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## The Watcher

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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.

<b>OIRA Reviews, 2009-2011</b>					
<b>Year</b>	<b>Total E.O. 12866 Reviews</b>	<b>Economically Significant Reviews</b>	<b>% Economically Significant Rules Reviewed</b>	<b>Average Review Time in Days</b>	<b>Rules under Review 120 Days or More</b>
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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