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In This Issue

The Seven Habits of Highly Effective Spending Transparency Systems

As leaders of both parties in Congress obsess over cutting spending, it's no surprise that spending transparency has become an issue. Most recently, the House passed the Digital Accountability and Transparency Act (DATA Act), a bill designed to increase the quantity, quality, and accessibility of federal spending information. The bill would be a leap forward in government openness, but it is only a beginning. A comprehensive system of federal spending transparency that enables citizens to hold government accountable must include a set of key elements, which we explore in this article.

1. Completeness

The data in any spending transparency system needs to be complete. The data must show every layer of pass-through spending for people to understand who is benefiting from federal funds. USAspending.gov, the government's main spending portal, currently shows only two layers of the recipients of federal spending. Because of this, we can see only prime recipients (those who are awarded federal contracts and grants) and their immediate subcontractors. Large federal projects are likely to be subcontracted multiple times, meaning current reporting requirements cut off several tiers of subcontracting data.

Instead of limiting transparency to two levels of recipients, Congress should create a system of full multi-tier reporting in which any organization that receives more than some minimum amount in federal funds – say, $25,000 – must report on the use of those funds. The DATA Act mandates such a system.

The DATA Act also calls for a report on the feasibility of reporting tax expenditure data. Currently, USAspending.gov does not include this information, even though the government spends more than a trillion dollars a year on tax expenditure programs (for example, tax subsidies).

2. Comparability

Every federal government database that contains information on private entities should be linked to every other federal database that contains information on private entities. Currently, firms receiving federal funds often have different identification numbers in different agencies' systems. For example, we need to be able to see that the Acme, Inc. that received a federal contract last year is the same Acme, Inc. that appears in EPA's Toxics Release Inventory. Furthermore, assessing the total amount of federal funds that an entity has ever received requires that systems be able to recognize that entity as such in every instance it is involved in the federal spending process. And because data are housed in many locations, the ability to link these datasets is essential to federal spending transparency.

This kind of comparison requires having one unique ID number for every recipient so we can trace firms across time and agencies and connect subsidiaries to their parent companies. The current system relies on proprietary information from Dun and Bradstreet, a for-profit company that assigns IDs to corporate entities. This database of companies is not public and does a poor job of linking together subsidiary companies owned by a large corporation. We need a single system to identify entities across all federal datasets, one that is non-proprietary and open to the public, and forces every agency to identify firms in the same, unique way. The DATA Act creates new data standards, including recipient IDs, allowing for easier comparison across datasets. By linking these disparate datasets, citizens and governmental actors could increase the accountability of contractors, Congress, and federal agencies.

3. Accuracy

Government spending data should be as accurate as possible. Agencies have made improvements in the quality of data they report to USAspending.gov; however, it's still far from perfect. Treasury Department data on the checks that are handed to recipients is the most accurate source of federal spending data and should be made public. Data on USAspending.gov is on contract and grant obligations, not actual payments to the firms or individuals doing work for the federal government. If you want to know how much money has been spent and to whom it has gone, there is no higher-quality data than what appears on the "Pay to the Order of" and "Amount" lines of Treasury payments. With appropriate identifiers on the payment data, which the DATA Act would make available for the first time, contract and grant data can be connected to the check to give further information on the details of the spending.

4. Universality

Transparency should be used to help hold decision makers accountable for the choices they make. This means being able to trace all spending from cradle to grave, from when the president recommends a program through to when Congress approves the spending, and to reporting on how the program performs. Currently, there is no easily accessible, public linkage between an appropriation and a federal program because there is no set definition of what a "program" is. Instead, one must laboriously comb through appropriations bills, legislative report language, the president's budget, agency reports, and USAspending.gov and manually piece the chain together, making it almost impossible to see how and why any given dollar of federal funds was spent. To fix this problem, Congress must change the way it writes appropriations bills and create a more robust way to identify programs across the federal government. Unfortunately, the DATA Act does nothing to change how appropriations bills are written.

5. Integration of Performance Data

The DATA Act is silent on performance data and would not create new sources of performance information. However, spending transparency should also be about helping policymakers make better decisions in the future. As part of their budget request process, federal agencies should have access to relevant, high-quality information on how their programs are working. 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 as interested citizens – should also have access to the same information. This would dramatically increase accountability. In other words, performance data, which is essentially unconnected to budget data today, should play a greater role in budgetary decisions. Access to such data would allow us to answer the question: what kind of bang are we getting for the buck?

6. Full Contract Information

Data points such as award amount and place of performance (which are currently displayed in USAspending.gov) are helpful in making spending information more transparent, but more information is required if the public is to see whether the federal government is getting value for its contracting dollars. The full text of a contract or grant agreement between the federal government and private entity would allow Congress and the public to know what exactly the government is supposed to be getting for what it spends. Currently, only brief summaries of awards are available on USAspending.gov, and citizens must go through a time-consuming and obtuse Freedom of Information Act (FOIA) process to obtain the actual contract text, which can take years. Making this information automatically available to the public, alongside the already existing award information, would help bring true transparency to the nation's spending. Other information on the federal contracting process, such as the high and low bids received, scope of work of a contract, and the original request for proposal, should also be made publicly available. Unfortunately, no such language is in the current version of the DATA Act, limiting the bill's scope.

7. Usability

Publicly available data is really only open if the public can find and use it. Any spending website, such as USAspending.gov, should show summary, big-picture information (such as the top 10 government contractors) and allow advanced users to perform detailed searches of the data (such as the top Defense contractor in Massachusetts's 3rd congressional district). It should also be jargon-free and comprehensible to lay users. It should provide raw, machine-readable data in flexible and open standards, with an option to download. USAspending.gov currently does an acceptable job on many of these fronts, and the DATA Act does not specifically change how the site would display or make spending data available. However, a key strength of the DATA Act is that it would require the government to create a standard format for federal spending data, which would enable far greater machine-to-machine communication and be easily transformed into public-facing websites and mobile device applications.

More on the DATA Act

If enacted and implemented well, the DATA Act could enhance federal spending transparency enormously by applying these seven principles to the sea of information currently within the government and turn on new streams of data. For example, the bill would create a recipient reporting system that would allow users to see further down the spending chain. It would also standardize data, enabling cross-dataset and cross-agency comparisons and mash-ups. However, the DATA Act does not call for linking performance data to spending decisions and does not fix the problem of comparing spending bills to the program information provided by the executive branch.

The DATA Act doesn't get full marks on any of the seven effective habits, but it is a regimen that would significantly strengthen federal spending transparency. And the one thing we know about habits is this: they get stronger as you live them.

Controversy Mounts over EPA's Release of Draft Report on Fracking

On May 3, the Associated Press reported that the governor of Wyoming pressured the U.S. Environmental Protection Agency (EPA) to delay the release of a draft study linking a controversial natural gas extraction process, commonly referred to as fracking, to the contamination of drinking water. Wyoming officials apparently used the delay to coordinate efforts with the oil and gas industries to attack the report's findings.

The government report is part of a growing body of evidence that fracking is a source of chemical contamination for local water supplies. Fracking is a process where sand and fluids, including toxic chemicals, are pumped underground at very high pressure to cause tiny fissures in rock and force natural gas out of shale rock deposits. Fracking fluid typically contains benzene, toluene, and pesticides, among other harmful substances.

The Draft Pavillion Report

In a December 2011 draft report, the EPA, for the first time, confirmed what residents of Pavillion, WY, have been complaining about for a long time: fracking may be the cause of groundwater pollution in their small community in the central part of the state. The EPA's draft report found dangerous amounts of the carcinogenic chemical benzene, as well as 2-butoxyethanol, which may cause severe kidney damage, in a monitoring well near Pavillion. The chemicals, not found naturally in groundwater wells, were measured to be fifty times the maximum contamination level allowed under the Safe Drinking Water Act.

Residents of Pavillion began complaining that their drinking water smelled and tasted of chemicals in the mid-1990s, shortly after nearby gas wells were "fracked." For over a decade, residents asked Wyoming state officials and the natural gas companies, EnCana (and its predecessor, Tom Brown, Inc.), to address the contamination of their water and the health problems residents felt were related to the toxins – including asthma and cardiac trouble. According to residents:

> When we turn on the tap, the water reeks of hydrocarbons and chemicals. Our drinking water now comes from five-gallon jugs. We wonder how we're going to support our families and pay our bills if the contamination affects our livestock and farming operations. Selling out is no longer an option because property values in the Pavillion area have declined to nothing.

The Wyoming Oil and Gas Conservation Commission and the Wyoming Department of Environmental Quality refused to test the water, denying any connection between oil and gas development and water contamination, so in 2008, residents turned to the federal government – the EPA – in frustration. Under the Comprehensive Environmental Response, Compensation, and Liability Act, commonly known as Superfund, the agency began an investigation to determine if groundwater contamination existed. The EPA sampled a variety of wells, including residential wells, stock wells, shallow monitoring wells, and two municipal wells. The initial sampling in 2008 revealed traces of methane, hydrocarbons, and other contaminants associated with fracking fluids in some of the wells.

In 2010, the EPA installed two deep monitoring wells to sample water in the local aquifer and to differentiate deep sources of contamination (fracking drills deep) from shallow sources of contamination. The agency also retested private and public drinking water wells in the community. EPA's analysis of the deep monitoring wells found chemicals related to fracking fluids, such as benzene, and high methane levels. The EPA determined that chemicals, such as petroleum hydrocarbons and methane, found in the more shallow wells were related to leakage and disposal of wastewater and other drilling wastes. Following the 2010 testing, federal health officials reviewed EPA's data and urged residents not to drink their water and to ventilate their homes while showering to prevent explosions from released methane gas.

The Controversy over the Draft Report

After requesting and reviewing more than 11,000 e-mails from Wyoming officials, the Associated Press found evidence that Wyoming Governor Matt Mead pressured EPA Administrator Lisa Jackson

to delay publicizing the draft study until state officials could review the data. Wyoming stakeholders participating in the Pavillion groundwater contamination study received a preliminary copy of EPA's draft report before it was publicly released on Dec. 8.

Prior to the Associated Press investigation, Jackson acknowledged her delay of the draft report in a January letter to Mead. The letter stated that the delay had been to allow the state, tribes, industry, and federal agencies time to conduct "a full technical review of the data and supporting information..."

However, findings from the investigation show that Wyoming officials took advantage of the extra time to coordinate an all-out press attack against the EPA's report. Immediately following the release, both EnCana Oil and Gas USA (the company that owns and operates the Pavillion gas field) and Wyoming state officials slammed the EPA and the report, questioning the agency's methods and analysis.

Wyoming officials were particularly concerned with how the report's findings would affect state revenue, not the health and safety of its residents, according to the Associated Press. Wyoming is ranked third in onshore gas production in the U.S., and nearly every new natural gas well in the state is fracked. "The limiting of the hydraulic fracturing process will result in negative impacts to the oil and gas revenues to the state of Wyoming," wrote Tom Doll, supervisor of the Oil and Gas Conservation Commission, in an e-mail to top state officials.

Members of Congress also attacked the EPA report. Sen. James Inhofe (R-OK), ranking member of the Senate Committee on Environment and Public Works, called the report "a political ploy" and "offensive." The House Energy and Environment Subcommittee held a hearing in February to assess the validity and integrity of the draft report's findings. The hearing, led by Rep. Andy Harris (R-MD), questioned the scientific integrity of the report, claiming that "we have politics trumping policy, and advocacy trumping science." Yet none of the four panelists who testified were actually scientists. Panelists included representatives from industry, Wyoming's Oil and Gas Conservation Commission, the EPA, and a public health expert.

Nonetheless, James Martin, the EPA's regional administrator for Region 8 (which covers much the Rocky Mountains and the Northern Plains), testified that state and industry officials had been consulted many times before, during, and after the testing. In fact, a group of external scientists were consulted on the draft report prior to its early December release. In addition, at the request of industry, the public comment period on the study was extended from 45 days to 90 days. Following the comment period, the report was subjected to standard peer review.

The House subcommittee did not invite Pavillion residents to the hearing. Pavillion resident John Fenton, who is chair of Pavillion Area Concerned Citizens, told MSNBC that EPA's investigation "proves the importance of having a federal agency that can protect people and the environment. We hope that answers to our on-going health problems and other impacts can now be addressed and that the responsible parties will finally be required to remediate the damages." Fenton's group noted that Wyoming's "delaying tactics" have allowed the contamination to continue, with no plans to address impacts on the residents.

Ten Republican senators have even called on EPA to label the report as a "highly influential scientific assessment" and to require it to undergo a more stringent peer review process that could delay the final report considerably.

Mounting Evidence against Fracking

Despite the attack, evidence supports the EPA's findings. A January Congressional Research Service (CRS) report found no obvious concerns with the legality and quality of EPA's draft report. The CRS is a public policy research agency that reports directly to Congress. Also, in May, an independent scientist and expert in hydrology, Dr. Tom Myers, declared the EPA's conclusion sound. "It is clear that hydraulic fracturing has polluted the groundwater east of Pavillion with contaminants associated with the fracking process," said Myers.

An earlier study of fracking well sites in Pennsylvania and New York by Duke University scientists also found extensive evidence of methane contamination (associated with deep shale beds) in drinking water wells located within a kilometer of fracking sites. There are multiple documented cases of severe water contamination near fracking sites, including water that can actually be set on fire as it comes out of the faucet. In addition, the process produces more greenhouse gas emissions over time than traditional methods of oil drilling or coal mining, according to a Cornell University study.

Moving Forward

In March, the EPA, the U.S. Geological Survey, the State of Wyoming, and the tribes have announced that they are going to do additional sampling of the groundwater. The EPA has announced it is extending the public comment period through October 2012 until additional sampling has been completed. EPA has also delayed convening the peer review panel on the draft Pavillion report until a report containing U.S. Geological Survey data is publicly available. In the meantime, residents of Pavillion are still drinking bottled water and ventilating their bathrooms when they shower to avoid explosions.

Big Business Suing to Stop Notices Informing Workers of Their Right to Organize

The U.S. Chamber of Commerce and other industry representatives are blocking a new rule that would better inform workers of their legal rights. The rule, issued by the National Labor Relations Board (NLRB) in August 2011, would inform employees of their right to organize and bargain collectively. The rule would add to the existing framework of policies to protect workers' right to know, but business lawsuits are preventing it from taking effect.

What You Don't Know Can Hurt You

Under the National Labor Relations Act and international human rights law, employees have the right to form or join unions and to bargain collectively. Congress established the NLRB in 1935 to protect those rights and to enforce fair practices by employers and unions.

However, many workers are unaware of these rights or that the NLRB will protect them if they exercise these rights. Not knowing these facts has real consequences for America's workers and economy. Most directly, lack of knowledge puts employees at a disadvantage for demanding better labor practices.

More broadly, lack of knowledge about labor rights has contributed to the decline in the number of workers who have access to the protections and benefits of a union. Studies show that unions raise wages and benefits for their members, as well as non-members, and play an important role in enforcing workplace protections. The decline of union membership in recent decades has been closely linked to the rise in income inequality during the same period. Ensuring that workers are aware of their labor rights is a critical element to rebuilding the middle class and making America's economy fairer.

Congress gave the NLRB the authority to issue "such rules and regulations as may be necessary" to enforce the National Labor Relations Act. In the rule, the NLRB states that requiring the notice posting is necessary to protect workers' rights by informing them.

Informing America's Workers

The NLRB rule being contested requires employers to post a notice in the workplace that summarizes employees' rights under the National Labor Relations Act. The poster also provides information on how to contact the NLRB if an employee feels his or her labor rights have been violated. Posting notices in the workplace has been considered a particularly appropriate method to inform workers (since the notice contains information about their employment rights), and posting a notice has been considered minimally burdensome on employers.

Employers are already required to post various notices informing employees about issues that concern them. For instance, the Family and Medical Leave Act of 1993 requires employers to post notices that explain the rights employees have to reasonable leave for medical reasons. Employers failing to maintain such postings can be fined. Similarly, under the Fair Labor Standards Act of 1938, employers must post information about minimum wage standards. Other laws have established requirements for notification of health and safety requirements and protection from age discrimination.

Big Business Fighting to Prevent Notices about the Right to Organize from Being Posted

Several prominent business associations, including the National Association of Manufacturers (NAM) and the U.S. Chamber of Commerce, flooded the NLRB with opposition comments while the rule was under consideration and promptly sued after the final rule was issued. On March 2, the U.S. District Court for the District of Columbia held that the rule was valid in response to a case brought by NAM. The association appealed its decision and on April 17, the U.S. Court of Appeals for the D.C. Circuit issued a temporary injunction, preventing the rule from taking effect while the court considers the case.

In a separate case filed by the U.S. Chamber of Commerce in the U.S. District Court for the District of South Carolina, the court ruled on April 13 that the NLRB lacked authority to issue the rule. On May 2,

the NLRB indefinitely postponed the rule's implementation until the legal challenges are resolved. In the meantime, workers will be left in the dark – a status that will continue if industry special interest groups succeed in striking down the rule.

Tug of War

This notice is similar to another struggle related to government contractors that has played out over 20 years of dueling executive orders. In 1992, President George H.W. Bush issued an executive order requiring federal contractors to post a notice informing employees of the limits of unions but did not include any explanation of employers' responsibilities to workers. President Clinton revoked that order in 1993. In 2001, President George W. Bush again required the notice, with a slight amendment.

Most recently, President Obama revoked the Bush notice in 2009, replacing it with a poster describing the responsibilities of employers and unions alike. The NLRB rule adopts the text of the Obama notice for posting by all employers subject to NLRB jurisdiction, not just federal contractors.

Right to Know for a 21st Century Workforce

The NLRB rule is just the latest development in an evolving framework for workers' right to know practices. A new feature of the rule is that employers who customarily post personnel policies on a website or intranet will be required to post the notice there, in addition to their physical facilities. The NLRB stopped short of an earlier proposal to require that right to organize notices be distributed by e-mail if employers customarily communicate with employees via e-mail.

In the 21st century, when many employees telecommute and may never set foot in their employers' physical facilities, finding new ways to inform workers of their rights electronically seems reasonable and necessary. The new NLRB rule could provide a model for modernizing the rest of our workplace right-to-know policies – that is, if Big Business does not succeed in striking down the rule before it even goes into effect.

Why Is the Small Business Administration Arguing that Formaldehyde Doesn't Cause Cancer?

The Small Business Administration (SBA) is supposed to protect the interests of small businesses – businesses most Americans define as employing fewer than 100 workers. But a little-known office in the SBA, the Office of Advocacy, has recently weighed in with the National Toxicology Program (NTP), urging that it scrap a congressionally mandated Report on Carcinogens and challenging NTP's designation of formaldehyde as a known human carcinogen. The NTP report is not a regulatory document. It does not directly affect small business costs. So what is the Office of Advocacy at the SBA doing objecting to a scientific report on carcinogens?

By way of background: the Public Health Service Act, passed in 1978, established the National Toxicology Program and required that it publish a biennial report listing substances that may cause cancer. Over the years, large chemical manufacturers have vigorously protested every time NTP

proposes to list a chemical as a carcinogen, fearing that the market for the chemical will shrink. Until recently, small business concerns haven't factored into the debate. Therefore, the SBA has no obvious interest in this issue or any scientific expertise to add to the debate.

Or so we thought. But the recent comments SBA sent to NTP questioned the quality of the scientific analysis on which the report relies. SBA specifically highlighted the listing of formaldehyde as a "known human carcinogen," arguing in congressional testimony that NTP's listing of formaldehyde as a possible cancer-causing agent might increase small businesses' workers' compensation costs. But the *Occupational Safety and Health Administration (OSHA) has regulated formaldehyde as a carcinogen since 1987*, so the increase in workers' compensation costs related to formaldehyde would have been rising for quite some time.

Interestingly, the concerns raised by the SBA Office of Advocacy are almost indistinguishable from the objections formaldehyde manufacturers have raised whenever a government agency has proposed to publicize formaldehyde's cancer-causing potential. Formaldehyde is a high production volume chemical; in 2004, international production was over 46 billion pounds. Leading producers of formaldehyde include DuPont, Georgia-Pacific, and Hoechst Celanese – not your average small businesses. Toxicology tests in the 1970s showed that formaldehyde caused cancer in rats. Ever since, big chemical manufacturers of formaldehyde have waged trench warfare against governmental efforts to warn the public about this effect or protect people from the hazard, following the play book of the tobacco industry.

The chemical companies funded the Chemical Industry Institute of Toxicology to produce many reports arguing, in essence, that just because formaldehyde caused cancer in rats did not mean it would cause cancer in people, and even if it did, it would not cause *too much* cancer.

Under the auspices of the Formaldehyde Institute (FI), the manufacturers of the chemical campaigned to stop the government from informing the public that formaldehyde causes cancer. First, FI blocked efforts by the EPA to designate formaldehyde as a carcinogen under the Toxic Substances Control Act (TSCA). It also persuaded OSHA to fire a scientist who had the audacity to call formaldehyde a carcinogen; then-Rep. Al Gore (D-TN) held an oversight hearing to ensure the scientist kept his job. It pressured OSHA to stall rules regulating formaldehyde use until 1987 when the United Auto Workers took OSHA to court and forced the agency to issue rules on the use of formaldehyde in the workplace. FI also sued to block the Consumer Product Safety Commission (CPSC) from regulating urea-formaldehyde foam insulation.

These efforts to block government action to protect the public from the cancer risks of formaldehyde were orchestrated by the big chemical companies that manufacture the substance. So how did NTP's listing of formaldehyde as a "known human carcinogen" become a legitimate issue of concern for a government agency whose mission is to protect small businesses? This is a question Congress might want to investigate.

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

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