GOVERNMENT MATTERS

April 23, 2013 Vol. 1, No. 8

In This Issue

Open, Accountable Govt.

Texas Fertilizer Plant Explosion Raises Important Questions about Risks Industrial Facilities Pose

Open Government Advocates Disappointed by Rollback of STOCK Act Requirements for Online Access

Revenue & Spending

President's Budget Carries Outsized Economic and Political Risks

Citizen Health & Safety

Legislation Would Delay Important Safeguards and Limit Citizens' Access to Courts

OMB, U.S. Chamber of Commerce Hold Forum on Trade Agreements and Regulations

---

Texas Fertilizer Plant Explosion Raises Important Questions about Risks Industrial Facilities Pose

On April 17, there was a massive explosion at a fertilizer plant in central Texas, which killed at least 14 people and injured more than 200. Though investigators are still trying to determine the exact cause of the incident, the West Fertilizer Company's explosion raises serious questions about managing the risks that facilities can pose to local communities.

The Explosion

A fire broke out at the fertilizer plant in the early evening of April 17, and first responders quickly arrived. As firefighters battled the blaze, an explosion powerful enough to be felt from 50 miles away and measured at the equivalent of a 2.1-magnitude earthquake tore through the plant. The explosion demolished up to 80 homes in West, TX, and damaged other buildings nearby, including an apartment complex, a middle school, and a nursing home. The 133 nursing home residents, many of whom had been injured, were evacuated and taken to hospitals.

The confirmed deaths include two workers, 10 firefighters, and two first responders who were caught by the explosion while battling the fire and evacuating nearby homes. The explosion is considered one of the worst industrial accidents in U.S. history. The largest U.S. industrial accident occurred in 1947 off the coast of Texas City, TX, when two shipping vessels full of ammonium nitrate exploded, killing six hundred people.

In the Texas blast's aftermath, questions have been raised about whether community residents and regulators fully understood the risks associated with the fertilizer plant and what information emergency first responders and the local community had about the risks.

Were Risk Management Plans Adequate?

Under the Clean Air Act, facilities that handle toxic, flammable, or otherwise reactive chemicals are required to submit risk management plans. These plans help local fire, police, and emergency responders prepare for and respond to chemical accidents and help residents understand the chemical hazards in their communities.

The risk management plan filed for the Texas fertilizer plant listed anhydrous ammonia, a toxic gas with suffocating fumes, as a potential risk. Although the 2011 risk management report West Fertilizer submitted to the U.S. Environmental Protection Agency (EPA) identifies several potential hazards, including equipment failure and toxic release, fire was not listed as a potential risk. The report describes the worst-case scenario for the plant as the "release of the total contents of a storage tank released as a gas over 10 minutes."

The plant also reported no flammable or explosive hazards on site. The EPA classifies anhydrous ammonia as toxic but not flammable. Yet the Centers for Disease Control and Prevention considers the chemical to be flammable. This raises serious questions about the accuracy of the company's risk management plan.

Moreover, the Texas plant stored large quantities of ammonium nitrate on site. This is the primary material used in the 1995 Oklahoma City bombing that killed 168 people at a federal office building. Yet ammonium nitrate is not one of the chemicals that facilities have to report under the EPA's risk management plan program.

The facility *did* report ammonium nitrate on the Tier II Chemical Inventory Report required under the Emergency Planning and Community Right to Know Act of 1986. The Tier II forms detail the hazardous materials stored on site at facilities and are submitted to the local fire department, State Emergency Response Commissions, and Local Emergency Planning Committees. However, Tier II Chemical Inventory Reports are generally not available to the public, so it is unclear if local residents were aware of the risk associated with the large quantities of ammonium nitrate being stored at the West Fertilizer facility.

Improving the Public's Right to Know About the Risks in Their Communities

The purpose of the Emergency Planning and Community Right to Know Act was to give first responders and residents of communities with plants that produce or store hazardous chemicals access to information that would allow them to protect themselves and their families from disasters like the one that occurred last week. But 17 years after the passage of the law, local residents are often unaware of the actual risks of the chemicals that are being produced or stored near them; it seems first responders may still not be fully prepared for the emergencies that occur at industrial facilities involving dangerous substances.

In fact, a 10-year-old Government Accountability Office (GAO) report found that EPA had reviewed only about 15 percent of required risk management plans in 2001 and did not know if the facilities with plans were sharing them with local responders. The Clean Air Act requires that risk management plans be submitted to the local agencies responsible for responding to chemical accidents but does not specify how this is to be accomplished.

As a result of the report, in 2004, EPA issued guidance on best practices for facilities to follow when providing information to the public about risks and emergency management plans. The guidance recommended extensive engagement with community residents when developing or revising risk management plans. It is unclear how many facilities follow this guidance.

In May 2011, based on a consultative process involving over 100 environmental and health and safety groups, we released *An Agenda to Strengthen Our Right to Know*, which recommended that EPA, industry, and public officials should expand opportunities for public engagement on developing risk management plans and disclosing chemical risks. The report contained extensive recommendations for improving public access to environmental information and advocated for strengthening residents' right to know about the operations, chemicals, and risk management plans of facilities in their communities.

Conclusion

In the aftermath of the explosion, communities nationwide have voiced concerns about fertilizer production and distribution and other chemical-producing sites. In Iowa, for example, residents expressed concerns about three ammonia plants in several locations in the state, as well as existing nitrate facilities. A 1994 blast in an Iowa ammonium nitrate plant killed as many as 30 and injured more than 160.

Communities and public interest organizations have been pushing for facilities to replace dangerous substances with safer chemicals for decades. And plants in some communities have heeded the call. In Michigan, ammonium nitrate (which was once commonly used in farming in the state) is "virtually nonexistent" thanks to a movement by farmers to use safer alternative chemicals.

There are safer alternatives available, but change is unlikely to happen without a demand from local residents that pushes oversight authorities. If the tragedy in Texas heightens awareness of the real risks of certain chemicals and encourages other communities to ask questions, we might find something of value in this terrible tragedy.

President's Budget Carries Outsized Economic and Political Risks

On April 10, President Obama released his proposed budget for the 2014 budget year. Unlike in the past, this year's budget came very late, after both the House and Senate had passed their respective budget plans. The president's plan is being billed by some as a compromise between the House and Senate.

The president's plan represents a substantial risk, both to the president's legacy and to the political fortunes of his allies in Congress. His budget would further reduce the deficit and cancel about $1 trillion in across-the-board spending cuts, called sequestration, largely by checking the growth in spending on entitlement programs and raising new tax revenues. Many of the proposed spending cuts target corporate subsidies, including agribusiness subsidies and excessively high prices paid to pharmaceutical companies in the Medicare program.

The plan also risks alienating several core supporters of the president. Among the more controversial proposals is one that would adopt a new inflation measure, called the "chained CPI," which would reduce benefits paid to Social Security beneficiaries. Another is the administration's primary tax proposal – a limit on income deductions for high-income taxpayers – which does not exempt charities and would therefore reduce individual charitable giving by an estimated 2.2-4.1 percent per year, according to the Urban-Brookings Tax Policy Center. Finally, by supporting further deficit reduction while the economy is still weak, the plan also risks prolonging the already slow economic recovery.

"Obama and his advisers don't necessarily view Chained CPI as good policy," wrote Greg Sargent at *The Washington Post*. "But they think a Grand Bargain is ultimately a better outcome than continued sequestration, and the only way to the former is to peel off individual Republicans who are open to new revenues."

So what has been the reaction among congressional Republicans? "It's just not serious," said House Speaker John Boehner (R-OH). "It's a step backwards."

Rep. Greg Walden (R-OR), chairman of the National Republican Congressional Committee, went further, calling the president's proposed Social Security cuts a "shocking assault on seniors."

Boehner later distanced himself from Walden's statements, but it is not clear how serious he was. "I've talked to Chairman Walden and I've had a conversation and I'll leave it at that," he said.

Republicans Angle for Midterm Gains

House Republicans may be crying crocodile tears. "Even if it is cynical for the party of Paul Ryan to object to assaults on Social Security and Medicare by a Democratic president, the cynicism works," wrote John Nichols for *The Nation*.

Nichols continued, "Pointing out—loudly—that a Democratic president and his allies are abandoning a historic Democratic commitment does not turn Democratic voters into Republican voters, it turns Democrats and Democrat-leaning independents into non-voters. This has long been the essential element to Republican success in mid-term elections."

Congressional Democrats have reason to worry. Headed into the 2014 midterms they possess a narrow majority in the Senate, where they hold 53 seats to 45 for the Republicans, with two independents that typically caucus with the Democrats. A switch of six seats would cost Democrats the Senate, something that is not impossible because Democrats are defending 21 seats compared to just 14 for Republicans.

Senate Democrats have already seen a wave of retirement announcements. Political analyst Charlie Cook rates three of these seats – those occupied by Sens. Tom Harkin (IA), Tim Johnson (SD), and Jay Rockefeller (WV) – as "toss ups." Several others also face danger, including Sens. Mark Begich (AK), Mark Pryor (AR), Mary Landrieu (LA), Max Baucus (MT), and Kay Hagan (NC).

Cook says it is "too early" to say that the Democratic Senate majority is in danger, but presidential missteps may make the difference.

Austerity Advocates Suffer a Setback. Is the Administration Listening?

Another recent development with major implications for budget policy came from the field of economics last week. A study by two Harvard economists, Carmen Reinhart and Kenneth Rogoff, that had been widely cited by proponents of austerity was punctured by a new paper that showed it suffered from missing data and database errors.

The authors originally claimed that their data showed that when national debt exceeds 90 percent of gross domestic product, economic growth slows dramatically. It has been used by many who argue that the United States must stabilize its own debt or risk prolonged stagnation.

"What the Reinhart-Rogoff affair shows is the extent to which austerity has been sold on false pretenses," wrote Paul Krugman in an op-ed for *The New York Times*. "For three years, the turn to austerity has been presented not as a choice but as a necessity. Economic research, austerity advocates insisted, showed that terrible things happen once debt exceeds 90 percent of G.D.P."

"But 'economic research' showed no such thing; a couple of economists made that assertion, while many others disagreed. Policy makers abandoned the unemployed and turned to austerity because they wanted to, not because they had to," Krugman said.

"There's basically no evidence that fast austerity programs, or ones undertaken during economic downturns, are even good at reducing the debt burden," wrote Dylan Matthews at *The Washington Post*. "It's very clear they're bad for growth."

If the Obama administration is not paying attention to this controversy, it should be. Poor choices that adversely affect the economy also have political consequences: the supposed political dividends of adhering to an austerity budget in Washington may vanish in the midterm elections of 2014.

Legislation Would Delay Important Safeguards and Limit Citizens' Access to Courts

Earlier this month, Sen. Chuck Grassley (R-IA) and Rep. Doug Collins (R-GA) introduced companion legislation in the House and Senate, entitled the Sunshine for Regulatory Decrees and Settlements Act (S. 714 and H.R. 1493). Disguised as an effort to increase transparency, this legislation aims to bog down the regulatory process with time-consuming and costly procedural hurdles that would limit the lawsuits brought to challenge unreasonable delays by regulatory agencies.

The Center for Effective Government joined with 40 public interest organizations to oppose earlier versions of this legislation introduced in 2012 by Reps. Ben Quayle (R-AZ) and Dennis Ross (R-FL). That letter explained that the legislation would "allow [...] individuals who want the federal government to continue breaking the law for their own benefit to obstruct and delay requirements to follow federal law." Rather than foster improvements, S. 714 and H.R. 1493 would delay important rules, including those that keep our nation secure, our financial markets stable, and our citizens safe and healthy.

Grassley and Collins Level Unfounded Accusations Against EPA

Collins, Grassley, and their industry supporters argue that this legislation would stop public interest groups from working with federal agencies like the U.S. Environmental Protection Agency (EPA) to enter into settlement agreements that force agencies to issue new regulations, a practice the lawmakers refer to as "sue and settle regulation." They claim that public interest groups frequently file lawsuits against federal agencies to compel agency action, settle the case with a mandate that EPA publish new regulations by a certain date, and thereby circumvent the regulatory process and review by the Office of Information and Regulatory Affairs (OIRA).

This assertion is untrue. Under existing law, once a settlement agreement is finalized, the agency issues a proposed rule using the same notice-and-comment procedures that it uses in other rulemakings. The settlement agreement does not impose additional procedural obligations on the agency; ***the agreement only compels the agency to do what Congress had already required it to do by law.***

Settlement agreements do not forbid OIRA review. By requiring an agency to publish rules by a certain date, a settlement agreement may prevent indefinite delay by OIRA, but indefinite delay is not permitted in any case (even though it frequently occurs in violation of Executive Order 12866).

Key Provisions and Key Challenges

Instead of improving the regulatory system, the legislation would create new problems where none previously existed. The key concerns with this legislation are that it:

Limits the Ability of Citizens to Ensure Federal Laws are Implemented and Increases the Ability of Industry to Influence Rulemaking: These bills are aimed at suits that are filed to force agencies to meet deadlines ***set by Congress***. By the time a suit is filed, the statutory deadline for publishing a standard has passed. This legislation would delay publication of ***already overdue*** rules by requiring that an agency seek notice and comment for 60 days on its decision before agreeing to settle a case. Although some statutes, like the Clean Air Act, already require EPA to publish proposed consent decrees or settlement agreements in the *Federal Register* for 30 days, this legislation would double the waiting period and would extend this requirement to all federal agencies.

In other words, when an agency is alleged to have unreasonably delayed publishing protective standards, it cannot agree to remedy this delay without waiting another 60 days.

Adds Unnecessary Procedural Requirements to Resolving Legal Disputes: Any proposed settlement agreement filed with a court must be accompanied by a certification from either the Attorney General or the agency head overseeing the litigation acknowledging his or her approval of the proposal at the time it is submitted (which would make the additional procedural requirements in the Grassley-Collins legislation unnecessary).

Transfers Agency Discretion to the Courts: Before a court could approve the proposed settlement, an agency would be required to inform the court of the agencies' competing mandatory duties. Currently, courts rarely second-guess an agency's priorities, but under the proposed legislation, a court would weigh these competing obligations in deciding whether the deadline agreed upon would give the agency sufficient time to act. In effect, this would give the court veto power over an agency's discretion to negotiate the terms of a settlement.

Grants Future Administrations a Right to Modify Settlement Agreements: Another significant concern with this legislation is that it would allow each new administration to modify a settlement agreement entered into by an agency during any previous administration "in light of changed facts and circumstances or competing duties." This vague language would open up a can of worms by allowing agencies to go back on their commitments to abide by federal law and complete development of protective standards and safeguards.

Conclusion

The unprecedented requirements in the Grassley-Collins legislation would further delay standards and safeguards that have already been unreasonably delayed and would take away a crucial tool that public interest groups use to ensure that agencies are, in fact, ***implementing the laws Congress passes*** in a timely fashion. It would also have judges second-guess an agency's priorities in settling cases related to regulatory delay. Too much process concerning whether a rule was delayed, how long it should be delayed, and whether the delay should end wastes agency resources that could better be spent protecting the public.

Congress should reject this convoluted legislation that would do nothing except allow federal agencies to continue to delay implementing the laws established by Congress.

OMB, U.S. Chamber of Commerce Hold Forum on Trade Agreements and Regulations

On April 10, the Office of Management and Budget (OMB) co-hosted a two-day stakeholder session with the U.S. Chamber of Commerce as part of its annual High Level Regulatory Cooperation Forum. The forum provides an opportunity for members of the business community to tell American and European officials how they would like the standards and safeguards that regulate their activities to be "harmonized." For the business community, "harmonization" is generally viewed as an opportunity to move to the lowest standards, or in the language of free trade, to remove or reduce "trade irritants." The exchange at the forum was between business and government; few public interest representatives were allowed to participate.

A Public Meeting Behind Closed Doors

This year's forum generated considerably more attention and business involvement than past sessions because of the forthcoming negotiations between the United States and European Union on the Transatlantic Trade and Investment Partnership (also known as the Trans-Atlantic Free Trade Agreement, or TAFTA). The agreement will, according to the U.S. Trade Representative, focus on addressing "regulatory issues and non-tariff trade barriers." Because formal negotiations on TAFTA will begin shortly, this year's forum provided business groups a setting in which to highlight regulations they would like weakened or eliminated during the trade negotiations.

A lack of transparency has been a consistent problem with trade negotiations, and this meeting exemplified OMB's reluctance to open up proceedings to input from the public interest community.

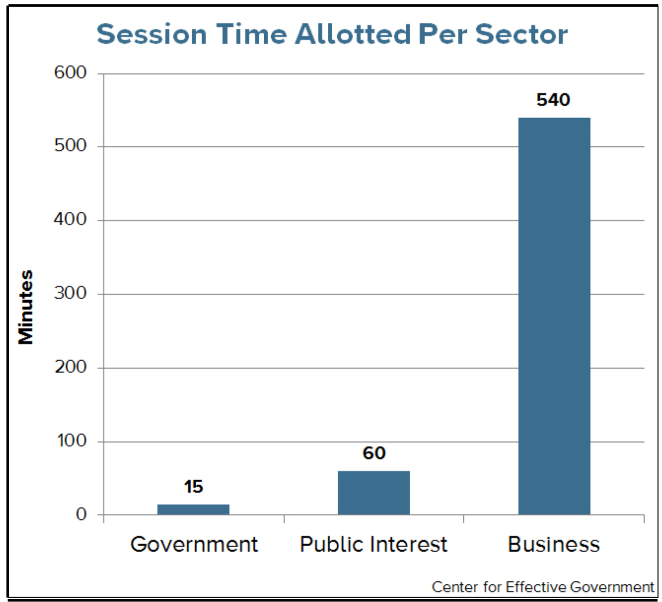
People who RSVP'd to the event were contacted several times via e-mail with warnings that the Chamber could not handle all those who wanted to attend and urged those in Washington, DC, to monitor it via webcast. A recording of the webcast has not been made available for those who were not watching live, and the second day's events were not webcast at all. The Chamber only notified stakeholders that the second day would not be webcast via e-mail *after the second day had ended*. It is a violation of the administration's transparency policies for OMB to host a public event with the Chamber, encourage individuals to stay away, and then fail to provide access to view the stakeholder presentations.

Another troubling aspect of the difficult-to-attend forum is that once it began, a representative from the Chamber notified the crowd that all comments made during that day's session, a public and government-sponsored event, would be off the record. More than a week later, the Chamber released copies of less than half of the presentations made at the forum.

Some Stakeholders Are More Equal than Others

Last week's forum highlighted an ongoing problem with trade-related forums – business has greater access to negotiators and information about negotiating positions than do other members of the public. The Stakeholder Session opened with government representatives reminding the audience that the voice of industry would be heard and represented in the free-trade negotiations. Agency representatives made it clear that they were in the mood to listen, and the agenda for the day made it clear they wanted to hear from industry.

Public interest groups presented for just 40 minutes and answered questions for another 20 minutes during the entire two-day session. Business representatives, on the other hand, presented and answered questions for nine hours.



Robert Weissman, President of Public Citizen, spoke on behalf of the Transatlantic Consumer Dialogue and urged OMB to sever its partnership with the Chamber to avoid the appearance of bias in conducting the TAFTA negotiations. Weissman also urged the release of draft TAFTA texts to the public in real time during the negotiations. Currently, only government negotiators and business stakeholders can see negotiated texts.

Ben Beachy warned of the threat posed by Investor-State Dispute Resolution mechanisms, an obscure, extra-judicial system that would allow private corporations to "sue" governments over domestic regulatory policy. These "suits" would be not be heard by a court but rather by a private tribunal made up of industry's own lawyers. This means that there would be significant conflicts of interest on the panels hearing the disputes, for which there would be no protection. Governments, working under budget and resource limits, would be subject to large damage awards that they would have to pay to private corporations.

Business Themes Stress Slower Rulemaking and Weaker Standards

There were some common themes in the business presentations at the forum. Business advocated for increased reliance on cost-benefit analysis, so-called "sound science" in setting regulations, and increased involvement in the regulatory process. Business already uses these analyses to slow the rulemaking process and to weaken standards and safeguards in the United States. Their inclusion in TAFTA, however, would force Europe to use these problematic tools in an effort to weaken their public health protections.

Many businesses also voiced support for a mutual certification process in which traded goods are only tested once before they are exported. On its face, mutual certification sounds reasonable, but it masks the important question of what certification standards will apply. Public interest groups are concerned that a move toward mutual certification will prevent nations from implementing stronger product safety standards and will lead to weakening existing standards. TAFTA negotiations could result in product safety standards being "harmonized" down behind closed doors.

However, on some issues, industry trade associations opposed "harmonization." For example, representatives from the American Chemistry Council and the European Chemical Industry Council argued *against* harmonizing the U.S. Toxic Substances Control Act (TSCA) and the E.U. framework on Registration, Evaluation, and Authorization of Chemicals (REACH). In the case of chemical regulation, "harmonization" might require increasing the regulation of chemicals in the U.S. to higher European standards. Industry groups on both sides of the Atlantic argued for "harmonizing" the *evaluation* of chemical risks so that no one country can label a chemical as causing cancer unless all countries do so. In effect, this would allow the country with the lowest standards to veto the scientific evaluations of other countries.

Conclusion

The upcoming TAFTA negotiations pose a serious challenge to the way sovereign nations create and implement standards and safeguards. Regulatory cooperation between the United States and the European Union will play a significant role in the negotiations, and the April 10 forum provided an important opportunity for the public to speak directly to agency leaders. Unfortunately, public interest advocates were not allowed to fully participate in the day's events, and the substance of the forum was so tilted toward business interests that it provided the directors of regulatory agencies with an unbalanced view of what is at stake during the TAFTA negotiations.

The standards and safeguards that protect the American and European people are too important to negotiate away behind closed doors. A broad-based campaign to educate state and local governments, small businesses, public health, environmental, and democracy advocates about the potential threats to our regulatory system that TAFTA represents will be needed to stop this juggernaut.

Open Government Advocates Disappointed by Rollback of STOCK Act Requirements for Online Access

Just a year after enacting it, Congress and the president rolled back a key transparency provision of the Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act) instead of amending it to address concerns.

On April 15, President Obama signed S. 716, which repealed the STOCK Act's requirements for online access to most public conflict-of-interest disclosures filed by congressional and senior executive branch staff. The STOCK Act's other disclosure requirements remain in place.

Background

In 2011, a *60 Minutes* investigation charged that members of Congress and their staff were using information about pending legislation to trade stock and make windfall profits. In response to the public outrage that followed, Congress passed the STOCK Act, which specifically made members and their staff subject to insider trading prohibitions. The law also contained several other ethics reforms and reporting requirements for high-level congressional and executive branch staff. The president signed the law on April 4, 2012.

The STOCK Act sought to guard against corruption or unethical profits being made from trading on inside political knowledge by increasing transparency in two ways: expanding financial disclosure requirements to include information on stock trades and posting online the annual financial disclosure forms filed by thousands of federal officials.

Expanded Disclosure

The STOCK Act expanded financial disclosure requirements to include regular reporting of financial transactions. The law required covered staff to disclose changes in their financial holdings within 45 days, rather than annually. In addition, the law required a subset of top officials to report mortgages on personal residences – a provision included in response to the Countrywide political loan scandal, where several public officials received preferential home loans. These provisions are unaffected by the recent amendments and remain in place.

Improving Electronic Access

In addition, the STOCK Act aimed to improve electronic access to the annual disclosure forms already filed by senior federal officials. Under the Ethics in Government Act of 1978, members of Congress, their staff, and approximately 28,000 senior executive branch employees have annually disclosed their financial holdings, sources of income, and transactions. While these financial disclosures are public records, most have not been posted online and are only available upon written request (a legal requirement for verification purposes). The president, vice president, Senate-confirmed presidential appointees, and members of the U.S. House already post their disclosure statements online; the STOCK Act would have significantly increased the number of high-level public officials who would have been required to post their disclosure statements online.

The STOCK Act also required that officials file their disclosures electronically, rather than on paper as is currently common. E-filing allows for more efficient and useful access to the information, facilitating improved analysis – which could make it easier to detect corruption.

Additionally, the law required the Office of Government Ethics to post the executive branch disclosures online, in a searchable and sortable database. The House and Senate were also required to develop systems to post the information online. Such databases would afford timelier and more useful public access than having to file a request and receive a paper copy of the disclosure form.

Online Access Questioned

These online access provisions were criticized by some public officials, who argued that easier access to these disclosures could increase the risks of identity theft and/or targeting of economically vulnerable high-security-clearance staff by foreign agents. After public officials filed suit on Aug. 2, 2012, challenging the provisions, Congress delayed the provisions' effective date.

On Sept. 13, 2012, the judge in the case granted a temporary preliminary injunction, prohibiting the provisions from going into effect pending resolution of the case, stating that the plaintiffs had "shown a likelihood of success on the merits" of their claim that the provisions would violate their constitutional right to privacy.

In response, Congress passed, and the president signed, another law delaying the provisions' effective date and directing the National Academy of Public Administration (NAPA) to study the risk of harm to security or privacy resulting from online disclosure provisions and to recommend ways to mitigate any such risks.

While the NAPA study was under way, Congress again delayed the effective date of the provisions. The delay was scheduled to expire on April 15.

Narrow NAPA Study

The NAPA study, *The STOCK Act: An Independent Review of the Impact of Providing Personally Identifiable Financial Information Online*, was issued on March 28. The study recommended that Congress indefinitely suspend the online posting requirements and the *unrestricted* access to searchable, sortable, downloadable databases of disclosure forms. However, the study supported implementing the other requirements of the act and recommended that the 35 year-old government ethics system be strengthened.

The NAPA study was limited in its scope. While the researchers spoke with hundreds of government officials across federal agencies, there was no apparent effort to contact and incorporate the views of civic organizations dedicated to transparency and accountability. The report detailed the concerns of government officials but did not explore the possibility of policy changes such as redactions or waivers that could have addressed their issues and still allowed online disclosure.

Nor did the NAPA study consider the experience of states that have implemented similar requirements. A 2012 report by the Center for Effective Government (then OMB Watch) found that several states have established online access to their public officials' financial disclosures, including Arkansas, Rhode Island, and Tennessee. There is no evidence of harm resulting from online access in these states.

The Congressional Substitute

Faced with the impending April 15 deadline to begin online disclosure and armed with NAPA's recommendations, as well as a March 27 court opinion denying the government's motions to dismiss, Congress repealed the online disclosure provisions. Senate Majority Leader Harry Reid (D-NV) introduced and hastily shepherded a bill repealing the provisions on April 11, and the House followed suit the next day. President Obama signed the bill on April 15.

The bill also repeals the e-filing requirements of the STOCK Act, even though they were explicitly endorsed by the NAPA study and never challenged in the lawsuit.

Under the remaining law, only the president and vice president, Senate-confirmed executive branch officials, and members and candidates for Congress will be required to e-file their disclosures, and only those disclosures will be posted online. Congressional staff and the approximately 28,000 senior executive branch officials who file public disclosures will not have to e-file, and those disclosures will not be posted online.

The open government community is disappointed by what they consider backsliding by Congress and the president. Sean Moulton, Director of Open Government Policy at the Center for Effective Government, said, "Returning to hand-written requests fulfilled at the whim and in the time frame that ethics officers choose makes it much harder for citizens to hold public officials accountable for misbehavior in real time." This is especially so for congressional staff who are privy to valuable secret information about upcoming changes in the law but do not have their disclosure forms reviewed by ethics officers like executive branch staff do.

A Better Solution

Putting public information online is the gold standard of open government, and being able to examine the personal finances of public servants is an important safeguard against corruption. But public service should not require the sacrifice of all privacy rights. Just as Freedom of Information Act requests must be made in writing to verify the identity of the requester, it is not unreasonable for public servants to ask for the same safeguards from individuals who request their personal financial information.

While there may be valid reasons for not posting personal financial information online, Congress could have addressed the privacy concerns (by redacting the name of the banks or limiting the amount of information released publicly, for example). Instead, the posting requirement was simply deleted.

While some of the STOCK Act's protections, such as timelier reporting of financial transactions, remain in place, the financial activities of congressional staff – the source of the original *60 Minutes* expose – remain difficult for the public to access.

Center for EFFECTIVE GOVERNMENT
Formerly OMB Watch

2040 S Street, NW, 2nd Floor
Washington, DC 20009
202-234-8494