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Commentary: Bush's Last-Minute Rush to Dismantle Public Protections

by Gary D. Bass, OMB Watch Executive Director

Those who keep an eye on the federal government know the Bush administration is not friendly toward regulation — particularly health, safety, environmental, civil rights, and consumer protections. When they have been forced to regulate, Bush officials have advanced policies that mostly let the market control the game, while the idea of strong government intervention has been left to gather dust. However, even outside the recent regulatory takeover of Fannie Mae and Freddie Mac, events show the administration is starting to kick things into high gear on regulations, trying to lock the next administration into a Bush legacy.

In May, White House Chief of Staff Joshua Bolten [issued a memo](#) that set deadlines for agency regulations during the remaining months of the Bush administration. Bolten said he wanted to stop last-minute regulatory activity — commonly known as midnight regulations. To avoid this, except in "extraordinary circumstances," Bolten said agencies should propose regulations

that they want to finalize no later than June 1 and that all final rules should be published by Nov. 1.

Now that the June 1 deadline has come and gone, it appears there are a lot of "extraordinary circumstances" to be found. Recently, the Department of Health and Human Services (HHS) proposed a rule that could have far-reaching impacts on women and family planning decisions. The rule allows health care professionals at institutions that receive government money to opt out of providing abortion and sterilization if such services create a problem of conscience for the provider. HHS would require the institutions to certify they are complying with federal laws that allow health care workers to withhold services on the basis of religious or moral grounds. Violations could lead to loss of funding.

After first leaking a proposed rule that would have defined many contraceptives as abortion, HHS published a rule that leaves ambiguous the scope of services that might be curtailed.

The proposed rule was published on Aug. 26, long after the Bolten June 1 deadline, and the Bush administration is gaming the system to get the rule finalized. The Office of Management and Budget (OMB) reviewed the rule before it was released, as it does with all major rules. But OMB reviewed the HHS rule with unusual stealth: the review was done in hours, the same day HHS published the rule, ensuring that it would not appear on OMB's website until after the fact. Additionally, the comment period on the proposal is only 30 days, which is short for major rules in general, but very short for highly complex and controversial rules such as this one.

Maybe the HHS rule was posted after the fact on the OMB website because OMB learned from another "extraordinary circumstance" proposed by the Department of Labor (DOL). The public first learned about the Labor Department proposal when *The Washington Post* found it on the OMB website. The rule would change the way the Occupational Safety and Health Administration (OSHA) and the Mine Safety and Health Administration (MSHA) calculate estimates for on-the-job risks; a draft was written quickly, in secret, and without the consultation of occupational health experts inside OSHA and MSHA, Labor Department insiders say. Labor Secretary Elaine Chao's office forwarded the draft to OMB for the required review period on July 7, well after the Bolten June 1 deadline.

After the *Post* disclosed this secret rulemaking, scientists and public health experts expressed concern the rule change would downplay the severity of workplace risks. In an August letter, 80 doctors, scientists, and public health experts asked Chao to abandon the proposal. The letter said the rule "has serious flaws that would weaken current procedures and undermine occupational health rules" and would add delays to an already lengthy process for writing occupational health rules. The DOL proposal is striking for an administration that has issued only two significant workplace health and safety standards in its two terms.

OMB cleared the rule on Aug. 25, and Chao officially unveiled it on Friday, Aug. 29. Call it an early Labor Day present from those in the Bush administration hostile to workplace

protections. Like the HHS rule on abortion, DOL will take public comment for only one month.

Another DOL proposed rule, this one from MSHA, violates the Bolten memo and appears to be heading swiftly toward finalization. On Sept. 8, MSHA proposed to require mandatory substance abuse testing for miners. The requirement would apply to miners who perform "safety-sensitive job duties" and their supervisors. (MSHA defines safety-sensitive job duties as, "Any type of work activity where a momentary lapse of critical concentration could result in an accident, injury, or death.") Mine operators could test for drug and alcohol use both as a condition of employment and at any time during employment.

Why would MSHA focus on drug testing when recent mine disasters have shown that miners face unconscionably hazardous working conditions including lack of adequate communications systems and rescue equipment? As Ken Ward reports in the [*Charleston Gazette*](#), "Coal industry officials have long sought an MSHA rule to require drug testing of miners." Like with the other rules, MSHA will only take public comment for 30 days, indicating Bush officials — like former coal industry executive and current MSHA chief Richard Stickler — are trying to bestow a generous parting gift to the coal industry before a new administration takes over.

In another "extraordinary circumstance," on Aug. 15, the Department of Interior proposed a change in the way government agencies comply with the Endangered Species Act. The proposal would allow officials to approve development projects that could impact endangered species without consulting federal wildlife and habitat scientists.

Interior's proposal missed the Bolten memo's deadline by two-and-a-half months. OMB spent only three days reviewing the proposed rule, whereas the average review time this year for Interior rules is 64 days. Like all the others, the comment period will only be 30 days.

The hits just keep on coming. On July 31, the Department of Justice proposed a rule — again, after the June 1 deadline — that may result in additional domestic spying by allowing state and local law enforcement agencies to gather and include terrorism-related information in their federally funded criminal intelligence data systems, and to share such information with federal officials. The data would be held in the information systems for ten years instead of the current five years. Civil liberties experts noted that the rule, the first revision of police intelligence gathering since 1993, would result in local and state law enforcement conducting intelligence gathering for the federal government. In short, the proposal makes it easier for state and local police to spy on Americans. Like the others, this proposed rule only allows one month to comment.

While the Bush administration fiddles, public protections burn. We have serious problems today. Eating food, taking medications, and drinking water, for example, are increasingly like playing Russian roulette; you are never certain if you're the one who will get seriously ill. Congress needs to stop this last flurry of "extraordinary circumstances" from the Bush administration. But the next president has a bigger challenge: he has to fix a broken system.

Among the many things that need to be done, here are four:

- First, restore credibility to the federal regulatory process. Putting politics above science and common sense must stop. Government regulations are supposed to protect us all, not just political patrons. It is time for our government to identify gaps in safeguards and take actions to protect us.
- Second, such actions need to be done with care, but also with alacrity. Academic experts have called the current system "ossified," filled with too many analyses and opportunities to slow or stop regulations. The next president should work to remove those barriers and act quickly when new threats emerge, instead of waiting while the tolls of pollution, disease, and economic hardship mount.
- Third, the system needs to be more transparent, thereby allowing for better public understanding and participation. National policy should reflect the views of citizens, not just well connected lobbyists and special interests.
- Fourth, once a regulation is final, enforce it. The federal agencies in charge of inspecting our toys, food, and workplaces and monitoring the cleanliness of our air and water are facing historic resource and staffing shortfalls. We need new techniques and more feet on the ground to ensure we receive the protection we deserve.

Increasingly, it appears the Bush administration is trying to solidify a range of policies before it leaves office — the Bolten memo notwithstanding. Proposals like the ones outlined above will tie the hands of the next president and bypass Congress and the public's will. The next president will have to deal with this legacy of midnight regulations while fixing the regulatory process to get the special interests out, make it more transparent and responsive to public needs, and once again restore public trust in government.

Rule Description	Proposal Date	Length of Comment Period	Days under OMB review
Department of Health and Human Services rule which could reduce women's access to federally funded reproductive health services. <ul style="list-style-type: none"> • Find out more from Reg•Watch, OMB Watch's regulatory policy blog • Proposed rule text 	Aug. 26	30 days	Less than 1 day

<p>Department of Labor rule which would change the way occupational health agencies calculate estimates for on-the-job risks.</p> <ul style="list-style-type: none"> • Find out more from Reg•Watch • Proposed rule text 	Aug. 29	31 days	49 days
<p>Mine Safety and Health Administration rule which would require drug testing for miners.</p> <ul style="list-style-type: none"> • Find out more from Reg•Watch • Proposed rule text 	Sept. 8	30 days	84 days
<p>Department of Interior rule which would change the way government agencies comply with the Endangered Species Act.</p> <ul style="list-style-type: none"> • Find out more from Reg•Watch • Proposed rule text 	Aug. 15	31 days	3 days
<p>Department of Justice rule which would allow local law enforcement to engage in domestic spying without good cause.</p> <ul style="list-style-type: none"> • Find out more from OMB Watch • Proposed rule text 	July 31	33 days	70 days

Notes:

*In May, the White House instructed federal agencies to propose by June 1 any rule they wished to finalize by the end of the Bush administration.

**The typical comment period for a proposed rule lasts 60 days or two months.

***As of Aug. 31, OMB has spent an average of 65 days reviewing agency drafts.

FDA Fighting Mounting Evidence on BPA

The U.S. Food and Drug Administration (FDA) continues to claim there is insufficient evidence about the health effects of a chemical widely used in consumer products to justify regulating the substance. Evidence is mounting from a variety of other sources, however, that bisphenol-A (BPA) may affect human development and mental health. FDA continues to advise consumers that there is no reason to "discontinue using products that contain BPA."

BPA is a common chemical found in certain hard plastics and the linings of food cans. The most common plastic products that contain BPA are shatterproof water bottles, baby bottles,

and food cans with plastic linings used to reduce the amount of metal leaching into food.

The latest evidence to conclude that BPA is harmful was reported in a Sept. 4 [Washington Post article](#) describing a Yale School of Medicine study that links the chemical to brain functions and mood disorders. The study was published Sept. 3 in the *Proceedings of the National Academy of Sciences*. According to the [abstract of the article](#), "This study is the first to demonstrate an adverse effect of BPA on the brain in a nonhuman primate model and further amplifies concerns about the widespread use of BPA in medical equipment, and in food preparation and storage."

The scientists who conducted the study used monkeys as subjects to better approximate the likely response in humans exposed to BPA. The scientists exposed the primates to levels the U.S. Environmental Protection Agency (EPA) considers a safe daily limit. Other studies used rodents as subjects "which may not be representative of the effects of human BPA exposure," according to the scientists. The authors conclude that because exposure to the chemical causes the loss of connections between brain cells, there may be memory loss, brain impairment, and depression at the exposure level the EPA has established as safe. EPA has the responsibility for setting safe chemical exposure limits, while FDA can limit or ban the use of BPA in food-related items.

On Sept. 3, another study was released indicating potential harm from BPA. The National Toxicology Program (NTP), part of the Department of Health and Human Services, released its [final report](#) on the health effects of BPA. According to the report, "The NTP has *some concern* for effects on the brain, behavior, and prostate gland in fetuses, infants, and children at current human exposures to bisphenol A." A spokesperson for NTP said the study indicates that concern about exposure cannot be dismissed.

These latest studies come on the heels of earlier analyses of BPA that led to warnings and product withdrawals. The Canadian government reviewed more than 150 studies on BPA exposure and announced in April that it would move to ban the use of BPA in baby bottles. At the time, the Health Canada minister concluded that it was "pretty clear" that the highest risk was to infants and young children, according to an April 19 *Washington Post* [article](#). As a result of the announcement, Wal-Mart Canada pulled BPA products from the shelves and a manufacturer of plastic water bottles containing BPA, Nalgene, switched to producing non-BPA plastic bottles. Other retailers and manufacturers in Canada and the U.S. also began withdrawing products and changing their manufacturing processes.

FDA, meanwhile, continues to claim the science regarding BPA is too uncertain to warrant regulation of the chemical in food products. An Aug. 14 [Draft Assessment of Bisphenol A for Use in Food Contact Applications](#) being circulated for FDA's scientific peer review program concludes that there is no adverse effect from BPA. The draft assessment continues to rely heavily on two industry-funded studies that formed the basis of FDA's earlier assessment of BPA. FDA is holding a public hearing on the issue Sept. 16.

According to FDA's website, the agency is not recommending consumers change their habits

regarding BPA-based products:

At this time, FDA is not recommending that anyone discontinue using products that contain BPA while we continue our risk assessment process. However, concerned consumers should know that several alternatives to polycarbonate baby bottles exist, including glass baby bottles.

The Center for Science in the Public Interest's (CSPI) *Integrity in Science Watch* [newsletter](#) from Aug. 18 notes that eleven states and Canada are all considering tougher stances on BPA in light of accumulating evidence. California, for example, is considering banning the use of BPA in any products designed for use by children three years old or younger. It also reports the chemical industry has launched a campaign to counter California's proposal, insisting the scientific evidence is too uncertain and has not established a connection between exposure to the chemical and adverse health effects. The industry group is also challenging the conclusions drawn by the Health Canada scientific review.

In addition to the state activity, Congress is investigating the FDA's approach to BPA, reviewing the science, and considering several proposed bills to limit or ban the use of BPA in some products. It is unlikely that legislation will be passed in the short September session Congress is planning before the recess for the November elections. Meanwhile, consumers are advised by public health experts like [CSPI](#) and [Consumers Union](#) to avoid using most plastic containers marked with the recycling number 7, the most likely plastics to contain BPA.

EPA Withholds Pesticide Information While Bees Die

A conservation organization has sued the U.S. Environmental Protection Agency (EPA) for failing to release information about a pesticide linked to dramatic declines in honeybee populations. The pesticide was approved on the condition that the manufacturer study the effects of the chemical on the bee species. The EPA has received the studies but refuses to release them to the public, even though a Freedom of Information Act (FOIA) request was filed.

The Natural Resources Defense Council (NRDC), which made the FOIA request, [sued](#) EPA on Aug. 18 for withholding the information. The pesticide, known as clothianidin and sold under the brand name Poncho, is in a class of chemicals linked to collapses of thousands of bee colonies.

Honeybees have been declining for several years in the United States, including a [die-off](#) of 36 percent between September 2007 and March 2008. The problem is referred to as Colony Collapse Disorder (CCD), and it is characterized by the disappearance of all adult worker bees in a hive while the queen and immature bees and honey remain. The result is the destruction of the entire hive. Exact causes are unknown. Recent evidence suggests certain pesticides may be contributing to the rapid decline in bee populations.

The collapse of managed bee colonies could be disastrous for U.S. agriculture. The U.S. Department of Agriculture [estimates](#) that the production of one-third of the nation's food is dependent on pollination by honeybees. Pollination is responsible for \$15 billion in added crop value, particularly for specialty crops such as almonds and other nuts, berries, fruits, and vegetables.

Clothianidin is a neonicotinoid, a chemical that attacks the nervous system of insects, leading to paralysis and death, among other effects. The use of clothianidin is currently [suspended](#) in France and Germany because of links between use of the chemical and collapses of honeybee colonies.

Since 1999, France has suspended use of similar pesticides in the same class of chemicals. For instance, another neonicotinoid, IMD, has been the subject of numerous controversies in Europe because of its connection to CCD. French research has found that exposure to even tiny amounts of IMD can disorient bees, which could explain the failure of the insects to return to colonies after flying off on foraging trips. Bayer CropScience, the manufacturer, has repeatedly suggested that other non-manmade causes are behind CCD. [Sales of IMD](#) were €556 million in 2007 (about U.S. \$784 million), making it the company's top seller among pesticides.

An EPA [fact sheet](#) from 2003 states clothianidin is potentially toxic to honeybees, as well as other pollinators, through residues in nectar and pollen. Bayer maintains that clothianidin does not pose long-term risks to bees.

NRDC scientists sought the clothianidin studies for several reasons. First, they want to discover what information the studies contain about the neurotoxin's effects on bees. Secondly, there are concerns surrounding the quality of the study and the standards by which it was designed. NRDC hopes to learn what EPA required of the company and whether the company's response meets those requirements. Finally, they want to learn what else the agency considered and examine how EPA evaluated the information when it decided to leave the pesticide on the market.

Little research has been conducted examining the effects of sublethal dose exposures on bees. It is possible the industry studies contain new information in this area. Existing research, as well as much anecdotal evidence, has convinced French and German agricultural authorities to suspend use of clothianidin until evidence of its safety to bees is established. Despite having the same facts before them, the EPA has not taken similar precautions.

Instead, the EPA has repeatedly used "[emergency exemption provisions](#)" under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to approve use of clothianidin in five states. The agency has also used the emergency provisions to approve use of IMD 163 times in 26 states. These emergency exemptions are intended to allow unregistered use of pesticides for a limited time if EPA determines that an emergency condition exists. The Sierra Club is urging EPA to suspend use of neonicotinoids until sublethal doses are shown to be safe for bees.

EPA's director of pesticide programs expressed "[great disappointment](#)" in NRDC's action and

defended the agency's activities regarding CCD. In an Aug. 21 letter, Debra Edwards described CCD as a "matter of serious concern" and noted voluntary measures the agency is undertaking to deal with the matter. Edwards also claimed that EPA needs more time to fully respond to the FOIA request. If bees are likely to be exposed, EPA requires pesticide manufacturers to conduct bee toxicity tests before a new pesticide may be registered and marketed.

This is not the first time that NRDC has had to seek legal intervention to extract pesticide information from EPA. NRDC [claims](#) that EPA's pesticide program has repeatedly refused to disclose information in response to FOIA requests until months or even years after the deadline. Several times, federal judges have rebuked the Office of Pesticide Programs in cases NRDC was forced to litigate regarding the EPA's lack of transparency. The group reports that over the last seven years, NRDC has filed several FOIA requests per year for EPA pesticide information, and the agency has not responded on time to any of the requests.

Government's Secrecy Grade: Unsatisfactory

OpenTheGovernment.org's [2008 Secrecy Report Card](#), released Sept. 9, explored numerous indicators of government secrecy and found that continued expansion of secrecy across the federal government occurred in 2007. The report is the group's fifth such annual publication; all five reports have discovered continual poor performance by the federal government in permitting public access to government information.

The 2008 report also noted that while secrecy worsened in the executive branch, the 110th Congress pushed forward with new legislation to increase government openness and accountability. In particular, Congress passed and the president signed into law [amendments to the Freedom of Information Act \(FOIA\)](#) intended to strengthen the law.

The report found that in 2007, the government received nearly 22 million requests for records under FOIA, which was almost a two percent increase from the number of requests received the previous year. These increases seem to be mostly due to the fact that the Social Security Administration and the Veterans Administration classify individuals' requests for information as FOIA requests.

The report also found that the 25 departments and agencies responsible for the bulk of FOIA requests continued to carry significant backlogs of these requests. According to Patrice McDermott, Director of OpenTheGovernment.org, "These trends indicate that citizens will have to wait even longer to know what their government is doing."

In 2007, there was a slight increase in the number of original classification decisions, after two consecutive years of declines. At the same time, there was an almost 13 percent increase in the number of derivative classifications. Derivative classifications replicate originally classified information in different ways and formats. The growing number of derivative classifications reflects the continuing increase in original classification and, according to ISOO (Information

Security Oversight Office), the use of classified e-mail, webpages, blogs, wikis, and so on.

In addition to the time that secrecy costs the public in waiting longer and longer for FOIA requests, classification costs taxpayers money. The report estimated the government spent almost \$200 to maintain secrets for every dollar the government spent declassifying documents, a five percent increase over the 2006 ratio. Even though the government spent the same amount of money on declassification as it did in 2006, the number of pages declassified declined. Also troubling was that the annual decline in original classification decisions being assigned automatic 10-year declassification status has continued: 64 percent of such decisions were slated for automatic declassification in 2005, but only 61 percent were so designated in 2006, and just 57 percent in 2007.

The report also tracks data on the following indicators to help present a complete picture of the state of access to federal government information:

- Use of state secrets privilege
- Issuance of National Security Letters
- Assertions of executive privilege
- Foreign Intelligence Surveillance Court Orders
- Secrecy orders for patents
- Use of presidential signing statements
- Whistleblower awards for saved money
- Competition of federal contracts
- Closed Federal Advisory Committee meetings

"The current administration continues to refuse to be held accountable to the public," said McDermott. "In recent years, polls have shown that a growing number of Americans believe the federal government is secretive — terrible news for our democracy. Until we restore openness and accountability to the federal government, it will be impossible to win back the public's trust."

OpenTheGovernment.org is a coalition of over 70 consumer and good government groups, librarians, environmentalists, labor leaders, journalists, and others working together to reduce governmental secrecy and promote openness. The coalition focuses on making the federal government a more open place in order to make the public safer, strengthen public trust in government, and support democratic principles. OMB Watch is a member of the coalition.

Congress Returns with Little Time, Huge Workload

Congress returned to Washington the week of Sept. 8 to a jam-packed schedule and just three weeks left to complete work for the year before the target adjournment date of Sept. 26. Below is a brief summary of some of the major pieces of legislation covering fiscal policy issues that will likely be addressed:

Appropriations: A new fiscal year will begin on Oct. 1, and without approved appropriations legislation, the federal government will lack the funds necessary to continue its day-to-day operations. With only one of the 12 bills passed by the House (Military Construction-Veterans Affairs) and none passed by the Senate, it is virtually guaranteed that a continuing resolution (CR) will be enacted in the next three weeks. Although one or two individual appropriations bills may pass (particularly the Defense bill), a CR will be necessary to keep the rest of the government operating past the start of the new fiscal year. The CR will most likely provide funds at current-year levels for several months into 2009. When inflation and population growth are taken into account, a level-funded CR represents a cut in funding for many vital programs.

AMT Patch: Because the Alternative Minimum Tax (AMT) was enacted without a provision for inflation indexing, every year it threatens to affect millions of middle-income taxpayers — a scenario unimagined by the architects of the tax. Rather than permanently fix the tax — at a 10-year cost of [\\$710 billion - \\$1.3 trillion](#) — Congress opts to apply one-year "patches" that prevent the AMT from affecting millions of middle-income families. In 2008, the AMT patch will cost [\\$63.5 billion](#) and will not be offset with other revenue raisers or cuts in mandatory spending, adding that cost to the [already growing federal deficit](#). If Congress fails to enact AMT legislation, over 22 million families will be hit with thousands of dollars of increased tax liabilities.

Tax Extenders: The "extenders" is a collection of miscellaneous tax cuts that expire every one to three years. Like the AMT patch, without congressional action, many of these tax cuts will expire in 2008. The current package contains a number of tax cuts for businesses (like a research and development credit) and some tax cuts for households (like a deduction for state sales tax in states that do not have a state income tax). Passage of this year's extenders package will cost approximately \$55 billion over 10 years (JCT scores: [House bill](#), [Senate bill](#)).

The House version ([H.R. 6049](#)) passed in May by a vote of [263-160](#) and is fully offset. Completion of the extenders package has been blocked by the Senate, which is steadfast in its resistance to offset the cost of these tax cuts. The Senate Finance Committee approved a \$123 billion bill ([S. 3125](#)) that contains a deficit-financed AMT patch and a fully offset extenders package. Four times Senate Majority Leader Harry Reid (D-NV) has tried to bring this bill up for a vote in the Senate, and four times a group of 40 Senate Republicans has rebuffed him.

Energy: Leading up to the August recess (and even throughout it), congressional Republicans were adamant that Democratic leadership bring to the floors of the House and Senate a bill that would allow energy companies to drill for oil and gas on the [Outer Continental Shelf](#) (OCS). House Speaker Nancy Pelosi (D-CA) [appears ready to relent](#) as she may offer an energy package containing the OCS drilling provision along with a repeal of some oil and gas industry tax cuts.

Defense Authorization: The \$613 billion FY 2009 Defense Authorization bill not only authorizes spending for national defense but contains a host of other measures affecting military policy. In the version passed by the House ([H.R. 5658](#)) in May ([384-23](#)) is a set of

provisions designed to improve contractor oversight. House Oversight and Government Reform Committee Chair Henry Waxman (D-CA) was successful in attaching his Clean Contracting Act as an amendment to the bill. The measure is a bundle of contracting reforms including provisions that would:

- Establish a database of contractors found in violation of federal laws and regulations (this provision was also passed in the House by voice vote as a stand-alone bill in April: [H.R. 3033](#)).
- Close a fraud reporting requirement loophole (also passed by the House by voice vote as a stand-alone bill: [H.R. 5712](#))
- Establish a database of the names and salaries of top executives of private contracting firms that receive more than 80 percent of their revenue from contracts (passed by the House by voice vote as a stand-alone bill: [H.R. 3928](#))

Passage of the DoD bill in the Senate has been [stymied by a Republican filibuster](#), as Senate Minority Leader Mitch McConnell (R-KY) has instructed his colleagues to insist that a vote on the OCS drilling bill be brought to the floor before any other bill. Enactment of the bill is also in doubt because President Bush has [threatened to veto the House version](#) over numerous provisions. Some of these provisions include a prohibition on public-private competitions for government contracts, a requirement to videotape detainee interrogations, a rejection of an executive order regarding earmarks, Iraq war policy, missile defense, and many others.

Other Priorities: Hurricane Gustav spared the Gulf Coast cataclysmic damage but did not leave the region unscathed. Although a damage estimate has yet to be tallied, and the extent the damage is unknown, hurricane victims seeking relief may find more than a few sympathetic ears in Congress. And as hurricanes continue to form in the Atlantic and threaten the Southeast, Congress may be compelled to appropriate funds for hurricane recovery before they adjourn for the year. In fact, this may become a high enough priority that a [lame-duck session](#) of Congress would be called after the elections in November.

In addition to hurricane relief, the prospects for a second economic stimulus package are improving as indications of a [souring economy](#) continue. Although gross domestic product (GDP) figures remain somewhat above levels typically seen during recessions, a [rapidly increasing unemployment rate](#) (currently at 6.1 percent) is [within recession territory](#). Further, insurance claims are also [at levels seen in recessions](#). While tax rebates keep the economy afloat, there are millions of households struggling to keep their heads above water. In an effort to boost the economy and provide aid to families that need it most, groups such as the Coalition on Human Needs (CHN) and the Emergency Campaign for America's Priorities (ECAP) have been asking legislators to enact [a number of stimulus measures](#) including:

- Unemployment Insurance extension and reforms
- Increased spending on Food Stamps and Emergency Food
- Assistance for home heating and cooling bills (LIHEAP)

Given the overloaded list of priorities and the glacial pace at which Congress has moved in

2008, completion of all of these items is unlikely. Whether congressional leaders will decide to bring members back after the elections to try to complete some of the unfinished work or simply wait until the start of a new Congress in 2009 is still undetermined.

Rising Unemployment Adds to Struggling Economy

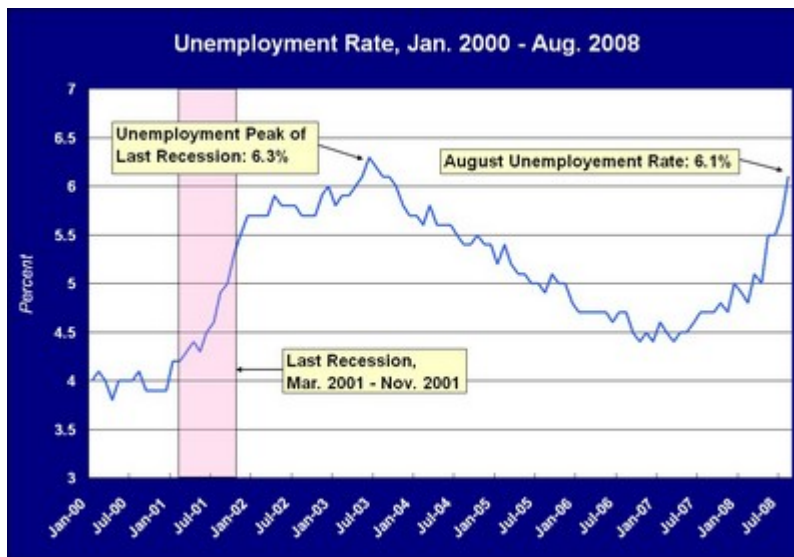
When the Labor Department released its monthly unemployment and jobs data on Sept. 5, it reported that the unemployment rate for the month of August was 6.1 percent. The 0.4 percentage point increase over the prior month has pushed the unemployment rate to a five-year high and is the latest indication that the economy continues to deteriorate.

Recessions are officially designated by the [Business Cycle Dating Committee](#) (BCDC) at the private, nonprofit, nonpartisan [National Bureau of Economic Research](#) (NBER). NBER defines a recession as:

...a significant decline in economic activity spread across the economy, lasting more than a few months, normally visible in real GDP, real income, employment, industrial production, and wholesale-retail sales. A recession begins just after the economy reaches a peak of activity and ends as the economy reaches its trough.

The news media typically cite the definition of a recession as "two consecutive quarters of negative GDP [gross domestic product] growth." However, NBER's definition is broader. While NBER "views real GDP as the single best measure of aggregate economic activity," it also considers personal income, employment, industrial production, and wholesale and manufacturing sales.

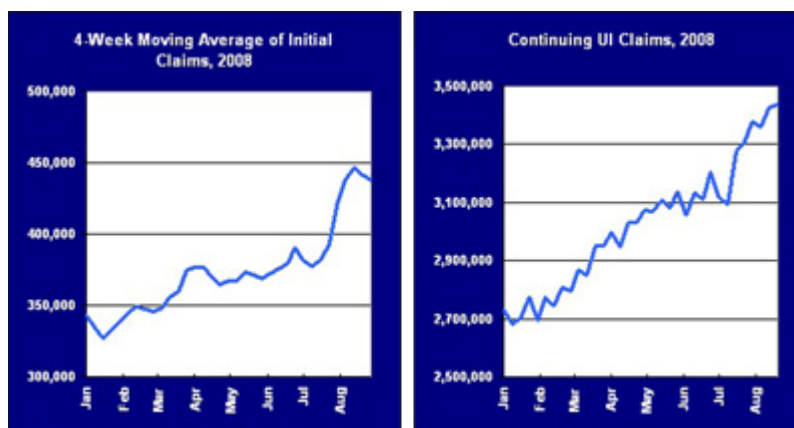
At 6.1 percent, the unemployment rate is [well within recession territory](#) and shows little indication that the 9.4 million unemployed people will return to the payrolls in the short term. Since August of 2007, the number of unemployed people has increased by 2.2 million, and the unemployment rate has ticked up 1.4 percentage points. As the graph below shows, during the last recession (March 2001 through November 2001), the unemployment rate increased 1.2 percentage points from 4.3 to 5.5 percent, but the economy continued to shed jobs during the recovery as the unemployment rate peaked at 6.3 percent 19 months later.



(click to enlarge)

The Labor Department measures unemployment by several methods; however, the most commonly reported measure, the one cited above, is known as the "U3" measure and counts only those people actively seeking employment. This ignores those too discouraged by their prospects to look for employment. Another, broader measure, "U6," includes "marginally attached workers...plus total employed part time for economic reasons." By this measure, as [Paul Krugman notes](#), the employment outlook is "worse than it was in the aftermath of the 2001 recession."

Paralleling the increase in unemployment is the number of people applying for unemployment insurance (UI) benefits. Since the beginning of this year, the four-week moving average of first-time UI claims has increased from about 343,000 to 438,000, a 28 percent increase. Similarly, the number of people who have claimed UI benefits for consecutive weeks has increased 27 percent, from 2.7 million in January to 3.4 million at the end of August. *The Wall Street Journal's* blog *Real Time Economics* has [noted](#) that economists view these UI claims as "arguably in recession territory" and that "there is no question this looks very bad indeed."



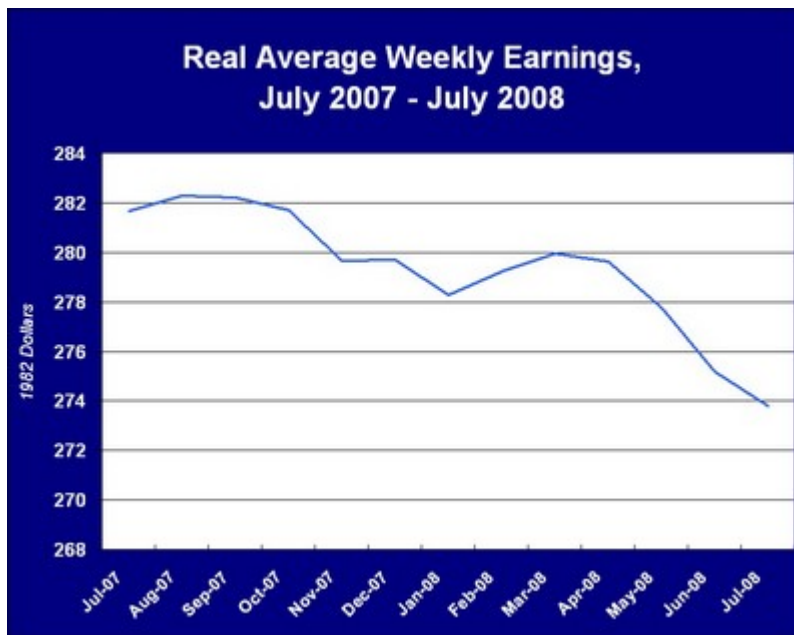
(click to enlarge)

The increase in the number of people looking for work can largely be attributed to the number of job cuts by employers. Since the beginning of the year, the economy has shed over 600,000 jobs, and each month has seen job losses. However, this number is buoyed somewhat by the growth in government jobs, which increased by 153,000 while private employers slashed their payrolls by 758,000. The last time the economy saw eight consecutive months of job losses was in May 2002, at the end of a 15-month period of payroll cuts precipitated by the 2001 recession.

Congress attempted to stem the tide of this economic downturn earlier this year when it approved tax rebate checks for the majority of Americans. While these checks did stimulate consumer spending and are likely the cause of a significant bump in economic growth in the second quarter, they did little to slow the deterioration of the economy.

This summer, Congress acted again, this time to help those already hit by job losses and the poor employment atmosphere. In light of rising unemployment, Congress voted to extend UI benefits in July, allowing people who exhaust the 26 weeks of state unemployment benefits to qualify for another 13 weeks of federal assistance. This policy has been enacted in the past, particularly when the ranks of the long-term unemployed swell, as is [happening in 2008](#).

Yet even those people who have maintained employment are not immune to the declining economy. Although real average weekly earnings have stagnated since December 2001, a precipitous drop in worker paychecks that began in September 2007 has yet to abate. Worker pay is now just above what it was in September 2005, and excepting that month, one has go back to almost ten years to September 1998 to find earnings levels as low as they were in July of 2008.



(click to enlarge)

Until the Bureau of Economic Analysis reports consecutive quarters of negative GDP growth (economic contraction), headlines proclaiming a recession will remain relegated to economic

blogs. Yet for millions of families who have lost a primary source of income or have seen a significant drop in pay, regardless of the headlines, they are currently living a recession.

Critics Ask DOJ to Drop Proposed Expansion of Domestic Surveillance Powers

Recently, several organizations submitted public comments critical of a Department of Justice (DOJ) proposed rule to expand the power of state and local law enforcement agencies to investigate potential criminal activities and report the information to federal agencies. Many noted the proposal is unnecessary for public safety and a threat to free speech and association. DOJ claims the changes are necessary because the existing regulation on criminal investigation does not specifically mention terrorism or "material support thereof."

The DOJ's [existing regulation](#) allows authorities that receive funds under the Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act) to "collect and maintain criminal intelligence information concerning an individual *only* if there is suspicion that the individual is involved with criminal conduct or activity." (emphasis added) DOJ wants to expand this. On July 31, the agency [proposed amendments to the existing regulation](#) that would broaden the scope of activities authorities could monitor to include organizations as well as individuals, along with non-criminal activities that are deemed "suspicious." The proposal would also double the period authorities could keep information without updating or validating it, from five years to ten years, and change the accepted standard of disseminating collected intelligence to agencies having "a need to know and a right to know" to a wider audience of actors, possibly including creditors, employers, and landlords. According to the [Washington Post](#), the proposed rule is "part of a flurry of domestic intelligence changes issued and planned by the Bush administration in its waning months. They include a recent executive order that guides the reorganization of federal spy agencies and a pending Justice Department overhaul of FBI procedures for gathering intelligence and investigating terrorism cases within U.S. borders."

The comment period was limited to 30 days, which is unusual for such a controversial rule. In its [comments](#), OMB Watch highlighted the short comment period and called for the rule to be withdrawn due to concerns about violations of the First Amendment rights of free speech and assembly. The comments noted that the proposed changes would expand information collection to include organizations, and as a result, "Americans may become reluctant to participate in organizations if they feel it will make them targets of government investigations.... Abuse and politicization of investigative powers are not just a potential danger. The problem already exists, and has been exposed in the press." The comments also said the proposed rule is at odds with the Safe Streets Act's requirement that regulations ensure that information collection systems "are not utilized in violation of the privacy and constitutional rights of individuals."

Other critics believe the additional powers will burden police officers with excessive and needless data and hinder the needed focus on legitimate threats. Comments filed by the

[Defending Dissent Foundation](#) said doubling the information storage period from five to ten years "will undoubtedly increase the volume of obsolete, incorrect and useless information sitting in intelligence databases." [OpenTheGovernment.org's comments](#) suggest that proposing to add activities such as taking notes or pictures, drawing diagrams, and voicing extremist views as acceptable reasons to suspect criminal activity "risks adding useless information to the database and making it more difficult to identify legitimate threats."

According to DOJ, some of the proposed changes would facilitate the dissemination of sensitive data at regional intelligence fusion centers and for Joint Terrorism Task Forces. These changes are a cause for concern, according to the [American Civil Liberties Union's \(ACLU\) comments](#). The ACLU's [research](#) details legal problems with fusion center intelligence activities. In addition, a [2007 Congressional Research Service report](#) revealed that guidelines issued in 2006 by the DOJ and the Department of Homeland Security sanction the collection of data "beyond criminal intelligence" in violation of the current DOJ rule. According to the ACLU reports, fusion center officials feared that the inclusion of data obtained under such broad conditions could lead to a reduction in powers granted to future intelligence gathering operations.

Members of Congress have also expressed concern. A [Sept. 5 letter](#) from House Judiciary Committee Chair John Conyers (D-MI) and Reps. Bobby Scott (D-VA) and Jerrold Nadler (D-NY) stated that "we question the need to consolidate the FBI guidelines during the waning days of the Administration." They asked the agency to answer a series of questions in writing prior to a Sept. 16 oversight hearing on the FBI's domestic operations.

The proposed rule is [being rushed through](#) despite a [White House memo](#) issued in May that says all regulations "to be finalized in this Administration should be proposed no later than June 1, 2008." The rush may be because the same White House memo also says that final rules must be published by Nov. 1.

Police and Protest Groups Clash at Political Conventions

Scores of protesters converged on the Democratic National Convention (DNC) in Denver, CO, and the Republican National Convention (RNC) in St. Paul, MN. Both were designated "national special security events," and the Secret Service was responsible for planning and implementing a security plan for each city. Protesters were visible at both conventions, although far fewer at the DNC, and hundreds of arrests made headlines at the RNC.

In Denver, police made few arrests. City officials had predicted thousands of protesters, but only a few hundred showed up. The location of the protest zone, far from the convention site at the Pepsi Center, was blamed for the low turnout. According to [Roll Call](#) (subscription required), "Protesters pointed out that only the back of the media tent faced the demonstration area, and reporters couldn't access the area without exiting convention security and walking about 15 minutes around the block." The American Civil Liberties Union (ACLU) of Colorado and a dozen protest groups filed a lawsuit against the city arguing that the demonstration area

was too far away from the convention, but a federal judge [ruled](#) that the plans were constitutional.

The scene was different in St. Paul, where there were reports of widespread civil liberties abuses during large-scale arrests, police raids on private homes, and the detention of several journalists. The Associated Press [reported](#) that there were over 800 arrests "during a week of sometimes peaceful, sometimes violent dissent. Anti-war protesters rallied Thursday [Sept. 4] at the state Capitol and then planned to march to Xcel Energy Center, where Sen. John McCain ☼ was due to accept the GOP presidential nomination. But their permit had expired, and police — in riot gear and using horses, snow plows and dump trucks — blocked their way. For hours, police let the protesters amble from one blocked intersection to another. But then the arrests began in earnest. At least 19 journalists, including two reporters from the Associated Press, were among those held by police." Journalists complained they were covering the protest activities, not participating in them, when being arrested.

One of the more publicized journalist arrests was [Democracy Now!](#) host Amy Goodman. According to the [Free Press](#), "Local advocates and independent journalists will deliver more than 50,000 petitions to St. Paul City Hall calling on Mayor Chris Coleman and local law enforcement officials to drop all charges against journalists arrested while covering protests." Nancy Doyle Brown of Twin Cities Media Alliance said, "The targeting and harassment of journalists that we've seen during the RNC sends the message that the Twin Cities don't value the essential role that journalists play in a democracy."

The [Minneapolis Star Tribune](#) reported that informants were planted in protest groups before the convention began, [reminiscent](#) of accounts from the 2004 RNC. At least six buildings across St. Paul and Minneapolis were raided to stop an "anarchist" plan to disrupt the RNC. "From Friday night through Saturday afternoon, officers surrounded houses, broke down doors, handcuffed scores of people and confiscated suspected tools of civil disobedience," the paper reported. The [ACLU of Minnesota](#) filed a lawsuit in federal court asking for the release of literature confiscated during the raids on private homes.

Eight people were charged with conspiring to cause a riot as part of a terrorist act and arrested in raids of homes conducted by the Ramsey County Sheriff's Department. The Minnesota Chapter of the [National Lawyers Guild](#) (NLG) is representing several of the suspects and is seeking judicial review of the preventative detentions ordered by Sheriff Bob Fletcher. An NLG [press release](#) stated, "Despite the incendiary and alarmist language used by Sheriff Fletcher, there is no evidence that the common household items and tools seized in the pre-emptive house raids were intended to be used to cause death or civil unrest. No judge or prosecutor has reviewed the allegations made by Sheriff Fletcher." Bruce Nestor, president of the Minnesota chapter of the NLG, referred to the accusations as "an effort to equate publicly stated plans to blockade traffic and disrupt the RNC as being the same as acts of terrorism."

In a [press release](#), ACLU Executive Director Anthony D. Romero stated, "Attempts by law enforcement to squelch lawful political speech and stifle the press have no place in our democracy and are unacceptable." The ACLU has called for an investigation into the arrests of

hundreds of peaceful protestors, the surveillance on several activist groups and private homes, and the targeting and harassment of journalists.

Not all forms of advocacy were so publicly dejected. Many nonprofit representatives were present at the conventions and used them as an opportunity to bring their issues to the table. For example, the advocacy group Every Child Matters had a [live blog](#) from the RNC.

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