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## The Watcher

October 13, 2010

Vol. 11, No. 18

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## Modernization at IRS Could Help Reduce Tax Gap and Shrink Deficit

The estimated \$345 billion in revenue that goes uncollected every year is a tempting target for deficit crusaders. However, closing the so-called tax gap is not a cure-all, and attempting to address the problem could create other tax compliance issues. Despite such potential complications, a new [report](#) by the Government Accountability Office (GAO) has found that recent modernizations to the Internal Revenue Service's (IRS) computer systems show promise in helping to close the tax gap while avoiding some of the problems that may arise from aggressive tax collection.

Reducing the tax gap, which is the difference between what individuals and businesses owe the government and what they actually pay on a timely basis, is important to improving the integrity of the tax system, ensuring fairness, and fulfilling the funding demands of the government. The last [estimate](#) of the average gross tax gap was \$345 billion. IRS released the updated estimate in 2007, which was based on data compiled in 2001, the last time the agency tried to determine the amount of revenue the government loses each year through noncompliance with tax laws.

In a 2007 [paper](#) for the Tax Policy Center, Eric Toder noted that stepped-up IRS enforcement imposes not just increased costs on the IRS, but on filers as well:

Measures to improve compliance also impose compliance costs on taxpayers (in addition to the tax and penalties they must pay) in the form of additional time spent gathering records, meeting with and corresponding with IRS agents, and possibly seeking assistance from outside counsel or tax preparers...

But additional enforcement and reporting requirements also impose time and sometimes money burdens on compliant taxpayers who must undergo an audit, respond to IRS correspondence, or supply additional data with their tax returns and on third parties such as brokers or credit card companies who must prepare additional reports for the IRS and taxpayers.

According to the GAO report, improvements to IRS's business nonfiler program, which aids the agency in tracking down businesses that do not pay their taxes, could play a significant role in shrinking the tax gap. The system has the added benefit of not placing a higher compliance burden on businesses.

Most businesses within the United States, including corporations, partnerships, and any business that has employees, are required to register with IRS. Once a business registers, the agency uses the account to track whether the business has filed the necessary tax returns for any given year. If a business does not file a return by the due date, the agency considers the organization to be a potential nonfiler.

There are, of course, many legitimate reasons why a business might not file a tax return, including not owing any tax that year, or, if the business is a subsidiary, a parent company filing the return. Additionally, a business may have closed, merged with another business, no longer have employees, or restructured and registered a new account with IRS.

For more than two decades, government watchdogs, including GAO and the Treasury Department's inspector general for tax administration (TIGTA), have documented IRS's shortcomings at attempting to correctly identify and pursue businesses that illegitimately fail to file a tax return. GAO noted:

Each year IRS identifies a large number of potential business nonfiler cases, more than IRS has the capacity to work. Many cases go unresolved, and many that IRS does pursue are closed with a determination that the business does not owe IRS a return – a generally unproductive use of IRS's enforcement resources.

To address these issues, IRS instituted the Business Master File Case Creation Nonfiler Identification Process (BMF CCNIP) in 2009. The long-winded acronym is simply a program that uses third-party information and IRS account data "to select potential business nonfiler cases for pursuit based on the likelihood of securing returns and revenue." Despite lacking

formal data on its performance – because the program is so new – BMF CCNIP, according to IRS officials, is showing a positive impact on prioritizing nonfiling cases.

The success of BMF CCNIP is not only important to IRS's accurate identification and pursuit of business nonfilers, which reduces the tax gap through recovered revenue, but it is also important to IRS's efforts to better understand the tax gap. Unlike the tax gap estimate for individuals, there currently is no comprehensive tax gap estimate for business nonfiling. Accurate identification of more illegitimate nonfilings by business would provide IRS with at least a partial estimate of business nonfilers, thereby increasing the accuracy of the tax gap estimate.

It is important for IRS to accurately identify and pursue businesses that owe taxes to the government because each instance of nonpayment reduces the confidence of those individuals and businesses that actually pay their taxes on time and in full. Moreover, \$345 billion is more than a sliver of the \$1.3 trillion projected deficit, and while it will be impossible to close the tax gap completely, BMF CCNIP could significantly improve the fairness of tax administration without imposing new burdens on business, alleviate the burden that individuals have to shoulder because of noncompliance, and chip away at the federal budget deficit.

## **Commentary: The Case of the Misunderstood Bailout**

Currently, it's hard to find a federal program more unpopular than the Troubled Asset Relief Program (TARP), the bank "bailout" passed in the waning days of the Bush administration. [Poll after poll](#) shows that the public does not support the bailout, and politicians, especially ones up for reelection, have picked up on this trend and frequently denounce the program. And yet, by many objective measures, the bailout could be considered a success: it helped avert financial calamity, it will cost a fraction of its original estimates, and TARP's bank provisions will likely end up earning a profit for the government. While TARP could have done better, the public perception that TARP failed is not consistent with most data.

The law creating TARP, the Emergency Economic Stabilization Act of 2008 (EESA), is an incredibly vague piece of legislation, mainly because Treasury officials, led by then-Secretary Hank Paulson, [were worried](#) that the nation's economy was collapsing. Lehman Brothers had already imploded, others seemed likely to follow, and AIG, an insurance group with myriad financial ties throughout the economy, was teetering. Congress needed to do something and do it immediately to stabilize the financial sector. Thus, TARP gives the Treasury remarkable leeway in how to use bailout money. This can be seen in the fact that TARP actually involved very little purchasing of "toxic assets," despite the moniker of the program created by EESA: "Troubled Asset Relief Program."

While some argue that the Federal Reserve's monetary efforts did more to prop up the economy in the long run, TARP unquestionably succeeded in the short run. No more large banks or investment houses collapsed, nor did AIG fail. Because of TARP, the nation did not descend into financial oblivion, saving the assets and retirement savings of millions of people.

At the same time, the bailout will not cost the widely publicized \$700 billion figure. TARP had essentially three kinds of programs. The first was the support for banks, the Capital Purchase Program (CPP), which is one of the more well known provisions. The federal government basically loaned banks money in exchange for various forms of collateral, enabling banks to stay afloat in a time when few were willing to lend. Since federal support was in the form of loans, which had to be paid back, CPP cannot be considered a "handout." And because banks had to pay interest on the loans, the support could even be profitable for the American people. [Thus far](#), 78 percent of bank recipients have paid back their TARP funds plus interest, which has provided the government with \$27 billion in profit on those loans.

However, the other two parts of TARP will likely end up costing the taxpayers money. The second part of the money was spent propping up AIG, the international insurance giant, while the third part was spent on several other programs, including support for American car manufacturers and home mortgages. Estimates for the cost of both parts are uncertain. The Treasury Department has recently [been hinting](#) that AIG may earn a profit for taxpayers, but that is far from clear. The home mortgage modification program, however, was never intended to recoup its investment and will end up costing almost \$50 billion, although it has only spent \$500 million so far. Depending on how the stock market fares in the coming months, the government's investment in automakers could end up costing somewhere less than \$20 billion.

All in all, it looks like TARP will have cost taxpayers some \$30 billion, far less than the \$700 billion figure frequently cited (the \$30 billion figure is a [government estimate](#); the independent Congressional Budget Office, on the other hand, estimates TARP will cost about [\\$66 billion](#)).

The United States has long had a strong anti-Wall Street populist streak, so it is unsurprising that the bailout is disliked. Indeed, animosity over TARP is so bad that sitting members of Congress have already lost their jobs over their votes for the bill. The most prominent example of this is [Sen. Robert Bennett \(R-UT\)](#), who resoundingly lost a primary battle for his seat in May. However successful TARP may have been at averting economic calamity, popular enmity toward the program is not without reason.

TARP was riddled with shortcomings. Reuters financial blogger Felix Salmon [wrote in a recent article](#) that not only did the Fed's monetary policy play a larger role in saving the nation's economy, TARP failed to improve small business lending or improve the nation's foreclosure crisis, despite the program's stated goal of removing "toxic assets."

Another vocal critic of TARP, Dean Baker, a director at the Center for Economic and Policy Research, has frequently noted that, through TARP, the government was providing Wall Street firms with [very low loan rates](#), losing a great deal of potential revenue while at the same time giving great benefits to the firms. [Many other critics](#) have decried TARP's implied moral hazard, in that bailing out failing banks only encourages them to continue risky behaviors in the future.

## **EPA Plans for Greater Openness in Coming Years**

The U.S. Environmental Protection Agency (EPA) will incorporate greater transparency, accountability, and community engagement throughout its operations over the next five years, according to the agency's recently released [Fiscal Year \(FY\) 2011-2015 Strategic Plan](#). The new strategic plan is the agency's first developed under the Obama administration, which has made increasing government openness a high priority.

Throughout the 68-page strategic plan, the agency repeatedly comments on the need to work with a diverse stakeholder community and to provide information in a transparent and useful manner. The document establishes three "core values" upon which the rest of the plan is founded: science, transparency, and the rule of law.

In addition to setting transparency as one of its three core values, EPA's plan incorporates open government concepts throughout its cross-cutting fundamental strategies. These strategies address a number of concerns raised by environmental and open government advocates over how the agency conducts its operations.

EPA's plan identifies five strategic goals and five cross-cutting fundamental strategies that the agency expects "will be used routinely by the Agency's senior leadership as a management tool." The plan's five strategic goals are:

- Goal 1: Taking Action on Climate Change and Improving Air Quality
- Goal 2: Protecting America's Waters
- Goal 3: Cleaning Up Communities and Advancing Sustainable Development
- Goal 4: Ensuring the Safety of Chemicals and Preventing Pollution
- Goal 5: Enforcing Environmental Laws

EPA also establishes five "cross-cutting fundamental strategies" that it plans to adopt agency-wide. These strategies are:

- Expanding the Conversation on Environmentalism
- Working for Environmental Justice and Children's Health
- Advancing Science, Research, and Technological Innovation
- Strengthening State, Tribal, and International Partnerships
- Strengthening EPA's Workforce and Capabilities

While transparency is a recurring theme throughout much of the plan, access to and management of information were most prominent in two goals and one strategy. The strategy of "Advancing Science, Research and Technological Innovation" seems to respond to repeated complaints by public interest groups that science had taken a backseat to politics at EPA under the Bush administration. The "Expanding the Conversation on Environmentalism" strategy ties directly into the Obama administration's open government efforts to improve participation and collaboration at agencies. The "Ensuring the Safety of Chemicals and Preventing Pollution" goal builds on a long history of disclosure of chemical risks.

## Science

A significant concern raised by environmental and open government groups has been the need for scientific and technical information to be presented to the public in ways that can be easily and readily understood. Among the new cross-cutting fundamental strategies, EPA calls for advancing science, research, and technological innovation. The agency states, "To maximize the impact and utility of our research, EPA will communicate the design, definition, conduct, transfer, and implementation of the work we do. We will translate our science so that it is accessible, understandable, relevant to, and used by stakeholders and the general public."

Many environmental advocates would agree with EPA's strategy to advance scientific and technical research. Environmental advocates have identified a [long list of data gaps](#) they believe must be filled in order to provide the strongest protections for the public. These research and data gaps include understanding the wide-ranging impacts of climate change, many of which climate experts claim we are already beginning to experience. According to the strategic plan, EPA will address this climate change research gap and incorporate its findings into its rulemakings and other decisions.

One of the agency's priority goals is implementation of the new [mandatory greenhouse gas \(GHG\) reporting rule](#). EPA promises that by June 15, 2011, all GHG emissions data will be available to the public. The agency is still developing a final rule on how it will evaluate company claims about confidential business information (CBI).

Additionally, advocates for stronger scientific integrity at EPA have long been [waiting for guidance](#) from the Obama administration on protecting agency research from political manipulation and distortion. Open government advocates also seek an agency [communications policy](#) that clearly sets forth procedures for public and media access to scientific and technical experts at the agency. The new strategic plan does not address either issue.

## Transparency and Community Engagement

EPA's plan includes establishing a fundamental strategy for expanding the conversation on environmentalism, by which EPA intends to improve communication and collaboration with stakeholder groups, especially citizens in low-income, tribal, and minority communities. In a [message](#) accompanying the strategic plan, EPA Administrator Lisa Jackson stated that EPA "will take broad steps to expand the conversation on environmentalism to communities across America, building capacity, increasing transparency and listening to the public."

It is through this strategy that the agency's strategic plan seems to offer the most opportunity for progress on open government issues. To achieve greater community engagement, the agency plans to incorporate a list of transparency principles into its regular functions. To aid the efforts, EPA is asking all employees to "bring their creativity and talents to their everyday work to enhance outreach and transparency in all our programs."



EPA reiterated its plan to make environmental information accessible to diverse public stakeholders. EPA will work to ensure that "science is explained clearly and accessible to all communities, communicating and educating in plain language the complexities of environmental, health, policy, and regulatory issues." Moreover, the agency will seek to "educate and empower individuals, communities, and Agency partners in decision making through public access to environmental information and data."

Addressing another concern identified by environmental advocates, EPA's plan seeks to help citizens build the skills needed to engage policymakers by encouraging "citizens to understand the complexities and impacts of environmental issues and environmental stewardship, and provide avenues and tools that enhance their ability to participate in processes that could affect them."

EPA succinctly summed up the basic reforms sought by many open government advocates when it stated in its strategic plan that it intends to "ensure that the Agency's regulations, policies, budget, and decision-making processes are transparent and accessible through increased access to environmental data sources, community right-to-know tools, and direct stakeholder engagement."

## **Chemical Information**

EPA has made ensuring the safety of chemicals one of its strategic goals. However, the agency [acknowledges](#) that the nation's primary chemicals statute, the [Toxic Substances Control Act](#) (TSCA) is flawed and in need of reform. EPA is seeking greater authority to collect data on the health and safety of chemicals. Under current law, the EPA's [authority to collect information](#) is so restricted that the agency has only been able to require testing on around 200 of the 84,000 chemicals on the TSCA Inventory. To date, only five existing chemicals have been regulated under TSCA's ban authority.

The EPA already has implemented several initiatives to increase transparency regarding information on the health risks of chemicals. EPA has [made changes](#) to the way it handles CBI claims from chemical manufacturers. EPA has repeatedly admitted that this privilege is overused and abused and denies the public important information on chemical risks. With the new policies, manufacturers will find it harder to conceal the health risks of certain products. The agency has even set a specific performance measurement for reducing the impact of CBI claims, seeking "to make all health and safety studies available to the public for chemicals in commerce, to the extent allowed by law" by 2015.

Rather than codify improved transparency as a separate goal or strategy, EPA has incorporated key aspects of open government throughout its strategic plan. By weaving transparency, participation, and collaboration into the fabric of the agency's guiding plan, EPA takes a major step toward creating a culture of openness. Of course, the true test will be in how successfully EPA's daily operations comport with this plan, and whether staff, from top to bottom, sincerely adopt these concepts. The plan gives open government advocates another tool to compel

meaningful changes from the agency and another opportunity to strengthen accountability.

## **No Taxation without Information**

The idea of providing taxpayers with an itemized receipt for their income taxes was recently proposed by Third Way, a center-left think tank. The proposal, which is not entirely new, has attracted considerable commentary. However, there are significant challenges to creating a simple and engaging taxpayer receipt that would provide meaningful transparency for federal spending.

Third Way proposed the receipt idea in a recent [issue brief](#) as a tool to inform debate about the federal budget and deficit. To demonstrate taxpayers' ignorance about the federal budget, the paper notes a [survey](#) that shows that Americans overwhelmingly – and mistakenly – believed that the U.S. government spends more on foreign aid than on Social Security or Medicare. (In fact, Social Security accounts for [around 20 percent of all federal spending](#), while non-security international spending only makes up one percent.) That misperception persisted through three different surveys from 1997 to 2005.

To provide taxpayers with more information about what they're paying for, the brief proposes providing each taxpayer with an itemized receipt detailing, in dollar figures, their personal contribution to various budget items. The receipt would be delivered online for taxpayers who file electronically and mailed to everyone else. To calculate the individual's contribution to each item, the group proposes multiplying a program's share of the federal budget by the individual's tax payment. The receipt would thus list the individual's contribution toward "twenty to thirty budget items of interest," although how the items would be chosen is not specified in the brief.

### **Precedents for a Taxpayer Receipt**

An early precedent for a taxpayer receipt was a website created by New York City's Independent Budget Office (IBO) in April 1997. The site allowed users to enter their tax totals and receive an itemized receipt for their contributions to federal, New York state, or New York City income taxes. The service for federal taxes was not limited to New York taxpayers. During its lifetime, the service received publicity from [The New York Times](#), [CNN](#), the [Federal Reserve Bank of New York](#), and the National League of Cities.

The IBO service [inspired](#) then-Rep. Charles Schumer (D-NY) to introduce the [Taxpayer Right-to-Know Act \(H.R. 2827\)](#) in November 1997, which subsequently received bipartisan support. The bill would have allowed taxpayers to request an itemized receipt when they filed their taxes and required the IRS to establish a website similar to IBO's service. The legislation failed to pass in the 105th Congress, but it was reintroduced in the 106th Congress by Schumer and Rep. Merrill Cook (R-UT) in 1999 (as [S. 942](#) and [H.R. 1153](#), respectively). The Senate bill refined the language, eliminating the provision for a receipt on request but retaining the idea of an interactive website. That year, the Senate attached Schumer's language to the [Treasury and General Government Appropriations Act](#), which was signed into law (P.L. 106-58).



IRS established the website in 2000 (see an [archived copy from July 2000](#)). In 2000 or 2001, IBO discontinued its service, referring taxpayers to the IRS site instead (see an [archived copy from August 2001](#)). The IRS site was updated in 2001 (see [archived copy from August 2001](#)) but was moved or deleted at some point after that. Requests for information from the IRS were not returned.

The IBO calculator was not the only taxpayer receipt for state or local taxes. In 1998, California's Franchise Tax Board created a [taxpayer receipt for California income taxes](#). The site was created in response to a legislative proposal that was never enacted. The site is still in service; however, it received only 2,700 visits between Jan. 1, 2008 and Oct. 5, 2010, according to the board's statistics – a small usage compared to millions of California taxpayers. Even the California Taxpayers' Association was not aware of the service.

### **Challenges in Establishing a Taxpayer Receipt**

While a taxpayer receipt may have some potential to serve as an engaging and easily understood vehicle to convey information to citizens, several challenges would have to be resolved for it to be effective and meaningful. The first and most basic challenge would be to get taxpayers to read such a receipt or use a website containing the information. The low usage in California suggests that changes would be necessary for a federal receipt to be effective. Given the major misconceptions about the use of taxes, the government may not require a very high percentage of use to see a receipt process as a useful tool to educate the public over the long term.

Another challenge would be trying to summarize the complex federal budget in an accessible yet comprehensive way. Although the Third Way brief asserts that preparing a taxpayer receipt would be "really very easy," many subjective decisions would be involved. Deciding how to describe and categorize federal spending could be challenging. For example, the Taxpayer Right-to-Know Act mandates nine broad categories and 19 sub-categories, while independent calculators by [What We Pay For](#) and [Kareem Shaya](#) use entirely different categories.

Should the receipt list agencies (e.g. Department of Defense) or particular activities (e.g. war in Afghanistan)? Listing the budget per agency would be simple but not necessarily informative. For instance, besides knowing the overall budget for the Department of Education, many taxpayers might wish to know how much spending goes to K-12 education, early childhood education, or postsecondary education. Government activities as seen by the taxpayer do not necessarily correlate to budget lines, and many activities cross agencies (such as educational programs conducted by the National Science Foundation). Because the way that spending activities are described can influence taxpayers' opinions, if a receipt were widely viewed, the descriptions [could be manipulated for political purposes](#).

Another difficulty is how to provide appropriate context to spending information while keeping that information accessible. For instance, rather than merely learning the dollar figure for last year's spending, taxpayers might wish to know how the number compares to recent years or historical trends. In addition, spending does not exist in a vacuum but is meant to address needs or produce outcomes; however, information on merit or performance of the activities is [outside](#)

[the scope](#) of Third Way's proposal. The administration's launch of the [IT Dashboard](#) is a good example of connecting the amount being spent on information technology by agencies with performance to identify over-budget and delayed projects. If a goal of the receipt is to root out wasteful spending, simply listing the amount of spending, but not the achievements it makes possible, will be of limited value.

Finally, although the Third Way brief describes the formula as "very simple," calculating the values of each budget item is complicated by several factors. The Third Way proposal neglects that income taxes and payroll taxes are separate revenue streams. Payroll taxes under the Federal Insurance Contributions Act (FICA) are capped for Social Security, applying only to incomes of \$106,800 or less, and go into dedicated trust funds for Social Security and Medicare, thus limiting an individual's maximum contributions to those programs. The proposal also fails to account for revenue sources besides personal income taxes and payroll taxes, which together only account for [around 80 percent of federal revenue](#). Of the remainder of revenue sources, some are earmarked for specific programs, such as the federal fuel tax. Thus, income taxes are not proportional to spending on these programs. In addition, actual spending does not match exactly the amount budgeted, as in the case of programs completed under-budget (in fact, accurate reporting of federal spending suffers [chronic difficulties](#)); it is unclear how a taxpayer receipt would reflect this.

Whatever its merits, a taxpayer receipt cannot be considered a substitute for improving detailed spending transparency. The government websites [USAspending.gov](#) and [Recovery.gov](#) are good examples of government providing detailed spending information to the public. These sites work and should be enhanced to give the public information not only about who is getting how much money, but also whether taxpayer dollars are being wisely spent.

## **A Long Road for Mine Safety Enforcement Reform**

Even though a five-month inspection blitz uncovered widespread disregard for miner safety, the Mine Safety and Health Administration (MSHA) is unlikely in the near term to be able to force behavioral or cultural reform among the nation's most recalcitrant mine operators.

From April through August, MSHA inspectors caught 108 mines breaking mine safety laws and regulations and cited the mines' owners and operators with 2,660 violations, 45 percent of which were determined to be "significant and substantial," the most serious category of violations.

The agency is conducting what it calls "impact inspections" that target mines with historically poor safety records. On Sept. 20, MSHA [released the results](#) of the impact inspections from April through August, which included 111 mines, but is continuing the initiative.

The impact inspections were conducted in part as a response to an April 5 explosion at the Upper Big Branch mine in West Virginia that killed 29 miners. The tragedy was the worst mining disaster in the U.S. since 1984.

Despite having been thrown into the national spotlight since the disaster, and despite MSHA's renewed focus on dangerous mining conditions, Massey Energy, the Upper Big Branch mine's owner, continues to violate mine safety laws. Most recently, during a Sept. 28 inspection of another Massey-owned mine in West Virginia, [MSHA found](#) that miners were making dangerous, unapproved cuts into the coal seam and that the mine foreman was not monitoring the mine's air supply or ensuring adequate ventilation. The violations led MSHA to close parts of the mine.

"This situation was very frustrating and totally unacceptable," Massey spokesman Jeff Gillenwater [told the \*Huffington Post\*](#). "We appreciate MSHA's blitz for uncovering conduct that we did not uncover ourselves."

Gillenwater's comments stand in contrast to the attitude previously expressed by Massey. Massey CEO Don Blankenship has blamed regulation for mine accidents, and he [proclaimed in July](#) that, had Massey further resisted MSHA regulation, the explosion at Upper Big Branch may have been prevented.

The difficulty MSHA faces cracking down on dangerous mines stems in part from its struggling Pattern of Violations (POV) program. MSHA can add mines to its POV list, triggering additional monitoring and enforcement actions, but MSHA has never added a mine to the POV list in the program's 32-year history.

Mine owners and operators are often able to keep themselves off the POV list by contesting MSHA citations before the Federal Mine Safety and Health Review Commission (FMSHRC). As the industry strategy has grown in popularity, FMSHRC has accumulated a backlog of more than 16,000 cases.

The POV program drew increased scrutiny after Upper Big Branch when MSHA acknowledged that a computer glitch had kept the mine off a list of POV candidates. In a [Sept. 29 report](#), the Department of Labor Inspector General found other problems with the POV program's computer systems and determined that MSHA was not pursuing POV listings aggressively enough.

MSHA began following through on pledges to reform the POV program when it [announced](#) on Sept. 28 that the agency will use new criteria to place mines on the POV list. However, MSHA chief Joe Main called the new criteria a "stop-gap measure" and acknowledged that legislative changes or new regulations are required to truly reform the program.

Congress took action in July when it [approved](#) \$22 million in additional funding for FMSHRC, to reduce the backlog of contested citations, and MSHA, to spend on mine safety enforcement.

MSHA's impact inspections may actually be undermining efforts to improve the POV program and reduce the FMSHRC backlog. [The Washington Post](#) reported Oct. 11 that an uptick in contested citations has mirrored the surge in MSHA violations. The backlog has grown to 18,100 cases, the *Post* reported.

With the help of the funds approved by Congress, FMSHRC hopes to eliminate the backlog in three years, according to the *Post*. "The commission is very determined to take whatever steps it can to attack the backlog," General Counsel Michael McCord told the *Post*.

## **EPA and Transportation Lay Out Long-term Fuel Efficiency Plans**

The U.S. Environmental Protection Agency (EPA) and the Department of Transportation (DOT) have begun the process for setting fuel efficiency standards for light-duty vehicles (cars and light-duty trucks) for model years 2017 through 2025. The regulatory initiative comes at a time in which the EPA is under bipartisan attack for addressing climate change issues in the absence of congressional action.

In April, EPA and DOT issued a joint rule that set fuel efficiency standards for model years 2012 through 2016. The rule marked the first time in U.S. history that the federal government had written regulations aimed specifically at reducing greenhouse gas emissions and stemming the impact of global climate change.

On Sept. 30, the agencies published a [notice of intent](#) asking for comment on four different miles-per-gallon (mpg) requirements of increasing stringency. (The notice of intent is not an official notice of proposed rulemaking, which will come after the agencies publish at least one more preliminary notice.) The proposals would require average mpg levels in 2025 of 47, 51, 56, and 62, leading to carbon dioxide outputs of 190, 173, 158, and 143 grams per mile, respectively. The agencies did not state a preference among the four options. The new standards would prevent hundreds of millions of metric tons of climate-altering CO<sub>2</sub> emissions and save hundreds of millions of barrels of oil.

The latest effort is in response to President Obama's May 21 [Presidential Memorandum Regarding Fuel Efficiency Standards](#) instructing EPA and DOT to propose the new rule by Sept. 30, 2011. The memo directs the agencies to develop a process that includes public participation and technical assessments leading to the standards. The joint rulemaking is one part of a coordinated national program described in the memo intended "to produce a new generation of clean vehicles."

The notice of intent comes [amidst attacks](#) on EPA's authority to regulate greenhouse gases under the Clean Air Act. According to a *Wall Street Journal* [article](#), EPA is a favorite target of politicians in this election season. Opponents of EPA's regulatory activity on a range of environmental issues claim new regulations will be overly burdensome on businesses at a time when they are struggling. The *Journal* article notes that these criticisms come from both sides of the political aisle.

These claims by opponents are nearly identical to the claims business groups and anti-regulatory politicians have been making for years – that the burden and cost of regulations hurt small business and are job killers. Yet evidence of increased burden and costly regulations is

scant. Instead, studies show regulations to have extensive economic benefits. In one such study, released in October, the Small Business Majority and the Main Street Alliance, two small business advocacy organizations, presented more evidence of the benefits of regulations under the Clean Air Act.

The [report](#), *The Clean Air Act's Economic Benefits Past, Present and Future*, noted that as the country marks the 40th anniversary of the Clean Air Act (CAA) this year:

EPA's authority under the CAA is coming under threat from members of Congress that would delay or limit the Agency's ability to regulate greenhouse gas emissions and other pollution. This has negative implications for many businesses, large and small, that have enacted new practices to reduce their carbon footprint as part of their new business models. It could also hamper the growth of the clean energy sector of the economy—a sector that a majority of small business owners view as essential to their ability to compete.

The report cited studies done by EPA, the Office of Management and Budget (OMB), and others that showed 1) substantial economic benefits of regulations that far exceeded the costs by more than 40 to one in the first 20 years of the act, for example; 2) that emissions of air pollutants have declined substantially while U.S. Gross Domestic Product (GDP) has increased (a 41 percent decline in emissions and a 64 percent GDP increase); and 3) that technological innovations – such as catalytic converters and direct fuel injection – resulting from environmental regulations, and especially the CAA, created about 1.3 million jobs between 1977 and 1991.

In addition, the report concluded that both "[i]ndustry and government economists alike have overestimated the costs of the Clean Air Act, anywhere from 500% to more than 1,000%." One cause of this miscalculation, according to the report, is that regulatory compliance spawns new technologies that ultimately lower the compliance costs to businesses as they adjust to new regulations and adopt new technologies. "Such innovations also allowed the U.S. to become a world leader in environmental control technologies—exports of environmental technologies grew by 130 percent between 1993 and 2003, and were valued at \$30 billion in 2004," the report noted.

The Senate failed in 2010 to pass legislation to establish a cap-and-trade regime to regulate greenhouse gases after the House passed a bill in June. Given the fractious nature of Congress, it seems less likely that significant legislation to address climate and energy issues will pass in a new Congress, leaving EPA to address a wide range of issues under its statutory mandates.

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