MI) and Subcommittee Chairman Cliff Stearns (R-FL). Waxman and DeGette wrote that taking such measures could help “understand actions that could be taken by industry and the Food and Drug Administration (FDA) to prevent similar outbreaks in the future.”

The letter also urged Upton and Stearns to request, as part of the investigation, a list of documents from Jensen Farms including the dates that company officials first notified, or were notified by, federal, state, and local officials of the contamination, all inspection records related to Jensen Farms facilities, and all communications to or from the FDA, the U.S. Department of Agriculture (USDA), or Colorado state authorities concerning inspections of Jensen Farms facilities or possible *listeria* contamination.

Remaining Challenges

Despite the importance of FDA's focus on preventing contamination, some advocates worry that food safety will continue to suffer from funding cuts to regulatory agencies, inadequate rules, and lax inspections. As part of the 2011 Food Safety Project, a [News21 investigation](#) found that "food safety in the U.S. depends on ineffective regulations and underfunded government agencies that lack the authority to protect consumers."

At the annual National Food Policy Conference on Oct. 4, FDA Commissioner Margaret Hamburg [discussed](#) the major challenges facing the agency, including budget restrictions. "While in recent years we've seen some increases that have been valuable . . . there remains a very large gap between what we have and what we need," she said. Hamburg also emphasized the importance of regulatory compliance assurance. "If we want to ensure that our food is safer, we need to be able to invest in compliance. . . . We need to educate and train our own work force, because we're asking them to inspect facilities with an eye on prevention and problem-solving—not just effectively writing 'speeding tickets' for infractions."

An effective and consistent regulatory system also benefits food producers by providing regulatory certainty and maintaining consumer confidence in food safety. Unfortunately, there are plenty of illustrations of the unanticipated costs of allowing contaminated food to reach consumers. Only two months ago, the USDA's Food Safety and Inspection Service (FSIS) [announced the recall](#) of ground turkey linked to a *salmonella* outbreak that sickened over 100 and killed at least one. In response to the outbreak, the producer of the ground turkey, Cargill Meat Solutions, issued a voluntary recall of its product and closed operations to conduct inspections. As a result, the company was forced to lay off employees at its Springdale, AR, plant. The Centers for Disease Control and Prevention (CDC) [announced](#) Sept. 29 that *salmonella* cases are still being reported.

It can be easy to take our food safety systems for granted until high-profile outbreaks and recalls highlight remaining weaknesses and regulatory failures. The need for effective rules, inspections, and enforcement has never been more evident. Consumers are counting on policymakers and regulators to strengthen food safety efforts and prevent the devastating consequences of foodborne illness outbreaks in the future.

Pulpit Freedom Sunday Clarifies the Need for Clarity

Hundreds of pastors took to their pulpits on Sunday, Oct. 2, to engage in an annual civil disobedience ritual known as Pulpit Freedom Sunday. Initiated by the Alliance Defense Fund and supported by Glenn Beck, Pulpit Freedom Sunday aims to challenge the current prohibition on partisan electioneering by churches and other 501(c)(3) organizations.

Pastors involved with Pulpit Freedom Sunday argue that the current law threatens their First Amendment rights. "The freedom of speech and freedom of religion promised under the First Amendment means pastors have full authority to say what they want to say," the Rev. James Garlow [told](#) *The New York Times*.

[According to the Alliance Defense Fund](#), the more than 475 pastors who registered to participate in Pulpit Freedom Sunday "committed to preach sermons that present biblical perspectives on the positions of electoral candidates." Garlow described his sermon in two parts: in one section, he would discuss *issues* like same-sex marriage and abortion, and in another, he would discuss *candidates*.

Like leaders of all other 501(c)(3) organizations, pastors in their official capacity are [prohibited](#) only from intervening for or against particular candidates. As individuals speaking for themselves alone, they may endorse or denounce whichever candidate they choose. Both as individuals and as representatives of their organizations, they are free to take positions on public policy issues, including controversial ones, so long as they do not cross the line into favoring or opposing a particular candidate.

The [American public](#), as well as most [religious leaders](#), agree with these commonsense restrictions. Without them, candidates could, for example, donate funds to the church of an endorsing minister and then get a tax break for doing so.

While the Alliance Defense Fund [claims](#) that the project is not about endorsing or opposing candidates, the speech they are aiming to "protect" is already legal. The more vexing question, however, is how precisely to know when speech about a particular issue crosses the line and becomes an implicit statement about a candidate. While [Revenue Ruling 2007-41](#) lists a series of factors that may play into that determination, there has never been a clear statement of precisely what qualifies as prohibited electioneering.

Both supporters and critics of the electioneering ban are frustrated by limited action from the Internal Revenue Service (IRS). Even though the first Pulpit Freedom Sunday was held in 2008, the IRS has yet to clarify the rules or take strong enforcement action in response. In fact, there are signs that the agency is becoming less interested in investigating political speech by churches: while it launched the Political Activities Compliance Initiative to investigate whether churches and other charities were engaged in illegal electioneering during the 2004 and 2006 elections, the IRS discontinued the program in 2010.

Religious leaders are, and should be, free to instruct their parishioners about the intersection of their faith with the issues of the day. However, it is a decided matter of public policy that they cannot enjoy the advantages of tax exemption while simultaneously using their pulpits to endorse candidates. Pulpit Freedom Sunday is an outlier example of activist preachers being spurred into action by a nonprofit organization with a particular agenda: such an action would never have occurred if the IRS had issued clear, comprehensible guidance about when commentary becomes an endorsement.

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Taxing Capital Income Increases Revenue, Reduces Inequality

In September, President Obama released a [deficit reduction package](#) for consideration by the congressional Super Committee that included a new tax reform recommendation regarding millionaires. Dubbed the "[Buffett Rule](#)," the proposal states, "No household making over \$1 million annually should pay a smaller share of its income in taxes than middle-class families pay," and it would address a long-standing disparity between the taxation of labor income and investment income. Indeed, going beyond the Buffett Rule and taxing capital income on par with labor income would not only bring in much needed revenue, it would help to reduce income inequality, a source of economic inefficiency.

Capital gains are the increase in the value of capital assets, which most generally include real estate, stocks, and bonds. When the capital gains tax was established by Congress in 1913, the capital gains tax rate was equal to the income tax rate, but in 1922, Congress lowered the capital gains tax rate, and – except for a few brief periods since – it has continued to enjoy preferential treatment. Today, capital gains benefit from the lowest tax rate in modern history at 15 percent, down from 20 percent during the Clinton administration.

Most of the benefits of this preferential tax treatment accrue to the wealthiest Americans. A recent Congressional Research Service (CRS) [report](#) on the economic effects of capital gains taxation found that wealthier households “are substantially more likely to own assets that can generate taxable gains than lower income households.” Indeed, “Well over half of the assets that can generate taxable capital gains are owned by the richest 5 [percent] of households,” with the richest 20 percent owning 83 percent of all stocks and mutual funds, 93 percent of bonds, and 79 percent of farm and business real estate. Home ownership, which is more spread out through the income spectrum, accounts for the vast majority of the lower 80 percent of households’ relationship with capital gains.

For several decades, Republicans have advocated for further reductions in the capital gains tax. Supporters argue that lower capital gains taxes increase tax revenues because they release investors to sell stocks and bonds they held onto longer than they otherwise would have because of the “prohibitive” tax on their return. Known as the “lock-in” effect, the capital gains tax is said to discourage “capital gains realizations” and persuade investors “to hold on to appreciated assets they would otherwise sell.”

Some economists have argued that the capital gains tax slows economic growth because investors may be discouraged from taking advantage of investment opportunities that would result in higher tax bills. Former Federal Reserve Chair Alan Greenspan gave voice to this theory during the 1990s when he notably [told](#) Congress that the “major impact” of the capital gains tax, “as best I can judge, is to impede entrepreneurial activity and capital formulation.” He added that the appropriate capital gains tax rate was zero.

Yet, according to CRS, reductions in the capital gains tax rate are not likely to negatively impact saving, as an increased return on investment due to a lower tax rate actually encourages households to save less in order to maintain their target wealth level. Thus, the report concludes, capital gains taxes do not significantly impede entrepreneurial activity or capital formulation and rate reductions are unlikely to affect economic growth over the long term. Moreover, “the bulk of the evidence” surveyed by CRS “suggests that reducing the capital gains tax rate reduces tax revenues” overall, especially in the long run.

Capital gains tax cut supporters also argue that such a cut would be an effective economic stimulus measure. CRS observes, however, that government spending would be a more effective economic boost. Because the wealthiest households hold the vast majority of capital gains assets, neither a temporary or permanent reduction of the capital gains tax rate would provide much economic stimulus, as these households are more likely to save additional income, rather than putting it back into the economy through purchasing goods and services.

Further reductions of the capital gains tax rate may even be harmful to economic growth. A new [study](#) by economists at the International Monetary Fund (IMF) found that increases in income inequality could hurt a nation’s potential for growth. The study turns conventional economic wisdom on its head by questioning the choice between efficiency and equality, concluding instead that “improving equality may also improve efficiency, understood as more sustainable

long-run growth.” In fact, “equality appears to be an important ingredient in promoting and sustaining growth.”

The wealthiest households have always realized the most income from capital gains, but over the past 25 years, the benefits from capital gains have become even more concentrated, contributing to the overall [concentration of wealth](#) within the top tier of the income distribution. Both the reductions in the capital gains tax rate and the reduction in income tax rates for the very wealthy have fueled the redistribution of wealth upward.

Economists at the IMF found that inequality mattered more to whether a country continued to enjoy economic growth relative to other factors, such as the openness of political institutions, trade openness, exchange rate competitiveness, and even external debt. Inequality was correlated with slower growth over the past 25 years.

The authors of the IMF report note that "better-targeted subsidies, better access to education for the poor that improves equality of economic opportunity, and active labor market measures that promote employment" could promote more equality and more growth. Cuts in the capital gains tax rate are unlikely to spur growth through private investments, but increases in the rate could provide public revenue for the social investments needed to spur growth – and more equitable growth at that.

Repatriation Tax Holiday Is Not a Jobs Plan

Congressional Republicans consistently push tax cuts for corporations and the wealthy as a means to create jobs. One measure that is receiving [increased attention](#) is a tax break for corporations that park profits overseas to avoid paying taxes. Despite Republicans' insistence that a tax holiday would bring these profits back to the U.S. and that corporations would then invest in jobs here, the evidence tells a different story.

[A recent report](#) by the Federal Reserve noted that private companies remain cautious about making new investments because of concerns about a “weaker and more uncertain economic outlook” over the coming months, but the decision to refrain from investing is not the result of a lack of funds.

In fact, many large corporations are flush with cash. [According to the Wall Street Journal](#), “Corporations have a higher share of cash on their balance sheets than at any time in nearly half a century, as businesses build up buffers rather than invest in new plants or hiring.” Businesses are holding more than \$2 trillion in cash and other assets. These companies could hire, but they are choosing not to because consumer demand for their products is weak. Another tax cut would increase corporations’ cash reserves but provide no incentive to hire.

Tax cuts generally do not stimulate the economy as much as government spending. An analysis of the spending in the American Recovery and Reinvestment Act (Recovery Act) conducted by the independent Congressional Budget Office (CBO) [found](#) that the tax cuts contained in the

Recovery Act had little stimulative effect on the economy (returning about 50 cents on the dollar), with corporate tax cuts having the least impact.

Similarly, the Congressional Research Service (CRS), Congress' independent research arm, [found](#) that "GDP growth, median real household income growth, weekly hours worked, the employment-population ratio, personal saving, and business investment growth were all lower in the period after the [Bush] tax cuts were enacted" than before those cuts took effect.

Despite this evidence, [Republicans and some Democrats are calling for](#) another "stimulative" tax break, proposing a so-called [repatriation tax holiday](#), which would temporarily but significantly lower taxes on foreign income from 35 percent to 5 percent. This, supporters say, would encourage corporations to bring profits currently stashed offshore back home, generating more income that could be used for hiring. A similar holiday was established in 2004, and the results were dismal.

[A CRS report](#) noted that "while empirical evidence is clear that this provision [the tax holiday] resulted in a significant increase in repatriated earnings, empirical evidence is unable to show a corresponding increase in domestic investment or employment." In other words, while the tax cut worked to bring money to the U.S., it did little to actually help the economy. In fact, [a Senate report](#) on the 2004 tax holiday found that it may have done more harm than good, noting "the 15 companies that benefited the most ... cut more than 20,000 net jobs and decreased the pace of their research spending."

The push for another tax holiday as a "job creation plan" flies in the face of all evidence. Such tax breaks will only increase the deficit and add to the pressure on lawmakers to further reduce spending. In fact, the CBO report on the Recovery Act and a wealth of other studies show that direct government spending on infrastructure projects has the largest multiplier effects on the economy, grows jobs, and significantly expands GDP. A serious push to move forward with such projects would do far more to spur significant economic growth than any tax holiday.

Senate Passes Bill to Improve Pipeline Safety and Increase Public Access to Information

On Oct. 17, the U.S. Senate unanimously passed a bill to strengthen safety standards and increase public availability of inspection results and enforcement actions related to the nation's 2.3 million miles of pipelines. The legislation was sparked by a series of deadly explosions in 2010 and 2011 that drew scrutiny to the safety of gas and oil pipelines.

Current pipeline safety standards have failed to adequately protect public safety and the environment. In 2010, there were a total of [585 reported pipeline leaks and/or explosions](#), resulting in 25 deaths, 111 injuries, and almost \$1 billion in property damage. [Weak oversight](#) by federal and state regulators contributed to many of those pipeline accidents, including a September 2010 natural gas pipeline explosion beneath a residential subdivision in San Bruno, CA, that killed eight people, injured more than 50, and destroyed about 38 homes. The San Bruno accident inspired the pipeline safety bill.

The pipeline accident numbers are not much better for 2011 so far, with 420 incidents already, leading to 14 deaths, 39 injuries, and close to \$200 million in property damage. For instance, in February, a gas explosion, which claimed five lives (including a four-year-old boy, in Allentown, PA), occurred as a pipeline erupted beneath a working-class neighborhood at night. The U.S. Department of Transportation's [Pipeline and Hazardous Materials Safety Administration \(PHMSA\)](#) oversees and publicly reports on pipeline safety, including data incidents.

The Pipeline Transportation Safety Improvement Act of 2011

The [Pipeline Transportation Safety Improvement Act of 2011 \(S. 275\)](#) would require several new safety procedures, including automatic or remote-controlled shut-off valves on new pipelines to halt oil spills and natural gas fires, more federal safety inspectors, higher penalties for safety violations, and faster notification to the government of accidents and leaks. The bill would also increase public availability of information on the pipelines – such as monthly inspection reports with all enforcement actions taken – and require that this information be made available online via PHMSA's website.

More specifically, the bill would significantly increase the enforcement of safety standards, authorizing the hiring of 39 new PHMSA staff over the next four years to assist with pipeline inspection and enforcement support. The bill would also more than double the penalties the agency is permitted to levy to a maximum of \$250,000 a day for each violation, with a cap of \$2.5 million for a series of violations. Currently, inspectors can only fine companies a maximum of \$100,000 a day with a \$1 million cap.

Moreover, within one year, the staff would have to provide monthly updates of all completed and final natural gas and hazardous liquid pipeline inspections conducted by or reported to the PHMSA and ensure that information is publicly available on the agency's website. This information would include the types of inspections performed, and the inspection results, including whether any violations occurred or corrective actions were taken. Greater inspection transparency will increase the level of accountability for both the inspectors and pipeline operators to identify safety problems and promptly resolve them.

The bill also calls for the agency to maintain and annually update a map of all designated "high consequence areas"; in these dense population areas, the pipelines are required to meet integrity management safety regulations. The mapping should increase participation in pipeline safety and emergency planning, especially in communities where many people are unaware that there are gas or oil pipelines running underneath them.

The bill cleared the Senate only after Sen. Rand Paul (R-KY) dropped his opposition, in return for getting approval of an amendment to the bill. Surprisingly, given that Paul is one of Congress' most fierce opponents of government regulation, his amendment added a change first proposed in January by Sens. Dianne Feinstein (D-CA) and Barbara Boxer (D-CA) that demands that older pipelines, like the one involved in the San Bruno explosion, be pressure-tested as newer pipelines are. More than [60 percent](#) of the nation's pipelines are exempt under current regulations from pressure testing and other safety procedures.

Business Support for the Pipeline Safety bill

Sponsored by Sen. Frank Lautenberg (D-NJ), the pipeline safety bill has received widespread support from both the industry's major trade associations, like the Interstate Natural Gas Association of America, the American Gas Association, and the Association of Oil Pipelines, as well as public interest groups in this area, such as the Pipeline Safety Trust, a safety advocacy group.

Public interest advocates also voiced support for the intent of the bill, saying it would "[increase](#) the public's trust in government to make pipelines safe and make clear inadequacies that need to be addressed," but called for several improvements to the legislation. For instance, Carl Weimer of the Pipeline Safety Trust expressed [disappointment](#) that Lautenberg withdrew language requiring pipeline emergency response plans to be made publicly available.

These demands mirror recommendations detailed in [*An Agenda to Strengthen Our Right to Know*](#), a document produced by OMB Watch and endorsed by more than 100 public interest organizations, that called for a public right to access emergency response plans related to oil and natural gas pipelines.

Following the Senate's passage of the bill, the American Gas Association announced its support in a [press statement](#) and expressed hope that Congress would send a final bill on pipeline safety to President Obama by the end of the year. It appears that PHMSA has [already begun working](#) on new safety rules, and gas companies are afraid that the agency will issue stricter regulations than those in the bill.

Pipeline Safety amidst Production Growth

The pipeline safety bill comes amid substantial investments in U.S. natural gas and oil production. For instance, in a \$20.7 billion deal, Kinder Morgan Inc. [announced its plans](#) during the week of Oct. 17 to buy El Paso Corp; the merged company would become America's largest natural gas pipeline operator, responsible for the safety of an 80,000-mile network of pipeline.

At this moment, the Obama administration is considering whether to approve the controversial \$7 billion Keystone XL pipeline project, which would transport tar sands, which are more corrosive than crude oil, from Alberta, Canada, through America's heartland to Texas. Thousands of communities face the prospect of having a major new, potentially explosive pipeline flowing under their homes and businesses. The TransCanada oil pipeline project is opposed by many public interest organizations but is supported by industry groups and many lawmakers. In a provision that may be directed at the proposed Keystone XL pipeline, the Senate bill calls for the Secretary of Transportation to complete a study of the transportation of tar sands crude oil. In particular, the bill requires that the secretary prepare a comprehensive review of hazardous liquid pipeline regulations to determine whether they are "sufficient to regulate pipelines used for the transportation of tar sands crude oil."

Next Steps

Two House committees – Energy and Commerce and Transportation and Infrastructure – have already passed separate pipeline safety bills, both of which are similar to the Senate version. The House plans to combine the two versions into a single bill to bring to a House vote by the end of the year.

Update of Key Transparency Law Would Better Protect Americans' Privacy

A critical but neglected transparency law could be updated for the 21st century if a new congressional proposal succeeds. The [Privacy Act Modernization for the Information Age Act](#) (S. 1732), introduced by Sen. Daniel Akaka (D-HI) on Oct. 18, would update the Privacy Act of 1974 ([5 U.S.C. 552a](#)). The Privacy Act governs what actions federal agencies must take when collecting personal information on American citizens and how agencies use and share it.

In addition to protecting personal privacy, the current act gives Americans the right to know what information the government has about them, to know how the government has used the information, and to correct inaccuracies in the information. This makes it a key transparency law. Akaka's bill would make the law a more robust tool for holding government accountable and for empowering Americans to protect their personal information. Akaka, who is retiring at the end of 2012, hopes to pass the bill before this session of Congress adjourns.

Bill Expands Scope of Protected Personal Information

The modernization bill extends privacy requirements "to all Federal collection and use of personal information" and updates the law's wording to better apply to electronic information. This would enable Americans to more easily access and correct any personal information about them held by agencies, including data purchased or licensed from commercial sources. Examples of commercial information that government agencies may access include credit report information, telecommunication records, online purchase data, and passenger flight information.

Requirements that Individuals Be Informed When Personal Information is Collected

Under the Privacy Act, when collecting personal information, agencies must inform individuals of the authorization and purpose for doing so, as well as any likely effects should the individual not provide the requested information. These notices are an important way to make the public more aware that such information is being gathered and to make agencies more accountable for how they use personal information.

The proposed legislation would improve these notices by mandating that public agencies add information on how to access and correct a person's personal information and how to learn

more about the reasons and uses for which such information is being collected. These changes would better inform Americans of their privacy rights, empowering them to engage agencies and make better decisions about providing their personal information. In 2008, a coalition led by OMB Watch [demanded](#) better notification of the public of their rights under transparency laws. The Akaka bill would implement that recommendation.

Information on Government Records Systems Collected on One Website

The Privacy Act requires agencies to publish a description in the *Federal Register* of the information they intend to use when establishing new systems for gathering personal information; moreover, they must solicit public comments on the proposed system before establishing or amending it. The modernization bill would update these provisions by requiring that these descriptions or notices be published both on agency websites and on a centralized, government-wide website. Since most people are not regular readers of the *Federal Register*, increased online notification should result in more people learning about these proposals and commenting on them.

The government-wide website would, in effect, generate an inventory of all such systems, updated annually. As Akaka commented, "We need more transparency so the average person has a place to go to learn about what information the government is keeping and how they can access that information."

The bill would also require agencies to publish replies to comments received and to notify the public when the system has been implemented. Establishing such a back-and-forth dialogue should strengthen public participation in setting agencies' privacy policies.

Better, More Unified Notification in the Case of Security Breaches

Moreover, the proposed legislation would require the Office of Management and Budget (OMB) to establish procedures for notifying the public of breaches of their personal information. Prompt breach notifications allow the public to protect against identity theft or other problems. Requiring notification also prevents agencies from hiding embarrassing security failures, providing a valuable incentive to prevent such breaches from occurring. A 2006 [report](#) of the House Oversight and Government Reform Committee found that every Cabinet department had reported "at least one loss of personally identifiable information" in the period from 2003 to 2006.

Most states have [breach notification laws](#) that apply equally to the private sector and to government agencies. However, no comprehensive law exists at the federal level. Instead, a patchwork of policies has developed over the years to address privacy breaches in the federal government or particular agencies:

- In response to high-profile losses of data by the Department of Veterans Affairs (VA), a [2006 law](#) requires the department to notify affected individuals of data breaches.

- OMB issued memoranda in [2006](#) and [2007](#) that discussed breach notification procedures for agencies to undertake.
- The Health Information Technology for Economic and Clinical Health Act (HITECH Act), enacted as part of the American Recovery and Reinvestment Act of 2009, requires breach notification by entities that handle medical records, including federal agencies.

There are other pending legislative proposals that would also extend breach notification requirements across the federal government. Both the [Data Breach Notification Act \(S. 1408\)](#), introduced by Sen. Dianne Feinstein (D-CA) in July, and the [Personal Data Privacy and Security Act \(S. 1151\)](#), introduced by Sen. Patrick Leahy (D-VT) in June, would establish comprehensive breach notification for both government agencies and private entities. Both bills have been referred to the Senate Judiciary Committee. In May, the White House published a [legislative proposal on breach notification](#) that would apply to the private sector but not federal agencies.

Centralized Compliance Oversight at OMB

To oversee agency compliance with the Privacy Act and related requirements, the Akaka bill would create a Federal Chief Privacy Officer housed at OMB. This new office would seek to create more consistent implementation of the Privacy Act across the federal government. Increased oversight should prevent the [sweeping exemptions](#) from the act that some agencies have claimed.

The bill would also establish chief privacy officers in each agency that does not currently have one. The bill would give these officers the authority to investigate agency compliance with privacy laws, which currently only the Department of Homeland Security's officer has. The bill also would establish a government-wide Chief Privacy Officers Council to coordinate policy across agencies.

Recommendations

While the proposed legislation would strengthen the transparency and accountability of federal privacy practices, it could be improved in several important ways:

- *More information on the central website:* The government-wide website on agencies' personal information collection practices should explain the Privacy Act, agency procedures and obligations under it, and easy-to-understand instructions on how a citizen can access and correct his or her own personal information.
- *Strengthen the breach notification requirements:* The proposed law gives OMB the authority to determine breach notification standards. Congress should establish this standard, as nearly every state legislature has done.
- *Improve public participation requirements in the law:* The provisions in the bill that expand notification requirements and online information about records systems that collect personal information seem geared to improve participation by better informing the public. However, these fall short of best practices for effective participation. The bill should: require agencies to publish [plain-language](#) descriptions of information collection

plans that would include personal information; to publish the comments they receive; and to publish responses to such comments before the establishment of new or amended information gathering systems.

Agency Heads Fight Back, Defend Their Missions

Rhetorical and legislative attacks on the agencies that protect the public from health, safety, and environmental hazards occur almost daily, coming from corporate interests and their political allies on Capitol Hill. Now, some agency heads appear to be publicly fighting back by openly defending the work their agencies do to protect the American people.

The traditional way that agency heads defend their agencies is in oversight hearings conducted by the House and Senate. Obama administration officials have testified often throughout 2011, especially before many Republican-controlled House committees and subcommittees. For example, on Oct. 5, Dr. David Michaels, Assistant Secretary, Occupational Safety and Health Administration (OSHA), [testified](#) before the House Subcommittee on Workforce Protections, the third time Michaels has testified before the House this year.

Michaels highlighted the benefits of the Occupational Safety and Health Act, passed in 1971, to both workers and businesses. "It is difficult to believe that only 40 years ago most American workers did not enjoy the basic human right to work in a safe workplace. Instead, they were told they had a choice: They could continue to work under dangerous conditions, risking their lives, or they could move on to another job," he noted in his written testimony.

He cited the decline in deaths and injuries per day (from an estimated 38 deaths per day on the job in 1971 to 12 today; illnesses and injuries have declined "from 10.9 per 100 workers per year in 1972 to less than 4 per 100 workers in 2009"), which is the result of enforcement of critical OSHA rules that regulate grain and cotton dust, limit exposure to toxics like asbestos and benzene, and protect health care workers from blood-borne pathogens through a reduction in needle sticks.

Michaels noted that deaths and injuries take their toll on businesses as well the workers and their families who suffer from lost wages. Michaels cited a 2010 report showing that "the most disabling injuries (those involving six or more days away from work) cost American employers more than \$53 billion a year – over \$1 billion a week – in workers' compensation costs alone."

Since she was appointed, U.S. Environmental Protection Agency (EPA) Administrator Lisa Jackson, also a regular at congressional hearings, has taken a more public stance defending her agency than many other agency heads. In an Oct. 12 [guest piece](#) in *Time* magazine, Jackson fought back against congressional broadsides on the agency and important environmental laws, calling the nonstop attacks "misleading information." She noted the significant benefits of strong environmental standards, including fewer asthma attacks, fewer deaths, innovations in business processes, and jobs created. She concluded, "The challenges we face as a nation deserve a fact-based discussion, not scare tactics. We shouldn't let a lot of hot air in Washington lead to

dirty air in your hometown. Yet that's the direction we're headed if we continue to put politics ahead of our health and environmental protection."

Jackson also joined with Kathleen Sebelius, Secretary of the Department of Health and Human Services (HHS), to write an [op-ed](#) in the Oct. 16 edition of *USA Today*. They discussed the costs of pollution to the health of families and children, especially in minority and at-risk neighborhoods. "In total, our children's exposure to air pollution and toxic chemicals costs America more than \$75 billion every year. When our nation is working to pay the bills, we shouldn't be spending \$75 billion a year to pay for illnesses we could have prevented."

Sebelius and Jackson noted how their two agencies are working together to improve Americans' health and quality of life. For example, HHS and EPA have combined data "to give local policymakers access to detailed information on environmental factors and health disparities. A local health official can now look at data on air quality and asthma hospitalization at the same time, and use it to identify at-risk communities and improve prevention efforts."

Robert Adler, one of the commissioners of the Consumer Product Safety Commission (CPSC), which regulates approximately 15,000 consumer products ranging from children's toys and cribs to swimming pools and all-terrain vehicles, also went on the offensive in an [op-ed](#) in the *New York Times* on Oct. 16.

"What many of our critics really want to do is to stop government from regulating, period. They are invoking cost-benefit analysis as their weapon of choice...health and safety agencies rarely impose new costs on society when we issue safety regulations. We simply re-allocate who pays the costs," Adler wrote.

CPSC estimates that about 31,000 people die and another 34 million are injured by unsafe consumer products. These deaths and injuries cost society about \$200 billion annually. Adler argues that "[a]nyone who insists that regulations necessarily impose new costs on society shouldn't be taken seriously. The costs are already there, in the form of deaths and injuries – and are often as much of a drag on our economy as any safety rule. So the real issue is who should bear the costs." Regulatory critics, he claims, are not interested in rationality and better rules but only in the costs to businesses. "[B]enefits to consumers somehow never make it to the table," he concludes.

Agency heads like Michaels, Jackson, Sebelius, and Adler have the responsibility to make people's health and safety their top priorities. It is encouraging to see them stepping up to defend the benefits our system of standards and safeguards delivers. Educating the public about what they do should be a critical part of their work – especially now when there is an orchestrated attack on our regulatory system. We hope they'll continue to make their case to the public.

Farm Dust Frenzy: A Misleading and Distracting Regulatory Myth

For the past several months, members of Congress and agriculture associations have decried a supposedly imminent regulatory threat by the U.S. Environmental Protection Agency (EPA) – new standards for a type of air pollution referred to as "farm dust." Despite assurances from EPA Administrator Lisa Jackson that the agency will not issue new Clean Air Act regulations for coarse particulate matter (PM₁₀), which would include farm dust, the mere notion of new air pollution standards has sent legislators and some agriculture groups into a frenzy to block future agency actions.

After giving several [indications](#) that EPA would not promulgate new National Ambient Air Quality Standards (NAAQS) impacting farm dust, Jackson confirmed the agency's position Oct. 14. In a [letter](#) to Senate Agriculture Committee Chair Debbie Stabenow (D-MI), Jackson wrote that the agency did not intend to revise the current standards for coarse particulate matter. *Politico* [reported](#) that, on the same day, Jackson said she intends to clear up the myths surrounding EPA regulation and "talk about what's really happening inside the four walls of the EPA."

The Clean Air Act requires EPA to reconsider the NAAQS standards, which cover pollutants such as airborne particulate matter, every five years. EPA must review and revise the standards as necessary to ensure they are at a level "requisite to protect public health" within "an adequate margin of safety." EPA has not only the authority but the *obligation* to review and tighten those standards if necessary to protect public health. The agency has concluded after such review that it is unnecessary to revise the standards for coarse PM at this time.

The statutory mandate to review air quality standards seems to be lost on those who inaccurately frame EPA's actions as "attacks on farmers." It has been [reported](#) that EPA is "cracking down on farm dust"; some articles even [imply](#) that Jackson lied to or misled those inquiring about the rule. The panic over farm dust is not the first time an unsubstantiated regulatory myth has resulted in opposition to an agency. Experts in agricultural policy [argue](#) that these "urban legends" distract from the substantial policy issues facing agency leaders.

Still Fighting Nonexistent Regulations

While it might seem that EPA's pronouncement that there will not be new NAAQS regulations for coarse PM would assuage concerns, Rep. Kristi Noem (R-SD) is pushing ahead with the Farm Dust Regulation Prevention Act of 2011, [H.R. 1633](#). The bill would prohibit the EPA from issuing a new standard for coarse particulate matter and exempt some coarse PM from federal regulations by excluding "nuisance dust" from the definition of particulate matter under the Clean Air Act. Noem's stance on the legislation was not affected by Jackson's assurance that the standard would not be revised.

"EPA's announcement does nothing to change the fact that they are still able to regulate farm dust. If the EPA has no intention of regulating farm dust then they should support my

legislation, which excludes farm dust managed at the state or local level from federal regulatory standards," Noem [said](#).

Others note that Noem's legislation is unnecessary and fundamentally flawed. John Walke, Director of the Natural Resources Defense Council's (NRDC) Clean Air Program, [wrote](#) that the bill would "[shut] down the scientific process of reviewing medical evidence to identify levels of coarse particle pollution levels that are harmful to human health." Walke further criticized H.R. 1633 for casting the bill "as salvation for 'farm dust'" when, in fact, it prevents EPA from issuing health standards for pollution that comes predominantly from industry, not farmers. Walke also warned that these bills are championed by people with an anti-regulatory agenda.

On Oct. 25, the House Subcommittee on Energy and Power of the Energy and Commerce Committee held a [hearing](#) on the legislation. Noem defended her bill alongside panelists including supporters from the American Farm Bureau Federation and other agriculture trade associations. Walke, who also [testified](#), charged that the "bill is sweepingly over-inclusive, creates unintended consequences, and increases harmful air pollution and health hazards for the American people."

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Deal or No Deal: The False Choice of the Super Committee

The so-called "Super Committee," charged with creating a \$1.2 trillion deficit reduction plan by Thanksgiving, seems to be stalling. If the committee cannot agree to a deal, or if Congress doesn't approve of the plan that the committee produces, the debt ceiling package that passed in August will trigger [almost a trillion dollars](#) in automatic spending cuts to both defense and non-defense spending. Congress as a whole appears to be waffling between voting for a deficit reduction plan that many constituents will find unpalatable or allowing the automatic cuts to proceed, which will also make voters unhappy. However, this problem presents a false choice because there is another option: Congress could vote to select "none of the above."

Though faced with a Nov. 23 deadline, the Super Committee does not appear to be moving closer to agreement on a plan. [Reports](#) indicate that the committee is meeting infrequently; that they are cramming in last-minute, small-group meetings during the current House recess; and that some members of Congress [are debating](#) an extension of the committee's deadline to approve a deal.

What little headway the committee was making was toward dramatic spending cuts. The committee's Democrats recently unveiled [their starting proposal](#), to the [dismay](#) of the wider

progressive community. According to an analysis by the Center on Budget and Policy Priorities (CBPP), the Democrats' proposal called for \$475 billion in cuts to Medicaid and Medicare, \$400 billion slashed from discretionary spending, and \$1.3 trillion in revenue increases. Combined with almost \$900 billion in cuts already put in place by [the debt ceiling deal](#), the new proposal would be a roughly three-to-two [ratio of spending cuts to revenue increases](#).

With this as a starting point, any plan that will likely come from the Super Committee will contain even larger cuts and smaller, if any, revenue increases. The spending cuts in [the Republican plan](#), for instance, are *63 times* greater than the revenue increases it contains, according to an [analysis by CBPP](#).

If a compromise is struck somewhere between the Democrats' and Republicans' opening salvos, the plan approved by the committee would severely underfund the nation's vital health care programs, retirement safety net, and public protections, like food inspections, worker safety enforcement, and consumer protections that benefit all Americans. Insufficient revenue increases will result in balancing the budget on the backs of middle- and low-income families, while the upper-class will continue to benefit from [historically low tax rates](#).

The alternative to a Super Committee plan, as outlined in the debt ceiling deal, is a round of automatic budget cuts. These cuts, which are "[triggered](#)" by the failure of the Super Committee to reach a deal, would be split evenly between defense and non-defense spending, with Social Security and Medicaid off the table and Medicare mostly protected. The cuts are drastic, amounting to \$831 billion over ten years. Cuts of this magnitude would significantly alter many of the functions of the federal government, scaling back a whole host of government services and further straining an already overburdened federal workforce. Tens of thousands of federal employees [would likely be laid off](#), pushing the unemployment rate even higher, further depressing consumer spending, and possibly setting off another recession.

However, the choice between a bad Super Committee plan and enormous spending cuts is a false one. Congress bound its own hands back in August, and it can unbind them if it wishes. Congress is not forced to choose the lesser of two bad options. The fiscally responsible path would be to choose a third option: undo the debt ceiling deal.

In fact, the entire premise of the Super Committee, that we absolutely must reduce the nation's deficit immediately, is a flawed premise. The nation's long-term debt problems are unrelated to our current deficit issues.

As CBPP has [repeatedly pointed out](#), the current budget deficit has been caused by largely temporary issues, including two wars, multiple rounds of tax cuts for the rich (which are set to expire soon), the recent recession, the 2008 financial collapse, and the government's reaction to the two crises. The forecasts of a larger debt in the long-term, however, are a structural problem related to skyrocketing health care costs.

Drastically cutting spending now is likely to exacerbate current and future economic problems. Delaying crucial investments to maintain public structures like education and infrastructure will

end up costing more down the road. With interest rates so low, now is the time to engage in wisely targeted government spending (infrastructure repairs and maintenance, extended unemployment insurance, etc.), which could boost the money in families' pocketbooks and allow households to increase their economic activity.

Even some congressional Republicans acknowledge that the last thing the nation needs is more cuts to federal spending. In a [recent piece in the *Wall Street Journal*](#), House Armed Services Chairman Buck McKeon (R-CA) warned that the defense cuts from the debt ceiling deal's "trigger" would have "grave economic costs." The trigger's large non-defense discretionary spending cuts would also deliver a large hit to the economy.

Instead of cutting spending, either through trigger cuts or through a Super Committee plan, Congress should choose to strengthen those programs that protect the public and the environment from pollution, workers from unsafe workplaces, consumers from foodborne illnesses, and families from the whims of a volatile economy. It's clear that neither the Super Committee nor the trigger will responsibly fund our nation's priorities, and deep cuts risk a double-dip recession.

Administration Identifies Unclassified Information to be Safeguarded

On Nov. 4, the National Archives and Records Administration (NARA) [released](#) the initial [registry](#) of controlled unclassified information (CUI) categories. When fully implemented, the categories listed in the CUI registry will be the only labels that agencies can use to identify unclassified information that requires safeguarding or dissemination controls.

Better sharing of sensitive information became a national priority when it was discovered that communication failures between agencies contributed to the United States' vulnerability to terrorism and the challenges the nation faced responding to the September 11 attacks effectively and in real time. However, efforts to improve the sharing of important public information have been inhibited by the haphazard proliferation of CUI categories and the lack of standards regarding their meaning and use.

In addition to hindering the critical work of government, the former system of sensitive but unclassified information unduly stymied transparency, as agencies claimed "pseudo-secrecy" with little oversight. For instance, some agencies restricted public access through the use of unjustified labels such as "For Official Use Only (FOUO)." The launch of the CUI registry is the latest step toward addressing those problems as part of the reforms in President Obama's November 2010 [executive order on CUI](#).

Categories in the Registry

The categories of information included in the registry, while unclassified, are deemed to warrant safeguarding – such as storage on a secure server – or conditions on dissemination – such as limitations on information sharing between agencies. The executive order requires each category to be based in statute, regulation, or government-wide policy in order to ensure that controls are reasonable and justified, and the registry lists such authorizations for each category.

The CUI office at NARA developed the registry based on agency submissions of categories currently in use. The submissions were reviewed for appropriate authorizations and standardized with equivalent categories across agencies.

Many of the authorizations referenced by the registry use language about preventing public disclosure: according to NARA, information restricted from public release should be safeguarded at some level, even if a statute or regulation does not require any specific security measures. However, the executive order is clear that CUI status imposes no *additional* restrictions on public access. CUI labels do not indicate how much information can be disclosed, but rather indicate how such information should be managed.

The initial registry comprises 15 categories, in addition to their sub-categories, representing the most widely used CUI categories. Each category identifies the type of information to be controlled, such as information related to nuclear materials or to a person's privacy. By thus specifying the reason for control, the new system should reduce overly broad restrictions on information.

For example, the [Privacy-Death Certificates](#) subcategory includes a description of the information and cites an [authority](#) for the subcategory. The authorizing language states that the Social Security Administration may share death records for statistical and research purposes, "subject to such safeguards as the Commissioner of Social Security determines are necessary or appropriate to protect the information from unauthorized use or disclosure." When the new CUI system is implemented, any user who encounters a document labeled "Privacy-Death Certificates" would be able to view that category's listing, creating a better common understanding of the category and preventing mishandling.

Initial CUI Categories	
Agriculture	Legal
Copyright	Nuclear
Critical Infrastructure	Patent
Export Control	Privacy
Financial	Proprietary
Immigration	Statistical
Intelligence	Tax
Law Enforcement	

NARA is expected to add additional categories in the coming months as it continues to process agencies' proposals. As the initial focus was on categories that cut across agencies, most of the forthcoming additions to the registry will likely be categories that only apply to single agencies. Agencies may also propose new categories or revisions to existing categories. Once the executive order is fully implemented, agencies will be prohibited from using categories that have not been approved by NARA. Such oversight should standardize the system and limit categories. However, it's unclear to what extent NARA's role as executive agent of the registry would allow it to modify [problematic categories](#) being authorized through appropriate channels.

Implementing the New System

Agencies are required to submit their [CUI implementation plans](#) to NARA by Dec. 6. After reviewing the plans, NARA will establish phased deadlines to implement the executive order.

That implementation, however, is unlikely to begin soon because several key elements required by the executive order and [NARA's implementation guidance](#) have yet to be completed. For instance, NARA has not yet determined how agencies will mark documents or systems containing CUI. Requiring more extensive labeling that precisely indicates the information subject to controls would reduce the risk of overly broad restrictions. However, more extensive labeling also would increase the compliance burden on agencies.

No decision has yet been made on how long each category will be subject to controls. Shorter control periods would reduce the risks that CUI will inhibit government openness, as well as limit agencies' compliance costs. However, agencies are likely to push for lengthier control for sensitive information.

The delays are not surprising given the difficulty and complexity of designing a new CUI system without the problems of earlier information control regimes. Tight agency budgets have left the NARA office overseeing the CUI system significantly understaffed, which has lengthened the delays.

Families Across the Country Demand Safer Chemical Legislation

On Nov. 10, families across the country will march with strollers to ask their senators to support chemical safety legislation to protect children from chemicals linked to cancer, birth defects, asthma, and other serious illnesses.

There are more than [80,000 chemicals](#) used in commerce in the United States today, and many have not been tested for safety. Scientists have linked [exposure to toxic chemicals](#) to a wide array of health risks, such as cancer, learning disabilities, birth defects, and reproductive problems. These chemicals are found in toys, furniture, electronics, cleaning supplies, cosmetics, food containers, and clothing. For instance, [nearly 72 percent of crib mattresses](#) contain dangerous chemicals (see [related article](#) in today's edition of *The Watcher*). The growing prevalence of chemicals in products, coupled with limited oversight and testing, has led many to call for improvements to our nation's out-of-date chemical protection laws.

Unfortunately, the U.S. Environmental Protection Agency (EPA) faces significant limitations in its authority to test and appropriately regulate the numerous chemicals constantly entering the marketplace. Members of Congress have proposed legislative remedies to bolster EPA's authority in this area, but the measures have not yet been enacted.

The Stroller Campaign

The family-oriented campaign, known as the "[Stroller Brigade](#)", is organized by Safer Chemicals, Healthy Families, a coalition of 280 public health, parent, environmental, and community organizations. It will feature activities such as letter writing, sign making, and parents with strollers walking to their senators' offices to hand-deliver letters supporting safe chemical legislation. Children ages two and up will dress in red capes to ask their senators to "be their heroes" by showing leadership and protecting them from harmful toxic chemicals.

The brigade will be held in the [following cities](#): Long Beach, NY; Newark, DE; Little Rock, AR; Fullerton, CA; Omaha, NE; Providence, RI; Norfolk, VA; Anchorage, AK; and Knoxville, TN. A previous and well attended stroller brigade, held on Aug. 10, took place in 17 states.

Chemical Safety Reform Needed

The EPA does not have sufficient authority to address the continual growth of chemicals in use, making it practically impossible to protect public health and the environment. The [Toxic Substances Control Act of 1976 \(TSCA\)](#), the nation's primary and outdated chemical safety law, quickly proved itself inadequate in regulating chemicals and ensuring products are safe. The law got off to a terrible start by immediately exempting [62,000 chemicals](#) in commerce at the time from any safety review. The law is written in a way that prevents EPA from requiring testing for all but about [200 chemicals](#). The testing resulted in partial restrictions on the use of five chemicals. In fact, under TSCA, the burden of proof falls on the EPA to prove a chemical poses a health risk, rather than on the chemical companies to prove the safety of their products.

A recent [study](#) by the Natural Resources Defense Council (NRDC) found that TSCA's weaknesses have allowed chemical companies to hinder the EPA's attempts to finalize chemical health assessments and delay regulation of chemicals, such as [trichloroethylene](#), or TCE, and formaldehyde, sometimes for decades. The chemical industry has successfully blocked agency action by attacking early drafts of health assessments; forcing new or more reviews; and introducing new industry-funded studies to confuse the process of evidence gathering when assessments are close to final.

Safe Chemicals Act of 2011

Sen. Frank Lautenberg (D-NJ) introduced the [Safe Chemicals Act of 2011 \(S. 847\)](#) in April to increase chemical safety, improve consumer access to information on chemical hazards in products, and protect vulnerable populations, such as low-income communities, children, and pregnant women. The bill would require safety substantiation of chemicals before they are placed in consumer goods, such as baby cribs and household cleaning products.

Specifically, the bill would:

- Require companies to submit minimum safety data for each chemical produced, with the industry bearing the legal burden of proving the chemicals are safe;

- Allow the EPA to prioritize chemicals based on risk into one of three classes – immediate risk management, safety standard determination, and no immediate action. The highest risk class receives the highest priority;
- Enable the EPA to ensure protection of vulnerable populations that may be particularly susceptible to chemical exposures, such as children, developing fetus, or to disproportionately high exposures, such as low-income communities living near toxic facilities; and
- Create an electronic database to provide public chemical safety information, including pre-manufacture notices, safety testing, and agency decisions.

If enacted, these provisions would likely benefit agencies, consumers, and businesses. Requiring chemical companies to submit health data before marketing a new chemical gives the EPA a more comprehensive starting point for oversight and frees up resources to pursue restrictions on the most dangerous chemicals. Greater access to information allows consumers to make more informed choices. And while business will have some increased costs associated with providing the new health data and could face additional restrictions on some chemicals, the process should result in increased public trust in their products and protect them from lawsuits.

Among the legislation's changes are several provisions aimed at reducing claims of confidential business information (CBI), which currently allow companies to demand that health and safety information of common chemicals be withheld from the public and medical professionals. The legislation would limit the conditions under which the industry can claim CBI:

- All CBI claims would have to be justified up front;
- EPA would be required to review all CBI claims, and only approved claims would stand;
- Approved claims would expire after no more than five years, except for types of claims for which EPA determines the five-year term would not apply; and
- Workers and local and state government officials would have access to CBI, so long as they protect the information's confidentiality.

Recently, the EPA has taken small steps to limit what TSCA information can be claimed as CBI and to ensure that only legitimate claims are granted such protections. Public interest groups have lauded these actions, as well as the proposed bill's ability to further limit CBI claims. Many of the bill's CBI provisions were recommended in the environmental right-to-know report [*Agenda to Strengthen the Right to Know*](#), drafted by OMB Watch and endorsed by more than 100 organizations.

Public Reaction

The bill has received widespread support from public interest advocates, medical associations, and business groups across the country. "We need a new law to put commonsense limits on toxic chemicals ... to protect American families," [*said*](#) Andy Igrejas, director of Safer Chemicals, Healthy Families. "The Safe Chemicals Act is a win for both public health and the economy. Smart businesses want to help make reform happen because it's in their financial interest to make safer, healthier products," Igrejas added.

A coalition of nearly 2,500 small businesses from across Maine [called on](#) the state's U.S. senators, Susan Collins and Olympia Snowe, both Republicans, to support the Safe Chemicals Act. "No business wants toxic chemicals in the products or packaging on our shelves," said Nate Libby, executive director of the Maine Small Business Coalition. Betsy Lundy, owner of the Center Street Farmhouse in Bangor, ME, says that the bill "allows me to look at the information out there and decide, 'Yes, this is something I personally feel comfortable having in my store and putting my name behind.'"

The Toxic Action Center, a public interest group, and the Main Small Business Coalition recently released [a survey](#) on market transparency and product safety; 88 percent of businesses surveyed want policies that ensure full health and safety testing of all chemicals in commerce.

Even chemical groups, such as the American Chemistry Council (ACC), acknowledge that TSCA needs to be updated. In a [press statement](#), the ACC expressed its commitment to modernizing the act but expressed concern "about how [the bill] may impact America's manufacturing base." Cal Dooley, the ACC's president and CEO, said the new legislation "may be legally and technically impossible to meet."

Next Steps

Lautenberg and advocates [predict](#) that the Safe Chemicals Act of 2011 will be marked up by the Senate Environment and Public Works Committee by the end of 2011, despite Congress's current partisan divide and chemical industry opposition.

No similar legislation has yet been introduced in the House, and the Energy and Commerce Committee, which would have jurisdiction over chemical reform legislation, has not held any hearings on the subject this year. However, Rep. Fred Upton (R-MI), chair of the Energy and Commerce Committee, did include consideration of TSCA on the committee's agenda.

Anti-Regulatory Attacks Coming in Both the House and Senate

While most Congress watchers have been focusing on the work of the Super Committee, anti-regulatory activists in both the House and the Senate have been working hard to undercut some of the most important safeguards that protect Americans.

On Nov. 3, the Senate rejected [S. 1786](#), the Long-Term Surface Transportation Extension Act of 2011. This bill, which was offered as the Republican alternative to the Democrats' transportation and infrastructure jobs bill, included two sweeping anti-regulatory provisions: the Regulations from the Executive in Need of Scrutiny (REINS) Act and the Regulatory Time-Out Act.

Both the REINS Act and the Regulatory Time-Out Act would make it more difficult for agencies to fulfill their statutory missions. The REINS Act would flip the existing regulatory process on its head: under current law, Congress may use the Congressional Review Act to halt a rule it opposes; if REINS took effect, Congress would have to approve every major rule issued by any

government agency before the rule could take effect. The Regulatory Time-Out Act would impose a one-year moratorium on new regulatory actions by government agencies, including, for example, safe produce regulations that are required by the Food Safety Modernization Act and should help to protect against contaminants like *Listeria*.

S. 1786 [failed 47-53](#) on a procedural vote, with all Democrats but Sen. Joe Manchin (D-WV) voting against it and all Republicans but Sen. Olympia Snowe (R-ME) voting in favor. This was a significant change from the last time a major anti-regulatory provision was on the floor of the Senate: on June 9, six Democrats and every Republican [voted](#) in favor of an [anti-regulatory amendment](#) offered by Sens. Snowe and Tom Coburn (R-OK). While this may indicate that more senators are coming to understand the importance of our nation's public protections, caution and vigilance will be needed in the weeks ahead, as more anti-regulatory attacks are expected in the Senate.

On the other side of the Capitol, the House Judiciary Committee was marking up the [Regulatory Accountability Act \(RAA\)](#). The RAA, which is sponsored in the House by Reps. Lamar Smith (R-TX) and Collin Peterson (D-MN) and in the Senate by Sens. Rob Portman (R-OH), Susan Collins (R-ME), and Mark Pryor (D-AR), would [fundamentally reorient](#) the regulatory process, requiring agencies to always choose the "least costly" alternative rule.

While such a provision sounds reasonable on its face, [experience](#) under the Toxic Substances Control Act (TSCA) has shown that requiring the least costly alternative as the standard essentially forbids agencies from issuing protective rules. In 1991, a federal court found that the U.S. Environmental Protection Agency (EPA) had not adequately analyzed every possible alternative asbestos regulation – even though the agency had spent ten years and millions of dollars considering alternatives and developed a 45,000-page record of their findings. Since that ruling, EPA has not even attempted to regulate chemicals under TSCA because, as the CEO of SC Johnson put it, "Your child has a better chance of becoming a major league baseball player than a chemical has of being regulated [under TSCA]."

Even more concerning, the RAA would run roughshod over many laws that are crucial to protecting the health and safety of Americans. One of these, the [Occupational Safety and Health Act](#), requires that regulations be issued when "reasonably necessary or appropriate to provide safe or healthful employment." Comparable requirements exist in the Clean Air Act, the Clean Water Act, the Mine Safety and Health Act, and at least twenty-one other major statutes. The RAA demands that, "notwithstanding any other provision of law," cost-benefit analysis must always be the first consideration.

At the mark-up in the House Judiciary Committee, Rep. Steve Cohen (D-TN) offered [an amendment](#) that would have preserved agencies' focus on public health and safety over costs to regulated industries. This amendment, which reaffirmed the basic goal of the entire regulatory system, failed by one vote. Ultimately, the RAA itself was reported out of the Judiciary Committee on a 16-6 vote, with many Democratic committee members unable to vote because Chairman Smith held the vote hours earlier than promised, at the same time that many Democratic members were meeting with U.S. Supreme Court Justice Elena Kagan.

The RAA came close on the heels of the REINS Act, which was marked up in the same committee on Oct. 25. Both RAA and REINS represent the culmination of the agenda that Majority Leader Eric Cantor (R-VA) [announced](#) in August. Over the past several weeks, the House has hewn closely to the Cantor agenda, passing a procession of bills that attack or repeal particular regulations; now, with RAA and REINS ready for floor action, they are preparing to take on the entire regulatory process.

Fortunately, both the Senate and the White House seem to be prepared to protect the public by protecting the process. Not only did the Senate vote down S. 1786, but the Obama administration also issued a strong [Statement of Administration Policy](#), which centered on the bill's anti-regulatory provisions and contained a strong veto threat.

While these are positive indications, they are not cause for much relief. A plethora of "regulatory reform" bills are still pending before the Senate Homeland Security and Governmental Affairs Committee chaired by Sen. Joe Lieberman (I-CT). Considering Senate Republicans' willingness to resort to amendments and [procedural maneuvering](#) to push their anti-regulatory agenda, Americans, all of whom benefit from our system of regulatory safeguards, will have to pay close attention to developments on the floor.

Confidence in Crib Safety: Are Regulatory Hoops and Delays Putting Babies at Risk?

Nowhere is safety more important than in children's toys and products. A number of regulatory agencies share responsibility for ensuring that children are not exposed to harmful toxins or dangerous products, but legislative gaps and procedural hoops have delayed needed protections. A new report by Clean and Healthy New York concludes that while some crib mattress manufacturers have made products less toxic, a "significant portion of the crib mattresses in the U.S. market contain one or more chemicals of concern" and may still pose risks to babies.

Toxic Crib Mattresses

The [report](#), *The Mattress Matters: Protecting Babies from Toxic Chemicals While They Sleep*, found that a majority of mattress models still contain at least one chemical of concern. Furthermore, the amount of disclosure that companies provide on the materials used to make the crib mattresses varies, making it difficult in many cases to know whether the product is safe.

Polyvinyl chloride (PVC) products are often found on mattresses and are usually made using additives called phthalates. The U.S. Environmental Protection Agency (EPA) has expressed [concern](#) "about phthalates because of their toxicity and the evidence of pervasive human and environmental exposure to these chemicals." The European Union has already acted and is currently phasing out a number of phthalates under its Registration, Evaluation, Authorization & Restriction of Chemical substances ([REACH](#)) program.

Based on these hazards, EPA developed a proposed rule in 2010 to add phthalates, bisphenol A (BPA) – found in baby bottles, the lining of food and beverage containers, and hard plastics – and other chemicals to a Chemicals of Concern List under the Toxic Substances Control Act (TSCA). This is the first time EPA used its authority under TSCA to create a list of chemicals that "present or may present an unreasonable risk of injury to human health or the environment." While not a substitute for the [comprehensive TSCA reform](#) that safety advocates and policymakers are calling for, the proposed rule received praise from public health and environmental organizations. However, the action has been stalled since EPA submitted the proposed rule to the Office of Information and Regulatory Affairs (OIRA) for review on May 12, 2010. OIRA has yet to release the rule for public comment after exceeding the authorized 90-day review period by more than a year.

In a Sept. 9 [letter](#) to OIRA Administrator Cass Sunstein, Sens. Frank Lautenberg (D-NJ) and Sheldon Whitehouse (D-RI) asked OIRA to conclude review of the proposed chemicals of concern rule and "allow EPA to propose the rule." The senators urged Sunstein to end the delay, which scientists and public safety advocates [have criticized](#) as inexcusable.

Listing phthalates on the chemicals of concern list may not provide the robust regulation needed to fully protect babies from all levels of exposure, but it would provide parents and caregivers with information to help them make safer choices. It could also increase public demand for less toxic products and push more manufacturers to voluntarily avoid using chemicals of concern in crib mattresses. The *Mattress Matters* report confirmed that many companies have responded to public demand for safer products but found that only a small percentage of manufacturers making "green claims" actually avoid using all of the dangerous chemicals identified in the report.

The Dispute over Crib Bumper Pads

Since the 2008 passage of the Consumer Product Safety Improvement Act, the Consumer Product Safety Commission (CPSC) has followed its congressional mandate to increase safety standards for children's toys and products, taking a number of actions to improve the safety of baby cribs and sleep products. In September 2010, the CPSC and U.S. Food and Drug Administration issued a [joint warning](#) against using infant sleep positioners because of the suffocation risk they pose. In June, [crib safety standards](#) issued in 2010 became effective, including rules that stop the manufacture and sale of dangerous, traditional drop-side cribs and require more rigorous safety testing. Unfortunately, despite warning cries from physicians and safety groups, the CPSC has yet to regulate or issue official warnings to parents of the dangers of bumper pads that wrap around the sides of cribs.

The American Academy of Pediatrics urged parents [not to use bumpers](#) after research conducted in 2007 by pediatrician Bradley Thach concluded that 27 infant deaths were attributed to bumper pads from 1985 to 2005. The city of Chicago [banned the sale of crib bumpers](#) in September, and Maryland proposed a similar state-wide ban a few weeks later. The Juvenile Product Manufacturers Association (JPMA), however, says there is not yet sufficient research to develop industry standards for bumpers.

In March, CPSC Chairman Inez Tenenbaum [said](#) that the commission is "currently taking a 'fresh look' into the safety of crib bumpers," with "[a]dditional staff reviewing more than 50 deaths in which a bumper is cited in the case file." Tenenbaum cautioned that the lack of evidence of a causal connection between properly used crib bumpers and suffocation, along with outdated information, make the issue especially challenging. However, she did commit to assembling a panel of outside experts to conduct a peer review of the CPSC staff's analysis. Notably, she said that CPSC's previous position that there is no scientific link between bumpers and suffocation should not be presented as the commission's current position until the "fresh look" is completed.

Unfortunately, the warnings about the dangers of crib bumpers came too late for some parents. "If I had heard one negative thing about a bumper, I wouldn't have used one," [said](#) Laura Maxwell, whose infant son suffocated after his face became wedged between the mattress and bumper pad. Some parents like Maxwell are demanding that CPSC take greater action. "If [bumpers] were taken off the shelf in 2009, my son would still be here," she [said](#).

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Congress Votes on Balanced Budget Amendment

Even though the Super Committee is stealing the limelight, this summer's debt ceiling deal didn't just create the deficit-cutting committee. It also forces both the House and the Senate to vote on a balanced budget amendment to the Constitution. [On Nov. 18](#), House leadership brought an amendment to the floor, where it failed to get the two-thirds vote necessary to pass. However, the close House vote and the impending Senate vote mean that this is not the end of the balanced budget amendment.

While conservative members of the House Republican caucus were in favor of a more restrictive version, leadership brought a "clean" balanced budget amendment to the floor, one without supermajority requirements for raising taxes, although a three-fifths majority vote would have been required to raise the debt ceiling. Leadership chose the clean version in an effort to win over House Democrats, since a constitutional amendment needs the support of two-thirds of each house. This equals 290 votes in the House, meaning at least 48 Democrats would have had to have voted to approve the amendment. In the end, [only 25 Democrats](#) voted for the amendment, and four Republicans voted against it.

The Nov. 18 vote produced far fewer "yes" votes than the last time a balanced budget amendment came up in the House. [In 1995](#), a version of the amendment passed in that chamber, garnering 300 votes, 72 of them from Democrats. Much has been written about how, in recent elections, so-called Blue Dog (more conservative) Democrats have been replaced by Republicans, but this does not fully explain the difference between the most recent vote and previous attempts to pass the amendment.

Back in the 1990s, balanced budget amendments were seen by some as a tool of good government, sort of like a stronger version of [PAYGO](#), which requires that certain budget actions have offsets. As a result, members of both parties supported the amendment (although a large majority of Democrats still opposed it).

However, Republicans have recently been attempting to use balanced budget amendments as a tool to advance their ideological goals. [Newer versions](#) have included limitations on government spending levels, supermajority requirements to raise taxes, and even higher hurdles for raising the debt ceiling. These new, more radical versions of the balanced budget amendment gained strong conservative support, with groups such as Grover Norquist's Americans for Tax Reform [coming out in favor](#) of them.

A balanced budget amendment would make it more difficult for the government to react to changing economic conditions, as it requires a supermajority vote to engage in deficit spending. Deficit spending is an important tool for governments when crises occur, since it lets them spend money without raising taxes or cutting from other areas. A constitutional requirement to balance the federal budget curtails that power. For instance, the Recovery Act, which helped [create or save millions of jobs](#), would not have passed the House if a balanced budget amendment was in effect.

[For more information on balanced budget amendments, see our [resource page](#).]

Despite the demise of the most recent version of the amendment in the House, the Senate must still vote on a balanced budget amendment by the end of 2011 (several times in the past, the Senate has come within one vote of passing a balanced budget amendment). Senate leadership could bring a "liberal" version to the floor, with exceptions for Social Security, Medicare, and Medicaid. Sen. Mark Udall (D-CO), for instance, [has offered a balanced budget amendment](#) that protects Social Security and prevents unpaid-for tax cuts for the rich. Such a proposal would likely have support from some Senate Democrats, but it would be rejected by Senate Republicans.

In the end, however, any version of the balanced budget amendment would be an unnecessary constraint on the authority and flexibility of future sessions of Congress and is thus best left in the dust bin of bad ideas.

Battling Income Inequality through Smart Surtax Policies

In spite of the media's developing [critical narrative](#) of the Occupy movement, Occupy protesters have succeeded in [changing the national political conversation](#) from an obsession with debt and deficits to a focus on the growth in income inequality and the concentration of wealth.

A recent Congressional Budget Office (CBO) [study](#) has found that between 1979 and 2007, the top one percent's share of after-tax income more than doubled while the share for the bottom 99 percent shrank. One way to help fight this growing inequality is a set of targeted surtaxes on the wealthiest Americans.

Before the Occupy activities, Washington had a myopic focus on debt and deficits due to the constant drumbeat from fiscal hawks on Capitol Hill who used the economic downturn – and consequent drop in federal tax revenue – as an excuse to call for cuts in government spending. President Obama acquiesced to these concerns, creating the [National Commission on Fiscal Responsibility and Reform](#) in early 2010.

Commonly known as the Bowles-Simpson Commission, the fiscal committee spurred numerous think tanks, policy shops, and lawmakers to put forth their own deficit reduction proposals over the course of the next year. A number of these plans examined not only cuts to government spending, but also ways to raise more federal revenue. One of the options examined was an additional tax on the extremely wealthy.

For example:

- The Center for American Progress (CAP) [called](#) for a five percent surtax on adjusted gross income (gross income less tax deductions) over \$500,000 and a seven percent surtax on adjusted gross incomes over \$5 million. According to CAP, this proposal would bring in about \$75 billion per year, or enough revenue to close 5.8 percent of this year's \$1.3 trillion budget deficit.
- Andy Stern, former head of the Service Employees International Union (SEIU), called for a new top tax rate specifically for millionaires in his [deficit reduction proposal](#). Stern estimated that the measure would bring in roughly \$50 billion per year, or enough revenue to close 3.8 percent of this year's budget deficit.
- Both [Our Fiscal Security](#) (a deficit coalition comprised of the Economic Policy Institute (EPI), Demos, and the Century Foundation) and the [Congressional Black Caucus](#) (CBC) advocated a 5.4 percent surcharge on joint filers with an adjusted gross income of over \$1 million. The groups estimated that the measure would bring in between \$46 billion and \$57 billion per year, or enough to close between 3.5 percent and 4.4 percent of this year's budget deficit.

Though these plans differ on rates and the level at which a surtax would take effect, the proposed measures share several key attributes. First, they target the very wealthy. Only CAP's proposal would affect those earning less than \$1 million in income each year. Second, the surtax rates are small. The current top federal income tax rate is 35 percent. If the current top rate were

permanently extended, then a surtax would only bring the top income tax rate back to what it was during the Clinton era, when it topped out at 39.6 percent.

The targeting of such surtaxes is important. As the CBO study revealed, over the last thirty years, the concentration at the top of the nation's income spectrum is the main culprit of inequality.

But income taxes aren't the only taxes most workers pay. Over the past 30 years, more federal revenue has been coming from payroll taxes (and less has been coming from income taxes). Payroll taxes are regressive: low-income households, on average, pay more than eight percent of their income into systems like Social Security and Medicare while the top one percent pays, on average, less than two percent of their income in payroll taxes, largely due to high-income earners only having to pay Social Security taxes on the first \$107,000 of their earnings.

High-income households are also more likely to receive a significant portion of their income from dividends and stock (capital gains earnings). Since this income is taxed at only 15 percent, it reinforces the upside-down character of the tax system. In fact, the top one percent of households' federal income taxes (as a percentage of their income) dropped precipitously after passage of the Bush tax cuts in the early 2000s. In other words, there has been a large shift in the source of federal revenue from income to payroll taxes, leaving low- and middle-income workers shouldering a larger share of taxes than before.

As detailed in a recent *Watcher* [piece](#), researchers at the International Monetary Fund (IMF) found that high levels of inequality are correlated with slower growth. Enacting a surtax on millionaires' income would be a step toward reducing income equality and might pave the way for faster economic growth in the future. At the very least, it would help to lower deficits and ensure the wealthy pay their fair share in taxes.

Communities Across the Nation Struggle to Combat Air Pollution

Though the Clean Air Act and rules from the U.S. Environmental Protection Agency (EPA) have reduced national air pollution levels, hundreds of communities around the country still struggle with dangerously poor air quality. Released on Nov. 7, [Poisoned Places: Toxic Air, Neglected Communities](#) is an investigative journalism project that raises awareness about these communities. The project includes a series of in-depth stories and an interactive mapping tool that raise important questions at a time when Congress is seeking to weaken the act and its enforcement.

In 1970, Congress authorized the EPA to develop and enforce standards to protect the public from exposure to smog, airborne contaminants that are known to be hazardous to human health, and other types of air pollution. The Clean Air Act Amendments of 1990 expanded the agency's authority and required steps to protect communities from nearly 200 dangerous substances, such as mercury, benzene, and arsenic. Agency efforts to reduce air pollution have resulted in an [estimated 40 percent](#) drop in national toxic emissions from 1990 to 2005.

However, despite the act and the progress made since 1990, air pollution continues to threaten the lives and health of millions of people in various communities throughout the United States. [A recent report](#) indicates that just over one half of the American people is exposed daily to toxic chemicals from industrial facilities, such as power plants, refineries, and cement plants. The pollution levels are frequently too dangerous to breathe, and exposure to the pollutants often leads to cancer, birth defects, asthma, and other serious health issues.

The *Poisoned Places* Project

Poisoned Places, a collaborative project of the Center for Public Integrity (CPI) and National Public Radio (NPR), seeks to present air pollution data in a new way and to tell the stories of communities around the country fighting to protect their health and environment from polluters and lax enforcement of standards. As part of the project, CPI and NPR make public for the first time an internal EPA watch list of the most serious or chronic violators of the Clean Air Act. The list of 464 facilities, obtained through a Freedom of Information Act request, reveals that most of the violators have not faced any formal enforcement action for at least nine months, or in some cases, years.

The project also launched a new interactive online map, providing data on more than 16,000 facilities nationwide that release harmful chemicals. The interactive map integrates existing government data from [four EPA datasets](#) relating to sources of air pollution, including: the Clean Air Act watch list, the Air Facility System (AFS), the Toxics Release Inventory (TRI), and the Risk Screening Environmental Indicators model (RSEI). Users of the site can find facilities near them and easily see what level of risk each poses.

Communities Struggle to Combat Toxic Air Pollution

Many communities have struggled for decades to get air pollution standards enforced. They have encountered industries that are disinterested in air quality and government officials tasked with clean air enforcement who have limited resources and are constrained by rules that restrict their actions.

The stories highlight how air pollution problems can be well known and yet difficult to address. For instance, in [Ponca City, OK](#), the Continental Carbon Company pumped out carbon black, a black powdery substance that can cause cancer and other illnesses, such as asthma. For over 10 years, residents, including the Ponca Indian tribe, filed over 700 formal complaints to state and federal regulators about how carbon black had affected their health and community. However, state rules prevented regulators from taking action unless officials directly witnessed the pollution leaving the facility. Emissions declined only after residents sued the company and won almost \$20 million in settlements. The company, which still claims not to have caused any pollution, purchased and then razed the homes closest to the plant.

Some *Poisoned Places* stories demonstrate how toxic emitters exploit loopholes that allow them to pollute legally. In [Chanute, KS](#), a town of roughly 9,000 people, the Ash Grove cement plant was the second largest emitter of mercury in the state in 2004. A federal loophole permits

cement kilns to burn hazardous waste without the same pollution control requirements of commercial hazardous-waste incinerators. Despite complaints of pollution and health problems by local residents, regulators have insisted that the Ash Gove plant is technically compliant with the pollution requirements that apply to the facility.

Another problem the stories have highlighted is that companies are allowed to self-report their own pollution and estimate the quantity of toxic chemicals they release. This system not only leads to erroneous reporting, but allows companies to underreport their pollution levels. In [Tonawanda, NY](#), for example, the Tonawanda Coke plant reported releasing between three and five tons of benzene, a known human carcinogen. After decades of inaction by local and state officials, residents, suffering from a host of illnesses, including fibromyalgia, breathing problems, rashes, infertility, and various forms of cancer, began conducting their own air tests. In 2009, the EPA charged the company with violating the Clean Air Act, finding that benzene emissions were over 90 tons annually, 30 times what the plant reported and well beyond emissions limits.

A Tool to Increase Public Awareness

Public awareness of pollution has proven a powerful tool in forcing more responsible actions by industry and government. Without access to information on pollution and compliance that is easy to understand, citizens are often left to complain for years with little or no results. When informed about the toxics in their air, residents are better able to organize and demand investigations from government agencies and improvements from companies.

Keith Epstein, CPI Managing Editor, [explained the empowering effect of the project](#). "Users can start learning the health risks in their neighborhood," he said. "People who are worried about the air – and complacency of regulators – can learn how to test it themselves." Local ["bucket brigades"](#) have proven incredibly important in confirming community suspicions and leveling the playing field when facilities misreport their pollution levels.

[The project](#), in particular the watch list and map, has also been especially useful to reporters around the country. The data has inspired local reporting on air pollution in [Minnesota](#) and [California](#). Elizabeth Shogren, NPR environmental correspondent, [believes](#) that the watch list "could be a good source of leads for stories," alerting reporters to the facilities that are known violators of the Clean Air Act.

Poisoned Places has already begun to result in new actions by government officials. In fact, just days after the article series covered the [Asarco copper smelter](#) in Hayden, AZ, the EPA declared the facility was breaking the law by releasing illegal amounts of lead, arsenic, and eight other dangerous compounds for six years. The finding also suggests that the state of Arizona, which has primary responsibility for federal Clean Air Act enforcement in the state, has failed to take meaningful action against the smelter.

Protecting Clean Air in the Face of Congressional Attacks

The investigative series also brings to mind serious questions about congressional efforts to weaken and delay enforcement of the Clean Air Act. In the House, representatives passed the Transparency in Regulatory Analysis of Impacts on the Nation (TRAIN) Act ([H.R. 2401](#)) in September. The TRAIN Act would block clean air safeguards designed to curb mercury emissions from power plants and limit air pollution that travels across state lines. In the Senate, Democrats recently blocked a [bill](#) that would have rescinded EPA controls on toxic emissions from industrial boilers and cement factories.

It is disappointing that, despite the clear agreement on the [need for clean air](#), Congress would consider creating more loopholes and exemptions, especially when the *Poisoned Places* project makes clear that we have more work to do on air quality and that many communities continue to live with health risks from the air they breathe.

Global Studies Highlight U.S. Transparency Strengths, Weaknesses

Several recently published studies compare the policy and practice of transparency in the United States and other countries. Such studies provide useful measures of U.S. openness relative to real-world conditions, in addition to highlighting global best practices and alternative approaches. The U.S. ranked in the middle range in the studies, demonstrating how other countries have met the challenges of 21st-century transparency while the U.S. has lagged in some areas.

The studies examined the Freedom of Information Act (FOIA) and the transparency of foreign aid spending. Openness in those areas is essential to building a more accountable, efficient government. The Obama administration is attempting to improve U.S. performance in these areas through its participation in the global [Open Government Partnership](#) (OGP) and other initiatives.

Transparency of government activities typically brings increased accountability and improved performance. The current work of the U.S. government – putting Americans back to work, protecting our families from harm, rebuilding our infrastructure – is too important to allow excessive secrecy to weaken our performance.

FOIA

On Nov. 17, the Associated Press (AP) published an [audit of FOIA laws](#) in 105 countries and the European Union; according to the AP, it was the first worldwide test of such laws. The AP filed requests in each country for information on terrorism arrests and convictions as part of an investigation into how anti-terrorism laws have been used globally since the Sept. 11 attacks. Certainly, the public deserves to know how effectively governments have combated terrorism – and whether they have abused their authority.

Unfortunately, the U.S. fared poorly in the audit. The AP graded the U.S. as "partially responsive," along with countries such as Canada, France, and Peru. Meanwhile, countries such as Mexico, Turkey, and India were scored as "responsive." In some of these countries, governments took only days to respond to the AP's request. In the U.S., however, the Federal Bureau of Investigation (FBI) responded six months late – with only a single page of information.

Globally, more than half the countries audited did not release any information in response to the request. In a notable trend, newer democracies performed better than more established ones. This may indicate that more recent democracies have been able to establish better policies and practices, essentially leapfrogging the problems of entrenched secrecy that have developed in older democracies.

That result is echoed by another FOIA study, the [Global Right to Information Rating](#) released in September by [Access Info Europe](#) and the [Centre for Law and Democracy](#). The authors claim that the rating is "the first detailed analysis of the legal framework for the right to information in 89 countries." The study examined 61 indicators across seven categories, such as the procedures to make a request and to appeal a denial.

The analysis found that countries with more recently adopted FOIA laws generally had stronger policies. The U.S., which adopted one of the first FOIA laws in 1966, ranked 36th out of the 89 countries studied. The U.S. received demerits for, among other reasons, excluding the legislative and judicial branches from the law; not having to show a risk of actual harm in order to withhold information; and not having a binding, independent appeals process. Overall, the report noted that "it is quite possible that this score undervalues the true openness of the United States government. Nonetheless, there are significant problems with the USA's access regime."

Aid Transparency

Three recent studies rank the U.S. on the transparency of its foreign aid spending. [According](#) to aid transparency advocates Publish What You Fund, lack of transparency "leads to waste, overlap and inefficiency. It impedes efforts to improve governance and reduce corruption and makes it hard to measure results." Those effects weaken public trust in donor countries and cause unnecessary hardship for the intended recipients of aid: those suffering from disease, malnutrition, and lack of opportunity in developing countries.

Using different methodologies, the three studies arrived at different rankings but the same conclusion: the U.S. is not following best practices in aid transparency. The [Quality of Official Development Assistance](#) report, published Nov. 14 by the Brookings Institution and the Center for Global Development, ranked the U.S. 12th out of 31 donors in its Transparency and Learning category. While not a leader, this represented a significant improvement from the [2010 study](#), in which the U.S. scored 24th out of 31.

However, a [study by Anirban Ghosh and Homi Kharas](#), published in the November issue of the journal *World Development*, ranked the U.S. 22nd out of 31 donors. Meanwhile, Publish What

You Fund's [Aid Transparency Index](#), published Nov. 15, examined 58 donor agencies, including six U.S. government agencies, which varied widely in their scores. The Millennium Challenge Corporation scored highest among U.S. agencies at 7th place, while the Defense Department ranked 46th and the Treasury Department's Office of Technical Assistance scored 49th.

Other Indices

These global studies join a short list of others, including the [Open Budget Survey](#) and the [Revenue Watch Index](#), that systematically compare certain aspects of transparency across countries. Such studies can help advocates and public officials identify areas for improvement while demonstrating that increased transparency is achievable.

U.S. Ranking in Transparency Indices	
AP FOIA audit (2011)	2nd category / 5
Global Right to Information Rating (2011)	36 / 89
Aid Transparency Index (2011)	varies per agency, from 7 to 49 / 58
Ghosh/Kharas aid transparency ranking (2011)	22 / 31
Quality of Official Development Aid, Transparency and Learning category (2011)	12 / 31
Revenue Watch Index (2010)	11 / 41
Open Budget Survey (2010)	7 / 94

Learning from Others' Examples

The U.S. has expressed some willingness to learn from the successes of other countries, most notably in its role leading the multilateral [Open Government Partnership](#) (OGP). The national action plans each country produces under OGP form an implicit "race to the top," and the partnership also provides for the exchange of ideas and experience between countries. For instance, the U.S. OGP plan includes a commitment to join the international Extractive Industries Transparency Initiative, which would shed additional light on government revenues from mining and drilling, and implementation efforts are [already under way](#). The U.S. also formed a bilateral [partnership with India](#) in 2010, and White House officials have expressed admiration of India's FOIA law. Nonetheless, these recent studies demonstrate that, despite recent progress, the U.S. still requires significant improvements to become an international leader on open government.

Regulatory Accountability Act Threatens Essential Public Protections

For the past six decades, our nation's system of public protections has developed safeguards that protect us from health and safety threats. Now, however, the misleadingly titled Regulatory Accountability Act could turn this system on its head, allowing more special interest influence and inviting endless rounds of litigation.

The Regulatory Accountability Act ([RAA](#)) is an attempt to fundamentally rewrite and expand the Administrative Procedure Act ([APA](#)), a sixty-five-year-old statute that can be considered a kind of constitution for administrative agencies and the regulatory process. There are now more than 110 separate procedural requirements in the rulemaking process; the RAA would add more than 60 new procedural and analytical requirements. For the country's most important rules, the RAA would add no fewer than 21 to 39 months to the rulemaking process.

The RAA would grind to a halt the rulemaking process at the core of implementing the nation's public health, workplace safety, and environmental standards. Rules that somehow make it through the RAA's process would tilt against the public interest and in favor of powerful special interests.

While the additional requirements would add tremendous cost and many years of delay to the process, they would do little to actually improve the quality of rules generated. In fact, experts in administrative law [have written](#) that they "seriously doubt that agencies would be able to respond to delegations of rulemaking authority or to congressional mandates to issue rules if this bill were to be enacted." The current Office of Information and Regulatory Affairs (OIRA) Administrator, Cass Sunstein, once wrote that "the costs of investigation and inquiry are never zero; to the contrary, they are often very high." The costs of these delays should be counted not just in days and dollars, however: regulations save lives, prevent illness and injury, and stabilize our economy.

Experience at the state level has demonstrated that an RAA-style approach not only wastes time and resources, but actually harms the rulemaking process. After California adopted an RAA-like set of requirements in 1979, the state's rulemaking process became slow, cumbersome, and resource-intensive. State agencies generate boilerplate findings because they do not have the time or resources to perform meaningful analyses. The process is so technical that experienced, specialized lawyers have to supervise every step. As a result, agencies can complete work on fewer regulations – and public health and safety is threatened.

Making the "Least Costly" Rule the Default Choice

The RAA requires that an agency default to the "least costly" rule unless it can demonstrate – out of all the possible alternatives – that additional benefits of a more costly alternative justify the additional costs and offer a public health, safety, environmental, or welfare justification clearly drawn from the authorizing statute. This would override more than two dozen deliberate

and long-honored precedents – in fact, most well known health, safety, and environmental statutes – that direct agencies to prioritize health and safety criteria to protect Americans.

The "least costly" default requirement is not a novel idea but is closely analogous to the standard found in the Toxic Substances Control Act (TSCA). This act has actually kept toxic substances from being regulated. For example, even though everyone agrees that asbestos is a serious threat to human health, the U.S. Environmental Protection Agency (EPA) has not been able to issue a rule that meets the TSCA standard and could protect Americans from asbestos. In fact, the CEO of SC Johnson has said, "Your child has a better chance of becoming a major league baseball player than a chemical has of being regulated [under TSCA]."

Super-Mandating Cost-Benefit Analysis

The RAA's requirement that, for any proposed rule, agencies consider all of the "potential costs and benefits associated with potential alternative rules ... , including direct, indirect, and cumulative costs and benefits," would apply "[n]otwithstanding any other provision of law." This would rewrite "much, perhaps most, of the safety and health legislation now on the books." The problems with the RAA's emphasis on cost-benefit analysis as the most important deciding factor are only compounded by how the analyses would be performed. The RAA omits language, found in [Executive Order 12866](#) and other executive orders, that reiterates that some of the most important considerations cannot be quantified. Certain types of benefits are difficult to quantify, and certain types of costs are inherently speculative. In addition, [empirical research](#) has demonstrated not only that the economic benefits of most rules vastly outweigh their costs, but also that cost-benefit analyses typically overestimate costs and underestimate benefits.

In a telling example of the problems with the RAA's cost-benefit analysis super-mandate, the U.S. Supreme Court has ruled that the Occupational Safety and Health Act prohibits the Occupational Safety and Health Administration (OSHA) from basing health standards on a strict cost-benefit determination, since protection of health should be the primary consideration. The RAA would override this requirement, making it more difficult to protect workers from chronic health hazards like silicosis.

Shifting to Formal Rulemaking Processes

It is no accident that most agencies now use informal (i.e., notice-and-comment) rulemaking. Formal rulemaking is generally considered to be expensive, time-consuming, and an inefficient way to resolve most issues during rulemaking. Both the American Bar Association and the Administrative Conference of the United States have denounced formal rulemaking as inappropriate for virtually all agency decisions.

Overall, formal rulemaking cuts agencies off from everyone except special interests with the resources to invest in achieving a particular outcome. Nevertheless, the RAA would automatically require formal rulemaking processes for rules with projected annual costs of more than \$1 billion and would allow any interested party to demand formal rulemaking for major rules (those estimated to have annual costs of \$100 million or more). The hearings would

encompass not only the issues laid out in the RAA, but also any other issues raised by an interested person (unless the agency can determine within 30 days of the request that a hearing would be unproductive or would unreasonably delay completion of the rulemaking).

One of the most infamous examples of how formal rulemaking procedures fail to achieve any purpose aside from wasting resources and delaying regulations is the Food and Drug Administration's (FDA's) peanut butter rule. In 1961, FDA proposed a rule that peanut butter must contain 90 percent peanuts. The industry petitioned for a formal hearing to argue for the standard to be set at 87 percent. The formal hearing alone added almost five months to the rulemaking process and resulted in a transcript of approximately 8,000 pages primarily discussing whether peanut butter should contain 87 percent or 90 percent peanuts. FDA finalized the standard in July 1968 – yet the battle continued on for another two years while the industry challenged the rule in court. Formal rulemaking allowed the peanut butter industry to drag out the public's demand for accurate labeling of products by nine years.

This formal rulemaking process would also be adversarial in nature and allow for endless challenges to agency evidence and findings. It would make rulemaking more complicated, more litigious, and more costly. It would tilt the process in favor of employer interests that have the ability to expend significant legal resources on the process and disadvantage workers and small businesses that do not have similar resources.

Allowing Judicial Review of All Agency Judgments

The RAA would greatly expand the courts' ability to review agency judgments, empowering parties to challenge virtually every agency decision to proceed with a rule. If an agency decides to proceed with a review or makes a decision that the rule is not "high-impact" or "major," its decision can be reviewed by the courts. However, if the agency decides not to act, no request for judicial review can be made. In other words, the RAA discourages agencies from acting and turns judges into "super-regulators" who are empowered to substitute their own opinions for the findings of agencies.

Under the RAA, EPA's greenhouse gas endangerment finding, which, on Sept. 28, the EPA's Inspector General found "met statutory requirements for rulemaking," could be delayed and challenged in court. The IG noted that EPA should have made public its review of a technical support document used in the endangerment finding, even though EPA determined that the document was not a "highly influential scientific assessment" as defined by OMB's guidelines under the [Information Quality Act](#) (IQA). Even without the IG's findings, under the RAA, anyone could have called for an IQA hearing to publicly debate this point. The results of the hearing would be judicially reviewable. Moreover, even if someone did not petition for a hearing, he or she still could challenge EPA's science in court.

Guidance Documents

The RAA would create a much more stringent process for agencies to issue guidance documents. Before issuing a "major" guidance document, an agency would have to consider certain issues

prescribed by the RAA – including, for example, a cost-benefit analysis considering all the direct, indirect, and cumulative costs associated with the guidance – and consult with OIRA. These requirements would likely lead agencies to delay issuing guidance, or in some cases forgo them altogether.

Nearly all guidance documents are welcomed, if not requested, by regulated entities because guidance allows an agency to explain and interpret the rules it is responsible for enforcing. Thus, making it harder for agencies to issue guidance would do little more than create unnecessary regulatory uncertainty. For example, statutory language that states that guidelines are non-binding would seriously undermine the ability of OSHA to enforce against serious hazards.

Conclusion

There may be hundreds of examples that demonstrate the combined impact of all of the RAA's provisions, but one is a pending rule at the U.S. Department of Agriculture (USDA) that would declare six highly-virulent, pathogenic strains of *E. coli* "adulterants" in beef products. The American Meat Institute opposed the USDA action in 2010. One of its arguments was that the new rule would "significantly impact international trade" with countries whose beef has been denied access to U.S. markets. The rule, according to this argument, would lead to retaliation, blocking the export of U.S. meat. If the RAA were in effect, the meat industry would have many new avenues to challenge and delay not only the rule itself, but also the USDA's scientific findings and its cost-benefit analyses.

The USDA rule has been roundly applauded by food safety advocates for protecting the American public from tainted meat. However, if the Regulatory Accountability Act were enacted, USDA would be forced to divert resources from finalizing and implementing the rule in a timely fashion and shifting them to performing cost-benefit analyses on every alternative that the industry (and its legions of attorneys) could devise and defending scientific findings to non-expert judges. Ultimately, the agency would be required to develop the final rule based on what would be cheapest for producers. More importantly, Americans would continue to be sickened and killed by *E. coli* infections that could have been prevented.

At its core, our system of standards and safeguards has been developed to protect Americans against very real threats to their health, safety, and well-being. The Regulatory Accountability Act is nothing less than an attempt to roll back our critical public safeguards and promote industry interests instead of protecting American citizens.

Editor's note: This article is based on [Impacts of the Regulatory Accountability Act: Overturning 65 Years of Law and Leaving Americans Less Protected](#), a paper published by the [Coalition for Sensible Safeguards](#) on Nov. 16. OMB Watch's [Jessica Randall](#) was the lead author of the paper.

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2011 Year-in-Review Edition

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Fiscal Policy: The Best and Worst of 2011

Welcome to OMB Watch's year-end fiscal policy review, where we give you a retrospective of the good, the bad, and the ugly of fiscal policy in 2011. Some acts, such as increased contracting transparency, made for enjoyable viewing, while others, like the congressional budgeting process, left us crying for a new script. Read on for our take on the year's highlights in revenue, budgeting, and spending.

Apocalypse Now and Again and Again

In this tense nail-biter, we watched helplessly as congressional Republicans held various parts of the federal government hostage not once, not twice, but three times in an effort to swing policy negotiations their way. The plot drove us to the point of exhaustion with its maddening highs and lows and soon became a repetitive, political cliché. The villains became tiresomely predictable, using the same tactics over and over again. In March, they floated H.R. 1, the continuing resolution that would keep the government operating for the remainder of the fiscal year. Ideologues threatened to shut down the government if they didn't get the [policy riders](#) and spending cuts they wanted.

A few months later, they took the economy hostage by refusing to increase the debt ceiling [without a ransom in program cuts from Democrats](#). The tactic [proved successful](#) again as they walked away with \$2 trillion in deficit reduction: about \$900 billion in spending caps over the next 10 years and [a so-called Super Committee](#) that would have to come up with an additional \$1.2 trillion in deficit reductions. In seeking changes to federal labor rules, conservatives [tried one more hostage act](#), holding up the reauthorization of the Federal Aviation Administration (FAA), costing the government millions in foregone tax revenue and forcing some FAA employees to do their jobs without pay.

NO TAXES FOR RICH OLD MEN

A romantic comedy that begins predictably, as Republican lawmakers fall in love again with lower tax rates on the rich, this piece managed to surprise us all with an unexpected plot twist and a surprisingly strong performance from the Occupy movement. In an inspirational narrative, the protagonists object to ever-expanding inequality and Wall Street influence and capture the hearts of American voters, making it impossible for Washington politicians to ignore. We're expecting *No Taxes II* to be released at the end of 2012 when the Bush tax cuts expire.

Corporate profits are at [record highs](#) and federal revenue collection at [historic lows](#), so it's no wonder inequality is growing. At the same time, families continue to struggle through the Great Recession, as unemployment remains stuck at just under nine percent. Although many of [Congress' 250 millionaires](#) refuse to consider increasing tax rates on capital gains and other wealth, 73 percent of the public – including 66 percent of Republicans – strongly back [raising high-income tax rates](#).

In fact, such taxes are wildly popular with audiences. Congress could institute a [surtax](#) on millionaires, tax [capital gains](#) – which overwhelmingly benefit the very wealthy – at the same rate as wage income, or put in place a [tax on financial transactions to reduce speculative trading](#). All of those taxes would also help to alleviate the crushing growth of inequality over the last thirty years.

THE DEFICIT HORROR PICTURE SHOW

This is a dreary film noir where grifters – played by deficit hawks – brainwash decent, everyday folks with a siren song that government overspending has caused deficits and spells imminent doom for the country. Their obsession with deficits ignores the fact that deficit spending during economic depressions is the fiscally responsible course of action, and huge, immediate cuts put the nation at risk. As pundits and public officials endlessly repeat the mantra, the spell strengthens.

But that talented newcomer, the Occupy movement, wakes some of the townspeople and the 99% begin to rise up. However, the inability of a significant portion of policymakers to recover from the deficit obsession spell means any chance for further investments in the economy disappears, and the fade-out leaves the viewer unclear about who will prevail.

INDIANA JONES and the **BUDGET PROCESS OF DOOM**

Even solid performances from a star-studded cast couldn't save this train wreck. Every year, Congress dreams up new ways to alter and delay the budget process, but the results don't improve. In FY 2011 and FY 2012, Republicans tried to stuff the annual budget full of [policy riders](#) – pieces of legislation hidden in funding bills that restrict the government's role in everything from environmental protection to gun control. While riders have been used by both parties for years, this year the GOP [slapped on riders](#) to advance the party's ideology. Fortunately, most were pruned out of the FY 2011 bills, but Congress is still clipping away at the FY 2012 budget.

In an attempt to shake up the production, congressional Republicans tried to change the Constitution itself by passing a balanced budget amendment. [The House failed](#) to get the two-thirds majority required to pass the amendment, and the Senate has yet to weigh in on this seriously flawed instrument.

The debt ceiling deal introduced a new team of fantasy writers to the budget process who created an entirely new, one-shot process to circumvent the usual order of things. The [Super Committee](#) was given both super powers and a cloak of invisibility to enact long-term budget cuts. Charged with proposing [\\$1.2 trillion in deficit reduction](#), which would have been fast-tracked through Congress, the 12 Super Committee stars could have overhauled federal spending priorities for a decade. Compromise, however, was the Super Committee's kryptonite. [The failure to construct an agreement](#) left Medicare, Social Security, and a host of other vital federal programs and public protections untouched – until the sequel.

Risky Business

A heart-warming, coming-of-age tale that mixes [plucky anecdotes](#) about overcoming the odds with [disheartening letdowns](#), this proves to be a genuine story of struggle and progress in the end. The last few years have seen a dramatic shift in the federal government's contracting openness, with much of the change coming from a transparency-friendly Obama administration and a handful of congressional advocates. Pressure from good government groups netted [the public release](#) of the Federal Awardee Performance and Integrity Information System (FAPIIS), but much of the performance data it contains remains hidden, and the failure of unique identifiers disappoints.

The Obama administration teased advocates with the promise of an [executive order](#) that would require federal contractors to disclose their political contributions – a move that would shed light on the byzantine federal contracting process and help to prevent a pay-to-play environment – but never delivered. Nevertheless, important reports from the [Project On Government Oversight](#) (POGO) and the [Commission on Wartime Contracting](#) inspire hope for a future system that is more open and accountable to the public.

Government Transparency in 2011: Moving the Chains

Heading into the holiday season, many Americans think not just of gifts and snowdrifts, but also of another winter tradition: football. As it happens, gridiron analogies are a good way to think about the year's events in the arena of government transparency and right-to-know. In March, OMB Watch published an [assessment](#) of President Obama's first two seasons as coach, which showed remarkable progress for Team Transparency. Throughout 2011, Obama and his staff made strong decisions, but there were also a few setbacks along the way.

Open Government Partnership – A New Playbook

The launch of the [Open Government Partnership](#) (OGP) on Sept. 20 marked a new era for open government in the United States and abroad. At the launch, the U.S. and seven other countries released national plans to strengthen transparency and accountability and endorsed a joint [Open Government Declaration](#) outlining their principles. More than 40 additional countries have also joined the partnership and will release their own

plans in 2012. President Obama envisioned the partnership in his 2010 [address to the United Nations](#).

The [U.S. government's plan](#), which was met with praise from the open government community, committed to action on 26 open government issues. The administration has already begun implementing several commitments, such as joining the [Extractive Industries Transparency Initiative](#), an international effort to publish more information on government revenue from companies extracting natural resources, and the [International Aid Transparency Initiative](#), an effort to publish more information about foreign aid to developing countries. The U.S. also began to [publish the source code to Data.gov](#), [solicited public ideas on improving federal websites](#), issued a [presidential memorandum on improving records management](#), and began [soliciting feedback on best practices for public participation](#). Work on these and other commitments are expected to continue in 2012 with a status report on implementation late in the year.

Toxics Release Inventory – Establishing the Run

The U.S. Environmental Protection Agency (EPA) continued to make progress on the Toxics Release Inventory (TRI) in 2011, not with a major advance but with several efforts to address specific needs and improvements. The agency established requirements for reporting to be done electronically, which will speed up processing of the data and reduce errors. The agency also [announced](#) that for the first time in over a decade, it is planning to expand the industry sectors covered by TRI. The agency is considering six sectors: Iron Ore Mining, Phosphate Mining, Municipal Waste Incineration, Industrial Dry Cleaning, Petroleum Bulk Storage, and Steam-Only Production from Fossil Fuels, but could add more based on online discussions currently underway. The agency expects to release a proposed rule in late 2012 and finalize the rule by late 2013.

In another TRI move, the EPA [withdrew](#) from consideration a final rule that would have clarified reporting requirements for off-gassing of chemicals from wood products. Wood treatment facilities have incorrectly thought that releases of chemicals such as ammonia, arsenic, and benzene from recently treated wood were excused from reporting under a provision that exempted natural deterioration of materials. The inability to finalize this rule, which had been in development for years, means that communities near such facilities will continue to receive incomplete information on the toxic releases in their area.

Scientific Integrity – Delay of Game

The Obama administration's efforts to protect scientific integrity made slow progress in 2011. In contrast to the George W. Bush administration's political manipulation and suppression of science, President Obama issued a [memo](#) embracing scientific integrity shortly after taking office. However, the process of implementing the principles of scientific integrity across the executive branch has been slow and uncertain.

In December 2010, the White House Office of Science and Technology Policy (OSTP) issued its overdue [guidance](#) to agencies on implementing the memo. That guidance, however, offered little perspective on the details of agency expectations or timelines. Throughout 2011, OSTP occasionally reported on [progress toward implementation](#), but access to the actual policies was rare and opportunities for public input even rarer. The few policies available for public inspection were of vastly different form, scope, and quality. For instance, the EPA's draft policy was [widely criticized as weak and vague](#) while the National Oceanic and Atmospheric Administration's (NOAA) draft policy was [praised as thoughtful and detailed](#). On Dec. 7, NOAA [finalized its draft policy](#), incorporating some revisions to further strengthen the policy. OSTP eventually directed agencies to [submit their draft final policies for review by Dec. 17](#) – and encouraged agencies to publish their proposals for comment before finalizing them – but to date, few additional policies have emerged.

Environmental Right-to-Know Recommendations – Sideline Coaches Send in New Plays

On May 10, on behalf of more than 100 public interest organizations, OMB Watch presented [a set](#) of detailed environmental right-to-know recommendations to the Obama administration. The recommendations, included in the report titled [*An Agenda to Strengthen Our Right to Know: Empowering Citizens with Environmental, Health, and Safety Information*](#), aim to expand access to environmental information, equip citizens with data about their environmental health, and empower Americans to protect themselves, their families, and their communities from toxic pollution.

The report, the result of a year-long collaborative effort, urged the administration to address the gaps in environmental information and offered detailed proposals for changes in specific agency activities. For example, there were several recommendations on how agencies could improve their Freedom of Information Act (FOIA) policies. Other recommendations, including creating new public affairs office policies, are more general, calling on the federal government to implement broader changes to reverse years of secrecy and isolation from the public. Woven throughout the report are three key priorities: environmental justice must always be considered; health risks from chemicals need to be tracked and communicated to the public; and public participation has to start with the government.

The report also served as the basis for [demands](#) to the government under another campaign. In preparation for the upcoming United Nations (UN) Conference on Sustainable Development, to be held in Rio de Janeiro, Brazil, in June 2012, an international public interest movement, called the 3D Campaign, was launched to urge countries to commit to improving environmental policy. The [three demands](#) for the U.S. focused on improving access to environmental and public health information and public participation in environmental policymaking.

Controlled Unclassified Information – Long Forward Pass

The government made considerable progress implementing President Obama's executive order to rein in pseudo-secrecy and improve information sharing. In June, the National Archives and Records Administration (NARA) released [initial guidance](#) on implementing Obama's 2010 order on controlled unclassified information (CUI). The guidance laid the foundation for a system of categories of information that are unclassified but require specific safeguarding or dissemination controls. Under the guidance, NARA's public registry of CUI categories will be the sole basis for safeguarding or disseminating controls on unclassified information, as opposed to the *ad hoc* former system that had little oversight or transparency. However, not everyone is happy about the new system: the Department of Defense (DOD) [proposed a rule](#) to preserve many of its vague legacy categories under the guise of a new CUI category. Open government groups have voiced strong opposition to the proposal, which DOD has not finalized yet.

In November, NARA published the [initial registry of approved categories](#) and their legal authority. While CUI categories indicate how information should be managed, they do not impose additional restrictions on public access: in late November, NARA and the Department of Justice issued a [memo](#) reiterating that CUI labels do not determine disclosure decisions under the Freedom of Information Act (FOIA). In 2012, NARA is expected to issue further guidance on several CUI topics, such as labeling information and when designations expire. In addition, NARA will review agencies' proposed implementation plans and determine deadlines for the new system to begin operation.

Fracking Disclosure – Special Teams

Amid substantial investments in U.S. natural gas and oil production, [initiatives](#) to require the disclosure of chemicals used in hydraulic fracturing, or fracking, became a sticking point this year at both the federal and state levels. At the federal level, the traditional plays were stymied. A loophole in the Energy Policy Act of 2005 exempted fracking from the Safe Drinking Water Act, which allows companies to keep secret what chemicals they use. Congressional Democrats have sought to counter that law with new bills that would mandate full disclosure of fracking chemicals. However, the [legislation](#) that was introduced in both the House and the Senate has not moved in either chamber.

The EPA has begun studies on the practices and environmental impacts of fracking, particularly affecting water contamination, but results are not expected until late 2012. Recent recommendations by the Department of Energy (DOE) include mandatory disclosure of chemicals used in fracking. The U.S. Interior Department is also considering regulations for natural gas and oil production on federal lands, including requiring disclosure of the chemicals used.

Absent federal oversight, states like Texas and Michigan have moved toward establishing state-level requirements for greater disclosure. A bill requiring disclosure of all fracking chemicals passed the Texas Senate after an attempt that would delay part of its implementation was defeated. The Michigan Department of Environmental Quality

announced new rules that will document water use and publish some information about the chemicals used in the fracking process. Other areas are also considering action on fracking, including the Delaware River Basin Commission (DRBC), which will decide in 2012 whether to allow fracking at 15,000 to 18,000 gas wells without a full environmental impact analysis.

Funding for Transparency Programs – Quarterback Sacked

In 2011, Congress' focus turned toward deep cuts in federal spending, and adequate funding became a question for all government activities, including [programs that support transparency](#). Notably under the gun was the Electronic Government Fund, or E-Gov Fund, which supports the development of government-wide systems such as USAspending.gov and Data.gov. The spending bill passed in April [slashed the fund by 75 percent](#), leading to the cancellation and delay of transparency projects. [Open government groups rallied](#) to reverse the cuts as congressional leaders [spoke out in opposition](#). Congress has yet to finalize its spending bills for the next fiscal year, but a House plan would [partially restore the fund](#) while a Senate proposal would [deepen the cuts](#). Without restored funding, the E-Gov Fund's important transparency projects – and the savings they yield – may be stymied.

Toxic Substances Control Act Transparency – Recovered Fumble

The [Toxic Substances Control Act of 1976](#) (TSCA), the nation's primary and outdated chemical safety law, has proved itself inadequate in regulating chemicals and ensuring that products are safe. Despite the strong need for major reform and [ongoing calls](#) to fix the program, TSCA reform legislation remains held up in Congress. However, EPA has taken some action with its limited authority under the law to increase transparency. The agency [began disclosing](#) more information about hazardous chemicals while challenging industry claims that information should be concealed as trade secrets.

For instance, the agency began reviewing confidential business information (CBI) claims in new and existing health and safety studies that companies submitted to the EPA under TSCA. Since 2009, the agency has released the names of [577 chemicals](#), previously claimed as confidential by industry, and made accessible to the public more than 1,000 health and safety studies. In August, the EPA also strengthened TSCA's [chemical reporting rule](#). These new requirements will provide Americans with the information they deserve about toxic chemicals affecting their communities.

Records Management – Kick-off

When the federal government produces an average of over 475 million pages of information each year, effective records management is not just important to open government – it is essential. If information hasn't been preserved or can't be located, then the public's right to know is thwarted. Unfortunately, this is an issue that has gone relatively unaddressed for far too long. At the end of November, a [Presidential](#)

[Memorandum](#) sought to correct this oversight and kicked off an effort for federal agencies to create new records management systems that take advantage of digital technologies while protecting the public's [right to information](#) about the actions and decisions of federal agencies. The memo requires each agency to report on its current records management and to consult with the public about improvements. Then a team of senior officials from the Office of Management and Budget, the National Archives and Records Administration, and the Department of Justice will develop a records management directive for the executive branch overall. In December, the National Archivist issued a [memorandum to agencies](#) clarifying their reporting requirements and explaining how the agency materials will be used to develop a modern framework for managing government records.

Greenhouse Gas Data – In the Huddle

The [EPA's GHG Reporting Program](#) requires facilities to annually report greenhouse gas (GHG) emissions data, and in August, the program [launched](#) an electronic tool to collect and later make public company GHG data. The new electronic tool will enable 28 industrial sectors – equal to approximately 7,000 large industrial GHG emitters and suppliers – to submit their emissions reports to the EPA via the Internet. EPA will make non-confidential GHG data publicly available by the end of 2011. However, the agency has allowed long deferral periods – until 2013 and 2015 – before releasing reports on certain data elements used to calculate emissions. This is unfortunate.

Public reporting of pollution has proven a powerful tool in fostering public awareness of environmental problems and generating significant reductions in emissions. When the GHG tool produces public data, we hope it will also provide tools that allow easy analysis, performance comparisons, and trackable industry averages. Properly presented, the data could help decrease GHG pollution, increase efficiency, and save money.

Government and Public Protections Under Attack in 2011

Big Business lobbyists and their allies in Congress waged systematic attacks against regulations in 2011, attempting to undermine the protections that keep our environment clean, our products and workplaces safe, and our economy prosperous. Underlying the charge against basic protections is an attack on government's role in safeguarding the general welfare of its citizens and in addressing the negative effects of irresponsible corporate behavior.

2011 did not see the large-scale corporate catastrophes witnessed in 2010 – the BP oil spill disaster, the explosion at a Massey Energy mine that killed 29 workers, and the recall of millions of Toyota vehicles, to name a few – but the individuals and families who lost loved ones from [faulty children's products](#), [workplace safety problems](#), and [foodborne contaminants](#) bear witness to ongoing hazards. However, despite this

evidence and strong public support for a variety of health, safety, and environmental safeguards, large corporate interests and their allies in Congress intensified their attacks on public protections.

The assault on public protections is decades old, but recently, the attacks have become more extreme, designed to block rulemaking entirely through regulatory moratoria and endless litigation.

The Legislative Assault on Regulations

The current assault on regulations [started after the 2010 elections](#) when the House switched from Democratic to Republican control.

Environmental regulations and the U.S. Environmental Protection Agency (EPA) have been the primary targets of these [legislative attacks](#), especially those rules that would affect climate change. For example, the House approved [H.R. 910](#), the Energy Tax Prevention Act of 2011, sponsored by Rep. Fred Upton (R-MI), chair of the Committee on Energy and Commerce. Upton's bill would strip EPA of authority under the Clean Air Act (CAA) to "promulgate any regulation concerning, take action relating to, or take into consideration the emission of a greenhouse gas to address climate change." Ironically, Congress has failed to enact climate change legislation in any form, leaving the EPA no choice but to follow the requirements of the CAA and the U.S. Supreme Court by seeking to control emissions through regulations.

The Transparency in Regulatory Analysis of Impacts on the Nation (TRAIN) Act ([H.R. 2401](#)), which passed the House on Sept. 23, would require an interagency panel of non-experts to review EPA regulations before they are issued and to submit a report to Congress on the costs of proposed regulations. This requirement is redundant and unhelpful for two reasons: first, the EPA and the Office of Management and Budget (OMB) already conduct extensive cost-benefit analyses on proposed rules. Second, under the TRAIN Act, the panel's report would have to consider "cumulative costs" of proposed and final regulations, a highly speculative analysis that would artificially inflate costs and stack the deck against issuing safeguards.

Like the TRAIN Act, the EPA Regulatory Relief Act of 2011 ([H.R. 2250](#)) and the Cement Sector Regulatory Relief Act of 2011 ([H.R. 2681](#)), both of which passed the House in October, were suspect on both substantive and procedural grounds. The bills' sponsors contend that they merely provide additional time for EPA to establish, and for industry to comply with, new emissions standards for boilers, incinerators, and cement plants. In fact, they would make substantial alterations to the Clean Air Act and to EPA's long-standing practice of establishing emissions standards for hazardous air pollutants. Attempts to rewrite major legislation like the Clean Air Act, if they occur at all, should be done through open and transparent processes in which the public can have a voice, not through backdoor procedural stunts.

The Coal Residuals Reuse and Management Act ([H.R. 2273](#) and S. 1751) would require the EPA to allow states to regulate coal combustion residuals, or coal ash, and limit federal oversight. Most states do not have standards in place to protect against the dangers of uncontrolled coal ash.

EPA's proposed rule, already weakened by the Obama administration during the review period, currently contains two options for regulating coal ash. The first option would designate coal ash as the hazardous waste it is (which would require special handling, transportation, and disposal, and monitoring any potential reuse). The second option would regulate coal ash like less-toxic wastes such as household garbage – an option that would limit EPA's responsibility and authority over coal ash management. The Coal Residuals Reuse and Management Act would take the decision between the two options out of scientists' hands, politicizing the process while failing to ensure that Americans are protected from the dangers coal ash poses to human health and the environment.

Beyond specific attacks on environmental and public health rules, many of the anti-regulatory proposals in Congress call for adding more procedural hurdles to a rulemaking process that is already riddled with legislative and administrative obstacles. Adding redundant analyses, expanding options for congressional rejection of agency actions, and overriding important health, safety, and environmental statutes are just some of the ways regulatory opponents are trying to short-circuit the process. The most extreme proposals include:

- The Regulatory Accountability Act (RAA) ([S. 1606](#) and its House companion, H.R. 3010) is an attempt to fundamentally rewrite and expand the [Administrative Procedure Act](#) (APA), a sixty-five-year-old statute that is the guidepost for administrative agencies and the regulatory process. The RAA would add more than 60 new procedural and analytical requirements. These [requirements](#) would grind to a halt the rulemaking process at the core of implementing the nation's health, safety, and environmental standards. Rules that somehow make it through the RAA's process would tilt against the public interest and in favor of powerful special interests.
- The Regulations from the Executive in Need of Scrutiny (REINS) Act ([H.R. 10](#) and S. 299) would require congressional approval of all major federal rules within 70 legislative days. Without approval, the rules would be nullified. If enacted, the bill would mire rules in congressional gridlock and endanger the commonsense standards that protect our food, air and water quality, and consumer products. The bill could also undermine new laws regulating Wall Street and expanding access to health care. Congress passes laws that direct agencies to implement them because agencies have the expertise to deal with these complicated problems; the REINS Act would turn that process on its head.
- The Regulatory Flexibility Improvements Act ([H.R. 527](#) and S. 1938) would force any action an agency proposes – even a guidance document designed to help a business comply with a rule – to be subjected to a lengthy review process. By requiring additional and wasteful analyses, this bill would make it extremely

difficult for federal agencies to protect the public from new and emerging hazards. This bill also makes the Small Business Administration's Chief Counsel for Advocacy a kind of "super-regulator," vesting him or her with new powers to review proposed agency actions and suggest alternatives.

Another legislative strategy employed to cripple regulatory agencies is to cut agency budgets and defund certain actions. For example, House Republicans have tried to load the 2012 spending bill for the Department of the Interior and the EPA with dozens of policy riders that would hamper efforts to protect our health, air, water, and wildlife. Some provisions would block regulations intended to protect streams and communities from mountaintop-removal coal mining, prohibit EPA from regulating coal ash as a hazardous waste, and prevent EPA from limiting toxic air pollutants from a number of sources. The appropriations bill, [H.R. 2584](#), would reduce Interior spending by \$720 million and cut EPA funding by \$1.5 billion, 18 percent below current levels. The bill has been debated on the floor but has not yet passed the House.

Similarly, the chairman of the Labor-Health and Human Services-Education Appropriations Subcommittee, Rep. Denny Rehberg (R-MT), introduced a [funding measure](#) that targets programs within the Department of Labor and that would weaken important worker protections. Both the Obama administration and the Democratic leadership in both chambers have opposed the inclusion of these political and ideological policy riders in the 2012 appropriations bills, but the result will not be clear until the process is completed.

Regulations and the Economy

Underlying these and other attacks on our system of standards and safeguards is the unfounded argument that deregulation is a job creation vehicle in a weak economy. This misguided notion has begun to attract attention on both sides of the aisle, as Sens. Claire McCaskill (D-MO) and Susan Collins (R-ME), as well as Sens. Mark Warner (D-VA) and Jerry Moran (R-KS), have recently introduced "job creation plans" with anti-regulatory components included in their text. (Read about the bills [here](#) and [here](#), respectively.)

However, an exhaustive review of years of careful research studies by the Economic Policy Institute (EPI) in April [showed](#) that regulations don't kill jobs, and killing regulations doesn't create jobs. Rather, EPI's research showed that compliance costs of regulations are a negligible part of the overall economy, and many standards often lead to business innovations and job growth. [Additional EPI research](#) examined specific environmental standards at EPA and debunked a widely cited regulatory cost figure used by those opposed to strong public protections.

In addition to research debunking pointed anti-regulatory rhetoric, a number of [surveys of small business owners](#) have found that economic uncertainty and lack of demand are the key reasons small businesses are struggling; the regulatory climate is not an

important factor in their hiring and/or expansion decisions. The National Association for Business Economics (NABE) even found in an [August survey](#) that a large majority of business economists have a positive perspective on the current regulatory environment.

These independent studies and surveys reinforce an argument that public interest advocates have made for decades: government standards and public investments in clean energy protect health and safety and encourage job creation.

The Obama Administration Struggles to Find a Clear Voice on Regulation

At the same time that Congress was leading the charge against crucial public safeguards, the Obama administration was struggling to find a clear voice on public protections. In a Jan. 18 *Wall Street Journal* [op-ed](#), President Obama repeated conservative messaging about regulation impairing job creation. The op-ed announced a new executive order [that instructed](#) agencies to review existing regulations and eliminate outdated rules that could impair growth, reinforcing the unsubstantiated relationship between job creation and deregulation (see below for details).

In his [State of the Union address a few weeks later](#), Obama sent a mixed message by reiterating his earlier points but then assuring Americans, "I will not hesitate to create or enforce commonsense safeguards to protect the American people." He also defended our nation's system of public protections, pointing out that "[i]t's why our food is safe to eat, our water is safe to drink, and our air is safe to breathe. It's why we have speed limits and child labor laws."

Executive Order on Regulatory Review

Obama's [Executive Order 13563](#) on "Improving Regulation and Regulatory Review" reaffirms the principles established in President Clinton's E.O. 12866 and emphasizes the importance of public participation, integration and innovation, flexible approaches, and scientific integrity in rulemaking. Most importantly, E.O. 13563 requires executive branch agencies to conduct periodic retrospective reviews of rules, directing agencies to develop plans for the ongoing review of existing regulations to identify rules that are "outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them."

In July, Obama issued another executive order, [E.O. 13579](#), asking all independent regulatory agencies to conduct retrospective reviews and develop review plans in compliance with E.O. 13563. Although independent regulatory agencies are not legally bound by the order, most started developing retrospective review plans by soliciting information and public comments on the review efforts.

Many in the public interest community initially expressed concern that the retrospective review process would have a chilling effect on agencies and cause them to repeal or weaken health and safety regulations. A majority of the public comments agencies

received on their review plans targeted specific rules that industry groups oppose. OMB Watch's [analysis of specific agency plans](#), however, found that agencies used the review to look for cost savings but protected their primary missions. These agencies identified ways to eliminate redundancies and streamline procedures through improving coordination and updating technology and reporting requirements.

Political Interference in Rulemaking

One of the most blatant Obama-era examples of political interference in agency rulemaking came at the tail-end of the summer. On Sept. 2, [the president ordered](#) the EPA to withdraw a rule establishing a new standard for ground-level ozone pollution. EPA Administrator Lisa Jackson had pursued the rule as recommended by the agency's scientific advisory panel, even in the face of intense opposition from business interests and some of their allies in Congress, because the ozone standard set during the George W. Bush administration failed to meet the legal standard required by the Clean Air Act.

According to a *New York Times* [article](#) describing the inner workings of the White House's decision process on the ozone rule, Jackson was pitted against William Daley, then-Chief of Staff and Obama's liaison to the business community, and Cass Sunstein, the administrator of the Office of Information and Regulatory Affairs (OIRA). In a statement, Obama justified the decision to kill the rule by saying that "[w]ork is already underway to update a 2006 review of the science that will result in the reconsideration of the ozone standard in 2013. Ultimately, I did not support asking state and local governments to begin implementing a new standard that will soon be reconsidered."

The ozone rule is not an isolated incident of political interference with agency rulemaking. Other rules, including two from the Department of Labor (one to require the reporting of musculoskeletal injuries and another proposing an occupational noise standard), have been delayed or killed, and many advocates continue to criticize OIRA for delaying important rulemakings. A study released in November by the Center for Progressive Reform (CPR) charged that OIRA "routinely substitutes its judgment for that of the [agency experts]," and that the internal review process is tilted in favor of industry interests.

The report studied all OIRA meetings with interested outside parties conducted during a period of almost ten years between 2001 and 2011 and revealed that industry lobbyists were the lone participants in 73 percent of the meetings. The report also looked at 501 regulatory reviews at OIRA during this 10-year period; 12 percent of the rules under review were delayed beyond the 120-day review deadline required by E.O. 12866, with some delayed for over six months.

OMB Watch's assessment of all OIRA reviews conducted during the Obama administration found the time taken to review rules increased over the first three years of the administration: in 2011, more than 50 of the reviews OIRA completed were overdue, compared to only five in 2009, and of the roughly 150 rules currently under

review, about 30 have exceeded the 120-day deadline. An example of an important public protection that is currently past due is EPA's proposed Chemicals of Concern List rule, which would identify chemicals that may present unreasonable human health risks. The rule would have important health and safety benefits and is not economically significant, yet it has been stalled at OIRA for well over a year.

OIRA Reviews, 2009-2011					
Year	Total E.O. 12866 Reviews	Economically Significant Reviews	% Economically Significant Rules Reviewed	Average Review Time in Days	Rules under Review 120 Days or More
2009	595	125	21%	39	5
2010	690	138	20%	51	≥30
2011 (through 11/30)	659	107	16%	59	≥50

Recent Administration Actions in Defense of Public Protections

Although the administration has sent mixed messages about its stance on the importance of regulations and has weakened or delayed many agencies' rules, in the past couple of months, the president has issued Statements of Administration Policy threatening vetoes or signaling opposition to the most damaging anti-regulatory bills before Congress.

In addition, the administration issued [a statement](#) opposing the Coal Residuals Reuse and Management Act and has threatened vetoes of the TRAIN Act, as well as other bills that target specific EPA actions.

Conclusion

In 2012, the Senate will be under pressure from anti-regulatory forces to vote on bills passed by the House. The RAA, the REINS Act, and other legislation could be offered as amendments to other bills the Senate debates. In an election year, these pressures will probably be greater than usual, and the anti-regulatory rhetoric will be even sharper, as the battle for control of the Senate plays out.

The anti-regulatory meme has been perpetrated by corporations and their political allies for decades, even during periods when jobs and the economy both were experiencing strong growth and in the face of evidence that undermines the industry narrative. Indeed, cost-benefit analyses consistently show that the benefits of public protections far outstrip their costs, both in terms of dollars and Americans' quality of life.

The evidence is clear: the American people do not have to choose between job creation and protecting their families and communities from environmental, workplace, and consumer product hazards. Attempts by Congress to dismantle the regulatory system will do nothing to create jobs now and could cost American businesses the jobs and industries of the future.

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