

# GOVERNMENT MATTERS

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## **State Department Report Acknowledges Climate Change Impacts of Keystone XL**

**by Sofia Plagakis**

On Jan. 31, the U.S. Department of State published its long-awaited [Final Environmental Impact Statement \(EIS\)](#) on the Keystone XL pipeline, which acknowledges, for the first time, that the proposed pipeline could contribute to climate change. On Feb. 3, communities and groups across the country organized [over 200 local vigils in 44 states and Washington, DC](#) to let President Obama know the risks that the pipeline will bring. The final EIS report does not provide any recommendations on the pipeline but will be used to develop a recommendation from the State Department and in the president's final decision on the pipeline.

### **Climate Change Impacts**

If approved, the pipeline would transport up to 830,000 barrels of tar sands, which are more carbon intensive, corrosive, and difficult to clean up than conventional oil, each day from Canada through America's agricultural heartland to Texas.

In the final EIS, the State Department backed away from its previous finding that the pipeline would not result in any significant adverse environmental effects. Instead, the report concluded that "[t]he total direct and indirect emissions associated with the proposed Project would contribute to cumulative global GHG emissions." The process of extracting and burning tar sands oil creates about 17 percent more greenhouse gas emissions (GHG) on a lifecycle basis than average crude oil, according to the report.

The report also concluded that the pipeline would not substantially impact tar sands development because it claimed tar sands would be brought to market with or without the pipeline. (If the pipeline does result in greater use of tar sands, then the environmental risks associated with that expanded exploration could be raised as an issue against approving the pipeline.) This conclusion directly conflicts with [oil and gas industry](#) claims that the pipeline is necessary if they are going to be able to increase the use of tar sands for fuel.

"Even though the State Department continues to downplay clear evidence that the Keystone XL pipeline would lead to tar sands expansion and significantly worsen carbon pollution, it has, for the first time, acknowledged that the proposed project could accelerate climate change," [says](#) Susan Casey-Lefkowitz of the Natural Resources Defense Council.

The climate change findings of the final EIS report could make President Obama's decision on the pipeline more difficult. The president has sought to make his fight against climate change a cornerstone of his second term and [stated](#) in a major speech last summer that the pipeline would only be approved if it would not "significantly exacerbate" the problem of carbon pollution. He said the pipeline's net effects on the climate would be "absolutely critical" to his decision.

### **Threats to Water Resources**

The State Department EIS report also provides more details of the public health and environmental dangers associated with the proposed pipeline, recognizing its great risk to water resources. The dangers from tar sands oil were vividly exposed in March 2013 when more than 5,000 barrels of tar sands oil gushed out in Arkansas, forcing residents to flee their homes. In addition, Keystone I, which runs from Canada through Illinois, had 14 reported leaks during its first year of operation between 2010 and 2011. One of the largest spills occurred in North Dakota in May 2011, when [21,000 gallons](#) of crude tar sands leaked from the pipeline, temporarily shutting it down.

The State Department concludes that tar sands spills would present difficult challenges because the tar sands is heavier than water and would sink below the water's surface when spilled. This is unlike conventional oil, which floats on water and is therefore significantly easier to clean up. This submersion would create additional impacts and present challenges to spill responders and local communities. As proposed, the pipeline would cross several major rivers (including the Missouri, Yellowstone, and Red Rivers) and aquifers that supply millions of Americans with drinking water and irrigate farmland. A large spill could leak into soil and contaminate miles of river and shoreline.

## **Minimal Economic Benefits**

The State Department report has helped further debunk the inflated job creation numbers [associated](#) with building the pipeline. The pipeline company, TransCanada, had claimed the project could create [20,000](#) "direct" jobs, though most of them temporary. No government or academic study has projected such a high number. The State Department's final report estimated that the project would directly create 3,900 temporary construction jobs and only 35 permanent and 15 temporary jobs after construction is complete.

In addition, the State Department concludes that the pipeline's construction would contribute 3.4 billion to the U.S. economy. While this sounds like a significant amount, it only represents a 0.02 percent increase in the nation's gross domestic product. The report also noted that most of the tar sands oil transported through the pipeline would be exported and therefore not have a significant impact on fuel prices in the United States. This confirms what President Barack Obama [said](#) in an interview last June:

So what we also know is, is that that oil is going to be piped down to the Gulf to be sold on the world oil markets, so it does not bring down gas prices here in the United States. In fact, it might actually cause some gas prices in the Midwest to go up where currently they can't ship some of that oil to world markets.

## **Public Reaction**

Since the final report's release, activists around the country have organized to let President Obama know about the risks that the pipeline will bring. "No environmental issue in decades has brought—and continues to bring—Americans into the streets in such large numbers," [said](#) 350.org co-founder Bill McKibben.

Also, on Feb. 3, an alliance of Native American communities [promised](#) to block construction of the northern leg of the Keystone XL oil pipeline. "We stand with the Lakota Nation, we stand on the side of protecting sacred water, we stand for Indigenous land-based lifeways which will NOT be corrupted by a hazardous, toxic pipeline," the groups said in a joint statement.

The Northern Plains Pipeline Landowners Group is comprised of Montana landowners whose property the proposed Keystone XL pipeline would cross. "The release of the final EIS means that it is now time for citizens, especially in the affected states with so much to lose, to speak up and let Secretary Kerry and President Obama know that we do not believe this project to be in the national interest," [said](#) Darrell Garoutte, a Northern Plains member in McCone County, MT.

## **What's Next?**

There is a chance that the environmental review will be redone. The State Department will soon release the results of an Inspector General's investigation into whether a conflict of interest was present when State was preparing earlier drafts of the environmental impact statement. Friends of the Earth prompted the inquiry after it obtained documents indicating that the primary contractor for the impact

statement, the ERM Group Inc., has financial ties to the company seeking to build the pipeline. If a conflict of interest is found, a new environmental review may be required.

Should the final EIS report stand, the State Department will use it in its national interest review. The department will consider both the environmental and economic impacts of the project, including its effect on the relationship between the United States and Canada, the nation's largest trading partner.

The agency launched the [30-day comment period](#) on the report and the project on Feb. 5, giving the public the opportunity to offer comments to the State Department on whether the pipeline is in the national interest. Federal agencies will have 90 days to submit their comments. The longer comment period for agencies may be important as the U.S. Environmental Protection Agency has been critical of the State Department's previous reviews of the proposed pipeline.

After the comment periods close, Secretary of State John Kerry will deliver his agency's final recommendation to the president on the pipeline. However, it is the president who will make the final decision.

## **President Obama's Use of His Executive Power: Facts vs. Hyperbole**

**by Katie Weatherford**

President Obama has issued 168 [executive orders](#) since taking office in January 2009, [fewer than any president](#) in office during the past 100 years besides George H. W. Bush. Yet conservative commentators continue to complain that this president has exceeded his executive power. Challenges to the president's executive power are on the rise following his [State of the Union address](#) on Jan. 28 when he vowed to take whatever unilateral action he can to ensure our government operates in the best interests of our citizens. "Wherever and whenever I can take steps without legislation to expand opportunity for more American families, that's what I'm going to do," the president declared.

One of the most notable executive actions Obama unveiled in his address is a forthcoming executive order that will raise the minimum wage of federal contractors to \$10.10 per hour. He also pledged to move forward on implementing his [Climate Action Plan](#) announced in June 2013, which directs the U.S. Environmental Protection Agency (EPA) to set limits on the amount of carbon dioxide emitted from new and existing power plants; the agency has already published the [proposed](#) new power plant rule. The president followed that pledge with a November 2013 [executive order](#) on preparing for the impacts of climate change.

In response, members of Congress have announced plans to file suit challenging the legality of the president's recent executive orders. But courts traditionally interpret the president's executive power broadly and have only invalidated two executive orders in the past. Instead, Congress may find that it has to enact unpopular legislation if it wants to stop the president from exercising his legal authority.

## **The President's Executive Toolkit**

The president's executive power is derived from Article II of the U.S. Constitution. Section I, Clause I provides that "[t]he executive power shall be vested in a President of the United States of America." Section III, Clause V further states that the president "shall take care that the laws be faithfully executed, and shall commission all the officers of the United States." In addition, Congress can also pass laws providing the president with executive authority.

Presidents throughout history have exercised their authority using instruments, such as executive orders, proclamations, and memorandums. These generally direct government officials and agencies in the executive branch to take a specified action. If an official does not comply, the president can remove the officer from his position. Additional reasons for presidential executive orders are: to clarify or further existing law, respond to an emergency such as a natural disaster, or to bypass congressional gridlock.

Although the president is not authorized to make laws, instruments like executive orders, when they are issued in accordance with the president's constitutional or congressionally delegated authority, may have the force and effect of law, which would require a court to take "judicial notice." But many executive orders expressly state, "This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person."

## **Judicial and Congressional Checks to Executive Power**

While a president's executive power is broad, it is not without limits. The Constitution's system of checks and balances provides both the judiciary and Congress with power to override executive actions.

Throughout our nation's history, only two executive orders have been invalidated by the courts, one issued by President Harry Truman in 1952 and another issued by President Bill Clinton in 1996. In the first case, *Youngstown Sheet & Tube Co. v. Sawyer* (343 U.S. 579 (1952)), the U.S. Supreme Court heard a challenge to Truman's executive order directing the Secretary of Commerce to take possession of and operate most steel mills within the U.S. The Court upheld a lower court decision invalidating the order because it constituted executive lawmaking. Yet the case is most cited for Justice Robert Jackson's concurring opinion describing the sliding scale of executive power. According to Jackson,

1. When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate. . . .
2. When the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain. . . .
3. When the President takes measures incompatible with the express or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter. . . .

In 1996, the D.C. Circuit invalidated Clinton's executive order prohibiting the federal government from hiring contractors to replace strikers. The court unanimously held that the executive order was invalid because it conflicted with the Supreme Court's decision in *NLRB v. Mackay Radio & Telegraph Company* (304 U.S. 333 (1938)).

Despite the few court cases invalidating executive orders, some members of Congress are gearing up to file suit challenging some of President Obama's recent executive orders. Rep. Tom Rice (R-SC) recently proposed a resolution, entitled [Stop This Overreaching Presidency](#) (STOP), which directs the House of Representatives to file a civil suit against the executive branch.

Among other actions, the resolution seeks to challenge the president's directive to the Department of Health and Human Services to extend health coverage that would have been terminated or cancelled as a result of provisions in the Patient Protection and Affordable Health Care Act taking effect Jan. 1, 2014.

Nor is Congress limited to challenging these actions in court. Congress has the option of enacting a law that conflicts with an executive order, effectively overriding it. However, if the president vetoed such law, Congress could override the veto only with a two-thirds majority vote, which is politically challenging. Congress could also refuse to appropriate funds for carrying out the order.

## **Conclusion**

Conservative members of Congress have been lobbing over-the-top rhetoric at President Obama during his entire time in office; their outrage about his promise to use the executive power granted him by the Constitution has no basis in reality. President Obama has issued fewer executive orders than any president in the past 100 years except George H. W. Bush. Contrary to their inflamed rhetoric, the examples cited by his opponents as presidential "overreach" are squarely within the president's legal power to "take care that the laws are faithfully executed." Since the courts have traditionally interpreted the president's executive power broadly and have rarely invalidated an executive order, Congress is unlikely to win a legal challenge. Congressional efforts to introduce legislation limiting the president's power in addressing issues like climate change or improved chemical security would likely create a backlash with voters.

## **Is the Federal Civilian Workforce Really Growing? Some Important Context**

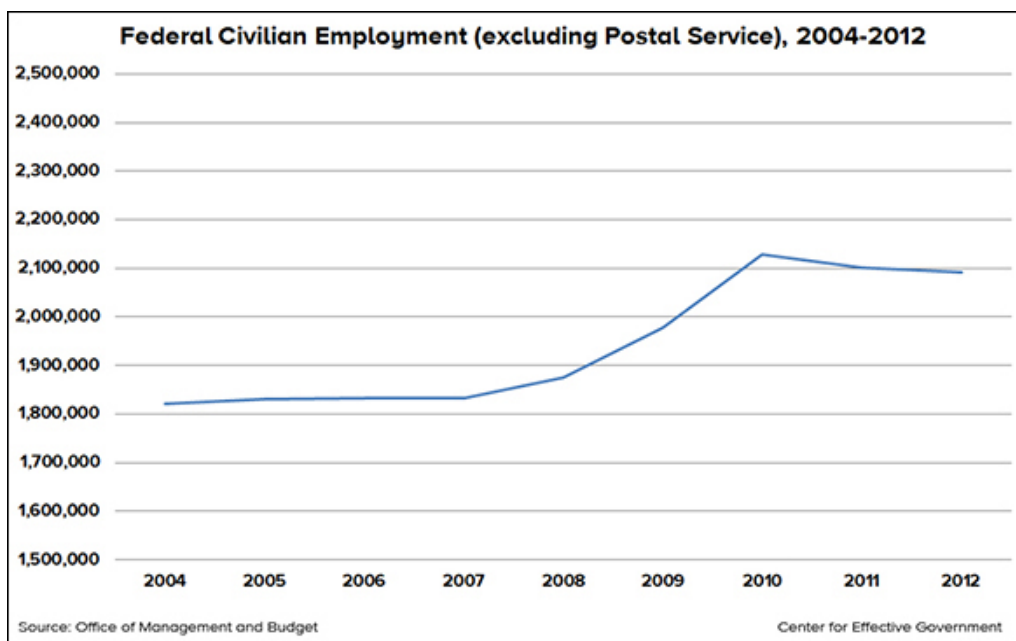
**by Nick Schwellenbach**

Congress's investigative arm, the Government Accountability Office (GAO), recently released its [latest analysis of the executive branch's civilian government workforce](#), and it shows a modest increase between 2004 to 2012. However, the GAO's analysis does not take into account workforce reductions of around [70,000](#) in 2013, [according](#) to the Bureau of Labor Statistics (BLS). When the 28,000 full-time equivalent reductions from 2011 to 2012 are included, there has been a contraction of the federal civilian workforce of around 100,000 in the last three years.<sup>1</sup> The report also leaves out significant context, which might lead readers to draw somewhat different conclusions about how the federal workforce has changed over time.

While the report makes it clear that only three agencies are responsible for the lion's share of growth, significant context is missing, namely: longer-term trends suggest a different picture of public-sector growth, and for-profit federal contract employees are not counted in these numbers. In particular, the picture can change significantly when contractors are included. One also has to dive into GAO's report to discover that most of the modest federal civilian workforce growth occurred between 2007 and 2009 and that numerous government agencies shrunk.

### **Wars and Emphasis on Border Security Have Led to Growth, But Many Agencies Shrunk**

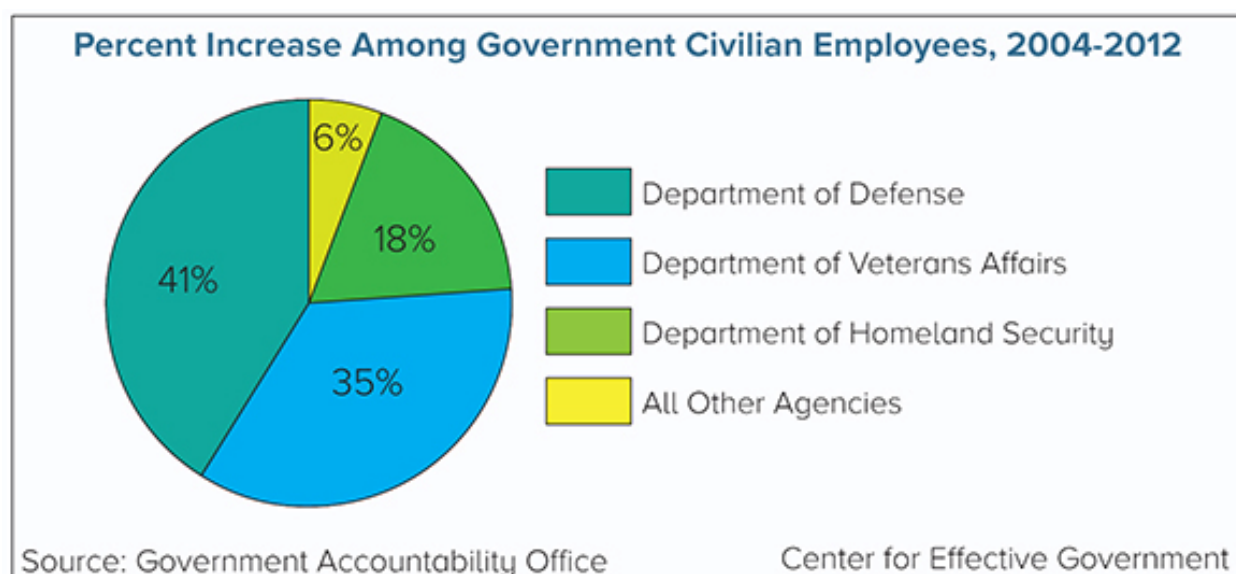
GAO's topline finding shows the federal government has been growing in size. From 2004 through 2012, the number of executive branch civilian employees grew 14 percent, from 1.88 million to 2.13 million, or by almost 257,000. Most of the increase occurred between 2007 and 2010; employment flattened between 2010 and 2011 and declined in both 2012 and 2013.



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Just three of the 24 agencies studied by GAO explain 94 percent of the increase in government employees from 2004 through 2012: the Defense Department (DOD) added about 105,000 employees; the Department of Veterans Affairs (VA) added 90,000 employees; and the Department of Homeland Security (DHS) grew by about 47,000 employees. These departments make up about 60 percent of the federal civilian workforce.<sup>2</sup>





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This growth in employment reflects major policy decisions. The conflicts the U.S. has been in since 9/11 have led to employment growth in the DOD and VA. The DOD added more civilians in part to avoid spending more on uniformed military and contractor personnel. Greater emphasis on border security and other aspects of security explains the personnel growth at DHS.

But even with these increases, DOD has fewer civilian employees than it had in the mid-1990s, when 350,000 civilian positions were eliminated. And as the war in Afghanistan draws to a close, it would be reasonable to see some reduction in the overall total force size, both civilian and uniformed, at the agency.<sup>3</sup>

### **Numerous Government Agencies Have Shed Employees Since 2004**

In contrast to the three national security agencies that added substantial employees since 2004, 10 out of 24 agencies analyzed by GAO had fewer civilian employees in 2012 than in 2004. The decreases are no more than an average of two percent each year, according to GAO, but over several years, the decreases add up. The Center for Effective Government dove deeper into the data on the Office of Personnel Management's [website](#) and looked at the period of September 2003 through September 2013 for the agencies GAO identified as shrinking.



## A Decade of Shrinking Workforces at Several Agencies

Agency	Sep-03	Sep-13	Percent Decrease
Department of Agriculture	113,155	97,231	-14.1%
Department of Education	4,679	4,232	-9.6%
Department of Housing and Urban Development	10,534	8,747	-17.0%
Department of the Interior	78,315	71,766	-8.4%
Department of the Treasury	110,366	98,499	-10.8%
Environmental Protection Agency	18,923	16,950	-10.4%
General Services Administration	12,605	11,824	-6.2%
NASA	18,996	18,009	-5.2%
Social Security Administration	64,903	62,543	-3.6%
Source: Office of Personnel Management's Fedscope Database. Note: While GAO states that the Small Business Administration saw a shrinking workforce from 2004 to 2012, OPM data shows a substantial increase from September 2003 to September 2013.			

The Department of Transportation was unchanged. Aside from the big three agencies that saw increases – DOD, VA, DHS – the remaining 14,258 employee increase was divided between 10 other agencies.

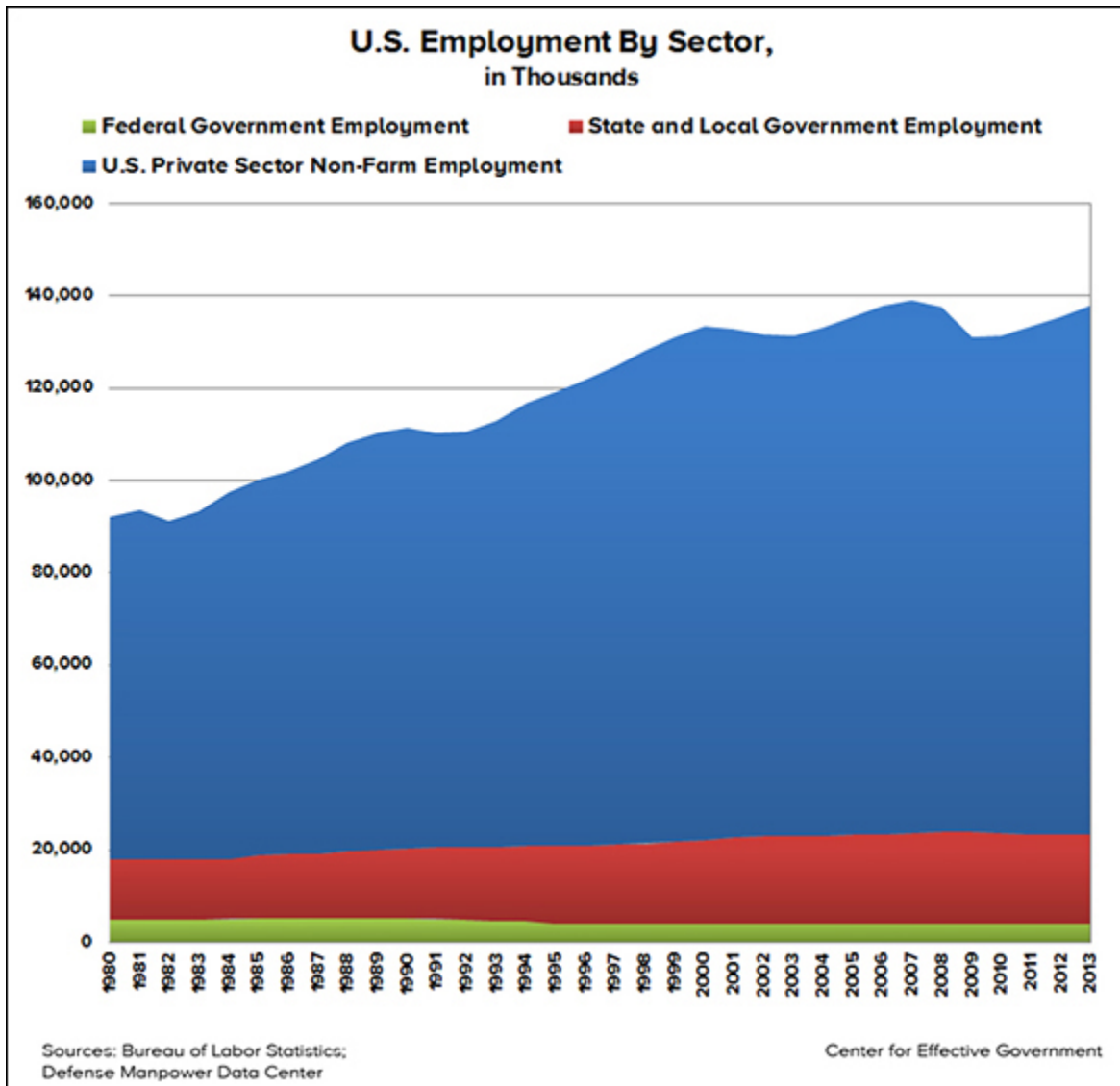
Given that the large increases at the three agencies are the result of policy decisions as GAO states, one must consider whether the declines at the ten agencies and mild increases elsewhere also represent explicit policy decisions, made as a result of laws or other changing organizational mission, or whether these workforce cuts were just responses to austere budget realities since 2011.

### Over the Decades, the Federal Workforce is a Declining Share of the Employed Population

The overall 14 percent growth in federal government employees from 2004 through 2012 should be put in context: the U.S. population grew by about 7.2 percent during this time. When 2013 reductions are factored in, along with continued population growth in 2013, the difference between the two is even smaller, somewhere around 10 percent government workforce growth to 8.4 percent population growth. **If you take out DOD, DHS, and VA, there was only 4.4 percent growth in the federal workforce during the 2004 through 2013 period.**

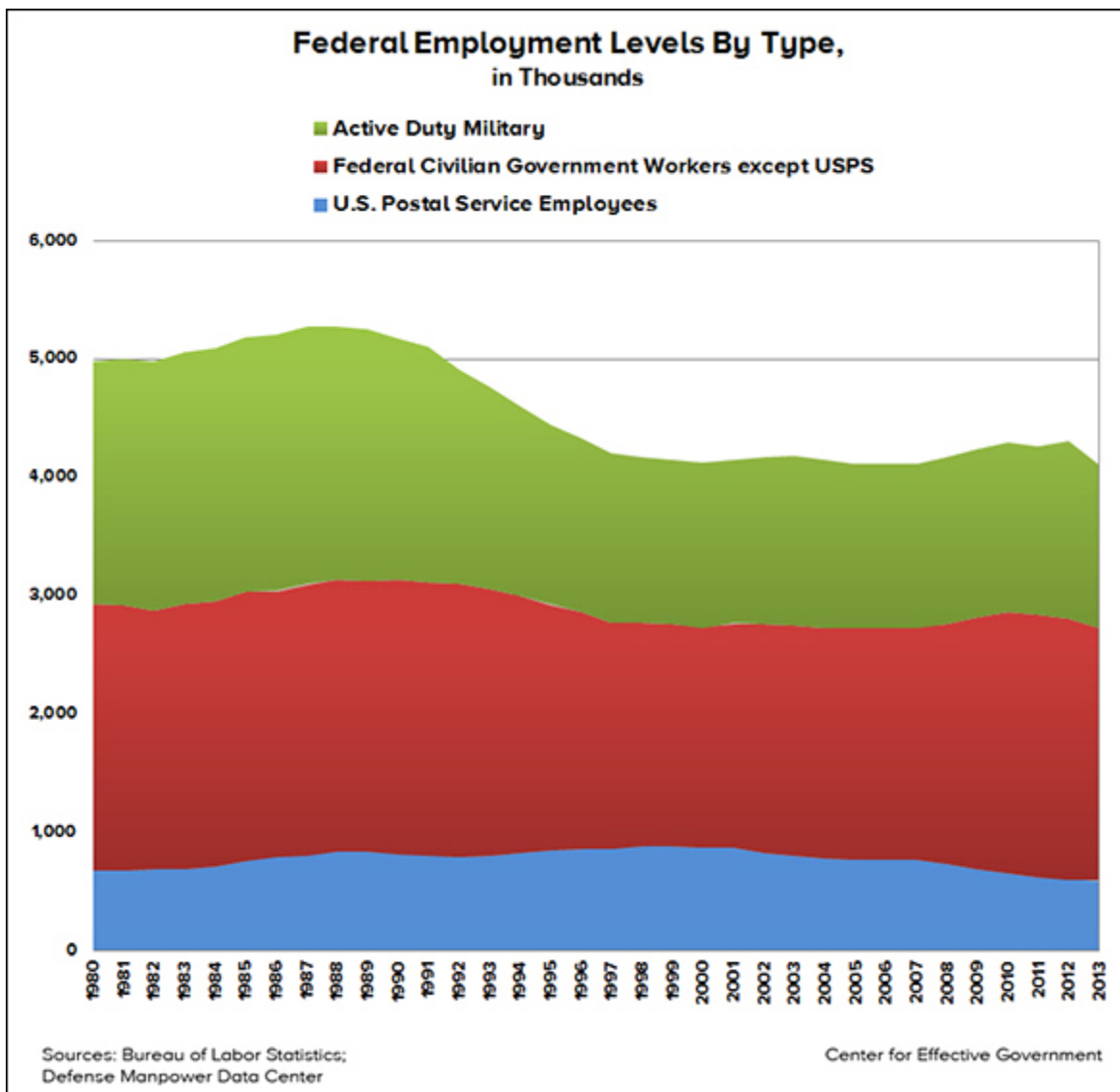
BLS [projects](#) a substantial drop of hundreds of thousands in the federal workforce (including the Postal Service, which was not examined by GAO) by 2022. While decisions on workforce size should not be made on what fraction of the population it represents, it's important to realize that over the last several decades, the federal workforce is a shrinking portion of those employed overall in the economy.

The point here is not just jobs – but needs. The federal workforce serves the nation – it needs to be appropriately sized to deal with the challenges we face. For instance, when the number of inspectors falls while an industry grows in size – everything else being equal – it's not unreasonable to expect more problems to arise.



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The GAO report and this analysis generally refer to the federal workforce as the part of the federal sector excluding the Postal Service and the uniformed military. Whether including the uniformed military and the Postal Service or not, federal employment has shrunk in absolute terms over the last several decades. Total public employment as a share of the population is at its lowest level since the late 1960s.



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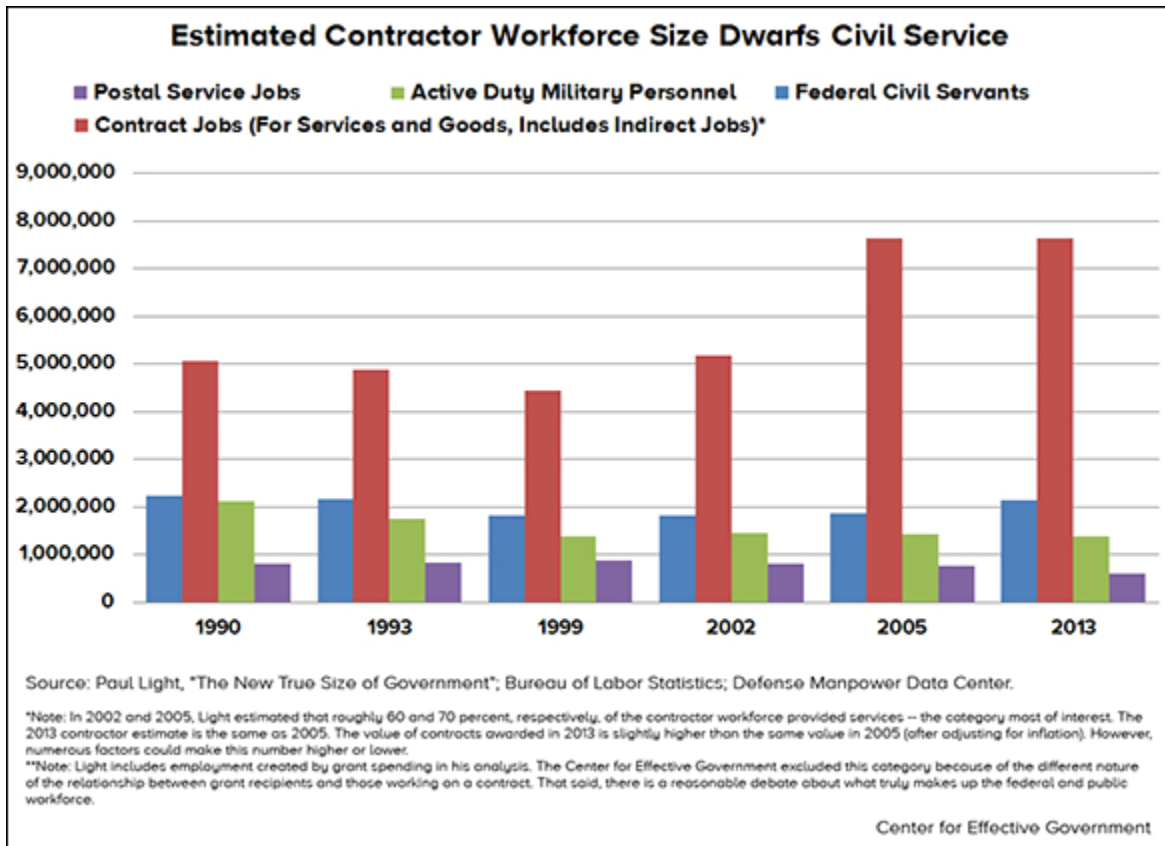
### **Taxpayers Spend More on Contractors than on Federal Government Employees**

While the number of federal government employees outside the three national security departments has been relatively flat, the number of employees of government contractors and subcontractors has grown sharply in recent years.

The federal government spends more on contract employees than it does on public employees. In fiscal year 2011 alone, GAO stated that [non-DOD agencies spent](#) \$126 billion on service contractors and [DOD spent](#) \$184 billion, for a total of \$310 billion. In contrast, the total cost of federal civilians (excluding the Postal Service), including pay and benefits, was about \$240 billion [that same year](#).

While the federal government has always contracted out to the for-profit sector for services, it is being done on a scale never before seen.

Contractors provide both goods – such as tanks, paperclips, fuel, etc. – and others provide services from laundry to management assistance to food services. In 2011, DOD's service contractor workforce was [estimated](#) to be 710,000 – nearly as large as its government civilian workforce, and this may be understated.<sup>4</sup> The last detailed attempt to come up with a federal government-wide estimate of the service contractor workforce was in the mid-2000s. New York University Public Policy Professor Paul Light [estimated](#) that in 2005, the number of contracted employees providing services to the government "increased by almost 2.5 million, up from 3 million in 2002 to more than 5.4 million in 2005."



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An important note: Light's estimate includes indirect-contract generated employment (such as at subcontractors), which explains why his numbers are so large.

Another one of his now nearly decade-old findings: "most non-defense departments and agencies lost small numbers of contract-generated jobs between 2002 and 2005, while several others gained...The [Department of Homeland Security] produced 140,000 contract jobs during the period, most due to the war on terrorism." It is currently unclear what has transpired in the decade since Light's analysis.<sup>5</sup>

Indeed, as GAO and others have noted in [numerous reports](#), lack of quality information on service contractors in particular has led to at least a decade of poorly informed decision making regarding federal spending, workforce levels, and the ability of federal agencies to perform their missions.

## Conclusion

The GAO report suggests the number of federal government employees grew modestly between 2004 and 2012. And most of the growth in the size of the federal workforce can be explained by policy decisions that expanded the role and function of three government agencies charged with national security, especially between 2007 and 2009.

It is unclear whether employee reductions at other federal agencies were related to policy decisions or were simply driven by the need to cut the federal budget somewhere. Future agency staffing levels should be based on assessments of whether an agency is sufficiently staffed to meet its statutory responsibilities to the American public.

The dramatic increase in outsourcing of government jobs and functions merits a robust public debate, too. Unfortunately, we don't have quality data with which to evaluate whether our increased reliance on government contractors delivers cost-effective services and adequate public accountability. Until we have this data, decision makers will not be able to make informed decisions about staffing and budgets – especially at agencies where contractors are heavily used.

*For an expanded analysis, stay tuned for an upcoming briefing paper, "Federal Civilian Workforce Trends: The Big Takeaways and Context," from which this article is derived.*

## Notes

1 Notes: BLS relies on a different measure for counting employees than GAO – i.e., people employed versus full-time equivalents, although the numbers are close. GAO's analysis does not include postal workers, employees of the judicial or legislative branches, intelligence agency workers, uniformed members of the armed services, or contractors. In general, the numbers can vary somewhat by source and how they are counted – however, for the purposes of this analysis, trends are the most important consideration, rather than absolutely precise numbers.

2 "Departments" and "agencies" are used interchangeably in this article.

3 Personnel cost is just one consideration in determining the future personnel mix at DOD; capability, flexibility, risk, and control are also considerations that DOD and other agencies that utilize substantial numbers of contractors to provide services that could be provided by government employees will need to take into account.

4 The estimates by DOD and other agency "inventories of contracted services" are typically considered substantially inaccurate, although there have been efforts, especially within DOD, to improve their accuracy.

5 As the Congressional Research Service stated in 2011 after recounting Light's work, "It is unclear whether the number of federal contractors has increased, decreased, or stayed the same since 2005." See [http://assets.opencrs.com/rpts/RL34685\\_20110419.pdf](http://assets.opencrs.com/rpts/RL34685_20110419.pdf).



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