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GAO Report Shines Spotlight on Recovery Act Jobs Data

On Nov. 19, the Government Accountability Office (GAO) released a report that details the first round of Recovery Act recipient reports. The GAO report focuses on data quality issues, which have garnered attention following widespread news stories about bad data in the Recovery Act reports. While the GAO report itself is informative, its recommendations, which call for improved guidance from the Office of Management and Budget (OMB), are particularly important. The recommendations echo earlier comments from transparency groups, which have long warned of potential data quality problems, especially concerning the job estimation data.

The GAO report is narrowly focused and seeks to examine "the jobs created or retained as reported by recipients" within the 17 jurisdictions (16 states and the District of Columbia) the GAO has been studying. The report did not undertake an in-depth audit of the recipient reports, in that it did not contact most of the recipients who reported in the first cycle; instead, the GAO looked for obvious errors or inconsistencies in the data. Using this method, the GAO found there were errors in a significant number of reports.

The GAO uncovered a wide variety of problems, many involving the job creation estimates. It found 3,978 reports (out of 56,986 studied) that "showed no dollar amount received or expended but included more than 50,000 jobs created or retained," and "9,247 reports that showed no jobs but included expended amounts approaching $1 billion." At the same time, the GAO found 261 reports where the "job creation narrative" field contained words such as "zero," "none," or "N/A," but showed jobs created or saved in the "number of jobs saved" field. These reports accounted for about a tenth of the jobs reported created or saved nationwide as listed on Recovery.gov.

However, the GAO found these major mistakes were relatively rare, since the erroneous reports only constituted a small fraction of the number of overall reports. The GAO hypothesized that most of the errors had one of two root causes: many were simple keystroke errors, and the rest were likely due to confusion among the agencies and recipients. The GAO is primarily concerned with the second point, as it indicates confusion over the guidance from OMB and a lack of clear communication between OMB, federal agencies, and Recovery Act recipients.

Expanding on this point, the GAO report specifically criticizes OMB's handling of job creation estimates. GAO's communications with recipients revealed that many were confused by OMB's guidance on how to calculate these estimates. The problem, it seems, is that OMB did not use a standard job creation definition. The current OMB guidance leaves it up to recipients to decide what constitutes a full-time job (the so-called "full-time equivalent," or FTE). To correctly estimate their FTEs, recipients had to take the number of hours worked on Recovery Act projects and divide it by the number of hours in a typical full-time schedule. The resulting figure is the number of jobs created or saved by the project (the FTE). Some recipients, however, were unsure how to use this formula or what it meant. For instance, some recipients simply entered in the number of actual people hired or retained, regardless of how many hours they worked. Such mistakes account for the errors described above, where recipients claimed that they created or saved jobs, despite having received no Recovery Act funding yet. Another common problem consisted of recipients simply entering the number of hours worked, leading to a drastic overestimate of jobs.

The lack of a standard FTE definition leads to other problems as well, according to the GAO report. It also makes it impossible to compare jobs across projects or awards, and especially across the country. For instance, if one highway contractor considered an FTE to be three months of a 40-hour work week, then a three-month job would result in one FTE. However, if another contractor considered an FTE to be a year's worth of 40-hour work weeks, then the same three-month job would only equal 0.25 FTEs. In other words, similar jobs, for similar amounts of money, can yield apparently vastly different job creation numbers. And since recipients only report the final FTE determination, and not the standard by which they arrived at the number, it is impossible to tell how individual recipients arrived at their job creation estimates, or what the estimates actually mean.

The lack of a standard FTE is not a minor problem, as the GAO found many recipients used different FTE standards. For instance, four Pennsylvania transit agencies all used different FTE measures, as did two California institutions of higher education. This fact has profound implications for the 640,329 jobs figure posted on Recovery.gov. As the GAO notes, "the current OMB guidance ... creates a situation where, because there is no standard starting or ending point, an FTE provides an estimate for the life of the project. Without normalizing the FTE, aggregate numbers should not be considered."

It is unsurprising, then, that the GAO's main recommendation concerns the standardization of the FTE. First and foremost, the GAO recommends OMB should "clarify the definition and standardize the period of measurement for FTEs and work with federal agencies to align this guidance with OMB's guidance and across agencies." A clear standard for estimating FTEs would help prevent many of the problems the GAO found in the recipient reports, while also allowing comparison across states and projects.

Second, GAO recommends that OMB clarify how recipients should report information for jobs saved. Under current guidance, it is not clear how recipients should report funding used to continue to pay existing staff. GAO recommends that the guidance be changed to clearly show that recipients should simply report “hours worked and paid for with Recovery Act funds,” essentially removing the distinction between “created” and “saved.” Such a change would stop recipients from engaging in strange hypothetical situations to decide if employees would have been fired without the funding, further reducing recipient confusion, as well as helping to convey the actual impact of the Recovery Act.

Such ideas are by no means new. OMB Watch has written extensively on the issues and has repeatedly made recommendations similar to the GAO's. However, this is the first time a federal agency has made the recommendations, giving them additional weight.

OMB Watch has also noted other problems with the jobs data. For example, Recovery Act grantees are to report on jobs created or saved by their subrecipients or themselves. However, contractors are not yet required to report information about their subrecipients. Also, job information is limited to the prime recipient and one tier below that entity; it does not always reach the ultimate recipient of the funds. GAO did not address these other types of problems in its report.

In response to the GAO report, OMB said it "generally accepts the report's recommendations." While this statement does not necessarily portend significant change from the agency, it might show OMB understands that the first reporting cycle could have been better if the agency had improved its own guidance. It remains to be seen if the report will affect the next reporting period, which ends in December.

The IRS Gets Serious about Tax Enforcement

On Nov. 17, the Internal Revenue Service (IRS) announced that some 14,700 taxpayers had taken part in its recently concluded tax amnesty program by coming forward to report previously undisclosed income hiding in foreign bank accounts. The figure represents a near doubling of the original estimate of 7,500 taxpayers the IRS provided at the end of the voluntary disclosure program. Credited in part for the success of the tax amnesty program is the Obama administration's larger emphasis on tax enforcement. With a beefed up IRS enforcement budget, new tax treaties with countries that once acted as tax havens, and stricter tax haven legislation in the works on Capitol Hill, the U.S. is starting to get serious about international tax enforcement.

When President Obama released his FY 2010 budget in May, watchdog groups noted the IRS stood to receive an overall increase in funding of $764 million, including a $400 million increase in tax enforcement funds. This represented a 13 percent increase for IRS enforcement activities, a much-overlooked area within the federal government during the Bush administration. Though the House has passed its Financial Services appropriations measure, which includes IRS funding, the Senate has not passed its version yet. Despite this, the IRS stands to receive a substantial funding boost, as both versions of the Financial Services appropriations bill are very similar to the president's request, and there is little reason to believe there will be significant changes in a conference committee.

Increased attention to stopping tax avoidance and evasion carries beyond the federal budget. In August, the Swiss government came to terms with U.S. demands that the Swiss bank UBS turn over information on U.S. clients suspected of tax avoidance. Along with revealing information about the identities of some 4,450 American UBS clients, the arrangement between the two governments included a new information exchange agreement. The agreement will allow the IRS and the Department of Justice (DOJ) to work with the Swiss government in prodding other Swiss financial institutions to disclose the identities of Americans suspected of hiding money in Swiss accounts.

In a similar development, the Mediterranean island of Malta, another former tax haven, recently agreed to a new tax information-sharing treaty with the United States. New information-sharing agreements fashioned after the Swiss settlement and the Malta treaty may provide a model for lawmakers in Washington looking to assist the IRS in cracking down on tax havens.

Even though the Obama administration's tax enforcement push spurred the IRS to begin a tax amnesty program in March, it was not until the agreement with the Swiss government was in place that the program began to see significant usage. The program, which offered a streamlined, uniform penalty for citizens hiding assets overseas, became exceedingly popular after the UBS agreement in August. In fact, the IRS pushed back the original deadline of the program, which was Sept. 23, to Oct. 15 to accommodate the surge in interest from taxpayers. The more than 14,000 taxpayers who came forward to take advantage of the program disclosed secret accounts in overseas tax havens containing anywhere from $10,000 to $100 million, though it will be some time before the Treasury Department can determine the total amount of back taxes and fines brought into the government.

At the end of the tax amnesty program, some lawmakers called for stricter legislation to help the IRS root out taxpayers hiding money in overseas tax havens. In late October, a group of legislators introduced the Foreign Account Tax Compliance Act in both the House and the Senate. The chairmen of the Senate Finance and House Ways and Means committees, Sen. Max Baucus (D-MT) and Rep. Charles Rangel (D-NY), respectively, who wrote the bill, sought to force foreign financial institutions, including trusts and corporations, to provide information about their U.S. account holders. If a foreign bank were to refuse to comply with the new regulations, the government would levy a 30 percent withholding tax on income from U.S. financial assets held by that foreign institution. Neither of the bills has moved out of its respective committee.

The increased emphasis by the Obama administration on tax enforcement has pushed the legislative branch and the global community to reassess tax policy in general and tax evasion in particular. With an increased budget and additional resources going toward enforcement – including new international criminal investigation offices and a program focused on unraveling the complex business entities used by some taxpayers to avoid paying taxes – the IRS is cracking down on tax evasion. If Congress passes additional tax haven legislation, the IRS will be able to do even more to ensure the tax system is as equitable as possible.

Lessons of Bhopal: 25 Years Later, U.S. Chemical Laws Need Strengthening

Dec. 3 marks the 25th anniversary of the most catastrophic industrial accident in history: the leak of poisonous gas from a chemical plant in the Indian city of Bhopal. A similar accident some months later in West Virginia drove Congress to pass legislation intended to protect citizens from such disasters by requiring emergency planning and public disclosure of chemical releases. Twenty-five years after the Bhopal tragedy, much progress has been made, but much remains to be done to provide a minimum level of protection against chemical releases.

In the early morning of Dec. 3, 1984, in the central Indian city of Bhopal, 40 tons of highly toxic methyl isocyanate (MIC) leaked from a pesticide manufacturing plant owned by an American company, Union Carbide. In addition to the thousands killed in the immediate aftermath, an Amnesty International report published in 2004 calculated that an additional 15,000 people died in the years following the accident due to long-term gas-related effects, and 100,000 people continue to suffer from "chronic and debilitating illnesses for which treatment is largely ineffective."

In August 1985, another Union Carbide plant experienced a toxic gas leak, this time in Institute, WV. More than 100 residents living near the facility were injured.

In response to the accidents, in 1986, Congress passed the Emergency Planning and Community Right to Know Act (EPCRA), a major advance in the right-to-know movement. As its name suggests, the law focuses on two main areas: emergency planning for chemical releases and public disclosure of threats from toxic chemicals.

Emergency Planning

The emergency planning sections of EPCRA required local governments to develop plans for sudden chemical releases resulting from spills, fires, or explosions. The law is intended to ensure that facilities quickly notify emergency response officials when releases occur and that they know what hazardous chemicals might be involved.

State governments are required to oversee and coordinate local planning efforts. The law outlines the formation of State Emergency Response Commissions (SERCs) and Local Emergency Planning Committees (LEPCs) for designated emergency planning districts. The LEPCs work with facilities to create emergency plans, such as evacuation routes and first responder training programs. Facilities must report releases of certain hazardous substances to the appropriate local, state, and federal authorities. Information about accidental chemical releases must be available to the public.

Right to Know

EPCRA also established several reporting requirements to ensure that citizens, especially those living near plants using hazardous chemicals, have the information they need to protect themselves and hold businesses accountable. The law requires material safety data sheets (MSDS) be provided to the local emergency planners and the public upon request. An MSDS provides important information on the health risks and proper handling of hazardous chemicals. Additional information on the types and quantities of hazardous chemicals stored at facilities must also be made available to emergency planners and the public.

The law also established the required reporting of releases of toxic chemicals. The U.S. Environmental Protection Agency (EPA) created the Toxics Release Inventory (TRI) to catalog the reports and provide easy public access to the information. (TRI data are available through OMB Watch's Right to Know Network and on EPA's website.)

The planning and reporting aspects of EPCRA do not regulate hazardous substances. The law demands no changes to the way a facility operates and sets no limits on how much of a substance can be released. Yet EPCRA is credited with driving significant improvements in the chemicals industry by making companies more aware of the dangers and inefficiencies at their plants and generating public pressure to reduce pollution and other health threats.

Attempts to weaken EPCRA over the years have repeatedly threatened the public protections and right-to-know measures provided by the law and its regulations. A "midnight regulation" put forth in the last months of the George W. Bush administration exempted factory farms from the EPCRA requirement to report emissions of toxic gases from the vast quantities of animal waste produced at these facilities. Such emissions can pose a serious threat to public and environmental health. The rule is still the subject of legal actions from both environmental organizations and operators of concentrated animal feeding operations.

The Bush administration also pushed through a controversial rule that dramatically raised the reporting threshold of the TRI program. Despite overwhelming public opposition to the proposal, the Bush rule survived two years before Congress and the Obama administration reversed the rule in March 2009, restoring the reporting rules that had been in place before the weakening changes.

Despite that restoration, TRI grows weaker every year as new chemicals are introduced and new industries begin releasing chemicals, none of which are covered by TRI. The list of covered chemicals and industries has not been significantly expanded since the late 1990s, allowing thousands of new chemical creations to enter commerce without letting the public know about their releases.

Chemical Security

In August 2008, an explosion and fire killed two people at the same Institute, WV, plant where the 1985 accident helped push Congress to pass EPCRA. The explosion occurred very close to a storage tank holding 40,000 pounds of MIC, the same chemical that was released in Bhopal. Subsequent investigations have shown the ongoing weaknesses in community right to know and the safety of chemical facilities.

A congressional investigation determined that the operator of the plant, Bayer CropScience, "engaged in a campaign of secrecy by withholding critical information from local, county, and state emergency responders; by restricting the use of information provided to federal investigators; by attempting to marginalize news outlets and citizen groups concerned about the dangers posed by Bayer's activities; and by providing inaccurate and misleading information to the public." Bayer sought to exploit a national security law to hide information by inappropriately labeling it as sensitive security information.

Despite the historic milestone established by EPCRA, a static unrevised law can only accomplish so much. The incident at the Bayer plant in West Virginia exposes the risk to the public's right to know posed by excessive secrecy in the name of "national security" and the need for safer technologies to replace unnecessarily dangerous processes at chemical plants across the country. Legislation that recently passed the House aims to reduce the risks and consequences of a terrorist attack on a chemical plant. The bill would drive adoption of safer technologies that would eliminate the risks of poisonous releases from chemical plants in the event of a terrorist attack. Such safer alternatives, which are already in use at plants across the country, are the best option for protecting the public and plant workers from the next Bhopal.

Technology Sector Increases Its Presence in Open Government Dialogue

In addition to nonprofit organizations, educational groups, and individual advocates, corporations have recently begun to stake out positions in the ongoing open government dialogue. Among these private sector actors are Adobe, Google, and Microsoft. These new voices are putting both money and technological resources behind an effort to advance the Obama administration’s commitment to transparency.

Most recently, Adobe made its entry onto the open government scene by hosting a Nov. 4 conference in Washington, DC, with the theme of “moving open government from promise to practice.” The event was heavily advertised with posters, billboards, and television spots. The event featured other big-name corporate technology sponsors, including Oracle and Dell. Although the conference did not specifically focus on Adobe products, some advocates found it ironic that the company would be hosting an open government conference, due to the fact that Adobe utilizes a large number of proprietary technologies.

Some open government organizations have strongly questioned both the ability and the appropriateness of using proprietary technologies, such as Adobe products, to increase access to government information. For instance, the Sunlight Foundation pointed out that agencies often use the PDF format to publish data such as budget tables. However, this method of presenting the information prevents it from being easily parsed and therefore difficult to mash up with other data. Instead, open government groups generally prefer data to be published initially in machine-readable formats such as XML. XML formats can be converted to PDF, but PDF formats cannot convert to XML.

Google is another private sector technology company that has already established its position in the open government dialogue. Google maintains a public policy office in Washington, DC, that interacts with Congress and the executive branch. In June, the company submitted comments to the Office of Science and Technology Policy concerning recommendations for the Open Government Directive. Among the suggestions Google made were that the federal government should utilize an XML Sitemap that informs search engines of pages that can be crawled, that government should make more selective use of robots.txt files on websites, and that government should encourage agencies to publish popularly requested data on agency websites and Data.gov.

A company known for its efforts in open-source and cloud computing technology, it seems that Google has largely been accepted by access advocates as an important voice in the dialogue. On Nov. 17, the company made full-text legal opinions from all U.S. court systems fully searchable and available to the public using Google Scholar. Typically, many of these opinions are held in subscription-only databases such as Westlaw or Lexis-Nexis.

Microsoft has also worked to establish itself as a resource on implementing open government. The company's biggest project is the Open Government Data Initiative launched in May. The initiative is an attempt to develop a system by which government agencies can publish their data using Microsoft Azure, the company's cloud computing platform. This method of dissemination would allow developers to interact with the data and make tools to display that data in a usable format. In this way, the government will be able to automatically refresh and update the data, and the public will have instant access to the most recent data without having to download new copies. (Full disclosure: A Microsoft employee serves on the Board of Directors of OMB Watch.)

On one hand, private corporations give the open government community a powerful ally with deep pockets and a booming voice. On the other hand, the open government community is somewhat suspicious of corporations, which often place profit and private interests ahead of the public good. The question of whether or not the involvement of private corporations is something the community should embrace remains to be answered.

OSHA Misses Injuries and Illnesses, GAO Says

The Occupational Safety and Health Administration (OSHA) cannot adequately verify lost-time injury and illness cases reported by employers, according to the Government Accountability Office (GAO). Although injury and illness rates for workers have been declining in recent years, critics say the improvement has more to do with OSHA data collection procedures than occupational safety and health policy.

OSHA audits the injury and illness records of about 250 out of approximately 130,000 worksites subject to detailed reporting requirements, according to GAO. The audits aim to determine whether internal company records match the reports submitted to OSHA.

However, whether the data is recorded accurately in the first place is a different story, and OSHA cannot often verify the details of injury reports. "OSHA's efforts to verify the accuracy of the data are not adequate because OSHA overlooks some information it could obtain from workers about injuries and illnesses" during the audits, GAO said.

The Oct. 15 GAO report, which was not released until Nov. 16, is titled, *Enhancing OSHA's Records Audit Process Could Improve the Accuracy of Worker Injury and Illness Data*. The report is available on GAO's website at http://gao.gov/products/GAO-10-10.

Data verification is not required by law or by OSHA regulation, but OSHA does attempt to verify reports during records audits. However, "OSHA does not require inspectors to interview workers during records audits about injuries and illnesses that they or their co-workers may have experienced." GAO said interviewing could provide OSHA with valuable information.

OSHA should attempt to verify injury and illness reports more promptly, GAO noted. Currently, OSHA waits about two calendar years to audit employer records. As a result, affected employees may have moved to different jobs or forgotten details of a specific incident.

GAO also faulted OSHA for failing to regularly update its list of high-hazard industries. Only designated high-hazard industries are subject to records audits and, subsequently, attempts at verifying injuries and illnesses. Eight additional industries should be included, the report says, including rental centers, amusement parks, and industrial launderers.

A relatively small number of U.S. worksites are subject to OSHA injury and illness recordkeeping requirements. Employers with 10 or fewer employees and those in "specific low hazard retail, service, finance, insurance or real estate" industries are not required to record or report an incident unless it "results in a fatality or the hospitalization of three or more employees," according to OSHA regulations. The exemptions cover about 83 percent of all employers, according to GAO.

OSHA relies on accurate injury and illness data to make regulatory decisions intended to improve worker protections. Industries found to have above-average injury or illness rates may be subject to more frequent or more thorough inspection, and OSHA may target emerging hazards through new regulation.

A 2006 study conducted by two University of Illinois-Chicago researchers, Lee Friedman and Linda Forst, blamed changes OSHA made in 1995 and 2002 that redefined injuries and illnesses. The changes allowed employers to interpret incidences more narrowly. The researchers found that 83 percent of the decline in injury and illness rates can be attributed to the definitional changes.

According to the Bureau of Labor Statistics, another Department of Labor agency, there were 3.7 million injury or illness cases in 2008, a rate of 3.9 cases per 100 workers. That number is down significantly from 1998, when the rate was 6.7 cases per 100 workers. However, BLS uses OSHA definitions and relies on OSHA's recordkeeping requirements to obtain its data. In 2008, 5,071 workers died as a result of injuries and illnesses suffered in the workplace – more than 13 fatalities per day.

GAO is not the first to criticize OSHA for mishandling injury and illness statistics. In June 2008, the House Education and Labor Committee held a hearing to investigate problems with OSHA's statistical policies and practices.

In his opening statement, committee Chair George Miller (D-CA) noted "mounting evidence that a number of employers are engaging in intimidation in order to keep workers from reporting their own injuries and illnesses." Miller faulted OSHA for relying on a system of employer self-reporting.

Both employees and employers face disincentives to fully report injuries. Since some worksites provide employee bonuses based on safety records, workers may prefer to underreport injuries, or not report them at all, according to the GAO report. Employees also face pressure from employers hoping to avoid worker compensation liability. Pressure can take the form of threatened job loss, job transfer, or reprimand.

Occupational health specialists and other health practitioners frequently witness these pressures. GAO noted that "67 percent reported observing worker fear of disciplinary action for reporting an injury or illness, and 46 percent said that this fear of disciplinary action has at least a minor impact on the accuracy of employers' injury and illness records."

GAO made four recommendations to improve injury and illness verification: OSHA should require employee interviews, minimize the time lag between incident and audit, update its list of high-hazard industries, and increase outreach efforts to help employers more accurately record data.

In response to the report, Acting Assistant Secretary for Occupational Safety and Health Jordan Barab acknowledged "GAO's analysis makes clear that there is a need to improve the accuracy of employer-provided injury and illness data" and pledged to take action on all four of GAO's recommendations.