OMB Watch
Promoting open government, accountability, and citizen participation since 1983
Subscribe Blog Donate
The Watcher
June 12, 2012 Vol. 13, No. 12

In This Issue

Confusion over Automatic Cuts Shows Downside of Crisis Budgeting

At more than 100 pages, last summer's debt ceiling deal was a fairly large bill. And it was passed in a hurry, as the federal government was literally hours away from hitting the debt ceiling and facing a shutdown and economic turmoil. The manufactured crisis resulted in legislation that would automatically cut $1.2 trillion in federal spending through an arcane mechanism known as "sequestration" that few lawmakers fully understood. As those automatic cuts draw nearer, lawmakers are expressing confusion over how sequestration works, providing yet another example of how crisis budgeting can lead to unexpected and unintended results.

Almost immediately after passing the bill, some members of Congress demonstrated they were unsure of the ramifications of the debt ceiling deal. For example, House Veterans' Affairs Committee Chairman Jeff Miller (R-FL) said he wasn't sure if the Veterans Administration (VA) was subject to the automatic cuts included in the debt ceiling deal, also known as the Budget Control Act (BCA).

Since it created the so-called sequestration process back in the 1980s, Congress has passed a number of laws specifically exempting some programs from automatic cuts and amended the law that governs sequestration – the Balanced Budget and Emergency Deficit Control Act of 1985, or "Gramm-Rudman" – many times. This has resulted in sometimes contradictory language in current law. Hence the confusion over the VA: while Gramm-Rudman states that the VA is exempt from automatic cuts, it also contains a section that says "Veterans' medical care" can be cut by up to two percent. The BCA employs existing language from Gramm-Rudman but applies its own modifications to that law.

Miller, confused by the discrepancy, asked the Office of Management and Budget (OMB) for clarification. In these situations, OMB has wide power to interpret the law. After deliberating for eight months, in late April, OMB released a letter announcing that all VA accounts, including medical care, were exempt from the automatic cuts. In the intervening months, Miller had introduced his own bill reconciling the conflicting clauses, but Congress has yet to act on it.

While cuts to veterans' health care represent a relatively small amount of funding, a much larger pot of money – $100 billion in war spending – has also become a source of confusion. Some members of Congress are convinced that war spending was exempted from the automatic cuts since it is treated differently from other spending, both in the budget process and in the BCA. At first, the Defense Department agreed, but last month, OMB corrected the department and announced that war funds would be subject to the automatic cuts since such spending is not on the list of exempt programs.

OMB's decision to include war spending is significant. By adding almost $100 billion to the defense spending category, the rest of the Pentagon budget will avoid deeper cuts ($55 billion will be cut from $630 billion instead of $530 billion). Instead of an almost 10.5 percent cut, all defense spending will now be cut by 8.5 percent. Additionally, congressional budgeters won't be able to "shelter" defense programs from the automatic cuts by shifting pet projects into war spending accounts. (Earlier this year, the Senate shifted $4 billion in Pentagon spending into the funds for the Iraq and Afghanistan wars.)

Congressional defense hawks are livid over the decision. House Armed Services Chairman Buck McKeon said, "I am disappointed the president has made this choice, since there is no clear mandate for it in the law." A defense analyst, who acknowledged that the law was "vague," said that "the accepted understanding around Washington has been that [war] funding is exempt." OMB's decision could redouble congressional action to "turn off" the automatic cuts to defense.

Despite these recent clarifications, areas of confusion remain, including concerns about how the automatic cuts in January 2013 will be calculated. It is not clear if the automatic cuts are taken as a set amount, regardless of what Congress budgets, or if the cuts are instead targeted at a given budget level below the current pace of spending.

The differences can be significant. If Congress pushes a budget lower than the current level, or baseline, do the automatic cuts still apply in full force, or does the budget get "credited" with already having been cut? For instance, in 2013, defense spending will be cut by $55 billion; under the first interpretation, if Congress budgets $55 billion below the baseline for defense, it is still hit with $55 billion in automatic cuts. In the second interpretation, the defense budget would not be automatically cut because Congress would be "credited" for budgeting below the baseline.

The House is pushing forward a budget that includes spending levels lower than the spending caps in the BCA, but if the House is wrong in assuming that these lower spending levels will reduce the size of the automatic cuts, they may be inadvertently cutting programs much more deeply than they anticipated.

Faced with this uncertainty, Budget Committee Chairman Paul Ryan (R-WI) introduced a new bill that would force the administration to fully explain the legislation Congress passed in August. It orders the administration to outline the spending cuts that would occur under sequestration, program by program, and to publish "any other data and explanations that enhance public understanding of the sequester and actions to be taken under it."

With all of the confusion over what the Budget Control Act does, one thing is clear: many members of Congress had little idea of what they were passing in August 2011. Tens of billions of dollars in vital public protections and safety net programs are at stake. The impacts of rushing changes to the budgeting process through Congress at the 11th hour may become clear to millions of American families before the law's authors fully understand what they have done.

Political Ad Transparency at Risk as Republicans and Special Interests Attack

In April, the Federal Communications Commission (FCC) approved reforms to modernize the disclosure requirements for broadcasters operating on the public airwaves. The rule will expose the influence of money in politics by making information about who is financing political advertising available online. However, the transparency rule is under attack: broadcasters quickly filed suit against the FCC, while House Republicans attached a policy provision to a spending bill that would block the rule from taking effect.

Opening the Files

To enable citizens to oversee the use of the public airwaves, broadcasters must disclose certain information about their programming and operations. Since 1965, broadcasters have maintained public inspection files with information on each station's license and ownership, compliance with FCC rules, programming, and political advertising.

However, the public files have only been available on paper in each station's studio, limiting access. To improve public access, the FCC passed a new rule on April 27 requiring TV stations to post their data to an online public database.

The information in the files on political advertising will allow the public to see who is purchasing political ads and how much they are paying for them. Ads by super PACs and other third-party organizations attempting to influence elections have ballooned in the aftermath of the Supreme Court's *Citizens United* decision in 2010.

That enormous influx of money in politics has made many Americans concerned about the integrity of the election process. Making ad spending more transparent would enable better analysis of its influence and options for reform, a first step in restoring the public’s trust.

Broadcasters adamantly opposed the rule, arguing that wider access to their ad rates could weaken their negotiating power with advertisers. (Campaigns typically pay the lowest rates for ad buys, but third-party organizations like super PACs can be charged commercial rates.) But the FCC is bound to protect the public interest, not broadcasters' profits.

Legislative Override Attempted

On June 6, the House Appropriations subcommittee on Financial Services and General Government marked up its funding bill for fiscal year (FY) 2013, which includes funding for the FCC. The subcommittee draft, introduced by Chair Jo Ann Emerson (R-MO), included a policy "rider" that would block the agency from applying the disclosure rule to information on political ads. Other information in the station public files would be unaffected and would go online as planned in the rule.

Republicans explained the move by criticizing the FCC rule as burdensome and intrusive – despite the facts that the files are already public and that online posting is expected to have minimal burden on broadcasters.

Appropriations committee ranking member Norm Dicks (D-WA) criticized the rider as kowtowing to the moneyed interests increasingly intervening in elections. "It looks like you're trying to cover up the fact that all these fat cats are coming in and putting all this money into these elections and they don’t want their names to be disclosed," said Dicks.

Subcommittee ranking member José Serrano (D-NY) sponsored an amendment to remove the rider, which was defeated on a party-line vote. Serrano vowed to continue efforts to strike the language, according to ProPublica.

The Senate is scheduled to mark up its version of the bill in subcommittee on June 12. The subcommittee has not yet released draft text of the bill.

Please take action and tell Congress to remove the rider so that we can see who is buying political ads on our airwaves.

Court Challenge

Broadcasters are also challenging the rule in court. On May 21, less than a month after the FCC finalized the new rule, the National Association of Broadcasters (NAB) filed suit to block it. The industry association argued that the rule is "arbitrary, capricious," and violates the First Amendment. The broadcasters did not explain their claims in their petition, but they have previously complained that the rule would make TV stations the only medium required to disclose their ad rates. The broadcasters also claim that the FCC lacks authority to bring the files online because Congress did not require the information to be posted on the Internet.

However, the FCC defended the rule, calling it a "common-sense update." Free Press, a nonprofit group that supports media reform, called the lawsuit "nothing more than an attempt by the NAB to stall an important and overdue transparency initiative" and said the FCC "is on firm legal ground."

Let's Move Forward

The FCC's rule should be the first step in a series of reforms to modernize its disclosure rules for the 21st century and our digital communications structure. But recalcitrant special interests and their defenders in Congress threaten to derail the process and leave the public with disclosure systems designed for an earlier generation of communications technology.

The American people deserve easy access to public information. Today, information on political ad spending is more critical than ever, as the influx of money in politics threatens to undermine honest democratic discourse.

Please tell Congress: We have a right to know who's buying political ads on the public's airwaves.

Attacks on Clean Air Standards Now Target the Expected Health Benefits of Rules

Clean air protections are under attack yet again. While opponents of these standards continue to target rules through anti-regulatory legislation, new arguments criticizing the U.S. Environmental Protection Agency's (EPA) analyses of air pollution reduction benefits have emerged. These efforts to undermine clean air standards ignore the purpose and legal mandate of the Clean Air Act (CAA) by focusing on the costs to businesses instead of the health benefits of cleaner air, despite evidence that the benefits of these rules outweigh their costs.

The 112th Congress has consistently voted to weaken environmental and health protections, earning the label of "the most anti-environment House in history." According to data compiled by the House Energy and Commerce Committee minority staff, the House majority has voted 77 times to dismantle the CAA. A number of statutory provisions that would block EPA's authority to issue certain regulations under the CAA have passed in the House. Meanwhile, the Senate will soon vote on a resolution introduced by Sen. James Inhofe (R-OK) that would nullify EPA's mercury and air toxics standards (MATS) for power plants.

One claim against the MATS, also called the Utility MACT rule, is that the Obama administration impermissibly relied on the "co-benefits" of reducing other kinds of air pollutants to justify the rule reducing mercury. The MATS set technology-based emissions standards for mercury and other air toxics, but the controls needed to meet the standards will also reduce emissions of particulate matter and lower the level of soot in the air. Particulate matter can cause serious health problems, so these additional reductions will produce significant health benefits. Many air pollution regulations achieve such co-benefits.

Despite these facts, Inhofe accused the EPA of "double miscounting benefits" because most of the benefits of the rule come from reductions in particulate matter, not mercury. Notably, he did not refute these expected benefits, which include preventing up to 11,000 premature deaths, nearly 5,000 heart attacks, and 130,000 asthma attacks per year starting in 2016.

This misleading argument was echoed last week, both during a House hearing and at a conference examining the impact of anti-air pollution efforts. The *National Journal* hosted a policy summit June 6 that featured public health and environmental experts, as well as industry representatives and private sector consultants. The debate over the MATS was particularly contentious, with a panelist from a private consulting firm (NERA Economic Consulting) asserting that the rule produced negligible direct benefits because the benefits calculated by EPA result from pollutant reductions other than mercury reductions.

Later that day, Rep. Andy Harris (R-MD) offered the same argument at a hearing of the House Science, Space, and Technology Committee's Subcommittee on Energy and Environment. The subcommittee chairman condemned what he called "a pattern of scientific and economic practices . . . that inflates health-based regulatory benefits." "More and more of these regulations are almost exclusively justified on the basis of incidental 'co-benefits' from particulate matter reductions," he said.

The recent attention on calculating the co-benefits of air pollution reduction rules may misleadingly suggest that this is a new practice. In fact, EPA has estimated the co-benefits of reducing emissions of non-targeted pollutants for years, during both the Bush and Obama administrations.

A memorandum from the Congressional Research Service (CRS) notes that "most EPA air quality regulations reduce particulate emissions, either as the targeted pollutant, or as a co-benefit of reduction emissions of other pollutants." Between 2004 and 2011, about 20 economically significant CAA rules had particulate matter reductions comprising over 50 percent of the total benefits. Roughly half of these rules were proposed or promulgated during President Bush's second term.

CRS also explains the difficulty in obtaining data regarding the illness or mortality associated with exposure to an individual pollutant. "The agency proceeds with regulation," CRS concludes, "because it was directed by the statute to do so, but it may not be able to quantify or monetize the benefits of regulating emissions of a specific substance."

The attack on EPA's calculation of rule benefits is another attempt to undermine strong clean air standards and justify valuing costs over public health and safety. The political rhetoric challenging these rules often ignores the primary goal of the CAA — to protect public health and welfare. If the anti-regulatory measures passed by the House gain traction in the Senate, clean air protections with enormous public health benefits could be in jeopardy.

Can We Employ Evidence in the Battle over Regulations?

The Office of Information and Regulatory Affairs (OIRA) recently asked for comments on whether and how to consider if regulations under development in federal agencies could have "adverse effects" on employment. Once again, the rhetoric coming from OIRA is reinforcing the distortions of industry groups, even while evidence shows that regulations are good for the American people and the economy.

Every regulatory agency has the same core mission: to protect the American public from unreasonable risks, including those caused by corporate neglect and ineptitude. One such risk is the pollution caused by the burning of fossil fuels to generate power. To protect public health, the U.S. Environmental Protection Agency (EPA) has been charged with ensuring that power plants limit their emissions. Research shows that these regulations have been tremendously successful. The Clean Air Act Amendments of 1990 alone prevent 130,000 heart attacks and 54,000 cases of bronchitis, avert 86,000 hospitalizations, and save more than 160,000 lives every year. American businesses also reap the benefits of these public protections: Americans work 13 million more days each year than they would if the Clean Air Act Amendments had not been passed.

Research has also found that regulations typically have a positive (though small) effect on employment.

After closely analyzing a single rule now under consideration – the proposed national emissions standards for mercury, arsenic, and other toxic air pollution from power plants – the Economic Policy Institute estimated that the rule would create a net increase of more than 90,000 jobs in sectors as diverse as mining, construction, utilities, agriculture, forestry, fishing, hunting, finance, insurance, educational services, health care, social assistance, arts, entertainment, and recreation.

Public protections can increase productivity, spur technical innovation, and encourage creation of new markets. Sometimes, new rules encourage firms to hire workers (for example, to build or maintain a new facility). Other times, they create an incentive for corporations to develop new technologies or business processes. In fact, a Harvard Business School economist has noted that the productivity gains generated by new regulations may entirely offset the cost of complying with the new standards.

This is particularly likely to be true when corporations are holding significant capital reserves and unemployment is high – the situation we currently face. Like average Americans, businesses have been battered by the recession. Unlike most of us, corporations are sitting on record levels of reserve funds, which they could be using to build new facilities, expand production, grow the economy, and put people back to work. Without an increase in consumer demand, corporations are not hiring or expanding production. But new standards could encourage corporations to move forward with new investments, simultaneously making Americans safer, healthier, and creating new jobs.

In other words, regulations are good for the economy. In fact, studies show that the benefits of recent regulations were more than two times their costs – even before non-quantifiable benefits were considered. This is why business economists overwhelmingly feel that the American regulatory climate is "good" for business and, in fact, small business owners say that regulations are an important part of the modern economy.

Recent history clearly shows that when the regulatory system serves corporate interests rather than the public interest, people get hurt. Consider the 2008 economic crisis. According to the Financial Crisis Inquiry Commission, "Widespread failures in financial regulation and supervision proved devastating to the stability of the nation's financial markets." In other words, millions of jobs, trillions of dollars of investments and savings, and billions of dollars of economic growth were lost to under-regulation and under-enforcement. Similarly, the BP Deepwater Horizon blowout is projected to cost the Gulf Coast's economy more than $8.5 billion and result in the loss of more than 22,000 jobs (to say nothing of the more than $14 billion BP itself has already had to devote to clean-up costs).

Despite the constant rhetoric to the contrary, evidence shows that public protections can be good for the American economy. Our regulatory agencies exist to keep the American public safe. Fortunately, there's no need to choose between economic growth and a strong system of public protections: effective standards keep our economy strong – both by spurring corporations to spend and invest and by safeguarding us against the disasters that can occur when corporate interests overtake the public interest.

OMB Watch • 1742 Connecticut Avenue, N.W. • Washington, D.C. 20009
202-234-8494 (phone) | 202-234-8584 (fax)