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Commentary: Congress's Backward Budgeting

Some in Congress are treating a recently released Government Accountability Office (GAO) report on duplicative federal programs as a recipe book for budget cutting. However, GAO's recommendations for fixes are more nuanced, and the report ultimately underscores the value of implementing effective program measurement tools and carefully calibrating federal spending to ensure that national priorities are addressed.

According to GAO's report, *Opportunities to Reduce Potential Duplication in Government Programs, Save Tax Dollars and Enhance Revenue*, addressing the issues raised would save billions of taxpayer dollars. The report served as the basis for a hearing by the House Oversight Committee to attack "wasteful" spending, and an amendment introduced by Sen. John Cornyn (R-TX) would use the report to rush program-ending legislation through Congress (see related article in this week's *Watcher*). Cornyn proposed the amendment during debate over an unrelated small business bill.

Although the backdrop for the report is the federal budget deficit and the need to find opportunities to improve the nation's fiscal situation, the report's recommendations should be seen as only a small part of the deficit picture. Defunding or completely ending some of the identified programs, while wholly compatible with good governance, would negligibly address our short- and long-term budget challenges.

The executive branch has already laid out its plans to address these issues. In his fiscal year 2012 budget request, President Obama identified 211 programs that his administration believes should be targeted for termination or reduction because they are wasteful or redundant. Should his proposal be adopted, it would yield $33 billion in savings. However, that $33 billion represents less than one percent of all federal spending and about two percent of the projected federal budget deficit.

To maximize taxpayer value, Congress and the president should be thinking about what's needed, what's not, and how best to identify programs as such. Our tax dollars support the programs and agencies that, when fully funded, reduce the chances that people will be sickened by contaminated food; ensure that cribs won't collapse and cause serious injury or death; make sure cars stop when drivers apply the brakes; sanction employers who cheat their employees out of earned pay; prevent oil spills; keep planes from falling out of the sky; and stop terrorist attacks.

While it's true that some federal programs attempt to address identical needs, eliminating any of them must be done with great care. If two programs exist that deliver the same services, eliminating one means expanding the other to ensure that the level of service provided to each population of need is maintained. The cost savings should be seen in the reduction of overhead and not in the wholesale dissolution of the operations of a duplicative program.

Nor should it be the case that two programs with seemingly overlapping missions be merged into a single program. For example, the Department of Health and Human Services (HHS) and the Department of Housing and Urban Development (HUD) both administer programs aimed at addressing homelessness. One HHS program targets people with mental health and substance abuse issues, while another is designed for homeless youths. HUD administers programs to assist homeless veterans, people with HIV/AIDS, and people with disabilities. The type of services that would help each of these communities varies, but the GAO report does not address this issue. Instead, the report highlights the problems that this apparent overlap causes for providers and beneficiaries both. In discussing homelessness programs, GAO notes that "[program] fragmentation can create difficulties for people in accessing services as well as administrative burdens for providers who must navigate various application requirements, selection criteria, and reporting requirements." This is an indication of need for better coordination among agencies and leaves open the question of whether there would be any gain – financial or otherwise – from ending or combining some of these programs.

The degree to which federal program missions overlap or are duplicative can be explained by two related phenomena. First, Congress, the executive branch, and the public have no way to trace federal spending from cradle to grave, from agency request to congressional approval to

program execution. In short, there is no comprehensive map of federal spending. Instead, information is scattered across federal agency websites, the Library of Congress's THOMAS legislation database, the White House website, and various other sources. It is no wonder that Congress would create duplicate programs, as authorizing committees simply cannot query "homelessness" to obtain a list of the efforts currently being carried out by the executive branch.

Second, it is clear that Congress and the executive branch lack the tools necessary to perform effective program evaluation that could be applied to informing funding decisions. In the section discussing programs intended to address homelessness, the GAO's report notes that:

> Fragmentation of programs across federal agencies has also resulted in differing methods for collecting data on those experiencing homelessness. In part because of the lack of comprehensive data collection requirements, the data have limited usefulness. Complete and accurate data are essential for understanding and meeting the needs of those who are experiencing homelessness and to prevent homelessness from occurring.

Federal agencies should have access to relevant, high-quality program data when submitting their budget requests to Congress. Congress should also have access to the same data to help guide its funding deliberations. Outside stakeholders – those who are affected by program funding, involved in service delivery, and concerned taxpayers – should also have access to the same information so they can participate in the process. Without relevant facts to answer the crucial questions on program effectiveness, Congress, program managers, and outside stakeholders have limited ability get more value from every dollar spent.

Unfortunately, spending decisions are too often driven by a desire to give the appearance of addressing "the deficit problem." Rather than starting with the budget deficit, Congress and the president should be primarily concerned with the jobs deficit, the public protections deficit, the social safety net deficit, the infrastructure deficit, and the economic investment deficit. Congress and the administration should first consider whether the needs of the nation are currently being met, rationally assess the programs that are designed to meet those needs, and then allocate funding based on which programs most effectively meet those needs. Once this baseline level of necessary services is established, Congress and the president should design a system to fairly collect revenues to fully fund these programs.

Doing the opposite, that is, setting deficit targets and cutting spending to meet those targets, is just a backward method of budgeting that simply doesn't get the job done in a way that benefits the nation.

Cloaked in Good Government Garb, Sunset Commission Would Fast Track Spending Cuts

On March 16, Sen. John Cornyn (R-TX) proposed a controversial amendment to a small business reauthorization bill. The amendment would create a so-called "sunset commission,"

which is designed to identify and eliminate federal programs deemed unnecessary. The commission, billed as a "good government" measure by proponents, would likely operate behind closed doors, usurping the traditional oversight role of key congressional committees and potentially eliminating important programs.

Cornyn's commission is relatively simple. A panel of eight members, four from each house equally divided along party lines, would operate using a two-step process. First, at least once every ten years, it would create a review schedule, which would essentially tell Congress which agencies and programs the commission would review. Second, the commission would evaluate each item on the review schedule according to certain criteria to determine if it should be terminated, reduced, consolidated, or continued. The commission's recommendations would then be sent to Congress as a legislative package. If Congress does not reauthorize the agencies and programs in question within two years, the commission's recommendations would automatically be carried out.

To decide which programs would be reviewed, the Cornyn amendment provides enormous latitude. At least 25 percent of the items (in dollar terms) in the "Commission Schedule and Review" must come from a Congressional Budget Office (CBO) report on unauthorized and expiring appropriations and at least 25 percent must come from a Government Accountability Office (GAO) report on duplicative programs. The rest of the items can be composed of any other agencies or programs the commission chooses.

By law, CBO must compile an annual list of all unauthorized appropriations and expiring authorizations, which can include agencies, programs, or activities. Normally, congressional rules only allow appropriations for programs that have been authorized, but this is not always the case. In January, the CBO found some $767 billion worth of authorized appropriations that will expire on or before the end of the 2011 fiscal year, $725 billion of which comes from the National Defense Authorization Act.

The GAO is tasked with annually highlighting federal programs and agencies that have "duplicative goals or activities." The first annual duplicative programs report was released in early March.

Simply because a program is labeled "duplicative" or "unauthorized" does not necessarily mean the commission will automatically recommend the program for elimination, reduction, or consolidation. The commission will evaluate each program according to ten criteria set forth in the amendment:

A. The effectiveness and the efficiency of the program or agency.
B. The achievement of performance goals (as defined under section 1115(g)(4) of title 31, United States Code).
C. The management of the financial and personnel issues of the program or agency.
D. Whether the program or agency has fulfilled the legislative intent surrounding its creation, taking into account any change in legislative intent during the existence of the program or agency.

E. Ways the agency or program could be less burdensome but still efficient in protecting the public.
F. Whether reorganization, consolidation, abolishment, expansion, or transfer of agencies or programs would better enable the Federal Government to accomplish its missions and goals.
G. The promptness and effectiveness of an agency in handling complaints and requests made under section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act).
H. The extent that the agency encourages and uses public participation when making rules and decisions.
I. The record of the agency in complying with requirements for equal employment opportunity, the rights and privacy of individuals, and purchasing products from historically underutilized businesses.
J. The extent to which the program or agency duplicates or conflicts with other Federal agencies, State or local government, or the private sector and if consolidation or streamlining into a single agency or program is feasible.

However, there is no clear guidance in the amendment on how these criteria are defined or how they should be applied. A program could theoretically pass muster if it fails all of them or be eliminated even if it meets all of the criteria.

Both the Commission Review and Schedule and the commission's recommendations are fast-tracked through the House and the Senate. The review schedule and recommendations are introduced into relevant committees and must be reported out within 30 days. Action on the review schedule is swift: debate is limited to ten hours, and no amendments are allowed. The recommendations can only be debated for 50 hours before votes are held, although amendments are allowed both in committee and on the floor.

The fast-track and automatic termination provisions indicate that the commission would have tremendous power. Although Congress regularly creates temporary committees or commissions, such as the Congressional Oversight Panel that helped perform TARP oversight, rarely do these bodies have as much power as the proposed sunset commission. Eight members of Congress would have power usually reserved to whole committees in both houses, and Congress as a whole would be left with just a single set of recommendations in one bill, potentially involving hundreds of programs related to education, the environment, workers, housing, nutrition, transportation, and other vital issues and constituencies.

Another significant problem with the sunset commission is the opacity in which it would operate. The commission is not required to take any input from the public or to hold open deliberations. The commission's decision making process could occur entirely behind closed doors, and the public would never know the rationale behind decisions to eliminate or consolidate important federal programs. The only time the public would have any input on the commission's recommendations would be when those recommendations are up for a vote on the House and Senate floors.

The lack of transparency in the commission's deliberations is a serious issue, since the commission could theoretically include every agency and program listed in the CBO and GAO reports, as well as any other agencies or programs, in its review schedule. That could include almost 700 agencies and programs (close to six hundred programs up for reauthorization or whose authorization has already expired, almost one hundred duplicative programs) that Congress would then have to affirm within two years of receiving the commission's recommendations, a tall order for a body that only manages to pass a handful of contentious bills in any given year. Many of these programs would likely be terminated, reduced, or consolidated simply because Congress would not be willing or able to get around to voting on them.

Another concern is that the commission could be susceptible to political manipulation because the language that lays out the composition of the commission is vague. The amendment states that the Senate Majority Leader and the Speaker of the House shall each choose four members from their respective chambers. It does not, however, specify that minority members must be included in the selection process, only that no more than two members from each chamber can be from the same party. While in theory this means that Democrats and Republicans would each have four members on the commission, it leaves open the possibility that two members of a nominally different, yet politically aligned, party could join the majority party's members on the commission.

For example, Senate Majority Leader Harry Reid (D-NV) could choose two Democrats and the chamber's two independents, Sens. Bernie Sanders (I-VT) and Joe Lieberman (I-CT), who caucus with the Democrats and regularly vote with them. Under that scenario, the composition of the commission would be six *de facto* Democrats and two Republicans, giving the Democrats a huge advantage on a powerful commission. That situation could easily be reversed, with House Republicans stacking the commission with hard-core conservatives (assuming a handful of House members become independents and retain their conservative ideologies).

Some also contend that a sunset commission is simply unnecessary. Congress already has the power to reorganize government agencies and programs when it determines the need to do so, and the legislative branch revisits programs' effectiveness and continued existence each year through the oversight and appropriations processes.

Non-Competed Contracts Down Slightly in FY 2010

In February, the Inspector General (IG) of the Department of Homeland Security (DHS) completed an audit examining the agency's use of non-competed contracts in fiscal year (FY) 2010. The audit finds DHS significantly reduced its use of these risky contracting vehicles, lowering both the total real contracting dollars spent and the percentage of contracting dollars spent on sole-source contracts. An examination of other federal agencies' non-competed contract spending reveals a similar, though less dramatic, trend.

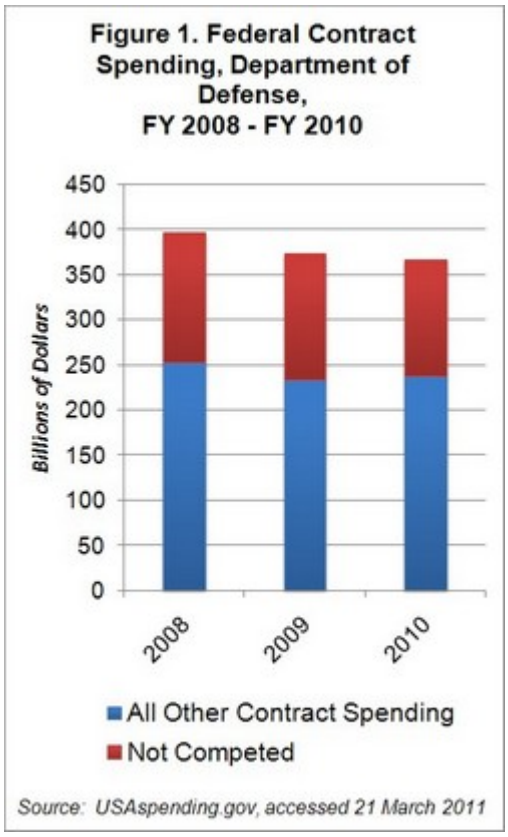
A March 7 *Government Executive* article trumpeted the IG audit, announcing, "DHS awards fewest noncompetitive contracts ever." The piece went on to relay that the agency obligated $1.3 billion in non-competed contracts in FY 2010, making up roughly 10 percent of DHS's contract spending. This total is down from $3.4 billion in FY 2009 and $3.5 billion in FY 2008, which made up 24 and 25 percent of the agency's yearly contract spending, respectively.

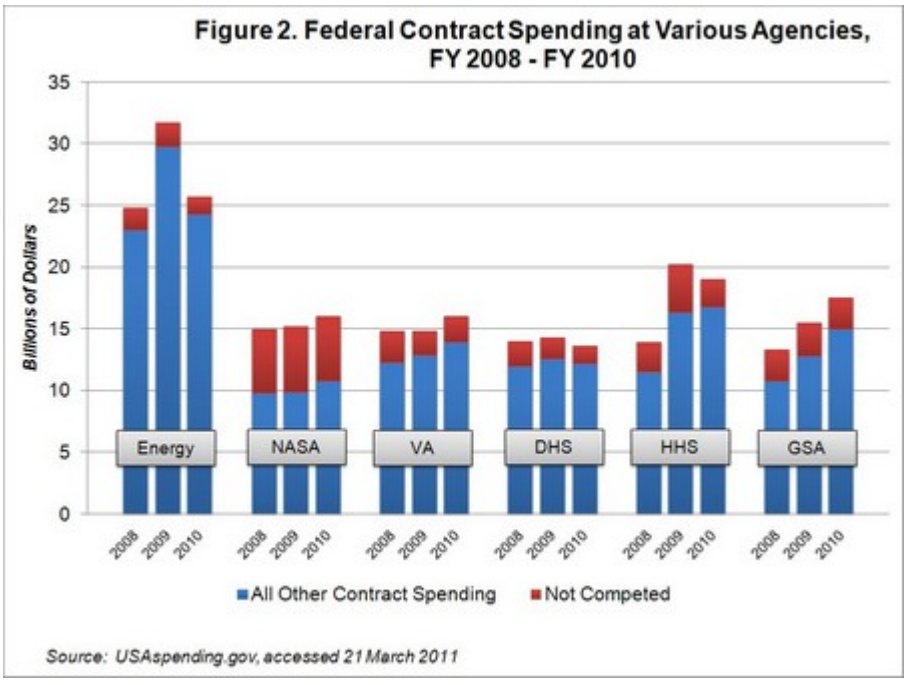
DHS IG personnel made use of the federal government's Federal Procurement Data System (FPDS) to aggregate their totals, but one can make a rough approximation of the results through USAspending.gov, which uses data from FPDS.

A small group of federal agencies spends the vast majority of federal contracting dollars each year and is a good representation of how the government spends taxpayer funds on contracting. The Department of Defense (DOD) is the largest spender in this group, making up approximately 70 percent of the government's yearly contract obligations.

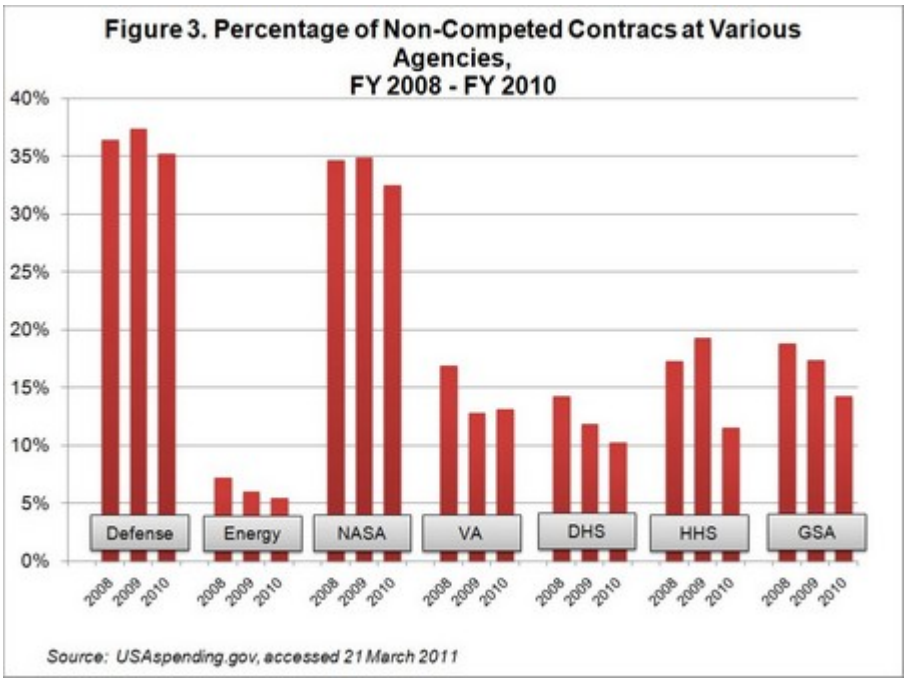
Together, the Departments of Energy, Veterans Affairs (VA), and Health and Human Services (HHS), along with the National Aeronautics and Space Administration (NASA), the General Services Administration (GSA), and DHS, make up another 20 percent, on average, each year. The other 10 percent of the government's contract dollars are spread over dozens of other departments and programs.

Looking at the seven agencies listed above, and combining only those contract totals listed under "not competed" and "not available for competition" in USAspending.gov, a rough pattern of reduced use of sole-source contracts similar to DHS's experience emerges.





Figures 1 and 2 show total contracting dollars and total non-competed contracting dollars spent by the seven agencies over the course of FY 2008 to FY 2010. Figure 3 shows those non-competed contracting dollars as a percent of total contracting dollars spent over that same period.



As can be seen in Figure 3, non-competed contract awards are decreasing as a percentage of total contract spending, yet they remain high at DOD and NASA, with both agencies averaging in the mid-thirties.

Some agencies, however, have seen significant reductions similar to DHS: HHS (Fig. 3) reduced sole-source contract totals from 17 percent of all contract spending in FY 2008 to 11 percent in FY 2010, and GSA (Fig. 3) reduced non-competed contract totals from 19 percent to 14 percent over the same period. Similarly, the VA (Fig. 3) saw a four percent reduction between FY 2008 and FY 2010. The Department of Energy, which is perennially the second leading spender of federal contracting dollars (Fig. 2), witnessed a less significant reduction, with non-competed contract spending reduced by only about two percent (Fig. 3).

When the Obama administration released its original contracting reform memorandum back in March 2009, the president specifically targeted the use of non-competed contracts:

> Excessive reliance by executive agencies on sole-source contracts ... creates a risk that taxpayer funds will be spent on contracts that are wasteful, inefficient, subject to misuse, or otherwise not well designed to serve the needs of the Federal Government [*sic*] or the interests of the American taxpayer.

The Office of Management and Budget (OMB) followed up with several sets of guidance released in July and October 2009. The July guidance instructed agencies to carry out two immediate tasks: reduce contract spending by seven percent by the end of FY 2011 and reduce the total use of high-risk contract vehicles, such as non-competed contracts, but also including cost-reimbursement, time-and-materials (T&M), and labor-hour (LH) contracts, by 10 percent in FY 2010. The October guidance provided broad guidelines for federal agencies that would allow them to continue the reductions sought in July.

Based on USAspending.gov data, most federal agencies are moving in the right direction. Even as many agencies' budgets have increased over the last three fiscal years, department heads have generally been able to keep the share of sole-source contract spending low, and some have even been able to decrease it as total contract spending grew. Only time will tell if these non-competed contracting figures continue to go down and whether the Obama administration can stick to its promise of reforming federal contracting and reducing taxpayer dollars used in risky contracting vehicles.

Congress Seeks to Reveal Toxic Drilling Chemicals

Congressional Democrats have reintroduced legislation that would disclose the hazardous chemicals used in drilling for natural gas. Cases of potential water contamination have been increasing as the nation experiences a boom in gas drilling and use of drilling chemicals. Secrecy surrounding the identities of the chemicals, many of which are known to be hazardous, has hampered efforts to protect public and environmental health.

On March 15, Rep. Diana DeGette (D-CO) and 31 cosponsors introduced the Fracturing Responsibility and Awareness of Chemicals Act (FRAC Act) in the House. On the same day, Sen. Bob Casey (D-PA) and seven cosponsors introduced a similar bill in the Senate. Hydraulic fracturing, or fracking, is a widely used process where water and chemicals are injected into wells at extremely high pressures to fracture underground rock formations and release trapped natural gas.

The FRAC Act amends the Safe Drinking Water Act (SDWA), the 1974 law that sets health and safety standards for the nation's drinking water and oversees state and municipal water regulators. The bill removes the oil and gas industry's exemption from regulation under the SDWA – a loophole created by 2005's Energy Policy Act – and requires disclosure of the chemicals used in fracking fluids.

According to Rep. Jared Polis (D-CO), a cosponsor of the bill, "The FRAC Act is a simple, common sense way to answer the serious concerns that accompany the rapid growth of drilling across the country. Our bill restores a basic, national safety-net that will ensure transparency within the industry and safeguard our communities. If there is truly nothing to worry about, then this bill will lay the public's concern to rest through science and sunlight."

Environmental advocates have compiled numerous cases of likely water contamination caused by hydraulic fracturing. A 2010 report by the environmental group Riverkeeper identified hundreds of cases of adverse environmental impacts linked to gas drilling. The report found impacts resulting not just from hydraulic fracturing, but also from "changes in land use, roadbuilding, water withdrawals, improper cementing and casing of wells, over-pressurized wells, gas migration from new and abandoned wells, the inability of wastewater treatment plants to treat flowback and produced water, underground injection of brine wastewater, improper erosion and sediment controls, truck traffic, compressor stations, as well as accidents and spills."

A recent documentary film, *Gasland*, which tracked the expansion of drilling and the connected rise in instances of water contamination and other health impacts, was nominated for an Academy Award.

Despite these documented impacts, the oil and gas industry consistently points to a lack of evidence that fracking contaminates groundwater or poses a public health threat. According to environmental groups, secrecy surrounding drilling operations, along with government failures to investigate possible contaminations – either due to the regulatory loophole granted to the industry or agency intransigence – keeps the public in the dark as to the nature and extent of health impacts.

Polis said, "There is a growing discrepancy between the natural gas industry's claim that nothing ever goes wrong and the drumbeat of investigations and personal tragedies which demonstrate a very different reality."

The FRAC Act contains important provisions that would meet many of the demands of environmental and public health advocates. However, drilling watchdogs stress that hydraulic fracturing is just one process among many in the development of fossil fuels that uses secret and harmful chemicals. From the exploration to the extraction, transportation, and processing of gas and oil at refineries, toxic chemicals pose a threat to public health and workers through leaks, spills, emissions, explosions, and other accidents. The disclosure of what chemicals are being used in each stage is necessary to monitor the health impacts of oil and gas development.

Advocates for this disclosure point out that it is very difficult to make definitive linkages between instances of water contamination and specific drilling operations when the public does not know what chemicals to test for or what chemicals have been used in the operations.

The FRAC Act would require drillers to disclose either to the U.S. Environmental Protection Agency (EPA) or to state regulators the specific chemical identities of the substances used in hydraulic fracturing. Drillers would be required to report before fracking commences, allowing the public to know what is planned, and after fracking concludes, allowing the public to see what actually went into the ground.

Under the bill, fracking chemicals would be identified in a number of ways, including the Chemical Abstracts Service number (CAS), a unique identifier that clearly identifies each substance. Drillers would not be able to merely disclose a product's trade name, which often fails to identify what chemicals are in a product.

The oil and gas industry has led opposition to the reforms called for in the FRAC Act, claiming that the chemicals used in the fracturing process should be considered trade secrets and not disclosed to the public (this excuse was also used to delay disclosure of the identities of dispersants used on the BP oil spill in the Gulf of Mexico in 2010). However, the FRAC Act does not require the disclosure of specific, proprietary chemical formulas except in the case of a medical emergency, where health professionals need to know the information in order to treat victims of exposure to the chemicals.

Many groups working to protect environmental and public health also want drillers to report on the chemical constituents of any wastes produced by oil and gas development activities, along with information about where the waste is disposed. This data is essential to any attempt to investigate potential contamination of water, air, and soil. Additionally, advocates have called for drilling companies to provide notices in local newspapers and direct mailings to residents and businesses in areas potentially impacted by their activities.

According to environmental advocates, greater transparency in the oil and gas industry will allow citizens to monitor industry activities and hold drillers accountable for harmful impacts. They point to numerous instances of excessive industry influence over federal and state regulators as evidence of the need for an informed public to defend against industry abuses and inadequate government regulation.

Another of the bill's cosponsors, Rep. Maurice Hinchey (D-NY), stated: "We need to know exactly what chemicals are being injected into the ground and we must ensure that the industry is not exempt from basic environmental safeguards like the Safe Drinking Water Act. The FRAC Act is an important first step toward protecting people from the risks of hydraulic fracturing."

The House version of the FRAC Act is now in the Energy and Commerce Committee. Strong anti-regulatory sentiment among committee Republicans presents an enormous challenge to further progress on this bill. The Senate version has been referred to the Environment and Public Works Committee.

Sunshine Week Brings Bevy of Transparency Announcements

America celebrated Sunshine Week 2011 between March 13-19. The White House and federal agencies announced several new transparency initiatives during the week, and Congress held hearings to examine government openness and introduced new transparency legislation. The open government community also released new reports examining transparency efforts within government.

New Websites

The Department of Justice's (DOJ) Office of Information Policy (OIP) announced the launch of FOIA.gov, a new website for the public to learn about the Freedom of Information Act (FOIA) and to explore data on agencies' FOIA performance. The agency had committed to developing the website as part of its Open Government Plan issued in April 2010.

The White House also launched a new Good Government portal, highlighting its efforts on transparency and accountability. During the week, the White House also posted several times on its blog to discuss its ongoing transparency initiatives.

The National Archives and Records Administration's (NARA) Office of Government Information Services (OGIS) launched a blog and released its first annual report. The Public Interest

Declassification Board also launched a new blog, which is publishing a series of papers for public comment. Data.gov, one of the administration's prime disclosure mechanisms, launched the Law community, which organizes and presents documents, such as agency decisions, to the public.

New Disclosures and Commitments

In addition to new websites and features, Sunshine Week saw some policy changes that commit the executive branch to new disclosures and other activities to support openness. As part of an effort to improve proactive disclosure of information and encourage greater accountability, the White House announced that agencies will post their staff directories online, as well as their congressional testimony and reports to Congress.

The White House also announced that OIP and OGIS would host a series of "Requester Roundtables," bringing together agencies and the public to discuss FOIA implementation. The goal of the meetings is to increase dialog between government agencies and those using government information to help set priorities, identify problems and find solutions. The first roundtable was held on March 21 at DOJ.

The Office of Personnel Management created a new job title for FOIA professionals and is exploring creating a new occupational series for FOIA-related staff. By creating the new titles, the administration hopes to create professional careers within agencies that will allow employees to progress while staying committed to disclosure and openness activities. In addition, the General Services Administration will update its government-wide contracts for services to assist agencies with FOIA processing.

Congressional Activity

The Senate Judiciary and House Oversight committees held hearings on FOIA.

Led by ranking member Rep. Elijah Cummings (D-MD), the Democratic members of the House Oversight committee introduced a bill, H.R. 1144, which contains several transparency provisions that passed the House in the 111th Congress. The Senate also saw transparency legislation introduced. Sens. Patrick Leahy (D-VT) and John Cornyn (R-TX) reintroduced Faster FOIA legislation, which seeks to reduce the backlog of FOIA requests throughout the federal government.

Reports

OMB Watch published an analysis of the government's FY 2010 FOIA reports. The analysis found that several openness indicators have improved, some for the first time in years, yet most remain worse than their average during the George W. Bush administration. The analysis concluded that though the Obama administration is making progress, the process remains far from complete.

OMB Watch also published a detailed assessment of the Obama administration's progress on implementing the open government community's 2008 transparency recommendations. The assessment explains the activities of the administration and Congress on the issues addressed in the wide-ranging recommendations and offers some insights on those actions. The report concludes that the administration has made significant strides in just two years but that much more remains to be done to create an open and accountable government

The National Security Archive released its annual FOIA audit showing that significantly more agencies were aware of and acting on the Obama administration's transparency policies than in 2009. However, several agencies still could not show any activities undertaken to implement the Obama administration's new policies.

OpenTheGovernment.org released an audit that shows that most agencies do not provide online access to key accountability information. Between Data.gov and the required open government plans, many agencies have made significant progress in providing data related to their specific mission or area of focus, but the report highlights the reality that most agencies have overlooked disclosure about basic government activities such as contracting.

Awards

The National Freedom of Information Act Hall of Fame inducted its five latest members, including OMB Watch's Sean Moulton. The FOIA Hall of Fame was established to honor those individuals who have helped establish, defend, and utilize the legal basis for our right to know.

The American Library Association (ALA) presented its 2011 James Madison Award to Patrice McDermott, director of OpenTheGovernment.org. The James Madison Award was established by the ALA in 1986 to honor individuals or groups who have championed, protected, and promoted public access to government information on the national level. OMB Watch is a member of the OpenTheGovernment.org coalition, and McDermott is a former OMB Watch staff member.

The American Society of News Editors announced the winners of its Local Heroes contest, recognizing achievements in improving state and local transparency.

Corporate Money Fuels Attack on Public Protections

An ongoing attack on the nation's regulatory safety net is being led by lawmakers with deep financial ties to the corporations and lobbying groups that often complain about federal standards, campaign finance data show.

The energy industry and other big polluters donated millions of dollars to the campaigns of top congressional Republicans in advance of the current legislative assault on the U.S. Environmental Protection Agency (EPA) and other environmental regulators. Other anti-

regulatory interests have also donated large sums to campaign war chests, potentially influencing lawmakers' willingness to target other consumer, education, and health agencies.

In 2009 and 2010, Rep. Fred Upton (R-MI), chair of the influential House Energy and Commerce Committee, received more than $259,000 in contributions from electric and gas utilities and the oil and gas industry, according to data provided by the Center for Responsive Politics (CRP), available at maplight.org.

Upton is sponsoring a bill that would strip the EPA of its authority to regulate carbon pollution under the Clean Air Act. The bill is supported by many in the energy industry who are fearful of new and pending EPA standards that will require them to curb greenhouse gas emissions. Upton's committee voted to approve the bill on March 15.

The Energy and Commerce Committee also approved legislation that would undo a new Federal Communications Commission (FCC) standard intended to preserve a free and open Internet. The FCC's net neutrality rule would prevent carriers from interfering with the speed or ease with which customers access web content. Major service providers AT&T, Comcast, Time Warner Cable, and Verizon Communications, companies that could benefit financially if the net neutrality rule is lifted, donated $46,000 to Upton in 2009 and 2010, according to CRP data. Overall, these four companies and their employees donated more than $1 million to committee members in 2009 and 2010.

Investigations have shown that congressional criticism of the Department of Education over pending standards for for-profit colleges can be linked to campaign contributions from the for-profit college industry. Both *ProPublica* and *The Huffington Post* have detailed how campaign contributions have coincided with efforts by House members to convince the department not to go forward with the standards.

Rep. John Kline (R-MN), chair of the House Education and the Workforce Committee, has held four hearings in 2011 in which he and other panel members have criticized education regulations. According to CRP data, Kline received $61,400 from education interest groups, including significant contributions from Education Management Corporation and Apollo Group, owners of the University of Phoenix.

The attack on public protections, which has been waged largely from the House side of Capitol Hill, began in earnest in December 2010 when incoming chair of the House Oversight and Government Reform Committee, Rep. Darrell Issa (R-CA), asked corporate lobbyists to build a hit list of existing and proposed regulations that they wanted the new Congress to halt or undo. Issa received more than 100 responses from industries objecting to a variety of health, safety, environmental, and financial requirements.

Since the 112th Congress has convened, House committees have held scores of hearings on regulatory policy, regularly conducting ten or more in a single week. House Republicans have also introduced numerous bills designed to restrain agencies from setting standards that protect the public, including the Regulations from the Executive in Need of Scrutiny (REINS) Act,

introduced by Rep. Geoff Davis (R-KY), which would require congressional approval of all major rules.

Congress Pushes to Strip EPA Authority to Regulate Greenhouse Gases

Congressional leaders are acting on several proposals to strip the U.S. Environmental Protection Agency (EPA) of its authority to regulate greenhouse gas emissions (GHGs). A House committee has passed one piece of legislation, and the Senate is expected to vote on a similar measure when it reconvenes in late March.

On March 15, the House Committee on Energy and Commerce approved H.R. 910, the Energy Tax Prevention Act of 2011, sponsored by Rep. Fred Upton (R-MI), committee chair. The bill now goes to the House floor for a vote (as yet unscheduled).

Upton's bill strips 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." The bill also repeals several rules and actions, including EPA's endangerment finding (a scientific assessment required under the CAA that identifies GHGs as pollutants), an October 2009 rule requiring GHG reporting by polluters, and permitting requirements applied to states. The bill leaves states free to regulate or deregulate GHGs but severs those actions from federal law, overturning the long-standing framework of federal-state relations used to implement the CAA.

The agency is legally required to promulgate rules as a result of the U. S. Supreme Court's 2007 decision in *Massachusetts v. EPA*, which held that greenhouse gases should be regulated under the Clean Air Act if EPA found them to be a danger to public health or welfare. EPA made the endangerment finding in December 2009 after the Bush administration failed to act on the Court's decision.

Sen. James Inhofe (R-OK) introduced a companion bill to H.R. 910. Inhofe's bill, S. 482, has been referred to the Committee on Environment and Public Works, chaired by Sen. Barbara Boxer (D-CA), a strong supporter of EPA and a proponent of addressing climate change. No committee action on Inhofe's bill is scheduled.

Perhaps recognizing that S. 482 is likely to die in committee, Senate Minority Leader Mitch McConnell (R-KY) is trying to force a vote on the issue by means of an amendment to legislation reauthorizing parts of a small business bill that was recently debated on the Senate floor. McConnell's amendment, SA 183, is a repackaging of Inhofe's proposal. The Senate has not voted on the amendment, but votes are expected before the spring recess in April.

According to a March 15 article on CQ.com (subscription required), McConnell blamed EPA's rules and actions targeted in the Upton and Inhofe proposals as part of the reason for higher gas prices. This is a claim Upton has also made in an effort to generate support for his bill, according

to the article. Those claims, however, were debunked in the article, which reports that experts claim Mideast instability is a key factor in rising crude oil prices.

The Inhofe/McConnell proposal has some Democratic support in the Senate. Sen. Joe Manchin (D-WV) is a cosponsor of Inhofe's bill, for example, and the proposal may gain the votes of other Democratic senators. Even so, it is unlikely that the amendment will garner the 60 votes necessary to pass. Even Manchin's colleague, Sen. Jay Rockefeller (D-WV), opposes the bill. Rockefeller was quoted by CQ as saying the Inhofe proposal represents a "complete emasculation" of EPA.

Rockefeller put forward his own proposal, S. 231, that would delay for two additional years any EPA regulation of stationary sources like power plants and oil refineries. He introduced the same bill in the last congressional session, but it was never acted on. S. 231 has also been referred to Boxer's committee.

These attacks on EPA are only some of the anti-regulatory broadsides that have been launched thus far in 2011. These assaults on public protections threaten workplace safety, public health and safety, and the environment. EPA has been the most frequent target of these attacks. Ironically, Congress has failed to enact climate change legislation in any form, leaving the agency no choice but to seek controls of emissions through regulations as required by the CAA and the Supreme Court.

Voters oppose legislation that would limit the EPA's authority to set greenhouse gas emissions standards, polling indicates. According to a poll released by the American Lung Association, "64 percent oppose [c]ongressional efforts to stop the EPA from updating standards on carbon dioxide" and 69 percent believe that EPA scientists, not Congress, should make decisions regarding clean air standards. 60 percent of voters support the EPA's efforts to limit GHGs, the poll found.