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White House and Federal Agencies Could Manage Effects of Automatic Spending Cuts in Early 2013

The White House and federal agencies have multiple tools to temporarily postpone most of the impacts of across-the-board spending cuts, known as "sequestration," scheduled to take place on Jan. 2, 2013, if budget talks during the congressional lame-duck session break down, according to [a new OMB Watch analysis](#) released Nov. 2.

The cuts were included as a backstop and enforcement mechanism in the Budget Control Act of 2011, which included \$1.5 trillion in immediate spending cuts, but also directed Congress to enact another \$1.2 trillion in deficit reduction measures by early 2012. If Congress failed, the Budget Control Act achieved the same \$1.2 trillion in deficit reduction through across-the-board spending cuts, with \$109 billion imposed in 2013 starting in January.

Sequestration was technically triggered when Congress failed to reach an agreement by Jan. 15, 2012, but because the cuts do not begin until 2013, Congress really has until the end of this year to enact new legislation that would cancel or delay the cuts. The chances of that happening, however, are decreasing by the day.

The odds of a budget impasse occurring if President Obama is reelected, and the House continues to be controlled by Republicans in a status-quo election, are high. The two sides are deeply divided over continuing Bush-era tax cuts for the wealthy. Reaching an agreement in November and December will be especially difficult. Republican leaders are unlikely to be able reach across the aisle when they are facing leadership elections in early January. Moreover, there may not be enough time to reach an agreement before the end of the year.

If sequestration occurred and lasted for the rest of the year, it could trigger a recession in early 2013, according to an August analysis by the nonpartisan Congressional Budget Office. Few budget analysts expect sequestration to last that long, however. A more likely outcome is that a budget deal would be struck in early 2013, a major component of which would be retroactive cancellation of sequestration.

A major reason for this is that the politics of reaching a balanced budget agreement become more favorable in January. Most Republicans (and a few Democrats) in Congress have signed a pledge issued by Americans for Tax Reform, an organization led by Grover Norquist, not to raise taxes. Before Jan. 1, any package that extended tax cuts for the middle class, but did not extend Bush-era tax cuts for the wealthiest Americans, would be labeled a tax increase. After Jan. 1, however, that same tax package would be a tax cut. Politically, it would be difficult to oppose a budget package in January that included tax cuts for middle- and working-class Americans and retroactively canceled sequestration.

A key question is: how would the executive branch handle a temporary sequester that lasted for a few weeks in January? One answer is that a substantial portion of federal spending is exempt from sequestration.

A partial list of exempt programs includes: Social Security benefits (old-age, survivors, and disability), all programs administered by the Department of Veterans Affairs (VA), military personnel spending (subject to the president's approval, which he has provided), interest on the federal debt, refundable tax credits, and a variety of low-income programs, including Temporary Assistance for Needy Families (TANF), food stamps (the Supplemental Nutrition Assistance Program, or SNAP) and child nutrition programs, mandatory funding under the Child Care and Development Fund, Medicaid, the Children's Health Insurance Program (CHIP), foster care, and the Supplemental Security Income (SSI) program. However, administrative expenses for these programs are subject to sequestration.

Still, many other programs would remain vulnerable to cuts ranging from eight to 10 percent, according to an early analysis released by the Office of Management and Budget (OMB) in September. Those cuts need not be imposed immediately, however.

According to OMB Watch's new analysis, the White House and executive branch agencies have the power to manage, mitigate, and postpone the negative effects of sequestration for several weeks if they choose. These strategies include:

- ***Controlling the Rate of Federal Spending:*** Once funds have been appropriated by Congress, it is up to the executive branch to decide how to spend that money throughout the year. OMB has authority, called apportionment, which enables it to accelerate spending for programs as needed in early 2013 to offset the impact of sequestration for a short period of

time.

- ***Using Carryover Funds to Help Cushion the Impact:*** Federal agencies have the ability to manage their own finances to save money early in the year and carry those savings over to later in the year. Some federal programs, such as highway programs, have funds that they carry over from year to year that are not subject to sequestration that can help cushion the impact of a sequester for those programs.
- ***Redirecting Funds to More Urgent Program Activities Early in the Calendar Year:*** Federal agencies have limited authority to redirect cuts within their budgets away from sensitive areas of spending to other areas that may be less sensitive in the first few weeks of the year.
- ***Accelerating Funding to Avoid Federal Employee Furloughs and Layoffs:*** Military personnel are exempt from sequestration. For civilian personnel, Congress has given agencies authority to accelerate funding to prevent furloughs and reductions in force (RIFs).
- ***Delaying the Announcement of New Federal Contracts:*** Existing contracts are largely immune from sequestration, and the administration has indicated that it will work to minimize the effects on those existing contracts that may be affected. However, new contract announcements may be delayed at the beginning of 2013.
- ***Delaying the Announcement of New Federal Grants and Prioritizing Existing Grants:*** Existing grants carried over from 2012 are largely immune from sequestration. Continuation grants in 2013 may be affected at the time they come up for renewal, but they may be prioritized by federal agencies over new grant awards, which may be delayed until later in the year.
- ***Delaying Sequestration for Education Programs:*** Most education funding to the states (such as Title I) is advance-funded. The administration has already indicated that advance-funded education programs will not be affected by sequestration until July.

The administration's authority to mitigate sequestration is not unlimited. It depends on sequestration lasting a relatively short period of time – perhaps no more than a month – and on the president and Congress agreeing to cancel it retroactively to the beginning of the year.

Still, if it is triggered, the worst effects of sequestration may be avoided temporarily – long enough for Congress to consider alternatives to a bad budget deal forced upon them by unreasonable fears of what might happen on Jan. 2.

Hurricane Sandy Highlights Role of Government Information in Our Everyday Lives

As the country continues to recover from the devastating effects of Hurricane Sandy, one lesson is already clear: government information plays a vital role in Americans' everyday lives, whether they realize it or not. Information created, collected, and disseminated by government agencies alerted the nation to the storm, tracked its every move, and helped millions of Americans to prepare.

Sandy's tragic impact – [more than 113 people dead](#) in the U.S. and perhaps [\\$50 billion in economic losses](#) – is a poignant reminder of the immense and complex power of nature. We have made tremendous strides in predicting natural disasters, such as hurricanes, and informing those in harm's way so they can take shelter. Many of those lifesaving advances have come as a result of government research and technology, and future progress will depend on continued public investments.

However, ensuring that government agencies have adequate resources to successfully execute their missions is only one part of the equation in ensuring that the American people have the information they need. *How* government operates also matters. Embracing openness and innovation is also an important part of delivering the information that people need to protect themselves and their families.

Weather Forecasts Rely on Government Data

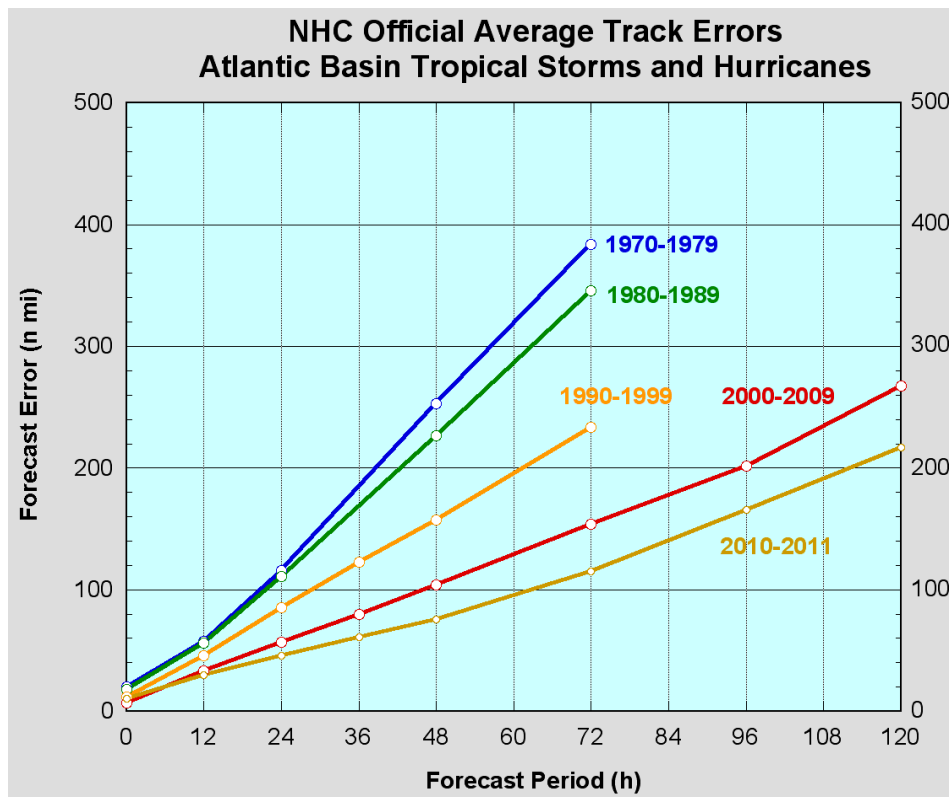
The forecasts that first alerted the public to the threat of a storm rely heavily on government data:

1. Government satellites and airplanes collect the data on the storm's strength and condition.
2. Then, government scientists develop and apply the models that predict where the storm will go.
3. Finally, a government agency, the National Oceanic and Atmospheric Administration's (NOAA) National Weather Service, provides that information to the public.

Some Americans receive those forecasts directly from the government via [Weather.gov](#). Others get the news through private intermediaries such as the Weather Channel, local TV and radio stations, or smartphone apps. They may not realize that they are using government information, but regardless of how they get it, the data and predictions all start with government.

Agencies Delivering Better Information, Easier Access

Because of the clear importance of this data to millions of people each year, the government agencies involved have made continual efforts to improve the accuracy of these forecasts. The improvements made in recent decades have likely saved untold lives and considerable economic losses. Predicting the direction of a hurricane is three times more accurate than in the 1970s. Less uncertainty about where a hurricane will go means that costly and disruptive evacuations can be focused on areas that will actually be affected. By more narrowly targeting evacuations, "the improved hurricane forecasts between 2000 and 2006 resulted in [savings of \\$3 billion](#) compared to what the forecasts of the 1990s would have cost," according to the Weather Underground's Jeff Masters.



click image to enlarge

In addition, the weather service has taken recent steps to make its information more accessible to citizens. In July, the agency [launched a redesign](#) of Weather.gov and its mobile-optimized website. The agency [conducted usability testing](#) to identify issues, then updated the design to make it easier for the public to navigate. Additionally, in April, the agency adopted a new policy that explains when and how the agency will [develop mobile services](#).

Effective Forecasting Requires Continued Investments

Agencies' efforts to provide the public with accurate storm predictions depend on continued public funding. However, with tight budgets and a sluggish economy, the prospects for the needed funding remain uncertain.

One area of particular concern are the satellites that NOAA uses to observe storms and weather conditions, providing more than 80 percent of the data used in hurricane prediction models. In the coming years, those satellites are predicted to fail before their replacements are launched, which could leave a gap of [a year or more without their data](#). Without that data, storm predictions could be less accurate by half. Experts have faulted lack of funding and management problems for the expected gap.

While the agency is planning a response to the problem, Congress has not been cooperative. The Center for American Progress's Scott Lilly notes, "When Republicans retook the U.S. House of Representatives in 2010, [they made deep cuts](#)" in the weather satellite program. Looming sequestration could slash the program by a further \$182 million, Lilly writes. Even greater cuts would

come under the proposal by House Budget Committee Chair Paul Ryan (R-WI), at perhaps [\\$250 million](#).

Government Warns Those in Harm's Way

Government also plays a central role in informing those in harm's way of the impending threat. The Federal Emergency Management Agency (FEMA) manages the [Integrated Public Alert & Warning System](#), the infrastructure for delivering such alerts to the public, including through:

- The [Emergency Alert System](#), which allows governments to send emergency information through TV and radio stations;
- [NOAA Weather Radio](#); and
- The [Commercial Mobile Alert System](#), which lets governments send free text alerts to mobile phone users in a particular geographic area. New York City [used this system](#) during Hurricane Sandy. By 2014, most phones sold should be able to receive the messages.

Government also delivers emergency information through online services. For instance, [FEMA has notably embraced social media](#) for informing the public. Many governments also offer customizable text alert systems, such as [Alert DC](#), which can provide information on emergencies, as well as situations like street closures and water outages.

By providing emergency information openly, government makes it possible for others to reuse the information and relay it further. For instance, Google quickly integrated public information about Hurricane Sandy into its [Public Alerts](#) system.

Rachel Haot, New York City's Chief Digital Officer, commented, "[Open data is critical in crisis situations](#) because it allows government to inform and serve more people than it ever could on its own." And as O'Reilly Media's Alex Howard pointed out, "When natural disasters loom, [public data feeds can become critical infrastructure](#)."

Knowing How to Mitigate the Effects of the Next Storm

The information on hurricanes and other weather patterns doesn't just help the public prepare for each individual storm – it can also help cities, states, and regions to better prepare for all storms. Many attribute the increased number and severity of recent storms, especially hurricanes, to climate change and rising sea levels that magnify the impacts on shoreline communities. The expectation of more such extreme storms raises the question of what should be done.

The New York State Sea Level Rise Task Force issued a [2010 report](#) to the state legislature that noted a number of possible actions to respond to higher sea levels and the more severe storm impacts, including storm surge barriers and elevation and relocation of critical infrastructure. The report also stressed the "tremendous need for new and updated information to make decisions," such as high-resolution elevation maps, storm surge models, shoreline infrastructure inventories, and FEMA flood studies.

New York Governor Andrew Cuomo (D) established as a goal not just recovering from the storm but improving infrastructure, [saying](#), "The challenge is not just to build back but to build back better than before." This may be a difficult and expensive prospect. An [October 2012 survey](#) found that while some states and cities are beginning to make such plans, none are adequate or far along. The survey identified the primary barriers to better adaptation as the lack of funding, legal impediments, and informational limits of predicting local effects of climate change.

Another Need in the Aftermath of Sandy: Toxic Soup Testing

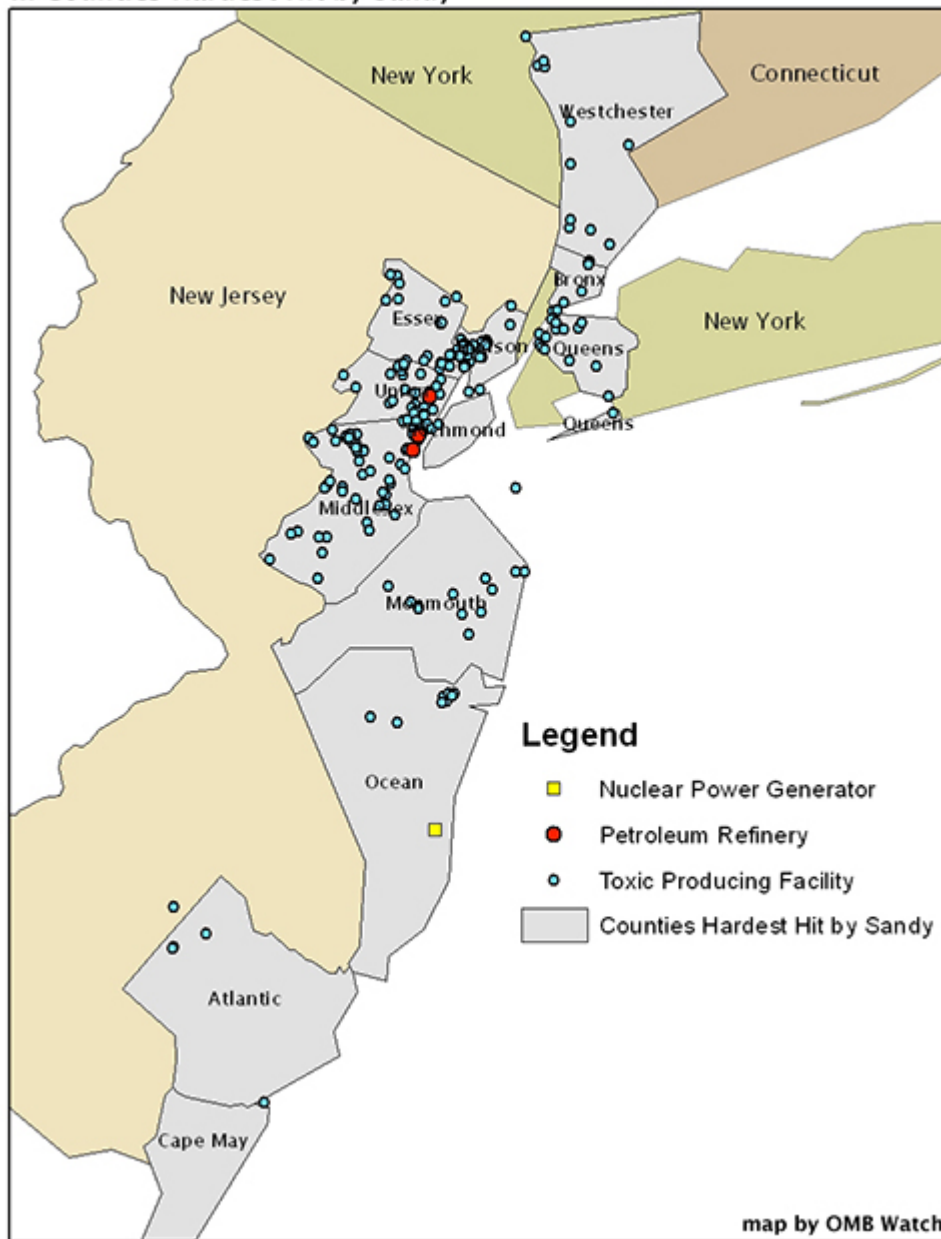
In Hurricane Sandy's aftermath, government agencies have acted quickly to save lives and restore power and other basic essentials for those impacted by the storm. As recovery continues, federal and state agencies will be addressing another growing problem: the noxious materials such as oil, toxic chemicals, and raw sewage that the storm has released into waterways. The health of residents and first responders will depend on knowing what's around them so they can take proper precautions and mitigate risks.

Hurricane Damage

Hurricane Sandy smashed and flooded entire communities across several mid-Atlantic and Northeast states, with particularly severe damage to the coastline of New Jersey and New York. The impacted region is a heavily populated and industrialized one. At least [113 people](#) were killed in the United States and more than [eight million](#) homes and businesses lost power. The estimated costs for recovery have ranged as high as \$60 billion so far. The storm also spilled dangerous materials into various bodies of water, potentially threatening the health of residents already dealing with the more direct damages from the disaster.

New Jersey is a center of chemical manufacturing in the U.S., and the eight New Jersey counties hardest hit by the storm contained 178 facilities that generated enough toxic waste each year to have to report to the Toxics Release Inventory (TRI) program. These facilities reported over one hundred million (106,897,503) pounds of toxic waste in 2010. New York contains 36 facilities in the Bronx, Queens, and Westchester County, and they reported another 867,865 pounds of toxic waste released in 2010. These facilities include paint and coating companies, iron and steel mills, petroleum refineries, chemical product companies, and metal container companies, to name a few.

Nuclear, Petroleum, and Toxic Producing Facilities in Counties Hardest Hit by Sandy



[click to view interactive map](#)

Oil Spills

Six large oil refineries were located in the hurricane's path, [according to Reuters](#) reports. Together, these refineries process about 1.19 million barrels of oil per day, or around seven percent of the total U.S. capacity. The six refineries shut down during the storm, and two of the six were not operating two days later. The biggest refinery in the area, the Philadelphia Energy Solutions refinery, was running at a minimum level (not at its full 330,000 barrels per day capacity).

New Jersey has identified at least one major petroleum spill so far. Over [300,000 gallons of diesel fuel](#) spilled into the waterway separating New Jersey and Staten Island, NY. The spill occurred after a tank

ruptured at a storage facility, owned by Motiva Enterprises LLC, a joint venture of Shell and Saudi Refining Inc. The National Oceanic and Atmospheric Administration (NOAA) reports that the spill included diesel, bio-diesel, and slop oil.

Prior hurricanes, such as Katrina and Rita in 2005, provide us with some sense of what can happen when an oil spill occurs during a hurricane. Both Katrina and Rita caused a [total](#) of 17,652 barrels (or roughly three-quarters of a million gallons) of petroleum products (including 13,137 barrels of crude oil and condensate and 4,514 barrels of refined petroleum products) to spill from platforms, rigs, and pipelines. About 7,300 of those barrels of crude oil and condensate spilled directly into the Gulf of Mexico.

While initial reports indicate that oil spills have been limited in the aftermath of Hurricane Sandy, the totals could rise.

Sewage and Chemicals

Raw sewage and other pollutants, including industrial chemicals, poured into New York City waterways as a result of the extensive flooding. [Five of New York City's 14](#) wastewater treatment plants were located within the mandatory evacuation zone. Many of the plants filled to capacity or flooded, which dumped a mix of sewage and storm water directly into rivers, flooded streets, and buildings. The New York City Department of Health & Mental Hygiene advised residents to avoid ["direct contact"](#) with several waterways, including the Hudson River, East River, New York Harbor, Jamaica Bay, and the Kill Van Kull.

The storm caused "widespread pollution of the Hudson River and New York Harbor by a variety of toxic chemicals, including petroleum and fluids from cars and boats; contaminants from flooded subways, roads, parking lots and tunnels; and contaminants washed from shoreline industrial sites, as well as commercial and residential buildings," [said](#) Riverkeeper, a New York-based clean water advocacy group. "Oil sheens and debris have been observed – everything from 55-gallon drums and quart-sized containers of transmission fluid, to wrecked boats and swamped vehicles with leaking fuel tanks," the group noted.

Government officials [have told](#) residents to stay away from potentially toxic sites, such as the Gowanus Canal Superfund site in Brooklyn and the Newtown Creek Superfund site (a waterway that separates Brooklyn and Queens). Superfund is the federal government's toxic waste clean-up program. The U.S. Environmental Protection Agency (EPA) listed the 1.8-mile Gowanus location as a clean-up site because of industrial pollution and sewage discharges. A city councilmember for Gowanus, Brooklyn sent an e-mail to constituents about the dangers of coming into contact with any water or debris that flooded from the canal, but many neighborhood residents do not have Internet service as a result of the storm. A more systematic warning to residents may be needed.

Greenpoint, Brooklyn (a few blocks from the Newtown Creek Superfund site) is already considered one of New York City's most polluted neighborhoods, with several industrial facilities including metal working and pencil manufacturing. In the aftermath of the storm, residents have complained that industrial waste from these facilities has flooded into basements. "Toxic chemicals are a long-term

concern," acknowledged Brian Coleman, who runs the Greenpoint Manufacturing and Design Center, one of the local industrial sites that flooded.

Nuclear Plants

Of the 104 U.S. nuclear reactors in the United States, thirty-four were in the storm's path, including the Indian Point 3 plant along the banks of the Hudson River 25 miles north of New York City. Twenty-four active reactors "survived the storm without any incident," according to the [Nuclear Energy Institute](#). Seven reactors had been closed for maintenance prior to the storm, and three were shut down completely in anticipation of the storm.

Prior natural disasters, such as Hurricane Irene and the tsunami that debilitated Japan's Fukushima-based nuclear reactor in 2011, have led to calls for increased nuclear safety requirements. Critiques contend that nuclear reactors are not fully equipped to handle increasingly severe storms. Oyster Creek, which is America's oldest nuclear facility and located in New Jersey, was closed for maintenance before the storm. If the plant had been generating power, and the flood waters had risen six inches higher, the storm could have knocked out the pumps and triggered a disaster, according to [Arnold Gundersen](#) of Fairewinds Energy Education Corp., a nonprofit educational foundation that promotes public understanding of nuclear power and safety related issues.

Recommendations

As the weather becomes increasingly volatile, both federal and state agencies are going to need to plan for emergencies of this magnitude and for the public health and safety issues that will follow in the wake of such natural disasters. This will involve environmental testing, cleanup, health monitoring, and citizen education, as well as rebuilding. The New York State Department of Environmental Protection stated in an [Oct. 31 press release](#) that water quality will be monitored as cleanup goes forward. Here's what we assume we will see in the coming days and weeks:

- *Environmental Testing:* We anticipate that agencies will be conducting comprehensive environmental testing to determine the nature and extent of environmental health hazards. Testing will need to include air, water, and soil sampling and should be designed to track down toxic hot-spots, such as Superfund sites. Government officials should involve citizens and community experts in the process; timely testing may require the use of independent experts.
- *Cleanup:* We assume agencies will be working to oversee and assist in cleaning up all the identified sites of toxic and hazardous contamination. ([See map above.](#)) We assume Governor Chris Christie (R-NJ), Governor Andrew Cuomo (D-NY), and Mayor Michael Bloomberg (I-New York City) will be working with the companies whose materials contributed to storm-related chemical releases, asking them to help with cleanup and requesting financial assistance in this effort. Residents and workers should not be allowed to return to contaminated sites until the sites have been inspected and their safety is assured.
- *Educating Citizens:* Local officials should be communicating known health hazards to recovery workers and returning residents through all available means. Health warnings, symptoms to

watch for, and steps to take should be disseminated broadly via print and broadcast media. Protective equipment, with instructions on appropriate usage, should also be made available to first responders, clean-up crews, and any residents involved in debris removal and rebuilding.

- *Health Monitoring:* We anticipate that public health agencies will be tracking the health effects of exposure on recovery workers and returning residents at regular intervals over time. The data collected should be publicly available and released in regular intervals (every six months or so). Individuals and communities should have access to their own health monitoring results.
- *Rebuilding:* Residents and community leaders should be encouraged to participate in decisions about how to rebuild damaged communities to mitigate future disasters. As these conversations occur, we expect public officials to fully enforce all environmental, workplace, and health standards as rebuilding plans move forward. We recognize that this is sometimes difficult, as hard-pressed residents want their lives to return to normal as quickly as possible. However, without these protections, more short- and long-term health problems can be expected in the future.

Anti-Regulatory Bill Would Limit the SEC's Ability to Protect Investors

A pending anti-regulatory bill that targets independent regulatory agencies would significantly curtail the Securities and Exchange Commission's (SEC) ability to protect investors from financial fraud and other economic hazards. The [Independent Agency Regulatory Analysis Act of 2012](#) (S. 3468) would require independent agencies to conduct formal cost-benefit analyses for all significant rules and would allow the Office of Information and Regulatory Affairs (OIRA) to review those analyses. This would cause lengthy delays in implementing the financial oversight contained in the Dodd-Frank law. The Senate Committee on Homeland Security and Governmental Affairs (HSGAC), chaired by Sen. Joe Lieberman (I-CT), may mark up this bill during Congress' upcoming lame-duck session, even though no hearings have been held on the bill.

Evidence is mounting that the legislation would have a detrimental effect on key independent agencies charged with oversight of the banking and financial industry, including the SEC, the Federal Deposit Insurance Corporation, and the Commodity Futures Trading Commission. These agencies protect the public from financial fraud and other irresponsible practices, some of which contributed to the financial crisis of 2008.

Financial regulators from six independent agencies [sent a letter](#) to HSGAC last week urging it to delay consideration of S. 3468 because the bill "would interfere with our ability to promulgate rules critical to our missions in a timely manner and would likely result in unnecessary and unwarranted litigation in connection with our rules." Two experts on financial regulation, Bruce Kraus and Connor Raso, agree, particularly when it comes to the SEC. [In a new article](#), they strongly argue that requiring the SEC to conduct cost-benefit analyses that are subject to OIRA review would limit the agency's ability to protect investors.

The SEC currently experiments with different methods of quantifying the costs and benefits of its standards. S. 3468 would stifle the dialogue about how to best define costs and benefits by imposing a one-size-fits-all approach dictated by OIRA. Mandating an OIRA-enforced, rigid approach to cost-benefit analysis would delay publication of SEC rules and waste limited agency resources.

Kraus and Raso argue that inflexible cost-benefit analyses that require monetization of all costs and benefits will make it impossible to issue new rules in areas that deal with catastrophic systemic risks – like the financial meltdown of 2008. In such a situation, attempts to quantify costs and benefits would be too speculative to generate a rulemaking decision capable of withstanding judicial review. Thus, agencies subject to these requirements would be unable to move forward with issuing safeguards to protect consumers and our economy from another financial crisis.

The authors also point out that the legislation's cost-benefit requirements are unnecessary, noting that although it is not required to do so, the SEC has voluntarily looked at the costs and benefits of its rules for decades. In addition, they assert that independent agencies structured as bipartisan, multimember commissions, like the SEC, should not have to meet the same strict economic analysis standards as executive branch agencies. The bipartisan nature of these commissions and the need for majority support on rulemaking decisions means that compromise is inherent in a commission's decisions. Further, unlike executive branch agencies, a commission's final decision on a proposed rule may involve making changes at the last minute. Thus, any economic analysis sent to OIRA with an initial proposed rule could look very different than the commission's formal proposed rule at the end of its decision making process.

The SEC and other independent agencies should be allowed to continue to experiment with different approaches to measuring the costs and benefits of their standards and should not be locked into the rigid approach proposed in S. 3468.

The Independent Agency Regulatory Analysis Act would undermine the independence of many agencies and limit the ability of the variety of agencies responsible for implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2009 from carrying out the law's requirements. Dodd-Frank authorizes independent financial agencies like the SEC and the newly established Consumer Financial Protection Bureau to issue new rules intended to protect consumers and investors from fraud and mismanagement by big banks and investment firms. Many deadlines embedded in the legislation have already passed because the agencies have limited staff and resources. Passage of S. 3468 would make it harder for these agencies to complete the reforms.

If you want to see the Dodd-Frank Wall Street Reform and Consumer Protection Act (financial reform) fully implemented, call the Senate Homeland Security and Governmental Affairs Committee at 202-224-2627 and tell the committee not to move forward with a mark up during the lame-duck session of Congress.

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