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## The Watcher

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## **Passing Over the "Fiscal Cliff" in Early 2013 Seems Increasingly Likely**

While the outcome of the 2012 election will still ultimately decide next steps on the federal budget, a status-quo election that leaves Democrats in control of the presidency and Republicans in control of the House of Representatives seems likely to produce a budget stalemate that will last through the rest of the year and will trigger a "fiscal cliff" of spending cuts and tax increases in the new year.

Unless Congress and the president take action, Bush-era tax cuts are scheduled to expire at the end of 2012 (worth about \$500 billion in 2013 alone) and another \$109 billion in across-the-board cuts in most spending programs (termed sequestration) are scheduled to become effective at the same time. Despite the pressures being brought to bear on policymakers to cut a broad budget deal to prevent this outcome, no deal may be better than a bad deal, particularly if a better deal can be reached in early 2013.

The current standoff between the two parties is primarily due to their differences over tax policy. Republicans want to extend all of the Bush-era tax cuts, while congressional Democrats and President Obama only want to extend them for couples making less than \$250,000 per year. Congressional Republicans consider anything less than a full extension of all of the Bush-era tax cuts to be a tax

increase. Many on the GOP side believe that if they hold out long enough, congressional Democrats and President Obama will eventually cave in to their demands, as they last did in 2010 when the Bush tax cuts were extended for an additional two years.

On the other side, many Democrats believe it will be necessary to wait until after Jan. 1, when the tax cuts have expired, to prove that they are serious. Moreover, once the new year comes, tax policies that could previously have been called a tax increase would be considered a tax cut. (The Congressional Budget Office would consider such changes a tax cut now, but its calculations have not substantially changed the politics of the issue.)

### **The Fiscal "Cliff" Is Really a Fiscal Slope**

As Jan. 1 approaches, an increasing number of budget analysts are beginning to recognize that the so-called "fiscal cliff" of pending spending cuts and tax increases may not be as immediately disastrous as the phrase implies. The Center on Budget and Policy Priorities has begun to refer to it as a "[fiscal slope](#)."

Much of the concern traces back to a Congressional Budget Office (CBO) [report](#) released in August that indicated that if current policies went into effect as scheduled at the beginning of 2013, the economy would fall into a mild recession in the first half of the year. However, the CBO forecast assumes that the policies will go into effect and stay in effect throughout the year.

In reality, most of the effects will be felt only gradually and may not be felt at all if a new budget package is enacted early in 2013. On the tax side, some of the effects will be felt slowly, such as increased tax withholding, but others, such as increased capital gains taxes, will not be felt until returns are filed. Meanwhile, on the spending side, the administration will have enormous flexibility to mitigate the effects of sequestration on federal programs. If a new budget deal cancels sequestration, as is expected, it will likely be retroactive to Jan. 1, thus negating its impact.

This reality – that the fiscal "cliff" is closer to a "slope" and that it is also reversible – is likely to substantially impact how the current budget impasse is resolved.

### **How a Budget Deal May Happen**

The most important factor – the 2012 elections – has yet to be resolved. No significant action is expected before then. If Gov. Romney is elected, the Bush-era tax cuts would probably be quickly continued, either in late 2012 or early 2013 after his inauguration. Sequestration would be quickly dropped for defense spending and, possibly, non-defense spending, too, to give the new administration time to formulate its own budget plan.

However, if President Obama is reelected in a status-quo election, the budget will probably be resolved very differently. If the president is reelected, his administration is expected to release a new budget plan sometime in mid-November. The proposal, which will probably closely track previous administration budget plans, will serve as a placeholder, preventing the president from being blamed for inaction and putting pressure back on Congress to act before Jan. 1.

While it is possible that Congress may act, this seems unlikely for several reasons. First, most congressional Republicans have pledged not to vote for any budget package that includes tax increases, while the Obama administration and most congressional Democrats are determined not to enact any deal that continues Bush-era tax cuts for high-income taxpayers. Second, while the House and Senate Republican leadership might ordinarily be motivated to cut a deal, they will be facing leadership elections within their own party at that time and will not be able to easily work across party lines for fear of facing a challenge from within their own party. Finally, there will probably not be enough time left for Congress to negotiate a budget deal in the last few weeks of 2012.

After Jan. 1, however, the political dynamics change dramatically. Once the Bush-era tax cuts have expired and tax rates return to Clinton-era levels, compromise proposals that omit tax cuts for upper-income taxpayers and give tax cuts to the middle class will no longer be considered tax increases. Congressional Republicans will face substantial political difficulty opposing a budget proposal that includes middle-class tax cuts and, at the same time, cancels sequestration on both defense and non-defense programs.

Some analysts believe such a deal would occur in two steps. The first step would occur in January. It would terminate sequestration and include modest spending and revenue changes that would serve as a down payment on reducing the federal budget deficit. It would also include rules that would fast-track more significant deficit reduction measures within six months, probably including significant changes in existing tax law and entitlements. Another component, still a major question mark, would be an enforcement mechanism that would be triggered if Congress fails to achieve the targeted level of deficit reduction.

### **Substantial Challenges Remain**

Depending on the outcome of the 2012 elections, the political terrain ahead is potentially more favorable for a positive resolution to the current budget impasse than previously believed, but many obstacles remain.

A new budget plan is reportedly being developed by former Sen. Alan Simpson (R-WY) and former President Bill Clinton's White House chief of staff, Erskine Bowles. The two co-chaired a [national commission](#) set up by President Obama that failed to agree on a plan for consideration by Congress by the end of 2010. Their new plan is reportedly more conservative than the first, containing more cuts in health-related spending. Their efforts are being supported by a major national lobbying effort, called [Fix the Debt](#), co-chaired by former Sen. Judd Gregg (R-NH) and former Pennsylvania Gov. Ed Rendell (D), financially backed by billionaire private equity mogul [Peter Peterson](#), and run out of the Washington, D.C., offices of the Committee for a Responsible Federal Budget.

### **New Website Will Make Government Information Easier to Obtain**

A new federal website launched Oct. 1 could speed processing of Freedom of Information Act (FOIA) requests and release more information to the public. [FOIAonline](#) is a multi-agency portal that allows the public to submit and track requests, receive responses, and search others' requests through a single website. The system also provides agencies new features to assist with processing requests, which could improve timeliness and reduce backlogs. Agencies can also use the system to publish their responses to FOIA requests, which would make this information more widely accessible.

The launch of FOIAonline represents a major advance in modernizing the FOIA system to deliver transparency more effectively and efficiently. OMB Watch and other open government groups have [long advocated](#) for the development of such a system.

### **Before: Manual, Dispersed**

FOIA is a vital tool for government transparency and accountability, as it provides the public with information necessary to understand what government is doing. Hundreds, if not thousands, of FOIA requests are filed every day by companies, journalists, advocates, and citizens seeking answers about every kind of government program and activity. The public can use the information to better understand government actions and participate in debates about public policy.

Under FOIA, citizens have a right to request information from federal agencies. However, each agency has its own procedures for how to submit a request and track its progress. Learning the many different systems can be confusing and time-consuming for requesters. In addition, many agencies currently lack the capacity for online submission and tracking, thus requiring slower and less-convenient mailed letters and phone messages.

Similarly, every agency has its own system for processing requests, each providing different functionality. The various systems don't inter-operate, even within the same department, as a Government Accountability Office (GAO) [report](#) showed in July. So when one agency has to refer a request to another agency, the records have to be manually transferred and processed again, which can contribute to delays.

### **Now: Centralized, Automated**

FOIAonline replaces incompatible processing systems with a shared multi-agency system. The new system also provides modern new functions to agencies and requesters.

The public can submit a request to any participating agency through FOIAonline. The system can save all of a user's requests under one account. Then users can log onto FOIAonline to check the status of all their requests, send questions to FOIA officers, or appeal decisions. A user's information will be saved so it doesn't have to be re-entered for future requests. These features are a significant service improvement for requesters: for instance, few agencies previously offered the ability to submit an appeal through a website.

On the agency side of the equation, the new system allows for much easier consulting with other agencies. Consultations can be handled within the system, eliminating the need to manually transfer

documents. In addition, the system offers features to automate other required activities in agency processing, such as creating invoices. These features could make FOIA processing timelier and more efficient. Faster processing would be a welcome improvement, as tens of thousands of requests are currently pending in agencies past statutory deadlines.

When a response is delivered, the documents are posted on FOIAonline and the requester is notified. The released documents will be available to the public, not just the requester, as was previously common practice, thus making more information accessible and potentially eliminating similar or duplicate requests.

## **Building FOIAonline**

Developed by the U.S. Environmental Protection Agency (EPA) with the National Archives and Records Administration (NARA) and the Commerce Department, FOIAonline leverages the existing infrastructure of [Regulations.gov](https://www.regulations.gov). The Treasury Department is also participating in the system, as well as two smaller independent agencies. Additional agencies may join FOIAonline in the future.

Earlier estimates put the cost to build the system at about \$1.3 million, with annual operating costs of \$500,000 to \$750,000. Potential cost savings from utilizing the system, assuming every agency participated, were estimated at up to \$200 million over five years. This represents a huge return on investment. Although only a subset of agencies is participating at the outset, the savings could still be substantial – and these resources could be put into programs or further improving agencies' operations.

With a handful of agencies initially participating, FOIAonline could be seen as a pilot program. Deploying the system to a few initial agencies will allow the project team to gain experience and identify issues that can be remedied before scaling the system up. Hopefully the developers will continue to pay close attention to agency and requester feedback and iteratively refine FOIAonline based on those reactions. If they do, the system could be even more effective when more agencies adopt it in the future. This is an important step toward realizing the long-sought goal of a single, government-wide system for delivering government information to the citizens who request it.

## **Agency Proposal Would Reduce the Public's Right to Know about the Fish Population**

Our nation's ocean wildlife and fish are a public resource, and citizens should be able to track the impact of fishing on fish populations. But a [new proposal](#) from the National Oceanic and Atmospheric Administration (NOAA) will greatly reduce the public's access to essential fisheries data, including taxpayer-funded programs. Restricting public access to fisheries data could erode scientific integrity, transparency, and public participation in government decisions and eventually lead to poorer management of fisheries.

## **Background**

Commercial and recreational fishing generates about \$183 billion per year for the U.S. economy and supports more than 1.5 million full- and part-time jobs. Despite being one of the leading producers of fish, the United States has had a poor record of ocean management, and overfishing has been a problem since the 1970s. According to [a 2009 World Bank and United Nations report](#), poor fisheries management and depleted stocks lead to a \$50 billion annual loss in the world's fishing fleet. We spend about \$40 million a year in public money to collect fisheries management data – data that tells us what fish are caught, how they are caught, and how that affects the ocean's wildlife. This information allows scientists to measure the impact of fishing and enables the public to see the importance of an effective fishery management system in ensuring the sustainability of ocean fish and the ecosystem on which they rely.

To assist in effectively managing ocean fish, Congress passed the Magnuson-Stevens Fishery Conservation and Management Act (MSA) in 1976 and reauthorized the law in 2006. The law provides for the placement of scientific observers aboard fishing vessels to collect and analyze data needed for the conservation and management of fisheries. The information these at-sea observers collect is crucial to monitoring whether fishermen are complying with conservation practices that protect endangered species and help prevent overfishing.

Under the act, the public can obtain observer fishery data from the government, as long as personal information, such as the individual and business name or fishing location, is not revealed. This method allows private fisheries to make important scientific information about wildlife resources transparent, but also lets them keep private information that might affect their competitiveness (a fisherman may not want information on where he fishes available to other fishermen, for example).

The fisheries data is critical for conservation measures, which need to be modified to reflect changing conditions. Observer information can be used to identify times and areas where there are conservation issues. It is essential that such information be publicly available to scientists and conservationists. NOAA's new proposal would reduce public access to this information.

### **NOAA's Proposal**

On May 23, NOAA's National Marine Fisheries Service issued a proposed new rule that could undermine the intent of the law to effectively manage fisheries and avoid overfishing. Instead of accessing the data directly from the government, the public might have to go through private fishing companies to access information about their fishing and its impact on the ecosystem. That is, the rule could give fishing permit holders control over the statistics and information collected and reported about them, even though the information is collected by third-party observers paid by the federal government. This change creates a clear conflict of interest since fishing permit holders have a financial stake in the fishery market. Even if only a minority of fishermen withholds information, it could compromise key data for wildlife management.

The purpose of using observers was to have impartial people record scientific data to avoid these kinds of conflicts. Releasing the data back to fishing companies will raise questions about the accuracy and integrity of the data since individual fishermen or businesses that receive financial gain from fish catches have an incentive to underreport.



The proposed rule does not provide any procedures for how the public can obtain the data collected by observers. Under Magnuson-Stevens, NOAA has periodically released aggregate information about the fish population to the public. Data aggregation is a simple method to provide the public with fisheries data without releasing confidential information. The new proposed rule does not contain any specifics on how, when, or to whom any aggregated data may be released. (The proposal also omits a timeline for developing procedures to make any data publicly available.)

### **Next Step: Stand Up and Take Action**

NOAA's proposal would roll back public access to data on our fish populations collected with public supports. America's oceans are a valuable resource, but in recent years, overfishing and ecosystem damage from pollution have put our fish populations at risk. The public has the right to know the environmental and economic status of fisheries.

If you want to guard against overfishing and protect endangered fish from possible extinction, it's time to take action.

Urge NOAA [to withdraw its current proposal](#) and replace it with one that continues to allow public access to fishery data and increases public participation in decision making around the management of our ocean resources. By doing so, you'll be protecting a vital national resource. The agency will be taking public comments until Oct. 21.

## **Celebrating a Public Protections Milestone: The 40th Anniversary of the Clean Water Act**

Oct. 18 marks the 40th anniversary of the Clean Water Act, a crucial law that protects the nation's water from pollution. Congress passed the landmark legislation at a time when much of our water was so contaminated by industrial waste and other pollutants that it was unfit for public use. By setting ambitious goals for the cleanup of contaminated waters, the Clean Water Act led to dramatic improvements in water quality and serious reductions in industrial pollution. As we celebrate the significant successes of the Clean Water Act, however, we must remain focused on responding to current and future threats to water quality.

### **The Call to Action**

In 1972, heightened public concern about the devastating impacts of water pollution pushed Congress to amend the relatively weak Federal Water Pollution Control Act of 1948 and adopt the Clean Water Act. (This followed several high-profile disasters like Ohio's Cuyahoga River catching on fire because of the contaminants in the water.) The Clean Water Act strengthened the statutory framework and required mandatory pollution controls and meaningful enforcement mechanisms.

The Clean Water Act set a new national goal "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." It sought to ensure all waters be "fishable and swimmable" and provided the U.S. Environmental Protection Agency (EPA) and states with the authority to set and

implement the standards necessary to achieve these goals. Generally, states set water quality targets and standards that define specific cleanup measures or limit the amount of pollution that can be discharged into bodies of water; EPA then reviews and approves these targets and standards. The Clean Water Act also established a number of different programs aimed at protecting wetlands, coastal waters, estuaries, and large ecosystems.

### **Successes of the Clean Water Act**

The Clean Water Act led to significant reductions in industrial and sewage waste discharges. Overall, [more than 60 percent](#) of the nation's waters meet the Clean Water Act's fishable and swimmable goal; in 1972, only about [a third](#) were considered fit for these activities. The Clean Water Act brought major [reductions in industrial pollution](#) flowing into the once-flammable Cuyahoga River, and segments of the Hudson River are in far better shape than they [were in the 1970s](#). In Lake Erie, a former dumping ground considered to be irreversibly damaged, conditions [improved](#) enough to support the return of crucial fish populations. The country's overall water quality has improved significantly over the past four decades, but many waters still fail to meet water quality standards.

### **Remaining Challenges to Clean Water**

EPA's most recent [national water quality inventory](#) reported that 44 percent of assessed miles of rivers and streams, 30 percent of assessed square miles of bays and estuaries, and 64 percent of assessed lake and reservoir acres did not fully support safe fishing and safe swimming.

Further improvements to water quality have been hindered by a number of [challenges](#) unforeseen in 1972. The impacts of population growth, development, and increased runoff from poorly regulated sources of pollutants were not anticipated when the Clean Water Act was passed. As a result, some of the greatest threats to water quality today are not sufficiently addressed by the existing legal framework of the Clean Water Act and pollution management practices it contains.

Water pollution comes from "point" sources, such as direct discharges from industrial or wastewater treatment facilities, and "nonpoint" sources, such as diffuse runoff from urban areas or agriculture operations. Nonpoint source pollution is now the leading cause of water quality impairment, but the Clean Water Act does not regulate this category of pollution as stringently as it does point source pollution. While many water quality experts agree that statutory revisions are needed to adequately address nonpoint source pollution, passing meaningful reform will not be easy.

Insufficient resources also limit the effectiveness of the Clean Water Act. To keep pace with emerging challenges and retain previous gains in water quality, the EPA and state environmental quality agencies need up-to-date technology and data. Staff and resources are necessary to monitor water quality and enforce the requirements of the Clean Water Act. [Continued budget cuts](#) threaten to undermine the progress of the Clean Water Act and derail future improvements in water quality.

### **Building on the Progress on Water Quality**



The Clean Water Act represented an unprecedented national effort to preserve the integrity of the nation's waters, and the amount of [waters restored since 1972](#) serves as a reminder of what we can do if the public will is there. [Efforts](#) are underway to identify and implement new solutions, but they require resources and a vigilant public demanding action.

Now is the time to celebrate the progress our country has made on water quality, to reaffirm the commitment to clean water, and to continue to work to achieve the goals of the Clean Water Act. One way you can join in: Clean Water Network and a number of partner organizations are hosting a celebration event in Washington, DC, during the afternoon of Oct. 18. If you're going to be in the area that day, plan to attend the event! Visit Clean Water Network's [event page](#) for more information.

## **Underestimating the Benefits of Public Protections**

In a [September article](#), OMB Watch highlighted how difficult it is for everyday Americans to find information on the benefits of the standards and safeguards that protect and improve our quality of life. In this piece, we describe how agencies identify benefits and assign a monetary value to them. If agencies either underestimate or undervalue the benefits of a proposed safeguard, it could be rejected by the Office of Information and Regulatory Affairs (OIRA), and important protections could be delayed for years, leaving the health and safety of American workers and families at risk.

### **Background**

Federal agencies are required to complete cost-benefit analyses of rules expected to cost more than \$100 million. This requirement has been imposed by each president since Gerald Ford. Currently, [Executive Order 12866](#) requires federal agencies to determine the costs and benefits of a proposed standard and to ensure it maximizes "net benefits." The Office of Information and Regulatory Affairs (OIRA) reviews an agency's assessment of costs and benefits to determine whether its analysis passes muster. Unless the estimated benefits of a public protection exceed the estimated aggregate costs (to industry and consumers) of complying with the rule, E.O. 12866 directs agencies not to adopt the rule.

### **The National Highway Traffic Safety Administration and the Backup Camera Rule**

In 2007, [Congress required](#) the National Highway Traffic Safety Administration (NHTSA) to reduce backup accidents after a father backed up his vehicle and killed his toddler. The most effective way to reduce such accidents is to require automakers to install backup cameras in all new cars, but this is also the most expensive way to address the issue. Costs for backup cameras range from \$159 to \$203 per new car, a total of \$1.9-2.7 billion annually. Based on these costs, NHTSA's [proposed rule](#) is among the most expensive rules under consideration.

NHTSA estimates that requiring backup cameras will prevent between 95-112 deaths and 7,072-8,374 injuries every year. More than 44 percent of those injured or killed in backup accidents are under age 5. Too often, when these accidents occur, parents have killed or injured their own children. In addition to saving the lives of children and preventing thousands of injuries, NHTSA has also identified a number of other benefits of the proposed regulation to put backup cameras on new cars. NHTSA

believes that avoiding the emotional distress from backup accidents, particularly by parents who have accidentally killed or injured their own children, and the convenience of being able to see behind a car while backing up are benefits of the proposed regulation that cannot be quantified.

The question for our country is: Is the backup camera rule worthwhile? Congress said yes when it passed the law requiring NHTSA to issue this regulation. We believe most parents would agree that spending \$200 more for a new car is a modest price for ensuring they don't harm their own or a neighbor's child. It is extremely unlikely to affect demand for new cars (or by extension, reduce jobs in the auto industry).

However, if strict cost-benefit analysis is used as the basis for deciding whether to move forward, NHTSA's backup camera rule will never be put in place because OIRA emphasizes monetary costs of avoiding death in benefits calculations but ignores other difficult-to-quantify benefits, such as non-fatal injuries and emotional distress.

In the case of the backup camera rule, NHTSA assumed the value of each life saved was \$6.1 million. This is not an expression of what NHTSA thinks a life is worth, but an estimate of what economists think people would pay to avoid a small risk of death. "If people are willing to pay \$6.10 to avoid a one in a million increase in the risk of death, then the value of a 'statistical life' is \$6.1 million," according to the agency. Economists base the value of a statistical life on surveys and other data, but since there is no market to trade the risk of dying, we do not know whether these guesstimates are realistic.

This method of valuing the benefits of public protections is called "willingness to pay." When NHTSA calculated the benefits of its rule using this method, the value of deaths to be avoided by backup cameras was less than the expense of installing them. However, NHTSA concluded that even though the monetized benefits of the rule are less than the costs, the qualitative, non-monetized benefits make the rule worthwhile. And Executive Order 12866 specifically says that agencies should consider quantified benefits, *as well as benefits that cannot be quantified*, when deciding whether to regulate. NHTSA forwarded a final rule to OMB for review on Nov. 16, 2011. It is still pending.

### **Valuing Some Benefits and Ignoring Others**

In addition to the moral and ethical questions raised by pricing a human life, relying on these quantitative estimates of the value of a life to determine whether to adopt any given standard has other basic problems. There is no market to buy and sell the risk of dying, so how do we know what people would pay to avoid a one-in-a-million risk? And those with limited incomes cannot willingly pay as much as those with high incomes, so does that mean we should provide less protection to middle-class workers than to wealthy individuals?

Second, the backup camera rule and many other health and safety protections reduce both death and serious injury. Reliance on the value of a statistical life to monetize the benefits of public protections means we count only the benefit of avoiding death and not the benefits of avoiding injury, such as less absenteeism from work, lower medical bills, and less pain and suffering. These benefits could be quantified in theory, but they are not quantified in practice.

Finally, cost-benefit analysis ignores all values that we cannot price. In the case of the backup camera rule, the qualitative benefits that NHTSA could not monetize include the benefit of preserving the lives of children, avoiding the mental anguish of harming your own child, and the convenience of a larger field of vision when driving in reverse. Most Americans would place a high value on such benefits, but they would be hard-pressed to express that value in dollars and cents. The cost-benefit analysis associated with the proposed rule values these benefits at zero.

## **Conclusion**

Congress directed NHTSA to take action to prevent backup accidents. NHTSA believes the best way to do so is to require all new vehicles to be equipped with backup cameras. The costs of these cameras – about \$200 per new vehicle – exceed the estimated quantified benefits of the rule. But the rule also has many other benefits that NHTSA could not quantify. Looking at all the benefits of the backup camera rule – those it quantified and those that it could not – NHTSA concluded the backup camera rule was justified. OIRA has been reviewing the rule for almost one year. Let's see whether it agrees with NHTSA that the value of the rule's benefits make it worth finalizing.

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