November 23, 2010   Vol. 11, No. 21

In This Issue

Millions Face Loss of Unemployment Insurance

On Nov. 18, the House failed to pass a three-month extension of unemployment insurance (UI), putting the benefits of nearly 2 million Americans in jeopardy. With funds for federal benefits set to expire Nov. 30, the failure to enact an extension sets up a post-Thanksgiving battle between UI extension advocates and deficit hawks. Complicating matters, the debate over extending the Bush tax cuts will likely encroach upon the UI benefits extension dispute, increasing the likelihood that many citizens will be cut off from help as the holiday season begins.

Currently, when an unemployed individual exhausts his or her 26 weeks of state benefits, he or she can claim federal emergency benefits for up to 73 weeks or 99 weeks, depending on his or her state's UI rules. After Nov. 30, funds will not be available for the Emergency Unemployment Compensation (EUC) program and the Extended Benefits (EB) program, which were enhanced and created under the American Recovery and Reinvestment Act (Recovery Act), respectively. Without these funds, new exhausters of state benefits will not be able to join the programs, and those already claiming federal benefits will only be allowed to collect through completion of

their current "tier," which means they will not be able to stay in the program for much longer than a month.

To stop federal benefits from expiring, House Ways and Means Committee Chairman Sander Levin (D-MI) introduced a three-month funding extension of emergency federal unemployment insurance. Even though the bill had more than a majority supporting it, it came up short, 258-154, since it was introduced under special rules requiring a two-thirds majority to pass. Eleven moderate Democrats, along with most of the Republican caucus, balked at the $12.5 billion cost of the extension.

If Congress successfully passes an extension, it will be the fifth time since the start of the Great Recession that an extension has been necessary. The most recent successful effort, which passed in July, occupied weeks of time in the Senate, where Republicans – most notably Sen. Jim Bunning (R-KY) – opposed the extension on similar spending grounds. At one point, benefits actually lapsed for three months before Democrats reached an agreement with Republicans and passed the last extension.

Though some Republicans claim that unemployment insurance discourages people from looking for work – which is demonstrably false – continuing federal benefits for the unemployed is important for several reasons. The economic recovery is taking longer than originally hoped for; the unemployment rate is still above nine percent; and there are still five unemployed workers for every new job opening. This recession is qualitatively different from ones past, typified by longer stretches of unemployment, making it crucial to maintain UI benefits longer than normal. Indeed, many, including President Obama, along with social equity nonprofits, are claiming the House-proposed three-month extension would simply be an ineffectual stopgap and are calling on Congress to extend benefits for a full year, as economists are forecasting the economy will still be sluggish into 2012.

In addition to providing stability to the unemployed, extending UI benefits would be beneficial to the economy at large. The Department of Labor recently affirmed that for every dollar the government spends on unemployment benefits, it generates two dollars of economic activity, making UI benefits one of the most powerful forms of federal spending. The Congressional Budget Office (CBO) came to a similar conclusion in January when it noted that every dollar in federal benefits generates $1.90 in the economy. Thus, the benefits of extension far outweigh the monetary costs, which will be negligible on the long-term deficit.

If Congress fails to pass an extension, the National Employment Law Project (NELP) estimates that nearly 2 million people would lose benefits in December, and large numbers of unemployed workers would lose benefits each month after that. Economists project that expiration of the federal emergency unemployment programs would "cut consumer spending significantly and reduce already-languid gross domestic product (GDP) growth by half a percentage point." UI benefits are, therefore, a "two-for-one": the spending both stimulates the economy and helps those most in need.

Many fiscal hawks in Congress, however, think the nation does not need more UI benefits. Recently, Rep. John Kline (R-MN), the incoming chair of the House Education and Labor Committee, when asked in an interview what he would tell those who are "hanging on by a thread" if Congress fails to extend emergency unemployment benefits, replied:

> Well, they, heh, the best thing to do for them is to get the economy back on track and get businesses hiring so that they have a job that they can go to. We simply don't have the money to keep extending unemployment benefits indefinitely. We just don't have the money.

Kline repeatedly pointed out that the government spends too much money and that our deficits are too high. Instead, the congressman, along with the rest of his party, would rather pass an extension of the Bush tax cuts, arguing that if Congress passes all the Bush tax cuts, it will "get the economy back on track" and the unemployed will "have a job that they can go to."

The problem is that extending the Bush tax cuts, especially for the top two income tax brackets, does not guarantee economic growth; in fact, it is one of the least effective stimulative policies available to policymakers. Additionally, failure to offset the cost of extending the top two rates – which no Republican has come out against – will add roughly $700 billion to the deficit over the next decade. Indeed, if choosing between extending high-income tax cuts and providing the unemployed with additional time to collect benefits, Congress should choose extending UI benefits based solely on the likelihood of stimulating economic activity.

Commentary: Earmark Ban's Potential Impacts Unclear

Earmarks took center stage during the week of Nov. 15 when congressional Republicans pledged to "ban" the controversial appropriations tool in a bid to answer the supposed call of midterm voters to reform Washington. Long used by members of Congress to guide federal spending toward certain projects, earmarks can be seen by the public as a form of corruption. While proponents of the ban argue that eliminating earmarks is good for both transparency and the budget, critics of the ban argue this is not necessarily the case.

Earmarks, like most aspects of government, are not good or bad in and of themselves. Contrary to popular belief, Congress can use earmarks in a responsible manner. Because earmarks currently lack key transparency requirements, however, they can be difficult to track, which adds to the public's perception that they are a form of corruption in Washington. But with appropriate changes, such as creating a central, open, government-run earmark database, earmarks could be more transparent than the average spending measure. With full transparency, the public could know who asked for an earmark and who would benefit from it, information lacking in most federal spending bills.

Senate Republicans pledged to ban earmarks when Minority Leader Mitch McConnell (R-KY), an ardent supporter of earmarks, agreed to the ban. However, the ban is not binding, and several Republican senators do not agree with the move. A push for a binding ban, offered as an

amendment to the pending food safety bill by Sen. Tom Coburn (R-OK), would put a moratorium in place until FY 2013 and faces even less support.

Sen. Richard Lugar (R-IN) warned that elimination of earmarks effectively cedes control over spending to the executive branch without reducing spending. Lugar said, "The Constitution explicitly states that it is the responsibility of Congress to make decisions on the appropriation of federal taxpayer funds. Earmarks should be considered and treated like amendments to any underlying spending bill. Members should have the opportunity to offer earmarks, review them, and offer motions to strike or modify them."

Sen. Lisa Murkowski (R-AK) echoed those sentiments. "The notion that Congress would abdicate its constitutional duty and turn federal spending over to government bureaucrats is wrong and goes against the Constitution's mandate that says the power of the purse lies with the legislative branch of government," she asserted.

These and other issues raise a question as to what impact the push to ban earmarks will have. What is one person's pork is another person's bacon. Those who dislike earmarks have gained national attention, but less visible are the many state and local policymakers and voters who appreciate nationally elected officials who bring resources back home. The federal money translates into jobs, safer communities, and more vibrant economies.

Even calculating the total dollar value of earmarks can be confusing. For example, a chart from a Taxpayers for Common Sense (TCS) database shows that the value of all earmarks, including those requested by the president, was roughly $37.6 billion in Fiscal Year 2010. This is approximately one percent of the total federal budget. However, as Steve Ellis of TCS noted to OMB Watch, few experts include earmarks requested by the president when putting together earmark totals. Instead, most experts and media outlets, including *The New York Times*, use the total of all disclosed and undisclosed earmarks requested by members of Congress. In FY 2010, that amounted to roughly $15.9 billion, or approximately half a percent of overall federal spending.

Dollar Value of Earmarks - 2010, by Bill

		Bill	Disclosed Lawmaker Earmarks	Member Undisclosed	Total Member Disclosed and Undisclosed	Pres Solo	President and Lawmakers	Pres Undisclosed	Bill Totals
Congressional Earmarks	$15,932,261,848	Ag-Rural Development-FDA	$350,776,000	$19,656,000	$370,432,000	$1,408,000	$3,229,000	$99,803,000	$474,872,000
Disclosed	$10,021,984,848	Commerce, Justice & Science	$714,201,000	$159,390,000	$873,591,000	$66,523,000	$0	$245,979,000	$1,186,093,000
Undisclosed	$5,910,277,000	Defense	$4,197,446,200	$5,400,061,000	$9,597,507,200	$0	$0	$0	$9,597,507,200
		Energy & Water	$1,023,285,000	$168,950,000	$1,192,235,000	$2,145,398,000	$2,675,351,384	$370,146,000	$6,383,130,384
		Financial Services	$65,000,000	$0	$65,000,000	$0	$0	$0	$65,000,000
Presidential Earmarks	$21,708,504,852	Homeland Security	$264,193,564	$9,000,000	$273,193,564	$12,088,000	$144,000,000	$0	$429,281,564
Pres Solo	$9,099,667,595	Interior	$323,885,040	$0	$323,885,040	$210,464,000	$158,595,000	$0	$692,944,040
With Member(s)	$11,723,476,257	Labor-HHS-Education	$772,301,010	$0	$772,301,010	$10,849,000	$109,786,000	$0	$892,936,010
Pres Solo (Und.)	$885,361,000	Legislative Branch	$200,000	$0	$200,000	$0	$0	$0	$200,000
		Military Construction	$1,100,286,000	$0	$1,100,286,000	$6,378,917,000	$7,046,431,000	$0	$14,525,234,000
		State-Foreign Operations	$0	$0	$0	$0	$0	$0	$0
		Transportation and Housing & Urban Development	$1,210,411,034	$153,220,000	$1,363,631,034	$274,620,595	$1,586,083,873	$169,433,000	$3,393,768,502
			$10,021,984,848	$5,910,277,000	$15,932,261,848	$9,099,667,595	$11,723,476,257	$885,361,000	$37,640,766,700

Source: Taxpayers for Common Sense

click to enlarge

Either way, if Congress cut all of the funds associated with today's earmarks, doing so would not have much impact on the federal deficit. Considering the budget deficit was about $1.5 trillion,

cutting less than $50 billion a year is small in scope. Ironically, the debate over earmarks has dominated discussion in Washington about controlling spending.

Additionally, advocates for earmarks argue that a ban on earmarks would not result in even modest deficit savings. They make this argument based on the fact that appropriations committees are given limits on spending. Thus, when earmarks are inserted into an appropriations bill, they must come out of other spending in the legislation.

Some fear that banning earmarks, without creating significant leaps in general spending transparency, could create perverse outcomes, pushing deal-making behind closed doors. For instance, members of Congress may lobby the executive branch itself. Federal agencies have some discretion when awarding federal funds, although they are often bound by many needs- and performance-based considerations. However, members of Congress can try to influence the awards process by sending letters to federal agencies requesting projects in their districts, a practice called "[lettermarking]." While it is unclear how influential the practice is, lettermarking is not bound by any disclosure process beyond Freedom of Information Act (FOIA) requests, making it almost impossible to track. Part of the Jack Abramoff scandal [involved lettermarking], with the lobbyist making donations to members of Congress who would contact federal agencies on behalf of his clients.

The end result for the district is the same, with or without earmarks: the district receives federal funding. However, lettermarking is far less transparent than not-so-transparent earmarks. The Center for Public Integrity (CPI) [recently released letters] showing that members of Congress were directly lobbying federal agencies for Recovery Act projects in their districts. Such letters normally never see the light of day, and CPI had to go through a long FOIA process to obtain them.

Congressional lobbying efforts around Recovery Act projects show that even without earmarks, lawmakers will still try to win federal funding for their districts. Without earmarks, lawmakers' lobbying efforts are simply forced into other channels, which are rarely affirmatively disclosed.

While an outright ban on earmarks is controversial, there seems to be widespread support for improved transparency of the earmarking process. Right now, it would be fairly easy for Congress to create a [framework that tags and tracks earmarks]. In fact, Jerry Brito of the Mercatus Center at George Mason University; Jim Harper, the webmaster of WashingtonWatch.com (and Director of Information Policy Studies at the Cato Institute); and Gunnar Helleckson of Red Hat have created a website with a proposed method for cataloging all earmarks. They argue that their organizational framework provides all the information advocates need to know about the proposed spending. They also note that advocates widely agree on the need for transparency, even as there is dissension over whether to ban earmarks.

Retiring Sen. Christopher Bond (R-MO) argues that politicians who know the needs of their home states are better positioned to make spending decisions than "unknown, unaccountable bureaucrats" from Washington. He also indicates that most politicians want to disclose information about earmarks. "I disclose what I'm going to ask for," he said. "I brag about it

when I get it. I answer any questions about it. Does a bureaucrat do that with any money they send? No." With many members of Congress just as willing to disclose the earmarks they obtain, it should be relatively simple for Congress to bring transparency to the earmarking process, a reform that would likely be far more meaningful to fiscal discipline and government openness than an outright ban on earmarks.

Whither Transparency in the Next Congress?

When the 112th Congress convenes in January, attention will be focused on the newly Republican-controlled House. On transparency issues, House Republican leaders have sounded positive tones. However, it remains to be seen whether bipartisan consensus on meaningful transparency can be achieved or whether transparency will be wielded as a partisan weapon.

Undoubtedly, divided party control of Congress will mean a more adversarial relationship between Congress and the White House and between the House and the Senate. What remains unclear, however, is whether Republicans will support the administration's many positive efforts to improve transparency while criticizing the instances where it has fallen short or dragged its feet. The House could also fall prey to the political theater that often occurs when parties in divided government compete for the public spotlight.

Past is Prologue: The 111th Congress

While the years of the 111th Congress saw the launch of new transparency measures, many were executive efforts of the Obama administration rather than acts of Congress. Congress played little role in the [Open Government Directive](), the [Attorney General's memo]() re-establishing a presumption of openness under the Freedom of Information Act (FOIA), or the [executive order]() reforming the controlled unclassified information (CUI) system.

Congress was also not involved in White House efforts to [modify disclosure under the Presidential Records Act](), to [address overclassification and declassification](), to [establish a searchable website of White House visitor logs](), or to post [the president's]() and [vice president's]() schedules online. Nor has Congress engaged in the Obama administration's actions to hire a chief technology officer and a chief information officer, to make better use of social media, or to create various dashboards such as the [IT Dashboard]().

However, Congress did advance some transparency policies. The Recovery Act set [new precedents for spending transparency](). After initially granting a broad FOIA exemption to the Securities and Exchange Commission (SEC) in the financial reform bill, Congress moved quickly to [rein in the exemption](). Bills to [reduce overclassification in the Department of Homeland Security]() and [improve the clarity of government documents]() also passed. With the exception of the Recovery Act, all of these provisions had bipartisan support.

Some additional transparency bills have passed one house of Congress but not the other, including [whistleblower protections](), [faster FOIA processing](), [campaign finance disclosure](), and a

media shield law. Congress could yet act on those bills when it returns for the remainder of the lame-duck session after Thanksgiving.

Promises to Keep: The *Pledge to America*

The House Republicans' pre-election governing document, *A Pledge to America*, promised transparency in a Republican Congress. Promisingly, when asked if he supported any parts of the *Pledge*, President Obama pointed to transparency as common ground. However, as described in OMB Watch's analysis, the *Pledge* only offered one specific transparency proposal: "Read the Bill," which would require that the text of a bill be published online for three days prior to a vote.

At the same time, it should be noted that the *Pledge* calls for sharp reductions in spending. Transparency initiatives are not cost-free, although they often save money over time because of improved efficiency for agencies. Inadequate resources are often cited as reasons for limited or delayed implementation of transparency projects. For instance, the Office of Government Information Services, a sort of FOIA ombudsman housed in the National Archives and Records Administration, has only seven staff. By comparison, the Scottish Information Commissioner, which plays a similar role in Scotland, employs 24 staff – for a country with a population comparable to Minnesota. Planned Republican budget cuts could further tighten the squeeze on funding for open government measures.

New Leadership, New Sheriffs in Town

Several key leaders of the House Republicans have been supportive of transparency improvements both for the House itself and for the executive branch. Minority Leader John Boehner (R-OH), whom House Republicans have selected as the next speaker, has supported some transparency reforms, including the Open House Project and others as noted in OMB Watch's *Pledge* analysis. Rep. David Dreier (R-CA), currently ranking member on the Rules Committee, wants to broadcast the committee's meetings, something most other House committees already do.

The head of the 22-member House Republican transition effort, Rep. Greg Walden (R-OR), has discussed the importance of improving transparency in all House activities, which he hopes will strengthen governance. While many have expected the new leadership to do away with the Office of Congressional Ethics, the relatively new office that has been very effective in reviewing allegations of ethics violations, Walden has said that has not been the focus of his work. He told ABC News, "Our focus on the transition is looking at other things that are much more important. And that is how the House operates, how to open it up. We're not focused in on the ethics side of things at all."

Additionally, Republicans will now hold the chairs of House committees and the accompanying subpoena power. Republicans have pledged vigorous investigations of the Obama administration. The question is, will the investigations shed more light on government operations or simply create more heat and partisan bluster?

The House Oversight and Government Reform Committee, which will be chaired by Rep. Darrell Issa (R-CA), will likely convene several of these investigations. Issa is co-chair of the Transparency Caucus and recipient of the Project On Government Oversight's 2010 Good Government Award. As the current ranking member on the committee, Issa released a report warning of "an oncoming tsunami of opacity, waste, fraud, and abuse" and calling for vigorous congressional oversight as a solution.

Issa has spoken out in favor of a number of transparency reforms. For instance, Issa played a leading role in calling attention to the SEC FOIA exemption. He has also called for providing public data in standardized formats, investigated the use of personal e-mail addresses by government officials to discuss public business, and advocated for greater investigative powers for inspectors general.

However, Issa has also voiced strongly partisan complaints, which could distract from meaningful transparency and accountability if allowed to dominate the committee agenda. His report on "propaganda" by the Obama administration included what *Politico*'s Ben Smith called a "totally unsupported claim." A GAO investigation requested by Issa disagreed with the report's claims that the Department of Health and Human Services misused funds to produce propaganda. Issa also pledged to investigate the "Climategate" dust-up, despite several investigations that cleared the scientists involved of any wrongdoing.

Other incoming committee chairs have pledged their own investigations. Rep. Ron Paul (R-TX), currently the ranking member on a Financial Services subcommittee, vowed to audit the Federal Reserve if he assumes the chairmanship. Rep. Ralph Hall (R-TX), who now serves as ranking member on the Science and Technology Committee, called for strong oversight of scientific integrity. In contrast, other reports of possible Republican investigations suggested that more partisan investigations may be in store.

Advocates Meet to Invigorate Environmental Right-to-Know Policies

Nearly 100 public interest advocates from around the country recently convened in Washington, DC, to build an agenda for improving the public's right to know about environmental and public health threats. Advocates for public health, safety, and the environment met to develop federal policy proposals that would enhance government engagement with communities and improve access to information crucial to protecting the public. The emerging agenda seeks to capitalize on recent openness initiatives by the federal government and the Obama administration's efforts to improve government transparency, participation, and collaboration.

The conference, hosted by four foundations and organized by OMB Watch, brought together representatives from labor, environmental, public health, and environmental justice organizations, as well as academia, the media, and open government groups. Part of a nearly year-long project dubbed the Environmental Information Initiative, the event allowed

participants to collaborate on defining what information needs and obstacles they face and identify what federal policy changes would help resolve these issues.

Despite the broad range of environmental and public health issues tackled by the diverse organizations, the meeting participants concurred that greater government transparency is essential to all of their respective missions. Participants agreed that with more information and better access to policymakers, communities are better equipped to protect their health and the health of their workplaces and ecosystems.

The conference looked at specific policy recommendations to improve the amount of, access to, and quality of information publicly available. Participants also reviewed proposals for empowering communities – especially minority and low-income communities – to use the information and have a voice in policymaking.

Among the topics considered at the environmental right-to-know meeting, the generation and disclosure of information on the identity and health risks of chemicals in use, as well as potentially safer substitutes, proved to be a major concern. With [more than 84,000 chemicals](#) manufactured or processed in the U.S., plus additional chemicals found in foods and food additives, pesticides, drugs, and cosmetics, understanding the potential ecological and human health impacts of so many substances presents an enormous information challenge.

However, the information needs identified by the public interest advocates extend far beyond industrial chemicals. The conference also addressed the need for access to enforcement and compliance information to hold regulators and industries accountable, the need for more monitoring of ecosystem health and wildlife populations, and better data on the demographics of impacted communities to better protect against environmental injustices, among many other needs.

Recognizing that information access alone is insufficient, participants also worked to craft policy solutions that would provide tools and opportunities that equip citizens to play an active role in protecting environmental and public health. Proposals were considered that would provide information in plain language that the public can understand and to develop methods for identifying and including the fullest range of stakeholder voices.

The Obama administration, which has made improving executive branch openness a priority, also was represented at the conference. White House policy advisor Steven Croley and EPA Chief Information Officer Malcolm Jackson addressed the gathering and took questions from the audience; they were followed by a panel of career civil servants from three agencies working on transparency initiatives. The officials reviewed several of the administration's recent open government initiatives, setting the stage for the subsequent conversations on how to move the administration's transparency agenda forward and address environmental concerns. These actions have opened a window of opportunity to advance a proactive agenda to create the federal policies and processes needed to improve public access to information, giving communities a strong voice in the decision making process.

Conference Themes

Several overarching themes emerged from the deliberations. The participants strongly felt that the concerns of environmental justice communities need to be more fully incorporated into agency activities and decision making. The needs of low-income and minority communities that are impacted disproportionately by environmental threats should be made a much higher priority. Efforts to improve environmental right to know should also take into account the unique needs of workers and workplace safety, as well as populations that are especially vulnerable to public health threats, such as pregnant women, children, and the elderly.

The issue of government efficiency that may be gained through greater transparency was raised repeatedly during the conference. Agencies themselves use information to meet their statutory obligations, and government workers frequently encounter the same obstacles to finding and understanding information encountered by the public. Improved information access would improve government efficiency, reduce costs, and produce better policy outcomes. Conference participants also asserted that consumer markets would benefit from more information, such as information on the health and safety of chemicals and their substitutes. Information empowers consumers to push for the adoption of safer products and cleaner industrial processes.

Additionally, conference participants want the federal government to be a leader and push states to adopt policies that lead to more transparency and community engagement. This federal leadership should include demonstrating the adoption of best practices, including those formulated and used by the states. Several states have implemented successful policies that exceed federal open government requirements. The conference participants want the federal government to incorporate such policies as models for the development of broader federal policies.

Finally, participants also widely called for more geographic information from the government. The ability to use maps to track environmental progress, monitor threats, and identify new concerns is crucial to protecting the public. Geographic data allow researchers to monitor water and air quality, give communities tools to fend off polluting industries, and help policymakers identify populations impacted by environmental degradation.

Environmental Right to Know in Action

Participants provided numerous examples highlighting how information and the public's right to know about health threats are being used to push for safer and healthier communities. For example, the [Center for Health, Environment, and Justice](#) (CHEJ), a nonprofit advocacy group, recently released findings from a report commissioned to educate consumers about unsafe chemicals found in children's toys. The report, *[Toxic Toys R Us](#)*, commissioned by CHEJ and the International Brotherhood of Teamsters, is part of an effort by CHEJ and others to hold toy manufacturers and retailers accountable for the safety of the products they provide.

Focusing on the giant retailer, Toys R Us, the report found that almost three-quarters of the company's toys tested contained high levels of chlorine, indicating that they were likely made

with PVC, a toxic plastic and a potential health risk for children. One-fifth of tested toys contained tin, indicating the likely presence of toxic organotins. Toy packaging also was found to contain chlorine and tin.

Similarly, the Campaign for Safe Cosmetics, a coalition effort by numerous nonprofit groups, uses government, industry, and academic databases of hazardous chemicals to inform consumers about chemicals of concern in cosmetics like shampoos and lipsticks and to push for safer products.

Participants also cited examples of efforts to improve public participation as a means to improving health and safety protections. Labor organizations recently secured from the U.S. Environmental Protection Agency (EPA) an agreement to engage employees and their union representatives during environmental inspections of the nation's most dangerous industrial facilities under the Clean Air Act.

The public interest organizations represented at the conference agreed to continue to develop the policy recommendations and work for their implementation. A public release of the finalized recommendations is planned for early 2011.

Food Safety Bill Starts, Stalls in First Week of Lame-Duck Session

The U.S. Senate, hampered by politics and process, recently failed yet again to pass food safety reform legislation. The Senate is in the process of considering both related and unrelated amendments to the bill during the lame-duck session.

The bill cleared a key procedural hurdle when, on Nov. 17, the Senate voted 74-25 to limit debate (60 votes are necessary to invoke debate-limiting cloture), setting the stage for a final vote. The Senate debated the bill through Nov. 18 but was unable to bring the bill to a vote before breaking Nov. 19 for the Thanksgiving holiday. The Senate is expected to continue debate and to hold additional votes when it returns Nov. 29.

Senate leaders resolved concerns raised by Sen. Jon Tester (D-MT) over the bill's impact on small farms. Tester had offered an amendment aimed at exempting small farms, defined as those that sell their products directly to consumers or restaurants and that have sales of less than $500,000 per year, from food safety inspections. The final version of the amendment would allow inspections if the small farm is tied to a foodborne illness outbreak.

Another hurdle was avoided when Sen. Dianne Feinstein (D-CA) backed away from her pledge to push an amendment banning bisphenol-A (BPA), a chemical found in plastics and other products, from baby bottles and sippy cups. "Unfortunately it has become clear that the American Chemistry Council has blocked and obstructed the agreement from being added to the Food Safety Bill currently on the floor," Feinstein said in a statement. Studies have linked exposure to BPA to developmental disorders, cancer, heart diseases, and other health problems.

Sen. Tom Coburn (R-OK) continues to be the bill's leading opponent. He objects to the additional regulations and spending the bill would require. (The Congressional Budget Office estimated the bill would neither increase nor decrease the federal deficit.) Coburn has offered his own, weaker food safety bill as an amendment that would replace the current bill. A summary of the amendment says "government is the *problem* with our disjointed and ineffective food safety system, not the *solution.*"

Coburn is also demanding a vote on an amendment to ban spending earmarks through FY 2013. The amendment is expected to be taken up when the Senate returns.

The food safety bill is the top item on the Senate's agenda for the week after Thanksgiving, according to Senate leadership. The Senate's first order of business is expected to be a cloture vote on Sen. Tom Harkin's (D-IA) substitute amendment, which combines the existing bill with the Tester amendment. If agreed to, the substitute amendment would essentially replace the bill.

The Senate would then vote on four amendments: Coburn's substitute amendment and earmark amendment and two similar amendments offered by Sens. Max Baucus (D-MT) and Mike Johanns (R-NE) that would repeal a controversial section of the health care reform law that requires businesses to report to the Internal Revenue Service contractor income and other income items over $600.

After the amendments are considered, the Senate can move to a vote on final passage.

The food safety bill, S. 510, the FDA Food Safety Modernization Act, would expand the regulatory authority of the Food and Drug Administration (FDA). Among other things, the bill would give FDA the authority to order firms to recall contaminated foods (a power it does not currently have) and would require the agency to conduct more frequent inspections of food facilities.

Food safety advocates support the bill, citing the need to reduce the number and severity of foodborne illness outbreaks such as this year's salmonella outbreak that sickened more than 1,600 people and led to the recall of 500 million eggs. Many large farm and food retail organizations support the bill, as well.

The Senate Health, Education, Labor, and Pensions Committee unanimously approved the food safety bill in November 2009, but the legislation awaited floor consideration throughout 2010 while the Senate dealt with other priorities such as health care and financial reform. Five Republicans on the committee, including Coburn, voted against the Nov. 17 cloture motion.

The House of Representatives passed a similar bill, H.R. 2749, in July 2009. The House bill enjoyed strong bipartisan support, with 54 Republicans joining 229 Democrats in voting "aye."

Rather than reconcile the two bills in a conference committee, a process that would require each chamber to hold another vote on the compromise bill, the House could opt to take up the Senate version. Rep. Henry Waxman (D-CA), chair of the House committee with jurisdiction over the

bill, suggested he would be open to passing the Senate's version, according to *The Wall Street Journal*. If the current Congress cannot pass a final version and send it to President Obama for his signature by the end of the year, the new Congress will need to restart the legislative process.

E-rulemaking Legislation Seeks Greater Transparency and Participation

On Nov. 17, Sens. Joseph Lieberman (I-CT) and Susan Collins (R-ME) introduced a bill that would expand public participation and transparency in the rulemaking process by improving aspects of the current electronic rulemaking (e-rulemaking) system. The bill would enhance technical aspects of the current federal system, encourage agency experimentation, and allow the public to track rules and better contribute to agency decisions.

E-rulemaking was one of the government's many initiatives created by the E-Government Act of 2002. The government developed Regulations.gov, the central public portal for viewing and commenting on agencies' rules. Several problems have afflicted the e-rulemaking initiative over the years, including differences in the ways that agencies submit similar information, unreliable searches, and a funding structure that prevents agencies from fully utilizing Regulations.gov.

The bipartisan legislation, the E-Rulemaking Act of 2010 (S. 3961), addresses many of these shortcomings while maintaining the current system as the core of a redesign. According to a press release issued by the two leaders of the Homeland Security and Governmental Affairs Committee (HSGAC), "The new bill addresses inconsistencies, impediments to open communication, and policy issues that have slowed progress toward a robust, publicly-accessible rule-making process."

For example, the current system is financed by a fee-for-service approach that is a disincentive for agencies to use Regulations.gov. The more participating agencies use the central system, the more it costs them. The Lieberman-Collins bill would authorize a stable appropriation of $10 million annually through 2015 for "maintenance, improvement, and promotion of the e-rulemaking system," and end the fee-for-service funding model. Instead, agency funds could be used for improving agency websites and experimenting with innovative approaches to e-rulemaking.

The bill also proposes changing the management and governing structure of the current system. The bill would create an interagency committee that would oversee the daily operations of the system; act as the liaison to agencies, through which agencies could propose new capabilities and improvements; and help develop recommendations for the online disclosure of regulatory information to the Office of Information and Regulatory Affairs (OIRA) and the Office of Electronic Government, both offices within the Office of Management and Budget (OMB).

In addition, the bill calls for the creation of a public advisory committee made up of regulatory experts and information access experts. The committee would advise and consult with the government officials overseeing the system and would be the mechanism through which public

users of the e-rulemaking system could share ideas about the most effective practices. The committee would also provide to congressional oversight committees a report outlining existing "obstacles to achieving e-rulemaking goals" and potential solutions. The advisory committee would terminate two years after its formation, unless extended by the president.

Lieberman and Collins also called for reform to the system's architecture – how the data and processes are constructed. The bill calls for broad goals intended "to achieve significant improvements." Data standards, new tools, and information retrieval and exchange processes need to be accurate and consistent, the bill says. The bill concludes that new guidelines need to be issued, for example, to help the system achieve transparency and usability of information, to ensure that agency websites and the central core of the system are interoperable, and that the system is flexible enough to evolve as technology and practices demand.

The bill reflects many of the changes proposed in a major 2008 study of the strengths and weaknesses of the current system. That report, *Achieving the Potential: The Future of Federal e-Rulemaking*, was written under the auspices of the American Bar Association (ABA) by regulatory and open government experts from outside the government. The authors wrote the report to provide the administration and Congress with a comprehensive roadmap for reforming e-rulemaking.

OMB Watch, which participated in the ABA study, supports the Lieberman-Collins bill. "The public has a right to participate in the regulatory process," said Gary Bass, OMB Watch Executive Director, "and e-rulemaking reform holds the potential to make the process more transparent and more participatory."

Passage of the bill in the lame-duck session of Congress is doubtful. Even if HSGAC approves the bill and the full Senate passes it, no one has introduced a companion bill in the House. The House could adopt the Senate bill and move it quickly, but most observers expect Congress to focus only on spending bills and a few high-priority bills (see the related article in this issue on food safety) during the current lame-duck session.