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In This Issue

Report Card Finds Federal Agencies Still Struggling to Implement the Freedom of Information Act -- 48 Years After Passage

by Peter Thomas

On March 10, the Center for Effective Government released a report card grading federal agencies on their implementation of the Freedom of Information Act. The overall results were disappointing: no agency earned a top overall grade of an A, and half received failing grades. The good news is that in each of the three performance areas we investigated, at least one agency earned an A.

Why FOIA Is Important

A building block of American democracy is the idea that as citizens, we have a right to information about how our government works and what it does in our name. The Freedom of Information Act (FOIA), passed almost 50 years ago, requires federal agencies to promptly respond to public requests for information unless disclosure of the requested information would harm a protected interest.

Unfortunately, since its passage in 1966 and reform in 1974, federal agencies have failed to implement the law consistently.

Instead of using anecdotes about the lack of responsiveness by particular agencies on specific requests, we decided to take a more systematic and comparative approach to evaluate where agencies are falling down and where and how they can improve their responsiveness and performance. *Making the Grade: Access to Information Scorecard 2014 Shows Key Agencies Still Struggling to Effectively Implement the Freedom of Information Act* evaluated the 15 agencies that received over 90 percent of all FOIA requests on three performance areas – speed and completeness in processing requests, disclosure rules, and the utility of agency websites.

Agency Grades

The American people, be they journalists, staff of nonprofit organizations, or individual citizens seeking records, request information from federal agencies on a daily basis. Records sought range from data on government spending to toxic chemicals to management of critical programs like Social Security and veterans' affairs. The agencies we examined regularly deal with such a wide range of requests. Responding to these requests is not just a bureaucratic requirement; it is an important step in a larger process to inform the public and hold agencies accountable.

The results of our analysis are sobering. None of the 15 agencies earned exemplary scores (an overall A grade), and only eight earned "passing grades" (60 or more out of a possible 100 points). The good news is that at least one agency earned an A in each of three performance areas, proving that excellence is within reach.

The Social Security Administration (SSA) was the top performer with a B grade. SSA performed exceptionally well at processing FOIA requests but earned relatively low scores for its rules and website. The Department of Justice (DOJ) achieved the second highest grade (B-), based on strong grades for its rules and website, rather than the actual release of information. The U.S. Environmental Protection Agency (EPA) came in third with a C+, also earning solid marks for its rules and websites, but a middling grade for processing requests. The Department of Agriculture (USDA) was fourth, with a C built on middling grades in each area. Only DOJ, EPA, and USDA received passing marks in all three areas examined.

The Departments of the Treasury, Transportation, and Health and Human Services, and the Securities and Exchange Commission received D or D- grades, failing at least one of the scorecard elements.

Seven agencies received overall failing grades: the Departments of Labor, Veterans Affairs, Defense, Homeland Security, and State, as well as the National Archives and Records Administration and Equal Employment Opportunity Commission. The State Department earned the lowest overall score of any agency, with a particularly low score for its request processing: a mere 17 percent.

While security-related agencies were among those with the lowest scores, the character of the materials the agency holds did not determine the scoring. Indeed, many security-related agencies hold large amounts of non-security information that can be heavily requested, such as records related to disaster response held by the Federal Emergency Management Agency (FEMA), located within the Department of Homeland Security. One could also argue that it is even more important for security-related agencies to have good rules and useful websites.

The complexity of the requests received is also often considered a factor in performance. The percentage of "simple" requests varies from a low of 15 percent at the Treasury Department to nearly 100 percent at the Securities and Exchange Commission. However, while the agencies with a greater percentage of simple requests tended to have higher processing scores, the relationship is far from determinative. Some agencies with a high proportion of simple requests scored poorly, and two agencies with a high proportion of complex requests did relatively well.

Moving Forward

Despite these disappointing scores, we are confident that successful FOIA implementation is possible. While each agency will need to develop its own plan for improvement, each can learn from the strong performers and the best practices identified in this report.

The quickest and easiest way for agencies to improve their handling of FOIA requests is to improve their websites. Agencies could take note of a simple checklist of features to include: online submission and tracking of requests and appeals; expanded, regularly updated electronic reading rooms with a search function and FOIA logs; and full FOIA public liaison contact information. It's notable that five of the 15 agencies reviewed did not provide something as basic as full FOIA contact information (name, phone number, e-mail address) on their websites. Additionally, if an agency had a fully functional and responsive website and usable reading room, it should reduce the overall number of requests and the staff time required to respond to routine inquiries, leaving precious staff time to actually fill requests.

Clarifying policies and rules on processing could also help staff improve performance. Updating disclosure rules to include commonsense provisions such as publishing online indexes of disclosed records would reduce duplication. All agencies should adopt basic communication commitments in their FOIA rules such as acknowledging requests as soon as possible (preferably electronically), seeking clarification from requesters when necessary, and contacting requesters about their inquiries before denying them as unreasonable. Establishing 60 days as the time limit for filing appeals would also improve performance.

There are some practices applicable to most agencies that would improve their processing of requests. Starting points include continuing to reduce the size of request backlogs while reducing the average time to respond to requests and appeals, ideally within the 20-day FOIA mandate. Many agencies should also explore how to increase rates of full grants and overturned appeals in the favor of requesters and post indexes of disclosed records. Agencies adopting these practices would increase their efficiency in processing requests and more regularly post information online that is most frequently requested by the public. And if more information is already disclosed online, there is the potential for fewer requests being necessary in the first place.

Conclusion

The Freedom of Information Act represents the codification of one of our founding principles – that a democratic government is answerable to the people. The passage of the Freedom of Information Act almost 50 years ago and repeated efforts to strengthen the law demonstrate our ongoing commitment to the idea that ordinary people have a right to know what their government does and to ensure that its actions reflect our national values and priorities. As uncomfortable as it may be at times for agencies to receive such scrutiny, public access to information is critical to a healthy democracy and to government of, by, and for the people.

- **Read *Making the Grade: Access to Information Scorecard 2014*.**
- **View agency-by-agency summaries**.

Idaho's "Ag-Gag" Law Threatens Transparency, Food Safety, and Workers' Rights

by Sofia Plagakis

On Feb. 28, Idaho became the seventh state in the country to criminalize filming abusive or otherwise unethical activities on farms. These laws (dubbed "ag-gag" laws) limit transparency and keep Americans in the dark about food safety problems. Activists, journalists, and whistleblowers play a vital role in exposing animal abuse, unsafe working conditions, and other violations on farms.

Idaho's "Ag-Gag" Law

In 2012, Mercy for Animals, an animal rights organization, released a video showing employees at an Idaho dairy facility abusing cows. An activist got a job at Bettencourt Dairies' Dry Creek Dairy in Hansen and shot the video using a hidden camera. The video showed workers at the dairy farm beating cows with a cane, kicking and stomping them, and dragging a cow by a chain around its neck. As a result of the incident, five dairy employees were fired and convicted of animal abuse.

Many would call the incident a victory for transparency and accountability. You might expect it would lead to regulatory reforms to ensure better treatment of animals in other facilities. You would be wrong. The incident prompted the dairy industry to launch a campaign to criminalize such videos. Senate Bill 1337, signed into law on Feb. 28, aims to "protect agricultural production facilities from interference by wrongful conduct." Rather than considering animal abuse at dairy farms the "wrongful conduct," the law finds exposing animal abuse the crime.

The new law makes it a crime for anyone, including journalists and employees, to film or record inside an agricultural operation without permission. Those convicted under the new law face up to a year in jail and a $5,000 fine (twice the maximum penalty for animal cruelty under Idaho law). Moreover, those found guilty would have to compensate the company, to the tune of twice the value of damages their investigation or exposé caused. Even a false statement on a job application to a factory farm could lead to prosecution.

Local Reaction to the New Law

This legislation was heavily criticized by the state's residents, newspapers, and even some in the dairy industry. Hamdi Ulukaya, CEO of Chobani Yogurt, urged Governor Butch Otter to reconsider his support of this bill. "A bill is up for approval in Idaho that, if passed, would limit transparency and make some instances of exposing the mistreatment of animals in the state punishable by imprisonment. This could cause the general public concern and conflicts with our views and values," Ulukaya said in a statement. The company has a $450 million plant in south-central Idaho's dairy region.

The Idaho Mountain Express, a state newspaper, observed that "[p]utting private interests above public interests in the Constitution is troubling and egregious." According to the newspaper's editorial board, Idaho should not "criminalize the collection and release of information about the food we eat." The U.S. Constitution protects this type of activity through the First Amendment's freedom of the press.

"Mercy For Animals is exploring all legal avenues to overturn this dangerous, unconstitutional, and un-American law," said Nathan Runkle, the group's executive director. "This is a sad day for animals, consumers, the constitution, and the media... Idaho's flawed and misdirected new law will now throw shut the doors to industrial factory farms and allow animal abuse, environmental violations, and food contamination to flourish undetected, unchallenged, and unaddressed." But Idaho is not the only state where the agricultural industry is attempting to silence its critics.

Other State "Ag-Gag" Bills

The nationwide battle over "ag gag" legislation has increased in the past few years, although most sponsors have had difficulty passing the bills in their state legislatures. Lawmakers in Arizona, New Hampshire, and Indiana have introduced bills this year. Eleven other states introduced bills last year, but not a single one passed.

However, "ag gag" laws are already on the books in six states – Iowa, Utah, Missouri, North Dakota, Montana, and Kansas. Iowa passed its law in 2012, only a few months after an ABC News report featured undercover video of inhumane and unsanitary conditions at one of the country's biggest egg companies, located in Vincent, IA. Iowa's law does not explicitly make filming a crime; state officials decided to remove that language to avoid constitutional challenges. But it does make it a crime for anyone to gain entrance to a farm or slaughterhouse on false pretenses.

Utah, which also passed its "ag gag" bill in 2012, retained language making it a crime for anyone to film. Almost a year after the law went into effect, a local resident and activist, Amy Meyer, was charged for filming a Utah slaughterhouse. While standing on a public road, Meyer shot footage of a loader dumping a sick cow outside the slaughterhouse. Prosecutors later dropped the charges after it became clear that she filmed the incident from a public road and not on the facility's property.

Many of these "ag gag" laws have their origins on model legislation drafted by the American Legislative Exchange Council (ALEC), the conservative think tank that has been behind legislative campaigns, such as voter ID laws and laws mandating states to teach climate change denial in schools. In 2002, ALEC introduced model legislation called the Animal and Ecological Terrorism Act, which labels people who film animal operations as "terrorists" and criminalizes taking such pictures. In 2004, ALEC began pushing the legislation, and many state "ag gag" bills have borrowed language from it.

The Threat to the Public Interest

Undercover investigations were the impetus for the nation's food safety laws. Upton Sinclair's *The Jungle*, an exposé of Chicago's meat packing industry, led to the passage of the Federal Meat Inspection Act and the Pure Food and Drug Act in 1906. More recently, Michael Pollin's exposé of the fast food and meat industries and concerns about more food imports led to passage of the Food Safety Modernization Act in 2010. These types of food safety laws and investigations help protect the public from "mad cow" disease, *E. coli*, and *Salmonella*.

"Ag gag" laws are a threat to our constitutional rights of freedom of speech and a free press, and legal challenges are mounting. On July 22, 2013, the Animal Legal Defense Fund (ALDF), People for the Ethical Treatment of Animals (PETA), and others, with lawyers from the University of Denver, filed a lawsuit challenging Utah's "ag gag" law on constitutional grounds in federal court. The Reporters Committee for Freedom of the Press has filed an amicus brief on behalf of 17 media organizations. Seventy-seven groups, including a wide variety of welfare, civil liberties, environmental, food safety, and First Amendment organizations, joined together to sign a statement of opposition to these laws, asserting:

> Not only would these bills perpetuate animal abuse on industrial farms, they would also threaten workers' rights, consumer health and safety, law enforcement investigations and the freedom of journalists, employees and the public at large to share information about something as fundamental as our food supply. We call on state legislators around the nation to drop or vote against these dangerous and un-American efforts.

Groups that signed onto the statement included: the American Civil Liberties Union (ACLU), Human Rights Watch, the Government Accountability Project, the AFL-CIO, and Sierra Club.

Take Action

If you live in a state that has introduced an "ag gag" bill and want to weigh in, the American Society for the Prevention of Cruelty to Animals has an advocacy center with information about how to contact your elected officials to express your concerns. The advocacy center also provides tips on how to write effective letters to legislators and other decision makers, with templates included.

Attempts to Use Congressional Review Act for Proposed Rules Threaten All Public Safeguards

by Katie Weatherford

Senate Minority Leader Mitch McConnell (R-KY) has recently taken an unprecedented action by introducing a joint resolution to disapprove of the U.S. Environmental Protection Agency's (EPA) proposed greenhouse gas emissions limits for new power plants. Through the resolution, McConnell is attempting to utilize the accelerated legislative procedures provided in the Congressional Review Act, even though the law was designed only for reviewing final agency rules.

This expansive application of the Congressional Review Act to challenge proposed rules, if allowed, would set a dangerous precedent: any member of Congress could challenge a rule before it has even been written. This not only circumvents traditional legislative procedures, it also forecloses the ability of an agency to issue important rules before the agency has even had an opportunity to solicit and respond to comments from the public. As a result, this political stunt has broad implications for all agency rules under development, including tobacco standards, motor vehicle safety, energy efficiency, child nutrition, and more.

Background: The Congressional Review Act

The Congressional Review Act (CRA) was enacted in 1996 as part of the Small Business Regulatory Enforcement Fairness Act (SBREFA), included in the Contract with America. Under the act, before a final rule can take effect, the issuing agency must submit to Congress and the Comptroller General a copy of the rule and a statement describing the rule, its purpose, and its proposed effective date. If the rule is "major" – defined as having an annual economic impact of $100 million or more; increases costs or prices for consumers, industries, or state and local governments; or has an adverse effect on the economy – then the rule is delayed from going into effect for 60 days, starting from the date the agency publishes the final rule in the *Federal Register* or the date the rule is submitted to Congress, whichever is later.

The CRA also established accelerated legislative procedures for Congress to review and disapprove of final rules issued by federal agencies. Upon receiving the final rule and report from an agency, any member of Congress may introduce a joint resolution of disapproval for the rule within 60 days. In the Senate, resolutions are considered according to special procedural rules spelled out in the CRA that provide a mechanism for moving a rule out of committee after 20 days, prohibit filibusters or amendments, and limit floor debate.

For resolutions introduced in the House, there is no petition procedure to move a resolution out of committee. When either the House or Senate has adopted the resolution, it sends it to the other chamber for consideration without the possibility of amendments.

If Congress adopts a joint resolution of disapproval, the resolution is sent to the president for his signature. If the president chooses to veto the resolution, Congress still has 30 days in which it can override the veto. If a rule is invalidated under the Congressional Review Act, the rule is retrospectively invalidated and has "no force or effect." For rules subject to statutorily or judicially imposed deadlines, passage of a joint resolution of disapproval results in a one-year extension. Once a disapproval resolution is passed, the agency cannot issue the same or substantially similar rule in the future unless Congress passes a bill that gives the agency such authority.

For more detailed information on the CRA, check out our Regulatory Resource Center.

Resolutions of Disapproval on the Rise, Along with Congressional Overreach

Since the Congressional Review Act was enacted, 97 joint resolutions of disapproval have been introduced to invalidate 60 different agency actions. But only one rule – the Occupational Safety and Health Administration's (OSHA) ergonomics rule – has ever been invalidated under a resolution of disapproval filed under the CRA process. On Nov. 14, 2000, OSHA finalized a workplace ergonomics standard that had been under development for over a decade. The following January, President George W. Bush took office, succeeding former President Bill Clinton. In March 2001, a joint resolution of disapproval was introduced in the Senate. After passage in both the Senate and House, President Bush signed the resolution into law, thereby invalidating the standard. Thus, OSHA's ergonomics rule had "no force or effect," and the agency was barred from promulgating a "substantially similar" rule in the future without an express act of Congress authorizing the agency to issue such a rule.

60 Agency Actions Challenged By CRA Resolutions, 1996-2014	
U.S. Environmental Protection Agency (EPA)	12
Department of Health and Human Services (HHS)	12
Department of Agriculture (USDA)	3
Department of Energy (DOE)	3
Department of the Treasury (Treasury)	5
Department of Labor (DOL)	4
Federal Communications Commission (FCC)	4
Department of Homeland Security (DHS)	2
Federal Election Commission (FEC)	2
Office of Comptroller of the Currency (OCC)	2
Federal Energy Regulatory Commission (FERC)	1
Department of the Interior (DOI)	1
Department of Commerce (DOC)/Department of the Interior	1
United States Postal Service (USPS)	1
Office of Personnel Management (OPM)	1
National Labor Relations Board (NLRB)	1
National Mediation Board (NMB)	1
U.S. Agency for International Development (USAID)	1
Department of Veterans Affairs	1
Presidential Memoranda*	1
Proposed Rules*	1

**Presidential Memoranda and Proposed Rules are not "covered rules" under the CRA*

Until recently, only one resolution had ever been filed that sought to disapprove of a rule not covered under the act. During the 107th Congress, S.J. Res. 17 sought to disapprove of a presidential memorandum, which is not a "covered rule" for purposes of the CRA, rendering the resolution ineffective.

The use of the CRA procedures to object to rules is growing. During the 112th Congress, more joint resolutions of disapproval were introduced than ever before, representing 27 percent of all the resolutions of disapproval ever filed.

Number of Resolutions of Disapproval Filed by Each Party, 104th-113th Congress					
Congress	**House**		**Senate**		**Total**
	Repubs	**Dems**	**Repubs**	**Dems**	
104th	2	0	0	0	2
105th	4	0	2	0	6
106th	3	1	1	0	5
107th	5	1	2	5	13
108th	2	4	0	3	9
109th	0	2	0	2	4
110th	0	7	0	6	13
111th	5	3	4	1	13
112th	16	0	10	0	26
113th (through 3/6/14)	2	0	4	0	6

In the current Congress, two joint resolutions have been introduced to disapprove EPA's *proposed* greenhouse gas emissions rule for new power plants, even though logically the CRA only applies to final agency actions. H.J. Res. 64 was introduced in the House by Rep. David McKinley (R-WV) on Sept. 25, 2013, before EPA's proposed rule was even officially published in the *Federal Register*. The second resolution, filed by McConnell on Jan. 16, 2014, targets the same EPA proposal, but it was not introduced until the agency published the proposal.

Attacking Proposed Rules with CRA Sets a Dangerous Precedent

Regardless of the specific content of the rule at issue, allowing these joint resolutions of disapproval attacking EPA's *proposed* rule will set a dangerous precedent for ***all*** agency rules under development, not just EPA's. Any member of Congress who dislikes any action an agency is planning to take, no matter how far into the future, could challenge the rule before the agency has even finished writing it.

The Coalition for Sensible Safeguards, which the Center for Effective Government co-chairs, recently sent a letter opposing McConnell's joint resolution. In the letter, the coalition writes, "If this effort were successful, every agency's standard-setting and enforcement capabilities would be on the chopping block." The coalition added that what is perhaps most troubling with this recent stunt is that "allowing these types of CRA resolutions of disapproval to go forward would not only void the proposed rule, but would also poison an agency's ability to re-issue *any* similar rule or proposal."

With resolutions of disapproval already on the rise, the consequences of setting this precedent are disturbing. By way of example, the Food and Drug Administration's (FDA) rulemaking defining "tobacco product" to include not only cigarettes, but other tobacco products like e-cigarettes, could be targeted. Congress expressly authorized FDA to issue this rule in the Family Smoking Prevention and Tobacco Control Act. Yet if a precedent is set that allows members of Congress to introduce a joint resolution to disapprove of rules under development, FDA's rule could be invalidated before the agency has even finished writing it. Not only would this outcome be contrary to what Congress intended, but millions of Americans would remain unprotected from the harmful health effects associated with tobacco products.

The use of the CRA process to block proposed rules could even extend to motor vehicle safety, such as the National Highway Traffic Safety Administration's (NHTSA) rule to require improved rearview mirrors or other technology to prevent children from being hurt or even killed in back-over accidents. Congress passed the Cameron Gulbransen Kids Transportation Safety Act in 2009, which required NHTSA to finalize the rule by February 2011. But after a series of delays, the rule is currently pending review at the Office of Information and Regulatory Affairs (OIRA) and is not expected to be completed until January 2015. If any member of Congress could attack the rule before it is even finalized, the statutory deadline would be delayed for yet another year, leaving thousands of children at risk of being injured and possibly killed in tragic back-over collisions.

The results would be the same for any rule an agency plans to develop, now or in the future. This includes energy efficiency standards currently under development by the Department of Energy (DOE), agency efforts to provide flu shots to Medicare and Medicaid recipients, and even rules intended to improve the integrity of child nutrition programs.

Conclusion

Efforts to circumvent the legislative process by using the Congressional Review Act to attack proposed rules should not be allowed to continue. Members of Congress should not be permitted to bypass the traditional legislative procedures to invalidate important public safeguards before the agency has even finished writing the rule. Setting such a dangerous precedent would allow anti-regulatory members of Congress to undermine agencies' efforts to issue much-needed health, safety, and environmental protections.

A Tale of Two Corporate Tax Plans

by Scott Klinger

Last month, House Ways and Means Chairman David Camp (R-MI) released his long awaited tax reform package. In it, he proposed overhauling the corporate tax code, eliminating many deductions and loopholes.

Last week, President Obama released his budget for Fiscal Year 2015, which starts Oct. 1. The president also proposed significant corporate tax reform, also closing some loopholes and proposing a one-time tax on offshore corporate profits that would raise $150 billion to recapitalize the nation's Highway Trust Fund, which is about to run dry.

While there are many important differences between Camp's and Obama's plans for overhauling the corporate tax system, there is one troubling similarity – both propose "revenue neutral" corporate tax reform, with any savings from closing loopholes plowed back into lowering the corporate tax rate. Both leaders assume, wrongly in our opinion, that U.S. corporate taxes are too high and that lowering them would increase the competitiveness of U.S. corporations and increase U.S. job creation.

Camp's Plan for Corporate Tax Reform

Camp believes the tax system is too complex and too riddled with loopholes benefitting special interests. He lays out his plan for reform in a 979-page draft bill.

To his credit, he does close numerous corporate tax loopholes, including many of the popular corporate tax extenders currently up for renewal. Gone is the popular bonus depreciation subsidy, which allows businesses to immediately deduct the full cost of new equipment purchases. This subsidy alone costs taxpayers about $5 billion per year.

The Camp proposal also eliminates the loophole that allows companies to deduct limitless amounts of executive pay – by eliminating the exceptions that allow companies to deduct more than $1 million of pay per executive. This saves $12 billion over ten years.

Lastly, in the plus column, Camp proposed a 3.5 percent excise tax on the ten banks with more than $50 billion in assets, justifying this as a payback for the federal bailout at the onset of the last recession. This would raise $86 billion over 10 years. Needless to say, the banks are furious and are pulling out all the stops to defeat this measure.

The most troubling part of Camp's corporate tax proposal is that he rewards the multinational corporations that have most successfully gamed the current system by using accounting gimmicks to shift their U.S. profits to tax haven countries like the Cayman Islands, Ireland, and Luxembourg, where they are lightly taxed, if at all. He proposes a one-time tax on the more than $2 trillion in offshore profits. If those profits are held in physical assets (buildings and equipment), they would be subject to a 0.035 percent tax; if held in cash, the tax rate would be 8.75 percent. Both are well below the 35 percent rate that companies would owe under current law. Camp would use the money generated from this one-time tax on offshore income to fund $127 billion of infrastructure improvements.

General Electric, with $110 billion in untaxed offshore assets, and Apple, with an offshore cache of $54 billion, would be major beneficiaries of the Camp plan.

Not only would Camp reward serial tax avoiders from the past, he would throw open the door to even more offshore tax abuse in the future by moving toward a territorial tax system, under which all profits reported offshore are permanently exempt from U.S. taxes. He claims, falsely in our opinion, that he will control future offshore abuse by exacting a tiny one percent minimum tax on all foreign profits in the future.

While Camp eliminates many of the corporate tax extenders that collectively cost the Treasury about $54 billion a year, he makes permanent the two most egregious – the Active Financing Exception and the CFC Look-Through rule, which are the very tools that multinationals use to play their offshore tax avoidance games.

The Active Financing Exception, as the name implies, is an exception to prevailing tax law that prohibits corporations from shifting offshore passive income (income that stems from activity the business does not materially participate in – for instance, by manufacturing a product or delivering a service) from things like financing. This is because paper transactions, like finance contracts, are so easily moved to tax advantaged countries. The Active Financing Exception makes moving interest income out of the reach of the Internal Revenue Service (IRS) child's play. It is the primary tool in General Electric's tax dodging tool box. So important is Active Financing to GE that in this year's Form 10-K filed with the Securities and Exchange Commission, it discloses to shareholders that failure by Congress to renew the Active Financing Exception is a material risk to its business, which would cause the company's tax bills to increase dramatically.

Apple is one of the principal beneficiaries of the CFC Look-Through. Hearings by the Senate Permanent Committee on Investigations held last summer revealed that Apple avoided paying $9 billion in U.S. taxes in 2012 by shifting profits to an Irish subsidiary that filed no tax returns nor paid any income taxes in the U.S. or Ireland. This "stateless income" is made possible and is encouraged by the CFC Look-Through rule that Camp would make permanent.

The Obama Plan: Infrastructure at the Center of Corporate Tax Reform

One of the centerpieces of President Obama's 2015 budget proposal is a dramatic increase in spending on roads and bridges. Half of the $302 billion the president wants to spend on infrastructure over the next four years would come from a one-time tax on untaxed offshore corporate profits. Obama expects to raise $150 billion in revenue off of the $2 trillion pool of offshore assets, an implied tax rate of just 7.5 percent.

Unlike Camp, Obama has a meaningful plan for closing offshore loopholes and curtailing much of the tax haven abuse that today bleeds the Treasury of $100 billion per year. Under the president's proposal, closing offshore loopholes would raise about $276 billion over the next ten years. Like Camp, the president supports revenue-neutral tax reform and would plow all of these savings back into corporate rate cuts. The president is aiming for a new 28 percent corporate tax rate, seven percent lower than the current rate and three percent higher than the rate proposed by Camp.

Like Camp, the president proposes keeping some tax extenders and allowing others to expire. The president wants to make permanent the Research and Experimentation tax credit and the tax credit for domestic manufacturing. Unlike Camp, the president would allow the Active Financing Exception and CFC Look-Through rule to expire. Obama, like Camp, includes a bank tax in his budget proposal but would raise $30 billion less than Camp would.

The White House has been vague about one of the key components of its plan to stem future offshore tax abuse. To date, the administration has refused to disclose the minimum tax rate that it would apply to foreign profits. There are widespread rumors that the rate would be in the neighborhood of 20 percent. It is likely that a 20 percent minimum tax on offshore profits would still create sufficient incentive for multinational corporations to continue at least some of their profit-shifting behavior to avoid a 28 percent corporate tax rate on their U.S. profits.

Why Are Camp, Obama and Members of Congress from Both Parties So Stubbornly Committed to Not Asking More of Corporations?

While there are significant differences in the corporate tax plans offered by Camp and Obama, at the end of the day, both arrive at the same troubling place: they don't ask corporations to collectively pay any more toward the cost of the government than they do today. The president's plan will do more to increase equity between corporations, ridding us of those companies that endlessly show up on the list of highly profitable corporations paying little or no taxes. But unlike a majority of the American people, neither the president nor the Ways and Means chairman believe corporations should be asked to pay a greater share of the costs of public services and public investment.

In the 1950s, when Republican Dwight Eisenhower occupied the Oval Office, corporate tax receipts paid nearly a third of the federal government's bills; today, corporate taxes pay less than a tenth of the cost of the federal government.

Leaders of both parties who champion cutting corporate taxes are quick to trot out a concern that high U.S. tax rates undermine the competitiveness of U.S. corporations in the global marketplace. It is hard to find any evidence of this at a time when U.S. corporate profits are at all-time highs and U.S. CEO pay is once again exploding. Corporate profits as a percent of GDP exceed 12 percent (they were in the seven percent range back when Ike was president), while corporate taxes as a percent of GDP are less than two percent (compared to about six percent of GDP when Eisenhower led the nation).

A new report by Citizens for Tax Justice, released the same day that Camp released his tax plans, found that the average large profitable U.S. corporation paid just 19.4 percent of its income in federal income taxes between 2008 and 2012, far below the posted 35 corporate tax rate. Perhaps more surprising was CTJ's finding that two-thirds of the multinational companies it studied paid a higher foreign tax rate than they paid on their U.S. earnings – 12 percentage points higher, on average.

So if corporations are already paying sharply lower taxes at home than abroad, why are they fighting so tenaciously for lower U.S. tax rates? It could be the same reason they fought so hard the last time corporate taxes were dramatically cut in 1986: they could use lower U.S. tax rates to press foreign nations to cut their tax rates. There's been an international tax rate war ever since – one result of which has been the erosion of fiscal resources and the under-resourcing of public investment in many countries around the world.

Why Are We Holding Infrastructure Spending Hostage to Tax Reform?

Both Obama and Camp have conditioned their infrastructure investment proposals on undertaking corporate tax reform. Washington leaders have been promising comprehensive tax reform for the last two years. Most observers think it will be at least two years and perhaps four years or more before serious reform occurs.

Every year of delay means another $100 billion in the pockets of those who are gaming the system and using lax international tax rules to pad their profits. Every year wasted also means another $100 billion drained from the Treasury – money not available for infrastructure spending or any other public need.

A far better idea is to fix the sinkholes in the tax code that allow this anti-social and unpatriotic behavior to continue unchecked. Closing the sinkholes in the tax code would allow us to raise an extra $100 billion a year to fix the sinkholes, potholes, and leaking water systems in our communities. And these investments would create jobs – a lot of them. The Center for Effective Government's 2013 report, *The Bridge to Prosperity*, concluded that spending the additional $124 billion a year needed to bring our entire infrastructure (roads, bridges, schools, water systems, and levees/dams) up to current standards would create 2.5 million new jobs.

There aren't too many things that liberals and conservatives agree on in this country – one is that we need more jobs, another is that we need to fix our infrastructure, and a third is that we need to eliminate offshore tax loopholes that allow large and very profitable corporations to get away with paying little to no federal income taxes.

With more than 10 million unemployed Americans and the ranks of the long-term unemployed growing every month, investing in infrastructure is not something that should wait. There's plenty of money to create jobs today by closing loopholes that a bipartisan majority of Americans think are wrong and should be ended. Demand more from your elected representatives.

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