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The Watcher

November 18, 2008

Vol. 9, No. 23

In This Issue

Regulatory Matters

[Panel Sends Regulatory Recommendations to Obama, Congress](#)
[Bush Changes to Employee Leave among First Midnight Rules](#)

Information & Access

[Coalition Makes Right-to-Know Recommendations to President-elect](#)
[Groups Seek More Congressional Transparency](#)
[Public Wants More Info on Food Labels](#)

Federal Budget

[TARP Purchases Increasing as Oversight Languishes](#)
[Unemployment Insurance in Need of Overhaul](#)

Nonprofit Issues

[Study Says Nonprofits Help, Not Hinder, the War against Extremism](#)
[Nonprofits to President-elect Obama: Strengthen the Sector](#)

Panel Sends Regulatory Recommendations to Obama, Congress

On Nov. 14, a panel of regulatory experts released a report calling for significant changes to the federal regulatory process. The recommendations are directed to President-elect Obama and the new Congress and are designed to achieve a more effective, efficient, and timely process that is now burdened with excessive requirements and assessments.

The [report](#), *Advancing the Public Interest through Regulatory Reform: Recommendations for President-Elect Obama and the 111th Congress*, outlines many of the problems that afflict the regulatory process and calls for specific actions to resolve those problems. The recommendations are both short term, urging immediate steps in the first 100 days of Obama's administration, and ongoing, such as recommending changes to statutes that impact how federal agencies develop public protections.

The report identifies numerous symptoms of the problems with a regulatory process that "no longer adequately protects the public." The symptoms include "the crises in the housing and financial sectors; mine and crane collapses; contaminants in consumer products like

toothpaste and pet food; contamination of spinach, jalapeños, meat, and other foods; dangerous chemicals used in popular medicines; and the exploitation of our public lands and natural resources." In addition, agencies are understaffed, require significantly more resources to respond to the challenges they face, and are required to perform a wide range of analyses, some of which are unrelated to the goal of producing effective regulations.

Among the high-priority recommendations described in the report are a call for Obama to impose an immediate 60-day moratorium and review of any new regulations finalized but not yet in effect, and for the creation of a blue ribbon commission to suggest "fundamental changes" to improve the regulatory process by reducing unneeded analytical requirements and bureaucratic hurdles.

The report also addresses the relationship between White House offices and the agencies responsible for promulgating regulations. The authors write, "We believe that the White House has been too involved in the substantive review of agency rulemakings, at times disagreeing with agency experts and changing the science presented by the agencies." Throughout the report are recommendations that place the locus of decision making within agencies, reserving the role of the White House Office of Management and Budget (OMB) as more of a coordinator.

According to the report, the authors differed on one of the most contentious aspects of the current regulatory process, the use of cost-benefit analysis. They agreed, however, that the prescriptive directives, such as the OMB Circular A-4, *Regulatory Analysis*, that require one government-wide approach to performing cost-benefit analysis, should be curtailed. The panel strongly agreed on principles that should guide the use of the cost-benefit tool, including using it in ways consistent with legal requirements and not as a determining factor in selecting regulatory options unless required by statute. Additionally, the report notes that agencies should have flexibility in deciding when and how to apply cost-benefit analysis to regulatory work.

The report notes that agencies must be given the resources necessary to initiate, write, and enforce regulations. The report is critical of the loss of agency experts and the impact limited funding has had on agencies' ability to do their regulatory jobs. The report provides a variety of recommendations to deal with the politicization of science, including improvements in the integrity of science and the suggestion that all research used in rulemaking be publicly available and part of the rulemaking record.

Following a chapter on recommendations for the first 100 days, the report is organized by several themes. The thematic recommendations address ways to improve regulations, restore integrity to the information used by agencies, improve the implementation and enforcement of regulations (including increasing resources for agencies), increase the transparency of the regulatory process, and improve ways for the public to participate in the process.

According to the report, the recommendations are based on six principles:

- Regulatory decisions should be timely and responsive to public need.
- The regulatory process must be transparent and improve public participation.
- Regulatory decisions should be based on well informed, flexible decision making.
- Authority to make decisions about regulations should reflect the statutory delegation granted by Congress.
- Agencies must have the resources to meet their statutory obligations and organizational missions.
- Government must do a better job of encouraging compliance with existing regulations and fairly enforce them.

The Steering Committee for the project on *Advancing the Public Interest through Regulatory Reform* consists of 17 regulatory experts with different perspectives on the problems with the current regulatory process. Many of the committee members, who work in public interest organizations, academia, scientific organizations, business, and local government associations, have often expressed differing opinions about regulatory matters. What is unique about this group, according to the report, is that, because they agreed that the current process is broken, the committee members found ways to sidestep disagreements to offer concrete recommendations to improve the rulemaking process.

The group began its work in July 2007 in order to have recommendations ready for the next president and Congress. The project was initiated and staffed by OMB Watch, but the consensus recommendations are the result of committee meetings over the course of the project. The panel commissioned four task forces to address broad regulatory topics and drew on that work and other information to inform its decision making.

Bush Changes to Employee Leave among First Midnight Rules

The Department of Labor has finalized a new rule that will affect the way workers take medical and family leave. It is among the first of many rules the Bush administration is expected to cement in the coming weeks.

The Family and Medical Leave Act of 1993 (FMLA) allows employees to take up to 12 weeks of unpaid leave each year to care for themselves or a family member without risking their pay, benefits, or position. The Department of Labor estimates 7 million workers took FMLA leave a combined 10.5 million times in 2007.

The rule, [published](#) in the *Federal Register* Nov. 17, will make it more difficult for employees to use paid leave when taking FMLA leave. Because FMLA leave is unpaid, employees often attempt to use paid leave, such as paid vacation time, to avoid disruptions in their pay.

Other changes require workers to provide greater advance notice of FMLA leave claims and give employers more time to respond. The changes require employees to give advanced notice

in a way that "compl[ies] with the employer's usual procedures for calling in and requesting leave, except where unusual circumstances exist." Employers will be able to delay or deny FMLA leave claims if the employee does not comply. The rule also gives employers five days to respond to leave claims. Currently, employers must respond within two days.

The Labor Department backed away from a controversial earlier proposal, which would have allowed an employee's direct supervisor to speak directly to that employee's health care provider. However, the rule change will allow human resource professionals to contact health care providers.

Worker advocates criticized the department for those changes and say the revisions make it more difficult for workers to take leave. Debra Ness, president of the National Partnership for Women and Families, [said](#), "The new FMLA regulations for workers take us in the wrong direction, and are harmful and unnecessary."

John Sweeney, president of the AFL-CIO, [said](#), "Given the worsening economic situation facing families, we should be talking about how to expand successful laws like the FMLA to provide workers more job security and flexibility to deal with urgent family situations, not less."

The National Association of Manufacturers (NAM), a group that lobbies for business interests, [said](#) the rule would "provide greater clarity and understanding." NAM asked the Labor Department for certain changes to the FMLA, including direct employer access to employee health care providers.

A part of the rule expands family and medical leave protection for military families and is being roundly lauded. Responding to a mandate from Congress signed into law in January, the rule will grant employees up to 26 weeks of leave per year to care for a family member injured during military service. Ness said expanding FMLA leave for military families will "help ease the strain of a family member's deployment."

The rule is one of many the Bush administration is expected to finalize in its waning days. Presidential administrations typically increase regulatory activity near the end of their tenures in order to [ensure their priorities are in place](#) before a new president takes over.

Unlike some [other controversial rules](#), the changes to the FMLA have been in development for some time. The Labor Department first solicited public input on a rule change in December 2006 and officially [proposed](#) the rule on Feb. 11, 2008.

The administration appears to have worked to assure the rule is cemented in place by the time Bush leaves office. Because the Labor Department expects the FMLA rule to have an annual economic impact of more than \$100 million, the agency is required by law to wait at least 60 days before making the rule effective. The rule is set to become effective Jan. 16, 2009.

White House officials have pushed agencies to finish their rules by early or mid-November. In May, White House Chief of Staff Josh Bolten issued a memo instructing agencies to finalize

rules by Nov. 1, absent "extraordinary circumstances." That deadline has slipped, but many agencies are attempting to finish their work as quickly as possible.

The Clinton administration published many rules in the *Federal Register* in January 2001, just days before leaving office. Because those rules were not yet effective, the incoming president, George W. Bush, took a second look at those rules and suspended many of them. Although [Bush's move](#) was of questionable legality, it was never challenged in court.

The FMLA rule will take effect just four days before Bush leaves office, thereby making it extremely difficult for Barack Obama to impact the rule in any way once he takes office.

Other rules that have already been finalized and are set to become effective by Jan. 20 include:

- A rule to allow oil shale development, an environmentally intrusive process, in Western states
- A rule to cut low-income citizens' access to health care under Medicaid's outpatient services programs
- A rule redefining solid waste and removing existing requirements that certain hazardous materials be disposed of in environmentally sensitive ways
- A rule allowing truck drivers to drive up to 11 consecutive hours and setting the required rest time at only 34 hours

Coalition Makes Right-to-Know Recommendations to President-elect

On Nov. 12, the right-to-know community published a set of [transparency recommendations](#) for President-elect Barack Obama and the 111th Congress. These recommendations are supported by a group of over 280 individuals and organizations and published in a report, titled *Moving Toward a 21st Century Right-to-Know Agenda: Recommendations to President-elect Obama and Congress*.

Seventy recommendations urge the new president and the incoming Congress to act quickly on a number of key government openness issues while encouraging a more systemic, longer-term approach to a variety of other transparency problems that plague the federal government. Among the top recommendations is a call for strong leadership and vision on government transparency from the president, starting with a statement on the importance of government openness in the inaugural address. Other top recommendations are for a new government policy that urges agencies to proactively disclose information where possible, rather than waiting for Freedom of Information Act requests; a new initiative to provide information about government spending, influence of lobbyists, and the revolving door for political appointees; and adequate funding to implement new policies.

Government openness advocates also placed a high priority on modernizing the government's use of technology to manage and disclose information. Greater exploration of wikis, comment

sections, collaborative projects, public review of pending policies, and online dialogs were also seen as innovations that would greatly improve the connection between government and the people. Additionally, the community took a strong position against the almost reflexive deference to secrecy by the executive branch when it comes to national security. While the need for national secrets was recognized, the group urged the president to challenge the mindset that secrecy makes us safer. The widespread use of "sensitive but unclassified" labels that has impeded interagency information-sharing and public disclosure of government activities was highlighted as a key security issue that needs to be addressed quickly.

The report consists of five chapters, each broken into subsections:

- Chapter A — Introduction: describes a brief history of government openness tracing back to the Continental Congress and the current status of government transparency, which has seen many threats but also some improvements.
- Chapter B — First 100 Days: depicts the need for major reforms in light of the current state of excessive secrecy and restricted public access and provides five recommendations for the president to immediately undertake.
- Chapter C — National Security and Secrecy: This is divided into six parts: Overclassification, Pseudo-Secrecy, State Secrets Privilege, Federal Secrecy Imposed on State and Local Officials, Failed Checks and Balances, and the Imperative of Real Accountability.
- Chapter D — Usability of Government Information: This section is divided into three parts: Using the Internet to Promote Interactivity, Electronic Records Management, and Scientific Openness & the Media.
- Chapter E — Creating a Government Environment for Transparency: This chapter is divided into five parts: Policy Statements, Resource Requirements, Incentives to Promote Disclosure, Improved Oversight & Enforcement, and Long-Term Vision for Government Transparency.

As reported in a [previous issue](#) of *The Watcher*, the recommendations were created as part of a two-year effort known as the 21st Century Right to Know Project, coordinated by OMB Watch. It brought together dozens of individuals and organizations from across the country and across the political spectrum to find common ground in possible solutions to what all involved saw as intolerable levels of secrecy in the federal government. The parties involved were also frustrated that government has not yet fully embraced the power of interactive technologies, noting that government agencies are largely functioning with 20th century tools and policies. Participants included conservatives, libertarians, and progressives representing good government groups, professional associations, traditional reporters, bloggers, unions, representatives of the philanthropic community, technology experts, and members of academia.

Gary D. Bass, Executive Director of OMB Watch and one of the key people involved in the project and the report, said, "Taken in total, the recommendations in this report propose a transformational role for government. The report calls for reconnecting our government with all of us, 'We, the people.'" Bass continued, "It calls on government to move its methods for

serving the public's right to know into the 21st century. And it calls on government to make itself more open than any past administration in order to rebuild trust and accountability."

This project started at the beginning of 2007 with a discussion by the [OpenTheGovernment.org](http://www.openthegovernment.org) steering committee. OpenTheGovernment.org is a coalition dedicated to less government secrecy and more openness. Working hand-in-hand with the coalition, OMB Watch spearheaded this initiative. It included a series of sessions across the country, various surveys and interviews, and leadership from three expert panels. The expert panels were chaired by Meredith Fuchs of the National Security Archive, Ari Schwartz of the Center for Democracy and Technology, and Patrice McDermott of OpenTheGovernment.org.

Several other organizations are also [calling](#) for increased transparency. The National Security Archive [released](#) memoranda to the President-elect concerning Freedom of Information Act efficiency, classification system reform, and Presidential Records Act compliance. The Center for American Progress [announced](#) the January release of its book, *Change for America*, which it calls "a progressive blueprint for the 44th president." The book includes a chapter on government transparency in the Internet age.

Readers can access *Moving Toward a 21st Century Right-to-Know Agenda* at <http://www.ombwatch.org/21strtkrecs.pdf>. Though the report is no longer in draft form, the 21st Century Right to Know Project is still accepting report endorsements. Please do not hesitate to add your endorsement through our [online web form](#).

Groups Seek More Congressional Transparency

The Sunlight Foundation recently launched the [Open Senate Project](#) as part of its ongoing attempt to improve congressional transparency. The project is a bipartisan initiative to study the Senate's current information sharing practices and subsequently develop recommendations for improvement, particularly through the use of technology.

The first stage of the project is to establish a dialogue among interested individuals and groups about the Senate's current practices and policies for disclosure, information sharing, and interaction with the public. The Sunlight Foundation has established an open [Google Groups e-mail list](#), as well as a blog, to initiate the online discussion on Senate transparency reform.

The project has been endorsed by Senate Majority Leader Harry Reid (D-NV), who [stated](#) that he would welcome the recommendations resulting from the collaborative effort. Specific recommendations from the project are expected next spring.

While many government openness groups and access advocates have focused on executive branch openness issues, the Sunlight Foundation has concentrated on congressional transparency. The legislative branch, which has passed several laws to require greater openness by executive agencies, has appeared reluctant to significantly increase its own transparency requirements. Since the executive branch has no authority to impose such

requirements on Congress, the situation will only improve when Congress chooses to set new standards for itself.

The Open Senate Project is paralleling another Sunlight Foundation project started in 2007, called the [Open House Project](#). The House-focused project began with the same Google Groups approach to identify issues and generate ideas. The project culminated in a [May 2007 report](#) on transparency in the House of Representatives. The Open House recommendations focused on technical areas such as coordinating web standards, removing web-use restrictions for members of Congress, and creating video access to congressional proceedings.

The Open House Project has made significant progress over the years on several of its recommendations. Among the successes was the Library of Congress' decision to create permanent links on [THOMAS](#), the government's online federal legislative information directory. A summary of other progress can be found in the project's [retrospective report](#).

Other organizations have made efforts to improve congressional transparency. For instance, Taxpayers for Common Sense has published a [database](#) of congressional earmarks for Fiscal Year 2008. Still other groups focus on Congress's role in making executive branch transparency efficient and accountable. The right-to-know community's recent report, titled [*Moving Toward a 21st Century Right-to-Know Agenda: Recommendations to President-elect Obama and Congress*](#), contains recommendations concerning Congress in the areas of oversight, funding, and new legislation.

Public Wants More Info on Food Labels

A national poll shows strong consumer support for improved food labeling and more frequent inspections of food-processing facilities. According to food safety advocates, Americans want labels that identify use of genetically engineered or cloned ingredients, as well as expanded country-of-origin labeling. Labels are one of the most effective means to inform the public about the health, safety, origins, and environmental impact of a product.

The public opinion [poll](#), conducted by Consumers Union, a nonprofit consumer advocacy group, shows interest in expanding the information available to consumers on food labels. Dr. Urvashi Rangan, a senior scientist and policy analyst at Consumers Union, said in a [statement](#) that the "American public wants to know more about their food, where it comes from, how safe it is, and will vote with their dollars to support highly meaningful labels."

The survey found that by wide margins, consumers are concerned about issues such as harmful bacteria in food, the safety of imported foods, and meat and dairy produced with synthetic growth hormones or genetic engineering. Approximately 95 percent of poll participants wanted clear labels on food products made from cloned or genetically engineered animals. A large majority also agreed that meat and dairy products from cloned animals should be labeled. Nearly 70 percent of respondents believe that cloning of food animals should be prohibited, and nearly six in ten consumers polled are concerned about meat or milk products

from cloned or genetically engineered animals.

The Food and Drug Administration (FDA) recently proposed allowing foods with genetically engineered ingredients to be sold without labels. The Center for Food Safety [estimates](#) that more than 60 percent of processed foods on supermarket shelves — including items such as soda, soups, crackers, and condiments — contain genetically engineered ingredients.

In January, the FDA [determined](#) that meat from cloned animals is "virtually indistinguishable" from meat from their conventional counterparts. *The Washington Post* [reported](#) that executives from the nation's major cattle cloning companies have not been able to keep track of how many offspring of clones have entered the food supply. Hundreds of cloned animals have already been produced for breeders in the United States.

Ninety-five percent of those polled agree that processed or packaged foods should be labeled by their country of origin and labels should be available at the point of purchase. Mandatory country-of-origin [labeling](#) for meat, fish, produce, and peanuts was implemented on Sept. 30. Several loopholes in the labeling rules remain, such as for processed and mixed-ingredient foods, and survey respondents agree that these loopholes should be closed.

According to [Jean Halloran](#), Director of Food Policy Initiatives for Consumers Union, "If a food safety problem is identified in a particular imported product, as happened with jalapeño and serrano peppers from Mexico earlier this year, then consumers will be able to avoid that product."

Two-thirds of survey respondents thought the FDA should inspect food-processing facilities at least once per month. Only two percent said the FDA should inspect facilities every two or more years. The reality is that FDA inspects domestic food production plants every five to ten years, according to Consumers Union and expert [testimony](#) before Congress in July. Despite similar demand for regular FDA inspections of foreign food-processing plants, inspections are even less frequent than at domestic facilities.

The survey also revealed the vast majority of consumers want the government to be able to act quickly in response to a food safety problem with recalls and information to the public. More than 80 percent want the government to be able to quickly and accurately recall food. Almost all respondents agreed (96 percent) that the government should publicly disclose information about schools, healthcare facilities, and other institutions that receive recalled meat. The same proportion of respondents believe that when food safety problems arise, FDA should disclose information on the origin and retailer location of potentially harmful food, as the USDA is currently required to do for meat.

The survey results are being used to counter proposed changes to the organic label requirements for fish. This week, the U.S. Department of Agriculture (USDA) National Organic Standards Board (NOSB) will meet to decide what the USDA "organic" label should mean for fish. The proposed changes to the definition of organic fish would allow the use of [fish food](#) made from wild fish and [open net pens](#). According to food safety [advocates](#), wild fish have the

potential to carry mercury and PCBs, which would then contaminate the farmed fish. The potential for contamination would violate the strict standards behind the organic label.

Farmed salmon is the most prominent industry that would be impacted by the proposed organic rule changes. Salmon cannot be raised on a vegetarian diet; thus, critics of the organic fish standard essentially say the whole concept of organic salmon should be put on hold until researchers develop sources of organic feed, rather than lowering the standards of the USDA organic label. Survey respondents agreed by large majorities that fish labeled organic should be produced from 100 percent organic feed like all other organic food animals.

Additional survey findings show that although 73 percent of those polled regard the overall food supply as safe, nearly half (48 percent) said their confidence in the safety of the nation's food supply has decreased over the last several years. A slight majority of Americans (54 percent) feel the government is doing all it can to ensure food safety.

The Consumers Union designed the poll, which has a sampling error of 3.2 percent. The Consumer Reports National Research Center conducted the telephone survey in October, using a nationally representative sample of 1,001 adults.

TARP Purchases Increasing as Oversight Languishes

As Treasury Secretary Henry Paulson continues to purchase hundreds of billions of dollars in bank equities under the Troubled Asset Relief Program (TARP), oversight of the program remains meager. TARP, as created through the [Emergency Economic Stabilization Act](#) (EESA), gives Paulson wide latitude in selecting firms and individuals to implement the program and equally wide latitude in disbursing the \$700 billion in authorized funds. However, with \$290 billion already committed, two of three oversight institutions created by EESA have yet to be implemented, signaling that oversight and transparency in TARP are second-tier objectives for Congress and the Treasury Department.

Since backing away from the program's original purpose to purchase toxic mortgage-related assets from banks, Paulson has initiated the [Capital Purchase Program](#) (CPP). CPP will inject \$250 billion into the banking system through direct purchases of bank equity. An additional [\\$40 billion of TARP money](#) has been promised to insurance giant AIG. The combination of CPP and the AIG package have committed the Treasury to \$290 billion in expenditures, but Treasury's website indicates that only [\\$149 billion has been spent](#) on transactions involving 29 banks.

Outside watchdog groups have had to step in to provide information about the TARP program because the Treasury Department has done such a poor job in its obligation to release information on how the bailout money is being spent. According to the investigative news source *ProPublica*, Treasury has approved billions of dollars more in bank stock purchases. Tracking news media reports of which firms have been approved for participation in CPP, *ProPublica* indicates that [over \\$175 billion has been promised to over 60 banks](#). The

discrepancies in Treasury's and *ProPublica*'s figures are based on the statute that mandates Treasury report TARP asset transactions. The Treasury Department is required to publish online details on transactions completed, whereas *ProPublica* notes approvals of bank stock purchases. While the difference in the two reporting methods is real and significant, both sets indicate that the federal government has spent well over \$100 billion, yet contrary to TARP authorizing legislation, scant oversight has been conducted.

EESA contains a set of provisions that create several oversight bodies and mechanisms. The first of these is the creation of the Financial Stability Oversight Board (FSOB). The FSOB is composed of the Federal Reserve Chairman, the Treasury Secretary, the Department of Housing and Urban Development Secretary, the Director of the Federal Housing Finance Agency, and the Chairman of the Securities and Exchange Commission. Within days of TARP being signed into law, the FSOB held its first meeting. Since then, it has met two other times to discuss the operations of the program. While the expeditious formation of the FSOB is to be lauded, the second executive branch oversight institution has yet to be implemented: a Special Inspector General for TARP (SIGTARP).

SIGTARP would provide an independent assessment of the execution of TARP and, like other IGs, have the ability to seek evidence and issue subpoenas — the tools necessary to expose any improprieties in the program. As EESA indicates, the president must nominate, and the Senate must confirm, the SIGTARP. And although EESA was signed into law on Oct. 3, President Bush waited over a month to announce his [nominee](#) — Neil Barofsky, an assistant U.S. attorney in the Southern District of New York — for this post on Nov. 14. The Senate Finance Committee held a hearing on Nov. 17 to begin the confirmation process, but after \$155 billion in bank stock purchases and millions of dollars spent to administer the program, SIGTARP will be coming late to the game. Any complaints submitted to SIGTARP or any investigations into alleged misconduct will hinder Congress's ability to conduct oversight. Unfortunately, Congress is also tardy in implementing its own oversight body.

The Congressional Oversight Panel is to be composed of five members appointed by the Speaker of the House and majority and minority congressional leaders. On Friday, Nov. 14, House Speaker Nancy Pelosi (D-CA) issued a [press release](#) stating that the Democrats had selected their three panel members. Republican congressional leadership has yet to announce their selections.

The panel's first report to the relevant congressional committees — on "the use of contracting authority and administration of the program;" "impact of purchases made under the Act on the financial markets and financial institution;" "extent to which the information made available on transactions under the program has contributed to market transparency;" "effectiveness of foreclosure mitigation efforts;" and the "effectiveness of the program from the standpoint of minimizing long-term costs to the taxpayers and maximizing the benefits for taxpayers" — is due Nov. 25. It is doubtful the panel will be able to issue a meaningful oversight report within in the legislated time frame.

Speaking to *The Washington Post*, the Inspector General of the Treasury Department, Eric M. Thorson, called oversight of TARP a "[mess](#)." While EESA gives the Treasury Secretary the ability to suspend certain contracting rules in hiring firms to implement TARP activities, he is still obliged to avoid conflicts of interest and ensure program activities remain above-board. [Contracts](#) for several firms that have been hired to execute TARP are available on the [EESA website](#), yet portions of the contracts — specifically staffing costs — are redacted.

Further, there is little proof that sufficient conflict-of-interest screening has been conducted in the execution of these contracts. Reports indicate that delays in forming the Congressional Oversight Panel were caused by difficulty in finding individuals with the necessary knowledge of the financial industry who would not have conflicts of interest. The reports also suggest that such conflicts are more likely than not to exist. An article in *The New York Times* on the [bevy of lobbyists](#) who are lining up to influence Treasury officials underscores the urgent need for an independent oversight body.

Despite the lack of EESA-mandated oversight institutions, Congress has already begun holding hearings on the implementation of TARP. Last week, on Nov. 13, the Senate Banking Committee conducted a hearing entitled "[Examining Financial Institution Use of Funding Under the Capital Purchase Program](#)." Committee chairman Sen. Christopher Dodd (D-CT) and his fellow committee members questioned executives of CPP-participating banks on their use of TARP funds. The following day, the House Committee on Oversight and Government Reform Subcommittee on Domestic Policy held a [hearing](#) to determine if TARP was, as specified in EESA, working to mitigate foreclosures. Bipartisan ire was raised at Treasury Assistant Secretary Neel Kashkari as lawmakers questioned Treasury's emphasis on assisting banks over homeowners. In addition, in late October, House Committee on Oversight and Government Reform Chairman Henry Waxman (D-CA) sent [letters](#) to the eight banks that received the first cash installment of CPP, inquiring after executive compensation.

The blog [BailoutSleuth](#), which has also been tracking TARP activities, notes that some banks participating in CPP have [increased their dividend payments](#) to shareholders, essentially passing taxpayer funds to the wealthier corners of the economy that receive dividend payments rather than increasing the liquidity of the banking system.

With the first tranche nearly exhausted — the first \$350 billion of the \$700 billion originally authorized by Congress — both the executive and legislative branches have yet to implement the systematic oversight that was written into EESA. Unsurprisingly, there are already [allegations](#) that banks are not using TARP funds for their intended purposes. Implementation of the program remains opaque, and if the experience of congressional Democratic leadership's Congressional Oversight Panel selection is an indicator, the federal government must remain vigilant of conflicts of interest in TARP. Disturbingly, hasty writing and passage of EESA has not been matched with equally quick action on enacting its oversight institutions.

Unemployment Insurance in Need of Overhaul

As the anticipated severity of the recession increases and unemployment estimates for 2009 reach as high as eight percent, Congress is under increased pressure to enact an extension of unemployment insurance (UI) benefits, perhaps as early as the current lame-duck session. Yet a broader overhaul of the UI program is needed to improve this important safety-net program for American workers.

Recent economic data certainly support action by Congress to extend current benefits. On Nov. 7, the Bureau of Labor Statistics (BLS) reported an October unemployment rate of 6.5 percent, marking a 14-year high. That week also saw initial weekly jobless claims rise to 516,000, the largest since the weeks after the Sept. 11 attacks.

Extension of UI benefits is a common tool used by Congress to help alleviate hardship during economic downturns. During the past five recessions, Congress has temporarily extended federal unemployment benefits under the Emergency Unemployment Compensation (EUC) program. The EUC program provides an additional 13 weeks of jobless benefits to all workers who exhaust their 26 weeks of state benefits, ensuring that those who are hardest hit by economic downturns receive necessary assistance. Not only are the benefits of the EUC program set to expire in March 2009, but with this recession predicted to be especially severe and prolonged, there is a need for even larger extensions of UI benefits.

Before Congress recessed for the fall elections, the House did pass legislation to extend UI benefits. The Unemployment Compensation Act of 2008, which passed the House on Oct. 3 by an overwhelming vote of [386-28](#), would provide 20 weeks of benefits for long-term jobless workers in all states (up from 13 weeks) and 33 weeks of benefits for workers in high-unemployment states (those states where unemployment rates exceed six percent). This legislation is essential in avoiding the disruption or discontinuation of assistance to jobless workers. Those who exhausted their benefits in October cannot collect insurance retroactively, meaning they cannot collect benefits for those weeks in which they received no assistance, thus making debt traps and poverty much more likely.

The Senate did not consider the House legislation, nor did it take up legislation addressing the extension of UI benefits before the recess. But Senate Majority Leader Harry Reid (D-NV) hopes to pass legislation during the lame-duck session of Congress that includes a UI extension. On Nov. 17, Reid, along with Sen. Robert Byrd (D-WV), introduced the Economic Recovery Act of 2008, a \$100.3 billion economic stimulus and recovery package. Included in this legislation is an extension of UI benefits for seven weeks in all states and up to 13 weeks in high-unemployment states.

Although current conditions warrant this action by Congress, a larger overhaul of the UI program is desperately needed. The UI program was first created in 1935 by President Franklin D. Roosevelt to address the needs of unemployed families in the midst of the Great Depression. But changes in our economy and workforce demographics over time have increased the need to

modernize the program.

Recent studies have shown that the UI system currently in place fails to meet the demands of the changing economy. Because the UI program is antiquated, there are many workers who end up falling through the cracks. According to *Helping the Jobless Help Us All*, a [new report](#) released by the Center for American Progress in conjunction with the National Employment Law Project, only around 37 percent of unemployed workers actually collect benefits, with certain populations, such as low-wage, part-time and female workers, particularly burdened by state eligibility rules that are outdated. In addition, states do not have adequate funding to provide the basic services needed to those applying for unemployment benefits — the average worker receives only \$293 a week in benefits, replacing only 35 percent of the average weekly wage. Further problems, such as administrative issues and staffing shortages, create a mismatch between the number of people who need help and the number who actually receive it.

The Unemployment Insurance Modernization Act (UIMA), which passed in the House in 2007, would provide \$7 billion to states that reform their systems. It encourages states to adopt the "alternative base period" (ABP), which counts the last three- to six-month wage period so that low-wage workers are not shut out from receiving benefits. Once states adopt the ABP method, they can receive their federal incentive payments. Also, the proposed law would automatically provide all states with \$500 million to address the administrative needs of maintaining an efficiently run UI system that will better process the growing number of UI applications. UIMA payments to states will also help to offset the low unemployment-trust reserves by infusing local economies with resources.

Recent recessions have demonstrated that unemployment may not reach its peak until well after the recession has ended, and even then, labor-market recoveries are generally slow. The need to reform the UI program to ease the suffering of struggling workers and provide states with sufficient funding is critical. As the effects of this recession become more pronounced, and unemployment rates continue to rise, passage of extension of the current program will merely be a stop-gap solution. True reform of the UI system will be needed to create a more efficient and effective safety net for the nation's unemployed workers in the long run.

Study Says Nonprofits Help, Not Hinder, the War against Extremism

On Oct. 30, the Fourth Freedom Forum and Kroc Institute for International Peace Studies at the University of Notre Dame released [Friend Not Foe: Civil Society and the Struggle Against Violent Extremism](#). The report urges countries, including the United States, to move away from counterterrorism measures (CTMs) that harm nonprofits and do not improve security. The report also calls on nonprofits to be more proactive in countering misinformation and shaping policy alternatives.

According to the report, civil society groups "help to advance international norms and treaties on behalf of an array of important causes, including human rights, the environment, development of democratic governance, and conflict prevention." They are an essential piece of the complex web of connections that bridge nations, foster healthy relationships, and aim to ease current and future tensions that plague many parts of the world. As a result, the report says the U.S. must lead the world in formulating CTMs that do not curtail the civil liberties and human rights of the very groups that can curtail extremism.

The report cites adverse effects CTMs have on civil society, including the use of national security as a pretense to limit dissent or carry out human rights abuses. It notes that "In Sri Lanka, Colombia, the Palestinian Territories, Somalia and other zones of conflict, peace and reconciliation groups are sometimes seen by governments as political adversaries...." In the U.S., the PATRIOT Act has permitted draconian policies that stifle humanitarian aid, advocacy, and the legal process. In addition, the report says the U.S. Department of Treasury's Risk Matrix for charities unfairly targets groups that assist with creating social, economic, or environmental changes in conflict zones. Instead of embracing these groups as the "means of overcoming conditions conducive to violent extremism," the federal government and other institutions have singled these organizations out "as high risk and ... more difficult to fund."

According to the report, American policy on combating terrorism should acknowledge that nonprofit groups often work in the world's humanitarian disaster zones. It recommends that governments have "sunset clauses in all counterterrorism and emergency security measures" and work with civil society groups in "the process of reviewing and assessing the effectiveness and impacts of such measures before they are reenacted." Standards for such assessment are available in a report, [*Defending Civil Society*](#), by the International Center for Not-for-Profit Law. These criteria are based on widely accepted legal conventions and include:

- The right to entry, defined as the freedom to associate and form organizations;
- The right to operate without unwanted state interference;
- The right to free expression;
- The right to communicate and cooperate freely, internally and externally;
- The right to seek and secure resources; and
- The right to have these freedoms protected by the state.

Another resource for reform cited in the report is the [*Global Counter-Terrorism Strategy*](#) embraced by the United Nations General Assembly in 2006, which recommends protecting human rights and sustainable development as a means of thwarting terrorism. This expands counterterrorism strategy beyond a strictly military paradigm to acknowledge the complex challenges terrorism poses. According to the report, "military means alone cannot deter a shadowy force of nonstate fighters," and defeating terrorist threats requires "a range of complex political, economic and social responses that go beyond and in many cases are incompatible with the use of armed force."

Although the report is critical of many governmental approaches to fighting terrorism, it also says that "civil society groups and the development community generally have not engaged

sufficiently in the public debate over counterterrorism strategy and the proper approach to overcoming violent extremism ... It is imperative that civil society groups mobilize to protect their operational space and advocate more effectively on behalf of rights based development." To accomplish this goal, the report suggests an international network that will:

- Agree on a set of principles and policy recommendations;
- Develop a coordinated advocacy campaign for reforms;
- Reframe the debate, rebut false claims, and raise public awareness of the problem; and
- Support reasonable transparency and accountability measures.

Nonprofits to President-elect Obama: Strengthen the Sector

Now that the election is over, nonprofits are encouraging the incoming administration to take action that will strengthen the sector with capacity building, incentives for giving, and policies that encourage service and protect the integrity of the sector. Many organizations, including OMB Watch, are also making policy recommendations in their areas of expertise, ranging from education to transparency to health and safety protections.

The Starting Point: Obama's Campaign Commitments

With a former community organizer as president-elect, nonprofits have high hopes that they will find a White House that is sympathetic to their needs and goals. This is especially true in a time of financial instability when government needs civil society to help address community needs. President-elect Barack Obama has [promised](#) to invest in the nonprofit sector, expand youth involvement in service programs, and expand the Corporation for National and Community Service and Peace Corps. BarackObama.com states, "Obama and Biden will expand AmeriCorps from 75,000 slots today to 250,000 and they will focus this expansion on addressing the great challenges facing the nation."

During his campaign, Obama proposed the creation of a [Social Investment Fund Network](#) "to use federal seed money to leverage private sector funding to improve local innovation, test the impact of new ideas and expand successful programs to scale." In addition, he promised to create a Social Entrepreneurship Agency for Nonprofits within the Corporation for National and Community Service, which will be dedicated to building the capacity of the nonprofit sector. The Sept. 11 issue of [TIME](#) stated Obama's goals for national service: "We need to invest in grass-roots ideas, because the 'next great innovation' usually doesn't come from government. So I'll create a Social Investment Fund Network and bring together faith-based organizations and foundations to expand successful programs across the country."

Obama acknowledges some of the problems facing nonprofit leaders, such as insufficient federal support. In [July](#), Obama criticized lack of funds for social services and outlined how he would alter the faith-based initiative, promising to bar religious discrimination in hiring for federally funded positions.

Proposals to Strengthen and Protect the Nonprofit Sector

A report from the Johns Hopkins University Nonprofit Listening Post Project, titled [*Nonprofit Policy Priorities for the New Administration*](#), provided results of a survey on priorities within a subsection of the nonprofit community. The survey asked what a new administration could do to help nonprofit groups and their clients handle the economic crisis. The results were based on 448 responses from nonprofit executives, heavy on human services providers, resulting in a list of four specific priority measures:

- "Growth of funds for their field in the federal budget;
- Expansion of tax incentives for individual charitable giving;
- Federal grant support for nonprofit training and capacity building; and
- Reform of reimbursements under Medicare, Medicaid, and other federal programs to ensure that they cover the real cost of services."

Survey respondents also strongly supported preserving the estate tax and strengthening recruitment of nonprofit workers.

Diana Aviv, chief executive of Independent Sector, called on Congress to create a "Small Nonprofit Administration" when she [*testified*](#) before a House subcommittee in 2007. An [*article*](#) in the *Chronicle of Philanthropy* (subscription required) addresses this proposal: "Something akin to a Small Business Administration for nonprofit groups, a move that would acknowledge the financial clout of the charitable world and its status as a lead player in solving social problems. Others question whether new government programs would really help improve charities' operations — or would instead stifle nonprofit organizations' independence and invite further regulation."

The Center for American Progress Action Fund and the New Democracy Fund recommend that the Obama administration create a White House Office of Social Entrepreneurship to draw attention to the significant role nonprofits and social entrepreneurs play in solving societal ills. This proposal differs from Obama's in that the office would be located within the White House instead of the Corporation for National and Community Service. The proposal was included in [*Change for America: a Progressive Blueprint for the 44th President*](#). According to the [*Chronicle of Philanthropy*](#) (subscription required), it also includes an "Impact Fund" at the Corporation for National and Community Service to help nonprofit groups collect data and better evaluate their success.

The Charity and Security Network, coordinated by OMB Watch, has proposed changes in national security and counterterrorism laws that have created barriers to nonprofit operations or that have been used to discourage dissent. These [*recommendations*](#) seek to update laws to address these barriers, ensure that frozen funds of designated terrorist organizations are used for charitable purposes, and increase government oversight over the impact national security laws have on humanitarian aid, development, and charitable programs.

Independent Sector has also put together a strong set of draft recommendations for the next administration and Congress. The platform, designed "to strengthen the ability of Americans to improve our communities and our world through nonprofit organizations," includes:

- Ensure adequate resources and fair and responsible fiscal policies to support vital programs that sustain, protect, and strengthen communities.
- Preserve and expand policies that help Americans give back to their communities.
- Ensure that nonprofits have the capacity and capital to serve the needs of our communities.
- Protect the rights of Americans to speak out through nonprofit organizations.
- Ensure that Americans are able to continue vital charitable work throughout the world without unduly jeopardizing their safety or their civil rights.
- Support funding and policies that provide for transparency and accountability to ensure integrity and public trust in our institutions.

Recommendations to Support Nonprofits' Public Interest Mission

Nonprofits are actively working to make sure their issues are on the Obama administration's agenda. For example, [Every Child Matters](#) (ECM) and other children's organizations plan to work with the administration and Congress to gain new federal investments in children, youth, and family services. During his campaign, Obama [proposed](#) numerous initiatives to protect children and strengthen families. ECM will urge Obama to make spending on children and families a priority in his budget. The Change for America document has proposals in numerous issue areas, including domestic, economic, and national security policy. Before the election, the [American Constitution Society for Law and Policy](#) released a package of proposals, which include two dozen papers covering a range of law and justice policy areas.

Nonprofits are being proactive and working diligently to develop consensus on various issues in preparation for January. OMB Watch convened a group of hundreds of individuals and organizations to put together recommendations on government openness, information, and other transparency issues. The [21st Century Right to Know Recommendations](#) stress the need for the Obama administration and Congress to effectively use modern Internet technologies. The recommendations fall into three categories: National Security and Secrecy; Usability of Information; and Creating a Government Environment for Transparency.

In addition, to develop regulatory reform recommendations, OMB Watch organized a steering committee of regulatory experts to put forth [a consensus document](#) that reflects what it sees as the most important regulatory process issues for the president-elect and Congress. For more on these and other recommendations, see [Renewing Government: Recommendations to President-elect Obama and the 111th Congress](#).

The Ongoing Oversight Role of Nonprofits and Civil Society

Shortly before the election, Pablo Eisenberg wrote an [opinion piece](#) for the *Chronicle of Philanthropy* (subscription required) that says, "Nonprofit groups have the obligation to

monitor, criticize, and, at times, oppose government efforts that are considered inappropriate or inadequate." Eisenberg goes on to call on nonprofits to "[m]aintain a strong advocacy role." He also urges these organizations to not "forget that one of the important missions of nonprofit organizations is to hold any administration and the federal government accountable and to fight against programs they deem harmful to their constituents."

The *Chronicle of Philanthropy* has a number of resources on what nonprofit groups would like to recommend to the next administration. One [article](#) (subscription required) discusses the results from interviews of charity officials and experts, asking what the new president can do to strengthen philanthropy. The results included support for federal assistance to nonprofits, working with charities on issues such as health care, encouraging and stimulating giving both domestically and overseas, requiring service for all students, reforming rules on charity solicitors, and much more.

One website has been set up, WhiteHouse2.org, which allows anyone to add his or her own content and express opinions on what Obama's priorities should be for his first 100 days. It adds up everyone's priorities and creates one list on the homepage of the top 25 recommendations. Change.org also has an online tool targeted toward transition recommendations. Change.org is asking people for their ideas, and the top suggestions will be submitted to the administration on Inauguration Day.

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