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The Watcher

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In This Issue

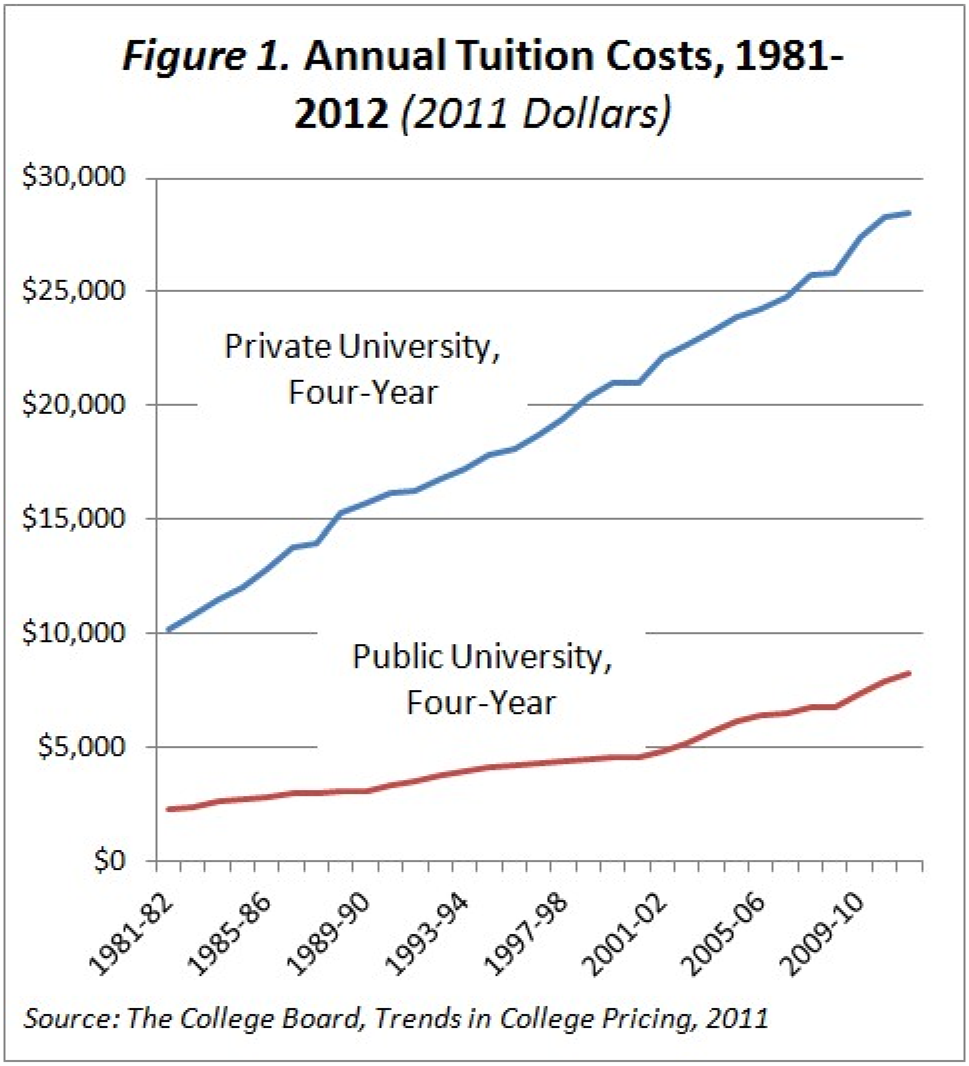
Student Loan Interest "Fix" Not a Solution to Longer-Term Problems

Just before they left town for the July 4th break, members of Congress finally voted to prevent a doubling of student loan interest rates for one year with mere hours to spare. Unfortunately, they paid for it by reducing other educational programs. If we want an educated workforce in the future, we need more permanent fixes to make college affordable for Americans.

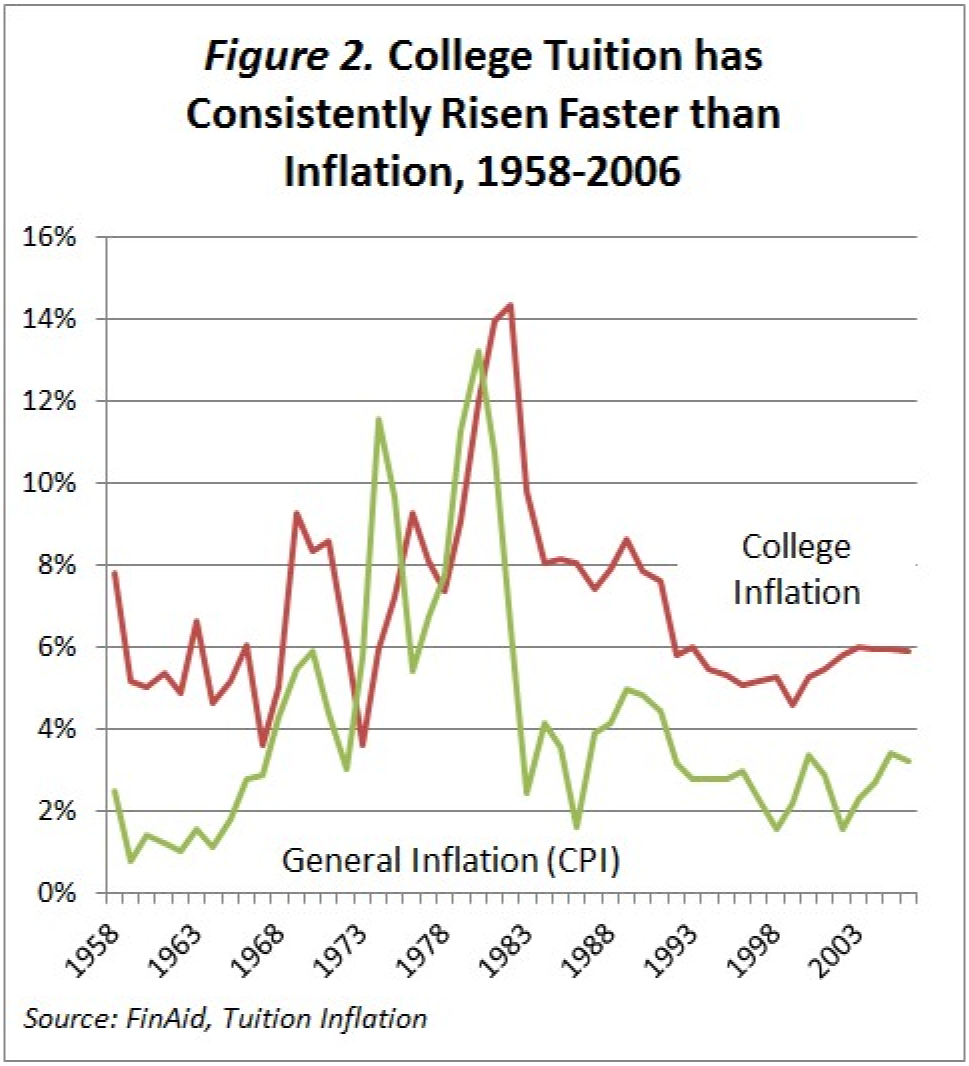
Although Congress maintained lower rates for subsidized loan recipients, members altered repayment rules so that recent graduates will have higher repayment bills. Prior to the passage of the interest rate cut extension, interest on loans did not accumulate until six months after graduation. Starting in 2014, interest charges will begin accruing the day after graduation. The recent generation of graduates has already been hit hard by the Great Recession; the underemployment rate for recent graduates is more than 19 percent.

On top of all this, access to federal lending has been narrowing. In 2011, as part of the debt ceiling deal, Congress voted to deny graduate students subsidized student loans, and last week's compromise will do the same for some non-traditional students by limiting subsidized student loans to only six years of undergraduate study. Non-traditional students, who often take more than the normal four years to graduate, are among those most in need of financial aid.

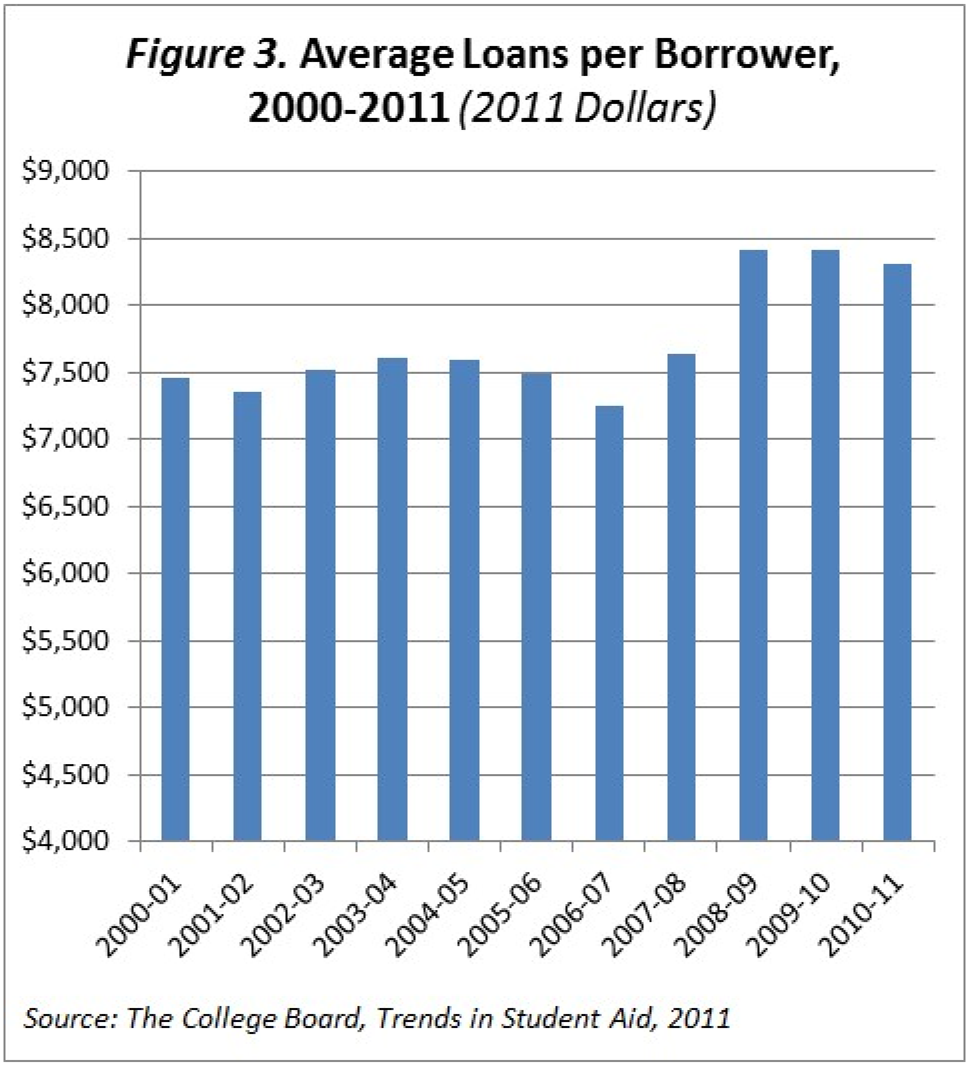
The cost of college has been increasing at a rate faster than inflation since the 1980s, and costs have skyrocketed in the past six years (see Figure 1). Controlling for inflation, annual tuition at private schools nearly tripled from $10,144 in 1981 to $28,500 in 2011-12 (a 181 percent increase). Average costs at public universities almost quadrupled, from $2,242 in 1981 to $8,244 last year (a 268 percent increase).



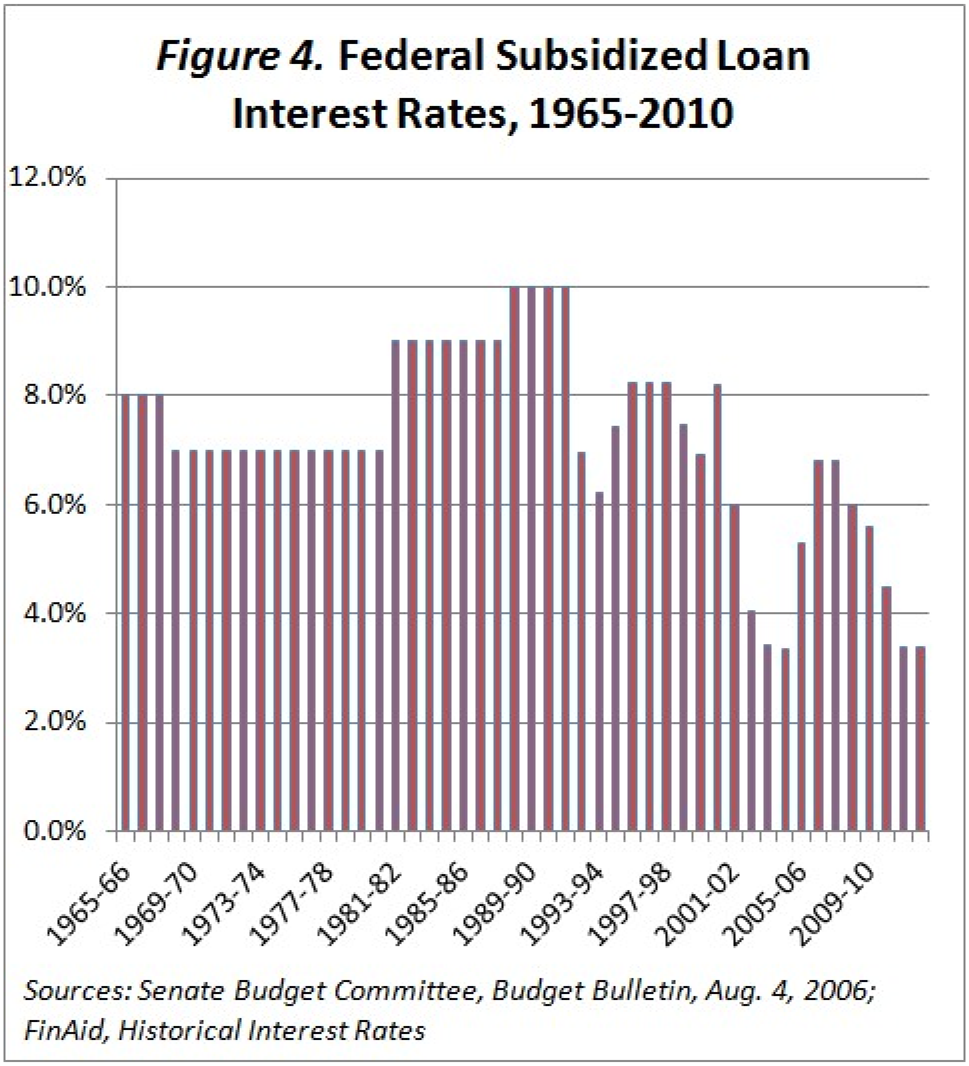
Sixty years ago, in 1952, the cost of a four-year undergraduate degree at the University of Pennsylvania was just $6,280 ($54,462 in today's dollars), including room and board and books. That's less than a single year at UPenn today, which costs $59,600 a year (including room and board and books). Leading educational researchers are warning that this trend is pricing many students out of higher education.



Unsurprisingly, the increase in the cost of a degree is translating into more debt for students. Almost half (47 percent) of students in 2007 received some form of financial aid, up from 32 percent fifteen years ago. And the average loan amount borrowed per student has been rising; it is now over $8,000 a year (see Figure 3). Recently, the total amount of student debt rose to over $1 trillion, eclipsing the amount of credit card debt. This represents a permanent drag on individual savings and investments. Keeping interest rates on this debt down is important but doesn't solve the underlying problem.



Federal loan interest rates have fluctuated dramatically over the past 30 years, as the Reagan administration raised rates, pegged them to the prevailing rate for Treasury bonds, and encouraged private banks to get involved in the student loan market. From the 1960s, when Congress created the federal student loan program, through 1992, Congress fixed the interest rate at between six percent and 10 percent. In 1992, Congress voted to shift to a "floating" rate, setting loans at 3.1 percent higher than the prevailing rate for short-term Treasury bonds (with a nine percent rate cap). Congress did not revert back to a fixed interest rate formula until 2002, when it passed a law that set a 6.8 percent rate for new loans. This rate went into effect in 2006.



After Democrats won control of both houses of Congress in 2006, they made good on a campaign promise and halved the student loan rate to 3.4 percent. But, as they had also pledged to follow Pay-As-You-Go (PAYGO) budgeting principles, they narrowed the loan program dramatically. Instead of cutting all rates, they just reduced rates for a subset of federal student loans – subsidized federal loans for undergraduates, and they phased in the reduction over a number of years. The new rates were set to expire after five school years in order to reduce the long-term PAYGO budget score for the legislation. This expiration was scheduled to take place this summer, but last week, Congress voted to keep loan rates low for another year.

The way that the government subsidizes a college degree has undergone a substantial shift in the past 70 years. After World War II, the nation's signature education initiative, the G.I. Bill, helped more than a million veterans pay for higher education with direct grants, which did not have to be paid back. Today, student loans are by far the bulk of federal dollars spent on undergraduate students. In 2011, $70 billion of undergraduate student aid was provided by federal loans, more than twice the amount given through Pell Grants. About 500,000 veterans use educational benefits every year (compared to 10.3 million students who receive federally guaranteed student loans).

Loans help spread limited federal education dollars, but piling debt onto students is a drag on the economy. IHS Global Insight economist Chris Christopher notes that "People are delaying marriage, postponing having children, and taking a pass on home purchases...They're living with their parents. They're not spending as much as they otherwise would have."

Sending people to college is an investment in America that benefits everybody. Fortunately, there are a number of ways to put college within reach of more people. We could return to expanding programs like the G.I. Bill and Pell Grants, which provide direct cash assistance to students. We could pass Rep. Hansen Clarke's (D-MI) Student Loan Forgiveness Act of 2012, which would lift the debt burden for students who have repaid a good proportion of their loans but are currently having trouble staying above water. And there are ways to pay for increased college financing, from taxing risky high-volume stock transactions to cutting the $600 billion Defense Department budget.

The outlook for students trying to figure out how to pay for college is pretty bleak. The Great Recession has severely constrained the amount of money parents can contribute to their children's education funds; tuition at many state universities has skyrocketed thanks to state budget cuts, and college graduates entering the workforce face a very tough job market. Congress' action to keep student loan interest rates low was a necessary first step, but it isn't a solution to the problem of exploding student debt.

Fracking Disclosure Policies Fail to Protect Public Health and Safety

State oversight laws requiring disclosure of the chemicals used in hydraulic fracturing (commonly referred to as fracking) are in need of an overhaul. A new OMB Watch report, *The Right to Know, the Responsibility to Protect: State Actions Are Inadequate to Ensure Effective Disclosure of the Chemicals Used in Natural Gas Fracking*, examines state chemical disclosure rules and aims to empower the public. It also encourages state and local authorities to improve their chemical disclosure standards, especially in those regions of the country most involved in and affected by natural gas fracking.

Disclosing the chemicals associated with fracking is the necessary first step to ensuring that our search for new domestic energy supplies does not compromise our water resources or threaten the health of our people. "Citizens need to have adequate information to evaluate the potential risks and rewards of allowing natural gas fracking in their communities," said Sean Moulton, Director of Information Policy at OMB Watch and an author of the report.

Background

Since the fracking of horizontal wells expanded in the last decade, tens of thousands of wells have been fracked in areas across the country. Fracking is a natural gas extraction process that uses sand and fluids pumped underground at very high pressure to cause fissures in rock and force natural gas to the surface. Although most of the fluid is water, numerous toxic chemicals are typically added to the mixture. Fracking fluid is known to often contain benzene (a known carcinogen), toluene, and pesticides, among other harmful substances.

The process of hydraulic fracturing has been linked to contamination of drinking water, and the fluids involved in the process create public health and environmental hazards. Despite its risks to public health and the environment, fracking is not subject to the same standards as other industries when it comes to disclosing the toxic chemicals used and protecting underground sources of drinking water.

In most cases, the Safe Drinking Water Act authorizes the U.S. Environmental Protection Agency (EPA) to regulate the injection of fluids underground and limit pollution levels in drinking water. However, the 2005 Energy Policy Act stripped the EPA of its authority to monitor fracking, making it the only industry to benefit from such an exemption.

With the absence of federal regulation and as citizen pressure for new protections and greater oversight mounts, more state governments are establishing rules requiring disclosure of the chemicals used in fracking and better monitoring of their potential impacts on local water supplies and public health. Unfortunately, none of the current state efforts sufficiently addresses all of the key elements needed for effective oversight.

Elements of an Effective Chemical Disclosure Policy

The Right to Know, the Responsibility to Protect identifies the gap between effective policy on chemical disclosure and existing practice. It finds that disclosure of the chemicals used in fracking is spotty and incomplete, and essential safeguards are missing. The report lays out what an effective chemical disclosure policy would look like, highlighting four key elements:

1. Before receiving a drilling permit, the owners and operators of natural gas wells should gather baseline information on nearby water sources and water and air quality. They should disclose the chemicals they intend to use in the fracking process and commit to regularly monitoring the water and air near the gas wells and near wastewater storage facilities for potential contamination for as long as the well is operating and for some period after operations have ceased.
2. Information on the chemicals used in fracking should be collected from drilling companies, well operators, and manufacturers and should include specific information on the unique chemical identification numbers, concentrations, and the quantity of the chemicals used.
3. States should have clear guidelines limiting "trade secrets" exemptions from disclosure laws to prevent companies from invoking this loophole to avoid disclosure.
4. Information about the chemicals used at each individual well where fracking occurs should be posted on a public website in a way that allows users to easily search, sort, and download data by chemicals used, companies involved, and well location.

How do States Measure Up?

The Right to Know, the Responsibility to Protect shows that no state has yet established all of the elements of a chemical disclosure policy strong enough to ensure the quality of the water and the health of communities near gas wells. "Public officials in state government are struggling to find a way to protect water supplies and public health in the wake of the rapid expansion of natural gas drilling and extraction. They haven’t gotten it right yet," said Katherine McFate, president of OMB Watch.

Currently, at least 30 states are engaged in natural gas drilling; six states have more than 30,000 wells; another five have between 10,000 and 30,000 wells. Yet only 13 states with active gas reserves have passed laws or established rules requiring some level of public disclosure of the chemicals used in fracking. Four other states have proposed chemical disclosure policies but have not finalized them.

Surprisingly, seven states with significant natural gas drilling activity (over 1,000 wells) have no state laws or rules requiring public disclosure of the chemicals used in the process. One of these states – West Virginia – has more than 52,000 wells in operation.

Colorado has made the most progress, putting in place several elements of an effective disclosure policy, including requiring detailed information on the chemicals used in fracking, limiting confidential business information exemptions, and requiring online public posting of some of the information collected. However, Colorado does not mandate baseline studies of air and water quality.

Most state rules do not contain any requirement for the public disclosure of the chemicals well owners and operators are planning to use before fracturing takes place. Wyoming's rule provides for some disclosure prior to fracking, and the Montana, Arkansas, and Pennsylvania rules provide much more limited prior disclosure.

According to the OMB Watch report, a major shortcoming of current state chemical disclosure laws is the exemption that allows companies to withhold "confidential business information." This loophole allows companies to conceal specific information on the ingredients in their products by claiming that disclosure would undermine their business model or give competitors an advantage. Already, gas drillers in Wyoming have used a "trade secrets" claim to resist the state's disclosure laws, and a legal challenge has been required to try to wrestle the information from them. Honoring the public's right to know and the government's responsibility to protect public health and water resources will require moving away from automatic exemptions when trade secrets are claimed, toward a new process of public review of business claims.

However, this shift to more limited trade secrets rules has been increasingly difficult as the American Legislative Exchange Council (ALEC), an organization funded by large corporations and dedicated to moving state legislation that reflects their priorities, has been promoting an industry-approved approach to legislation. ALEC's December 2011 model bill, sponsored by ExxonMobil, is based on Texas' chemical disclosure bill. The model bill has broad "trade secrets" exemptions and fails to include baseline reporting of chemical and water quality data. State legislatures that build on this approach are unfortunately establishing flawed programs that will provide very little in terms of real oversight. In a March blog post, ALEC claimed that legislators in Pennsylvania, Illinois, Indiana, New York, and Ohio had introduced versions of its model bill.

Next Steps

The gas industry's quest to expand the production of fracking across the nation has outpaced the development of regulatory protections aimed at protecting Americans' health. The report offers recommendations for steps at both the state and federal levels.

At the federal level, no action would be more useful than for Congress to eliminate the Safe Drinking Water Act (SDWA) loophole created in 2005. Given the growing concerns about contaminated well water, the SDWA is the most relevant and comprehensive vehicle to oversee fracking activities.

On July 28, a nationwide coalition of citizens, communities, and organizations are coming to Washington, DC, to demand that Congress eliminate the SDWA exemption, as well as close other loopholes that allow reduced supervision of the oil and gas industry under the Clean Air Act and Clean Water Act. The rally, called Stop the Frack Attack, will call for the pursuit of clean, renewable energy, rather than practices that put the environment and public health at risk.

Until the federal loopholes are closed, oversight responsibility for natural gas drilling will remain with state governments. To fulfill their responsibility to protect public health and welfare, *The Right to Know, the Responsibility to Protect* encourages government officials – legislators and administrators – to develop or strengthen chemical disclosure rules to meet the principles set out in the OMB Watch report.

"The secrets and loopholes that keep people in the dark are resulting in pollution and community health degradation everywhere the industry goes," said Tracy Carluccio, Deputy Director of the Delaware Riverkeeper Network. "This report will be an important weapon in our struggle to protect the river's drinking water for over 15 million people, including New York City and Philadelphia, to protect the Wild and Scenic Delaware River, and stop the industry's free-for-all in the shale regions."

Health Care Law's Transparency Provisions Empower Consumers, Prevent Waste and Fraud

Transparency isn't typically the first thing that comes to mind about the 2010 health care law. However, the law puts more health care information in the hands of consumers and gives the public new tools for combating waste and fraud.

The law's more than 900 pages attest to the complexity of the American health care system. The new disclosure provisions aim to simplify health care and make it more understandable for the average person. Increased transparency not only helps consumers make the right health care choices, but also cuts down on health care waste and fraud, which costs the federal government billions of dollars every year.

Background

After his inauguration, President Barack Obama sought to fulfill one of his major campaign goals: reform of the U.S. health care system. On March 23, 2010, Obama signed the Patient Protection and Affordable Care Act (PPACA) – known informally as "Obamacare" – as well as a related package on March 30. The law's main goals are to protect health care consumers from abusive practices while controlling costs, improving the quality of care, and extending coverage to the nation's 49 million uninsured people.

On June 28, after a high-profile legal challenge, the U.S. Supreme Court upheld the law's key provisions. Nevertheless, the law continues to be targeted by Republicans, with House Speaker John Boehner (R-OH) calling for the law to be repealed "in its entirety." As our analysis shows, though, fully repealing the law would eliminate a number of helpful transparency provisions in addition to the better-known aspects of the law.

New Nutritional Labels for Healthier Dining Choices

To help Americans make healthier meal choices, the law requires restaurants to list the number of calories per menu item. The requirements will apply to chains with 20 or more locations. In addition, vending machines must provide a sign disclosing the calories in each item. The Food and Drug Administration (FDA) proposed the rules for restaurants and vending machines in April 2011 but has not yet issued final rules.

Such labels will be a big help to anyone watching their weight and could have an important impact on Americans' health. More than one-third of U.S. adults are obese, increasing their risk for conditions including heart disease and diabetes, according to the Centers for Disease Control and Prevention (CDC) – a number which has grown in recent decades. But a recent study in the *American Journal of Public Health* showed that labeling menus with calorie counts resulted in customers choosing options with fewer calories, a crucial step toward making caloric intakes healthier.

Empowering Insurance Consumers with Information

To inform consumers' choices on insurance, the law requires insurers to disclose certain information about their policies and performance. The data to be disclosed includes information on how the plan sets rates for different customers and the number of claims that the plan denies.

The Department of Health and Human Services (HHS) issued its rules for the disclosures in March. The rules will apply to group health plans, as well as plans participating in the health insurance exchanges established under the law, except for those grandfathered in. The exchanges, which will be marketplaces for individual and small group plans, will begin operation by 2014.

To help consumers understand their choice of plans, the law also requires insurers to provide a simple and standardized disclosure form summarizing their coverage. The form explains key information such as benefits, deductibles, and examples of how benefits of a plan work under common scenarios such as pregnancy. Under the rules issued in February, insurers will have to provide these disclosures starting in September.

Making Medicare More Transparent

The law also makes Medicare data more transparent, which will allow researchers to analyze the performance of doctors and hospitals and to monitor for fraud. Medicare is a federal government health insurance program for Americans over 65 years old. Such research will help inform patients' choices and make Medicare more efficient. Improper Medicare payments were estimated at $43 billion in 2011, the largest of any federal program.

The law requires HHS to make Medicare claims data available to researchers to evaluate providers' performance, including quality, efficiency, effectiveness, and resource use. The data will not be directly accessible to the general public, but only to qualified researchers who agree to keep the data secure.

Those researchers can publicly report their findings, so long as no information identifies any beneficiaries. Such reports can be powerful, as demonstrated by the *Wall Street Journal*'s Pulitzer Prize-nominated series exploring questionable Medicare practices based on data obtained before the new provisions took effect.

HHS issued rules to implement the provision in December 2011. Applications to access the data opened in January. There are several pending bills in Congress that would further expand access to the data.

Encouraging Whistleblowers to Report Fraud

Other provisions in the new law aim to root out and deter health care fraud by encouraging whistleblowers to report wrongdoing.

Under the False Claims Act, an individual who reports fraud against the federal government can receive a share of the money that is recovered. To qualify for an award, the whistleblower must be the original source of the information before it is publicly disclosed. However, this was often difficult to prove under the existing rules, and whistleblowers with useful information could easily be disqualified.

The health care law strengthens the False Claims Act by tightening the standards, making more whistleblowers eligible for awards. The result should be a greater willingness for those with knowledge of fraud to report it – and hopefully to deter fraud from occurring in the first place. The new standards apply to fraud with any federal funds, not just those related to health care.

Reforming Health Care Through Transparency

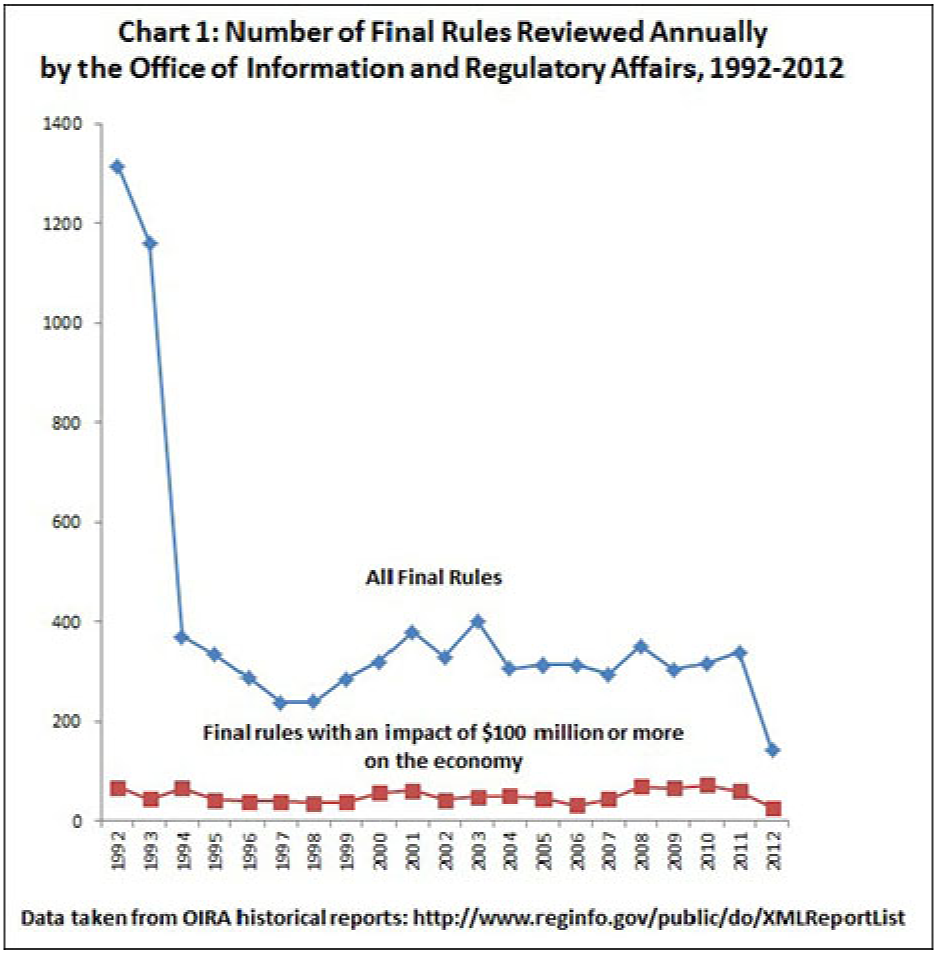
In sum, the health care law will provide consumers with understandable information so they can make decisions that are right for them and protect important programs such as Medicare from fraud. The provisions discussed here are only the highlights of transparency efforts contained within the law; the law also grants HHS the authority to require additional disclosures in several other areas. By giving people more information, the quality and efficiency of the health care system should increase over time.

Searching for a Regulatory "Tsunami" in Calm Seas

Has the Obama administration unleashed a regulatory "tsunami" as House and Senate Republicans charge? Has this administration issued more significant final rules than past administrations?

Contrary to the rhetoric of the business community and its allies on Capitol Hill, hard research shows the answer is an unambiguous no.

To put Obama's regulatory record in perspective, OMB Watch analyzed the number of final rules reviewed by the Office of Information and Regulatory Affairs (OIRA) each year since 1992. The results of our analysis are shown in the chart below.



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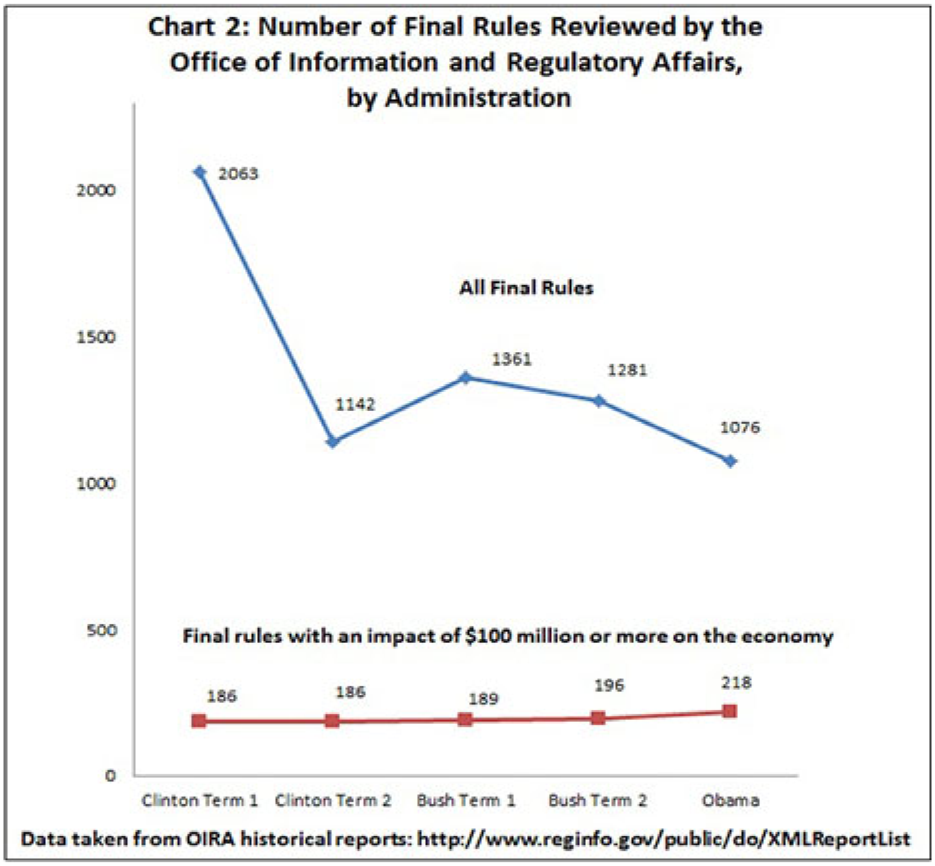
OIRA reviews all significant rules, whether economically significant or otherwise, before they are finalized. Economically significant rules are those that are estimated to have an effect of $100 million or more on the economy. Not counting the large number of final rules in 1992 and 1993, the number of final and economically significant final rules has been relatively constant. When the rules are grouped by presidential term, the most rules were reviewed and approved during President Clinton's first term. Under President Obama, OIRA has reviewed and approved fewer rules than in either of President Bush's terms.

In fact, during the first term of the Clinton administration, agencies finalized almost twice as many rules as were finalized to date by the Obama administration. And during the first term of the Bush II administration, OIRA reviewed roughly a quarter more rules than the first three and half years of the Obama administration (see Chart 2). In 1992 alone, the last year of the Bush I administration, OIRA reviewed and finalized more than 1,200 rules. In comparison, during the entire three and half years of the Obama administration, OIRA has reviewed fewer than 1,100 final rules. The data also show that this year, OIRA has reviewed significantly fewer final rules than in prior years. Unless the pace picks up before the election – an unlikely event – Obama will regulate less, not more, this year.



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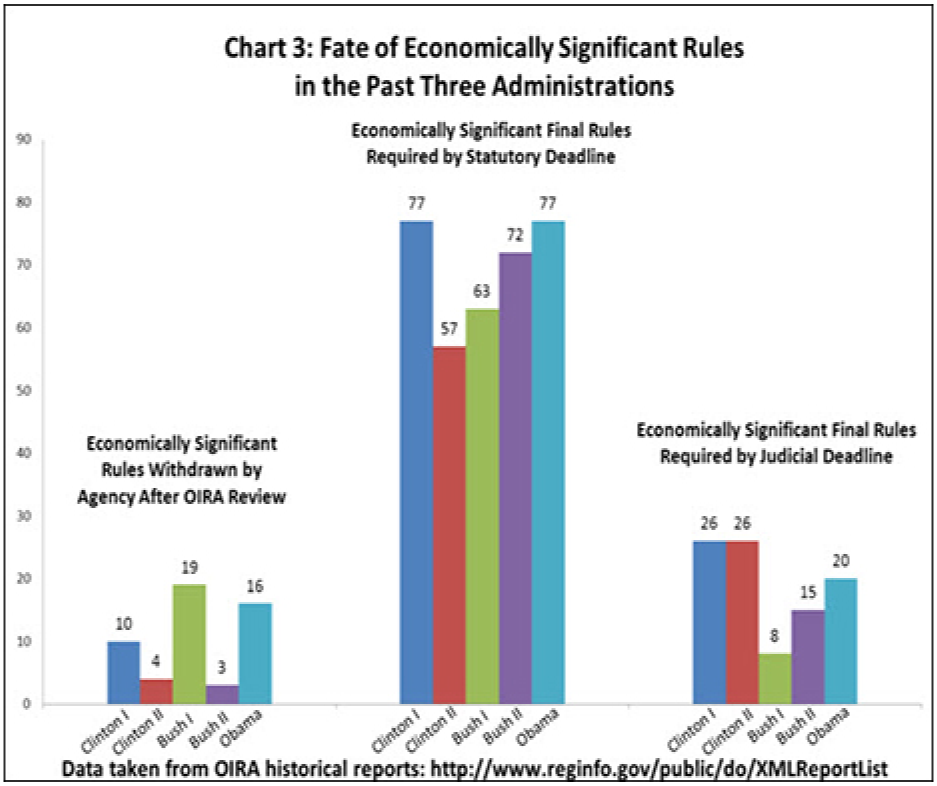
Since Obama took office, his administration has finalized 218 economically significant regulations. During his first term, Bush finalized 189. This 29-rule increase – representing a 12 percent increase in the number of economically significant rules finalized – is hardly a "regulatory tsunami." Moreover, the increase is probably due to inflation, since the definition of "economically significant" is a rule that has an impact of $100 million or more. This number has not been adjusted for inflation since centralized review by OIRA began in 1980, even though the costs of goods and services have increased over the past 30 years. Inflation may also explain why the Bush administration – which was openly hostile to many types of federal regulation – finalized more economically significant rules than were finalized during either term of the Clinton administration. The year-by-year figures in Chart 2 confirm the relatively gradual increase in major regulations being finalized.

Indeed, not only are the total number of rules finalized by Bush and Obama comparable, so too are the number of rules required by either statutory or judicial deadlines (see Chart 3). This is true despite the fact that the Bush administration was philosophically opposed – or so they claimed – to regulation.



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The number of significant rules being reviewed has been relatively constant for years. Our analysis suggests that Obama has been a relatively timid regulator, finalizing only a handful more rules than Bush. In fact, recent work by Public Citizen suggests that OIRA is taking longer to review rules than in the past, further reducing the number of standards being finalized. Actual data shows that there is no "regulatory tsunami"; rather, the tide of rulemaking under the Obama administration has been steady and predictable.

June Was a Good Month for Clean Air Act Protections, but Challenges Continue

On June 26, a federal appeals court upheld the U.S. Environmental Protection Agency's (EPA) authority to regulate greenhouse gases under the Clean Air Act (CAA). The decision reaffirms the EPA's ability to protect our health and the environment from air pollution and allows it to continue combating climate change.

The U.S. Court of Appeals for the District of Columbia Circuit agreed with EPA's interpretation of the CAA and denied industry and state challenges to its finding that carbon dioxide and other greenhouse gases endanger public health. Environmental groups and leaders in Congress applauded the decision.

In 2007, the U.S. Supreme Court, in a landmark decision (*Massachusetts v. EPA*), held that EPA could regulate greenhouse gases as air pollutants under the CAA. The Court directed EPA, which had previously refused to regulate greenhouse gases, to determine whether such emissions endanger public health, a finding that triggers regulation under the CAA. In 2009, EPA issued a finding that motor vehicle emissions of greenhouse gases contribute to climate change, and climate change can be reasonably anticipated to endanger public health and welfare.

EPA then issued greenhouse gas emission standards for cars and light trucks as part of a joint rulemaking with the National Highway Traffic Safety Administration (NHTSA). New permitting requirements and standards for facilities emitting pollutants regulated under the CAA followed.

The D.C. Circuit rejected industry challenges to EPA's endangerment finding and greenhouse gas emission standards, allowing the rules to stand. Affirming the "precautionary and preventive orientation" of the CAA, the court found that "EPA's interpretation of the governing CAA provisions is unambiguously correct" and refused to substitute its judgment for that of agency experts when interpreting scientific evidence. Public interest and environmental groups rejoiced in the court's stern rejection of arguments claiming the scientific evidence showing greenhouse gases cause climate change is too uncertain to support regulation.

Other air pollution control standards recently survived an attack on Capitol Hill. The Senate on June 20 voted 46-53 against a resolution introduced by Sen. James Inhofe (R-OK) that would have nullified EPA's mercury and air toxics standards (MATS) for power plants. The MATS are expected to carry enormous public health benefits but have been targeted by industry groups.

The day after the Senate voted to retain the MATS, a coalition of clean air groups announced that they had collected an unprecedented 2.1 million public comments in support of the new carbon pollution standard that EPA proposed in March. The proposed rule would set national limits on the amount of carbon pollution newly built power plants can emit. According to the clean air groups, this is the largest number of comments ever submitted to the EPA during a public comment period.

Despite the popularity of clean air protections, we can expect more challenges to EPA rules in both Congress and the courts. Although the recent Senate vote and D.C. Circuit decision protected the rules under attack, CAA standards are far from safe. Attempts to weaken EPA air regulations have succeeded in the House, and industry groups have filed lawsuits challenging the MATS. At the same time, EPA faces the possibility of significant funding cuts and rulemaking constraints. The House Appropriations Committee recently approved a bill that would slash EPA's funding and prevent the agency from implementing certain greenhouse gas standards.

Has the Supreme Court United Against Citizens' Participation in Government?

By refusing to hear *American Tradition Partnership v. Bullock*, the Montana case on corporate election spending, the U.S. Supreme Court reaffirmed on June 25 that corporations can spend unlimited money to influence the outcome of political campaigns.

One hundred years ago, Montanans passed a ban on corporate spending in elections. This came after an election in 1894 when two "copper kings" – out-of-state copper industry magnates – spent $17 million trying to buy the statehouse. Political corruption became so blatant in the state that in 1899, the U.S. Senate refused to seat William Clark after he bribed state legislators to choose him for Montana's Senate seat. (At that time, state legislatures elected U.S. senators.)

The people of Montana fought back by enacting the state's Corrupt Practices Act, which included a ban on corporate spending in political campaigns. Montana's law decreed that a "corporation may not make . . . an expenditure in connection with a candidate or a political committee that supports or opposes a candidate or a political party." In *American Tradition Partnership*, the Montana Supreme Court described the Corrupt Practices Act as necessary to ensure that Montanans and their elected representatives, rather than corporations, were governing the state. The court also pointed out that even Clark agreed that the influx of political spending by corporations had discouraged citizens from voting.

But in 2010, the U.S. Supreme Court ruling in *Citizens United v. Federal Election Commission* declared that corporations have the right to make independent expenditures and attempt to influence political campaigns because "political speech does not lose First Amendment protection simply because its source is a corporation."

As a result of this ruling, American Tradition Partnership, a 501(c)(4) "social welfare organization," argued that the Montana law had been overruled by *Citizens United*, which the group understood to ban all restrictions on independent expenditures by corporations. Montana's Supreme Court disagreed, ruling that *Citizens United* would allow restrictions on corporate political speech if the government could demonstrate that the restrictions were as minimal as possible to achieve a compelling governmental interest. The Montana court decided that the state's demonstrated history of corporate vote-buying, which had allowed corporations to take over the government and discouraged people from participating in the democratic process, was sufficiently compelling and the Corrupt Practices Act restrictions were sufficiently narrow that the law should stand. The U.S. Supreme Court promptly issued a stay of that decision, essentially ensuring that until they could *actually* overturn the Montana Supreme Court's decision, everyone would have to act as if they'd already done so.

Two justices – Ruth Bader Ginsberg and Stephen Breyer –agreed with the Montana Supreme Court's argument that the state's history demonstrated that corporate spending on political campaigns can corrupt democracy. They also described the case as "an opportunity to consider whether, in light of the huge sums currently deployed to buy candidates' allegiance, *Citizens United* should continue to hold sway."

Nonetheless, on June 25, the U.S. Supreme Court issued a 5-4 decision striking down Montana's law – without ever hearing arguments in the case. (This happens a few times each term, usually indicating that the majority of justices feel the result is so obvious that full arguments aren't necessary.)

For those fighting to remove all limits on campaign spending, this decision may only be the first step. American Tradition Partnership – like the U.S. Supreme Court in *Citizens United* – argued that disclosure laws, rather than outright bans on political contributions, would guard against corruption or the appearance of corruption. But the Montana Supreme Court pointed out that the organization making this argument is also involved in a separate, simultaneous lawsuit asserting that those same disclosure laws are unconstitutional restrictions of the freedom of speech.

Other advocates for unlimited corporate political spending are making similar arguments. For example, on June 12, Senate Minority Leader Mitch McConnell (R-KY) told the American Enterprise Institute that disclosure requirements would "intimidate donors" and argued that corporations should not face restrictions on their political spending.

Fortunately, not all these challenges have been successful. The Fourth Circuit ruled on June 28 that while *Citizens United* allows corporations to make independent expenditures to support or oppose candidates for office, corporations cannot make direct contributions to candidates. In doing so, they reversed a federal district judge's finding that corporations have exactly the same political speech rights as individuals.

And Montanans might not be done yet. Ballot Initiative I-166, the "Prohibition On Corporate Contributions and Expenditures in Montana Elections Act," is expected to be on the ballot in November. If passed, this law would establish that corporations are not people and would call on Montana's congressional delegation to support a constitutional amendment to overturn *Citizens United*. This is only one of many similar efforts around the nation.

With the fall 2012 elections looming and estimates that more than $1 billion will be spent by each of the presidential campaigns, the whole country might be about to experience first-hand what Montanans learned a century ago. Unlimited corporate spending in elections does give corporate donors undue influence over the recipients of their funds. This undercuts a basic pillar of our democracy – that elected officials are representatives of the people who vote for them and should respond to their needs, not to the demands of a few wealthy contributors. Perhaps this will spark a movement to support the response of Montanans past and present: to ban all corporate spending in elections once and for all.

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