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FY 2011 Budget Fight Ahead

The major piece of unfinished business from the last session of Congress is the fiscal year (FY) 2011 budget. Even though FY 2011 started on Oct. 1, 2010, the federal government still does not have a budget and has been funded through a series of [temporary continuing resolutions](#) (CR) since last fall. It remains to be seen if both the Senate and hard-line fiscal conservatives in the House will sign off on a budget for the remainder of the fiscal year, once again raising the specter of a government shutdown.

The Republican-controlled House is currently working on creating a budget for FY 2011, the broad outlines of which [were released the week of Jan. 31](#). The plan calls for an increase of \$8 billion in security-related spending and cuts of \$44 billion from non-security discretionary spending.

In the short-term, the calendar does not look good for timely action on the budget. The current CR expires on March 4. House leadership has promised a vote on an FY 2011 budget during the week of Feb. 14 to coincide with the release of the president's budget proposal. However, the Senate will be in recess the following week, meaning the upper chamber will only have a week to react to the House's budget. This is probably not enough time for Senate leadership to hammer out a counterproposal that can garner the necessary 60 votes. Therefore, in all likelihood,

Congress will be forced to pass another short-term CR, covering another couple weeks, to give itself more time to agree on a compromise.

What such a compromise will look like, however, is more ambiguous. It is not clear if the Senate will agree to any cuts the House makes or how deep senators would be willing to cut. The debate over earmarks may prove to be an insightful lesson for how spending decisions might be made.

Senate Democrats have strongly opposed elimination of earmarks from the FY 2011 budget even as congressional Republicans have lately highlighted the earmarks issue, agreeing amongst themselves in 2010 to forgo earmarks. Also, the president pledged in his State of Union address to veto spending bills with earmarks in them. Shortly after that, Senate Democrats agreed to no earmarks in spending bills.

In [announcing the Senate Democrats' decision](#), Senate Appropriations Committee Chairman Daniel Inouye (D-HI), a long-time supporter of earmarks, said "the handwriting is clearly on the wall," acknowledging that the current political climate has turned against earmarks. With Republicans asserting that the recent election showed that Americans demand spending cuts, some Senate Democrats might decide that the writing is on the wall when it comes to overall spending, as well, particularly if the president sides with Republicans on the issue.

On the other hand, the agreement to ban earmarks could simply have been political cover for wavering Senate Democrats – earmarks account for a small amount of money in the context of the overall budget. With the 2012 election coming up, Democrats may choose to start drawing distinctions between the two parties, and the FY 2011 budget may be a good place to start. The president has already been calling for investments in certain types of areas such as education and infrastructure, which runs counter to the steep cuts the Republicans are calling for. Liberals [both in](#) and [out of Congress](#) are already arguing that cutting federal spending now would only hurt the fledgling economic recovery and will intensely oppose any effort to cut spending.

Perhaps foreshadowing the battle to come, [The Hill recently quoted](#) Senate Majority Leader Harry Reid (D-NV) as saying that the Republicans' budget plan was "more draconian than we originally anticipated" and "unworkable," strong language for a politician looking for compromise. Similarly, President Obama's budget director, Jack Lew, [submitted an op-ed](#) to *The New York Times* saying that the "easy cuts are behind us," signaling Obama's intention to pressure the Senate to instead back his five-year budget freeze.

On the other side of the Capitol, House Republicans have problems of their own. While House leadership is backing the new spending plan, which cuts about \$35 billion from the FY 2010 budget, some rank and file members are less than thrilled with it. "Anything short of our pledge to cut \$100 billion from FY 2011 will be getting off on the wrong foot," said [Rep. Jeff Flake](#) (R-AZ), voicing the concerns of conservative Republicans. "We're going to have to do much better and cut much more." Even some establishment conservative groups, such as [the Heritage Foundation's political action arm](#), are saying that the leadership's budget proposal left money "on the table."

In order for there to be any kind of a compromise between the House and the Senate, House leadership must be able to control its caucus. However, the vote on the House budget plan scheduled for the week of Feb. 14 will include an open amendment process, and [according to CQ](#) (subscription required), the Republican Study Committee, representing the party's conservative bloc, "will push for an additional \$42 billion in cuts beyond the non-security spending reductions sought by House leaders." If House leaders fail to beat back amendments like that one, negotiations with the Senate will likely be much harder.

If budget negotiations between the House and the Senate fail, the chance of a government shutdown becomes that much greater. It is entirely possible that the House will send the Senate large spending cuts, and the Senate will refuse to make anything beyond modest, targeted discretionary cuts. In such a situation, neither side will be willing to back down or meet in the middle, and if they cannot agree on a stop-gap solution, a government shutdown could occur as time runs out on the current CR.

Both sides are already trying to blame the other for any future shutdown. "Too many Republicans seem to want to force a government shutdown," [said Sen. Chuck Schumer](#) (D-NY), the number-three Democrat in the Senate. "The only people talking about shutting down the government are a handful of Senate Democrats," [fired back](#) Senate Minority Leader Mitch McConnell (R-KY). Regardless of blame, if lawmakers can't agree on spending levels in the next 25 days, a shutdown might very well be in the nation's future.

Drinking Chrome – New Studies Expose Threats to Tap Water

A new health study found drinking water in 31 out of 35 U.S. cities contaminated by a dangerous form of chromium known as hexavalent chromium. Another study found that hexavalent chromium, a known carcinogen when inhaled and a suspected carcinogen when ingested, often contaminates water leaching from coal ash impoundments. The revelations expose the need for greater monitoring of public drinking water and stronger protections against contamination.

The recent studies by environmental and public health groups shed new light on the extent of drinking water contamination in America and the potential sources of that contamination. The Environmental Working Group (EWG) commissioned water sampling and testing for hexavalent chromium, also known as chromium-6. The results, published in the report [Chromium-6 in U.S. Tap Water](#), found that more than 26 million people are serviced by the water utilities in the 31 cities where chromium-6 was detected. However, the report represents a one-time "snapshot" of the water quality in 35 cities, and without regular monitoring, the full threat to public health is unknown.

Chromium is found in many forms, and the two most prevalent forms are trivalent chromium (chromium-3) and chromium-6. In small amounts, chromium-3 is a vital nutrient needed for healthy human metabolism, but chromium-6 is a known carcinogen and dangerous even in small amounts. Chromium-6 was the toxin contaminating the drinking water of Hinkley, CA, the

case made famous by the 2000 film [Erin Brockovich](#). California is currently the only state that requires water utilities to test for hexavalent chromium.

California environmental officials recently revised a proposed "[public health goal](#)" for chromium-6 in drinking water. The state's environmental agency originally proposed a goal of 0.06 parts per billion (ppb) of hexavalent chromium in tap water. That figure was lowered to 0.02 ppb to better protect vulnerable populations such as children. However, the EWG report states that California's water testing methods cannot detect levels of hexavalent chromium in amounts below 1 ppb, 16 times higher than what the state considers the maximum safe level.

According to the EWG report, drinking water can be contaminated by hexavalent chromium released by steel and pulp mills, as well as metal-plating and leather-tanning facilities. However, researchers from Earthjustice, Physicians for Social Responsibility, and the Environmental Integrity Project contributed to a report released last week linking numerous cases of chromium-6 groundwater contamination to pollution from coal ash impoundments. Coal ash, a major byproduct of burning coal for energy, is often disposed of in huge landfills or surface impoundments. One such site, a coal ash impoundment operated by the Tennessee Valley Authority (TVA), collapsed in December 2008. The resulting spill at the [Kingston Fossil Plant](#) sent more than one billion gallons of toxic sludge flowing into the nearby community and the Emory River.

The report, [EPA's Blind Spot: Hexavalent Chromium in Coal Ash](#), draws on U.S. Environmental Protection Agency (EPA) reports and other studies to identify 28 coal ash dump sites in 17 states that have contaminated groundwater with chromium at levels far above the public health goal proposed by the state of California. According to the report's authors, the contaminated coal ash dump sites "are likely the tip of the iceberg," and EPA regulators are operating with a "blind spot" that misses this significant source of water contamination.

The report also uncovered a study by an electric utility industry group, Electric Power Research Institute (EPRI), that found that 97 to 100 percent of the chromium leaching from coal ash impoundments is the deadly chromium-6. This industry study tested water at 29 coal ash landfills and ponds, finding chromium-6 at 15 coal ash dump sites at levels hundreds of times greater than the proposed California goal. However, the locations of these dumps are unknown, identified only by a number.

The report cautions that "the high levels of hexavalent chromium at the sites may pose a danger to those living near the landfills." The report warns that at these contaminated sites, "there may be little attempt to monitor [the contamination's] migration offsite to protect well users from harmful exposure to hexavalent chromium or other toxic metals commonly found in coal ash leachate."

According to the [National Toxicology Program](#) (NTP), "Hexavalent chromium compounds have been shown to cause lung cancer in humans when inhaled." In addition, the NTP states that "hexavalent chromium can also cause cancer in animals when administered orally." The EPA listed chromium-6 as a priority for evaluation under its Integrated Risk Information System

(IRIS), and the agency released a [draft toxicological review](#) in 2010 stating that chromium-6 in drinking water is "likely to be carcinogenic to humans."

In January 2011, the EPA [recommended](#) that water utilities nationwide test for chromium-6. According to EPA, "Systems that perform the enhanced monitoring will be able to better inform their consumers about any presence of chromium-6 in their drinking water." Currently, EPA only requires public water utilities to test for *total* chromium, which lumps the essential nutrient chromium-3 with the carcinogenic chromium-6. EPA's drinking water standard for total chromium, set back in 1991, is 100 ppb, or 5,000 times higher than California's recent proposed goal for chromium-6 in drinking water. There are no federal regulations requiring water utilities to monitor drinking water for hexavalent chromium, and chromium in leachate from coal ash dumps also is mostly unmonitored.

At a recent Senate [oversight hearing](#) on the safety of drinking water, Sen. Frank Lautenberg (D-NJ) announced plans to introduce legislation to require greater monitoring and disclosure of pollutants in drinking water. [According to the senator](#), the public "has no idea that they might be drinking water laden with unregulated contaminants like chromium six, gasoline additives or other toxics." Lautenberg's planned Drinking Water Right to Know Act would allow EPA "to require a targeted increase in monitoring for unregulated pollutants that could be hazardous." The bill would also require EPA "to make information on contaminants in drinking water more readily available online and in simple English."

According to Lautenberg, "More information on contaminants will empower citizens and help government make better decisions on pollutants in the water supply."

Environmental advocates are [calling for strong federal regulation](#) of the disposal of coal ash to prevent water contamination, as well as setting a legal limit for chromium-6 in drinking water and requiring water utilities to regularly test for the contaminant. Coal ash disposal proposals have met with fierce industry opposition. TVA, for example, [was allowed to comment](#) on EPA's coal ash proposal before it was made available for general public comment, and evidence indicates that EPA may have weakened its original proposal in the face of strong pushback from industry interests and [entities within government itself](#).

Congress Works to Improve Legislative Transparency

At the outset of the 112th Congress, both the House and Senate have adopted new rules to increase the transparency of their activities. The Senate will end its practice of "secret holds," where one senator could anonymously forestall proceedings on a bill. Meanwhile, the House adopted a variety of transparency reforms, including posting bills online for three days before voting on them and disclosing more information about committee actions.

Changes in the House

The [House rules package](#), which passed Jan. 5 [along party lines](#), includes several transparency provisions. The reforms come among [other changes](#) not related to transparency, such as several [changes to spending procedures](#) and the names and composition of some committees.

The new rules fulfill two promises made in the [Pledge to America](#), the House Republicans' pre-election policy document. The rules' "Read the Bill" provision requires legislation that has not gone through the normal committee process to be available to members (which may include electronic availability) for at least three legislative days before being considered on the floor. However, [as the Sunlight Foundation noted](#), "the rules do not explicitly mandate online public availability."

In addition, the new rules require each introduced bill to be accompanied by a public statement citing the legislation's authority under the Constitution. Previously, this statement was only required when bills were reported from committee. As noted in [OMB Watch's analysis of the original proposal in the Pledge](#), it remains unclear how these statements will be used and who will resolve any disagreements that may arise.

The rules also contain several changes to committee procedures to give greater notice to the public about activities. For instance, committee meetings must now be publicly announced at least three days in advance, subject to exemptions. Legislation to be marked up by a committee must be publicly available 24 hours before the committee meets, and the text of any amendments to be adopted during the markup must be published within 24 hours after the meeting. Additionally, the record of committee votes must be published electronically within 48 hours. The new rules also eliminate an exemption that allowed the Rules Committee not to disclose its voting records.

"Truth-in-testimony" forms for non-governmental witnesses in committee hearings must be posted online within a day after the hearing. Earlier rules required witnesses to submit these forms, which disclose how much federal funding the witnesses receive, but did not specify that they must be posted online.

Each committee is now required to post its rules online. Committees are also required to issue a report on their activities twice a year, rather than every other year under the previous rules. "To the maximum extent practicable," committees must provide public audio and video recordings of their meetings and hearings. However, the rule does not specify deadlines or that the recordings must be available online.

The Committee on House Administration is newly assigned specific responsibility to "establish and maintain standards for making documents publicly available in electronic form by the House and its committees."

In a nod to the changing media landscape, the new rules eliminate references to specific news outlets for admission to the House floor or committee meetings and hearings. Moreover, the

rules lift the blanket ban on using computers or mobile phones on the House floor. Instead, only devices that "impair decorum" are banned.

The rules also retain the [Office of Congressional Ethics](#), an independent ethics review board. Speculation had swirled that [Republicans might eliminate the office](#) since most Republicans [voted against](#) creating it in 2008.

The Sunlight Foundation [said](#) it was "delighted" with how many of its proposals were adopted in the new rules. Citizens for Responsibility and Ethics in Washington [added](#), "For transparency and open government geeks, there are a few good nuggets to be happy about."

Changes in the Senate

The Senate adopted a [rules change](#) to end the use of secret holds, where one senator could anonymously forestall proceedings on a bill or nomination. Only four senators [voted against](#) the change: Jim DeMint (R-SC), John Ensign (R-NV), Mike Lee (R-UT), and Rand Paul (R-KY).

The vote came as part of an [agreement](#) on several aspects of Senate reform, where both parties agreed to streamline procedures and reduce obstructionism. *The Washington Post* [called the deal](#) "the most significant change in the chamber's rules in 35 years."

Under the new rule, senators are required to publish their holds in the Senate Calendar and *Congressional Record* within two legislative days. The [previous rule](#), adopted in 2007, required disclosure within six legislative days but could be withdrawn without publication at any time before the sixth day. This allowed senators to cooperate and place rolling holds, each lasting less than six days, and avoid the publication requirement. The new rule should reduce the opportunity to place rolling holds.

The previous rule also had no enforcement mechanism, which Senate reformers [had criticized](#). Under the new rule, if Senator A claims to object on behalf of another anonymous senator, Senator A automatically will have the hold printed in his or her name if the anonymous senator does not reveal him or herself.

"The transparency and accountability in this resolution will ensure that the public's business will be done in public," [said](#) Sen. Ron Wyden (D-OR), who sponsored the rule. "Congratulations to the Senate for ending this terrible practice," [wrote](#) the Sunlight Foundation.

Other changes

After the November elections, Rep. David Dreier (R-CA), now chair of the House Rules Committee, sent a [letter](#) to the House Chief Administrative Officer requesting that cameras be installed in the committee's room, one of three committee rooms [previously lacking them](#). The committee has since begun posting [video of its meetings](#).

Speaker of the House John Boehner (R-OH), in a recent [letter](#), supported [expanding access to the Capitol grounds for photojournalists](#). But in a separate [letter](#), Boehner denied C-SPAN's request to add independent cameras on the House floor.

Anti-regulatory Forces Launch Full Assault on Public Protections

Corporate lobbyists and their allies in Congress have launched a systematic, coordinated effort to attack the federal government's efforts to boost innovation and protect public health, worker safety, and environmental quality. The attacks appear to have the Obama administration backpedalling on its agenda to provide meaningful health and safety standards to the American people.

During most of the time President Obama has been in office, corporate special interests have been complaining about the administration's attempt to govern more proactively. As Congress passed major reforms like health care and financial regulation packages and the 2010 midterm elections approached, anti-government opponents prepared strategies to attack the role of government. (See the Jan. 11 issue of *The Watcher* for a [summary](#) of strategies.) The sections below describe the actions taken or planned to implement these strategies.

Congressional Oversight Hearings

On Jan. 26, the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce held a [hearing](#) on "The Views of the Administration on Regulatory Reform." The only witness was the Administrator of the Office of Information and Regulatory Affairs (OIRA), Cass Sunstein, who defended the Obama administration and its regulatory reform efforts.

The chair of the subcommittee, Rep. Cliff Stearns (R-FL), accused the administration of permitting "an onslaught of federal regulations" that have added significant costs to businesses in a slumping economy. Sunstein defended the pace of public protections coming from the administration. He said, "Actually, the number of regulations issued over the past two years is approximately the same as the number of regulations issued in the last two years of the Bush administration," according to a [Congressional Quarterly article](#) (subscription required).

Also on Jan. 26, the Committee on Education and the Workforce held a [hearing](#) on the "State of the American Workforce." The chair of the committee, Rep. John Kline (R-MN), in his [opening remarks](#), expressed "strong concern with administration proposals and policies that are having a chilling effect on America's job creators." One target of the chair's wrath is the 2010 health care act.

Opponents of government intervention in the economy – for example, Virginia Gov. Bob McDonnell (R) and Dyke Messinger, testifying on behalf of the National Association of Manufacturers (NAM) – focused on reducing taxes and the costs of regulations as the two most

important factors leading to new job creation. Neither focused on the benefits of public protections.

Heather Bushey, an economist at the Center for American Progress, painted a picture of a more complex economy crippled by "mismanagement ... in the 2000s." She stressed the need for greater investment in U.S. infrastructure and keeping jobs in this country when making trade policy decisions. She also noted, "Even though corporate America is flush with cash, investment is at the lowest level in more than five decades. So far in this business cycle, from December 2007 to September 2010, business investment has averaged 9.8 percent of gross domestic product, the lowest average for any business cycle since the late 1950s."

Additional hearings with anti-government themes are scheduled:

- On Feb. 8, the House Rules Committee plans a hearing on [a resolution](#) "Directing certain standing committees to inventory and review existing, pending, and proposed regulations and orders from agencies of the Federal Government, particularly with respect to their effect on jobs and economic growth." This resolution is expected to move to the House floor on Feb. 10 and will require major House committees to identify regulations that are "harming job creation," likely teeing up a broader assault on public protections.
- On Feb. 9, the House Energy and Commerce Committee will hold [a hearing](#) on a bill to strip the authority of the U.S. Environmental Protection Agency (EPA) to regulate greenhouse gases.
- On Feb. 10, the House Oversight and Government Reform Committee will hold [a hearing](#) on "Regulatory Impediments To Job Creation."
- Also on Feb. 10, the House Judiciary Committee will conduct [a hearing](#) on the "'Regulatory Flexibility Improvements Act of 2011' – Unleashing Small Businesses to Create Jobs."
- On Feb. 15, a House Oversight and Government Reform subcommittee will hold a hearing on "Regulatory Issues as it Pertains to Unfunded Mandates."

In addition to these and other specific hearings, the chair of the Oversight and Government Reform Committee, Rep. Darrell Issa (R-CA), sent letters to roughly 170 companies and trade associations requesting lists of regulations impacting job creation that should be reformed or eliminated. Issa also posted the same request on a business-oriented website. On Feb. 7, Issa announced he received [more than 200 responses](#) to his request. It is unclear how the committee intends to use the information, though many expect Issa to use the responses to put further pressure on the Obama administration.

Proposed Legislation Targeting Regulations

Anti-regulatory lawmakers have begun following through on their campaign promises to attack not only individual regulations, but the entire rulemaking process.

The most significant piece of legislation to date is the Regulations from the Executive In Need of Scrutiny (REINS) Act, [H.R. 10](#). This bill would require Congress to vote on and approve every new agency rule with an estimated economic impact (either cost or benefit) of \$100 million or more or any rule with a "significant effect" on prices, competitiveness, productivity, or other economic factors. The act would prohibit agencies from implementing rules that do not garner congressional approval.

The REINS Act would cover nearly every aspect of government operations and service. Not only would health, safety, and environmental protections be required to face a fast-tracked vote in Congress before they could be implemented, but so would many rules covering civil rights, Medicaid, Head Start, tax provisions, and even subsidies to industry. This would strip away the current buffer between congressional politicking and technical rulemaking, allowing lobbyists to spread their money around and politicize rulemaking.

By designating this bill within the first 10 bills of the session, the House leadership has signaled that the REINS Act will be one of its top priorities. In addition, the legislative calendar has begun to fill with other bills that seek to undermine the rulemaking process, including:

- The Regulation Audit Revive Economy Act ([H.R. 213](#)), which would impose a moratorium of up to two years on all new regulations, making only limited exceptions for emergencies and other issues.
- The Congressional Office of Regulatory Analysis Creation and Sunset and Review Act ([H.R. 214](#)), which would create the Congressional Office of Regulatory Analysis and require agencies to review all significant rules to consider whether they should be revised or eliminated.
- The 10th Amendment Regulatory Reform Act ([H.R. 455](#)), which would create special standing for state officials to challenge the constitutionality of any rule under consideration.

EPA's regulatory authority is another clear target of House Republicans, particularly related to EPA's efforts to regulate greenhouse gas (GHG) emissions. A few samples of these anti-EPA proposals include:

- The Free Industry Act ([H.R. 97](#)), which would amend the Clean Air Act (CAA) to prevent it from being used as legal authority to regulate greenhouse gases.
- The Protect America's Energy and Manufacturing Jobs Act ([H.R. 199](#) and [S. 231](#)), which would suspend for two years EPA's authority to regulate stationary source emissions.
- A [bill](#) prohibiting any agency from regulating GHGs until China, India, and Russia have enacted similar regulations.
- The Ensuring Affordable Energy Act ([H.R. 153](#)), which would prohibit the EPA from funding a cap-and-trade program or issuing any new stationary source emission regulations.
- The Defending America's Affordable Energy and Jobs Act ([S. 228](#)), which would amend the CAA to exclude greenhouse gases from EPA regulation and prevent the agency from taking climate change into account when considering any regulation.

The Obama Administration's Rulemaking Slowdown

Obama has shown that he, too, is willing to bow to anti-regulatory interests. In a Jan. 18 *Wall Street Journal* [op-ed](#), Obama adopted the conservative mantra that regulations impair job creation and innovation. The op-ed also announced a new executive order on regulation [that instructs](#) agencies to review existing regulations and impressed upon agencies the need to place regulatory decisions in a job-creation context.

Rhetorically, Obama [shifted](#) during his State of the Union address. He reiterated points in his executive order but assured Americans, "I will not hesitate to create or enforce commonsense safeguards to protect the American people." Obama connected regulation to health and safety by saying, "It's why our food is safe to eat, our water is safe to drink, and our air is safe to breathe. It's why we have speed limits and child labor laws."

Since Obama signed the new executive order, however, several agencies have pulled back on planned regulatory actions. Whether politically motivated or not, each move strengthens the perception that the administration may be sacrificing regulation to curry favor with the business community and conservative lawmakers.

The most striking example of the administration's hesitancy toward regulation came Jan. 25 when the Occupational Safety and Health Administration (OSHA) announced it would reconsider a rule on musculoskeletal injuries that had been nearing completion. The rule would restore a musculoskeletal column to the form employers fill out when a worker is injured. This minor requirement for employers would be a boon to OSHA, which would then have additional information on such injuries. However, industry opposes the rule and lobbied against a draft final version while it was under review at OIRA, typically the last major step before final publication.

In a [statement](#), OSHA head David Michaels acknowledged, "Work-related musculoskeletal disorders remain the leading cause of workplace injury and illness in this country," but added, "However, it is clear that the proposal has raised concern among small businesses, so OSHA is facilitating an active dialogue between the agency and the small business community."

The industry lobbyists that [met with OIRA and OSHA](#) were not from small businesses, but rather Washington-based trade groups including the U.S. Chamber of Commerce (the Chamber), the National Association of Home Builders, Associated Builders and Contractors, Inc., and NAM. In a [statement](#), NAM Vice President of Human Resources Policy Joe Trauger called the musculoskeletal column "unnecessary."

Trauger referred to an earlier [announcement](#) that OSHA had withdrawn a "proposed interpretation" on occupational noise standards when he said, "This is another positive sign that the Agency is listening to the concerns of employers about the economic impact of costly and burdensome requirements." OSHA said it needed to perform more public outreach and is concerned about potential costs. Industry had publicly objected to the proposal and applauded

its withdrawal. "OSHA spokeswoman Diana Petterson said the noise standards decision was 'completely unrelated' to Obama's order," according to the [Associated Press](#).

On Jan. 18, the Employment and Training Administration (ETA) [announced](#) new wage standards for foreign guest workers. ETA says the rule, by setting wage floors, will help foreign guest workers while at the same time making U.S. workers more competitive in the job market. However, ETA delayed implementation of the rule until 2012, angering labor unions. "Delaying the new wage process until 2012 gives too great a concession to the Chamber of Commerce and other business groups that profit from employing low-paid foreign guest workers," AFL-CIO President Richard Trumka said in a [statement](#). Like OSHA, ETA is a part of the Department of Labor.

On Jan. 31, the Consumer Product Safety Commission (CPSC) again [delayed](#) a requirement that children's product manufacturers test their products to ensure they do not contain harmful levels of lead. Since Congress approved the requirement in 2008's Consumer Product Safety Improvement Act, industry has complained about the costs of the testing, which must be conducted by an accredited third party. CPSC's commissioners have voted three times to delay implementation. The commission's Jan. 31, 4-1 vote extended the deadline until Dec. 31, 2011, and will be the final stay of enforcement, [according to CPSC head](#) Inez Tenenbaum.

Taken together, these examples portend a shift in the administration's regulatory strategy. A September 2010 OMB Watch [report](#) analyzing the Obama administration record on rulemaking in its first 18 months found that agencies had poured energy into their rulemaking agendas and had made significant progress on a variety of health, safety, and environmental issues. Obama's record stood in stark contrast to that of President Bush, who preferred a hands-off approach and more collaboration with industry, the report found.

It seems as if the Obama administration is trying to find a clear message on regulatory issues. Obama [spoke](#) at the Chamber on Feb. 7, where he reiterated points made in the *Wall Street Journal* op-ed and emphasized actions the administration has taken to reduce requirements on business. However, Obama countered those points by stating, "[E]ven as we work to eliminate burdensome regulations, America's businesses have a responsibility to recognize that there are some safeguards and standards that are necessary to protect the American people from harm or exploitation," and, "[T]he perils of too much regulation are matched by the dangers of too little."

Obama continued with a strong defense of regulation. He provided some historical context with examples where industry claimed the sky was falling, such as with seatbelts in cars and the creation of the Food and Drug Administration, and he stated that in fact, "companies adapt and standards often spark competition and innovation." Citing other examples, Obama concluded, "So regulations didn't destroy the industry; it enhanced it and it made our lives better." He then called on industry to create jobs by spending some of the corporate profits that have swelled from an annualized pace of \$995 billion to nearly \$2 trillion.

Yet on the same day that Obama was defending regulation at the Chamber, Sunstein of OIRA posted [a blog entry](#) heavy on capitulating to corporate special interests and light on promoting public protections.

The Case for Greater Public Protections

The jobs-versus-regulations myth has been perpetuated by corporations and their political allies for at least three decades, yet the U.S economy has experienced both tremendous growth and economic declines unrelated to government intervention during that time. There is little evidence to support the canard that regulations cost jobs. In addition, the current regulatory process, with its [biased approach](#) to calculating costs and benefits in favor of business, shows that the benefits of public protections far outstrip the costs as reported in OIRA's [annual costs and benefits reports](#) to Congress.

Businesses often urge federal agencies to set national standards to protect against disparate state standards and/or competition from international companies. In a recent [Bloomberg Government Insider article](#), author David Lynch illustrates numerous examples of businesses supporting government intervention. On food safety, underground storage tanks, emission control systems, seat belts, air bags, and climate change, businesses benefit when the government creates standards that protect public health, safety, and environmental quality.

Lynch cites a representative of the Grocery Manufacturers Association that called the landmark food safety bill passed in 2010 "a present under the tree" because its clients lost millions of dollars after contaminated food led to multiple recalls and reduced consumer confidence in food products, even those products unaffected by the recalls. The new standards in the law "will be worth the trouble if they calm shoppers and prevent costly recalls," according to the article.

At the Energy and Commerce Committee hearing described above, ranking member Henry Waxman (D-CA) [noted that nine corporate heads](#) of energy and manufacturing companies supported comprehensive energy legislation. "What these CEOs [*sic*] were telling us is that they needed more energy and carbon regulation – not less – so they would know the rules and plan and invest for the future," Waxman said in his hearing statement.

Ironically, even the Chamber's chief lobbyist R. Bruce Josten debunks the jobs vs. public protections myth, according to the *Bloomberg* article, when he admits, "Everyone thinks the business community hates regulations. Not only is that not true, it couldn't be further from the truth."

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