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In This Issue

Cutting Oil and Gas Tax Subsidies a Small but Responsible Step

There are few subsidies more polarizing than those for oil and gas drilling. Increasingly, however, the public tide seems to be turning against the subsidies. The president has been targeting them for repeal, and last week, the Senate came just a few votes shy of ending a slew of tax subsidies for oil and gas companies. While the subsidies are small compared to the forecasted $10.7 trillion 10-year deficit, ending the give-away to oil and gas companies that currently enjoy record-setting profits is a popular and fiscally responsible choice.

Oil and gas subsidies have played an important role in American politics for more than a century. As the nation rapidly expanded at the end of the 19th century, explorers began finding large oil fields throughout the United States. American oil producers became wealthier, and their political power grew with their wealth. In the early 1900s, they began to exercise this power in the political sphere, winning many concessions and favorable tax treatment. One of the most important was the oil depletion allowance, passed in 1913, which allowed oil companies to shield up to 27.5 percent of their profits from taxation.

Today, there are a wide range of oil and gas subsidies. The three largest subsidies cost the federal government more than $40 billion over ten years. All three of them essentially allow oil and gas companies to deduct normal business expenses, allowing them to reduce the taxes they pay.

The first subsidy benefits many American businesses and is not specific to oil and gas companies. The domestic manufacturing deduction allows companies to deduct a certain amount of their income simply for manufacturing goods in the United States. Beginning in 2004, Congress changed the tax code so that oil production could be considered a manufacturing activity. This allows oil companies to use the deduction to shield up to six percent of their net income from taxation. The addition of this loophole costs the government $18 billion over ten years.

The second major fossil fuel subsidy allows oil and gas companies to expense "intangible" drilling costs. This deduction, which has been in the tax code since 1913, allows oil companies to deduct a range of non-drilling costs, such as surveying, well development preparation, and wages leading up to drilling. Since 1986, this deduction has allowed major oil companies to deduct 70 percent of these basic expenses of doing business. The Congressional Research Service, Congress' nonpartisan research arm, notes that this expensing "allows for a quicker return of invested funds through reduced tax payments," thus making drilling itself a less risky investment. Expensing intangible drilling costs the U.S. more than $12 billion in revenue over ten years.

The third subsidy is the percentage depletion allowance. Similar to the intangible drilling expensing, percentage depletion allows companies to recover the cost of their capital investments by deducting 15 percent of the revenue from the sale of oil and gas from their gross income (essentially depreciating oil fields similar to depreciating a piece of capital equipment). Percentage depletion used to allow up to a 27.5 percent deduction, but in 1975, Congress eliminated the deduction for major oil companies and reduced it for the rest. However, it still affects a number of wells owned by large companies, and eliminating the deduction would give the government another $11 billion over ten years.

With oil and gas companies reaping record profits, it is becoming hard to justify the continuation of the subsidies. As the Obama administration has pointed out, "In 2011 alone, the three largest American oil companies made a combined profit of more than $80 billion, or more than $200 million per day." The five biggest oil companies earned $137 billion in profit in 2011. And despite these record profits, the oil and gas industry laid off more than 11,000 workers between 2005 and 2010. Meanwhile, environmental disasters, such as the 2010 BP/Deepwater Horizon oil spill in the Gulf of Mexico, are bringing the government's relationship with oil and gas companies under greater scrutiny. As a result of the recent negative publicity, a recent poll showed that 73 percent of Americans would approve of ending federal subsidies for oil and gas companies, making it one of the most popular budget and revenue options polled.

While the industry's subsidies were generally protected under the previous administration, the Obama administration has repeatedly called for eliminating many fossil fuel subsidies, including the three listed above. All told, the president has called for removing some $30 billion in preferential treatment for fossil fuel companies. Last week, the Senate voted on a bill by Sen. Robert Menendez (D-NJ), which would have repealed six subsidies for the five largest oil and gas companies, saving $24 billion over ten years. While the bill failed to pass, it only fell a few votes short, and the fact that the bill even came up for a vote at all is a sign that oil and gas subsidies are coming under increasing fire.

Congressional Progressive Caucus and Ryan Revenue Proposals: Two Sides of the Budget Coin

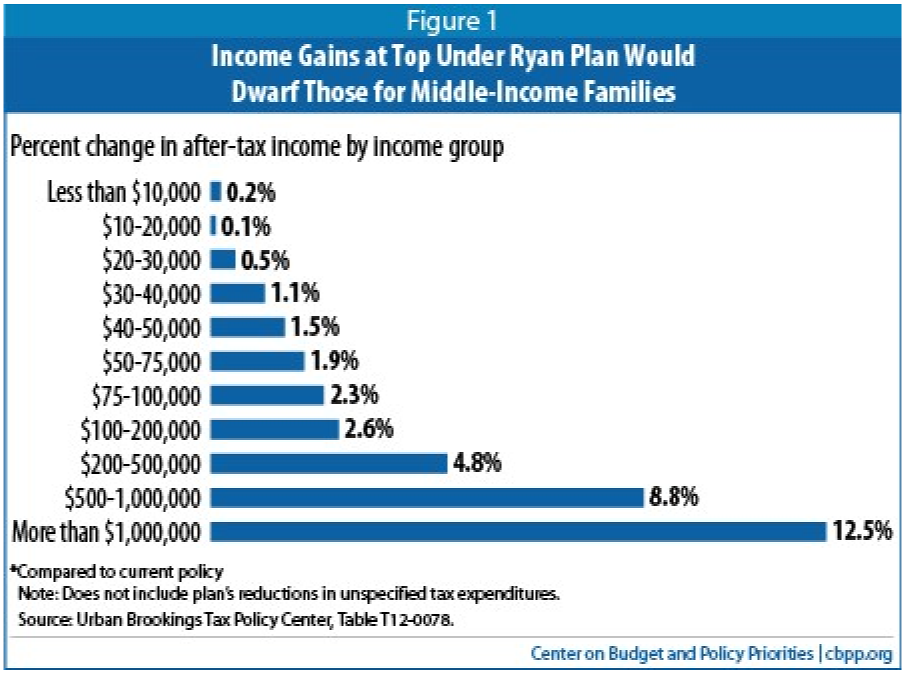
The fiscal year (FY) 2013 budgets proposed by the House Congressional Progressive Caucus (CPC) and Rep. Paul Ryan (R-WI), Chair of the House Budget Committee, are perfect examples of the fact that budgets are about choices. The revenue proposals in each serve as a study of opposites. Where the Ryan budget would double down on the Bush tax cuts and provide huge windfalls to the country's wealthiest, the CPC's proposal – *The Budget for All* – would ask those with the most wealth to help fund important investments in our public structures.

For individual taxpayers, Ryan proposes reducing the top income tax rate from 35 percent to 25 percent and would condense the other five tax rates into one bracket of 10 percent. The plan does not reveal the incomes that would be subject to the different tax rates, but it's clear the wealthiest would receive a sizeable tax break. These tax cuts for the rich would be added to the Bush tax cuts, which would be made permanent under Ryan's plan.

Ryan also proposes eliminating the Alternative Minimum Tax (AMT), as well as the Affordable Care Act's (ACA) increase in the Medicare tax for high-income individuals. As the Center on Budget and Policy Priorities (CBPP) recently noted, "New analysis by the Urban-Brookings Tax Policy Center (TPC) finds that people earning more than $1 million a year would receive $265,000 apiece in new tax cuts, on average, *on top* of the $129,000 they would receive from the Ryan budget's extension of President Bush's tax cuts." TPC also estimates that these tax code changes would provide millionaires a 12.5 percent bump in after-tax income, which is *six times* the 1.9 percent increase most middle-income families would realize.

Ryan's individual tax proposals would almost surely exacerbate an already increasing income inequality gap, as CBPP summarizes:

> The best gauge of the distributional impact of a tax cut is the percentage changes that it causes in the after-tax incomes of households at different income levels. A progressive tax cut raises after-tax incomes by a greater percentage among lower- and middle-income people than among higher-income people. A regressive tax cut provides a larger percentage after-tax income gain at the top of the income scale and thereby widens income inequality.



On the corporate tax side, Ryan proposes to reduce the tax rate from 35 percent to 25 percent and convert the corporate tax code to a "territorial" system. Ryan also stipulates that he would close certain loopholes within the tax code to help pay for the rate reduction, but the congressional Joint Committee on Taxation (JCT) recently estimated that Congress could not lower the tax rate below 28 percent without losing revenue even if it eliminated every corporate loophole in the code. Similarly, a territorial tax system, which taxes only corporate profits generated in the United States, would only encourage companies, according to Citizens for Tax Justice (CTJ), to move their activities offshore, hurting job growth and costing the government tens of billions of dollars in revenue each year.

The total cost of Ryan's revenue proposals – which would slash tax rates, abolish four tax brackets, eliminate the AMT, and lower the corporate tax rate without specifying any offsets – could run as high as $4.5 trillion over the next decade. Ryan would make up for much of this reduction in revenues by slashing government spending on infrastructure, public safety, and programs for low-income families, specifically turning SNAP (formerly known as Food Stamps) and Medicaid into block grant programs and sharply reducing their funding over the next decade.

In contrast, the House Progressives' *Budget for All* proposal would allow the top two individual income tax rates of 35 and 33 percent to return to their Clinton-era levels of 39.6 and 36 percent, respectively. The CPC proposal would also wait until 2017 and 2019, when the economy would presumably be much stronger, to allow the next two Bush tax cut rates of 28 and 25 percent to expire and return their Clinton-era levels of 30.5 and 27.5 percent, respectively. The Progressive budget would permanently extend the 10 percent bracket that affects the vast majority of low-income families.

Importantly, the CPC budget would also extend the refundable tax credits expansion enacted under the Recovery Act, such as the Earned Income Tax Credit (EITC), the Child and Dependent Care Credit, and the American Opportunity Tax Credit, which helps low-income households afford college. House

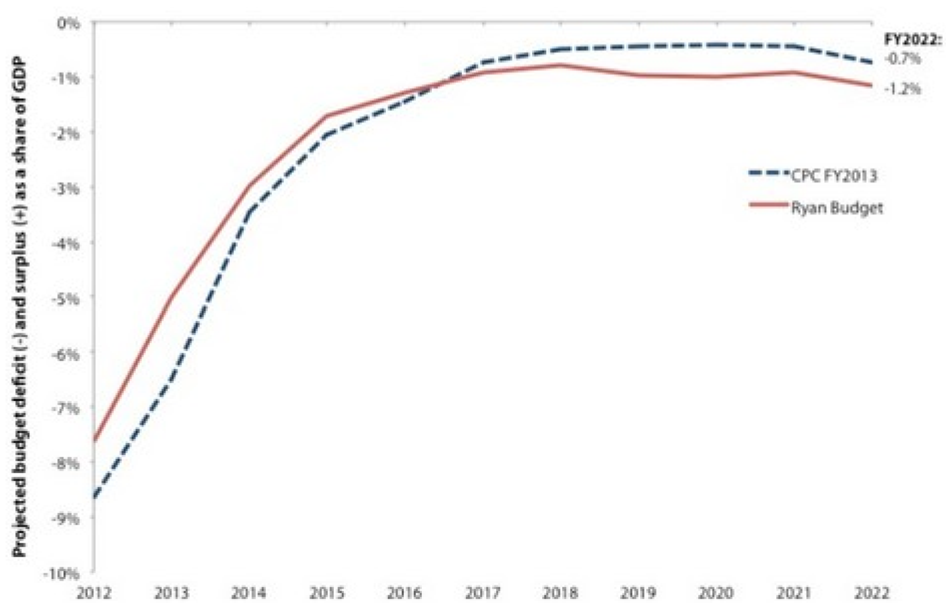
Progressives also propose indexing the AMT to inflation, thereby eliminating the annual need for Congress to "patch" the hole that sucks in middle-income families.

To raise revenues, the CPC budget would add five new income tax rates to the top of the bracket scale: 45, 46, 47, 48, and 49 percent. These rates would only affect those making millions and billions of dollars each year. House Progressives would also tax capital gains and dividends as ordinary income, enact a tax on some financial transactions, and limit itemized deductions to 28 percent of high-income households' earnings. Combined, these proposals would help pay for $2.9 trillion worth of investments in public structures and job creation over the next decade.

With respect to the corporate tax code, the CPC budget eliminates taxpayer subsidies to oil, gas, and coal interests; reinstates Superfund taxes to help pay for environmental cleanup efforts; and enacts a financial crisis responsibility fee to make sure that those financial firms that helped cause the economic collapse of 2008 help pay for the assistance to average Americans that the government had to provide in the Great Recession's wake. The Progressives' budget also eliminates most loopholes in the corporate tax code and imposes a tax on carbon emissions while providing rebates for low- and middle-income families to defray the increased cost of energy.

These two different proposals have dramatically different impacts on the national deficit over the next 10 years. The Ryan budget would generate a deficit of $797 billion in FY 2013, about $240 billion lower than the projected deficit for the CPC's budget at that point in time; by FY 2022, the relationship is inversed, with the CPC budget resulting in a $180 billion deficit, compared to the Ryan budget's $287 billion.

Figure C. CPC vs. Ryan Budget, Deficit Path



Sources: EPI analysis of CBO, JCT, OMB, TPC, and CTJ data, Ryan budget and other sources

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While the Ryan budget provides outsized tax cuts to the wealthiest while slashing spending on government services used by low- and middle-income families, the House Progressives' budget requires a little more of those who can afford it to make important investments in our nation's public structures. Congress could choose to enact a budget that causes little to no pain to the vast majority of our nation's families while addressing long-term budget deficits, and Congress could responsibly raise the revenue desperately needed for improvements in infrastructure, education, and public safety at the same time. The House Progressive Caucus provides a blueprint for how to do so.

Federal Government Increases Online Access to Conflict-of-Interest Data

On March 22, the U.S. Senate passed the Stop Trading on Congressional Knowledge Act, or STOCK Act, which will put thousands of disclosures from congressional and executive branch officials online for the first time. President Obama will sign the legislation into law on April 4. Many state governments already provide some online access to similar disclosures, and others, such as Maryland, are considering following suit.

Public officials regularly make decisions that could impact the value of their personal financial holdings. Asset disclosure helps ensure that such conflicts of interest are identified and addressed before decisions are made – and transparency allows the public to hold officials accountable for doing so. While rules in the federal government and many states require asset disclosure, online public access to this information has lagged. The passage of the STOCK Act, and the advancement of similar legislation in Maryland, represent welcome steps forward.

Federal Financial Disclosure

The Ethics in Government Act of 1978 requires high-ranking federal officials to publicly disclose their personal financial interests, such as stocks owned and sources of income. Such requirements apply to officials in all three branches of the federal government. In the executive branch, more than 28,000 such disclosures were filed in 2010, according to the Office of Government Ethics (OGE).

However, the federal government does not provide much online access to those reports, with a few exceptions in recent years:

- The House has posted the financial disclosure forms of members since 2008, as required by the Honest Leadership and Open Government Act of 2007. (The Senate does not follow a similar practice.)
- The White House has posted the disclosures of President Obama and Vice President Biden since 2009.
- As of March 12, OGE posts the reports of about 900 top officials in the executive branch.

The STOCK Act will bring those disclosures under a common legal standard and significantly expand the number of officials whose reports are available online. The legislation requires that public disclosures from the executive and legislative branches be posted online by August. In addition, the bill requires that disclosure reports be submitted electronically, which will make them easier to post as a searchable database, which the bill requires by September 2013.

In addition, the bill enhances the content of financial disclosure reports by requiring timelier reporting of transactions and requiring a subset of top officials to report mortgages on personal residences. The bill also strengthens ethics in several other ways, most notably in tightening restrictions against insider trading by public officials.

Previously, the task of providing online access to financial disclosures has fallen to nonprofit organizations outside of government, such as the Center for Responsive Politics' OpenSecrets.org and Judicial Watch's Judicial Financial Disclosure Project. Such projects have struggled at times to secure access to the records and are not complete; nevertheless, they have developed some innovative features to help the public find and understand the information. Under the STOCK Act, the government will take greater responsibility for the transparency of this important ethics information.

Financial Disclosure in the States

While the federal government has only begun to formalize online access to financial disclosure reports, a number of states have already established some level of online access. A recent OMB Watch report examined accountability websites in the states, including asset disclosure information. The report discussed several existing state websites, among them Arkansas, Rhode Island, and Tennessee. The usefulness of financial disclosure websites lags behind other types of accountability websites, such as those for campaign finance or lobbying information.

Nevertheless, some states are continuing to make progress. Most recently, a bill in Maryland would require the posting of financial disclosure reports online and require officials to submit their reports electronically. These disclosure requirements would apply to state legislators, top-ranking executive branch officials, and certain local officials. The Maryland Senate has approved the bill, and the House of Delegates is scheduled to hear the bill on April 4.

Judicial Disclosure Lags

Despite the progress, a notable gap remaining at the federal level and among many states is online access to financial disclosure by members of the judiciary. Judges make important decisions that can significantly impact individuals and businesses. At the federal level, judges are required to submit asset disclosures, but the government does not provide online access to the information. The STOCK Act does not require that these disclosure reports be posted online.

In many states, judges are elected, and therefore subject to the same potentially corrupting forces as elected officials in the legislative and executive branches. Unfortunately, judges' disclosure reports are not included in the requirements for online posting in many states, and even some current bills, like Maryland's, do not cover judicial disclosures.

In California, the judges association is fighting a requirement to post such disclosure reports online. The reports of other state and county public officials are already posted, but on March 15, the association won a delay for posting judicial records while guidelines for redacting sensitive information are drafted. While the judges claim that posting the information could constitute a security risk, a member of the commission responsible for the disclosures commented that the situation looked like "the judges don't want the voters to know how rich they are."

Recommendations

While the STOCK Act and the Maryland legislation both offer generous timelines for implementation, officials should minimize delay in upgrading transparency. States that have not yet begun to post asset disclosures should follow suit. OMB Watch's recent report, *Upholding the Public's Trust: Key Features for Effective State Accountability Websites*, offers recommendations for making online disclosures most useful to the public.

Using the Clean Air Act to Protect Americans from Chemical Accidents

In March, a U.S. Environmental Protection Agency (EPA) advisory panel recommended that the agency use its authority under the Clean Air Act to protect Americans against chemical disasters. Using safer chemicals could reduce or eliminate the threats and dangers that chemical plants pose to millions of people living downwind.

Americans at Risk

More than four hundred chemical plants in the United States pose a significant risk to the communities in which they operate, each one putting at least 100,000 Americans at risk of a chemical disaster. In addition, several thousand plants use, store, and ship poisonous gases, such as chlorine and anhydrous ammonia, creating more risks of accidents and exposure. For instance, in March 2011, two workers were killed, two more injured, and about 130 employees were out of work after a chemical plant exploded in Rubbertown, KY. In January 2005, nine people died and at least 529 were injured when a freight train pulling three tankers full of liquidized chlorine and one tanker of sodium hydroxide crashed into a parked train in Graniteville, SC, releasing 11,500 gallons of chlorine gas.

However, there are many safer alternatives that industry can use to replace these dangerous chemicals and better protect Americans in the process. In fact, some communities no longer face risks of dangerous chemical exposures because the plants have switched to safer chemicals and processes. Ninety days after the Sept. 11th terrorist attacks in 2001, the Blue Plains Wastewater Treatment Facility in Washington, DC, voluntarily switched from using a deadly chlorine gas in the treatment of wastewater to a potentially safer alternative. In 2009, the Clorox Company announced its replacement of bulk quantities of chlorine gas with safer chemicals. Though more than 220 chemical facilities have switched to safer and more secure chemicals and processes since 2001, risky chemical plants have been slow to voluntarily convert to safer alternatives.

In 2006, Congress sought to address chemical plant security with passage of the Chemical Facility Anti-Terrorism Standards (CFATS), a law that required vulnerability assessments to be submitted to the Department of Homeland Security (DHS). However, CFATS specifically prohibited DHS from requiring any specific security measures, including the use of safer chemicals and processes that could eliminate the catastrophic hazards posed by poison gas. Provisions of the law also exempt thousands of chemical facilities, including about 2,400 water treatment facilities and the majority of U.S. petroleum refineries, from oversight and fail to involve employees in the development of a plant's security plans. CFATS operates under such excessive secrecy that the public is unable to evaluate if the program is working and cannot hold the government or facilities accountable.

On several occasions, the Department of Homeland Security (DHS) has asked Congress for the authority to require the highest risk plants to switch to safer alternatives. However, Congress has been unwilling to act on these requests. In recent years, legislation has been proposed in the Senate to close these gaps but has been unable to move past committees. Congressional Republicans, with support from the chemical industry, have locked in the security gaps and loopholes in CFATS.

EPA Authority

Despite congressional inaction on the issue, many believe that existing authority at the EPA could be used to require safer chemical plants. In a March 14 letter to the EPA, the National Environmental Justice Advisory Council (NEJAC) formally recommended that the EPA use the "general duty clause" of the 1990 Clean Air Act Amendments to prevent chemical disasters. This clause is also known as the "Bhopal amendment," as it refers to the 1984 chemical explosion in Bhopal, India, which killed thousands. The clause, section 112(r) of the Clean Air Act, obligates chemical facilities to prevent catastrophic chemical releases.

Using this authority, the EPA could require plants to use safer chemicals in order to reduce or eliminate the threats that the plants pose to communities. Historically, these communities have included significant low-income, minority, and indigenous populations. For instance, of the people living within one mile of the chemical plant that exploded in Rubbertown, KY, more than 70 percent are people of color, and 22 percent live below the poverty line.

In its March 14 letter, NEJAC stated that the general duty clause has never been fully implemented, despite a 2002 EPA proposal that would have required chemical plants to use safer chemicals and processes. "Unfortunately, the agency's efforts were scuttled and environmental justice communities, and indeed all communities, remain vulnerable to the dire threat of hazardous chemical releases, explosions, and spills." The letter was generated after the council received testimony from environmental justice leaders during a public comment session in October 2011.

Public Interest Reaction and Campaign

Public interest advocates welcomed the letter and urged the administration to mandate that safer chemicals be required. "[T]hese chemical facilities are a huge threat to disadvantaged communities, and the EPA must do everything it can to protect us from the risk of a poison gas disaster," said Juan Parras of Texas Environmental Justice Advocacy Services (TEJAS). According to Parras, Texas leads the nation with 106 chemical facilities; Houston has 21 facilities that each put one million or more people at risk.

Public interest organizations have long advocated that more needs to be done to protect communities near chemical facilities. In June 2011, a coalition of more than 100 local and national organizations, including OMB Watch, urged President Obama and the EPA to reduce or eliminate chemical risks to Americans by using the Clean Air Act to protect communities against chemical disasters with the safest chemicals available.

In May 2011, public interest organizations submitted a report with extensive recommendations for improving public access and participation on environmental issues, which included the use of safer chemicals. Specifically, the report recommended that the Obama administration require emergency plans in chemical facilities to include an assessment of safer chemical alternatives. In *An Agenda to Strengthen Our Right to Know*, organizations noted that "by requiring an alternatives assessment during the emergency planning process, the threat to countless communities could be greatly reduced or even eliminated as facilities discover and convert to safer technologies that other facilities are already using."

Take Action

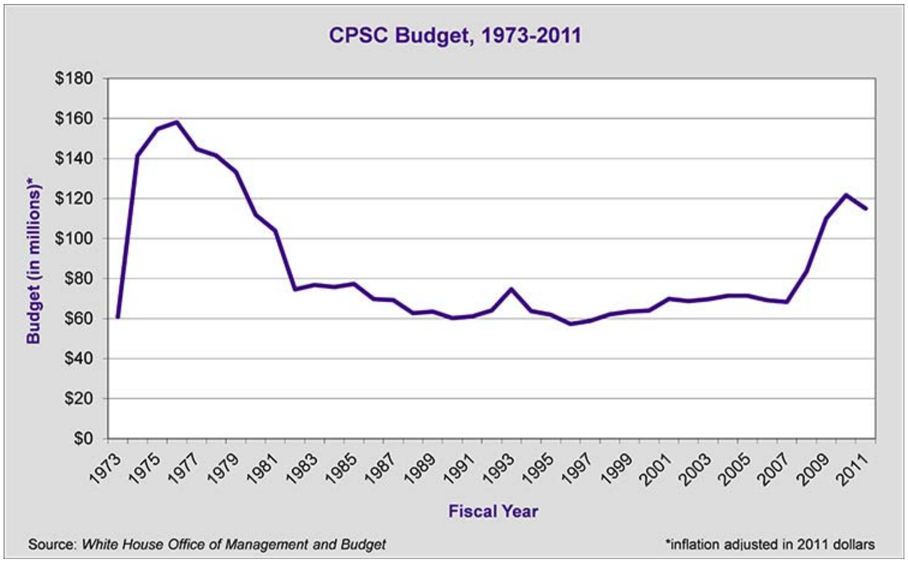
You can take action by urging President Obama to use his authority to protect you, your family, and community from chemical disasters. Call on the president to use the Clean Air Act to require companies to user safer chemicals and processes.

Product Safety Regulator May Lack Resources to Implement New Mandates, Safeguards

With federal spending on the chopping block, we have decided to highlight the potential effects of spending cuts on public protections. In a series of articles, we will examine spending cuts to a number of crucial public protections, beginning here with consumer product safety, and discuss how budget decisions in fiscal year 2013 could affect the ability of federal agencies to safeguard the public.

Although the nation's premier consumer product regulator, the Consumer Product Safety Commission (CPSC), has been crippled by budget cuts and staffing losses in the past, it has seen increases in its resources and responsibilities since 2008. However, advocates argue that a much larger influx is required to ensure that the CPSC has the resources it needs to protect Americans and eliminate dangerous products from the marketplace.

President Obama's 2013 budget request would cut many agency budgets, but CPSC would see a proposed six percent increase in its budget. Nonetheless, consumer safety advocates warn that CPSC’s resources have not kept pace with the size and number of industries it regulates or the inflow of imported goods from under-regulated countries.



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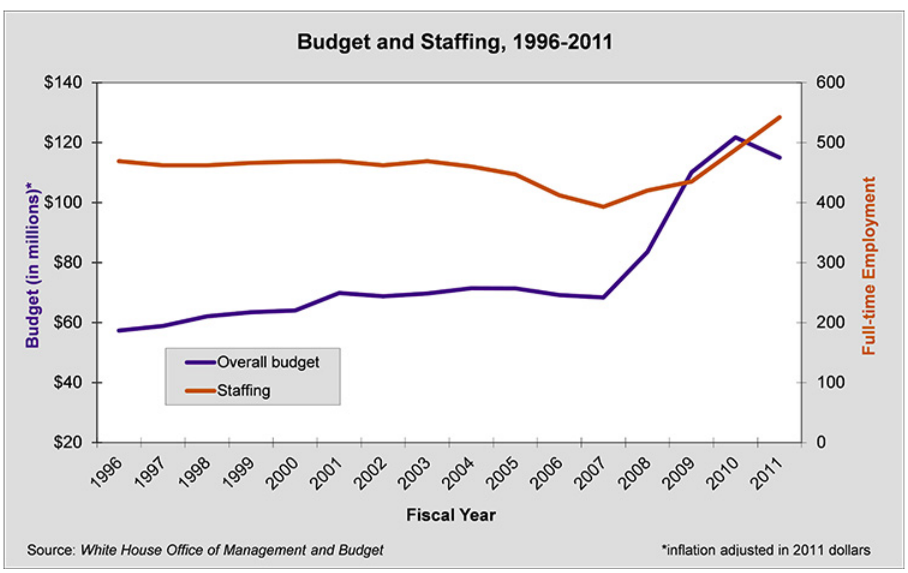
In 1972, Congress passed the Consumer Product Safety Act, creating the Consumer Product Safety Commission. CPSC began operating in 1973 as an independent federal regulatory agency whose mission was to protect the public from product risks and reduce injuries and fatalities associated with the use of those products. CPSC now regulates more than 15,000 different kinds of consumer products. After decades of cuts in the 1980s and 1990s, its funding reached an all-time low in 1996, when its annual budget fell to a third of its 1976 budget, in inflation-adjusted dollars.

Between 1998 and 2008, imports of foreign-made consumer products that entered the United States more than doubled, but staffing declined during this period.



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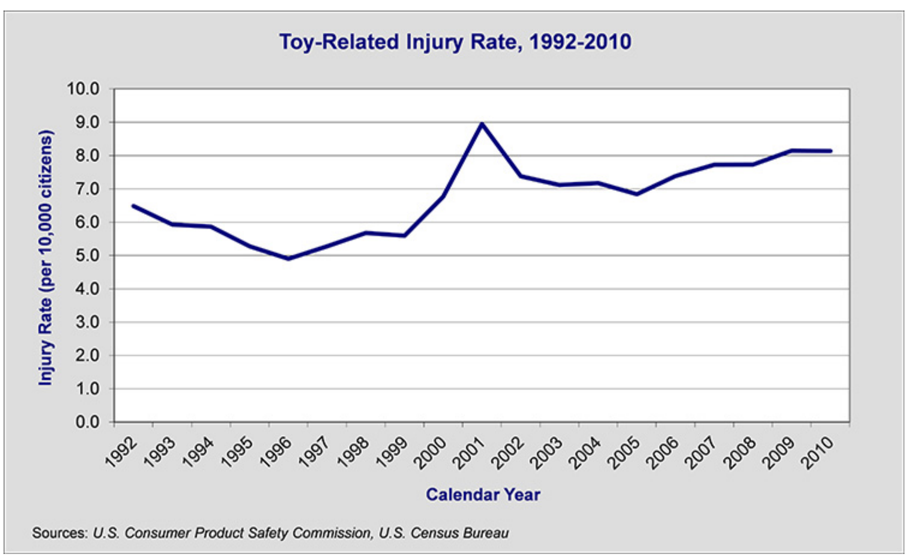
Recalls of unsafe toys and other consumer products increased as imports rose. At the height of the consumer product recalls of 2007, the CPSC had its lowest staffing levels ever and half the funding it enjoyed in 1976.

Congress responded by enacting the Consumer Product Safety Improvement Act (CPSIA) in 2008. The CPSIA increased the CPSC's authority to regulate dangerous products and increased its budget to reflect its broader mandate. Since 2008, the agency's budget has increased by 40 percent.

The CPSIA included a provision that authorizes a significant increase in CPSC's budget to $136 million in 2014, though congressional appropriators must approve additional legislation to direct those funds to the commission. The act also directed the CPSC to increase the number of full-time employees to at least 500 by 2013, subject to the availability of appropriations. In fiscal year (FY) 2011, the agency's staff was increased to above 500 employees; CPSC requested 610 full-time employees for FY 2012. Yet while the agency received significant budget increases from 2008 to 2010, funding decreased in 2011 and remained level in 2012. The president's FY 2013 request of $122 million represents an increase over the $115 million appropriated in fiscal years 2011 and 2012 but is roughly the same as funding in 2010 when adjusted for inflation. The agency will need significant and steady increases in appropriations in the coming years if it is to accomplish its mission and fulfill its statutory obligations under the CPSIA.

Can CPSC Keep Up with the Growth of Imports?

CPSC's increased efforts have helped improve consumer product safety. In the past 30 years since the agency was established, there has been a 30 percent decline in deaths and injuries associated with unsafe consumer products, and toy recalls have steadily declined since the passage of the CPSIA in 2008. But even with the improvements these safeguards have achieved, the number of toy-related injuries continues to grow. CPSC estimates the number of toy-related injuries jumped from about 130,000 in 1996 to about 220,000 in 2006 – more than 600 injuries every day. Even when adjusted for population growth, the rate of toy-related injuries has increased significantly since the 1990s.



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The American Association for Justice estimates that almost 95 percent of toys in America are imported. Most of these come from China. In fact, the value of toys imported into the U.S. increased

16-fold between 1974 and 2007, even when adjusted for inflation, according to a report by Public Citizen. Since 1992, the value of these imports has nearly doubled.

The increase in imported toys and rise in toy-related injuries illustrates the difficulty CPSC has in keeping pace with the regulated community. An astonishing 251,700 toy-related injuries were reported in 2010 – 16,400 more than in 2008. The CPSC reported in 2011, "Deaths, injuries, and property damage from consumer product incidents cost the nation more than $900 billion annually."

The CPSC is working with U.S. Customs and Border Protection to stop dangerous imported products from ending up on American shelves, but the agency must have more resources to keep up with the vast universe of products Congress has charged it with overseeing.

How Will the CPSC Weather Spending Caps in FY 2013?

The House recently approved Rep. Paul Ryan's (R-WI) FY 2013 budget resolution, which calls for severe cuts to non-defense programs. If enacted, Ryan's plan would probably put the CPSC out of business in the next ten years. *Slate*'s business and economics correspondent Matthew Yglesias wrote, "[T]o meet the spending caps consistent with Ryan's views on the appropriate level of military spending would require us to completely dismantle the rest of the federal government."

With the passage of the CPSIA, Congress gave the CPSC new authority and new responsibilities to regulate a massive increase in imported consumer products. Depleting agency resources now will undercut the progress the agency made in recent years in taking dangerous products off the market and reducing injuries from unsafe goods.

Doing Little, Changing Everything: EPA's Carbon Pollution Standard for New Power Plants

Nearly five years after the U.S. Supreme Court directed the U.S. Environmental Protection Agency (EPA) to determine whether carbon dioxide should be regulated as a "pollutant" under the Clean Air Act, the agency finally issued a proposed standard for carbon emissions from newly constructed power plants.

What's in the Standard

The Carbon Pollution Standard for New Power Plants, which was issued as a proposed rule on March 27, directs permits for new power plants to be issued only if a facility will emit no more than 1,000 pounds of carbon dioxide per megawatt-hour of electricity generated. The rule applies only to *new*, not *existing* power plants, and does not specify any particular fuel or technology.

The "average" American power plant emits somewhere between 800 and 850 pounds of carbon dioxide per megawatt-hour – "traditional" coal-fired power plants, however, emit more than twice this amount. Observers have suggested that the rule amounts to a ban on coal-fired power plants without carbon sequestration technology. As George Peridas of the Natural Resources Defense Council has pointed out, carbon sequestration is now a technological and regulatory reality – in fact, coal plants that would meet the new standard are already proposed in Mississippi and Texas.

How We Got to a Proposed Rule

The Carbon Pollution Standard was issued as a proposed rule under Section 111 of the Clean Air Act. The EPA will receive public comments on the rule for 60 days and also plans to hold public hearings. This is, however, certainly not the first opportunity for public input on the rule.

In 2006, the EPA issued air pollution standards that did not treat carbon dioxide as a pollutant. Based on arguments by the state of Massachusetts and others, the U.S. Supreme Court found in April 2007 that carbon dioxide, and greenhouse gases generally, should be treated as pollutants. In 2009, the EPA determined that carbon pollution threatens human health and welfare, which should have triggered regulation under the Clean Air Act. However, the EPA did not move forward with regulations for carbon emissions. Under threat of another lawsuit, the EPA agreed in December 2010 to issue the rule for power plants.

Under the settlement agreement, the rule was originally due in July 2011. Throughout 2011, the EPA held several "listening sessions" and collected written comments from stakeholders. In September 2011, the EPA publicly acknowledged that the rule was being delayed, but did not offer a new target completion date.

What Will Happen Next?

Ahead of the March announcement that a proposed rule would be issued in short order, it was unclear exactly when, how, and in what form the Obama administration had intended to proceed with the rule. Because other EPA rules had been delayed over the past several months, environmental and public interest advocates protested sharply.

For example, Earthjustice Senior Legislative Representative Sarah Saylor said, "The Obama administration and the EPA owe it to the people of this nation to put these pollution safeguards promptly in place. We hope President Obama and Administrator Jackson follow through on their promises and move swiftly to issue these necessary pollution protections."

Although the EPA has stated that the public comment period will last for 60 days, the agency has not yet issued a schedule for the public hearings or projected when the rule will be final. Even though it is just at the proposed stage, the rule has come under harsh criticism from energy and coal interests. Under pressure from similar groups in September 2011, President Obama directed the EPA to withdraw a final rule on the national air quality standard for ozone.

Uncertainty remains as to whether, how, and when the carbon pollution standards for power plants will be finalized, but it seems clear that those decisions will involve political calculations. This is unfortunate, as we know delays cost lives. The public should be protected from unchecked carbon pollution as soon as possible.

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