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In Lame-Duck Session, Emboldened Republicans Face Tough Fiscal Choices

While the 2010 midterm elections swept in a significant Republican majority in the House and a larger Republican minority in the Senate, Congress will face a great deal of important fiscal legislation that it must address before the newly elected members begin their terms in 2011. With annual appropriations bills and the expiration of the Bush tax cuts pending in the upcoming lame-duck session, the focus will be on the Republican minority in the Senate and whether it decides to block key legislation or work with Democrats to address unfinished business.

One of the most pressing fiscal issues before Congress is the set of Fiscal Year (FY) 2011 appropriations bills. Congress has yet to pass [any of the 12 spending bills](#), a poor showing considering the Democrats have controlled both houses of Congress and the presidency for the past two years. FY 2011 began Oct. 1, meaning Congress is now more than a month late in passing spending bills. Operations of the federal government are currently funded by a continuing resolution (CR), a stop-gap funding measure that will expire Dec. 3. At this point, an omnibus appropriations bill, which will wrap all twelve spending bills into a single, large bill, seems to be the only feasible way of approving all the provisions necessary to fund the federal

government for the current fiscal year. This means members will be forced to vote for one giant bill with an enormous price tag, probably about \$1.2 trillion – a cut in discretionary spending from FY 2010's \$1.4 trillion.

The question is whether Republicans, especially in the Senate, will decide to support the likely package of spending bills. The FY 2011 budget will be the Democrats' last chance to fully shape a budget, since the next two years will involve a lot of compromising between the Democratic Senate and the Republican House if any spending bills are to be completed. At the same time, Republicans in the Senate may choose to stall by passing another CR to fund the government until January, when Republicans take control of the House and there are more Republicans in the Senate. Democrats will have little reason to agree to a CR, knowing that doing so will allow Republicans to significantly reshape FY 2011 spending levels, setting the stage for a potential budget stalemate in the coming weeks. On the other hand, if a stalemate develops, Democrats will have no reason not to accept a CR, given that the Republicans, once they take over in the House, plan on offering bills to rescind current spending anyway.

If both sides cannot agree on a course of action before Dec. 3, when the current CR runs out, the federal government will be forced to shut down. The last time this happened was in the mid-1990s, when Republicans also found themselves in a strengthened position, and the resulting government shutdown rebounded against the party badly. This time, Republicans must decide if gaining more influence over the FY 2011 appropriations bills is worth a possible shutdown. The current sentiment, at least [among Senate Republican leadership](#), seems to be leaning toward letting the FY 2011 bills go through and instead focusing their budget-cutting efforts on the FY 2012 budget process. It remains to be seen how the incoming class of fiscal conservatives feels about postponing a fiscal reckoning, but it is likely [they will not be happy](#).

A less politically risky option for Republicans looking to take a fiscal stand is the Bush tax cuts, although they are possibly more politically charged. Originally passed in 2001 and 2003, the Bush tax cuts lowered taxes for large swaths of the population but predominately helped higher-income taxpayers. The cuts are set to expire at the end of 2010, and Congress is locked in a struggle over which aspects to extend. Many, but certainly far from all, Democrats [are pushing to extend](#) the cuts for families earning less than \$250,000, and Republicans are pushing to keep all of the cuts, leaving the two parties fighting over the tax rates for the [wealthiest two percent](#) of the nation. The difference is important, since fully extending all the Bush tax cuts could cost [more than \\$5 trillion over ten years](#), once associated costs such as debt servicing are factored in.

Similarly, thanks to the Bush tax cuts, the estate tax has been slowly cut, from a rate of 55 percent on bequeathed assets above what would have been \$1 million if past law had continued, to 45 percent with a \$3.5 million exemption, culminating in full repeal for the 2010 tax year. In 2011, however, the tax returns to 2001 levels with a \$1 million exemption. With the potential for billions of dollars in revenue to be collected from the wealthiest 1.76 percent of decedents, many Republicans and Democrats are fervently calling for some sort of resolution.

Although some congressional Republicans are calling for permanent repeal of the estate tax, the [almost \\$600 billion cost over the next ten years](#) has made that proposition untenable. Instead,

members of Congress from [both sides](#) of the aisle have been trying to find a compromise. Support is strong for simply setting the estate tax at its 2009 levels – a \$3.5 million (\$7 million for couples) exemption at a 45 percent rate, but soon-to-be-departing Democratic Sen. Blanche Lincoln (D-AR) and Republican Jon Kyl (R-AZ) have aggressively pushed a far more generous estate tax with a \$5 million (\$10 million per couple) exemption at a 35 percent rate. Inaction will cause the estate tax to affect less than the wealthiest two percent of estates, up from its current impact on no estates (and one quarter of one percent of estates in 2009), yet attention from members of both parties is inexplicably and intensely focused on this issue, likely resulting in some action during the lame-duck session.

Fighting to extend the Bush tax cuts and repeal the estate tax are far less risky battles for congressional Republicans, since the worst-case scenario is a tax hike, not a government shutdown. While a tax hike would likely [rankle](#) the Republicans' voting base, a government shutdown would anger a large swatch of independent voters, potentially giving them pause in 2012. Therefore, Republicans may choose to wage a high-profile fight for the tax cuts while quietly passing the FY 2011 budget bills, gaining the limelight and placating their supporters but avoiding a potentially harmful political debacle.

Another possibility being discussed is simply extending all the Bush tax cuts for one or two years, letting the new Congress deal with the issue. President Barack Obama has indirectly suggested this approach as a possible compromise during the lame-duck session. Sen. Orrin Hatch (R-UT), likely the new ranking Republican on the tax writing committee, has said he could support an extension as long as all the tax cuts – for wealthy and middle-income individuals and families – are treated the same. This, of course, raises a question for the estate tax: Would an extension be based on 2010 when there was no tax, or would it be based on 2009 when there was?

These three issues – the budget, the Bush tax cuts, and the estate tax – are only part of the fiscal challenges facing the lame-duck session. Congress [must also pass](#) a patch for the Alternative Minimum Tax (AMT), a package of miscellaneous tax provisions often referred to as “extenders,” and a “doc fix,” which would postpone a planned payment cut for Medicare physicians, all of which are annual occurrences. Congress has yet to address any of these measures because, yet again, Congress dragged its feet and failed to pass any of them in a timely fashion. The result could be a hectic lame-duck session, with trillions of dollars in spending on the table, which will produce legislation motivated more by political expediency than sound fiscal policy. Alternatively, lawmakers could take a “kick-the-can” approach and leave many of these issues for the next Congress to tackle.

Commentary: Contracting Oversight in the 112th Congress

With the GOP winning control of the House on Nov. 2, Republican members of House oversight committees are poised to determine how the lower chamber of Congress uses its investigatory powers for the next two years. Rep. Darrell Issa (R-CA), the likely chairman-to-be of the House Oversight and Government Reform Committee, has [released](#) what his website calls “a blueprint”

for oversight of the executive branch, and Rep. Eric Cantor (R-VA) released [a document](#) shortly after the elections calling for greater congressional oversight overall. With plenty of contracting issues that remain unexamined or in need of further investigation, what will this shift mean for congressional oversight of government contracting in the next Congress?

During the Bush administration, as dollars spent on contracting doubled between 2001 and 2008 and became more concentrated in a relative handful of companies, Democrats began scrutinizing the federal contracting process. In 2005, while still in the minority, Democrats began using the Senate Democratic Policy Committee (DPC) to begin investigating [whistleblower allegations](#) of waste, fraud, and abuse in contracting in Iraq. After Democrats took control of Congress in the 2006 midterm elections, they began showering oversight attention on contracting by creating new oversight panels in both chambers and creating the Commission on Wartime Contracting in Iraq and Afghanistan (CWC).

While Republicans will have no control over the CWC, which will wrap up its work and provide final recommendations within the next six months, or the contracting panel in the House, which submitted its final recommendations in March, questions remain as to the House's commitment to continue the work on contracting reform that has occurred over the past four years. Indeed, several contracting issues have come up just within the past few months that warrant continued congressional scrutiny.

In early November, the Department of Defense (DOD) announced that Lockheed Martin's F-35 fighter jet – the only fifth-generation fighter platform the Pentagon will have since Congress terminated funding for continued F-22 acquisitions – would experience additional delays and cost increases. Writing in his influential military reporting blog *War is Boring*, David Axe [notes](#) that just this spring, DOD reorganized the F-35 program, delayed the start of full production, and added \$3 billion to development costs. Now the Pentagon is pushing full production back another year and adding another \$5 billion for research and development. Proper oversight would require that Congress call Lockheed Martin executives, along with top Pentagon brass, up to Capitol Hill to testify about the company's continued failures to meet cost and schedule demands and DOD's failures to keep the project on course.

Additionally, continued problems with contractors in Iraq and Afghanistan demand further congressional attention. In June, Rep. John Tierney (D-MA), the current chair of the Subcommittee on National Security and Foreign Affairs of the House Oversight Committee, released a [report](#) titled *Warlord, Inc.* The report, which incorporates a six-month investigation spurred by an [expose](#) conducted by *The Nation* magazine, exposes the extortion and corruption surrounding DOD's "outsourcing of security on the supply chain in Afghanistan to questionable providers, including warlords." In short, the report found that DOD "designed a contract that put responsibility for the security of vital U.S. supplies on contractors and their unaccountable security providers." This arrangement, which "has fueled a vast protection racket run by a shadowy network of warlords, strongmen, commanders, corrupt Afghan officials, and perhaps others" – read: the Taliban – not only conflicts with DOD and congressional rules and regulations, but likely undermines "the U.S. strategy for achieving its goals in Afghanistan."

Without pressure from Congress resulting from investigations like these, DOD risks unwittingly funding the very groups our country has sent our armed forces to fight.

In Iraq, the State Department is about to [assume](#) all responsibility for overseeing contractors, as the military continues its withdrawal of most combat troops. State estimates that it will have to watch over some 25,000 to 26,000 private security contractors (PSCs). These PSCs will continue to provide standing and moving security, and the training of Iraqi police and soldiers, but they will also have to supply quick-reaction combat teams, route clearance, recovery of wounded personnel, removal of damaged vehicles, and the detection and disposal of explosive devices. This may create a nightmare scenario where the State Department, due to [lack of experience and too few oversight personnel](#), can't adequately oversee contractors tasked with new and difficult duties to perform. Congress needs to pick up the CWC's vigorous oversight of the State Department and ensure that the agency is adequately overseeing contractors in Iraq.

In his September report criticizing Democratic oversight of the executive branch and other issues, Issa ostensibly lays out his plan of action for the next Congress. While scrutiny of the executive branch is surely the duty and prerogative of Congress, Issa's [report](#) fails to mention oversight of federal contracting, nor does it address any of the issues discussed here.

Of course, even if the House fails to confront contracting issues, the Senate will likely continue to do so. Indeed, Sen. Claire McCaskill (D-MO), chair of the Subcommittee on Contracting Oversight of the Senate Homeland Security and Governmental Affairs Committee, recently released an "aggressive" [agenda](#) for the next Congress. According to Robert Brodsky of *Government Executive*, McCaskill plans to hold hearings on "Afghanistan reconstruction projects and is conducting investigations of Energy Department procurements, public relations contracts, and acquisitions connected to congressional earmarks." McCaskill, one of the driving forces behind the creation of the CWC, is determined to "cause squeamish moments for both industry leaders and federal agencies." Without similar support from the House, the oversight of contracting issues may be detrimentally affected in the next Congress.

New Executive Order Reforms Controlled Unclassified Information

On Nov. 4, President Obama signed a new [executive order](#) on controlled unclassified information (CUI), reforming the system of safeguarding information that is not classified but is still considered "sensitive." Previous practices for handling CUI stymied public access and inhibited information sharing inside government. The new order has been praised by numerous government openness advocates.

Over the years, agencies have created CUI categories on an ad hoc basis: sometimes as required by legislation or regulation, but also simply out of perceived need. A 2009 report identified more than 100 such categories across the government, including many without a clear public definition. The new executive order will create a public registry of all CUI categories and their definitions, along with their justification in statute, regulation, or government-wide policy. The

order also makes clear that CUI documents are subject to standard disclosure processes under the Freedom of Information Act (FOIA); labeling a document as CUI does not exempt it from FOIA.

History of CUI

Since at least the 1970s, agencies have sought ways to protect information that was "sensitive but unclassified." The growth of such practices was facilitated by a post-9/11 Bush White House [memo](#) that instructed agencies to control such information.

However, the problems caused by the confusion resulting from the proliferation of "pseudo-secrecy" practices became apparent even to the Bush administration. In 2005, President Bush issued a [memorandum](#) directing agencies to standardize procedures for safeguarding sensitive terrorism, homeland security, and law enforcement information in order to better facilitate the sharing of this information between different agencies. This was followed by a [2008 memo](#) adopting CUI as the common designation for systems to protect terrorism-related information.

The Obama administration continued the reform efforts. In May 2009, President Obama established an interagency task force to examine CUI and issue recommendations for reform. OMB Watch, along with other public interest groups, contributed [perspectives](#) to this process. In August 2009, the task force issued [a set of recommendations](#), including a call for a new executive order.

What the Executive Order Does

The new executive order establishes CUI as the sole system for controlling unclassified information. It makes clear that a CUI designation is not an exemption from FOIA review and requires an assumption of openness in designating information as CUI. Throughout the process, the National Archives and Records Administration (NARA) can consult with government officials, state and local authorities, private stakeholders, and the public.

NARA is responsible for administration and oversight of the order. NARA is assigned to develop government-wide procedures for implementing the order within six months. At the same time, agencies must review the categories they currently use and submit them to NARA for review, including definitions citing a basis in law, regulation, or government-wide policy. Agencies no longer have the authority to create new information categories on their own; only those categories approved by NARA may be used.

NARA then has six months to review and approve the categories proposed by the various agencies. As the executive agent overseeing the order, NARA has the authority to reorganize categories submitted to eliminate duplication, overlap, and other conflicts. Conflicts over categories or implementation procedures that cannot be settled by NARA and agencies will be resolved by the White House Office of Management and Budget (OMB). Within one year of the order, NARA must publish a public registry of authorized categories, including their definitions and associated procedures. Future proposed categories will also have to be approved by NARA.

While NARA is reviewing the submitted categories and creating the public registry, agencies must establish their CUI programs and policies based on NARA's implementing guidance. The agencies must submit their plans to NARA for review to ensure they comply with the original guidance. NARA will review the proposals and establish deadlines for agency implementation. The procedures will likely consider questions such as systems for safeguarding CUI, markings, control processes (e.g., who is authorized to control a document), decontrol timelines and processes, staff training, and selective control (controlling parts of documents rather than entire documents).

For the first five years, NARA must produce an annual report on implementation of the order. After five years, NARA will issue a report every other year. The order does not specify any particular metrics or framework for the reports. It may be that the implementation guidance to the agencies will provide some indication by requiring the agencies to collect and report to NARA on certain aspects of implementation.

Analysis

The order steps back from the direction of an earlier [draft](#), which would have directly established a small, tiered set of broad, government-wide categories, rather than having NARA process the existing categories. This earlier approach would have been similar to Bush's 2008 memorandum. [According to OpenTheGovernment.org](#), "The Bush policy and earlier drafts could have created a fourth level of classification." Likewise, the Federation of American Scientists [commented](#) that under the earlier draft order, "CUI would have constituted another level of classification, by another name."

The draft order also spelled out government-wide procedures rather than having NARA develop them. Among the policies were sanctions for unauthorized disclosure of CUI, which created concerns about retaliation against whistleblowers. Openness advocates will be closely watching the development of the procedures for such issues.

Even after the procedures are released, implementation of the order will remain a topic of vigilance for openness advocates. One indicator many will no doubt like to see built into the procedures is the reporting of statistics on the use of CUI designations, which will allow assessment of whether the order actually is reining in the volume of information marked as CUI.

Reactions to the E.O.

Initial reactions from open government groups were positive. OMB Watch [said](#) that the order "deserves genuine praise as a simple but strong path forward." Gary D. Bass, OMB Watch's executive director, went on to stress that "implementation will determine if this policy succeeds or fails."

The American Civil Liberties Union (ACLU) [said](#) the order would "improve government transparency" and added, "This Executive Order is a welcome step toward ensuring that our government agencies can no longer withhold information without oversight."

The Federation of American Scientists [commented](#) that the order "seems well-crafted to streamline information handling in the executive branch without creating any new obstacles to public access."

OpenTheGovernment.org [commented](#) that the order will "significantly limit the number and end the spiraling proliferation" of CUI categories.

Lack of Plan for EPA Libraries Threatens Access to Environmental Information

After more than three years of development, the U.S. Environmental Protection Agency (EPA) has yet to complete a strategic plan for its library network or to inventory the network's holdings, according to the [Government Accountability Office](#) (GAO). The Bush administration controversially moved to close several agency libraries, but opposition from Congress and the public pushed EPA to reverse course and [reopen the libraries](#). However, the GAO report makes clear that additional steps are needed to ensure the library network's valuable holdings are genuinely accessible to the public.

EPA issued a draft outline for a strategic plan in July 2007, and the plan was scheduled to be completed in 2008. However, the outline is missing several important pieces and is composed primarily of placeholders for future activities with no specific goals, timeframes, or methods listed.

In addition to the lack of a plan to guide the library network, GAO found that EPA does not yet have an inventory of its holdings. The agency also has no plan for prioritizing the digitization of its materials, a key component to improving public access to the agency's library holdings. Without an inventory of holdings, EPA cannot prioritize what documents need to be digitized or know how much it will cost or how long it will take. Additionally, the agency has no criteria for scheduling funding for digitization or a timeline for the process. Without a completed strategic plan or a plan for funding the reorganization of the library network, the EPA's ability to meet the network's users' needs is threatened, according to the GAO.

The EPA's library network has for several years been the focus of controversy resulting from the Bush administration's moves to close several libraries and the potential [loss or destruction](#) of library holdings. EPA reopened the libraries in 2008 following numerous protests by public interest groups, including OMB Watch, and the employees' union, a critical government report, and congressional intervention.

An earlier [GAO report](#) found that the EPA's process for closing the libraries was seriously flawed. The agency failed to follow its own plan for closing and reorganizing the libraries. The public was cut out of the process, with poor communications with library users and no plan for dispersal or disposal of holdings. EPA had also failed to fund the library closings and reorganizations.

In its response to the recent GAO report, the EPA agreed to complete its strategic plan in Fiscal Year 2011, although no detailed timeline was provided. EPA also agreed to create a schedule for cataloguing the inventory of library network holdings and to complete the cataloguing by Sept. 30, 2011.

The GAO report went on to highlight another significant flaw in the EPA's information access policies. EPA often contracts with private entities to do many types of work, such as research and development. In addition, EPA provides financial assistance to states, local governments, schools, hospitals, and nonprofit organizations. Work produced under contract, as well as work produced under assistance agreements, may include copyrighted material. Although federal regulations generally allow for public disclosure of copyrighted materials produced under government contracts, EPA regulations do not allow public disclosure of copyrighted material produced under assistance agreements.

EPA has awarded more than 21,000 grants valued at more than \$40 billion, according to the GAO report, producing a "substantial body of publicly funded written material," and much of it may be copyrighted. EPA may only disseminate copyrighted materials to federal workers for official purposes and may not disclose them to the public.

GAO recommends EPA follow a practice similar to the [Federal Library and Information Network](#), the business subsidiary of the Federal Library and Information Center Committee, which seeks permission to disclose copyrighted material under assistance agreements at the time an agreement is made. EPA currently does not have such a practice. The GAO makes clear, "without permission from copyright holders, however, documents prepared under EPA assistance agreements, using taxpayer dollars, will remain unavailable online to the public."

The EPA, in responding to the GAO recommendations, agreed to identify ways of gaining permission from assistance recipients to disclose copyrighted material. However, the EPA feels restricted by legal constraints and will not digitize materials from ongoing assistance agreements.

Despite the missing strategic plan and inventory of holdings, EPA has taken important steps to improve the operations of the library network. The GAO report commends EPA for several actions taken to improve communications with agency staff on the operations of the library network, including regular teleconferences with library managers and staff and a live chat feature connecting staff to librarians. Numerous other positive steps are being taken to improve the usability of the agency's online library system. The GAO report cites work that is underway to improve searchability of documents and navigation of the site.

EPA libraries contain a vast amount of information on environmental protection and management, basic and applied sciences, and local and regional environmental and public health issues. The network includes extensive coverage of issues pertaining to legislative mandates such as hazardous waste, drinking water, pollution prevention, pesticides, and other toxic substances. The information is used to evaluate environmental threats, assess new chemicals, inform policy decisions, and provide the essential data that agency and

nongovernmental scientists need to challenge the scientific claims of polluting industries. Therefore, improving access to the network's holdings is an important part of protecting public health and the environment.

As agency staff work to complete and implement the strategic plan, EPA may need to look beyond merely providing access to digital copies of its materials online. As one library advocate [suggests](#), the agency should be able to provide library services to mobile phones and exploit social media like Facebook and Twitter in order to connect to users and potential users. The library network should also include topic-specific RSS feeds and other alert systems to push information out to the public.

The agency's [vision](#) is to create "the premier environmental library network that provides timely access to information and library services to its employees and the public." For a full recovery from the Bush-era assaults and to progress into a 21st century information network, EPA must implement the GAO's recommendations and begin adopting the newest online technologies to ensure all users have access to this publicly funded information.

All Eyes on Regulation in Post-Election Environment

Facing a Republican majority in the House and a slimmer Democratic majority in the Senate, President Obama and administrative agencies may increasingly turn toward regulation to accomplish policy goals. In contrast, new lawmakers and congressional leaders vow to use their power to roll back regulations, cut spending, and shrink the size of government.

The 112th Congress will be more skeptical of Obama's agenda than the 111th – in the midterm elections, many Republicans framed their campaigns as a referendum on Obama's presidency, and some Democrats distanced themselves from the White House. As a result, the administration will find it difficult, if not impossible, to score major victories in the next Congress.

A shift toward regulation carries both pros and cons. The administration can move at its own pace and shape policy without the compromises and delays inherent in legislating. However, in writing new rules, regulators are bound by statute, and regulation is usually not a powerful enough tool to enact major or systemic changes.

Previous presidents have encountered similar situations and have chosen to look at regulation differently in response to changes in Congress. After Republicans gained control of the House in the 1994 elections, President Bill Clinton shifted some of his focus toward the administrative side of government. Additionally, the Clinton administration expended time and energy responding to increased congressional oversight and investigation. President George W. Bush was also forced to deal with a less compliant Congress when Democrats regained control in the 2006 elections.

Congressional Republicans have shown a desire to tighten oversight of regulatory decisionmaking. The House Republicans' [A Pledge to America](#), a policy agenda unveiled by House Republican leadership in September, calls for congressional approval of all "major" regulations – those expected to have annual costs or benefits to the economy of \$100 million or more. "The Pledge's proposal will either result in significant delay or will completely stop the executive branch from carrying out its statutory and constitutional responsibilities," according to an [analysis by OMB Watch](#).

A [document](#) released after the election by Rep. Eric Cantor (R-VA), the likely House Majority Leader, calls for House committees to review proposed and existing regulations and issue reports, presumably recommending alteration or repeal of regulations the committees dislike. The document derides regulation, commenting on its cost to businesses without mentioning its benefits to society as a whole.

Climate change regulations written by the U.S. Environmental Protection Agency (EPA) are a likely target of congressional scorn. The agency has finalized several rules under the Obama administration that limit climate-altering greenhouse gas emissions. The most controversial has been EPA's stationary source rule, which will curb emissions from power plants and other large facilities beginning in 2011. Conservative lawmakers and many in the business community have criticized the stationary source rule, as well as other clean air and climate rules EPA has pursued.

Some Republicans have attacked the scientific conclusions EPA has used to support its regulations. An attempt to overturn EPA's 2009 endangerment finding, which officially recognized greenhouse gases as a threat, [was defeated in June](#), but similar attempts are likely to surface in the 112th Congress. Fifty percent of Republicans newly elected in the midterm elections deny the existence of human-caused climate change, [according to ThinkProgress.org](#), a blog of the Center for American Progress.

The Obama administration will need to continue to look to regulation if it intends to add to its climate change record. Climate and energy legislation, passed by the House in 2009 but stalled in the Senate, is dead in the 112th Congress, insiders say. EPA has other items on its regulatory agenda that could curb greenhouse gas emissions, including a [rule proposed](#) in October to improve fuel efficiency in large trucks and other heavy-duty vehicles.

A Republican-controlled House is also unlikely to prioritize bills expanding power and authority for regulatory agencies. A [bill to improve](#) mine safety in the wake of the Upper Big Branch explosion that killed 29 miners, a [bill to require](#) new safeguards for passenger vehicles in response to the recall of millions of defective Toyota vehicles, and a [bill to expand](#) protections for workers and whistleblowers who report unsafe conditions were all introduced in the 111th Congress but did not pass either chamber. If the bills do not pass during the upcoming congressional lame-duck session, given existing rhetoric on regulation, these bills are unlikely to advance in the near future.

That will oblige the administration to look to rulemaking as the method for protecting workers and consumers. The Mine Safety and Health Administration (MSHA), National Highway Traffic Safety Administration (NHTSA), and Occupational Safety and Health Administration (OSHA), not Congress, may be expected to take the lead in crafting new policy.

The fate of [food safety legislation](#) remains a mystery. Before recessing for the elections, Senate Majority Leader Harry Reid (D-NV) filed a cloture motion on the FDA Food Safety Modernization Act (S. 510), a bill to give the Food and Drug Administration (FDA) more regulatory authority, including the power to order recalls. The motion means the Senate could tee the bill up for passage during the lame-duck session coming up later in November. However, the Senate will likely only be in session for three weeks. Even if it does pass S. 510, the bill would need to be combined with a House version (passed in 2009) in a conference committee, and the conferenced bill would need to be approved again by both chambers. Food safety legislation has bipartisan support, but it is unclear whether House Republicans would prioritize passage of a bill in the 112th Congress or whether they would push to include greater spending and regulatory requirements found in current versions.

Health care and financial regulations are also sure to draw greater scrutiny. Rulemaking agencies will continue to write regulations implementing the health care reform bill and the financial regulatory reform bill, both of which many Republican lawmakers and candidates opposed. Targeting those regulations may prove to be a successful strategy in undermining the laws' impacts if the new Congress can agree on procedures to delay or kill the rules.

Congress can target health care and financial regulations in at least one of three ways. First, Congress has the power to review major regulations and send a resolution of disapproval to the president. Even if House Republicans were successful in getting such resolutions of disapproval through the Senate, they would most certainly face a presidential veto, which Congress would unlikely be able to override.

Second, Congress has the power to conduct oversight. Cantor's plan of action calls for a significant increase in oversight in an attempt to control executive branch activity. Oversight committees are often the same ones that deal with legislation affecting the covered agencies. Thus, the fear of legislation may provide enough pressure to sway agencies.

Finally, Congress has the power of the purse. It can withhold funding from an agency to keep it from working on a particular regulation. This may be the most powerful course in trying to influence health care and financial regulations because it puts the president in a bind over whether to veto an entire spending bill over a specific restriction on a regulation.

Increased oversight and limiting funding are the most likely strategies opponents may adopt to restrict health care and financial regulations. Resolutions of disapproval have rarely succeeded in the past.

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