



Promoting open government,
accountability, and citizen
participation since 1983

[Subscribe](#)

[Blog](#)

[Donate](#)

The Watcher

March 20, 2012

Vol. 13, No. 6

In This Issue

Fiscal Stewardship

[House FY 2013 Budget: Another Nail in the Budget Control Act Coffin](#)
[Budget 101: The Differences between the President's Budget and a Budget Resolution](#)

Government Openness

[States Releasing Information Online that Can Ensure Public Official Accountability](#)
[Mixed Results for the Obama Administration on Freedom of Information](#)

Protecting the Public

[The Regulatory Freeze Act: Legislation to Make the World More Dangerous and the Economy Weaker](#)
[Should Victims of the BP Oil Spill Be Unsettled by Recent Settlement Agreement?](#)

House FY 2013 Budget: Another Nail in the Budget Control Act Coffin

Leading up to the release of Rep. Paul Ryan's (R-WI) fiscal year (FY) 2013 budget resolution proposal, the question has not been whether House Republicans will adhere to the federal spending agreement reached in last year's debt ceiling deal ([they will not](#)), but how far below the previously agreed-upon figures they will go. The House GOP's abandonment of this agreement is yet another example of actions taken to undermine not only the spirit but also the letter of last summer's deal.

Representing the culmination of debt and deficit hysteria that engulfed Washington after the midterm elections brought a new kind of legislator to the House, the passage of the deal (known as the [Budget Control Act](#) (BCA)) last August ended the [debt ceiling crisis](#). The law initially put caps on federal spending, cutting roughly \$841 billion over 10 years and dividing the cuts between security spending (which includes the departments of State and Homeland Security) and non-security spending. In addition, the law established a joint congressional committee to draft a plan to cut another \$1.5 trillion from the deficit over 10 years. However, the so-called "Super Committee" failed, triggering \$1.2 trillion in additional spending cuts over the next ten years.

Even before the Super Committee failed, however, prominent Republicans began to voice opposition to any cuts to the Department of Defense (DOD). In October 2011, former Republican presidential nominee Sen. John McCain (R-AZ) [began promising](#) “to be among the first on the floor to nullify [any automatic defense cuts].” Likewise, Rep. Buck McKeon (R-CA), Chair of the House Armed Services Committee, [pledged](#), “I will not let these sequestration cuts stand.” Both voted in favor of the legislation that created the deficit committee and the resulting automatic cuts. Both have now also introduced legislation to undo the automatic cuts to DOD, shifting the cuts entirely onto non-defense discretionary spending.

In his budget, President Obama also rejected the automatic cuts set out in the agreement but offered an alternative path to deficit reduction. In February, the president’s FY 2013 budget request proposed that Congress [replace the automatic cuts](#) triggered by the Super Committee’s failure with a mixture of progressive revenue raisers and spending cuts adding up to more than the total called for in the BCA.

The administration has also proposed removing the so-called firewall between defense and non-defense spending, combining all discretionary spending into one pot and forcing non-defense discretionary programs to compete for funds against the much more powerfully defended defense-spending portion of the budget. The Center on Budget and Policy Priorities (CBPP) [concluded](#):

The proposal wouldn’t change the *overall amount* of discretionary funding that Congress could approve in any year. But in the current political environment, where advocates of the Pentagon are emphatic, defense contractors employ well-connected lobbyists and make substantial campaign contributions (and, in many cases, are strategically located in key congressional districts), and budgetary savings in defense often are attacked as jeopardizing national security, it would likely lead Congress to cut domestic and international discretionary programs further in order to help protect the military budget.

Ryan, the chair of the House Budget Committee, is unlikely to allow defense spending to face off against non-defense spending. [His budget](#) calls for the automatic cuts to defense to be replaced with unspecified cuts to non-defense mandatory spending, which could include cuts to programs such as Social Security, Medicare, Medicaid, and SNAP (formerly known as Food Stamps).

This makes the FY 2013 House budget all the more “ridiculous” and “infuriating,” as budget expert Stan Collender [recently wrote](#). Bending to whims of its Tea Party wing, House Republicans are jettisoning last year’s agreed-upon spending levels. The Senate has already announced that it will appropriate funds based on the levels in the debt ceiling agreement, so the House’s push to reduce that level could threaten the nation with another government shutdown in late September when Congress reopens the fight over spending levels as the new fiscal year approaches.

If the GOP takes either the White House or the Senate in November, the lower overall spending levels proposed in Ryan’s FY 2013 budget resolution could be enacted. Moreover, any cuts to defense, including the Obama administration’s proposed \$487 billion slowdown of defense spending growth over the next decade, would likely be abandoned. If Democrats take back the House and maintain control of the Senate, the automatic cuts to non-defense discretionary spending and possibly to

discretionary defense spending will likely be undone. They will likely be replaced with a mixture of revenue raisers and other, more targeted spending cuts, as the president has proposed.

Either way, it is not clear that the BCA's spending caps will actually go into effect. Policymakers said they established the automatic cuts to motivate both political parties to compromise, but members of Congress and President Obama are already attempting to undo the automatic cuts in this election year. The winners in this contest will be determined by the results of the elections in November. [Those who argue](#) that budget gridlock in Washington can be solved through reforms to the budget process alone are dreaming.

Budget 101: The Differences between the President's Budget and a Budget Resolution

Today, the House [released its budget resolution](#), a document laying out that chamber's budget priorities for the coming fiscal year. The budget resolution is often compared to another document, [the president's budget](#), which is usually released a few weeks earlier. But these two documents are very different in both content and purpose. The budget resolution creates a budgetary framework for Congress, while the president's budget is more of a strategic planning document for federal agencies. These differences make it difficult to compare and contrast the documents' competing policies.

The president's budget, which is produced by the Office of Management and Budget (OMB), has a much different purpose than the congressional budget resolution. While it is frequently used as a political messaging document, the president's budget is also a line-by-line presentation of all the programs in the federal government. Each program is listed, explained, and given a proposed budget for the upcoming fiscal year. Essentially, the president's budget can be seen as a strategic plan for every agency for the coming fiscal year. Congressional budgeters often use these budget numbers as a starting point for the 12 annual spending bills that fund the operations of the federal government. In addition, the president's budget lays out his proposed tax policy changes for the next ten years.

BUREAU OF CONSUMER FINANCIAL PROTECTION			
<i>Federal Funds</i>			
BUREAU OF CONSUMER FINANCIAL PROTECTION FUND			
Special and Trust Fund Receipts (in millions of dollars)			
Identification code 95-5577-0-2-376	2011 actual	2012 est.	2013 est.
0100 Balance, start of year			
Receipts:			
0200 Transfers from the Federal Reserve Board, Bureau of Consumer Financial Protection Fund	162	340	448
0400 Total: Balances and collections	162	340	448
Appropriations:			
0500 Bureau of Consumer Financial Protection Fund	-162	-340	-448
0799 Balance, end of year			
Program and Financing (in millions of dollars)			
Identification code 95-5577-0-2-376	2011 actual	2012 est.	2013 est.
Obligations by program activity:			
0001 Consumer Financial Protection Bureau	123	356	448
0100 Direct program activities, subtotal	123	356	448
Budgetary Resources:			
Unobligated balance:			
1000 Unobligated balance brought forward, Oct 1	9	48	32
Budget authority:			
Appropriations, mandatory:			
1201 Appropriation (special or trust fund)	162	340	448
1260 Appropriations, mandatory (total)	162	340	448
1930 Total budgetary resources available	171	388	480

An example of the text of the president's budget (FY 2013)

A congressional budget resolution is a much more limited document, as it merely sets top-level fiscal policy for Congress. According to law, each house passes its own budget resolution, and then both hash out their differences to create a final resolution, called a "[concurrent resolution](#)." This resolution sets discretionary spending levels, which fund non-entitlement programs such as defense and education, along with revenue and overall spending limits for the next ten years. It may also contain "[reconciliation instructions](#)," which make it easier for the Senate to avoid a filibuster when debating tax and mandatory policy changes. However, the budget resolution typically does not make very many policy recommendations for Congress.

1	TITLE I—RECOMMENDED
2	LEVELS AND AMOUNTS
3	SEC. 101. RECOMMENDED LEVELS AND AMOUNTS.
4	The following budgetary levels are appropriate for
5	each of fiscal years 2012 through 2021:
6	(1) FEDERAL REVENUES.—For purposes of the
7	enforcement of this resolution:
8	(A) The recommended levels of Federal
9	revenues are as follows:
10	Fiscal year 2012: \$1,866,454,000,000.
11	Fiscal year 2013: \$2,127,981,000,000.
12	Fiscal year 2014: \$2,324,503,000,000.
13	Fiscal year 2015: \$2,425,363,000,000.
14	Fiscal year 2016: \$2,522,695,000,000.
15	Fiscal year 2017: \$2,693,493,000,000.
16	Fiscal year 2018: \$2,807,893,000,000.

*An example of the text of the House budget resolution (FY 2012)
(FY 2013 numbers were unavailable at press time)*

The numbers in the budget resolution are important because they are used by the other congressional committees as guides for their fiscal work. The spending levels in the resolution are used as spending limits, while the revenue levels are floors (any bill going over the spending limits or under the floor is subject to challenges in both houses). The [appropriations committees](#) use the budget resolution to set spending levels for appropriations bills, the tax writing committees may produce bills to bring revenue into alignment with the budget resolution, and committees with jurisdiction over entitlements make similar adjustments.

The level of detail in the numbers in the two documents is very different. The president's budget contains detailed information on a number of subjects, since it describes explicit policy recommendations. The budget contains past, present, and proposed spending information for every program, including budget authority, outlays, offsetting receipts, unobligated balances, and more. (Each agency also produces a more detailed document called a "congressional justification," which contains even more details about each program and office in the federal government.) In the budget's [historical tables](#), [analytical perspectives](#), and [summary tables](#), one can find everything from government expenditures as a percent of Gross Domestic Product going back to the 1940s, to the amount of federal revenue going back to 1901.

The president's budget also contains many detailed estimates of *future* spending and revenue. For instance, this year, the president has proposed [limiting itemized deductions](#) for wealthy taxpayers, and his budget provides an estimate of how much additional revenue this change will bring in each year for the next ten years.

Since the congressional budget resolution sets top-level fiscal policy only and does not make the same detailed recommendations as the president's budget, the resolution does not contain nearly as detailed information. The few numbers it does provide show overall recommended spending, revenue, and debt levels for the next ten years, with spending broken down only by "[functional categories](#)" – the thematic groupings of spending, such as General Science, Health, and Community Development. Other materials released with the budget resolution often provide some context for the numbers, but these are more frequently political talking points than substantive information.

The difference in content makes it difficult to compare the president's budget to a budget resolution. It is only possible to compare the big-picture fiscal policy changes, since the budget resolution only shows top-line numbers. For example, the budget resolution might propose a tax cut, but it typically would not provide detail on the exact tax policies that would change or detailed estimates of the budgetary impact on individual programs. In contrast, the president's budget will provide this information for all tax and spending policy changes.

In the end, both documents are only starting points for legislation. The president's budget is not presented as a bill, and thus is never voted on, although it does provide proposed legislative language for Congress. The budget resolution, similarly, is not signed into law by the president, and has limited binding power. A simple majority of the House or 60 votes in the Senate can override the spending limits provided in the budget resolution. However, the spending limits are only in effect if both houses of Congress pass a concurrent budget resolution, and the Senate is [not expected to pass](#) a budget resolution this year. If that happens, the House budget resolution will have little power to set spending limits for the 2013 budget year. Instead, the two parties will fight it out at the end of year on the eve of yet another government shutdown.

States Releasing Information Online that Can Ensure Public Official Accountability

On March 19, OMB Watch released a [new report](#) that evaluates state and federal websites designed to ensure the accountability of public officials. The report, *Upholding the Public's Trust: Key Features for Effective State Accountability Websites*, examines state efforts to release public officials' integrity information online. Such transparency is crucial to guard against self-dealing and patronage. While states and the federal government have made progress in this area, more work lies ahead.

Transparency can deter corruption and guard against ethical conflicts. It is impressive that the federal government and so many states are disclosing so much information about elected and appointed officials online. However, the quantity and quality of disclosure is uneven.

Background

The OMB Watch report was inspired by the [State Integrity Investigation](#), a project of the [Center for Public Integrity](#), [Global Integrity](#), and [Public Radio International](#). The State Integrity Investigation ranks each state on its risk of public corruption by examining more than 300 measures of integrity policy and practice, including online disclosure. The inaugural State Integrity Investigation was published on March 19.

As an independent companion to the State Integrity Investigation, OMB Watch developed our report to elaborate on what makes online disclosure effective. This report examines four disclosure topics from the State Integrity Investigation: the online disclosure of campaign funding, lobbying activities, government contracting, and public officials' finances and assets.

Key Features

The report examines disclosure websites based on the existence, and capability, of five key features:

1. Transparency websites should have an intuitive interface that makes them *easy to navigate* through the vastness of government records, as a confusing webpage can deter a curious user. A good example is [Hawaii's procurement disclosure website](#), which includes simple options and a drop-down list of vendors to search among.
2. Transparency websites should provide *basic information* to citizens. There are a few core types of information that most users will be interested in – generally, the answers to who, what, where, when, and how (or how much). For example, [Michigan's lobbying disclosure website](#) allows users to quickly identify lobbyists, clients, and expenses.
3. Transparency websites should make available *features that make the data easier to understand* and that make it come alive. This may take the form of a chart, graph, interactive map, or other tools that provide an overview of the data and make it possible to generate comparisons between entities. [Colorado's campaign finance disclosure website](#) makes good use of graphs to provide an overview of contributions in the state.
4. Transparency websites should provide *advanced information*, which is needed by journalists, watchdog organizations, and researchers – the groups most often charged with explaining the more detailed information to the broader public. For instance, [New Jersey's procurement disclosure website](#) describes the contractor characteristics for each vendor: whether it is a small business or whether it is minority- or woman-owned.
5. Transparency websites should provide *downloadable datasets* so that interested citizens can perform more in-depth analyses. For example, the [federal procurement website](#) offers data downloads.

Findings

A number of states are doing well on some aspects of online disclosure of accountability information, but no state has a uniformly user-friendly site, and even the best sites struggle with basic usefulness and usability.

It seems many of the sites are geared toward more advanced users, which can make locating information quite arduous for the average citizen. Generally, most states lack mechanisms, like graphs and interactive maps, for summarizing data, and do not provide user-friendly searching and sorting tools.

Sites are still overwhelmingly based on a “records” rather than “data” paradigm: they are meant to retrieve the digital analog of a paper filing, rather than using modern technology to allow users to explore and analyze the information contained in those records. Citizens familiar with state-of-the-art general consumer technology would likely find themselves disappointed by most of the sites we reviewed.

In general, the federal websites outperformed the states, but they still fell short in one or more important ways. The exception is in the area of financial and asset disclosure by public officials, in which the federal government lags behind state governments. However, the [Stop Trading on Congressional Knowledge Act](#), or STOCK Act, would improve this situation. The bill, which has passed both the House and the Senate in different forms, would require a new electronic system for financial disclosure filings from federal officials to be posted online.

Although the federal websites are generally more effective than the state sites, some of the better state sites implemented innovative features that the federal government and other states should consider adopting. For example, several state procurement websites provide the text of their contracts, including [Mississippi](#), a [practice that the federal government has yet to adopt](#).

Mixed Results for the Obama Administration on Freedom of Information

Sunshine Week, the annual nationwide celebration of transparency in government, prompted numerous analyses of the Obama administration’s progress on improving its responsiveness in processing Freedom of Information Act (FOIA) requests. Through its own analysis, OMB Watch found the administration has continued to make progress overall, but agency-by-agency results have been mixed.

Congress passed FOIA in 1966, creating one of the public’s most powerful tools for obtaining critical information from the federal government. FOIA provides citizens a legal right to obtain records held by government agencies and has been an integral part in ensuring that the American people can access information of public concern. However, despite the importance of FOIA, complaints about slow processing are endemic, and citizens often find the process burdensome, confusing, and slow.

OMB Watch Analysis

On March 14, OMB Watch released an analysis of the government’s fiscal year (FY) 2011 performance on FOIA implementation, based on federal agency annual reports under the act. The analysis, entitled [Strides and Stumbles: Mixed Results for the Obama Administration on Freedom of Information](#), found that several transparency indicators have improved.

In fact, agencies processed six percent more requests in 2011 than 2010, bringing the number of FOIA requests processed to the highest level since 2005. The percentage of requests denied based on exemptions declined by seven percent, bringing exemption use to its lowest level since 2008. In addition, use of the most discretionary exemptions – exemptions 2 (internal agency rules) and 5 (interagency memos) – decreased sharply, largely due to decreases at the Department of Homeland Security.

Nevertheless, the surge in FOIA requests outpaced the administration's increase in processing, leaving more requests unprocessed at the end of 2011 than in 2010. Still, unprocessed requests are at their lowest level overall since 2003.

The Department of Homeland Security (DHS) is responsible for most of these trends. DHS received more requests than any other federal agency (36 percent of the total), and the number of requests it received increased by 35 percent. DHS was unable to cope with the increase, causing its backlog to more than double.

The Obama administration's combined average for granting requests in full or in part (95 percent) remains higher than the average of the Clinton administration (89 percent) and the Bush administration (93 percent). However, the Obama administration's performance relies more heavily on partial releases than the previous administrations.

The OMB Watch analysis was based on annual FOIA reports filed by federal agencies with the Department of Justice. The analysis covers 25 federal agencies, including most cabinet-level departments.

Other FOIA Analyses

The Associated Press released its [analysis](#) of the 2011 federal agency FOIA reports for 37 of the largest federal departments and agencies, with similar findings. The Associated Press also concluded the administration made progress but was unable to keep pace with the increasing number of FOIA requests and thus "still fell further behind with backlogs, due mostly to surges in immigration records requested from the DHS."

On March 15, the House Oversight and Government Reform Committee, chaired by Rep. Darrell Issa (R-CA), released a [report card](#) indicating that many federal agencies have failed to track basic information in response to FOIA requests. The committee gave the administration an overall grade of C-minus for its efforts to track and manage FOIA requests. The congressional report, released a day after OMB Watch released its FOIA analysis, is based on requests for FOIA logs at 100 different agencies.

According to the House report card, 62 of the 100 agencies surveyed provided all necessary information in their FOIA logs, while the remaining 38 were vague or lacked critical information, such as status, subject matter, or tracking numbers. The departments that received the most FOIA requests – Homeland Security, Defense, and Justice – lacked critical information from their FOIA tracking

logs; the most complete tracking logs were provided by the departments of Education, Energy, Labor, and Transportation.

Of all the federal agencies reviewed, the Department of Justice (DOJ) received the harshest criticism during Sunshine Week. Though last week marked the first-year anniversary of DOJ's website, FOIA.gov, which contains FOIA data for all agencies, the DOJ won the "infamous" Rosemary Award for worst open government performance over the past year. (The Rosemary Award is named after President Nixon's secretary, Rose Mary Woods, who erased about 18 minutes of a crucial Watergate tape; it is awarded by the National Security Archive.)

In selecting the DOJ, the National Security Archive cited the agency's continued use of abusive prosecutions and espionage laws against whistleblowers as "leakers" of classified information; the agency's legal arguments to justify greater secrecy throughout DOJ's litigation posture; and proposed regulations that would allow the government to lie in court about the existence of records requested by the public.

"The Department of Justice – which is responsible for enforcing FOIA government-wide – was supposed to be the change agent and role model for President Obama's FOIA reforms," [said](#) Nate Jones, the Archive's Freedom of Information Act Coordinator. "But, despite the president's clear instructions, the DOJ has embraced a 'FOIA-as-usual mindset' that has failed to transform the decades-old FOIA policies within its department, much less throughout the government."

Reaction and Next Steps

"After the Bush administration wrought havoc on the FOIA system, the Obama administration is still rebuilding," said Sean Moulton, Director of Federal Information Policy at OMB Watch. "We're glad to see generally increased openness, but more work needs to be done to usher in the type of government openness and transparency that the American people want and deserve."

On March 21, Moulton will be testifying at a House Oversight and Government Reform hearing on use of technology to improve FOIA processing.

The Regulatory Freeze Act: Legislation to Make the World More Dangerous and the Economy Weaker

The so-called Regulatory Freeze for Jobs Act, [reported out](#) of the House Judiciary Committee earlier today, is the clearest example yet of just how broken the national debate on public protections has become. This bill is ostensibly about getting Americans back to work, but the bill contains no provisions to address unemployment. Instead, it would gut the system of public protections that underpins our entire economy.

The Regulatory Freeze Act ([H.R. 4078](#)) would impose a moratorium on all "significant regulatory actions" until the national unemployment rate falls below six percent. With very few exceptions, the moratorium would forbid any steps toward issuing any rule (or updating a current one) expected to

have an economic impact of \$100 million or more. However, rules may be repealed or rescinded regardless of their economic impact.

This legislation is breathtakingly bold – and breathtakingly bad. With passage of the REINS Act, Regulatory Accountability Act, and Regulatory Flexibility Improvements Act in December 2011, the House declared its intention to rewrite the regulatory process to promote special interest influence and to delay and weaken safeguards that people rely on every day. The Regulatory Freeze Act would go even further by shutting down the regulatory system entirely. Economists predict that it will be at least five years before the national unemployment rate falls below six percent: under Regulatory Freeze, it could be half a decade until limits on air and water pollution, standards for food and drug safety, and even restrictions on Wall Street to prevent the next financial crisis could take effect.

The Regulatory Freeze Act is premised on a false assertion that has been debunked by all available evidence. A survey of the economic research on the relationship between regulations and employment found that regulations have a positive effect on employment or make no difference. Business economists say that the current regulatory environment is "good" for business. Surveys by the [American Sustainable Business Council](#), [Main Street Alliance](#), [Small Business Majority](#) and [McClatchy/Tribune News Service](#) show that small business owners do not feel regulation is their most pressing problem. In fact, even [surveys](#) by the U.S. Chamber of Commerce and the National Federation of Independent Business – who themselves are vehemently against regulation – find that small businesses rank "economic uncertainty" and "poor sales," respectively, as their most important concerns. The proportion of small businesses citing regulations as the single most important problem they face is lower than it was during the Clinton administration, a time of rapid growth in employment.

Health, safety, environmental, financial, and other regulatory protections make our country stronger and safer for everyone. The Regulatory Freeze Act would impede any number of crucial safeguards that allow Americans to trust in the products they find at our retailers, the jobs being offered by our employers, and the infrastructure and environment that constantly surround us. It would undermine standards and safeguards that industry, as well as the public, support.

For example, the Regulatory Freeze Act would block implementation of the Food Safety and Modernization Act. This law was passed with support from both industry and consumer groups and should improve the safety of eggs, dairy, seafood, fruits, vegetables, and many processed and imported foods – but its effective implementation depends on rulemaking. The Food and Drug Administration has proposed [a series of implementing rules](#) that establish food safety programs and standards. The outbreak of [Listeria in cantaloupe](#) and concerns over "pink slime" in school lunches, among other incidents, demonstrate the importance of these rules. Delaying them could also have a significant, harmful economic impact on the agriculture and food industries, including job creation and preservation.

The Regulatory Freeze Act is the wrong legislation at the wrong time. Congress should be focused on policies that put Americans back to work by building sustainable economic growth – not on thinly veiled anti-regulatory shenanigans that would increase the risks to American families and the

economy.

Should Victims of the BP Oil Spill Be Unsettled by Recent Settlement Agreement?

April will mark the two-year anniversary of the BP Deepwater Horizon oil spill disaster that killed eleven people, injured seventeen others, and released an estimated 4.9 million barrels of oil into the Gulf of Mexico. On March 16, the Senate passed a widely supported measure that would section off 80 percent of the fines BP has paid and direct those funds to the five Gulf states impacted by the spill.

The [RESTORE Act](#), introduced in July 2011 and similar to National Oil Spill Commission [recommendations](#), was attached as an [amendment](#) to the Senate transportation bill passed March 14. Approved by an overwhelming vote of 76 to 22, the amendment directs 80 percent of the Clean Water Act (CWA) fines paid by BP straight to the Gulf states damaged by the spill instead of allowing them to go into the general [Oil Spill Liability Trust Fund](#). Experts at the Center for American Progress [wrote](#) that "[n]early two years after the explosion aboard the Deepwater Horizon and without a single piece of legislation to aid the families, businesses, and ecosystems that continue to suffer as a result of the spill, [the RESTORE Act] can't come soon enough."

Even if the measure is signed into law, the financial claims against BP are still far from finalized. A trial was expected to begin Feb. 27 but was postponed for settlement negotiations. In early March, BP announced it had [reached an agreement](#) with a group of businesses and individual plaintiffs. Claims brought by the federal government and Gulf states, however, will proceed in the coming weeks unless another settlement is reached. While settling may be in the best interests of the responsible parties and could ensure more timely compensation for victims, many worry that BP is merely buying its way back into public favor.

The [March settlement](#) with a plaintiffs' group is estimated at \$7.8 billion; this money would come out of the \$20 billion compensation trust fund set up in August 2010. Bloomberg News [reported](#) that while a representative for the plaintiffs' group described the settlement as doing "the greatest amount of good for the greatest number of people," other victims have argued in court that they are being coerced to settle and accept payouts to give up their claims. The settlement appears to have [increased investor confidence](#) in BP, and some see the settlement as a way for the company to avoid more public scrutiny during a trial.

The National Oil Spill Commission found that BP, Halliburton, and Transocean created an unacceptable risk by making a series of money-saving and time-saving decisions, and BP has accepted some responsibility for the spill. The settlement, however, allows BP to avoid paying punitive damages to victims for willful negligence. Greg Palast, an economist who has investigated the BP spill, [likens](#) this to "telling a bank robber, 'Hey, just put back the money in the vault and all's forgiven.'"

But forgiveness may not come so easily. The Department of Justice [said](#) that while it is "open to a fair and just settlement," it is "fully prepared to try the case." Under the CWA, BP could face penalties of \$1,100 for each barrel of oil spilled and up to \$4,300 per barrel if the court finds gross negligence on

the part of the company. With 4.9 million barrels spilled, the total maximum penalty would be \$21 billion.

"[A]s we move forward with trial and the rest of this trial unfolds," investigative journalist Antonia Juhasz [told](#) *Democracy Now!*, "it's critical that there's public pressure and public attention so that BP truly has to pay, we make sure this never happens again, and all the people and all the places of the Gulf have the opportunity for restoration, which right now isn't happening."

[Comments Policy](#) | [Privacy Statement](#) | [Standards of Quality](#) | [Press Room](#) | [OMB Watch Logos](#) | [Contact OMB Watch](#)

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

© 2012 | Please credit OMB Watch when redistributing this material.



Combined Federal Campaign #10201