GOVERNMENT MATTERS

In This Issue

Revenue & Spending

Citizen Health & Safety

Open, Accountable Government

Austerity Politics: Automatic Spending Cuts, a Government Shutdown, Job Loss, and Record Corporate Profits

by Scott Klinger

2013 opened with the economy poised on the edge of "the fiscal cliff," and on that cliff was a sign reading, "Manufactured in Washington D.C." How did we start the year on a ledge, land in a shutdown in October, and scramble to a mini-deal in December? Since it all goes back to the Budget Control Act passed in August of 2011, a short recap may be in order.

The Source of Austerity Policies

In 2011, the House of Representatives refused to raise the debt ceiling without promises of long-term cuts in federal spending. But the House Republicans and Senate Democrats could not decide on the depth or nature of the spending reductions. So a complex piece of legislation named the Budget Control Act created a congressional "Super Committee" to come up with a plan to cut spending before the "temporary" (i.e., 10-year) tax cuts passed by the Bush administration in 2001 and 2003 expired. The

thinking was that deep cuts to defense programs championed by Republicans and to social programs cherished by Democrats would be so painful that they would never materialize. Conventional wisdom was wrong. It hadn't counted on the depth of antipathy toward government by the Tea Party wing of the Republican Party.

At the end of 2012, Congress found it had painted itself into a corner: either let the Bush tax cuts expire or accept deep automatic spending cuts – the fearsome cliff approached. Who would blink first? The Center for Effective Government and other allied groups argued that the Bush tax breaks for households earning more than $250,000 annually should be allowed expire, and we produced a report outlining measures that agencies could take to mitigate the short-term impact of the automatic spending cuts, or "sequester." The *Boston Globe*, *Politico*, and *The Washington Post* featured our work and commentary.

But the deal that was cut in the early hours of 2013 left 82 percent of the Bush tax cuts in place, requiring deep cuts to myriad discretionary spending programs.

Spending Cuts on Autopilot

In March, with the House and Senate appropriations bills still miles apart, the across-the-board automatic spending cuts kicked in. We responded by beginning to gather stories of the impact on agencies, communities, and families. We gathered these stories on our Sequestration Central webpage, and they became a valuable resource for citizens and for journalists.

A significant impact of the sequester in 2013 was the downsizing of the government workforce. Hundreds of thousands of government employees experienced furloughs totaling a few days to a few weeks. Some government offices closed for entire days throughout the summer and fall; others reduced their service hours. To avoid laying off public servants, many agencies adopted policies of attrition, which strained the workforce, sometimes leading to delays in service or backlogs. Cuts in federal government programs impacted states, leading to more cuts to jobs at the state and local levels. Since the Great Recession, an estimated 300,000 teachers (state and local employees) have lost their jobs. In 2013 alone, the Bureau of Labor Statistics reports the loss of 94,000 federal government jobs, one of the reasons unemployment remains stubbornly high. The number of federal government employees per 100 Americans has fallen to its lowest level in more than 50 years.

The Center for Effective Government organized a letter calling for an outright repeal of sequestration cuts and obtained support from more than 200 national, state, and local organizations.

By April, both the House and Senate had passed budget outlines for the first time in the last four years, and the White House unveiled its annual budget blueprint (a few months late); the progressive and conservative wings of each House caucus released their budget visions, as well. We published a comparison of the various budget proposals and the philosophy behind each. While the budgets offered very different visions of the federal government, there were some points of agreement: both progressive and conservative budgets targeted excessive agribusiness subsidies for cuts.

Over the summer, we documented the impact of the sequester cuts with our "What's at Stake" series of reports on the impact of cuts on Meals on Wheels nutritional assistance for elderly Americans, transportation and housing spending, and enforcement of worker safety laws.

Meals on Wheels cuts resulted in 4 million fewer meals being served to elders facing hunger. The $10 million saved by these cuts was dwarfed by the potential increased costs faced by Medicaid. Meals on Wheels is one of the most cost-effective government programs, making it possible for thousands of Americans to remain at home, rather than moving into costly nursing homes. Our analysis found that Meals on Wheels cuts could force more than 40,000 elderly Americans into skilled nursing facilities that would cost Medicaid $479 million in 2013 alone.

Our report on transportation infrastructure highlighted the dramatic differences between House and Senate budget proposals. With more than 11 percent of the nation's bridges rated structurally deficient, the Senate allocated $500 million to address this crucial unmet need, while the House budget offered no equivalent funding. This echoes an overall divergence in Senate and House spending priorities for the Housing and Urban Development budget, where the Senate proposed a 10.5 percent budget *increase*, while the House offered a 14.7 percent budget *cut*. Long-term cuts in federal funding of public housing (down 12 percent between 2008 and 2012) have contributed to a shortage of rental housing and rents that are rising faster than inflation. The House budget proposal would have eliminated rental subsidies for 125,000 low-income Americans.

Mandatory budget cuts also took their toll on the government's regulatory functions. Our report on the impact of budget cuts at the Occupational Safety and Health Administration (OSHA), the agency charged with enforcing worker safety laws, found that the U.S. had fewer workplace safety inspectors in 2012 than in 1981, when President Reagan came into office, even though the number of U.S. workplaces has doubled over the last three decades. Federal cuts to OSHA's budget have trickled down to state worker safety regulators both in terms of reduced revenue sharing and fewer training programs offered by the federal government, for the benefit of both state regulators and private industry.

The research conducted for our "What's At Stake" series and throughout the process of collecting stories for Sequestration Central was shared in visits to more than 50 congressional offices. This allowed us to present our research and give progressive leaders on Capitol Hill additional tools and confidence to decry sequestration's impacts.

Over the summer, the Center for Effective Government examined ways to save money at the federal level that could be used to replace automatic sequester cuts, such as canceling and replacing wasteful defense programs like the F-35 Joint Strike Fighter, getting rid of excessive agribusiness subsidies, and changes in Medicare that would not affect the benefits people receive.

Government Shutdown

With the end of summer came the end of the government's fiscal year and its authority to spend additional funds. Eighty-one members of the House publicly committed to blocking a vote on funding the government unless the Affordable Care Act was defunded. This minority of one party in the House shut down the federal government in a futile effort to repeal one law.

Without funds to continue work, 800,000 government workers across the country were idled the morning of Oct. 1. Americans got a quick lesson that the federal government was not just about Washington, D.C., but about federal public servants in cities and towns across America. In the hours before the shutdown, the Center for Effective Government gained access to a list of federal government

workers by county. We used this data to create an interactive map showing where federal employees work. We also found that the districts represented by the 81 House members that forced the government to shut down had 6,300 federal workers, on average, nearly a third more than the typical congressional district.

Throughout the shutdown, we gathered information on the far-reaching impacts on families, communities, and the economy. We provided perspective on the shutdown by reporting on the impacts of increased uncertainty on the economy, emphasizing the widespread impacts on families, drawing attention to the potential impact on veterans, launching a landing page for the shutdown, echoing reports of economic damage, and collecting best resources for readers.

As the shutdown entered its second week, a second peril drew into the nation's focus: a default on U.S. government debt as the debt ceiling was reached. We examined the lasting potential impact of a default on the nation's debt, including higher interest rates on everything from student loans to home mortgages.

The president refused to negotiate on the Affordable Care Act, and after two weeks, as the harm to communities, families, and public workers was being documented, on the eve of default, the House Speaker allowed a vote on a temporary government funding measure and an extension of the debt ceiling. The bill passed the House with bipartisan support, 285-144.

The Center for Effective Government recognized that the shutdown of the federal government created a "teachable moment" for many Americans about what government does and its importance. And we decided it was time to tackle the austerity frame head on.

We challenged austerity-loving CEOs who are calling for cuts to Social Security benefits and increases to the Social Security retirement age by comparing their personal retirement assets with those of typical American retirees. *Platinum Pensions*, a report we co-published with the Institute for Policy Studies, found that CEOs who are members of the Business Roundtable, a powerful lobbying group that represents the interests of its 200+ CEO members, have, on average, $14.5 million in their company retirement accounts, enough to generate an $86,043 monthly retirement check once they turn 65. This golden nest egg is 1,200 times what the average retired American can expect.

We launched our latest website, OurGovernmentMatters.org, on Dec. 3 with the release of a report that explored whether cutting taxes on corporate profits creates jobs. We found that the 30 large firms with the highest corporate tax rates between 2008 and 2010 created nearly 200,000 jobs over the last five years, while the 30 corporations with the lowest tax rates shed more than 50,000 jobs.

A companion piece to this report was released on Dec. 11. It examines the unmet needs for infrastructure investments that have resulted from these austerity budgets and discusses the positive effects on the economy and job creation when we invest in education, infrastructure, and social safety net programs.

In upcoming months, the Our Government Matters campaign will feature reports looking at waste involved in excessive contracting and the money that could be saved by in-sourcing public services, as well as potential new sources of government revenue from user fees.

The campaign's website, OurGovernmentMatters.org, offers grassroots advocates, public employees, elected officials, and others new resources that we hope will help change the conversation about government to acknowledge the role of collective action in fighting hunger, protecting vulnerable populations including our seniors, and more. We dished up our first helping of these new resources with the pre-Thanksgiving release of "Table Talk: Four Ways to Respond to Friends and Relatives Raging Against Government Over the Mashed Potatoes."

What Lies Ahead

We began the year by outlining steps that government agencies could use to mitigate the impact of the sequester. We are deeply pessimistic about the ability of agencies to continue to rely on what were largely one-time fixes to complete their missions in a climate of austerity, however. Attrition, furloughs, delays in equipment repair and maintenance, underinvestment in research and technology for the future, and a tolerance for backlogs are strategies for dealing with short-run crises, but these are not elements of long-term budget solutions.

The recently announced budget deal – which, as of publication, still requires Senate approval – would forestall many of the additional sequester cuts that would have kicked in next month, but the deal leaves untouched cuts made since 2011.

Many cuts, especially those in training new employees and neglecting research and development in medicine, physics, and ecology, will deliver harsh impacts for years to come. For instance, in response to the cuts in 2013, both the Federal Aviation Administration (FAA) and the FBI curtailed their training academies, which will lead to a shortage of trained air traffic controllers and FBI agents as current workers reach retirement age.

As we end the year, the deficit has fallen to its lowest level since before the Great Recession, thanks in part to the tax increases at the start of the year. Nonetheless, authorities ranging from the Congressional Budget Office (CBO) to the International Monetary Fund (IMF) have drawn attention to the dangers of short-run crisis budgeting and the importance of government investment in public structures for long-term growth and future economic development and competitiveness.

As the human and community costs of austerity become clearer, we believe we have an enormous opportunity to educate Americans on the importance of effective government in protecting families and communities from harm and in investing in the public structures that ensure equitable growth from the middle class out.

Nick Schwellenbach and Jessica Schieder contributed to this article.

Standards and Safeguards in 2013

by Katie Weatherford

Agencies rolled out few health, safety, or environmental standards in the first quarter of 2013, despite hopes that President Obama would commit more attention to agencies' regulatory agendas after

winning reelection. But in the spring, the gears began to move as the administration focused on implementing crucial public protections and the new director of the Office of Information and Regulatory Affairs (OIRA), Howard Shelanski, made good on his promise to cut the backlog of rules waiting for review at OIRA. With the gridlock on legislation in Congress, many are looking for the administration to be more active in moving rules and action through the executive branch.

However, ongoing budget constraints have eroded the ability of some agencies to issue new standards and to enforce existing safeguards. The federal government shutdown highlighted the importance of the government's role in protecting public health and safety. But industry lobbyists and their allies in Congress have continued to campaign against important safeguards that protect our public health and environment, and new threats are emerging at the state level and in international trade negotiations.

Small but Critical Successes in 2013

First Steps Taken to Combat Climate Change

During President Obama's second inaugural address in January, he promised the nation that if Congress failed to take action to combat climate change, he would. In June, he delivered on this promise, announcing his Climate Action Plan with a realistic strategy for reducing domestic carbon pollution, preparing to mitigate the impacts of climate change, and participating in international efforts to address the problem. A critical component of the plan is the president's directive to the U.S. Environmental Protection Agency (EPA) to set limits on greenhouse gas (GHG) emissions from new and existing coal-fired power plants.

On Sept. 20, only a few months after Gina McCarthy was confirmed as EPA Administrator, the agency proposed strong but achievable GHG limits for *new* power plants. EPA is expected to propose the GHG limits for *existing* power plants next June. The Center for Effective Government, along with many other public interest and environmental advocacy organizations, will be carefully watching to ensure EPA meets this deadline.

Slight Resurgence in Workplace Health and Safety Standards

In August, the U.S. Occupational Safety and Health Administration (OSHA) finally announced a proposal to protect workers from exposure to crystalline silica. Every year, silica dust kills hundreds of workers and sickens thousands. The rule was under development for over a decade and then was stuck "in review" at OIRA for an additional two years. The new standards would lower the limit of silica dust that workers are permitted to breathe and lay out methods for controlling exposure. OSHA estimates that once its full effects are realized, the proposed rule will save almost 700 lives and prevent 1,600 new cases of silicosis (a deadly lung disease) each year. However, given the contentious history of the proposal, a final rule is not likely to be completed until 2015 since the proposal will undergo an extensive public comment and hearing process in 2014, with OSHA then needing to consider the input it receives and send the rule back to OIRA for a second review before finalizing the rule.

OSHA has also recently increased online access to valuable data for companies and workers and is working to streamline injury and illness reporting requirements. OSHA's two new web tools include an online toolkit to identify safer chemicals that can be used in place of more hazardous ones and a

reference table with OSHA's permissible exposure limits (PELS) on the amount or concentration of certain substances in the air. The latter also shows the California Division of Occupational Safety and Health PELs, National Institute for Occupational Safety and Health recommended exposure limits, and American Conference of Governmental Industrial Hygienist threshold limit values. These resources will allow employers to easily access information that they need to ensure their facilities are not exposing workers to health threats.

OSHA is currently working on a rule that will improve the tracking of workplace injuries and illnesses by transitioning to an online system that will allow employers to submit such information electronically. Under the proposal, establishments with more than 250 employees will be required to submit their injury and illness records online every quarter. Smaller establishments that operate in an industry with high injury and illness rates and employ 20 or more people would be required to electronically submit an annual summary of injuries and illnesses to OSHA.

However, given budget constraints, OSHA's ability to perform inspections and issue adequate penalties for violations is limited – its ratio of inspectors to facilities fell from one inspector for every 1,900 workplaces in 1981 to one for every 4,300 facilities in 2012. Given these constraints, OSHA must rely on workers to play a more active role in ensuring their workplaces are safe and healthy. In October, the Center for Effective Government released a report entitled *Securing the Right to a Safe and Healthy Workplace: Improve State Laws to Protect Workers*, which explores the constraints on OSHA to protect workers from retaliation for reporting health or safety concerns and calls for better state-level protections for workers.

New OIRA Administrator Commits to Reducing Excessive Review Delays

A number of rules that would have strengthened health, safety, and environmental protections were stalled in the regulatory review process during 2012 and the first half of 2013.

Under Executive Order 12866, OIRA review is limited to 90 days with a possible 30-day extension, but rules are routinely delayed beyond the 120-day deadline. A research report prepared for the Administrative Conference of the United States (ACUS) documented dramatic increases in both the average time for completion of OIRA regulatory reviews as well as in the number of rules for which reviews exceeded the 90-day limit between 2011 to first half of 2013 (see figure below).

Figure 3: Both Average Review Time and Percentage of Completed Reviews Lasting More Than Six Months Have Increased
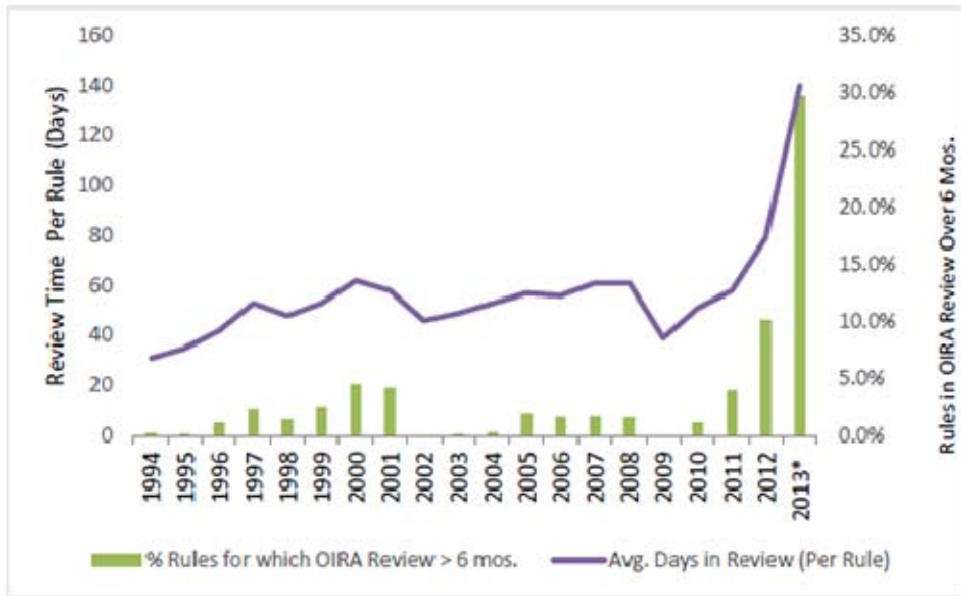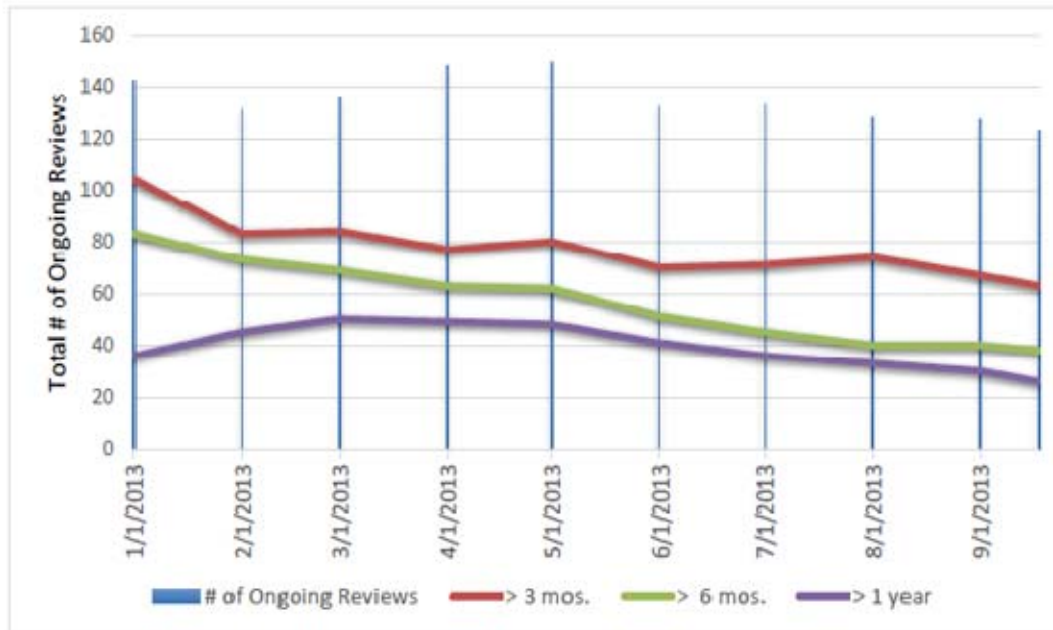

Source: Administrative Conference of the United States, Office of Information and Regulatory Affairs

Some regulatory agency officials interviewed for the report indicated that OIRA required agencies to "get permission" to submit a rule, and that in some cases, this permission was contingent on the inclusion of all changes OIRA was requesting, thus completely circumventing the formal process and time frames set by the executive order.

In addition to documenting recent increases in delays and political pressure exerted by OIRA staff, the report highlighted long-standing concerns about the lack of transparency in the OIRA review process. Executive Order 12866 includes transparency provisions that direct OIRA to document communications with outside parties, provide the public with a current status of rules under review, and encourage agencies to disclose changes OIRA made to a rule during the review process. OIRA often fails to comply with these transparency rules.

OIRA released some long-delayed proposed rules soon after Howard Shelanski was confirmed in June as the OIRA Administrator, suggesting that Shelanski is committed to moving rules through the review process more efficiently. This improvement is especially critical for rules needed for moving forward on overdue health, safety, and environmental standards. While recent improvements at OIRA in reducing rule review delays are laudable, substantial procedural and transparency issues still need to be addressed.

Figure 5: Number of Extended Ongoing Reviews Has Declined During 2013

Source: Administrative Conference of the United States, Regulatory Information Service Center

Continued Regulatory Roadblocks

The Impact of Budget Cuts on Crucial Public and Environmental Protections

As a result of funding cuts over the past few years, many agencies began 2013 without adequate resources to effectively issue and enforce important safeguards. Agency budgets were squeezed even further beginning on March 1, when $85 billion in automatic, across-the-board spending cuts known as "sequestration" went into effect for 2013 budgets. The Congressional Budget Office warned that sequestration cuts in 2013 alone would cost 750,000 jobs and reduce economic growth by 0.6 percent, damaging the fragile economic recovery.

Although sequestration has been lifted for two years, upcoming appropriations battles mean that regulatory agency budgets in 2014 are still uncertain. The inability of federal agencies to conduct environmental pollution and workplace safety inspections, as well as respond quickly to disease outbreaks, during the government shutdown highlighted the importance of the government's role in protecting public health and safety. The non-defense discretionary budget – which funds regulatory agencies – is still on track to be the lowest it has been in decades and could erode the enforcement and improvement of crucial public and environmental protections.

Big Business Strategy to Undermine Agency Science: The "Small Business" Ruse

As in 2012, attacking agency scientific assessments by calling into question the underlying data and offering last-minute, industry-sponsored studies remained a popular strategy for corporate lobbyists to gain additional time to influence the process.

In January, the Center for Effective Government released a report highlighting the unwarranted influence of trade associations representing large chemical companies over officials at the Office of Advocacy, an independent office within the Small Business Administration. This little-known office is responsible for ensuring that small businesses have a voice in the regulatory process and that federal agencies consider ways to address small business concerns when proposing and enforcing regulations. However, our investigation found that the office was involved in technical, non-regulatory scientific assessments of the cancer risks of formaldehyde, styrene, and chromium at the behest of trade associations. Industry also worked to delay agency rules under development by calling for more opportunities for stakeholder input and lobbying agencies, OIRA, and members of Congress.

Regulatory "[D]eform" Legislation Reintroduced in 2013

Several harmful bills targeting the regulatory process were reintroduced in 2013. Sen. Rob Portman (R-OH) reintroduced the Regulatory Accountability Act (RAA), which would impose over 60 new procedural and analytical requirements and ultimately bring the entire rulemaking process to a halt. Rep. Todd Young (R-IN) brought back the Regulations from the Executive in Need of Scrutiny (REINS) Act, which prevents any major rule from going into effect unless it receives congressional approval within 70 days. Sen. Chuck Grassley (R-IA) and Rep. Doug Collins (R-GA) reintroduced the Sunshine for Regulatory Decrees and Settlements Act, which would impose costly and time-intensive procedural hurdles on settling a lawsuit challenging an agency's noncompliance with a congressional mandate, such as failing to issue a rule to reduce an unnecessary risk to human health, safety, or the environment by a statutory deadline. The effect would be to limit citizens' rights to hold agencies accountable for violating the law while enhancing corporations' rights to intervene in the litigation solely for the purpose of delaying an agency from issuing a legally required rule.

Emerging Threats to State-Level Regulations

The attack on environmental and public health standards and safeguards is shifting to the states. In November, the Center for Effective Government released a report entitled *ALEC's Latest Trojan Horse: The Attack on Standards and Safeguards Moves to the States*, which highlights special interest groups' recent push for "reform" legislation that would expand or institutionalize requirements that delay and weaken important regulations and increase the already outsized influence of corporations in setting environmental, food, consumer, and worker safety policies.

Proposed TSCA Reform Bill Threatens State Toxics Laws

On May 23, the late Sen. Frank Lautenberg (D-NJ) and Sen. David Vitter (R-LA) introduced the Chemical Safety Improvement Act (CSIA) of 2013, a bill to update the nation's primary and outdated chemical safety law, the Toxic Substances Control Act (TSCA). Modernizing TSCA to better protect the public is a laudable goal. However, as the Center for Effective Government has explained, the proposed legislation, as currently written, fails to address several key deficiencies in the existing law and threatens to undermine state chemical safety laws and protections intended to fill the gaping holes in the federal law. Among many harmful provisions in the bill, it would interfere with states' rights to set chemical laws, even when EPA has set no federal minimum standard.

For example, under California's primary chemicals law, Proposition 65, the state publishes a list of chemicals known to cause cancer or reproductive harm. Companies must notify state residents about significant quantities of the listed chemicals found in consumer products or building materials, or significant releases into the environment. CSIA would prohibit a state like California from issuing or enforcing restrictions on chemicals that EPA has classified as either high- or low-priority for a safety assessment and determination, as well as creating or enforcing a restriction on the manufacture, processing, distribution, or use of a chemical once the safety determination is completed. In other words, this proposed legislation would preempt protective state laws without requiring that EPA adopt comparable protections.

The bill is currently stalled in committee, and a revised version of the bill is expected in early 2014. However, even if the revised bill eliminates the state preemption provisions, state chemicals laws are still at risk of being preempted in ongoing trade negotiations between the U.S. and the European Union (EU).

Trans-Atlantic Free Trade Agreement (TAFTA) Targets Domestic Safeguards

In July, the U.S. began negotiations with the European Union to forge a bilateral trade agreement, the Trans-Atlantic Free Trade Agreement (TAFTA) (also referred to as the Transatlantic Trade and Investment Partnership, or TTIP). However, because tariffs between the U.S. and EU nations are already quite low, the agreement will target consumer and environmental protections under the erroneous and unsubstantiated belief that weakening public protections is good for business.

The United States Trade Representative (USTR) has noted that regulation of toxic substances will likely be raised during negotiations this month. Since the trade negotiations are being carried out in secret with hundreds of industry representatives and only a few public interest delegates, it appears the goal is to lower the bar regarding restrictions on the ability of chemical companies to manufacture, produce, and sell toxic chemicals on both sides of the Atlantic.

Thus, in addition to the threat of state preemption in the TSCA reform bill, the U.S.-EU trade agreement also seeks to preempt state chemicals laws and regulations. Any legislation or trade agreement that overrides state chemical regulations would represent a major step backward in protecting the public's health and the environment.

The next round of TAFTA negotiations began on Dec. 16 in Washington, D.C., and the Center for Effective Government, along with numerous U.S. and EU public interest groups, will continue to raise awareness about the troubling provisions to be included in this pro-business trade deal.

(For more information about how TAFTA threatens consumer and environmental protections, visit our TAFTA resources webpage at http://www.foreffectivegov.org/tafta-factsheets.)

Looking Ahead

In 2014, industry campaigns to subvert the regulatory process are likely to continue at all levels of government. It is critical that public interest advocates work to translate technical issues into language that the public understands and hammer home the fact that responsible businesses can be profitable

and work within existing and even improved health, safety, and environmental standards. In 2014, CEG will be working with partners at the local, state, and federal levels to ensure that environmental and health and safety laws are implemented as quickly and efficiently as possible so that we can have smart, sustainable regulatory policies in place that protect and enhance the public interest.

Katie Greenhaw and Ronald White contributed to this article.

Citizen Access to Information: A Rollercoaster in 2013

by Sean Moulton

What a rollercoaster of a year it was for citizen access to public information. Early in the year, a flurry of activity around improving freedom of information requests took place but then slowed down. Likewise, we are being teased with the possibility of serious improvements in the accuracy of federal spending datasets. We thought we were going to get better disclosure of fracking chemicals on federal lands, but good rules failed to materialize. After 38 years, legislation to reform the Toxic Substances Control Act has been introduced, but with preemption clauses, it could actually end up reducing protections. The information leaked by Edward Snowden has led to tough questions and pressure for better oversight of our national surveillance agencies, but to date no action has occurred. And the government shutdown shut down federal agency websites, leaving citizens in the dark. Here is our take on the biggest ups and downs in open government for 2013.

Freedom of Information Act (FOIA): Hurry Up and Wait

The Freedom of Information Act was purportedly a priority for both the executive and legislative branches in 2013, although nothing made it over the finish line. Our report analyzing the FOIA performance of major federal agencies found that agencies were processing more requests and reduced the number of unprocessed requests; at the same time, they were using exemptions to redact or withhold information more often. In March, the House Committee on Oversight and Government Reform approved the FOIA Oversight and Implementation Act. While taking steps to improve agency compliance, encourage proactive disclosure, and strengthen oversight, the bill lacks any enforcement mechanisms. The Senate Judiciary Committee held hearings and expressed disappointment at the lack of progress in improving agency response times since passage of FOIA reform legislation in 2007; however, the committee has not introduced any new legislation on the issue.

The administration made significant commitments to modernize and improve the FOIA process in the Dec. 6 Open Government National Action Plan, including the creation of a centralized online FOIA service, the development of government-wide FOIA regulations, improved FOIA training, and the establishment of a FOIA Modernization Advisory Committee.

In September, the Government Accountability Office (GAO) criticized the Office of Government Information Services (OGIS) for failing to establish any plans for comprehensive agency FOIA reviews, as it had been tasked by Congress to do. While a good ombudsman for requesters, OGIS has limited resources and may need to redefine its function in FOIA oversight.

The 16-day government shutdown in October halted FOIA processing at several agencies and all OGIS activities. FOIA processing was deemed "non-essential" during the shutdown.

Spending Transparency: Maybe Coming

Several events occurred in 2013 that could pave the way for greater fiscal transparency. Late in the year, the House finally passed the Digital Accountability and Transparency (DATA) Act . The act directs the executive branch and Treasury Department to improve federal spending transparency, including creating standards for spending data and recipients. The legislation has received the support of the GAO.

The administration has begun trying to improve USAspending.gov, a website dedicated to making federal contracting information available to the public. The Treasury Department took responsibility for the website from the Office of Management and Budget in the fall and included "improving the user experience at USAspending.gov" as a goal of the Open Government National Action Plan. The administration also committed itself to publishing federal contract data not currently available, although it did not specify what the additional information will include.

Medicare may also be subject to greater transparency, as a U.S. District Court lifted a 34-year injunction that barred the release of information about payments to providers. On Dec. 12, House and Senate committees reported bills that would require Medicare to disclose such payments online. These bills are expected to move to the floor in early 2014. At $555 billion in expenditures, Medicare is an ideal candidate for greater transparency of its non-patient spending, especially since increased public scrutiny can detect and deter fraud.

Fracking: State Rules without Enforcement and a Weak Proposed Federal Standard

States across the country are requiring more stringent oversight of hydraulic fracturing (commonly referred to as fracking), but real enforcement is still lacking.

Earlier this year, California and Illinois passed the most stringent fracking disclosure laws in the country, but both contain loopholes to weaken their bite. The good: both states require baseline water quality testing prior to drilling, tighter trade secrets exemptions, and online disclosure on a state website. The bad: it's still difficult for medical professionals to get the information on the chemicals used, even when they are treating patients exposed to dangerous substances during emergencies.

Although a legal exemption in the 2005 Energy Bill prevents the federal government from regulating fracking waste under most environmental laws, the Bureau of Land Management (BLM) proposed a rule in May to regulate fracking on public lands. Unfortunately, the proposed rule failed to require companies to disclose the chemicals being used prior to fracking or to allow emergency health professionals access to chemical information. The BLM rule, which advocates hoped would be a model for states, has been assailed as a capitulation to the oil and gas industry. Many public interest groups, including the Center for Effective Government, provided the BLM with detailed recommendations for improvements. The rule has not yet been finalized, but observers are doubtful that the agency will fix the identified problems.

Tired of waiting for stronger state or federal protections, even more communities across the country passed bans or moratoriums on fracking activity in 2013. In November's election, voters in three Colorado cities – Boulder, Fort Collins, and Lafayette – approved anti-fracking initiatives by wide margins, ignoring an industry campaign that cost over $800,000. However, state governments and corporations have been quick to challenge these efforts in the courts. The State of Colorado has already filed a lawsuit against the city of Fort Collins for approving its five-year moratorium on fracking. A disturbing pattern of corporate lawsuits challenging the electoral preferences of the majority of voters in local communities is emerging.

Preventing Chemical Disasters: An Opening

Several explosions this year highlighted the risks to communities from hazardous chemicals and the need to shift to safer chemical alternatives in production processes and in products. In April, an explosion at a fertilizer plant in West, TX killed 15 people and injured more than 160. Then in June, an explosion at a chemical facility in Geismar, LA killed two workers and injured 114 others. These incidents revealed that first responders and government officials are unaware of the risks of the chemical facilities located in population centers.

In response to these tragedies, on Aug. 1, President Obama signed Executive Order 13650, Improving Chemical Facility Safety and Security. The order required three agencies – the U.S. Environmental Protection Agency (EPA), Department of Homeland Security, and the Department of Labor's Occupational Safety and Health Administration (OSHA) – to identify policy changes that will improve government coordination of chemical safety rules, to modernize hazardous chemical regulations and standards, and to work with stakeholders to identify best practices. Public listening sessions and webinars are being held around the country to gather input from stakeholders on how to prevent chemical disasters.

The Center for Effective Government, working with the Coalition to Prevent Chemical Disasters, has provided testimony and materials for these public "listening sessions" that emphasize the need to switch to safer chemicals and production processes. Using safer chemicals could keep millions of Americans out of harm's way. A poll released in October shows that the majority of Americans favor strong federal requirements requiring plants to switch to safer alternatives when available and affordable.

To help better inform the public about the dangers of hazardous chemicals in their communities, the Center for Effective Government is producing a series of interactive maps of major toxins (anhydrous ammonia, chlorine, and hydrogen fluoride) reported to the EPA's Risk Management Program. For the Texas listening session, we produced a Texas state map showing that thousands of schools and more than a hundred hospitals were within a one-mile radius of a high-risk chemical facility.

Protecting the Public from Toxic Substances: Starts and Stops

On May 23, the late Sen. Frank Lautenberg (D-NJ) and Sen. David Vitter (R-LA) introduced the Chemical Safety Improvement Act (CSIA) of 2013 that would reform the 1976 Toxic Substances Control Act (TSCA), our primary and extremely dysfunctional chemical safety law. Most environmental and

health advocates viewed the legislation as massively flawed and believe it represents a significant retreat from the much stronger Safe Chemicals Act of 2013, which Lautenberg introduced in April.

Unlike that earlier legislation, the CSIA fails to protect vulnerable populations that may be particularly susceptible to chemical exposures, such as children, developing fetuses, or those that might receive disproportionately high exposures, such as low-income communities living near toxic facilities. But most troubling, the new legislation would preempt state chemical laws.

The CSIA has also evoked opposition from Senate Environment and Public Works Committee Chair Barbara Boxer (D-CA). Boxer is adamantly opposed to the preemption provisions, since California currently has the strongest chemical laws in the country. Because the California market is so large, most national companies adhere to its standards. If California's laws were preempted, chemical risks would increase for the residents of the state and for millions of other people across the country. The Senate and House held several hearings on the legislation and chemical reform efforts in general. Negotiations to improve the legislation involving Sens. Boxer, Vitter, and Tom Udall (D-NM) have continued with no clear end in sight.

Effective Use of Technology: Progress and Pitfalls

The highlight of the administration's efforts to improve agencies' use of new information technologies was the May release of President Obama's executive order on data management. It provides a framework for agencies to improve public access to, and use of, government data; it asks for dataset inventories and directs agencies to plan for public release of data from the earliest stages of information collection, which could lead to major improvements in the accessibility of public information.

Unfortunately, the most infamous tech story of the year was the bumbled launch of Healthcare.gov in October. The federal health insurance market exchanges, created under the 2010 Affordable Care Act to allow consumers to easily compare insurance plans, debuted with frustrating glitches and sluggish service for users. The head of the agency that developed the site apologized for the problems, and the administration quickly undertook remedial efforts to patch the flaws. By the beginning of December, the most egregious problems seemed to be fixed, but some nagging issues remain.

Of course, Healthcare.gov is not the first time the federal government has struggled to launch a new technology. This example might be the prime exhibit to make the case for rebuilding the internal capacity of government information dissemination – something we called for in our 2008 recommendations to the incoming president. In fact, there have been steps taken to improve implementation of information technology, though not necessarily through increased internal capacity at agencies. As a direct result of the health care site problems, President Obama has said that he plans to pursue broader reforms in the way government procures technology. Furthermore, as part of its Dec. 6 Open Government National Action Plan, the administration pledged to improve federal websites and update website policies in 2014. While neither effort has specifically required increased internal IT capacity, there is no doubt that overseeing IT procurement and updating federal websites would be significantly easier if agencies had more qualified personnel.

Other agencies actually did exemplary work developing useful, citizen-friendly public websites. The Consumer Financial Protection Bureau's expansion of its complaint disclosure database is an excellent example.

The Center for Effective Government is monitoring executive agency efforts to provide helpful, easy-to-use disclosure websites. We launched our E-Gov Spotlight feature in the fall and reviewed new online tools like the EPA's enforcement database, a one-stop-shop for government benefits assistance, and Recalls.gov. There are positive examples of advances; unfortunately, they did not receive much public attention.

National Security Surveillance: Scrutinized Itself

In June, disclosures by former National Security Agency contractor Edward Snowden began to generate headlines around the world – and continued throughout the year. The disclosures revealed stunning new information about the scope of U.S. government surveillance activities and ignited vigorous debates about the merit, legality, and oversight of this kind of domestic and international surveillance. Many leaders and organizations called for increased scrutiny and better oversight of surveillance policies and programs.

The fallout from the Snowden (and other) disclosures is ongoing, but it may be creating the pressure for serious reforms. President Obama initially emphasized that the surveillance program had safeguards built in, but the White House now says it welcomes debate on the issue.

In June, the independent Privacy and Civil Liberties Oversight Board – with a full slate of members after lying dormant for years – met with the president and recommended that "every effort be made to publicly provide the legal rationale for the programs." The Board's review of the programs is ongoing. Additionally, in August, President Obama established a special review group, which provided its recommendations in December; the White House has said it will publish those recommendations in January 2014.

In October remarks to the Open Government Partnership conference, Secretary of State John Kerry admitted that some surveillance activities had "reached too far" and indicated that the administration would seek to restrain surveillance by the national security community in some way. Several reform bills have been introduced in Congress, most prominently the USA FREEDOM Act, introduced by Rep. Jim Sensenbrenner (R-WI) and Sen. Patrick Leahy (D-VT). House leaders are reportedly under pressure to call up such measures for consideration. On Dec. 6, as part of its new Open Government National Action Plan, the Obama administration committed to publishing aggregate data about certain surveillance activities annually and to continue to declassify related information. We are eager to see how the ride will end.

Gavin Baker, Sofia Plagakis, and Peter Thomas contributed to this article.

New Report Recommends Best Practices for Executive Agency Freedom of Information Act Regulations

by Elizabeth Hempowicz

Americans deserve easy access to public information. For that to happen, executive agencies need effective procedures for responding to requests for information under the Freedom of Information Act (FOIA). Although several agencies have adopted some good practices, most agency FOIA regulations are outdated and unfriendly to the public. To encourage agencies to improve their FOIA procedures, a goal under the president's 2nd National Action Plan on Open Government, the Center for Effective Government released a new report on Dec. 9, *Best Practices for Agency Freedom of Information Act Regulations*.

Under the Freedom of Information Act, anyone can request information from a federal agency, which is supposed to promptly provide the information requested unless it is specifically exempted by law. However, each agency adopts its own rules for responding to FOIA requests. These rules and practices can vary widely and either facilitate or prevent the public's access to information under FOIA.

Our new report includes recommendations for more effective FOIA regulations, drawing on the best practices in operation today, and includes model language. The recommendations cover topics such as improving communications with requesters, providing simple procedures for appealing FOIA decisions, and proactively disclosing information in advance of any FOIA request. If implemented, the recommendations would make the FOIA process more predictable and straightforward for the American people and increase the disclosure of public information.

Why FOIA Rules Are Important

While FOIA creates a right for citizens to access government information, the practical application of the law varies between agencies. There is no uniform FOIA regulation, so agency-specific rules are at the heart of FOIA implementation. These rules serve as the agency "how-to" guide for handling FOIA requests.

Agencies can use FOIA regulations to adopt leading practices in order to become more open and transparent. Presently, however, many agency regulations aren't even up to date with the current law.

Additionally, the differences between agencies' FOIA regulations can be confusing for those requesting information. For example, some agencies allow electronic submission of requests, while others require written requests. While one agency will send an acknowledgement letter when it receives a request, another agency may send no communication until it has made a determination, weeks after the original request. Creating and implementing effective agency regulations is vital to FOIA's success as a tool for promoting transparency and access to information.

How to Improve FOIA Regulations

The report addresses eight key areas where agencies can increase transparency by adopting best practices in their FOIA regulations:

1. Expand proactive online disclosures to make information more easily accessible.

2. Use the Internet to respond to requests more efficiently by allowing requesters to submit requests and appeals online, providing online tracking, and using e-mail as a default way of communicating.

3. Acknowledge and track requests by promptly noting that they have received requests and making it easy to view the progress of a request.

4. Clearly and proactively communicate with requesters and be certain that agency staff understand what information is being requested if there is any confusion.

5. Apply the presumption of disclosure, prevent the destruction of records, and adopt a foreseeable harm standard for withholding information.

6. Limit and streamline confidential business information claims to ensure that these claims are reasonable and are not being abused to withhold or delay access to information that should be public.

7. Adopt clear fee procedures so requesters understand the potential costs of fulfilling a FOIA request and how they can avoid such fees.

8. Improve administrative appeals and methods of resolving disputes with requesters.

Adopting these recommendations would reinforce the commitment to transparency that President Obama promised when he took office and when he recently issued the 2nd National Action Plan on Open Government under the international Open Government Partnership. While the recommendations are not an exhaustive list of all the changes necessary to bring agency FOIA implementation up to date, they can be a starting point for reform.

The report also raises three necessary best practices that have yet to be clearly established or widely implemented: making fee assessments fair and timely, avoiding inappropriate administrative closure of requests, and avoiding the inappropriate application of exemptions. In the spirit of cooperation and transparency, the report calls for input from agencies, those requesting information, and FOIA leaders on these underdeveloped best practice areas.

Next Steps toward Better FOIA Implementation

The report highlights agencies that meet the best practice standards and offers concrete suggestions to those agencies that have not yet adopted such standards. Through the recommendations, model language, and implementation language, the report aims to help bring FOIA regulations up to date and contribute to a transparent and user-friendly FOIA system. This report can also serve as a model for the upcoming common FOIA regulations under the National Action Plan. The report's best practices can be used as benchmarks to gauge agency progress, as well as the strength of the regulations adopted agency by agency.

Gavin Baker contributed to this article.