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In This Issue

Fiscal Stewardship

[Two-Week Continuing Resolution Shows No Path Forward on Funding](#)
[Commentary: GAO Duplicative Programs Report Shows Need for More than Spending Cuts](#)

Government Openness

[Celebrate Open Government during Sunshine Week](#)
[Offshore Drilling Poised to Expand, but Transparency Still Lags](#)

Protecting the Public

[Regulation a Boon for the Economy, Reports Show](#)
[Consumer Products Reporting Database Under Attack](#)

Two-Week Continuing Resolution Shows No Path Forward on Funding

The federal government is currently operating under a two-week continuing resolution, the details of which are not widely known. This marks the current fiscal year's fifth continuing resolution (CR). There is little expectation of compromise on the budget for the remainder of the fiscal year, leaving funding for agencies and government programs in limbo.

As has been true for other budget discussions during fiscal year (FY) 2011, there has been little talk about what Congress actually cut in the recently enacted two-week CR, which trims some \$4 billion from the FY 2010 budget. Because of its speedy trip through the House and the Senate, Congress held no hearings on the cuts in the CR, meaning the public has little, if any, idea of what specific programs were cut or why.

Not everyone is happy with the lack of debate. On March 4, [CQ quoted](#) Sen. Tom Harkin (D-IA) as saying, "How many people know that CR ... cuts out all federal literacy programs in this country? We just wiped them all out."

The cuts in the [current CR](#), which expires on March 18, mostly come from non-security discretionary spending. Of that amount, \$2.8 billion is from eliminating some earmarks from the FY 2010 budget, reducing spending from some 50 different accounts. While frequently viewed as waste, the loss of these earmarks will likely be felt across the country. They impact funding for any entity that would receive money in a non-competitive bid, including nonprofits such as Special Olympics, the East Harlem Council for Human Services, and a particular YWCA.

[Education Week](#) noted that many national education programs, such as Teach for America, Arts in Education, and the National Writing Project, receive funding through federal earmarks and could face budget crunches with the loss in funding. Even some lawmakers were confused as to what exactly constituted an earmark, with [a group of senators writing Senate leadership](#) on March 1 asking if these education programs were considered earmarks.

The remaining \$1.2 billion in cuts come from eliminating funding for eight programs President Obama proposed to eliminate or consolidate in his FY 2012 budget. These cuts also target education programs, such as Striving Readers and Even Start, representing some \$316 million in federal spending. The bill also cuts \$650 million in highway spending. While some of these programs were deemed duplicative, it's unlikely their funding will be transferred to other existing programs, as Obama [had been planning](#).

Interestingly, since the CR only lasts for two weeks, the cuts are not permanent, and these eliminated programs could see their funding restored. The next CR could simply replace the funding for the programs, undoing any damage caused by the current CR. However, with members of both parties considering the \$4 billion in cuts as a floor, any agreement, either short-term or long-term, will likely include the cuts featured in this CR.

In the longer term, the current CR might make further compromise more difficult. Its earmark and program cuts represent the "low-hanging" fruit for budget cuts. Congress already agreed to eliminate earmarks for this year's budget, making it easy for both sides to add them to the cuts in the CR. And for Senate Democrats, who are looking for painless cuts, simply signing off on Obama's cuts is easier than trying to come up with alternatives.

Indeed, both sides are already sparring over the next CR, which is required to keep government from shutting down on March 19. On Tuesday, March 8, the Senate is expected to hold two votes to try to gauge the relative strength of support for two alternative long-term CRs. The first vote is on the [House's year-long CR \(H.R. 1\)](#), which cuts \$61 billion from FY 2010 levels, and the second is on a year-long CR authored by Senate Democrats. The second bill represents Democrats' attempt at compromise, taking the \$4 billion already agreed to in the current CR and adding another \$6 billion on top of that.

However, Democrats are also using their bill to [draw a line in the sand](#), saying they will not cut more discretionary spending for FY 2011. At the same time, [Republicans in both houses](#) are rejecting the Democrats' compromise bill as not containing enough spending cuts. As a result, [both bills are expected to fail](#) their test votes, leaving the two sides back at square one with a

week and a half to find a compromise both parties can agree on.

Commentary: GAO Duplicative Programs Report Shows Need for More than Spending Cuts

The Government Accountability Office's (GAO) recent [report on duplicative federal programs](#) has caused quite a stir in Washington. Conservative lawmakers have latched on to the report as "proof" of the need to cut billions of dollars of federal spending. Whether Congress should make such cuts is [debatable](#), but the tome-like report includes much more than an extensive list of duplicative federal programs. It also provides a list of potential cost savings that involve continued prodding and oversight from Congress and some that may even require additional spending to help reduce waste, fraud, and abuse.

The GAO report encompasses the entire federal government, but for the sake of brevity, let's use the Internal Revenue Service (IRS) as an example. The GAO report does not include any IRS measures under its list of duplicative programs, at least directly, but it does include quite a few recommendations for the agency under the "Other Cost Savings and Revenue Enhancers" section. These recommendations are all geared toward improving the efficiency and effectiveness of IRS tax collection but can nonetheless be broken down into two categories: areas where Congress needs to continue vigorous oversight and areas where Congress needs to pony up some cash.

Every year, taxpayers fail to provide Uncle Sam with the full amount of taxes due. This is called the [tax gap](#), and at last estimate, it stood at \$345 billion (some [estimate](#) that it could be as high as \$500 billion). The IRS attempts to narrow the gap each year through preventative measures like education and tax preparation assistance and after the fact through tax enforcement initiatives to collect money owed. Much of the IRS's tax enforcement work relies on the availability and use of taxpayer data.

Recognizing the limitations the IRS currently faces without adequate data, GAO recommends that the agency collect more information on everything from mortgage interest and real estate deductions, including forgiven mortgage debt, to sole proprietorships and S corporations. The increased data collection places a higher burden on taxpayers and businesses, though GAO finds that many of these would be minimal seeing that the IRS already collects information on each of these activities. With the recent ascension of Republicans in the House and their aversion to the word "regulation," though, some of these recommendations may find active resistance in Congress rather than the support that is needed.

The other category of recommendations – those that will require increased investment by Congress – range from increasing the use of electronic taxpayer filing to increasing IRS efficiencies with data use. GAO finds that for every return filed electronically, the IRS saves \$3.10 compared to the submission of a paper return. And while 71 percent of all returns are now filed electronically, there is still room for increased efficiency.

One area of improvement, according to GAO, is reform of the IRS's electronic filing rejection service. When a taxpayer files a tax return with an error, the IRS simply responds with a notice, often with a vague error code. Frustrated taxpayers then often mail in a paper return with the same errors, leaving it to the IRS to process, identify, and correct the issue. Reforming the rejection service, though, will require IRS resources to study, test, and implement a solution, all of which requires more, not less, funding. Moreover, on a broader level, one could argue that if more taxpayers are going to use electronic filing – saving the government, and therefore taxpayers, money – they will need access to the Internet, making the case for increased investments in national broadband coverage.

The IRS has [requested](#) \$13.3 billion for fiscal year (FY) 2012, a \$1.2 billion increase over the agency's enacted FY 2010 budget. House Republicans, however, are unlikely to grant that request, as they are currently attempting to cut \$603 million from the IRS's current budget. Much of the IRS's requested FY 2012 budget increase will go toward increasing the agency's ability to narrow the tax gap through better tax enforcement and information technology (IT) enhancements.

Unfortunately, the GAO report is shaping up to be just another cudgel congressional Republicans will use to beat down government spending; indeed, a small group of Republican senators has [seized on the document](#), demanding elimination of the duplicative programs outlined before the Senate authorizes more spending.

This is disappointing because there is much more to this report, and if Congress dug a little deeper, they could push the federal government to increase its efficiency and effectiveness through more than inarticulate spending cuts. Streamlining government is a good thing, and there is, no doubt, waste, fraud, and abuse in government spending, but in many cases, it's going to take an investment of funds to help eradicate inefficiency.

Celebrate Open Government during Sunshine Week

From March 13-19, Americans will commemorate the importance of open government during [Sunshine Week](#). Organized by the American Society of Newspaper Editors and a coalition of groups including OMB Watch, Sunshine Week is observed annually to coincide with the birthday of James Madison, the Founding Father known for his emphasis on checks and balances in government.

Transparency advocates and journalists nationwide will conduct activities to call attention to the benefits of access to information. Activities will include several public events in Washington, DC, and around the country, congressional hearings, film screenings, newspaper editorials and reporting, awards, and public proclamations.

Events

Sunshine Week 2011 will kick off on Monday, March 14, with the Collaboration on Government Secrecy's [Fourth Annual Freedom of Information Day Celebration](#). The day-long conference will feature discussions on Freedom of Information Act (FOIA) implementation and transparency activities in Congress. The Collaboration will also present Alan B. Morrison, founding director of the Public Citizen Litigation Group, with the 2011 Robert Vaughn FOIA Legend Award.

Also on the 14th, the Advisory Committee on Transparency will host a discussion on [improving lobbying disclosure](#).

On March 15, the Senate Judiciary Committee will hold a hearing titled "[The Freedom of Information Act: Ensuring Transparency and Accountability in the Digital Age](#)." The committee will first hear testimony from administration officials Miriam Nisbet, Director of the Office of Government Information Services, and Melanie Pustay, Director of the Office of Information Policy. The committee will then get an outside perspective from a panel featuring Sarah Cohen, professor of journalism at Duke University; John Podesta, president of the Center for American Progress; and Thomas Fitton, president of Judicial Watch.

The Project On Government Oversight continues its Whistleblower Film Series on the 15th with a [reception](#) and public screening of *The Big Uneasy* in Silver Spring, MD. The film is a documentary about the flooding of New Orleans during Hurricane Katrina.

On March 16, the First Amendment Center will host the 13th annual [National Freedom of Information Day Conference](#), in partnership with OMB Watch and several other organizations. In addition to presentations and discussions, the American Library Association will announce the recipients of its annual James Madison Award, and the National Freedom of Information Act Hall of Fame will announce its latest inductees.

On March 18, OpenTheGovernment.org will host a discussion on "[The Road Forward on Open Government](#)" that will explore the policy and technological issues associated with President Obama's openness efforts. The event's first panel, on the policy aspects of the administration's Open Government Initiative, features Gary D. Bass, executive director of OMB Watch, along with administration officials Steven Croley, Special Assistant to the President for Justice and Regulatory Policy, and David Ferriero, Archivist of the United States. The second panel will focus on using technology to deliver information and engage the public and will feature perspectives from Jennifer LaFleur, director of Computer Assisted Reporting at ProPublica; Tom Lee, director of Sunlight Labs at Sunlight Foundation; and Sheila Krumholz, executive director of the Center for Responsive Politics.

Several of the events will be webcast for those unable to attend in person.

Other Activities

Sunshine Week has also released [Ray of Sunshine](#), an online quiz about open government that will enable people to learn about government transparency in a fun and engaging way. Sunshine Week will also name the winners of its [Local Heroes](#) contest, an award to recognize citizens from across America who have helped to improve open government in their communities.

As occurs every Sunshine Week, several organizations are expected to release reports on government transparency, and legislators may keep with tradition and introduce new bills or resolutions to support government openness.

Offshore Drilling Poised to Expand, but Transparency Still Lags

As the Obama administration increases approvals of deepwater oil drilling permits in the Gulf of Mexico, environmental advocates have seen little meaningful increase in the transparency of the permitting process. A [lack of transparency](#) in the regulatory process was identified as a contributing factor in BP's Deepwater Horizon oil spill disaster and the highly criticized [response effort](#).

The Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE) [announced](#) on Feb. 28 the approval of the first deepwater oil drilling permit since the BP disaster that released an estimated five million barrels of oil into the Gulf of Mexico. A temporary ban on exploratory offshore oil drilling in water depths greater than 500 feet [was lifted](#) on Oct. 12, 2010. The new permit is for a well operated by Noble Energy of Houston, TX, and co-owned by BP. According to BOEMRE Director Michael R. Bromwich, "This permit was issued for one simple reason: the operator successfully demonstrated that it can drill its deepwater well safely and that it is capable of containing a subsea blowout if it were to occur."

Regardless of Bromwich's assurances about the safety of the newly approved drilling, BOEMRE does not publicly disclose drillers' safety programs or their plans for preventing or containing an underwater blowout. Without access to these records, the public is left to simply trust governmental and drilling industry assertions that future operations will be safer than those on the Deepwater Horizon and that the spill containment capacity will be more effective.

In the [press release](#) announcing the new permit approval, BOEMRE states, "Noble Energy contracted with the Helix Well Containment Group (Helix) to use its capping stack to stop the flow of oil should a well control event occur. The capabilities of the capping stack meet the requirements that are specific to the characteristics of the proposed well." However, BOEMRE will not publicly disclose information on the capping stack or related information for other approved drilling permits. Moreover, BOEMRE will not release pending permit applications and associated information. Environmental advocates worry that such secrecy prevents needed scrutiny of the agency's review of offshore drilling permits.

According to Bromwich, "We expect further deepwater permits to be approved in coming weeks and months based on the same process that led to the approval of this permit." Interior Secretary Ken Salazar [recently informed](#) a Senate panel, "There are other deepwater permits that are pending and the ones that will go out the door will hopefully be the templates that will allow us to move forward with an additional, significant number of deepwater permits."

BOEMRE's [website](#) does provide aggregated information on offshore oil drilling permits. The site shows the total number of pending or approved permits but provides no information on the safety features or contingency plans for individual wells.

BOEMRE's process for managing the publicly owned oil and gas resources off the nation's coast generally is divided into [three stages](#). First, the agency drafts a five-year oil and gas leasing program describing the size, timing, and location of planned leasing activity. In the second stage, BOEMRE solicits proposals from industry for specific areas outlined in the five-year program to lease. Then the leases are auctioned off to the highest bidder. The last stage is the permitting process for drilling individual wells. Environmental reviews and public participation are key features throughout the drafting of the five-year program and identifying which tracts to lease. However, environmental advocates complain that the permitting process does not include the same level of transparency.

According to BOEMRE, "A lessee must file an Application for Permit to Drill (APD) before drilling can begin on a lease. The agency often attaches lease-specific conditions of approval to these permits to address matters such as administrative, technical, and environmental issues. In all cases, these are specific requirements depending on the conditions in the area." The oil drillers are also required to submit Oil Spill Response Plans to BOEMRE for approval. The conditions attached to permits and the spill response plans are not available on the agency website.

The public has access to limited amounts of data regarding offshore drilling. Information regarding the newly approved [Noble Energy drilling permit](#) is available through a [searchable database](#) on BOEMRE's website. The agency's database only provides access to a summary of the permit for each well and does not link to any supporting documents or to environmental analyses of the impacts of the drilling in the specific region. There is no opportunity for the public to see what types of technological requirements or standards a drilling operator has committed to implement. Information on environmental reviews of oil and gas leases is available in a [separate location](#), and there is no clear way to identify what environmental analysis documents pertain to the particular permit.

BOEMRE has taken steps to use [electronic reporting](#) by industry. According to the agency's website, "Working jointly with industry representatives and other regulatory agencies, BOEMRE is testing solutions that provide both a standard regulatory reporting format and a more direct interface with our databases." The public, however, is unable to take advantage of the improved information collection. Much of the information regarding pending and approved drilling permits is considered "[proprietary](#)" and is not disclosed.

Without adequate disclosure of key permit information, environmental advocates worry that plans to prevent or manage emergencies on oil rigs may be insufficient or missing entirely. During the BP Deepwater Horizon crisis, BOEMRE's predecessor, the Minerals Management Service (MMS) – along with the oil industry – was [criticized](#) for approving an inadequate and erroneous [emergency response plan](#) submitted by BP. An Associated Press [analysis](#) identified numerous errors in the plan, such as listing walruses, sea otters, and seals as local wildlife, when there are no such animals in the Gulf of Mexico.

Advocates are also concerned that without access to permit information, a regulatory agency such as BOEMRE cannot be held accountable by the public.

Since the BP oil spill, the Obama administration has [taken steps to reform](#) the bureaucracy that oversees the oil and gas extraction industry. Secretary Salazar [reorganized](#) MMS, creating BOEMRE and separating the conflicting roles of enforcing safety regulations and maximizing revenues from offshore operations. In August 2010, the Obama administration announced plans to improve the environmental review of the offshore oil drilling permitting process. The Department of the Interior [announced](#) that BOEMRE "will restrict its use of categorical exclusions for offshore oil and gas development to activities involving limited environmental risk."

The president also issued a [regulatory compliance memo](#) on Jan. 18 that calls for disclosure of "information concerning ... regulatory compliance and enforcement activities..." Obama noted in the memo, "Greater disclosure of regulatory compliance information fosters fair and consistent enforcement of important regulatory obligations. Such disclosure is a critical step in encouraging the public to hold the Government and regulated entities accountable." What is unknown is whether permit data, such as for offshore drilling, will be disclosed under the memo.

Regulation a Boon for the Economy, Reports Show

Amid a tide of Republican complaints over regulations' impact on economic growth, two new government reports show that the economic benefits of rules outstrip compliance costs by billions of dollars every year.

An annual [report](#) released March 1 by the White House Office of Management and Budget (OMB) finds that the annual benefits of major rules finalized in fiscal years 2001 through 2010 ranged from \$136 billion to \$651 billion, while compliance costs amounted to somewhere between \$44 billion and \$62 billion per year.

OMB prepares the report by aggregating agencies' cost-benefit analyses – notoriously inaccurate tools that ignore benefits that don't have easily attachable price tags, such as environmental preservation, and awkwardly account for others whose values surpass mere economics, such as lives saved and injuries or illnesses avoided. Cost-benefit analyses also typically misrepresent compliance costs by assuming a static business model and ignoring innovations that allow regulated entities to operate more efficiently while complying with government requirements.

While the specific numbers and vast dollar ranges presented in the OMB report are imperfect, the report highlights the value of regulation and undermines the notion that government standards that impose requirements on businesses and other entities hurt the economy.

Among the beneficial rules contributing to the lopsided ledger are several U.S. Environmental Protection Agency (EPA) air quality standards. "It should be clear that the rules with the highest benefits and the highest costs, by far, come from the Environmental Protection Agency and in particular its Office of Air," the report states. "More specifically, EPA rules account for 60 to 85 percent of the monetized benefits and 47 to 54 percent of the monetized costs."

EPA's effort to reduce human exposure to fine particulate matter is perhaps the most economically significant, according to the report. The agency's Clean Air Fine Particle Implementation rule generates benefits between \$19 billion and \$167 billion per year while imposing compliance costs of \$7.3 billion per year, the report says.

The monetary benefits of environmental, health, and safety regulations often stem from health care cost savings, increases in worker productivity, and lives saved. When preparing a cost-benefit analysis, agencies assign a value, typically between \$5 million and \$10 million, to a human life.

The OMB report is the draft version of the 14th annual *Report to Congress on the Benefits and Costs of Federal Regulations*. A final version of the report is expected later in 2011.

EPA released a [report](#) March 1 that draws similar conclusions. The agency found that rules written under the Clean Air Act yielded significant annual benefits. In 2010, those benefits totaled approximately \$1.3 trillion; compliance costs that year were approximately \$53 billion. The value of annual benefits could reach an estimated \$2 trillion in 2020, the report says. Specifically, the report examines rules written as a result of the 1990 Clean Air Act amendments. It compares current and projected conditions against a baseline that assumes only 1970s Clean Air Act controls to be in effect.

"In 2010 alone, the reductions in fine particle and ozone pollution from the 1990 Clean Air Act amendments prevented more than: 160,000 cases of premature mortality; 130,000 heart attacks; 13 million lost work days; 1.7 million asthma attacks," [EPA says](#). "These benefits lead to a more productive workforce, and enable consumers and businesses to spend less on health care – all of which help strengthen the economy."

Clean air advocates are holding up the EPA report as proof that the agency serves the public's best interest and that its detractors are misguided. "By limiting our exposure to air pollution, the Clean Air Act has not only saved lives but also vastly reduced cases of heart attacks, asthma attacks, bronchitis and other illnesses, thus cutting our medical bills – a huge drag on the economy," John Walke, clean air director at the Natural Resources Defense Council, said in a [statement](#). "The study also exposes big industry's decades-long habit of crying wolf whenever the government has sought to strengthen health protections."

The report comes on the heels of an agency white paper [showing](#) that EPA clean air standards have created new jobs, particularly in the environmental technologies industry.

Despite the evidence, Congress continues to consider [options restricting](#) EPA's ability to protect the public under the Clean Air Act. The House-passed spending bill that would have funded the government for the remainder of the fiscal year contains at least [80 non-budget policy riders](#), many of which target the EPA's regulatory authority. The bill would prohibit the EPA from spending money to work on standards that would cut mercury pollution from cement kilns and set new limits on particulate matter. The bill would also forbid the agency from curbing climate-altering carbon pollution under the Clean Air Act. The bill has not passed in the Senate.

Consumer Products Reporting Database Under Attack

Corporations and their political allies are targeting a public database that allows consumers to file complaints about unsafe products with the Consumer Product Safety Commission (CPSC). Republicans in the House are trying to prevent the agency from spending money to implement the reporting site by blocking approximately \$3 million in funding.

The CPSC plans to launch its Consumer Product Safety Information Database, at [SaferProducts.gov](#), on March 11. Online reporting forms will allow consumers to report unsafe products to the agency and will allow businesses to review and respond to the reports. The site will also allow consumers to gather information by searching for specific products such as children's toys.

The 2008 [Consumer Product Safety Improvement Act](#) (CPSIA) required CPSC to create a publicly accessible, searchable database where consumers could find product incident reports and better inform themselves about the quality and reliability of a wide range of consumer products. The site is currently in its "soft launch" phase in which CPSC is testing its internal applications and procedures, according to the SaferProducts.gov website.

The major attack in Congress came from Rep. Mike Pompeo (R-KS), who proposed an amendment to [H.R. 1](#), the spending bill passed Feb. 19 by the House for the remainder of fiscal year 2011. The amendment passed and would prevent the agency from spending any funds on the database, thus killing the launch if the bill becomes law.

Manufacturers and business associations like the National Association of Manufacturers have targeted the database for fear that inaccurate data will be reported by consumers and, as a result, profits could be hurt. In CPSC's testing of the site during the soft launch, however, "of the 900 complaints that were logged, four were determined to be inaccurate," according to a March 3 [BNA article](#) (subscription required).

The attack on the database is only the tip of the iceberg in the fight against CPSC's implementation of the CPSIA, according to a Feb. 21 [New York Times](#) article. The broadside against CPSC – one of many agencies under fire in the spending bill – is part of a [broader attack](#)

on regulations and government's role in protecting the public by these same corporate special interests and politicians.

H.R. 1 was set aside as Congress passed another stopgap spending bill that runs through March 18. However, the House and Senate are already working on another spending measure that would continue until the end of the fiscal year. It is likely that the CPSC rider will be part of the bill developed by the House, but it is not likely to be supported by Senate Democrats. BNA reports that Sen. Jay Rockefeller (D-WV) called the effort to block funding for the database a "bad idea" and said the action would deny consumers valuable information.

Some of the benefits of the database include:

- The database will enable CPSC to recognize trends in product safety hazards.
- The database will provide potentially life-saving public information about unsafe products. CPSC is currently required to contact manufacturers about a potentially unsafe product before it releases information publicly; this process often results in delays in getting information to consumers.
- The database has built-in safeguards to limit the release of inaccurate or misleading information about products, including a period for businesses to review consumer complaints before they are posted publicly.
- In compliance with the CPSIA, the CPSC has spent considerable effort and resources preparing the database. To stop it from being implemented is inefficient and wastes the resources already expended.

Open government groups are also strongly opposing the attempt to kill the database. The groups are lobbying the Senate to prevent passage of any spending bill that defunds the database.

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