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The Watcher

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Inheritance Tax Renewal to Be Part of "Fiscal Cliff" Discussions

With the federal budget on the precipice of a "fiscal cliff" of pending budget cuts and tax increases that could take place starting Jan. 2 and tip the economy into recession, many budget watchers are waiting on the outcome of this year's elections to determine how to proceed. One issue up for discussion is the renewal of the inheritance tax (also known as the estate tax).

A Brief History of the Inheritance Tax

Created in 1916, the inheritance tax helps prevent the over-concentration of wealth and has been an important source of federal revenue. It also encourages billions of dollars in charitable donations, since charitable gifts reduce the taxes on large estates.

The inheritance tax had a top rate of between 10 percent and 45 percent for the first 15 years it operated. But in the post-Depression era and WWII, Congress upped the top tax rate on inherited wealth several times, peaking at 77 percent, which is where it stayed for the next 34 years.

The inheritance tax came under attack in the 1970s, and the exemption level that triggers the tax steadily climbed through the 1980s while the top tax rate plummeted. Rates and exemptions stayed

constant roughly through the 1990s, but President George W. Bush's 2001 and 2003 tax cuts whittled the inheritance tax to its current levels. In 2010, the inheritance tax temporarily disappeared completely, costing the nation billions in lost revenue.

Where We Stand Today

Under current law, which was enacted in 2010, the existing inheritance tax rate is 35 percent on amounts over $5 million (this amount is adjusted annually for inflation). However, this law is expected to expire at the end of the year, along with several other Bush-era tax cuts. If that happens, the inheritance tax will revert to 2001 levels – a rate of 41-55 percent on amounts over $1 million, according to the Tax Policy Center, a joint project of the Urban Institute and Brookings Institution.

Most Republicans and business groups support maintaining or lowering the current rate. Organizational supporters include the National Federation of Independent Business (NFIB) and the American Farm Bureau Federation. They are among 50 groups in the Family Business Estate Tax Coalition, which opposes inheritance taxes in general. On the far right, Sen. Orrin Hatch (R-UT) is calling for repealing the inheritance tax entirely.

On the other side, the Obama administration and many congressional Democrats support rolling back the existing law to 2009 levels, when the rate was higher than it is now, at 45 percent, and the exemption was lower, at $2 million. According to a report by the Center on Budget and Policy Priorities, the 2009 levels would bring in an additional $119 billion in revenue over the next ten years and average $1.1 million in additional revenues from each of the wealthiest 0.3 percent of estates. 99.7 percent of estates would still face no inheritance tax if the law reverted to 2009 levels.

However, if the inheritance tax were allowed to rise back to the level it was in 2001, before the Bush tax cuts, much greater revenues could be found for program funding and deficit reduction. In the year 2000, the inheritance tax exemption was only $675,000 per spouse, and the top estate tax rate was 55 percent. The Congressional Budget Office (CBO) projects that this would collect $516 billion in revenue over ten years – over half the funds needed to prevent the automatic cuts of sequestration. Rep. Jim McDermott (D-WA) is leading the push for the inheritance tax to be rolled back to the levels before the Bush-era tax cuts were enacted in 2001. OMB Watch is among over 70 organizations that are part of Americans for a Fair Estate Tax, a coalition that has endorsed McDermott's bill, the Sensible Estate Tax Act (SETA). In a March letter, the coalition urged Congress to either enact the bill or do nothing and let the pre-2001 inheritance tax rules come back into effect.

Opponents of inheritance taxes charge that going back to pre-2001 levels will force the breakup of family businesses and family farms. However, a 2005 analysis by CBO of the pre-2001 rules indicated that only one percent (or 520) of the estates taxed in 2000 were family-held businesses, and just three percent were the estates of farmers.

Little Support for Spending Cuts

Exploring as many revenue options as possible is critical in the months ahead, since polls show the American public has little appetite for specific spending cuts. A recent poll of registered voters by

Ipsos Public Affairs conducted August 27-31 found that the American public supports very few cuts in spending of any kind.

Voters were asked: "As you may know, the US federal budget has a significant deficit. Here are the main expenses for the government. In your view, which of the following areas can we afford to cut back on? (Select all that apply)."

The answers, in descending order, were: defense and military (35 percent); alternative energy development (31 percent), other (28 percent), education (12 percent), Medicare (10 percent), Social Security (nine percent), and law enforcement (nine percent). No category received majority support, and a full sixth of registered voters (16 percent) chose no categories for spending cuts.

Even Republicans were loath to suggest cuts. Almost half (49 percent) endorsed cuts to alternative energy development and about a third (36 percent) endorsed cutting "other programs." No other category received the support of more than 22 percent of registered Republicans, and that was military spending.

Among Democrats, defense and military (49 percent) received the most support for cuts, followed by "other" (23 percent). No other category received more than 19 percent. Similarly, independents also led with defense spending (38 percent), followed by “other” (25 percent).

Cuts in Medicare, which have been the subject of great interest during the election, received the highest support among Republicans (16 percent) and lowest among Democrats (five percent), suggesting widespread bipartisan opposition to cuts in the program.

Chevron Refinery Fire Highlights Need for Better Risk Management, Safer Chemical Alternatives

In August, a major fire at a Chevron oil refinery in California sent thousands of people to hospitals and forced local residents to hide in their homes with their doors and windows shut. The fire, which sent clouds of black smoke over the San Francisco Bay area, highlights the risks that refineries and chemical plants can pose to local communities and the need for ready access to information that residents can use to protect themselves and their families from chemical disasters.

The Chevron Fire

The Chevron Richmond (CA) Refinery is one of the country's largest and oldest refineries, processing up to 240,000 barrels of crude oil a day. On Aug. 6, workers discovered a gas-oil (a combustible liquid hydrocarbon) leak when they were trying to fix an old, 1970s-era pipe. When the workers saw the liquid spreading, they evacuated the area. The temperature of the gas-oil, in excess of 600 degrees Fahrenheit, caused the substance to form a large, flammable vapor cloud.

Investigators from the U.S. Chemical Safety Board (CSB), the independent federal agency in charge of investigating chemical accidents, called the Chevron fire a "near disaster" that could have killed more

than a dozen workers. "Witness testimony collected by CSB investigators indicates that a large number of workers were engulfed in the vapor cloud," said CSB team lead Dan Tillema in a press release. "These workers might have been killed or severely injured, had they not escaped the cloud as the release rate escalated and the cloud ignited, shortly thereafter."

The CSB confirmed the fire's impact on the community. "Area hospitals told CSB investigators that they attribute hundreds of emergency room visits by community members to reported effects of the release and fire, with symptoms ranging from anxiety to respiratory distress," said CSB board member Mark Griffon.

CSB investigators questioned why the leaking pipe had not been replaced in November 2011 after an inspection forced an adjacent and corroded pipe to be upgraded. The Board will also examine whether the unit should have been shut down before crews started working on the leaky pipe.

In addition, the U.S. Environmental Protection Agency (EPA) is investigating the fire to determine whether Chevron violated the Clean Air Act, which could result in fines and changes in how the company operates the refinery. "There's a history of violations at the facility that have led to enforcement actions," said Jared Blumenfeld, administrator for the EPA's regional headquarters in San Francisco.

In 2003, Chevron was required to pay $275 million to settle violations of the Clean Air Act and upgrade its Richmond refinery; in 2000, the EPA fined the company $20,000 for failure to immediately notify officials of a 500-pound sulfur dioxide leak; and in 1998, Chevron paid $540,000 to settle a water pollution case in which the refinery discharged unfiltered wastewater into San Francisco Bay. California's Occupational Safety and Health Administration and the Bay Area Air Quality Management District are also investigating the fire.

The Failure to Notify and Protect

The fire highlighted inadequacies in the Chevron risk management plan, which is supposed to notify the public about chemical disasters. Local residents said emergency sirens were not activated, and the county's emergency telephone notification system notified only some residents about the need to "shelter in place" (stay in their homes or workplaces). Moreover, it took almost six hours for all the notification calls to go out.

The county's telephone notification system, currently administered by a vendor (CityWatch Notification Systems), sends alerts to landline phones to inform local residents of emergencies. The vendor is supposed to notify 20,000 people within 30 minutes after an emergency notification is triggered, but county officials cited problems with the vendor's software, outdated technology, and lack of multiple lines as reasons for the delay. Since the fire, Contra Costa County officials are exploring different vendors in order to improve the county's emergency notification system.

Local residents are also angry that no information on the air quality in Richmond, CA, was available after the fire. In an agreement with the city in 2010, Chevron received utility-tax concessions that were supposed to have been in exchange for "installing air monitoring equipment that would detect gases

crossing the refinery fence line" and for "establishing community-based air-monitoring stations." The company apparently never installed the equipment.

"We live with this risk day in and day out. I will be seeking a full investigation and analysis from both Chevron and independent sources. I am calling on Chevron for full and complete transparency and accountability in determining what caused the health and safety of our residents to be jeopardized," said Mayor Gayle McLaughlin. "Our community is rightfully concerned and we shall continue to seek full cooperation from Chevron regarding all aspects of their day-to-day operations of this inherently dangerous and complex process of oil refining."

Historically, refineries and chemical facilities have often been sited in minority and low-income communities. For example, the North Richmond community closest to the Chevron refinery is one of the poorest in California. The rate of asthma among adults and children is three times the county average. One in three children in Richmond has been hospitalized for asthma.

Communities at Risk

About 140 oil refineries and over 400 chemical plants in the United States pose a significant danger to the communities in which they operate, and the Richmond refinery fire was just the latest example of the risks they pose. Back in March 2011, two workers were killed, two more injured, and about 130 people lost their jobs when a chemical plant exploded in Rubbertown, KY. (Over two thirds of the people living within one mile of the chemical plant were people of color, and 22 percent were poor.)

The EPA states that "no other industry suffers as many catastrophic incidents involving hazardous chemicals as refineries." There were at least 28 refinery fires in the United States in 2012 alone. In addition, several thousand plants use, store, and ship poisonous gases, such as chlorine and anhydrous ammonia, which creates more risks of accidents and exposure. In fact, if one of the Chevron refinery's tanks of anhydrous ammonia, a toxic and odorless gas, were to have exploded during the fire, 160,000 residents living up to five miles from the refinery would have been in grave danger.

Despite the risks posed by chemical plants and refineries, local residents often do not know what chemicals are being produced and stored onsite, nor are they aware of the potential dangers and response plans when emergencies occur. Greater transparency and engagement with communities could improve the public's ability to identify and remedy weaknesses in risk management plans and chemical hazards at specific facilities.

Improving the Public's Right to Know

Under the Clean Air Act, the EPA requires facilities to submit a risk management plan, or RMP, describing the facilities' activities to prevent the accidental release of harmful chemicals and, should accidents nonetheless occur, how the plan would reduce the severity of chemical releases and the harm experienced by the surrounding community.

The risk management plan is supposed to help "local fire, police, and emergency response personnel (who must prepare for and respond to chemical accidents), and is useful to citizens in understanding the chemical hazards in communities," according to the EPA. Although the law requires this critical information be available to the public, EPA places severe restrictions on the public's access to this information (many of which were born out of a reaction to the terrorist attacks on Sept. 11, 2001). The government does not allow online access to risk management plans, and citizens have to visit one of the 66 federal reading rooms across the country to obtain information about response plans in their communities.

Current EPA guidance, issued in 2004, does contain a set of best practices for facilities to follow when providing information to the public about risks and emergency management plans. The guidance also recommends extensive engagement with community residents when facilities are developing their risk management plans and when companies are revising those plans. However, it appears that most facilities do not actively follow this guidance.

In May 2011, public interest organizations released a report with extensive recommendations for improving public access and participation on environmental issues, which included ideas for improving residents' right to know about facility operations, chemicals, and risk management plans. Specifically, the report, *An Agenda to Strengthen Our Right to Know*, recommended that EPA develop new procedures to improve online public access to risk management plans. In addition, organizations suggested that industry and public officials should expand opportunities for public engagement on developing risk management plans and disclosing chemical risks.

For example, local communities should be included in the development of an emergency and risk management plan, and the completion of the plan should not represent the end of community engagement. As community demographics and technologies change, emergency plans should evolve, too. In the report, organizations noted that emergency plans need to reflect the needs of vulnerable communities, such as those with disabilities, the elderly, non-English speakers, and low-income and minority residents. The report also recommended that the EPA require chemical facilities to use safer chemicals.

Beyond Knowledge: Using Safer Alternatives to Protect Americans

There are many safer chemicals and processes that industry can use to replace dangerous substances and better protect Americans in the process. In fact, some communities no longer face risks of dangerous chemical exposures because nearby plants have switched to safer alternatives. For example, three months after the Sept. 11 terrorist attacks, the Blue Plains Wastewater Treatment Facility in Washington, DC, voluntarily switched from using a deadly chlorine gas in the treatment of wastewater to a potentially safer alternative. In 2009, the Clorox Company announced it would replace bulk quantities of chlorine gas with safer chemicals. More than 220 chemical facilities have switched to safer and more secure chemicals and processes since 2001.

However, chemical industry lobbyists continue to oppose federal legislation to mandate safer chemical alternatives. In the face of this opposition, recent bills designed to require plants to take steps to minimize the use of unsafe chemicals have stalled in Congress.

An alternative path to safer chemical plants is available. The EPA could follow the advice of the National Environmental Justice Advisory Council and use its authority under Section 112(r) of the Clean Air Act to prevent chemical disasters by requiring plants to shift to less toxic chemical alternatives. Perhaps the recent Richmond explosion will spur the EPA to use the authority it already has to reduce the risk of future catastrophes – before more lives are put at risk.

Technology Reforms Pave the Way for Greater Transparency

The federal government recently unveiled a number of valuable reforms that will pave the way to a more transparent, efficient, and innovative government. The reforms implement and complement the Digital Government Strategy released by the Obama administration in May.

The strategy establishes a vision for modernizing the technology government uses to improve the delivery of information and services to citizens, with a detailed one-year plan for doing so. Reporting on their progress at the three-month milestone, agencies highlighted several accomplishments designed to make government more accessible and responsive.

Prioritizing Improvements to Federal Agency Data and Services

Federal agencies recently identified their priority projects for modernizing digital services. The Digital Government Strategy directs agencies to make more information accessible through application programming interfaces (APIs) and on mobile devices. APIs allow third parties to develop innovative online tools that pull data directly from government databases, facilitating the broader use of public information. Meanwhile, the rising popularity of smartphones and tablets offers the opportunity to make government information accessible to users of those devices, but this requires a different approach than designing solely for desktop computers.

Under the Digital Government Strategy, agencies are required to implement APIs for two high-value data sets, as well as optimize two customer-facing services for mobile use, within a year. Agencies were required to engage with customers in selecting those services; many agencies sought public feedback on identifying or prioritizing candidates, although some agencies did so only at the last minute.

Many agencies have now published their selected services to convert or a short list of candidates. For instance, the U.S. Environmental Protection Agency (EPA) is considering developing APIs for Envirofacts, Regulations.gov, and the Facility Registry System. An API for the latter service would allow external software developers to make on-demand queries of EPA's database of regulated facilities and incorporate that information into tools for the public, such as OMB Watch's RTK NET.

Some agencies are even further ahead. The Census Bureau released its first mobile app, as well as its first API. The free app, which has been downloaded more than 30,000 times since its release, provides the latest statistics on economic indicators, such as unemployment and homeownership. In addition to converting their two initial services, agencies will have to publish a plan for how they will convert remaining services.

Improving Services by Harnessing Customer Feedback

Agencies also have new guidance on how to use digital metrics and customer feedback as tools to improve their online services. The guidelines were developed by the Digital Services Innovation Center, a new center within the General Services Administration (GSA) established to help agencies implement the Digital Government Strategy.

Metrics and citizen feedback can reveal problems with and potential improvements to transparency tools, such as USAspending.gov, and other government websites. Effective feedback mechanisms also invite public engagement and encourage government to be more responsive to citizens.

The new guidance explains how agencies should collect metrics and feedback, such as whether users were able to find the information they wanted and whether the information was easy to understand. Each agency is directed to then "use the data to make continuous improvements to serve its customers." Agencies are to implement the common metrics within three months.

In addition, the guidelines establish a common set of measurements to be used across agencies. These standard metrics will enable greater cross-agency comparisons and facilitate a government-wide view of digital performance.

OMB will publish guidance on how agencies will be required to report their metrics. However, the GSA guidance suggests that such reporting will be open to public view, noting that such transparency "will lead to greater accountability and improved management of public websites."

Better Management Processes for Digital Services

Another new guidance document offers recommendations on how agencies can improve their governance of digital services. The document notes that without effective governance, agencies "struggle to develop coherent priorities, ensure current and accurate services, and take advantage of new capabilities."

The guidance explains effective structures and policies for managing digital services. Several of the requirements will facilitate greater public access to government information, including the direction to "ensure that digital services are created in such a way that they maximize sharing." Agencies are to implement the guidance within three months.

Empowering Innovators to Tackle Key Projects

The White House also recently launched its Presidential Innovation Fellows program, which allows technology innovators to enter public service to work on targeted technology projects. The new fellows will carry out six-month projects in government designed to catalyze wider use of open government data and streamline access to government information. The program could help change the culture of government to embrace more innovative use of technology to deliver information to the public.

Looking Forward

The next round of milestones under the Digital Government Strategy will arrive in three months. Key on the list of expected deliverables is a new OMB policy on websites and open data.

To date, the strategy has focused on making existing public information more accessible and laying the foundation for making additional information available to the public, rather than requiring agencies to immediately release new information. The new OMB policy could change that. The seven-year-old memo that the new policy will replace includes some specific elements of information that all agencies are required to post online. The administration has subsequently added requirements for several new elements, and the new policy may well incorporate those elements to reflect the current requirements.

OMB Watch and the open government community have advocated for the establishment of a broader "floor," or minimum set of information, that every agency must post online. In its new policy, OMB could adopt some of those elements as new requirements in order to further advance transparency.

Sponsors of the Independent Agency Regulatory Analysis Act Try to Slip Bill in Under the Radar

The Independent Agency Regulatory Analysis Act (S. 3468), introduced on Aug. 1 by Sens. Mark Warner (D-VA), Rob Portman (R-OH), and Susan Collins (R-ME), may appear to be just another item in the string of anti-regulatory legislation considered, but not enacted, by the 112th Congress. Unfortunately, because it boasts both Democratic and Republican co-sponsors, it appears to be heading straight to mark-up within the Senate's Homeland Security and Governmental Affairs Committee (HSGAC).

The Independent Agency Regulatory Analysis Act seeks to change the way independent regulatory agencies operate. The bill authorizes the president to require that all independent agencies compare the costs and benefits of proposed and final rules and submit those rules to the Office of Information and Regulatory Affairs (OIRA) for approval. Executive Order 12866 requires executive branch agencies to complete cost-benefit analysis before rules are adopted and to obtain OIRA approval before they are published. No such requirement currently applies to independent regulatory agencies like the Federal Communications Commission or the Consumer Financial Protection Bureau. If enacted, the bill would dramatically increase executive branch control over independent agencies. They would no longer be able to enact rules to implement existing legislation without approval from OIRA.

The Independent Agency Regulatory Analysis Act is merely the latest piece of "regulatory reform" legislation to be referred to HSGAC. The last time the committee held hearings on regulatory reform issues, the debate was highly partisan, and no related legislation has been reported by the committee. However, Sens. Joseph Lieberman (I-CT) and Susan Collins – the Chair and Ranking Member of the committee, respectively – have indicated a desire to find compromise legislation. The Independent

Agency Regulatory Analysis Act apparently is the “compromise” legislation with which they expect to move forward.

Independent regulatory agencies implement a wide variety of statutes, each of which requires that the agency consider a variety of different factors before issuing rules. The Securities and Exchange Commission, for example, must determine whether its rules adequately protect investors, while the Consumer Product Safety Commission must weigh the costs of product safeguards against the risk that the public will be harmed by those products. Congress requires some agencies to complete cost-benefit analyses to justify rules, while other agencies are not required to do so. The Independent Agency Regulatory Analysis Act would override the unique priorities given to each independent agency in the legislation that created it, requiring instead that every independent agency focus first and foremost on the economic impact of its proposed rules.

A requirement that all rules pass a cost-benefit test can yield absurd – even dangerous – results. Consider, for example, the Federal Aviation Administration (FAA) – an executive agency already subject to OIRA's comprehensive cost-benefit analysis requirements. The FAA has been remarkably successful at protecting the flying public, meaning that there have been relatively few airplane accidents over the past decade. That very success has made it more difficult for the agency to modernize its safety standards because, under a purely economic cost-benefit analysis requirement, too few people have died to justify any improvements over the status quo. Subjecting independent agencies to this same type of mandate would limit their ability to protect Americans from nuclear meltdowns, keep lead paint off children's toys, and stand guard against another mortgage fiasco.

Unlike executive branch agencies, the president cannot dictate the day-to-day policies of an independent regulatory agency. Most of these agencies are guided by a bipartisan, multi-member commission that serves for a fixed term. Rules are almost always a compromise between competing political visions. Currently, OIRA lacks authority to review rules proposed by these agencies. The Independent Agency Regulatory Analysis Act would fundamentally change the way such agencies operate, making them answer to OIRA for the first time.

With this one act, each previous decision by Congress to establish an independent agency outside the executive branch in order to insulate the agency from political pressure would be undone. For example, when it passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), Congress chose to insulate the Consumer Financial Protection Bureau from political pressure by making it independent. S. 3468 would effectively nullify that choice.

Congress does not usually easily cede control over a regulatory agency to OIRA. In fact, Collins – a co-sponsor of the Independent Agency Regulatory Analysis Act – previously expressed concern about the prospect of OIRA control over independent agencies, arguing in May 2009 at a HSGAC hearing, "If you bring these independent agencies within the regulatory purview of OIRA, you defeat the whole purpose of having them be independent agencies. You’re treating them as if they’re members of the [president’s] cabinet." Collins has given no reason for her dramatic reversal on this issue.

Indications are that HSGAC is preparing to take the Independent Agency Regulatory Analysis Act straight to mark-up without holding a hearing to determine the bill’s impact. This expedited process

means that independent agency heads will not have an opportunity to testify about how the bill would affect their ability to implement the laws Congress has adopted. Lawmakers with an interest in the bill (including, for example, the leaders and members of the Senate Banking Committee, who spent months fighting for the Dodd-Frank reforms) will have only limited, informal opportunities to participate in the process.

Like other so-called "regulatory reform" legislation HSGAC has considered and rejected, the Independent Agency Regulatory Analysis Act is not designed to improve the regulatory process or, more fundamentally, to improve Americans' lives. Instead, it would slow the process and undercut laws like Dodd-Frank and the Consumer Product Safety Improvement Act that were designed to guard against economic and public health disasters, regardless of who is in the White House.

Before taking such dramatic action to curtail the independence of agencies that previous Congresses deliberately established, HSGAC should hold a hearing to examine the full implications of this proposed legislation. What is potentially at stake is Congress' ability to ensure ongoing enforcement in some key areas of law. Legislators need to carefully consider whether they want to give up this authority and whether this bill would undermine the ability of independent agencies to fulfill the missions for which they were created.

Highlighting the Benefits in Cost-Benefit Analysis: A New OMB Watch Series on the Rules that Protect the Health and Welfare of the American People

Over the past several years, the conversation about regulatory protections that safeguard the environment, worker safety, and the health and welfare of American families has focused almost exclusively on the monetary costs to affected businesses rather than on the benefits they provide to everyday citizens. Conservatives repeat false or exaggerated cost estimates and overblown anti-regulatory rhetoric. And too often, news articles fail to report on the benefits of the standards and safeguards they are criticizing, making for a very one-sided public discussion.

Yet the benefits of public protections are extensive. The air we breathe and the water we drink is significantly freer from toxins than 40 years ago. There are fewer foodborne illnesses, toxic toys, and unsafe drugs. Children have higher IQs because there is less lead in the environment. Asbestos is rarely used in construction, dramatically reducing the risk of lung disease to workers. Toxic polychlorinated biphenyls (PCBs), used in an array of industrial and consumer products before 1972, have been banned. Congress passed laws authorizing regulatory agencies to protect the public from all these environmental and public health hazards because businesses failed to act when public health risks were identified.

For most regulations, a particular set of producers bear the costs of implementing health and safety standards while a broad and diffuse group of citizens receives the benefits. Because of this, those businesses affected by regulations often complain loudly about the economic impact of safety standards and fund lobbyists to represent their interests in Washington while the public rarely

participates in regulatory debates. Too often, when federal agencies consider new safeguards, the public is unaware of the deaths, injuries, and illnesses the proposed protections will help avoid.

In a new *Watcher* series, OMB Watch will carefully examine the benefits of standards and safeguards. Our goal is to redirect the conversation from "the costs to business interests" toward a focus on the benefits of regulations to everyday Americans. We feel the inside-the Beltway preoccupation with monetizing costs and benefits has obscured the human side of regulation. We will be highlighting the benefits side of the debate.

To illustrate how little attention is paid to understanding the benefits of public protections, OMB Watch staff reviewed cost-benefit analyses of 18 rules from a variety of agencies to see if an average person could find and understand the information on which agencies are required to base their decisions.

In this first phase of work, our most significant and surprising finding was how difficult it is for a lay person to find the estimated benefits of any government regulation. It is almost impossible for someone not schooled in the regulatory process to find benefits information.

Where Are the Benefits?

Tracking down cost-benefit studies on agency websites is like a complex game of "Where's Waldo?" Since the mid-1970s, a variety of executive orders have required that agencies weigh the costs and benefits of their proposals before regulating. Although regulatory agencies have been completing these cost-benefit analyses for decades, they are nearly impossible to find.

Agency websites house the information on a maze of links and department pages. Every agency site looks different, so the ease or difficulty in accessing cost and benefit information varies, too. Beyond individual agency websites, there's a short list of potential sites where one might think a person could find a cost-benefit study or information about benefits. Our research suggests that the practical utility of each is limited.

We started looking for benefit information at the Office of Information and Regulatory Affairs (OIRA) website. After all, this office has the authority to determine whether the costs of federal rules are justified by their benefits, so we thought OIRA would post benefit information on each rule it reviews. Reginfo.gov is OIRA's main website for regulatory review information. Although the site is visually appealing, a visitor cannot find information on a rule without knowing its proper name (which can be incredibly long, convoluted, and non-intuitive) or its Regulatory Identification Number (RIN). Once you find the rule's page, Reginfo.gov provides a description of the rule and a link to the Government Printing Office's text file (not a PDF) of the rule's *Federal Register* entry. The site, however, provides no information on the benefits of a rule.

Next, we tried to find benefit information on Regulations.gov, the government's electronic docket office for rulemaking. The site provides an electronic portal for submitting comments on rules and links to comments and other data in the rulemaking record. Again, the interface is quite pleasing to the eye but is of limited use in tracking down benefits information.

Regulations.gov has a docket page for each rule that houses all the documents used to support the rule. We hoped the docket page would have information on the rule's costs and benefits. But, to access a rule's docket page, you need the rule's docket number, which is different from the RIN number on Reginfo.gov. You obtain the docket number from either the agency or a *Federal Register* notice. With that information, you can access the rule's docket page and try a keyword search to find a cost-benefit analysis.

However, there is no standard designation or label for a cost-benefit analysis, which makes conducting such a search difficult. Some agencies refer to cost-benefit analyses as Regulatory Impact Analyses, while others refer to them as Economic Analyses. Some agencies have two documents that evaluate costs and benefits separately. (This makes playing up the costs or playing down the benefits easier and makes it much more difficult for the average person to do his or her own independent comparisons of the available data.) If you don't know what the agency called a particular analysis, you have to scroll through all the comments on a rule – sometimes thousands of them – and search each one to see if it includes the information you want.

Occasionally, an agency seemed to try to make it easier to find benefits information on Regulations.gov. Sometimes, an agency summarized its cost-benefit analysis in the *Federal Register* and included the docket number reference for the cost-benefit study on which it relied, making it easier to find the study on the docket page. However, this was unusual. Scrolling through the docket page could turn up dozens of documents, some prepared by industry and others prepared for the agency, all purporting to analyze the costs and benefits of a particular proposed rule. Sometimes, it was hard to identify which study was used as the basis for the agency's action.

Consider the following example illustrating how difficult it is to find information on regulatory benefits. The Occupational Safety and Health Administration (OSHA) requires chemical manufacturers to provide workers with Material Safety Data Sheets that describe chemical hazards of the materials that they work with every day. The agency recently revised the way it requires businesses to inform workers about these hazards in order to "harmonize" the way U.S. businesses and those in other countries operate. Outgoing OIRA Administrator Cass Sunstein touted this regulatory action as yielding substantial "net benefits."

Now, suppose an auto worker wanted to learn about how this rule change benefited the workers in her plant. If she were to go to OSHA's website and search for Hazard Communication (the actual name of the standard), she would get a page that tells her about the recent revisions and includes a link to the *Federal Register*. The standard itself contains a table of contents, so she might scroll down to find a section on OSHA's "final economic analysis." OSHA even includes a reference to the four different economic analyses it relied on when adopting the rule and a link to Regulations.gov with the rule's docket number, making it easier to find.

However, the Hazard Communication standard docket includes 27 pages of comments, and each page has 25 entries. None of the entries are numbered, so the docket references included in the *Federal Register* are not entirely helpful in finding information on Regulations.gov. Searching within the docket for "benefit" reduces the search results to only six pages of comments, none of which are labeled "cost-benefit analysis."

Ultimately, the auto worker would not be able to readily find a discussion of the benefits of the Hazard Communication standard, even though OSHA tried to point her in the right direction. Even if she were able to find the right analyses or studies related to the rule change, it is uncertain whether the materials would clearly tell her to what extent the Hazard Communication standard will help prevent her and her coworkers from suffering job-related illnesses and injuries.

American citizens cannot meaningfully participate in debates about the rules that could directly and critically affect their lives if they can't access the information and analyses on which decisions on rules are based. Most people interested in rulemaking – at least those outside the Beltway – have limited time each day for civic engagement. If information on costs and benefits is the basis for government decision making (we do not believe that they should drive decision making), then that information should be publicly available to citizens.

Our work shows that the time and effort necessary to become informed about federal rulemaking would overwhelm most Americans. Business complaints about regulation already dominate the debate about over health, safety, environmental, and economic safeguards. If few citizens can find the information necessary to meaningfully participate, then self-interested businesses that want weaker regulations will have an even louder voice when public comments are gathered.

If policymakers continue to emphasize the monetary costs and benefits of a rule as a measure of its worth, then **at a minimum**, information on the estimated benefits of a rule and how the benefits were calculated (including the monetary value of the benefits of the rule) should be readily available to the public – *presented in a form that interested citizens can understand*. Toxicology or engineering studies should be summarized in clear language so that affected citizens know what is at stake.

Our experience demonstrates that it takes a tenacious investigator to find the estimated benefits of many rules. And, once the benefits information is found, it can require a Ph.D. to decipher the results. Since OIRA is the final arbiter of cost-benefit analyses, it should maintain a central website that provides links to agencies' assessments of the costs and benefits of proposed and final rules, summaries of what those costs and benefits represent, and plain-language explanations of the issues that anyone can understand.

The remainder of this series will explore some of the practices individual agencies and OIRA use to calculate benefits and propose ways to improve both the calculations and the way they are presented and made available to the public. Our goal is to highlight the human and social benefits of our regulatory system. After all, protecting the health and safety of the American people is the reason the system was put in place. This fact seems to have been lost in recent policy debates.

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