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The Watcher

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In This Issue

"Do-Nothing" the Best Prescription for Deficit Reduction, but a Bad Approach for the Country

Congress was busy in the days leading up to the winter holidays. At the 11th hour, the fiscal year (FY) 2012 budget finally passed, three months late, along with an extension of the payroll tax cut and a package of other assorted cuts and credits. The only real substantive legislative change coming out of the session was the death of the ethanol tax credit – because Congress failed to pass it. In the year ahead, this might be a theme: change only happens when Congress does nothing.

Some commentators claim that a coalition of fiscal conservatives and liberal environmentalists joined forces to deliberately kill the ethanol credit, but the reality seems to be that the two parties could simply not agree how to move forward. The tax credit was created 30 years ago to spur production of ethanol, when the fuel was viewed as a possible alternative to fossil fuels (ethanol is produced from agricultural products such as sugar cane, potatoes, and corn). The credit provided a subsidy of between 45 and 55 cents per gallon of fuel blended with ethanol and gave producers of a certain kind of ethanol one dollar per gallon in subsidies. In recent years, the credit cost the government $6 billion annually, helping to make the United States the

number one producer of ethanol (the U.S. produces almost 60 percent of the world's supply of ethanol).

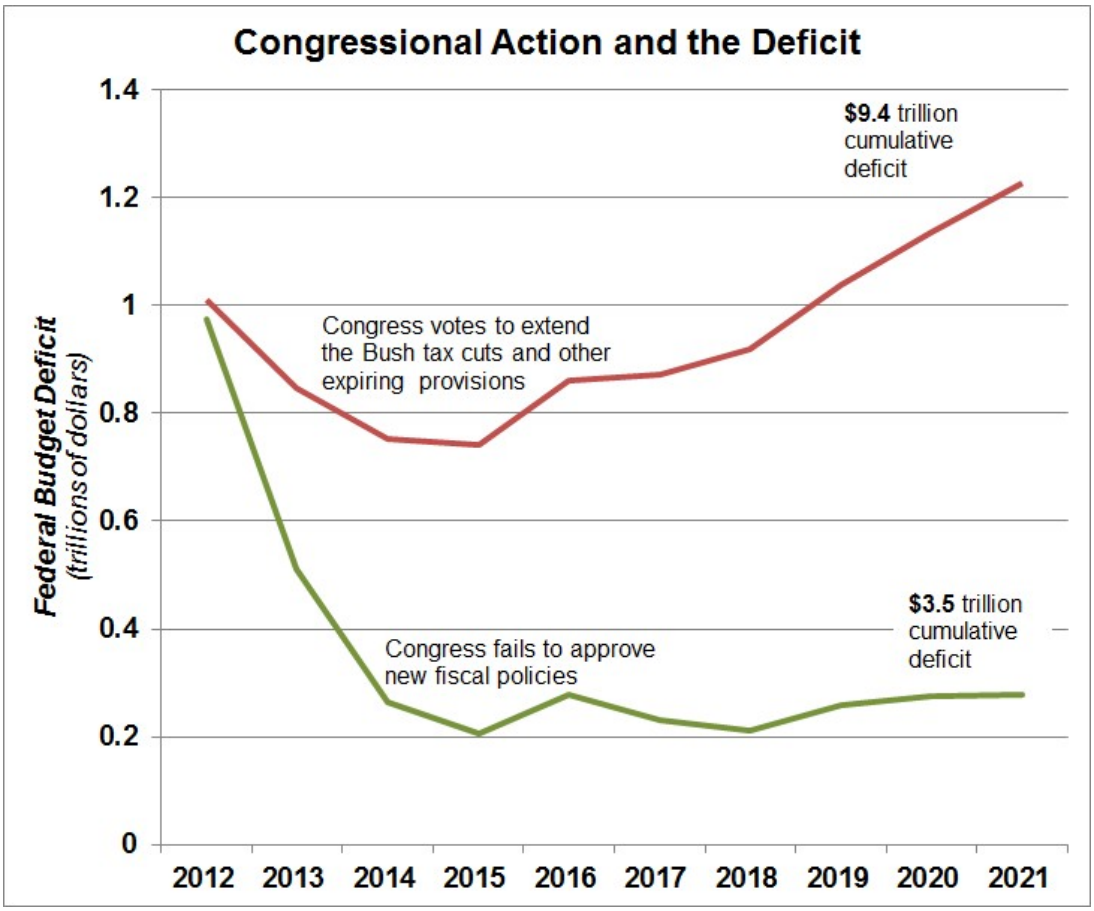
As ethanol production grew rapidly, the tax credit became controversial, pitting the farm industry, which found the credit incredibly lucrative, against hardcore fiscal hawks, who found it wasteful, and environmentalists, who charge it is actually a less efficient of use of energy resources than traditional fossil fuels. This impasse could not be overcome in last-minute negotiations, when congressional negotiators were finishing a package of "extenders," or temporary tax subsidies. Earlier in 2011, Congress tried to pass legislation repealing the ethanol credit, but failed to move it through both houses. (As Kevin Drum of Mother Jones points out, however, there are still plenty of biofuel subsidies in the U.S.)

2011 was one of the most polarized legislative sessions in recent memory, and it produced little in the way of meaningful legislation. The upcoming 2012 session is not likely to be much different, with an election looming at the end of the year. Neither party wants to give the other a legislative victory, despite declining congressional poll rankings, so last year's paralysis and gridlock will only get worse.

Partisan gridlock imperils a host of other time-sensitive provisions. The payroll tax cut, which Congress temporarily extended in December 2011, will come up for a vote again in March, and its extension is far from assured. The Bush tax cuts, including those targeted at upper-income households, will expire at the end of 2012 if the two parties do nothing. The debt ceiling will be raised this year because, thanks to the convoluted process set up by last summer's agreement, Congress has to pass a law to *prevent* an increase of the debt ceiling, which is a higher bar than blocking legislation. Also, the government faces another shut-down threat in the fall, when Congress has to reauthorize more than a trillion dollars in yearly spending in the heat of a campaign season.

By doing nothing, Congress would actually reduce the deficit by trillions of dollars. Letting the Bush tax cuts and the Alternative Minimum Tax (AMT) "fix" expire will save about $4.7 trillion over ten years; allowing an assortment of other tax provisions to expire will net about $920 billion; and allowing a cut to Medicare doctor payments to kick in would save about $350 billion. This $6 trillion in combined savings is $2 trillion more than the amount even the most vigilant fiscal hawks have called for in their most ambitious plan. However, deficit reduction of this magnitude would come at a huge cost.

Medicare doctors would see their pay cut by 27 percent, the AMT would hit more of the middle class, and the child tax credit would shrink. A do-nothing Congress would succeed in significantly reducing the deficit, but it would fail to preserve the social safety net at a time when many American families desperately need it.



With the two parties at each other's throats over relatively small-scale and uncontroversial polices like the payroll tax cut, comprehensive tax reform – long called for – and thoughtful policies geared toward funding key national priorities are extremely remote possibilities in the year ahead.

Secrecy Still Protects Genetically Modified Foods from Disclosure

The use of genetically engineered (GE) crops has increased enormously over the last decade, without a corresponding increase in government oversight. Industry has fought hard against strict oversight and testing and has even blocked efforts to label GE food products as such, leaving U.S. consumers in the dark about how their food is produced and what it contains. As consumers have become increasingly concerned about food safety and health, demands for federal and state food labeling legislation have intensified.

Genetically engineered food, also referred to as genetically modified organisms (GMOs), is created when a plant or animal receives genetic material from a different source – sometimes a different species – in a way that would not happen without human intervention. The most common GE crops in the United States are soybeans, corn, cotton, and canola. Since many

processed foods in the U.S. contain high fructose corn syrup or soy protein, it is estimated that more than half the foods in grocery stores contain GE products.

Many scientists continue to have concerns regarding the ecological and public health impacts of GE foods. In 2009, the American Academy of Environmental Medicine highlighted several animal studies that indicated serious health risks associated with GE food, including infertility, immune system problems, accelerated aging, faulty insulin regulation, and changes in major organs and the digestive system. In addition, tests show that GE crops can induce allergies. Despite these concerns, the agricultural industry continues to push for expanded use of GE crops with little to no oversight, disclosure, or impact testing.

GE Crops Continue to Get Approvals

On Dec. 21, the U.S. Department of Agriculture (USDA) approved a controversial strain of GE drought-resistant corn formulated by Monsanto. The USDA heard from more than 45,000 people and organizations that were opposed to the company's approval petition on GE corn, and the agency only received 21 comments in support. The opposition comments included a letter with 6,335 signatures, more than 16,000 similar comments from a write-in campaign, and a consolidated document of 22,500 comments. The majority of comments expressed general opposition to GE crops and concern over the potential health and environmental effects of such crops. Further, many worried that the approval process relies too heavily on company safety testing, without allowing independent studies of health risks.

As is the case with previous GE products, the new corn has not been independently peer reviewed or tested in independent labs. In February 2011, the USDA approved three new kinds of GE foods: alfalfa, corn used to produce ethanol, and sugar beets.

One of the main reasons for the lack of independent studies on the health risks of GE crops is that under U.S. patent law, companies are not required to reveal anything that could be classified as a "trade secret." Corporations like Monsanto have restricted research on their GE crops by refusing to provide independent scientists with seeds. Doug Gurian-Sherman, a plant pathologist and senior scientist at the Union of Concerned Scientists, believes that beyond trade secrets concerns, "it's likely that the companies fear something else as well: An experiment could reveal that a genetically engineered product is hazardous or doesn't perform as promised."

In December 2011, the USDA opened 60-day public comment periods on two additional petitions for approval of GE foods. The first petition involves Dow's new GE corn that is designed to better resist 2,4-D, a herbicide most famous for its use as a main ingredient in the highly toxic Agent Orange. Studies have found that 2,4-D may cause cancer, as well as infertility, birth defects, organ toxicity, and neurological effects, and there is concern that the herbicide will be used more widely on crops specifically designed to resist its toxic effects.

The second petition involves Monsanto's new GE soybeans, which have been engineered to contain a high level of an omega-3 fatty acid, commonly found in fish oil, for use in yogurt, granola bars, and spreads. The omega-3 soybean will be the first agricultural product genetically

engineered for nutritional purposes, as omega-3 fatty acids are essential to human growth and development, but omega-3 fatty acids do not naturally occur in soybeans, leaving many scientists, health professionals, and public interest organizations to question the safety of injecting animal genes into plants. The public has until Feb. 27 to comment on the two petitions.

Americans are Demanding Food Labeling

The U.S. Food and Drug Administration (FDA) ruled against requiring labels for GE foods in 1992. Since then, other countries have taken the issue more seriously and have begun to require labeling. The European Union began requiring labeling for GE foods in 1997, and other countries around the world have followed their lead in mandating labeling, including Russia, Japan, Australia, New Zealand, and China. The U.S. is one of the only developed countries that does not require GE foods to be labeled.

Public opinion polls consistently find that Americans want to know what is in their food and heavily favor the labeling of food products that contain genetically modified ingredients. In 2003, an ABC News poll found that 93 percent of respondents supported mandatory GE food labeling: more than half said they believe GE foods are unsafe. This is, of course, why businesses resist labeling so strongly – it would hurt their sales or force them to modify their production practices. In March 2011, an MSNBC Health poll revealed that support for GE labeling stood at nearly 90 percent. According to one pollster, "A free market depends on open information from which to base decisions."

In the absence of federal requirements to label GE food, citizens' initiatives on GE labeling are gaining support. The Committee for the Right to Know is aiming to get an initiative on the California ballot for the November elections. The committee, a grassroots coalition of consumer, public health, and environmental organizations, as well as some food companies, submitted the California Right to Know Genetically Engineered Food Act of 2012 to the state attorney general's office in November 2011. For the initiative to get on the ballot, the coalition must gather 560,000 qualifying signatures in the next three months. Advocates hope a win in the nation's largest state economy will change industry practice and encourage other states to mandate labels.

Efforts to pass federal food labeling laws and standards have not been abandoned, despite resistance from the powerful agricultural and food industries. In October 2011, the Center for Food Safety filed a legal petition with the FDA seeking mandatory labeling of foods made from GE crops. The petition requires a formal response from the FDA and is the first step toward filing a lawsuit against the agency. It is supported by a coalition of approximately 350 organizations, representing public interest and consumer organizations, the health care industry, food and farming organizations, and businesses. The coalition has also launched a website petition campaign and is encouraging consumers to pressure the FDA to require labeling on GE products.

Legislation was also introduced by Rep. Dennis Kucinich (D-OH) in December 2011 (for the sixth time since 1999). The Genetically Engineered Food Right to Know Act of 2011 (H.R. 3553) would:

> amend the Federal Food, Drug, and Cosmetic Act, the Federal Meat Inspection Act, and the Poultry Products Inspection Act to require that food that contains a genetically engineered material, or that is produced with a genetically engineered material, be labeled accordingly.

The bill, which has 12 co-sponsors, has been referred to the House Agriculture Committee and the House Energy and Commerce Committee.

"Genetic engineers have dramatically altered the food we consume, disrupting entire ecosystems and contaminating crops with potentially devastating effects on our long-term health," Kucinich said in a press release. "My common sense legislation will finally allow informed consumers to make their own decisions and to vote with their wallets. People have a right to know how their food is made and whether or not it has been genetically modified," stated Kucinich.

Small Wins for Transparency in 2012 Spending Package

The fiscal year 2012 spending package signed by President Obama on Dec. 23 included some good news for government transparency and right to know. Many of the worst provisions of the bill were removed from the final compromise, but open government advocates remain concerned.

The Budget Control Act, passed to end the debt ceiling hostage crisis in August, capped total funding for fiscal year (FY) 2012, but Congress continued to struggle over specific allocations for programs and the slew of conservative policy riders attached by the House, which made compromise with the Senate difficult. To avoid a government shutdown or another stopgap spending bill, Congress had to rush to finalize the funding bill (H.R. 2055) before the holidays in a cramped and opaque process.

Modest Boost for E-Gov Fund

Despite the many problems with the spending package and the process by which it was enacted, there is some good news: the law provides a small increase for the Electronic Government Fund, which pays for flagship transparency projects such as USAspending.gov, Data.gov, and the IT Dashboard. The increase represents a restoration of $4 million, to total allocation of $12.4 million, after the fund saw its budget cut from $34 million to $8 million in April 2011. In the context of the overall budget cuts, the increase for the E-Gov Fund is remarkable, and we hope it represents a new respect for the value of public information.

Moreover, the spending package preserves the E-Gov Fund as an independent budget line and retains the E-Government Act's authorization and reporting requirements. Previously, both the

House and the Senate appropriations committees had proposed merging the E-Gov Fund with the Federal Citizen Services Fund, which could have resulted in e-gov dollars being diverted to other purposes.

Cuts in Support for the Government Printing Office

The funding bill cuts support for the Government Printing Office (GPO) by $9.1 million, or 6.8 percent of its total budget. GPO provides the public with access to government information in a variety of forms, including publishing documents such as the *Congressional Record* and the Code of Federal Regulations, maintaining the FDsys website for online access to government documents, distributing government publications to libraries through the Federal Depository Library Program, and digitizing historical government publications for free public access. Earlier versions had proposed cuts of over 20 percent of GPO's budget, so the enacted bill is a good reprieve. However, the cuts could weaken GPO's ability to make information available to the public, even though Congress seems to think increased efficiencies at GPO will allow the agency to absorb cuts without a reduction in services: the managers' statement on H.R. 2055 directs the Congressional Research Service to commission a "review of GPO operations and additional cost saving opportunities."

Other Transparency Efforts

The final bill provides $5 million for a new Integrated, Efficient and Effective Uses of Information Technology fund to be managed by the Office of Management and Budget (OMB). The Obama administration had proposed a funding level of $60 million in its February 2011 budget request "to establish a coherent Federal strategy for centralized, efficient provision of IT services and infrastructure across the Government." $5 million will not go far in meeting this important goal.

Product Safety Database Protected

A provision previously approved by the House appropriations committee that would have prohibited the Consumer Product Safety Commission (CPSC) from spending to update its consumer product safety database was struck from the final bill. CPSC launched the database at SaferProducts.gov in March 2011, in response to several highly publicized recalls of dangerous products, but industry interests complained about the monetary impact of having their goods listed in a public data set of unsafe products. Helping Americans make safer choices about the goods they purchase is the purpose of the website, and the removal of barriers to its mission is a victory for the American public.

Money in Politics

H.R. 2055 includes a revised version of a rider that had been designed to limit disclosure of campaign contributions given by companies doing business with the federal government. The original House provision prohibited the Obama administration from requiring current or prospective contractors to disclose their political contributions. It was attached in response to

rumors that the administration was about to issue an executive order to try to cut down on "pay-to-play" government contracting practices.

The final version of the rider states that firms do not have to disclose their campaign contributions during the bidding process. However, the administration could require that successful bidders disclose their campaign contributors after a contract has been awarded. Rep. Anna Eshoo (D-CA) commented, "I hope the President takes this opportunity to finally issue his long-awaited Executive Order."

Other Policy Riders

A variety of other riders that impact reporting and access to information also found their way into the final law. For instance, the law contained a rider exempting manure management systems from greenhouse gas reporting requirements, as well as a provision prohibiting the printing of the *Congressional Record* for members of Congress and limiting the printing of bills as a cost-saving measure.

What's Likely in FY 2013

While this budget deal resulted in deep cuts in spending for transparency and government modernization efforts, the final compromises were not as bad as we initially anticipated. In February, President Obama will present his proposal for the FY 2013 budget, and the process will begin again. OMB Watch will continue to advocate for adequate funding for programs that protect the public's right to know.

Regulatory Oversight and Congressional Horse Trading

Appointing Richard Cordray on Jan. 4 to head the Consumer Financial Protection Bureau, President Obama said that he was stepping in to remedy a delay that "hurts our economy and puts people at risk." The Cordray situation is just one example of how obstructionism and other tactics have led to difficulties and delays in protecting the American people and the economy.

The best that can be said about Obama's use of the recess appointment in Cordray's case is that it may have been the least-bad option out of a set of terrible choices. Such appointments circumvent the important role of the Senate in evaluating the president's nominee and short-circuit the public's opportunity to learn about and comment on the choice. However, in this instance, Republicans were not questioning the qualifications of the proposed commissioner; they were protesting the powers of a commission established by law three years ago and had pledged to continue to filibuster any nomination vote.

The Consumer Financial Protection Bureau (CFPB) has operated without a formal director since it was established by Congress in 2009. Without a director for the commission, the Secretary of the Treasury is empowered to enforce existing consumer protections but not establish new ones. According to Cordray, his appointment will allow the CFPB to "exercise the full authorities

granted" by Congress, including regulating "nonbank financial institutions" like payday lenders and mortgage services.

Preventing the nomination from coming to a vote in December, Senate Republicans explained that they wanted to replace the director with a commission, allow the CFPB to be overseen by other agencies, and fund the CFPB through congressional appropriations. That is to say, they wanted to rewrite the law that instituted some financial system reforms.

While Senate Republicans were trying to reopen the debate over the CFPB and delay Cordray's nomination, Republicans in both chambers were working to force the administration to make a final decision on the Keystone XL oil pipeline, issuing or denying a permit within 60 days. This expedited timeline would make it virtually impossible for the administration to make a full analysis of the environmental, health, and safety impacts that would typically be considered. In effect, the legislators were insisting that analyses, which are typically required by law, should not be part of the decision about the pipeline.

Of course, these two high-profile cases are not the only instances of legislative meddling in the regulatory process. In 2000, EPA found that it was "appropriate and necessary" to regulate coal- and oil-fired electric utilities under the Clean Air Act (CAA), which triggered a requirement for the agency to propose regulations to control air toxics emissions from these facilities by Dec. 15, 2003. However, it took more than a decade before a standard was finalized.

In 2005, the Bush administration issued the Clean Air Mercury Rule, which actually increased the amount of pollution allowed. In 2008, the D.C. Circuit Court of Appeals vacated the rule and required EPA to develop standards consistent with the CAA's mandate to protect public health and the environment.

In March 2011, EPA issued an air toxics standard to limit mercury, acid gases, and other toxic pollution from power plants, which was finalized in December. The standards will prevent between 4,200 and 11,000 premature deaths by 2016.

Environmental and public health groups applauded the "long overdue" standards, but the House passed legislation to stop the rule in its tracks and impose even more delays. In addition, the House went further, passing a series of bills in late 2011 to try to prevent the implementation and enforcement of environmental and public health rules that would strengthen our economy and protect American families from harm.

The Debate over Public Protections: Is the Middle Caving?

When the 112th Congress returns to Washington, the debate over public protections is certain to continue. However, developments within the Obama administration and Congress over the past few weeks are likely to change the conversation in 2012.

In 2011, the Office of Information and Regulatory Affairs (OIRA) directed federal agencies through a "look-back" process to satisfy the requirement of E.O. 13563 that agencies "modify, streamline, expand, or repeal" rules that are supposedly "outmoded, ineffective, insufficient, or excessively burdensome." As this year begins, OIRA is initiating a new action under the executive order to ensure that regulations are "accessible, consistent, written in plain language, and easy to understand."

In a Jan. 4 memo, OIRA Administrator Cass Sunstein directed all executive branch agencies to include "straightforward executive summaries" in the preambles of proposed and final rules that are "lengthy or complex." In a blog post, Sunstein wrote that the memo is "a major step in the direction of greater clarity and simplicity." "The use of clear, simple executive summaries," he continued, "will make it far easier for members of the public to understand and to scrutinize proposed rules – and thus help to improve them." The memo includes a model template for the executive summaries, which must include: the purpose of the rule, a summary of the major provisions of the regulatory action in question, and a summary of the costs and benefits of the rule (including a table summarizing quantitative and qualitative costs and benefits for economically significant rules).

Ideally, this action will help produce rules that are clearly articulated by agencies and easily understood by members of the public, but OIRA should proceed with caution and ensure that necessary factual or technical information is not removed from the text of rules.

One key example illustrates what can happen when simplification is not done with care. In 1999, a Bureau of Land Management regulation on leasing and developing federal land for geothermal power was rewritten into plain language and won Vice President Gore's "No Gobbledygook Award." But, as the American Bar Association's Section on Administrative Law and Regulatory Practice pointed out, the rewrite stripped away important information about permit application requirements, what standard would be used to evaluate applications, and where the public could go to learn more about the program.

As 2011 drew to a close, two different bipartisan pairs of senators announced that they had developed legislation on regulatory reform, but both are predicated on the misleading rhetoric that regulations cost jobs and hinder growth.

On Dec. 7, 2011, Sens. Claire McCaskill (D-MO) and Susan Collins (R-ME) introduced the "Bipartisan Jobs Creation Act," S. 1960. The bill proposed to trade an extension of the payroll tax for a delay in the implementation of an air quality and public health standard that has been a frequent target of Republican attacks.

Sens. Mark Warner (D-VA) and Jerry Moran (R-KS) took a slightly more measured approach in their "Start-Up Act," S. 1965, by specifically targeting "those regulations which discourage start-up businesses." However, neither was able to identify a single example of a federal regulation that actually discouraged business development.

Including anti-regulatory provisions in a job creation bill feeds the misguided idea that regulations cost jobs, despite evidence to the contrary. Research reviews show that, overall, public protections have a small positive impact on employment. Multiple surveys of small business owners tell us the reason small businesses aren't hiring is due to sluggish demand, not so-called "over-regulation."

Throughout 2011, partisan anti-regulatory activists were relentless in attacking the standards and safeguards that keep Americans safe. The entrance of moderate Democratic senators into the discussion – on the anti-regulatory side – represents a new threat to our system of public protections.

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