CONTINUING OVERSIGHT OF REGULATORY IMPEDIMENTS TO JOB CREATION: JOB CREATORS STILL BURIED BY RED TAPE

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

JULY 19, 2012

Serial No. 112–161

Printed for the use of the Committee on Oversight and Government Reform

Available via the World Wide Web: http://www.fdsys.gov
http://www.house.gov/reform

U.S. GOVERNMENT PRINTING OFFICE

75–465 PDF WASHINGTON : 2012

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

DARRELL E. ISSA, California, *Chairman*

DAN BURTON, Indiana
JOHN L. MICA, Florida
TODD RUSSELL PLATTS, Pennsylvania
MICHAEL R. TURNER, Ohio
PATRICK T. MCHENRY, North Carolina
JIM JORDAN, Ohio
JASON CHAFFETZ, Utah
CONNIE MACK, Florida
TIM WALBERG, Michigan
JAMES LANKFORD, Oklahoma
JUSTIN AMASH, Michigan
ANN MARIE BUERKLE, New York
PAUL A. GOSAR, Arizona
RAÚL R. LABRADOR, Idaho
PATRICK MEEHAN, Pennsylvania
SCOTT DESJARLAIS, Tennessee
JOE WALSH, Illinois
TREY GOWDY, South Carolina
DENNIS A. ROSS, Florida
FRANK C. GUINTA, New Hampshire
BLAKE FARENTHOLD, Texas
MIKE KELLY, Pennsylvania

ELIJAH E. CUMMINGS, Maryland, *Ranking Minority Member*
EDOLPHUS TOWNS, New York
CAROLYN B. MALONEY, New York
ELEANOR HOLMES NORTON, District of Columbia
DENNIS J. KUCINICH, Ohio
JOHN F. TIERNEY, Massachusetts
WM. LACY CLAY, Missouri
STEPHEN F. LYNCH, Massachusetts
JIM COOPER, Tennessee
GERALD E. CONNOLLY, Virginia
MIKE QUIGLEY, Illinois
DANNY K. DAVIS, Illinois
BRUCE L. BRALEY, Iowa
PETER WELCH, Vermont
JOHN A. YARMUTH, Kentucky
CHRISTOPHER S. MURPHY, Connecticut
JACKIE SPEIER, California

LAWRENCE J. BRADY, *Staff Director*
JOHN D. CUADERES, *Deputy Staff Director*
ROBERT BORDEN, *General Counsel*
LINDA A. GOOD, *Chief Clerk*
DAVID RAPALLO, *Minority Staff Director*

CONTENTS

CONTINUING OVERSIGHT OF REGULATORY IMPEDIMENTS TO JOB CREATION: JOB CREATORS STILL BURIED BY RED TAPE

Thursday, July 19, 2012,

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The committee met, pursuant to call, at 9:45 a.m., in Room 2154, Rayburn House Office Building, Hon. Darrell E. Issa [chairman of the committee] presiding.

Present: Representatives Issa, Platts, Jordan, Walberg, Lankford, Gosar, Labrador, DesJarlais, Ross, Kelly, Cummings, Towns, Maloney, Norton, Kucinich, Tierney, Connolly and Murphy.

Staff Present: Ali Ahmad, Majority Communications Advisor; Robert Borden, Majority General Counsel; Molly Boyl, Majority Parliamentarian; Lawrence J. Brady, Majority Staff Director; Sharon Casey, Majority Senior Assistant Clerk; Katelyn E. Christ, Majority Professional Staff Member; John Cuaderes, Majority Deputy Staff Director; Brian Daner, Majority Counsel; Adam P. Fromm, Majority Director of Member Services and Committee Operations; Linda Good, Majority Chief Clerk; Christopher Hixon, Majority Deputy Chief Counsel, Oversight; Mark D. Marin, Majority Director of Oversight; Kristina M. Moore, Majority Senior Counsel; Kristin L. Nelson, Majority Counsel; Sharon Meredith Utz, Majority Professional Staff Member; Rebecca Watkins, Majority Press Secretary; Krista Boyd, Minority Deputy Director of Legislation/Counsel; Claire Coleman, Minority Counsel; Kevin Corbin, Minority Deputy Clerk; Ashley Etienne, Minority Director of Communications; Susanne Sachsman Grooms, Minority Chief Counsel; Carla Hultberg, Minority Chief Clerk; Lucinda Lessley, Minority Policy Director; Dave Rapallo, Minority Staff Director; and Ellen Zeng, Minority Counsel.

Chairman ISSA. The Committee will come to order.

The Oversight Committee exists to secure two fundamental principles: first, Americans have a right to know the money Washington takes from them is well spent and, second, Americans deserve an efficient, effective government that works for them. Our duty on the Oversight and Government Reform Committee is to protect these rights. Our solemn responsibility is to hold government accountable to taxpayers, because taxpayers have a right to know what they get from their government. Our job is to work tirelessly in partnership with citizen watchdogs to deliver the facts to the American people and bring genuine reform to the bureaucracy.

In Congress, we hear every day from our constituents, Americans, their concern for their jobs and the lack of job creation. June figures show unemployment has remained unchanged at 8.2 percent. That means that 12.7 million Americans are unemployed. And far more have quit looking. Almost 42 percent have been unemployed for 6 months or more.

The verdict is in: Keynesian economics, when applied the way the President's stimulus plan applied it, clearly will not work. Jobs created in the public sector for a year kept a job for a job, but did not create lasting employment in America, and certainly not in the private sector.

For those of us who understand small business, they are responsible for over half of all job creation. Government can create an environment in which job creation is logical, desirable, and the goal of every small businessman, or government, through its out-of-touch statements and actions, can create an uncertainty. That uncertainty, without a doubt, will cause small and not so small businesses to do the minimum and protect themselves from the downside.

Today that is what we see in America. Whether intended or not, this Administration has created an environment of uncertainty. Not just through regulations that are the creation of current legislation. Not even the regulations from laws passed long ago. But, in fact, regulations coming out of thin cloth, coming out of places that no one knows where they came from; legislation that was passed generations ago suddenly creating new and innovative requirements on business.

Additionally, there has been a growth in the kind of non-regulation regulation, often called guidance, or sometimes through Executive Order, that can come with no notice, can be just as compelling, just as draconian as any new piece of red tape coming from a long process with public comment and then, lastly, bureaucrats run amok. In this Administration, bureaucrats seem to have an open door to simply do what they want to do; to say you must do something or to delay a decision time and time again. Dates and mandates within the statute are often ignored, so when you ask for and you plan on starting production on a given date, it simply doesn't happen.

This happened to Shell Oil in Alaska. It wasn't until hearings were scheduled, and virtually on the day, that they suddenly got a permit to start something for which they had lost at least one full season and countless millions of dollars.

This and other pieces of red tape are part of the unintended consequences of an Administration that gives only lip service to the word red tape. Only today, only today, and I will ask unanimous consent that the article be placed in the record. Without objection, so ordered. Today, the White House launches a new website in an effort to streamline regulations. I recognize this because, in fact, our Committee launched that with little fanfare, but the disdain of some in the Administration that we would actually go out and actively ask trade associations and employers in America to tell us what the impediments to job creation were more than two years ago. We have more than 1,000 responses from that, and today I have instructed my staff to forward at least a sampling of those to

the Administration to upload it to their website in the hopes that what they didn't seem to read for the last two years they would read today.

Forty-four percent of likely voters believe EPA regulations are hurting the economy and 53 percent of registered voters say federal regulations are one of the major reasons the economy is struggling. According to the National Federation of Independent Business, regulations and red tape are one of the single most important problems to small business.

As a former small businessman, I know that to be true. Give me as few uncertainties and I will be bold in every other way. Each uncertainty in a private business causes you to be less willing to take other risks that occur every day in putting your own capital at risk in new and innovative products or programs. Today we will hear from a distinguished panel who live that nightmare.

One of our challenges here on this Committee is to get out enough to the field and to get people here that can tell us what they deal with every day in the heartland. I am pleased that our Committee has held more field hearings to listen to more job creators than any of our predecessors since I have served in Congress, but it isn't enough. This hearing isn't enough. We have to go from this hearing to real regulatory relief or the American people will continue to see the hundreds of billions of dollars that could be invested in new and innovative products, in new services, spent, in fact, on lawyers, accountants, and other people complying with regulations; and dollars will continue to pile up, not invested, but simply waiting for an opportunity and a certain environment.

I would be remiss if I didn't also mention that agencies like the National Labor Relations Board, who took it on themselves to personally attack one of America's finest companies, our largest exporter, simply because they wanted to expand to a State that wasn't union friendly to their liking. Ultimately, South Carolina did add those 3,000 jobs, and I have no doubt whatsoever that the Boeing plant there, in the years to come, will be doing just fine.

I recognize the Ranking Member for his opening statement.

Mr. CUMMINGS. Thank you very much, Mr. Chairman. One of the first hearings this Committee held this Congress was a hearing much like this one. The title of the hearing was even similar: Regulatory Impediments to Job Creation. I said then that an effective regulatory review should include several basic elements: it should examine both cost and benefits; it should base conclusions on solid data; and it should seek input from a wide variety of sources.

Eighteen months have passed, but, unfortunately, not much has changed. Today's hearing is the 29th hearing our Committee has held during the Congress on the impact of regulations. Yet, in every single one of those hearings the Committee's approach has been lopsided and unbalanced. The Committee has focused on the cost of regulations without considering the benefits. The Committee has solicited input only from witnesses who want to weaken or repeal regulations, but not those who wish to strengthen protections for children, small businesses, the economy, and American families.

In these 29 hearings, the Committee invited 107 witnesses to testify in favor of rolling back health, safety, and economic protections. We in the Minority were left to bring some semblance of bal-

ance to those proceedings, but we were permitted to invite only 17 witnesses to provide alternative perspectives. Again, today you invited five industry representatives to discuss their desire to weaken or repeal regulations and we were allowed only a single witness to represent the other side of this important question.

In May the Committee sent 187 letters, almost exclusively to industry organizations, asking for examples of regulations that "continue to negatively impact job growth." These letters went to companies like Conoco Phillips and industry groups like the Society of Chemical Manufacturers and Affiliates, and the American Fuel and Petrochemical Manufacturers. In response, these industry groups targeted a host of regulations that provide basic health and safety protections such as child labor laws, standards for lead in children's toys, air and water quality standards, and lead paint renovation rules.

But the Committee sent no letters to organizations representing the other side, such as the American Academy of Pediatrics or other children's advocacy groups that could testify about the benefits of those rules and how children could be harmed by weakening them.

Of course, the Chairman has every right to conduct this Committee's activities as he sees fit, but in my opinion the Committee loses credibility when its actions are so blatantly and explicitly one-sided; and losing that credibility means the American public is less likely to take our results seriously.

In the Committee's letter, the Chairman referred to a "regulatory tsunami that does not appear to be slowing down." If this is a tsunami, then I wonder what a drought looks like. OMB data shows that the current Administration has approved fewer rules than in either of President Bushes' terms. A report published last month by Public Citizen found that 78 percent of the rules with statutory deadlines last year were not in fact issued by the statutory deadline and that OMB's Office of Information and Regulatory Affairs is taking longer to review rules than ever before.

It is this kind of inaccurate rhetoric that drives the constant stream of anti-regulatory legislation considered by the House this Congress. Next week, the House will consider legislation to prevent federal agencies from issuing regulations until the unemployment rate is under 6 percent. This bill does not make any sense. Why in the world would you take a regulation to protect children from toxic chemicals, for example, and prevent it from taking effect until the national employment rate reaches some arbitrary threshold?

The problem is that the Republican approach is based on a faulty premise: that regulations kill jobs. This myth has been widely discredited by economists on both sides of the aisle.

I ask unanimous consent to insert in the record a report issued in April by the Institute for Policy Integrity entitled The Regulatory Red Herring: The Role of Job Impact Analysis and Environmental Policy Debates.

Chairman ISSA. Without objection, so ordered.

Mr. CUMMINGS. Thank you, Mr. Chairman.

This report found that the current rhetoric linking regulations to job losses is indeed misleading.

Mr. Chairman, the time has come for Congress to change course and to focus on reality instead of myths and inaccurate rhetoric. We need to work together to conduct legitimate oversight that is focused on creating jobs and protecting the health and safety of American families. We can indeed do both; we do not have to choose one or the other.

With that, I yield back.

Chairman ISSA. I thank the gentleman.

I now ask unanimous consent that the Committee's report be placed in the record. Without objection, so ordered.

And as a point of personal privilege, I suspect that the Ranking Member, in his opening statement, was not objecting to any breach of protocol, since one witness at most was, and often not one witness, is what was received when we were in the Minority. The gentleman was not implying that Mr. Towns, when he was in the Majority, treated the Minority any differently, is he?

Mr. CUMMINGS. No, Mr. Chairman. I am looking for the today when I become the Chairman and we will make sure that we have that balance.

[Laughter.]

Chairman ISSA. I am looking forward to the day in which a chairman in your party somehow does allow more than one witness.

With that, I recognize the subcommittee chairman, Mr. Jordan, for his opening statement.

Mr. JORDAN. Thank you, Mr. Chairman.

Mr. Chairman, I want to thank you for your continued leadership, focusing this Committee's efforts on the plight of job creators struggling to survive under a mountain of red tape. The Subcommittee on Regulatory Affairs has held 10 separate hearings and listened to job creators from across the Country to better understand what is stopping them from putting more Americans back to work. We held these hearings because, like you, we know that it is not the Federal Government that creates jobs. Rather, it is the small business entrepreneur who is responsible for over 50 percent of job creation in this great Country.

Most of our constituents are not employed by Fortune 500 companies; rather, they are employed by the local restaurant, manufacturers, or home builders whose CEO is part of the community and one of their neighbors. These folks tell me that they are not hiring any more workers because of the regulatory uncertainty created by this Administration. I have heard from folks in the manufacturing industry explain that it is the never-ending cascade of EPA regulations that drive up the cost of energy, eliminating their competitive advantage over foreign manufacturers. I have heard from truck drivers who have had every incentive to maximize fuel efficiency and driver safety tell me that the DOT and the EPA are putting them out of business with their multiple mandates that impose a great cost with very little return in benefits.

While the President may be trying to convince himself that the private sector is just fine, constituents in Ohio and across the Country know firsthand that this is just not the case.

So, again, I want to thank you for this hearing. And if I could, Mr. Chairman, I know the very first hearing this Committee held this Congress, January of 2011, we had five small business owners

from around the Country come in and speak. One happened to be from our district, Jack Buschur, Buschur Electric; started his company 30 years ago; successful, but he was just like the other four on that committee. And it was a great hearing, about three hours, but if you remember, Mr. Chairman, I think the most compelling question came at the end of that hearing, where a colleague of ours who is not here today, Mr. Guinta, asked a simple question. He said, to the five witnesses who were there that day, he said, gentlemen, I just want to know one thing. You all have been in business 25, 30, 35 years, successful leaders in your community, like many of the folks we have with us today. He said, I just want to know one thing: If you knew then what you know now, would you have started?

It was, again, a question that cut right to the heart of the matter. If you knew back then all the hoops and the hassles and the hurdles and obstacles and baloney that government was going to make you deal with, would you in fact have been that entrepreneur, taken the risk, started your business, taken out that loan, worked and struggled like you did to create this business, employ people, and become a leader in your community and someone who helps a lot of— would you have done it all over again? And if you remember the response, Mr. Chairman, every single one of those witnesses said I don't think I would have done it. And if that is not a sad indictment on the greatest Country in the world that we are making it that difficult for entrepreneurs to start a business and create jobs and help their community and help our Country, I don't know what is.

So, again, I want to thank you for your efforts and the efforts of this Committee in focusing on this issue of red tape and the regulatory burden that faces so many of our job creators and small business owners out there; it is entirely appropriate.

With that, I would yield back.

Chairman ISSA. Would the gentleman yield?

Mr. JORDAN. I would be happy to yield.

Chairman ISSA. Just one question. Do you remember, in these over 100 witnesses, them being interested in eliminating safety or somehow rolling back the health and protection in any of their complaints on regulations even once?

Mr. JORDAN. Not even once, Mr. Chairman. In fact, as you well know and as I am sure our witnesses will testify to today, employers are focused on safety because they understand the value that their employees bring to their business, and the value and quality that they add to their product or to their service. So they get that simple fact. It is unfortunate that some in government don't understand that basic phenomenon.

Mr. DESJARLAIS. Would the gentleman yield?

Mr. JORDAN. I would be happy to yield to the gentleman from Tennessee.

Mr. DESJARLAIS. Because I like simple math, there was an observation made about the fairness of the folks that were pro-regulation, anti-regulation in terms of witnesses. I think we had 170 or so witnesses that were here that complained about regulations and 17 who were in favor of regulations. In my job creators tour around Tennessee's Fourth, I went to about 40 businesses and I was sit-

ting there going through my head, and these were businesses that had unions and otherwise. Only four did not complain about regulations. From my simple math, that is 10 percent, so I think maybe the proportion of witnesses in this case happened to work out fine.

I yield back.

Mr. JORDAN. I thank the gentleman for his point and yield back to the Chairman.

Chairman ISSA. I thank the Chairman.

Does anyone else seek recognition?

[No response.]

Chairman ISSA. With that, we will now introduce our esteemed panel.

We would like to welcome Mr. Paul Yarossi. He is President of HNTB Holdings, Ltd. in New York, New York City. He has been testifying on behalf of the American Road & Transportation Builders Association. I think that was one of the groups that we asked if there were impediments to job creation.

Mr. Jim Hamby is Chief Executive Officer of Vision Bank in Ada, Oklahoma, a place I was fairly near not too long ago, like this past weekend, meeting with job creators.

Mr. Billy Pirkle is Senior Director of Environmental Health and Safety of Crop Production Services, Inc. in Loveland, Colorado. He is testifying on behalf of the Agricultural Retailers Association.

Mr. Howard Williams is Vice President & General Manager of Construction Specialties, Inc. in Muncy, Pennsylvania.

Mr. Steve Russell is Vice President of Plastics Division of the American Chemistry Council here in Washington, DC, one of the organizations we often go to for facts and figures on industry.

And Mr. Barry Rutenberg is the owner of Barry Rutenberg & Associates, Inc. in Gainesville, Florida. He is testifying on behalf of the National Association of Home Builders.

Pursuant to our rules, I would ask you all to rise, raise your right hand to be sworn.

Do you solemnly swear or affirm the testimony you are about to give will be the truth, the whole truth?

[Witnesses respond in the affirmative.]

Chairman ISSA. Let the record reflect that all witnesses answered in the affirmative.

Please be seated.

Now, thanks to C–SPAN, every time I say this I get to smile, because you all know how this works. There are lights in front of you. It will be a countdown clock. They are going to go green, yellow, red. When they are green, say anything you want to say, whether it is included in your prepared statement or not. When it turns yellow, the way Mr. Lankford probably would describe it, hurry up and don't get caught underneath the red light in the intersection. When it gets to red, if you haven't finished up, please go to that last page where you say, in summation, and make it short. It is a large panel today. We are very happy to have all of you, but we would like to get to the questions on both sides of the aisle.

Mr. Yarossi.

WITNESSES STATEMENTS

STATEMENT OF PAUL A. YAROSSI

Mr. YAROSSI. Thank you. Chairman Issa, Ranking Member Cummings, members of the Subcommittee, I am Paul Yarossi, President of HNTB Holdings. I am here today representing the American Road & Transportation Builders Association.

ARTBA, now in its 110th year of service, represents all sorts of U.S. transportation construction industry, all the sectors which sustain more than 2.2 million American jobs. ARTBA recognizes federal regulations play a vital role in the fabric of our society. In the transportation area they provide a sense of predictability and ensure a balance between meeting our Nation's mobility needs and protecting the public interest.

We commend Congress that acted in a bipartisan manner to improve the transportation project delivery process by cutting red tape in the recently enacted transportation bill. However, in other areas federal regulations hinder, rather than help, achieve the balance that we need.

One of these instances is the recently enacted federal rules governing the hours of service for commercial truck drivers may work. These rules are designated to ensure long-haul drivers do not drive to the point of exhaustion by spending too much time on the road.

Transportation construction industry drivers are not long-haul operators who consistently spend many consecutive hours on the road on a given day. Generally, transportation construction industry commercial drivers do not operate in the manner that leads to concerns over fatigue.

At the same time, transportation project owners, the driving public, and commercial shippers expect contractors to build projects in a timely and efficient manner, with minimum disruption to traffic.

In addition, the industry is also using innovative techniques to replace a bridge or a roadway, working attentively, in a concentrated period of time, like over a single weekend. This situation is a prime example of applying a one size fits all regulatory approach. While windows of 10 to 11 hours of drive time and 13 to 16 hours of on-duty time may seem adequate in other cases, in fact those limitations can disrupt the efficient deployment of professionals and resources on construction job sites without a demonstrated increase in safety. Further increased costs would otherwise support capital and personal expansions.

Another area of concern for our group is EPA's draft guidance that would greatly expand the reach of the Clean Water Act. In this undertaking, EPA is proposing a significant expansion of the federal jurisdiction over wetlands, and doing so in a manner that bypasses the opportunity for my industry and other affected interests to provide input.

Chief among our substantive concerns with this proposal is roadside ditches, which would be subject to federal wetlands requirement. This is both unnecessary and potentially damaging to the transportation construction industry. Virtually every road or roadway improvement project in the U.S. has a ditch associated with it. As such, the EPA plan could provide that agency with an approval role in most, if not all, future roadway improvements.

Not withstanding the lack of viability of such a plan, it would inject major uncertainty in delays and the delivery of transportation benefits. If members of my industry are stuck in a continuing labyrinth of bureaucratic wetland approvals, they will be unable to make decisions about allocating existing personnel, let alone future hires.

Chairman Mica and other leaders of the Transportation Infrastructure Committee have introduced a measure which would stop the EPA proposal. We urge members of this Committee to support that legislation.

Finally, EPA has indicated evaluating whether or not to regulate coal ash as a hazardous substance. Coal ash is commonly used in material such as concrete, which is a key component of transportation infrastructure improvements. Further, EPA has routinely noted the benefits of recycled coal ash in the transportation arena and its safety. Reversing course and designating coal ash as a hazardous material would remove the valuable tool of my industry's efforts to create efficient U.S. transportation network at the lowest possible cost. Our study has found that that will cost our industry more than $104 billion over the next 20 years.

Mr. Chairman, Ranking Member Cummings, ARTBA deeply appreciates this opportunity to present testimony to you on this important issue. I look forward to answering any questions you have.

[Prepared statement of Mr. Yarossi follows:]

American Road & Transportation Builders Association

Continuing Oversight of Regulatory Impediments to Job Building: Job Creators Still Buried by Red Tape

Testimony of
Paul A. Yarossi, President
HNTB Holdings, Ltd.
On Behalf of the
American Road and Transportation Builders Association

Submitted to the
United States House of Representatives
Committee on Oversight and Government Reform

July 19, 2012

My name is Paul Yarossi. I am the president of HNTB Holdings, Ltd, a national planning and design firm that has helped create our nations infrastructure network for nearly 100 years. Chairman Issa and Ranking Member Cummings, thank you for holding today's hearing to examine regulatory impediments to job creation and for inviting the American Road and Transportation Builders Association (ARTBA), for which I currently serve as Chairman, to participate.

ARTBA, now in its 110th year of service, provides federal representation for more than 5,000 members from all sectors of the U.S. transportation construction industry. ARTBA's membership includes private firms and organizations as well as public agencies that own, plan, design, supply and construct transportation projects throughout the country. Our industry generates more than $200 billion annually in U.S. economic activity and sustains more than 2.2 million American jobs.

ARTBA members must directly navigate the federal regulatory process to deliver transportation improvements. As such, they have first-hand knowledge about specific regulatory burdens that can and should be alleviated. We have raised many of these issues directly with the U.S. Department of Transportation (DOT) and the U.S. Environmental Protection Agency (EPA).

ARTBA recognizes that regulations play a vital role in the transportation review and approval process. They provide a sense of predictability and ensure a balance between meeting our nation's transportation needs and protecting vital environmental resources. However, there are areas where regulations have become overbroad and hinder, rather than a help to achieving this balance.

According to a report by the U.S. Government Accountability Office (GAO), as many as 200 major steps are involved in developing a transportation project from the identification of the project need to the start of construction. The same report also shows it typically takes between nine and 19 years to plan, gain approval of, and construct a new major federally-funded highway project. This process involves dozens of overlapping state and federal laws, including: the National Environmental Policy Act (NEPA); state NEPA equivalents; wetland permits; endangered species implementation; and clean air conformity. This unacceptable delay in delivering transportation improvements was a major focus of the recently enacted surface transportation bill. However, there are further steps that can be taken to lighten the regulation load to improve project delivery times and reduce costs to the public and private sectors.

In an effort to assist the Committee on Oversight and Government Reform with its examination, ARTBA would recommend focusing on the following areas in an effort to restore a proper balance between regulation and job creation:

- **Hours of Service Rules for Commercial Motor Vehicle Operators**: (49 CFR Parts 385, 386, 390, and 395): Throughout various Federal Motor Carrier Safety Administration (FMCSA) comment periods (starting in 2000) addressing the hours of service rule for commercial motor vehicle operators, ARTBA has argued the revised rule should not apply to drivers in the transportation construction industry. In the most recent rulemaking, FMCSA proposed to revise these regulations again, but without contemplating an exemption for the transportation construction industry. In comments submitted to FMCSA and at the present time, ARTBA believes the rationale for this exemption remains strong and worthy of the agency's consideration. The effect would be increased efficiency in the construction of transportation improvement projects, while still preserving the safety of all involved.

  Transportation construction industry drivers are not long-haul operators who consistently spend many consecutive hours on the road in a given day. They are short-haul drivers who typically travel less than 20 miles one way. Many of our drivers spend substantial amounts of time off the road during the work day, loading and unloading materials or equipment, which allows for short breaks. Others may be responsible for positioning a piece of mobile equipment at the beginning of the work day, but may not be back behind the wheel until day's end. As such, their daily drive time may be minimal. Generally, transportation construction industry commercial drivers do not operate in a manner that leads to concerns over fatigue, which is are the focus of the hours of service rule. Further, we are unaware of any conclusive data to demonstrate that driver fatigue and ancillary health issues are a significant problem in our industry.

  Moreover, transportation project owners, the driving public and commercial shippers are expecting more timeliness and efficiency in the delivery of needed transportation

improvements, as well as less disruption to traffic. Transportation construction firms will often work very long hours to complete these projects expeditiously, especially in regions of the country where seasonal weather is a factor. While windows of 10-11 hours of drive time and 13-16 hours of on-duty time may seem adequate, in fact they often disrupt the efficient deployment of professionals and resources on the construction job site, without a demonstrable increase in safety. Ultimately, this is an example of two areas of federal policy—hours of service as administered by FMCSA and accelerated transportation project delivery as promoted by other agencies at U.S. DOT–that are simply in direct conflict.

In recent years, the transportation construction industry and many public-sector transportation agencies have been eager partners in utilizing accelerated construction techniques to increase efficiency, maximize the safety of motorists and workers, and minimize the inconvenience to the traveling public. This often involves total closure of a bridge or stretch of highway so the contractor can undertake an intense effort to replace or renovate it within a very short time frame—sometimes over a single weekend. In recent years, we have seen numerous safe, swift, inovative and high-profile examples of these techniques, acclaimed by public agencies, elected officials, the media and the general public alike. Similarly, natural or man-made disasters may require contractors to be extremely resourceful under even more challenging time frames, in order for them to repair or replace critical infrastructure assets that have been damaged.

The industry is proud to be at the cutting edge of these emerging techniques. However, in these circumstances, the hours of service rule makes the job more difficult by limiting the availability of certain key personnel (none of whom are long-haul truck drivers) to discharge job duties relating to commercial motor vehicles. The rule may also disrupt the timely delivery of materials to the construction site. For these reasons, the rule may increase the project's cost (in terms of additional personnel required) without a requisite enhancement of safety for all concerned.

Therefore, ARTBA continues to push for an exemption relating to the drive-time and on-duty limits for transportation construction industry drivers. Any standard tailored for the transportation construction industry should be based on clear facts that establish the degree to which—if at all—fatigue for these drivers is a factor that could threaten safety on the nation's roadways.

It should be noted that other classes of industries are exempt from the general rule or enjoy certain exceptions, including agriculture and, as we were reminded over the recent holiday, members of the American Pyrotechnics Association involved in transporting explosives for Fourth of July fireworks shows. One would think that, as a national public policy goal, the improved efficiency in the delivery of transportation improvements would rank at least as high as the successful staging of holiday fireworks displays.

A transportation construction industry exemption could be fashioned in a similar manner to those affecting other specific industries, as described. Moreover, the existing rule includes a 24-hour restart provision (as opposed to 34 hours under the general rule) for commercial motor vehicle drivers of construction materials and equipment. Therefore,

the rule already contemplates a unique place for our industry and it would be possible to carefully craft a wider, viable exemption in a similar vein. Such an exemption would address drive time and on-duty limits for our sector while preserving safety.

- **EPA Proposed Guidance on Clean Water Act Jurisdiction**: One of the main reasons for the success of the federal Clean Water Act (CWA) over the past 35 years is the Act's clear recognition of a partnership between the federal and state levels of government in the area of protecting water resources. The lines of federal and state responsibility are set forth in Section 101(b) of the CWA:

> "It is the policy of Congress to recognize, preserve, and protect the primary responsibilities of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation and enhancement) of land and water resources..."[1]

This structure of shared responsibility between federal and state governments allows states the essential flexibility they need to protect truly ecologically important and environmentally sensitive areas within their borders while, at the same time, make necessary improvements to their transportation infrastructure. The success of the federal-state partnership is backed by dramatic results. Prior to the inception of the CWA, from the 1950s to the 1970s, an average of 458,000 acres of wetlands were lost each year. Subsequent to the CWA's passage, from 1986-1997, the loss rate declined to 58,600 acres per year and between 1998-2004 overall wetland areas increased at a rate of 32,000 acres per year.[2]

ARTBA supports the reasonable protection of environmentally sensitive wetlands with policies balancing preservation, economic realities, and public mobility requirements. Much of the current debate over federal jurisdiction, however, involves overly broad and ambiguous definitions of "wetlands."[3] This ambiguity is frequently used by anti-growth groups to stop desperately needed transportation improvements. For this reason, ARTBA has, and continues to, work towards a definition of "wetlands" that would be easily recognizable to both landowners and transportation planners and is consistent with the original scope of the CWA's jurisdiction. As an example of this, ARTBA recommends defining a "wetland" as follows: "If a land area is saturated with water at the surface during the normal growing season, has hydric soil and supports aquatic-type vegetation, it is a functioning wetland."

The EPA and Corps decision to issue draft guidance May 2, 2011 on this topic as opposed to a formal rulemaking runs contrary to the express aforementioned views of the U.S. Supreme Court. The guidance process shortcuts critical rulemaking requirements, such as: including a response to public comments; providing a rationale and factual basis for agency decision; and producing a final decision that can be judicially reviewed. Put simply, the matter of CWA jurisdiction is too important to be handled through the guidance process. It does not offer the

---

[1] CWA §101(b).
[2] *Draft 2007 Report on the Environment: Science*, USEPA, May 2007, available at http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=140917
[3] Many states define wetlands as well other types of water resources and prescribe regulatory regimes that are appropriate to each. The federal government tries a one-size fits all approach essentially requiring water resources viewed by states as not being wetlands to be regulated as if they were wetlands under federal law.

regulated community sufficient protection, nor will it solicit the information necessary to be able to properly inform agency decision making.

The guidance expands the universe of waters that will be considered "traditional navigable waters" by including for the first time ever, waters that support one-time recreational use. In addition, the guidance gives new and expanded regulatory status to "interstate waters," equating them with traditional navigable waters. Further, the guidance makes it easier to find jurisdiction for adjacent wetlands, tributaries and other waters. All of this results in an unprecedented expansion of CWA jurisdiction that is wholly inappropriate for a guidance document. If this level of CWA expansion is truly what EPA and the Corps desire, it should be done through the regulatory process or, alternatively, the agencies should approach Congress and ask for their authority to be expanded.

ARTBA is particularly concerned with the treatment of ditches by the guidance. Roadside ditches are an essential part of any transportation project and contribute to the public health and safety of the nation by dispersing water from roadways. The current regulations say nothing about ditches, but the guidance regulates all roadside ditches that have a channel, have an ordinary high water mark, and can meet one of five characteristics.

In addition, the guidance creates a completely new concept of allowing for "aggregation" of the contributions of all similar waters "*within an entire watershed*," making it far easier to establish a significant nexus between these small intrastate waters and newly expanded roster of traditional navigable waters. This novel concept results in a blanket jurisdictional determination for an entire class of waters within an entire watershed. Such an interpretation of jurisdiction will literally leave no transportation project untouched from federal jurisdiction regardless of its location, as there is no area in the United States not linked to at least one watershed.

One method of establishing clarity would be to develop a classification system for wetlands based on their ecological value. This would allow increased protection for the most valuable wetlands while also creating flexibility for projects impacting wetlands that are considered to have little or no value. Also, there should be a "de minimis" level of impacts defined which would not require any permitting process to encompass instances where impacts to wetlands are so minor that they do not have any ecological effect. A "de-minimis" standard for impacts would be particularly helpful for transportation projects and allow projects to avoid being delayed by minimal impacts to areas which are non-environmentally sensitive areas.

- **EPA National Ambient Air Quality Standards (NAAQS)**:

The stated goal of the U.S. EPA's National Ambient Air Quality Standards (NAAQS) is in part to improve public health. This is a commendable objective and one shared by ARTBA. EPA, however, must be cognizant of the impact more stringent NAAQS would have on other federal initiatives. Nearly 32,000 people die on U.S. highways each year and many federally-funded highway improvements are designed specifically to address safety issues. Imposing stricter NAAQS that threaten future highway improvements could be counterproductive to improving public health. As such, EPA's recent recommendation to tighten PM standards ignores one public health threat and favors another.

When considering the NAAQS, and any possible changes, it is important to note the EPA's own reports have consistently indicated an overall decline in emissions over the past 30 years. Any tightening of the NAAQS by the EPA would greatly increase the stringency of regulation at a time when existing standards are already resulting in noticeable progress. According to the EPA's own data, since 1980, gross domestic product increased by 127 percent, vehicle miles travelled increased by 96 percent, population increased by 36 percent and energy consumption increased by 19 percent. Indeed, since 1980, the overall amount of aggregate emissions, has decreased by 67 percent[4]. This continuing improvement indicates the current regulations are having their desired effect.

Today's average motor vehicle produces 80 to 90 percent less emissions than it did in 1967.[5] Clearly, the transportation sector is playing a major role in reducing emissions and is continuing to take steps, independent of the NAAQS, to build on this success by further reducing all forms of air pollution. As better motor vehicle and fuel technologies develop, vehicle emissions will continue to decrease, even as automobile usage increases.

Illustrating this point, major automobile manufacturers announced in 2005 a new generation of vehicles that will be 99 percent cleaner than vehicles produced 30 years ago. This reduction in emissions comes from a four-part strategy that includes cleaning up the fuel as it goes into the vehicle, burning the fuel more precisely in the engine, removing undesirable emissions with a catalyst, and monitoring all of these systems to ensure minimal emission levels. As these and other new technologies are integrated into both on and off road vehicles, emissions levels in all areas should continue to decline.

Moreover, counties need some sense of predictability in order to develop long-range transportation plans to most effectively achieve emissions reduction. Adding new layers of requirements on top of existing standards that have not been fully implemented complicates these efforts. Specifically, existing projects deemed to be in compliance with the Clean Air Act (CAA) when first undertaken could be thrown out of compliance once new standards are approved, exposing these projects to costly, time-consuming litigation.

To fully understand the effects of increasing the NAAQS on the transportation sector and the problems counties face when the standards are tightened, the transportation conformity process as a whole also needs to be examined. The problem with the existing conformity process is caused by the fact that some have tried to turn conformity into an exact science, when it is not. Rather, conformity findings are based on assumptions and "modeling of future events," not often reflecting reality. Very few conformity lapses occur because a region has a major clean air problem. They occur because one of the parties involved cannot meet a particular deadline. Thus, the conformity process has become a top-heavy bureaucratic exercise that puts more emphasis on "crossing the t's

[4] U.S. EPA, Comparison of Growth Areas and Emissions, 1980-2010, available at: http://www.epa.gov/airtrends/aqtrends.html#comparison. The six principal or "criteria" air pollutants referred to by the EPA are nitrogen dioxide, ozone, sulfur dioxide, particulate matter, carbon monoxide and lead.

[5] United States Department of Transportation, "Transportation Air Quality Selected Facts and Figures." (1999).

and dotting the i's" than on engaging the public in true transportation planning that is good for the environment and the mobility of a region's population.

The problems with the conformity process are amplified by transportation plans and the State Implementation Plans (SIPs) with which they are intended to conform often being out of sync with one another. Largely, this is due to transportation plans having very long planning horizons requiring frequent updates, while most air quality plans have very short planning horizons and are updated infrequently. As a result, many of the planning assumptions used for conformity determinations of transportation plans and programs are not consistent with the assumptions used in the air quality planning process to establish emissions budgets and determine appropriate control measures.

In other words, because transportation plans must use the most recent air quality data, a perceived increase in emissions and possible conformity lapse can occur simply because the numbers of models relied on in the transportation plan differ from those in the air quality plan—not because an area's air quality has changed. The more EPA changes the NAAQS, the greater the conformity problems become. Changes in the NAAQS, on a completely different timeline than conformity schedules, can set off a chain reaction forcing counties to re-examine deadlines that had been set years prior and result in significant additional regulatory requirements. These types of complications need to be weighed against the potential gains of increasing air quality standards.

ARTBA is also concerned by EPA's proposal to place air quality monitors in "near roadway" locations. The monitors, which determine CAA compliance for counties, must be placed in areas where they can get a reading indicative of emissions levels for the area as a whole. Emissions are naturally going to be higher in some areas of a county and lower in others. For example, a monitor placed by the side of a well-travelled highway is most likely going to get a higher reading for emissions than one placed by a little used residential street. Also, when taking readings from air quality monitors, it should be realized the monitors cannot account for the aforementioned emissions reductions due to take place in the near future, such as reductions from newer, cleaner trucks and busses coming on-line. Thus, even if there is a violation, the steps to remedy may already be underway.

A major key to further emissions reductions is to deal directly with traffic congestion. Additional emissions reductions from the transportation sector will be achieved by relieving congestion through greater production of transportation improvements across all modal sectors. Vehicles operating at highway speeds unimpeded by congestion are far more efficient—and therefore generally emit far less—than vehicles caught in stop-and-go traffic. Thus, the worse traffic congestion becomes, the worse the emissions from on-road vehicles will be.

The simple fact is that if America is to meet its mobility and environmental challenges during this century, we must invest in a host of transportation solutions, including new capacity for both highways and mass transit systems. And not create a false choice between needed investments in both areas.

Unfortunately, traffic congestion has grown drastically during the past quarter-century, as vehicle travel has greatly outpaced new highway capacity, which has only increased six percent in the last 30 years. Failure to alleviate congested areas already produces specific bottlenecks that cause 50 percent of total congestion on the nation's freeways. In 2004, a study of the nation's most severely congested highways highlighted the reality that significant reductions in emissions require a reduction in vehicle time traveled, not vehicle miles traveled. The study concluded that modest improvements to traffic flow at 233 bottlenecks would reduce carbon dioxide emissions by as much as 77 percent and conserve more than 40 billion gallons of fuel over a 20-year period.[6] These fuel savings translate directly into lower emissions.

While the proponents of a modal conflict will argue the solution to this national dilemma is to get people out of their cars, there is no evidence that this approach is either achievable or even desired by the American public. The preferred alternative should be to advance all modes of transportation improvement. In a nation as large as ours, different areas will require different transportation strategies.

Certainly new roadway capacity is not a viable solution in some communities, but for others it is appropriate. Given the nation's vast transportation challenges, federal policy should not constrain potential solutions available to communities. To do so would have serious economic consequences. For example, the truck traffic statistics cited earlier do not represent discretionary decisions—the fact of the matter is that for certain products, locations and time schedules, frequent shipments by truck are the only feasible alternative.

The implementation of ever-tightening standards will hamper the nation's abilities to both preserve and improve its transportation infrastructure. In the future, when NAAQS are examined, retention of the current standards should always be presented as a viable option. This would enable the nation to continue to make progress towards cleaner air while at the same time continue to pursue desperately needed transportation improvements vital to our economy, public health and safety.

- **EPA Potential Regulation of Coal Ash**: ARTBA members routinely use coal ash to produce concrete, an essential material in transportation improvement projects. Non-hazardous forms of asbestos are also commonly used in roads and other transportation projects. Therefore, the June 21, 2010 proposed rule regarding the disposal of coal ash and its potential classification as a hazardous material are alarming to the transportation construction industry.

  The transportation sector's use of coal ash is truly an environmental success story. According to EPA's own data, coal ash accounts for between 15 and 30 percent of the

[6] Unclogging America's Arteries, Effective Relief for Highway, Cambridge Systematics, Inc., (February 2004) available at: http://trpc.org/regionalplanning/transportation/projects/Documents/Smart%20Corridors/americanuseralliancestudy.pdf.

cement in concrete. Further, EPA has noted using coal ash at this level results in annual greenhouse gas reductions in concrete production of between 12.5 and 25 million tons and an annual reduction in oil consumption of between 26.8 and 53.6 million barrels. Also, EPA has stated coal ash "generally makes concrete stronger and more durable," which "reduc[es] the need for future cement manufacturing and corresponding avoided emissions and energy use."

In 2008 alone, more than 12.5 million tons of coal ash was used in the production of concrete. Perhaps the most recognizable use is in Minnesota, where coal-ash was used in the concrete for the new I-35 bridge replacement.

In more general terms, EPA properly acknowledged the use of coal ash "an important function in road building, replacing material that would otherwise need to be replaced such as aggregate or clay." EPA also acknowledged in many cases coal ash use leads to "better road performance." In terms of safety, EPA has stated coal ash is used to "replace fine aggregate that would otherwise need to be used to prevent skidding." Thus, with respect to both specific and general benefits, coal ash is a significant asset for both the production and maintenance of transportation improvements.

In order to preserve all of the attributes recycled coal ash has provided to the transportation sector and the environment, EPA should be prohibited from regulating coal ash as a "hazardous waste." On at least four separate occasions in 1988, 1993, 1999 and 2000 EPA has found coal ash did not warrant regulation as a "hazardous waste." There has been no new scientific information since the last time this issue was broached to warrant reaching a different conclusion now.

Every element of the transportation construction process, from the suppliers of concrete to the contractors who handle construction materials would be affected by the stigma of a "hazardous waste" label for coal ash. Specifically, because of the increased expense of handling a "hazardous waste," the producers of coal ash would be resistant to continue providing it to concrete manufacturers.

Another potentially unintended consequence of categorizing coal ash as a "hazardous substance" would be the invalidation of already existing guidance on coal ash use. Specifically, EPA, FHWA and the U.S. Department of Energy collaborated with the regulated community in 2005 to craft guidance on the appropriate use of coal ash in highway construction. This guidance has contributed to all of the aforementioned benefits from coal ash use. A reclassification of coal ash as a "hazardous substance" will undercut this guidance, as it was not designed to address "hazardous substances," and leave the regulated community without any direction in coal ash use.

As further evidence of the importance of coal ash to the nation's transportation infrastructure, ARTBA released a study late last year entitled "The Economic Impacts of Prohibiting Coal Fly Ash Use in Transportation Infrastructure Construction." The study concludes the cost to build roads, runways and bridges would increase by an estimated $104.6 billion over the next 20 years if coal fly ash is no longer available as a transportation construction building material.

This breaks down to a $5.23 billion annual direct cost, including a $2.5 billion increase in the price of materials and an additional $2.73 billion in pavement and bridge repair work due to the shorter pavement and service life of other portland cement blends. To put this $5.23 billion figure in perspective, it is almost $2 billion per year more than the federal government currently invests in the Airport Improvement Program and about 13 percent of the federal government's annual total annual aid to the states for highway and bridge improvements.

The ARTBA study also explores how states would have to forego the potential additional benefits and savings of as much as $65.4 billion over 20 years derived from using fly ash in new, high performance concrete pavements.

The ARTBA study's analysis utilized bid tab data from 48 states and Washington, D.C., collected and organized by Oman Systems, Inc., in Nashville, Tenn. The same data are used by the Federal Highway Administration (FHWA) to calculate the National Highway Construction Cost Index. It also used transportation construction market data from the U.S. Census Bureau, FHWA's National Bridge Inventory and Highway Performance Monitoring System and conducted extensive surveys and personal interviews with state transportation department officials and fly ash supply company executives to determine state market shares and penetrations.

EPA should not be permitted to unnecessarily increase the cost of sorely needed transportation improvements by designating coal ash as a "hazardous substance."

It should be noted that the Committee's examination of regulatory burdens is particularly well-timed as it coincides with the recent completion of the long-overdue reauthorization of the federal surface transportation program. Members of both parties have termed the new law as a "jobs bill." Allowing this much needed legislation to be followed by continued implementation of overly burdensome federal regulations is at best two steps forward and one step back. Providing resources and important policy reforms to help states advance critical transportation improvements while making it more difficult for transportation projects to move forward actually undermines the goal behind the surface transportation bill.

It is ironic that members of both chambers and parties have made streamlining the environmental review and approval process for transportation projects a priority of the transportation bill yet few talk about how excessive regulatory burdens can disrupt the very process they are trying to make more effective. Essentially, while any streamlining reforms in the reauthorization bill could save years during the project delivery process, each of the regulations highlighted today could severely restrict the opportunities states have to take advantage of these reforms.

ARTBA thanks the Committee on Oversight and Government Reform for initiating this examination of regulatory issues negatively impacting jobs and the economy. We stand ready to assist the Committee in continuing to ensure federal regulations operate in the most effective, least burdensome manner to achieve their stated goals.

Chairman ISSA. Thank you.
Mr. Hamby.

STATEMENT OF JIM HAMBY

Mr. HAMBY. Chairman Issa, Ranking Member Cummings, Congressman Lankford, and members of the Committee, I want to thank you for allowing me to speak today. I am the President and Chief Executive Officer of Vision Bank in Ada, Oklahoma, and it is a community bank. I want to thank you for inviting me to testify, and I want to thank this Committee for its willingness to address the issues of how regulatory red tape is impending job creation.

Like most community banks, Vision Bank is deeply involved in every aspect of the communities we serve. We have been helping our small business partners grow now for over 100 years. These include businesses, farmers, ranchers, oil and gas companies, Indian tribes, doctors, hospitals, and anything that walks in the door. We have helped create thousands of jobs and we sponsor a lot of things, some of which are right now we are doing a financial literacy program for students in 13 high schools in our district, where we are providing financial literacy training for each one of those and helping them meet curriculum requirements so they will be productive citizens.

We also donated over $420,000 last year to assist local charity groups and organizations, and this equals about 8 percent of our income.

These accomplishments are the essence of what a community bank does, and I am very proud to be a community banker.

Vision Bank is also a small business, and we can't lose sight of that. We are locally owned and we employ more than 200 people, all of which have great futures. We provide health care, life insurance, health benefits, retirement plans, and we are really a family. Most small businesses are.

Community banks like mine pride themselves on being quick to adapt. But at some point it gets very hard to handle it. We understand the need for regulations to protect the safety and soundness of our bank. We understand regulations that protect the consumer. And we are in favor of those regulations. We are the highest regulated industry in the world and we need a lot of regulations. We agree that our customers should be protected. To do this, regulations are a large part of our business.

But we are now facing 10 times the number of rules than we did just 10 years ago. Fifty of these rules were new in the two years before Dodd-Frank, and with Dodd-Frank there are now 4,000 pages of proposed rules and more than 4,000 pages of final rules.

The new laws and regulations might be manageable by themselves, but we are dying a death of a thousand paper cuts. Wave after wave of new rules, one on top of another, are overwhelming many small community banks and making it harder for us to do what we do best, which is meet the credit needs of our local communities.

I am going to give you a few staggering statistics.

At Vision Bank our compliance costs have increased $1.4 million in the last three years, and those are hard numbers. That rep-

resents a 29 percent decrease in our profits. That means 29 percent less taxes; that means 29 percent less in capital formation, which helps support lending.

This includes more than the cost of hiring and training of new compliance personnel and systems; it also includes something that you cannot quantify, and that is the lost opportunities that result when money that would normally be devoted to making loans to consumers and small businesses is, instead, spent on outside consultants, lawyers and so forth; not to mention the fact that it causes us to take our eye off the ball and spend most of our time trying to comply with new regulations, instead of getting out and meeting the customer.

The more resources we devote to regulatory compliance, the fewer resources we have to meet our communities. Every dollar spent on regulatory compliance means as many as $10 less available for creditworthy borrowers. Less credit means businesses can't grow and create jobs. As a result, local economies suffer and the national economy suffers as well.

One example of unnecessary compliance burden, and it is a small example, is the outdated requirement that ATMs include potential fee notices on the screen and on the machine itself. Originally, you couldn't put it on the screen, so the law said to put it on the machine. Well, the main contribution of this rule today is to encourage frivolous lawsuits and to force banks to spend valuable time and resources scurrying around, updating all of our ATMs to make sure that fee notification stickers haven't been removed by vandals, even though the screen discloses what the fees are and asks you if you want to proceed or not.

I am grateful that the House, last week, passed legislation to remove this duplicative requirement. It is a minor one.

Another example is the requirement that banks renotify customers of their privacy policies every year if a bank hasn't made any changes to their policies. I can understand if you are changing policies with them, but when you are not, it is a large expense and it takes a lot of money.

Under Dodd-Frank, the proposed qualified mortgage exemption, on the ability to repay rules are unnecessary, complicated, and it is potential to make it much more costly for banks, especially small banks, to make loans. The QM exception alone could force banks to deny loans to creditworthy customers.

Likewise, provisions on municipal advisers is problematic in itself and would limit the important services the banks provide in municipalities.

As regulatory burdens like these increase, banks like mine find it hard to meet the needs of our local communities. I am really worried about the health of small banks. The average bank is $165 million. the average community bank. Our profits of $550 million were decreased by 30 percent. I would imagine, likewise, theirs were decreased 40 to 50 percent.

If this trend continues, they are also companies; they have shareholders. My fear is that shareholders look at the profitability of it and the future of it, and they tell them it is time to sell. And when a small town loses its community bank with its local ownership, that is a tragedy.

Thank you for the opportunity to testify, and I would be happy to answer any questions.

[Prepared statement of Mr. Hamby follows:]

July 19, 2012

Testimony of

James Hamby

before the

Committee on Oversight and Government Reform

of the

United States House of Representatives

July 19, 2012

Chairman Issa, Ranking Member Cummings, and members of the Committee, my name is Jim Hamby. I am President and Chief Executive Officer of Vision Bank in Ada, Oklahoma. Vision Bank is a locally-owned bank that was chartered in Indian Territory in 1901. We are now a $550 million bank with six bank branches in five communities and we employ 200 people. I am thankful for the opportunity to present my views on how regulatory impediments are making it difficult for banks like mine to help the job creators in our local communities get our economy back on track.

I appreciate the Committee taking the time to look at the important topic of how job creators like banks are buried by red tape. In our case, the cumulative impact of the last few years of new regulations threatens to undermine the community bank model. Banks certainly appreciate the importance of regulations that are designed to protect the safety and soundness of our institutions and the interests of our customers. And we recognize that there will always be regulations that control our business. But the reaction to the financial crisis has layered regulation upon regulation, doing little to improve safety and soundness and, instead, handicapping our ability to serve our communities.

Like many banks around the country, my bank is intensely focused on building and maintaining long-term relationships with our customers. We have to have this long-term view because we plan to be here for a very long time, and that requires us to provide the financial services that will keep our communities strong and growing. We cannot be successful without such a long-term philosophy and without treating our customers fairly.

I am proud to say that Vision Bank is approaching 112 years of service in Oklahoma. Our success has always been closely linked to the success of the communities we serve, and we are very proud of our relationships with them. They are, after all, our friends and neighbors.

Vision Bank, like most community banks, is deeply involved in every aspect of its community. In each community we serve we have a student board of directors that gets detailed training on bank management and products. We sponsor the local university's "Presidential Leadership Class" and teach a personal finance course in thirteen schools within our area. In addition, we spent and donated over $420,000 (8% of earnings) last year to assist local groups. This is what a community bank does.

A bank's presence is a symbol of hope, a vote of confidence in a town's future. When a bank sets down roots, communities thrive. We strongly believe that our communities cannot reach their full potential without the local presence of a bank – a bank that understands the financial and credit needs of its citizens, businesses, and government.

That is why it is particularly frustrating to me, and I'm sure to most other community bankers, that we end up being punished for the actions taken by others. We never made an exotic mortgage loan, changed our underwriting standards, or took excessive risks. We had nothing to do with the events that led to the financial crisis and are as much victims of the devastation as the rest of the economy. We are the survivors of the problems, yet we are the ones that pay the price for the mess that others created.

During the last decade, the regulatory burden for community banks has multiplied tenfold, with more than 50 new rules in the two years before Dodd-Frank. And with Dodd-Frank alone, there are roughly 3,900 pages of proposed regulations and more than 3,600 pages of final regulations (as of April 13). It is frightening to consider that we are only a quarter of the way through the more than 400 rules that must be promulgated under this new law.

Community banks like mine pride themselves on being agile and quick to adapt to changing environments. Yet there is a tipping point beyond which even the most nimble community banks will find it impossible to compete. New laws or regulations might be manageable in isolation, but wave after wave, one on top of another, will undoubtedly overrun many community banks.

The calculus is fairly simple; more regulation means more resources devoted to regulatory compliance, and the more resources we devote to regulatory compliance, the fewer resources we can dedicate to doing what banks do best – meeting the credit needs of our local communities. Every dollar spent on regulatory compliance means as many as ten fewer dollars available for creditworthy borrowers. Less credit in turn means businesses can't grow and create new jobs. As a result, local economies suffer and the national economy suffers along with them.

Congress must be vigilant in overseeing regulatory actions that unnecessarily restrict loans to creditworthy borrowers. Holding oversight hearings like this one is critical to addressing the negative implications that flow from excessive regulatory red tape.

In my testimony today, I'd like to make three key points:

- ***Small Businesses Are Critical to Job Creation And Banks Are Essential Partners.***

  Banks are the primary lender to small businesses. As such, the presence of banks in local communities throughout our nation is critical to meeting the unique needs of new and developing companies. We also are small businesses in our own right and we are major employers in our community.

- ***The Cost Of Implementing New Regulations Weighs Most Heavily On Community Banks.***

  Community banks generally have more limited resources compared to their larger competitors. As the volume and magnitude of regulations increase, more of these resources are dedicated to compliance rather than making loans to consumers and small businesses. Even a small reduction in compliance costs could free up billions of dollars needed to help the economy grow.

- ***Dodd-Frank Has Significantly Compounded the Problem of Regulatory Burden and May Drive Community Banks out of Lines of Business Altogether.***

  The cumulative impact of rules emanating from Dodd-Frank may be too much for some banks to bear. New rules on mortgage lending and municipal advisors are particularly problematic and must be addressed.

I will discuss each of these in detail in the remainder of my testimony.

I. Small Businesses are Critical to Job Creation and Banks are Essential Partners

It is well-documented how crucial small businesses are to the national economy. Studies produced by the Small Business Administration demonstrate that small businesses account for over

half of all jobs in the U.S. and this share of total employment has been fairly stable over the past few decades. More importantly, small businesses account for as much as 65 percent of net new jobs created over the past 15 years and most new job growth during economic recoveries occurs at new and small firms. Small firms and start-ups promote innovation because they are more flexible and often more daring than larger businesses.

Banks are the primary lender to small businesses and their presence in local communities throughout our nation is critical to meeting the unique needs of new and developing companies. It is why banks have financed more than 20 million small business loans.

At my bank, we have been helping our small business partners (businesses, farmers, ranchers, oil and gas companies, Indian tribes, doctors and hospitals) grow for over 100 years. We have had a great deal of success and have helped create thousands of jobs and have improved the lives of everyone in our markets. I take great personal pride in this and I like being a community banker.

The pace of business lending is affected by many things, the most important being the demand from borrowers. The state of the local economy – including business confidence, business failures, and unemployment – and pressure by regulators to conserve capital play important roles too. Bankers are asking more questions of their borrowers, and regulators are asking more questions of the banks they examine. This means that some projects may not qualify for funding. Banks do not turn down loan applications because they do not want to lend – lending is what banks do. In some cases, however, it doesn't make sense for the borrower to take on more debt.

Our still fragile economy and uncertain economic future makes borrowers less interested in adding new debt. Studies indicate that lack of sales remains the top concern for businesses. Without strong sales prospects, businesses won't hire more workers, grow production, and invest in new products.

At Vision Bank we've experienced a significant downturn in the demand for loans over the past couple of years. And while demand has increased somewhat recently, we are still at a much slower pace than what we would consider healthy.

II. The Cost of Implementing New Regulations Weighs Most Heavily on Community Banks

The burden of regulatory compliance is keenly felt by all banks. But smaller banks generally do not have as many resources as their larger brethren and endure greater difficulty in adapting to new regulations or to changes in existing regulations. Historically, the cost of regulatory compliance as a share of operating expenses is two-and-a-half times greater for small banks than for large banks.

We are a $550 million bank and our compliance costs have increased by $1.4 million in the last three years, which has resulted in a 29% decrease in earnings. This includes salaries, compliance training, legal and consulting services, compliance software and IT expenses, printing expenses and privacy mailing expenses, and various record-keeping requirements. And there are other costs that we simply cannot capture. We have several dedicated compliance officers just to handle all the legal and paperwork requirements.

Considering that the median sized bank in this country has $166 million in assets and 38 employees, it is not difficult to see how the burden of absorbing increasing compliance costs is magnified for smaller institutions. And it is not just in-house staffing requirements that must be considered. Banks must also factor in the high cost of attending conferences and seminars, the many subscriptions to legal and accounting services that are necessary to ensure nothing is missed, upgrades to IT software to monitor our activities, and the additional burden of proving that we have in fact complied with the new law. And unlike many of our larger competitors who have the means and resources to hire additional in-house lawyers, community banks like mine generally resort to paying outside counsel, which is often more expensive. On top of all this, the regulatory agencies want to see independent third-party confirmation, so besides internal audits, banks now have to have outside audits for compliance – a significant expense for smaller banks.

Along with the real, hard-dollar costs are lost opportunity costs. Instead of being trained on how to expand markets or bring in new customers, employees are trained on how to comply with regulations. Money that would normally be diverted to making loans to consumers and small businesses is instead used to pay consultants, lawyers and auditors. And instead of investing capital in new products and services, banks are paying for changes to software to ensure compliance with new regulations.

Excessive regulation saps staff and resources that should go instead to meeting the needs of our customers. Even a small reduction in the cost of compliance would free up billions of dollars that could facilitate loans and other banking services, helping create jobs and grow the economy.

One example relates to the outdated requirement that a physical placard be affixed to ATMs notifying customers of the possibility that they may be charged a fee for using the machine, even though any actual fees are fully disclosed on the screen before any transaction is completed. Requiring disclosure of fees, and giving consumers the ability to opt-out, is sound policy. But requiring both a physical placard and on-screen notice is a vestige from the days when such information was harder to present on the computer screen. Its main contribution today is to encourage frivolous lawsuits and force banks to spend valuable time and resources scurrying around to all their ATMs to make sure that fee notification stickers – which have no real value to today's customers – haven't been peeled off or removed by vandals.

I am certain I speak for all of my colleagues when I say that I am grateful to the House of Representatives for passing legislation last week, H.R. 4367, that removes this unnecessary and duplicative requirement. Measures such as this can do much to help ease regulatory burdens.

Another example relates to the requirement that a bank send annual privacy notices to customers even if the bank does not share nonpublic, personal information (beyond what is permitted by regulatory exception) and the bank has not changed this practice. The continued requirement that banks send such a notice to their customers every year is costly both in terms of money and man hours. Moreover, receipt of the annual notice irritates consumers and risks desensitizing them to other important communications from their bank. Eliminating the annual re-notification requirement when no changes to the notice have been made would provide real and immediate regulatory relief without impacting a customer's rights or existing privacy protections. That is why I support H.R. 5817 and I urge this body to quickly move to pass this important legislation.

III. Dodd-Frank has Significantly Compounded the Problem of Regulatory Burden and May Drive Banks out of Lines of Business Altogether

As I noted earlier in my testimony, we are only a quarter of the way through the more than 400 rules that must be promulgated under Dodd-Frank. The flood of regulations emanating from Dodd-

Frank is so large that bank regulators have been urging banks to add compliance officers to handle it. And despite claims that community banks like mine would be exempt from the new Consumer Financial Protection Bureau, we are not exempt. ***All banks – large and small – will be required to comply with the rules and regulations set by the CFPB.***

The CFPB, at its sole discretion, can join the prudential regulator during compliance exams. In addition, regulators will examine banks for compliance with the CFPB's rules at least as aggressively as the CFPB would do independently. In fact, the FDIC has created a whole new division to implement the rules promulgated by the new CFPB, as well as its own prescriptive supervisory expectations for laws beyond FDIC's rule-making powers. Thus, the new legislation will result in new compliance burdens for community banks and a new regulator looking over their shoulders.

Given that the cost of compliance has a disproportionate impact on small banks as opposed to large banks, it is reasonable to expect this gap to widen even more as Dodd-Frank is fully implemented.

The cumulative impact of hundreds of new or revised regulations may be a weight too great for many small banks to bear. Congress must be vigilant in its oversight of the efforts to implement the Dodd-Frank Act to ensure that rules are adopted only if they result in a benefit that clearly outweighs the burden. Some rules under Dodd-Frank, if done improperly, ***will literally drive banks out of lines of business.*** New rules on mortgage lending and on registration as municipal advisors are two particularly problematic provisions.

One of the changes required in Dodd-Frank is that lenders must show that borrowers meet an "ability to repay" test—***which can be challenged in court for the entire life of the loan***, raising the risk of litigation tremendously. Few would argue against the idea that borrowers should be able to demonstrate some ability to repay their loans. But the new law makes this matter much more complicated than it needs to be. Dodd-Frank also imposes broad risk retention requirements on most loans sold into the secondary market. These requirements have the potential to make it much more costly for banks to make loans and could have the unintended consequence of denying quality loans to creditworthy borrowers.

Dodd-Frank does provide that banks can show they have met the ability to repay test by making loans that fall into a category known as a Qualified Mortgage or QM. The QM is intended to be a category of loans with certain low risk features made to borrowers shown to be creditworthy

and able to meet the payment terms. The CFPB is tasked with finalizing a rule setting forth exactly what will qualify as a QM, but a number of concerns have arisen with regard to the approach which the CFPB may take. If the QM category is made too narrow by excluding too many loan types or by requiring borrowers to meet too high a standard of creditworthiness, then credit will contract and potential borrowers will be denied credit for which they would otherwise qualify.

How these exceptions are defined will dramatically impact the willingness and ability of banks to make mortgage loans, and of consumers' ability to qualify for credit. The thought of quality institutions being forced from the mortgage market and of otherwise creditworthy borrowers being denied credit because of overly broad regulations is chilling – especially at a time when our housing economy has been severely battered and is just beginning to show signs of recovery.

The provision on municipal advisors is also problematic and would limit services to municipalities by community banks. Banks offer public sector customers banking services and are regulated closely by several government agencies. It is generally believed that Dodd-Frank intended to establish a regulatory scheme for unregulated persons providing advice to municipalities with respect to municipal derivatives, guaranteed investment contracts, investment strategies or the issuance of municipal securities. The Securities and Exchange Commission has proposed a very broad definition of "investment strategies" that would cover traditional bank products and services such as deposit accounts, cash management products and loans to municipalities. This means that community banks would have to register as municipal advisors and be subject to a whole new layer of regulation on bank products for no meaningful public purpose.

Such regulation would be duplicative and costly. Consequently, community banks would not be able to offer banking services to municipalities at a price that would be competitive and many may decide not to provide them at all. The likely result will be less innovation and diminished job creation and economic expansion.

I urge Congress to oversee this implementation and ensure that the rule addresses unregulated parties and that neither Section 975 of Dodd-Frank nor its implementing regulation reaches through to traditional bank products and services.

Conclusion

An individual regulation may not seem oppressive, but the cumulative impact of all the new rules plus the revisions of existing regulations is oppressive. This is particularly true for community banks that lack the resources necessary to address an ever-growing panoply of government red tape. What's more, as regulatory burden increases, the ability of banks to meet the credit needs of their local communities diminishes. This leaves businesses – particularly small businesses – without the funding they need to create jobs and grow the economy.

The regulatory burden from Dodd-Frank compounds the problem and must be addressed in order to give all banks a fighting chance to maintain long-term viability and meet the needs of local communities everywhere. Ultimately, it is the customers and community that suffer along with the fabric of our free market system.

Chairman ISSA. Thank you.
Mr. Pirkle.

STATEMENT OF J. BILLY PIRKLE

Mr. PIRKLE. Thank you, Chairman Issa and Ranking Member Cummings. I appreciate the opportunity to appear before this Committee. My name is Billy Pirkle. I am the Senior Director of EHS, or Environmental Health and Safety, for Crop Production Services. We are an ag retailer. I am also the Chairman of the Ag Retail Association. I am here to represent the ag retailer. The ag retailer is a small business with employees of around 5 to 15 in a rural agricultural area.

ARA and ag retailers are concerned with regulatory actions by EPA. We believe that some of these cause unnecessary financial burden to our industry. I will give a specific incident that occurred to us and to some ag retailers as well. But at the same time I understand the comments about being resistant to regulatory change. But I think our industry has shown that we love to participate, and actually applaud the efforts of EPA as we participated and supported the pesticide container containment rule that was passed in 2006.

One of the things that we are actually experiencing some change in interpretation of the rule that is creating a burden is under EPCRA. In EPCRA, which was passed in 1986 and then clarified in 1987, EPA correctly articulated an interpretation of the intent of a fertilizer retail exemption. It says because the general public is familiar with the application of agricultural chemicals as part of common farm, nursery, livestock production activities and the retail sale of fertilizers, there is no community need for reporting of the presence of these products.

In the reference that was placed there into the regulation under Section 311(e)(5), retailers are exempted from reporting requirements for fertilizers only. Therefore, substances sold as fertilizers would not need to be reported. However, the agricultural chemicals such as pesticides would need to be reported.

In the last few years, EPA has actually visited ag retailers and cited them for not reporting fertilizers. There were actions taken, fines and penalties paid, to resolve these issues, where the ag retailer felt like they did report their Tier 2s, they did report the products as directed by EPA, and they were in compliance with those. However, due to some guidance or reinterpretation by EPA, these ag retailers lost the exemption and it cost them monies.

One of the things that is also occurring that EPA is actually under the SIC codes for the ag retailer, they typically fall under 5191, which is a farm wholesale suppliers. Many EPA agencies are now recognizing or actually identifying or reclassifying ag retailers as manufacturers under the SIC code of 2875. If EPA continues to reclassify ag retailers as manufacturers, it does place additional regulatory burden upon the ag retailers in the amount of somewhere around $30,000 per location, with an annual update burden of around $6,000.

The second point I would like to highlight is the Clean Water Act pesticide permits. EPA has developed a general national pollution discharge elimination permit in response to 6th Circuit Appeals

Court's decision in the National Cotton Council v. EPA. In this case, there actually was clarification direction given to ag retailers and farmers that they would need to get an NPDES permit to apply pesticides to waters of the States.

These products would already have been permitted or a label approved by EPA through FIFRA, and we see this to be duplicate of effort and also probably differencing of opinion from the FIFRA group and the clean water group. This difference of opinions or actual approvals will cause confusion to the ag community and unnecessary burden as well.

In summary, we applaud your efforts here to hear our testimonies, and we ask you to continue to hold these regular oversight meetings, and we ask Congress to look into legislative action to prevent EPA to continually give guidance, rather than regulations, and we look forward to answering any questions you might have.

[Prepared statement of Mr. Pirkle follows:]

Thank you, Chairman Issa and Ranking Member Cummings. I appreciate the opportunity to appear before this Committee. My name is Billy Pirkle, and I am here to testify on behalf of the Agricultural Retailers Association (ARA), a trade association which represents America's agricultural retailers and distributors of crop inputs, equipment and services. ARA members are scattered throughout all 50 states and range in size from small family-held businesses or farmer cooperatives to large companies with multiple outlets.

I am the Senior Director for Environmental, Health, and Safety for Crop Production Services (CPS). In this role I work with staff and management to give direction for the regulatory support and oversight of regulatory programs for the company's retail operations.

CPS is headquartered in Loveland, Colorado. The company was established in 1983, but predecessor companies began operating as early as 1859. CPS continues to grow by being an innovative, full-service agriculture retailer with a vision. At CPS our mission statement is: *"We are committed to being the leading provider of agricultural inputs in each of our markets. We will attract and retain outstanding employees by motivating and rewarding them for their accomplishments in providing exceptional service to our valued customers."*

I would like to explain the important role that agricultural retailers play in feeding the nation and the rest of the world. Agricultural retailers provide farmers with crop input products like seed, fertilizer, crop protection products and equipment. Agricultural retailers also provide their farmer customers with crop consulting and custom application services. Agricultural retailers perform soil sampling so that the right kind and amount of fertilizer is applied in the right place; thus, preventing leaching. Also, agricultural retailers perform approximately 45 percent of crop pesticide application. Agricultural retailers are trained and certified to perform these activities.

ARA is concerned with several regulatory actions by the U.S. Environmental Protection Agency (EPA) that we believe are unnecessary, causing financial burden on the industry, and in several instances contrary to the agency's statutory authority.

Emergency Planning and Community Right-to-Know Act (EPCRA) Regional Interpretation of the Fertilizer Retail Exemption:

Several years ago the U.S. Environmental Protection Agency's (EPA) Region 4 office began issuing citations to agricultural retail facilities for failure to report under the Emergency Planning and Community Right-to-Know Act (EPCRA) when fertilizer was blended at the retail facility. However, the EPCRA statute specifically exempts "fertilizer held for sale by a retailer to the ultimate consumer".

When EPA headquarters was asked to clarify the exemption, EPA sided with Region 4, saying that custom blending is manufacturing fertilizer, so the exemption does not apply. This exemption is longstanding in the industry. Nearly all agricultural retailers custom blend types of fertilizer at the retail site for farmer customers because farmers do not have equipment to blend in the field. Furthermore, blending fertilizer is a different process than manufacturing fertilizer. On October 15, 1987 in the *Federal Register*, EPA correctly articulated the following interpretation of Congressional intent regarding the fertilizer retail exemption:

> Because the general public is familiar with the application of agricultural chemicals as part of common farm, nursery, or livestock production activities, and the retail sale of fertilizers, there is no community need for reporting of the presence of these chemicals.

In other words, EPA concluded in 1987 that Congress' intent was to exempt a retail facility from these provisions because the community was well aware of the retail sale and application of fertilizers, not because these fertilizers are present in small quantities or because of any activities performed on the fertilizers at the facility.

On March 22, 2012, Senate Environment & Public Works Committee Ranking Member James Inhofe (R-OK) at a full committee hearing entitled, "Environmental Protection Agency Fiscal Year 2013 Budget Hearing" stated the following to EPA Administrator Lisa Jackson:

> "Rural America has been hit especially hard by EPA's regulatory overreach. Fourteen years ago, EPA tried to regulate propane dealers under the Emergency Planning and Community Right-to-Know Act (EPCRA) even though they didn't meet the definition of the program. In response, I introduced legislation which was signed into law to stop it. Now, under the same program, you are trying to force the Ag Retailers to comply with the reporting requirement under Section 312 of EPCRA, even though the law currently exempts them. EPA is proposing that the simple mixing of fertilizers to meet customer's specifications for their soil negates the current exemption that they have under EPCRA. Does EPA expect to require farmers to now go to Wal-Mart or Target for their fertilizer needs? Maybe EPA doesn't understand rural America but I do. If EPA continues down this road they will be imposing additional costs on hundreds of small businesses and farmers in rural America. I would ask that you rethink your approach. If you won't apply this exemption to the Ag Retailers, I will not hesitate to work with Chairman Lucas from Oklahoma to make sure the exemption is applied."

ARA strongly agrees with the statement made by Senator Inhofe and questions submitted to EPA Administrator Jackson. The consequences of letting this interpretation stand are increased costs of reporting fertilizer under EPCRA, the risk of regulatory enforcement on other retailers seemingly working under the exemption, and the additional consequences of defining an agricultural retailer as a "manufacturer". This would change the regulatory requirements for retailers under other environmental laws. For example, it would pull retailers into the storm water runoff permitting requirements, Clean Air Act requirements, and Toxics Release Inventory reporting. If a retailer bundled all of these permits together with one engineering firm, a retailer could probably obtain a total EHS service for around $30,000 initial with a $6,000 annual update cost.

Pesticide Spray Drift Guidance:
It is ARA's understanding that EPA plans to release pesticide spray drift guidance sometime in 2012 in order to help standardize pesticide labels and to help regulators have clarity. In November 2009, EPA proposed new spray drift label guidance that used language like, "could cause harm" or "may cause adverse effects" as the standard for liability. However, the Federal

Insecticide, Fungicide and Rodenticide Act (FIFRA) has a science-based, risk-benefit standard of "no unreasonable adverse effects". When EPA proposed to diverge from this standard to an essentially zero-tolerance spray drift standard, the agriculture industry quickly commented to EPA that this standard is unworkable and it is not in line with FIFRA and opens industry up to endless citizen suits. The proposed standard would also not encourage technology adoption or applicator training. Congress should see that EPA does not try to change the legal standard found in FIFRA through a guidance document.

Clean Water Act Pesticide Permits:
EPA developed a general National Pollutant Discharge Elimination System (NPDES) permit in response to the 6th Circuit Appeals Court decision in *National Cotton Council v. EPA*, which struck down an EPA rule that exempted certain pesticide applications from Clean Water Act (CWA) point source permitting. The court gave EPA and industry until October 2011 to develop and adopt a NPDES permitting system for pesticide applications. Since this court imposed deadline, pesticide applicators are being required to obtain an NPDES CWA permit to conduct any aquatic applications.

The issue is that pesticides are already thoroughly evaluated by EPA under FIFRA. The pesticide label, which includes use instructions for different crops, geographic regions and weather conditions, is approved by EPA, and the instructions are based on mountains of health and environmental data. Thus, this new NPDES permitting system will result in little to no environmental benefit but will cost the industry millions of dollars to comply with these new requirements and leave commercial applicators and their farmer customers vulnerable to citizen suits. Legislation has been introduced called "the Reducing Regulatory Burdens Act" (HR 872) that would explicitly exempt FIFRA-compliant pesticide applications from Clean Water Act (CWA) permitting requirements. HR 872 is supported by the agricultural industry, state departments of agriculture, mosquito control officials, and a wide range of other impacted industries. The House of Representatives passed HR 872 convincingly on March 31, 2011 by a vote of 292 to 130. In the Senate, HR 872 easily passed out of the Committee on Agriculture and Forestry on June 21, 2011 and has bi-partisan support of well over 60 Senators. However, it continues to be held up for consideration primarily by one Senator - Senate Environment & Public Works Committee Chairman Barbara Boxer (D-CA). ARA supports the Federal Agriculture Reform and Risk Management Act (FARRM) of 2012 (H.R. 6083) or 2012 Farm Bill sponsored by House Agriculture Committee Chairman Frank Lucas (R-OK) and Ranking Member Collin Peterson (D-MN). HR 6083, which was approved by the House Agriculture Committee on July 11, 2012 by a bi-partisan vote of 35 to 11, includes HR 872 and other key regulatory reform provisions. ARA believes it is imperative the U.S. House of Representatives take action on the 2012 Farm Bill prior to the upcoming August recess in order to allow enough time to complete negotiations with the Senate on a final conference agreement.

Clean Water Act Jurisdictional Guidance
In May 2011, EPA put out for comment a draft guidance document to clarify the jurisdiction of the Clean Water Act by interpreting the term "waters of the US". ARA is concerned that EPA is making large legal changes through a guidance document which has the lowest bar to getting approved. Also, the Guidance represents a significant rewrite of the current regulations, guidance and agency policy that governed jurisdictional determinations for the history of the

regulatory program. The Guidance expands the universe of waters that will be considered "traditional navigable waters" by including for the first time ever, all waters that support one-time recreational use. In addition, the Guidance gives new and expanded regulatory status to "interstate waters," equating them with traditional navigable waters, and in addition, making it easier to find jurisdiction for adjacent wetlands, tributaries and other waters judged by a newly crafted significant nexus test.

ARA is concerned that the Guidance has serious legal implications, and will open America's custom applicators and farmers up to CWA citizen and third-party lawsuits through other policies like the NPDES permits for pesticide application and spray drift. ARA joined the Waters Advocacy Coalition (FB, TFI, CLA, Homebuilders and others are members) in submitting detailed comments on the legal implications and economic consequences of finalizing this guidance. In August 2011, EPA told ARA that they were still reviewing comments and trying to decide what to do next and may decide to put it out as a proposed rule so that it would have legal impact. However, in early 2012, EPA decided to send their guidance to OMB in form of final. The final guidance may be released sometime later this summer. House Transportation & Infrastructure Committee Chairman John Mica (R-FL) and Ranking Member Nick Rahall (D-WV) have an introduced a bi-partisan companion bill (HR 4965) in the House to block EPA's actions and re-assert Congress' authority in this area. This guidance document is an attempt to expand the jurisdiction of the CWA without obtaining the necessary statutory changes or going through the required formal rulemaking process.

Numeric Nutrient Criteria in Florida:
Pursuant to a January 2009 Clean Water Act determination and a consent decree with Florida Wildlife Federation to settle a 2008 lawsuit, EPA proposed numeric nutrient water quality standards for lakes and flowing waters in Florida in January 2010, and established final standards in November 2010. The model used to define impaired waters is scientifically flawed, and will result in 50 percent more impaired waters than would be defined as "impaired" if a biological component were added. EPA did not have the legal basis to set criteria for Florida. As a result of this rule, the Florida agriculture industry will be severely hurt in terms of jobs, monetary cost of compliance, and agricultural production. It is estimated that 44 states have some form of numeric nutrient criteria in development. EPA should not be able to enter states and force the state to adopt numeric nutrient criteria which are not scientifically based or attainable.

ARA joined a federal lawsuit with other national and state agribusiness organizations to sue EPA in an effort to stop the agency from taking similar action in other states. In February 2012, a federal judge ruled that the EPA has the authority under the CWA to establish numeric nutrient criteria if a state fails to act and upheld the proposed lakes and streams criteria. The federal judge did strike the EPA's proposed streams criteria due to inadequate modeling and stated that the agency failed to use sound-science. The state of Florida has submitted proposed numeric nutrient criteria, which is pending review at the EPA. The EPA is currently under a court order to propose additional federal NNC for coastal waters and South Florida canals by July 20. EPA has requested the court extend this deadline until early 2013 to allow the agency more time to review the state proposal.

Mississippi River Basin Watershed Numeric Nutrient Criteria Lawsuit:
Environmental advocacy groups recently sued EPA in federal district court in Louisiana. The Gulf Restoration Network, Sierra Club, Natural Resources Defense Council, and others assert that EPA wrongly denied a July 2008 petition requesting the establishment of numeric nutrient water quality criteria and a nutrient TMDL for the Mississippi River Basin and northern Gulf of Mexico. The complaint asserts that EPA's July 2011 denial of the petition constitutes an abuse of discretion under the U.S. Administrative Procedures Act.

If EPA loses or settles this case, the result would likely be federal rulemakings establishing numeric water quality criteria for Total Nitrogen and Total Phosphorus throughout the Mississippi River Basin as well as EPA-promulgated nutrient TMDL(s) for the River and Northern Gulf of Mexico. The nutrient criteria and TMDLs stemming from a negative judicial ruling would be translated into nutrient water quality based effluent limitations in NPDES permits and TMDL load and waste load allocations. In other words, local governments, industry, and agriculture in the Mississippi River Basin states could have new limits placed on the amounts of nitrogen and phosphorus they discharge or allow to runoff into the river system.

The economic impact of numeric nutrient criteria and nutrient TMDLs on the Mississippi River Basin states would likely be enormous. By way of comparison, EPA's recent numeric nutrient criteria rules for Florida freshwater systems are estimated to carry a Florida-wide implementation price tag of $298 million to $4.7 billion per year. Another study calculated that Florida sewer utility bills would have to increase $570 to $990 per year to fund the substantial capital projects required to achieve EPA's nutrient water quality criteria. ARA and a coalition of national and state agricultural organizations have been granted the right to intervene in this case by the federal court.

Chesapeake Bay TMDL's- Nutrient and Sediment Pollution Diet:
The agricultural community supports protecting and improving water quality in the Chesapeake Bay and its tributaries, however the final phosphorus, nitrogen and sediment total maximum daily loads (TMDLs) are clearly based on a flawed model that will cost the agriculture industry. Farmers have taken voluntary action throughout the Bay region to responsibly manage the nutrients from fertilizer and manure used to produce crops, and to prevent or minimize soil loss from farmland. Conservation and agronomic measures adopted by farmers in the Bay watershed have resulted in significant reductions in nutrient and sediment loss to the Bay over the past 25 years. The agricultural community has more to do to fulfill its commitment to improving water quality in the Bay, and is eager to work with the Bay states, other stakeholders and the Environmental Protection Agency (EPA) to continue to improve its management of all nutrient sources.

The agricultural sector is struggling to accept this TMDL, either substantively or as a matter of economics, and is questioning the wisdom of EPA's insistence to move forward with these policies at this time. The agricultural community believes that the approach EPA is taking in the Bay TMDL is entirely wrong and counterproductive, for the following reasons:

- EPA has adopted thoroughly unachievable goals for water quality in the Bay region, given the population that lives there and the environmental impact of supporting and employing a growing number of residents.
- EPA followed the setting of these impossibly high expectations by issuing poor and incomplete information about water quality in the Bay region and the real cost of achieving the goals it has set.
- One of the reasons for this impossibly flawed information is that EPA is relying upon an untested and highly imperfect model of the Bay, including incomplete and incorrect information about agricultural practices in the region and their water quality performance. Despite these serious concerns, most of that model's operations and assumptions are not reviewable by the public.
- EPA is further undermining confidence in this effort by using means and measures that are absolutely contrary to the law.

Clean Air Act:

Dust regulation:
Under the Clean Air Act, EPA periodically reviews National Ambient Air Quality Standards (NAAQS). EPA has traditionally regulated small particulate matter because it is known to cause health problems, like cigarette smoke. However, ARA remains concerned that EPA may still consider regulating course particulate matter (PM) or dust, at levels that would be impossible for some places like the West to achieve. There is no conclusive evidence that PM causes health problems. EPA Administrator Jackson has told Congress that she will not move forward with changes to the dust standard. Rep. Kristi Noem (R-SD) introduced legislation (HR 1633) that would prevent EPA from offering changes to the standard for a year. HR 1633 passed the House on December 8, 2011 and is pending in the U.S. Senate. If EPA is ever allowed to go forward with regulating PM at very low levels of occurrence, the agriculture industry will be severely limited in many parts of the U.S.

Greenhouse Gas Regulation:
EPA's greenhouse gas "endangerment finding" has triggered the regulation of greenhouse gas emissions under the Clean Air Act. Since greenhouse gasses occur naturally and are necessary for life, it is clear that the Clean Air Act is an inappropriate vehicle for regulating greenhouse gas emission. EPA has issued a "Tailoring Rule" to help small emitters adjust and to shelter certain emitters from the requirements of the Clean Air Act. This proposal has been challenged in federal court. On June 26, 2012 the United States Court of Appeals for the District of Columbia affirmed the EPA's findings and upheld the rule. ARA and other segments of the agricultural industry strongly disagree with the court's ruling and continue to believe that the Clean Air Act is not an appropriate vehicle to regulate greenhouse gases. We believe the EPA proposal goes against Congressional Intent. Our industry is concerned with agricultural retailers' suppliers' costs of compliance that will be passed along to the retailer. Furthermore, retailers fear that their farm and ranch customers and their businesses will be disproportionately impacted through substantially higher electricity, feed, and fuel costs. In an industry that operates on very thin margins (approximately 2%), uncertainty can play a large part of a retailer's economic failure or success.

Conclusion

In summary, ARA asks Congress to continue to hold regular oversight hearings regarding federal agency regulatory and enforcement activities. ARA also asks Congress to take necessary legislative action to prevent the EPA from over-reaching its statutory authorities in the areas highlighted in our testimony here today. ARA and our members are strong stewards of the environment and continue to operate in an environmentally safe manner. We look forward to working with the Committee, Congress, and EPA to provide any needed statutory clarifications and improve these regulations.

Chairman ISSA. Thank you, and we will.
Mr. Williams.

STATEMENT OF HOWARD WILLIAMS

Mr. WILLIAMS. Thank you, Chairman Issa, Ranking Member Cummings, staff, representatives.

Nearly as the 20th century, cyanide used as a fumigant was as likely to kill the neighbors as it was the vermin, and in the secret history of lead we knew, our surgeon general knew, and the manufacturers of the gasoline or additive knew, in 1922, that gasoline would leave behind particulates of lead which in small doses would affect human health. And, yet, the federal bureau studying that aspect with interest chose to leave the word lead out and chose not to have any press releases because the word lead would cause excitement in the newspaper headlines.

Ultimately, the word ethyl was used, and again, because leaving lead out would leave the public somewhat blind as to what was in the gasoline additive. At that time, national gasoline sales were 8 billion gallons per year and the additive ethyl, if it gleaned 20 percent market share, would bring in approximately $40 million per year in net profit. Lead was outlawed as an additive here in 1986.

As we leave 1922 and move forward 90 years, in an advancing society, we see the Chicago Tribune's article, four-part series on flame retardants, and again we see scarey headlines and the need for regulation. My understanding from a news release yesterday is that the EPA is investigating those allegations. And as I repeat a comment that I made in my February testimony, a thriving free market economy self-regulates demand, supply, and price, but it does not uniformly or equitably regulate health, safety, or environmental responsibility. The invisible hand of the free market does not naturally yield to the good of the whole, but regulation is a necessary balance, and spirited debate such as this is its necessary counterbalance.

Fred Knapp, in writing for The Hill, cites several independent survey findings showing that a weak economy is more rooted in customer demand and concerns over that economy, and that a 2011 U.S. Chamber of Commerce survey showed that only 8 percent of the respondents said too much regulation was a cause.

I manage a manufacturing division in central Pennsylvania. We make architectural building products. Our business, as all businesses, are, of course, subject to regulations. But all of our investment decisions, and our company dates back to 1948; we are privately held, all of our decisions for investment are based on market research, solid market research, and it is on that that we make our decisions, not on whether some aspect of that work is regulated or not regulated.

In this economy, we are blessed to have added jobs, in spite of the doubtful economy that we have been in. Since 2008, July of 2008, we have added 94 jobs to our facility and we have invested in a startup that has now 29 other jobs, millions of dollars invested in that startup.

Investments in workplace safety, trading commerce, and environmental aspects have resulted in our success within the marketplace. Our customer demand is what raises our bar, much higher

than federal or State regulation may raise it, because we are subject to the direction of the customer.

In his 1961 farewell address, President Eisenhower said: Another factor in maintaining balance involves the element of time. As we peer into society's future, we, you and I, and our government, must avoid the impulse to live only for today, plundering for our own ease and convenience the precious resources of tomorrow. We cannot mortgage the material assets of our grandchildren without asking the loss also of their political and spiritual heritage. We want democracy to survive for all generations to come, not to become the insolvent phantom of tomorrow.

Regulation is a necessary balance because the invisible hand of the free market does not naturally, or even willingly, yield to the good of the whole. Business growth and jobs creation will continue to be rooted in the basics of market demand. Business growth by deregulation has the potential to externalize costs that were otherwise covered at the point of origin.

Business gains from deregulation will not likely be shared with the America of tomorrow, and we will have done what President Eisenhower warned us against; we will have mortgaged the material assets of our grandchildren because we chose to live for today, plundering for our own ease and convenience the precious resources of tomorrow.

Thank you.

[Prepared statement of Mr. Williams follows:]

Howard Williams' Testimony
July 19, 2012
"Continuing Oversight of Regulatory Impediments to Job Creation: Job creators Still Buried by Red Tape"
Committee on Oversight and Government Reform

Early in the 20th Century cyanide used as a fumigant was as apt to kill the neighbors as it was the intended vermin.[i]

In The Secret History of Lead, Jamie Lincoln Kitman writes that, "in December 1922 the US Surgeon General, H.S. Cumming, wrote Pierre DuPont: "Inasmuch as it is understood that when employed in gasoline engines, this substance will add a finely divided and nondiffusible form of lead to exhaust gasses, and furthermore, since lead poisoning in human beings is of the cumulative type resulting frequently from the daily intake of minute quantities, it seems pertinent to inquire whether there might not be a decided health hazard associated with the extensive use of lead tetraethyl in engines."[ii]

A federal bureau studying the matter decided it would, "refrain from giving out the usual press and progress reports during the course of work, as newspapers are apt to give scare headlines and false impressions before we definitely know what the influence of the material will be." [iii]

Ultimately, the report omitted the word, "Lead", using instead "Ethyl" because, "If it should happen to get some publicity accidently, it would not be so bad if the word "lead" were omitted as this term is apt to prejudice somewhat against its use."[iv]

Gasoline sales at that time were around eight billion gallons per year. It was then estimated that if Ethyl Gas could corner just 20% of that market, it would yield a profit of $40 million per year.[v]

Lead was outlawed as an automotive gasoline additive in 1986.

Leaving 1922, and moving ahead 90 years to the more current story in the Chicago Tribune's 4-part series on flame retardants, we see truly "scary headlines" and, again, the need for regulation.

Repeating a comment from my February testimony on Regulatory Reform, "A thriving free market economy self-regulates demand, supply and price, but it does not uniformly, or equitably, regulate health, safety and environmental responsibility."

The invisible hand of the free market does not naturally yield to the good of the whole.

Regulation is its necessary balance, and spirited debate its necessary counter-balance.

Fred Knapp, Jr., in writing for The Hill, cites several independent survey findings pointing to a weak economy and low customer demand to be limiting business and jobs growth; noting a 2011 U.S. Chamber of Commerce poll asking what the top obstacle to hiring new employees was, only 8% said, "too much regulation". [vi]

I manage the Pennsylvania division of an American Owned business specializing in the manufacture of architectural building products.

Our business, as all businesses are, is subject to regulation, but our investment decisions are made on the basis of market research and financial analysis. The cost of regulation has never been the deciding factor in these decisions.

Our marketplace did not experience a double digit growth 2011 over 2010, but we did because we continued to invest in our people, our products and our environment.

We did not lose jobs because of the economy or regulation. We created 94 new jobs at our site since July 2008 and an additional 29 at a new business start-up.

Investments in workplace safety, trade and commerce, and environmental aspects have resulted in reduction in Workers Compensation rates, increased security at each of our 3 sites, and the management and continuous improvement of our environmental aspects.

Our work and investment in Sustainability resonates with our customers. It is within the great free market that, customer demand raises the bar on performance higher than federal or state regulation.

In his 1961 farewell address, President Eisenhower said, "Another factor in maintaining balance involves the element of time. As we peer into society's future, we – you and I, and our government – must avoid the impulse to live only for today, plundering for, for our own ease and convenience, the precious resources of tomorrow. We cannot mortgage the material assets of our grandchildren without asking the loss also of their political and spiritual heritage. We want democracy to survive for all generations to come, not to become the insolvent phantom of tomorrow."[vii]

Regulation is a necessary balance because the invisible hand of the free market does not naturally, or even willingly, yield to the good of the whole.

Business growth and jobs creation will continue to be rooted in the basics of market demand.

Business growth by deregulation has the potential to externalize costs that were otherwise covered at the point of origin.

Business gains from deregulation will not likely be shared with the America of tomorrow, and we will have done what President Eisenhower warned us against. We will have, "mortgaged the material assets of our grandchildren", because we chose, "to live for today, plundering, for our own ease and convenience, the precious resources of tomorrow."

Thank you.

---

[i] The Poisoner's Handbook; Deborah Blum

[ii] The Nation, March 2000, The Secret History of Lead, Jamie Lincoln Kitman **http://www.thenation.com/article/secret-history-lead?page=full#**

[iii] The Nation, March 2000, The Secret History of Lead, Jamie Lincoln Kitman; http://www.thenation.com/article/secret-history-lead?page=full#

[iv] The Nation, March 2000, The Secret History of Lead, Jamie Lincoln Kitmanhttp://www.thenation.com/article/secret-history-lead?page=full#

[v] Radford University, Charles F. Kettering and the 1921 Discovery of Tetraethyl Lead In the Context of Technological Alternatives, Bill Kovarik, Ph.D. http://www.radford.edu/wkovarik/papers/kettering.html

[vi] http://thehill.com/blogs/congress-blog/economy-a-budget/207957-small-business-polls-reject-anti-regulation-rhetoric

[vii] http://mcadams.posc.mu.edu/ike.htm

Chairman ISSA. Thank you. I am sure he wasn't talking about a trillion dollar deficit.

Mr. Russell.

STATEMENT OF STEVE RUSSELL

Mr. RUSSELL. Chairman Issa, Ranking Member Cummings, and members of the Committee, good morning. My name is Steve Russell. I am the Vice President of the Plastics Division at the American Chemistry Council. ACC thanks you for the opportunity to participate in today's hearing.

ACC represents companies in the business of chemistry. Our members apply the science of chemistry to make innovative products that make people's lives healthier, better, and safer. The business of chemistry is a $760 billion enterprise and a key element of our Nation's economy. Our industry is one of the Nation's largest exporters, accounting for $0.10 out of every $1 of U.S. exports; and we are among the largest investors in research and development.

In response to the Committee's request for information, ACC pointed out five areas where regulatory burdens are impeding our Nation's economy and hurting jobs in our industry. Those areas included chemical assessment processes and certain air regulations.

I am here today to highlight another example: the General Services Administration's decision to designate a single green building rating system, LEED, as the standard for federal agencies and departments. LEED is one of several private sector green building systems which are helping to drive reductions in the energy use in both public and private sectors. To be absolutely clear, ACC supports this broad objective. We have supported laws and regulations to increase energy efficiency. We and several of our members are members of LEED. In fact, our own building here in Washington is LEED certified silver.

Our concern is that the GSA has given its stamp of approval to only LEED, and LEED is currently being revised in a way that would jeopardize U.S. jobs and our industry's competitiveness, not to mention building performance and efficiency. This matters to ACC, and it should matter to the Committee, because many of the construction materials that our industry manufactures are essential the insulation, roofing, windows, and sealants that allow buildings to achieve the kind of efficiency and savings critical to reducing environmental impacts and ensuring a sustainable future.

GSA's selection of LEED is damaging for several reasons, but I would like to highlight three.

First, by picking a single rating system, GSA effectively creates a monopoly for federal buildings. Building rating systems function as standards, and there are various standards available to the Federal Government. When the entire Federal Government picks just one private standard, then competition, the engine that drives lower prices, greater efficiency, higher quality products, is removed. Once a standard captures the entire market, there is no competition and no incentive to keep the price of implementing that standard down. So, in the end, the taxpayer pays more.

In this case, GSA continues to award a monopoly to LEED, and the Committee should urge GSA to, instead, construct performance-based criteria for selecting green building rating systems, and

then accept any private standard that meets the designated performance criteria.

Second, regulations and standards adopted by agencies should be data-driven and science-based. Federal agencies can't avoid obligations to make regulatory decisions based on science by simply adopting a private standard that is not based on science. Yet, this is unfortunately what GSA is doing. Recently proposed LEED updates are so weakly grounded in science that the system would give a credit for avoiding proven U.S. made products. These products include energy-efficient foam insulation and cool vinyl roofing, such as the recently installed vinyl roof at the DOE headquarters.

This credit would also restrict the ability of the Federal Government to use shatter-resistant, polycarbonite glass, such as this example here, which is essential in protecting buildings such as courthouses, government institutions, and prisons from bullets. As you can see, a bullet has been shot into and remains impregnated in the unshattered glass.

Because credits such as these are not adequately justified by science or data, GSA should not recommend LEED for federal buildings if these and similar credits remain.

Finally, GSA is wrongly giving preference to building standards that could hurt the competitiveness of small American businesses. For example, under a proposed chemical avoidance credit in the current version, small U.S. manufacturers of building materials will have to certify that their materials comply with complex European regulations so that the builders can obtain a credit, imposing additional costs for U.S. small manufacturers if they wish to compete.

A different proposed credit requires materials to be screened against a cumbersome tool developed by an environmental NGO, which adds unnecessary costs not easily borne by small domestic manufacturers. Of course, if compliance with the European requirement is a function of the LEED standard, U.S. manufacturers could decide that the compliance cost is too high and exit that market.

ACC sincerely appreciates the Committee's interest in working on regulations that hinder job and economic growth, and we urge you to ask GSA to recommend, instead, science-based, performance-based green building rating systems that reduce costs to businesses and save jobs.

Thank you. Thank you to the Committee, and we look forward to answering your questions.

[Prepared statement of Mr. Russell follows:]

Chairman Issa, Ranking Member Cummings, and Members of the Committee:

Good morning. My name is Steve Russell, and I am Vice-President of the Plastics Division at the American Chemistry Council. ACC thanks you for the opportunity to participate in this hearing on regulatory burdens facing our economy that impede job and economic growth.

ACC represents the leading companies in the business of chemistry. Our members apply the science of chemistry to make innovative products that make people's lives better, healthier and safer. ACC is committed to improved environmental, health and safety performance through Responsible Care®, and to common sense advocacy designed to address major public policy issues. The business of chemistry is a $760 billion enterprise and a key element of the nation's economy. Our industry is one of the nation's largest exporters, accounting for 10 cents out of every dollar in U.S. exports, and we are among the largest investors in research and development.

In response to the Committee's request for information, ACC pointed out five areas where regulatory burdens are impeding our nation's economy and costing jobs specific to just the chemical industry. Those areas included the chemical assessment process and onerous air regulations.

I'm here today to highlight another example: the General Service Administration's decision to designate a single green building rating system – LEED – as the standard for all federal agencies and departments. LEED is one of several private sector "green building" systems which are helping drive reductions in energy use in public and private sector buildings. To be clear, ACC supports this broad objective; our members have worked with the LEED developers, and we have supported laws and regulations to

increase energy efficiency. Unfortunately, GSA has given its stamp of approval only to LEED, and LEED is currently being revised in a way that could jeopardize U.S. jobs and our industry's competitiveness, not to mention building performance and efficiency. This matters to ACC – and it should matter to the Committee – because many of the construction materials our industry manufacturers are essential to the insulation, roofing, windows and sealants that allow private-sector and federal government buildings to achieve the kind of energy efficiency and cost savings critical to reducing environmental impacts and ensuring a sustainable future.

GSA's selection of LEED is damaging for many reasons, but I will highlight three.

First, by picking a single rating system GSA effectively creates a monopoly for federal buildings. Building rating systems function as standards, and the various standards produced by the private sector compete in an open marketplace. When the entire federal government picks just one private standard, competition – the engine that drives lower prices, greater efficiency, and higher quality products – is removed. Once a standard captures the entire market there is no competition, and no incentive to keep the price of implementing the standard down, so in the end the taxpayer pays more.

In this case, GSA continues to award a monopoly to LEED. The Committee should urge GSA to construct performance-based criteria for selecting green building ratings systems, and then accept those private standards that meet the designated performance criteria.

Second, regulations and standards adopted by agencies should be data-driven and science-based. Federal agencies cannot avoid obligations to make regulatory decisions based on science by adopting a private standard that is not based on science. Yet this is what GSA has done. Recently-proposed LEED updates are so poorly grounded in

science that the system gives "credits" for avoiding proven US-made products. These products include energy-efficient foam insulation; shatter-resistant polycarbonate glass (essential to federal courthouses and prisons) and cool vinyl roofing, such as the very roof recently installed on the DOE headquarters. Because credits such as these are not adequately justified by science or data, GSA should not use LEED for federal buildings if these credits remain.

And third, GSA is wrongly giving preference to a building standard that could hurt the competitiveness of many small American businesses. For example, as the wood industry points out, LEED credits can be manipulated to encourage use of lumber shipped from overseas over domestic lumber. And, under a proposed chemical avoidance credit in the current LEED update, small U.S. manufacturers of building materials will have to "certify" that their materials comply with complex European regulations so that builders can obtain the credit – imposing additional costs for small U.S. manufacturers if they want to compete.

A different proposed credit requires materials to be screened against a cumbersome tool developed by an environmental NGO which adds unnecessary costs not easily born by small domestic manufacturers. Of course, if compliance with European requirements is a function of a LEED standard, U.S. manufacturers could always decide that the compliance cost is too high and exit that product market. Going forward, builders wanting LEED-compliant materials (even for federal buildings) could import the materials from Europe. In either case, GSA's actions will have hindered U.S. business, and cost American workers their jobs.

ACC appreciates the Committee's interest in limiting regulations that hinder job and economic growth. We urge you to ask GSA to recommend science-based, performance-

based green building ratings systems that reduce costs to businesses, and save American jobs.

Thank you for the opportunity to testify before the Committee today; I am happy to answer any questions that you may have.

Chairman ISSA. Thank you.
Mr. Rutenberg.

STATEMENT OF BARRY RUTENBERG

Mr. RUTENBERG. Chairman Issa, Ranking Member Cummings, members of the Committee, thank you for the opportunity to testify. My name is Barry Rutenberg, a home builder from Gainesville, Florida and NAHB's 2012 chairman of the board. On behalf of the 140,000 members of the National Association of Home Builders, I want to thank you for holding this hearing on streamlining federal regulations.

NAHB members have daily interaction with scores of federal regulations and know firsthand how the regulatory process impacts small businesses. I want to highlight a few of those regulations now, but my written testimony contains much more detail on these and other burdensome regulations. I might add that recent studies show that the cost of regulations is 25 percent or more of the cost of a home.

This year, regulators may make decisions that will determine the future shape of the secondary mortgage market. Dodd-Frank authorized significant changes to mortgage lending practices, including the ability to repay standards, which is part of what is called a qualified mortgage, as well as risk retention and qualified residential mortgage provisions which will determine the future shape of the secondary mortgage market.

NAHB supports regulatory changes aimed at more rational lending practices, greater lender accountability, and improved borrower safeguards. It is critical that mortgage lending reforms are implemented in a manner that causes minimum disruption. A housing finance system that provides adequate and reliable credit to homebuyers at reasonable interest rates through all business conditions is critical to our Nation's economic health. Overly restrictive rules will prevent willing, creditworthy borrowers from entering the housing market, even as owning a home remains an essential part of the American dream.

Another key factor in housing's current depressed state has been confusion over the issue of acquisition, development, and construction lending. Our members are frequently caught in an argument between banks and regulators, who take turns pointing fingers at each other for the lack of lending to the construction sector. We seek answers as to whether the federal banking regulators are pressuring the banks or if institutions are overhauling and downsizing portfolios independent of regulator and examiner pressure.

A significant source of frustration in the remodeling sector is EPA's lead renovation, repair, and painting rule. Renovation work that disturbs more than 6 square feet in a pre-1978 home is required to follow new safe lead work practices, supervised and performed by an EPA-certified renovator. These requirements do not apply if tests show an older home does not have lead paint present; however, currently available test kits have false positive rates as high as 78 percent. While EPA has indicated that it is committed to having more accurate kits, consumers are paying additional costs for unnecessary work practices.

EPA also removed an opt-out provision for households living in pre-1978 homes that do not have young children or pregnant women. EPA estimated removing the opt-out would increase costs to small businesses by $507 million.

Legitimate small contractors will be forced to pass on these costs, increasing the likelihood that homeowners will turn to uncertified contractors who may not follow the rules.

NAHB is also concerned about the Department of Justice's interpretation of the Lacey Act, which seeks to prevent trade in protected plants and animals. Under the Lacey Act, Congress sought to exempt honest business owners and, instead, provided the U.S. Government more targeted tools to go after intentional violators. The U.S. Department of Justice, however, has virtually eliminated this important defense for honest business owners through a broad misinterpretation of the law. By deeming Lacey violation wood and plant products contraband, innocent companies are left without legal standing to challenge the government taking in court. Coupled with the requirement that the U.S. Government enforcing an almost limitless set of foreign laws, builders, and ultimately consumers, are left at great risk.

Therefore, NAHB supports Representative Cooper's bill, H.R. 3210, the Retailers and Entertainers Lacey Implementation and Enforcement Fairness Act, or RELIEF Act, which recognizes the need to hold harmless those who knowingly are found to be in possession of products that run afoul of the Lacey Act. NAHB is encouraged that the targeted common sense reforms included in this legislation will address these concerns and we thank Majority Leader Cantor for including this legislation in his schedule.

Again, we appreciate the opportunity to testify today and look forward to your questions. Thank you.

[Prepared statement of Mr. Rutenberg follows:]

Chairman Issa, Ranking Member Cummings, members of the committee, thank you for the opportunity to testify this morning.

My name is Barry Rutenberg and I serve as NAHB's Chairman of the Board and a home builder from Gainesville, Florida.

On behalf of the over 140,000 members of the National Association of Home Builders (NAHB), I want to thank you for holding this hearing and for your continued interest in investigating federal rules and regulations that should be a part of Congress' oversight efforts. NAHB represents members involved in a wide variety of activities, including the development and construction of single-family for-sale housing; the development, construction, ownership, and management of affordable and market-rate multifamily rental housing; and the development and construction of light commercial properties. We are affiliated with more than 800 state and local home builder associations throughout the country, and since the association's inception in 1942, NAHB's primary goal has been to ensure that housing is a national priority and that all Americans have access to safe, decent and affordable housing, whether they choose to buy or rent a home.

It should not be overlooked that the home building industry has been hit hard by the impacts of the Great Recession, with the construction sector currently experiencing a 17% unemployment rate with nearly 1.5 million jobs lost in the residential construction sector, which includes single-family and multifamily construction, land development and remodeling. In normal economic times, housing constitutes approximately 17% to 18% of Gross Domestic Product and is an important source of job creation.

As NAHB represents all aspects of the residential construction industry, our members have daily interaction with scores of federal regulations. Because of our experience, NAHB members have an acute understanding of how the federal government's regulatory process impacts real-world small businesses. Given the regulatory environment we face as an industry and as small businesses, I would like to share with you our thoughts on some key regulations that should receive increased federal oversight. Housing serves as a great example of an industry that would benefit from smarter and more sensible regulation.

Access to Financing/Dodd-Frank

In response to the financial crisis, Congress passed the *Wall Street Reform and Consumer Protection Act* ("Dodd-Frank") that authorized significant changes to mortgage lending practices, including the ability-to-repay standard, which in defining the QM (qualified mortgage) will set the ground rules for mortgage financing, and the risk retention and QRM (qualified residential mortgage) provisions, which will determine the future shape of the secondary mortgage market. The ability-to-repay provisions set minimum standards for mortgages by requiring lenders to establish that consumers have a reasonable ability to repay at the time the mortgage is consummated, and state that certain high-quality, low-cost loans are presumed to

meet this standard. The risk retention measures mandate how much "skin in the game" mortgage securitizers must have and which mortgages are exempt from risk retention.

NAHB supports regulatory changes aimed at more rational lending practices, greater lender accountability and improved borrower safeguards; however, it is critical that such mortgage lending reforms are implemented in a manner that causes minimum disruption to the mortgage lending process. New reforms should not limit consumer financing options or increase the cost. NAHB believes a housing finance system that provides adequate and reliable credit to home buyers at reasonable interest rates through all business conditions is critical our nation's economic health. According to an NAHB Housing Market Index survey conducted in January 2012, 69 percent of builders report that qualifying buyers for mortgages is a significant problem for them.

The Consumer Financial Protection Bureau (CFPB) has the responsibility for issuance of the final QM rules and have announced that they will publish a final rule by the end of this year and prior to the January 2013 statutory deadline. CFPB must be able to balance competing viewpoints as consumers must have access to affordable credit and responsible lenders should be able to operate in an environment without excessive penalties and litigation. Overly restrictive rules will prevent willing, creditworthy borrowers from entering the housing market even as owning a home remains an essential part of the American dream.

Another key factor in housing's current depressed state has been continued confusion and roadblocks in the banking community over the issue of Acquisition, Development and Construction (AD&C) lending. The lack of lending has stymied recovery of our industry and scores of others. Our members have spent years caught in an 'argument' between banks and federal regulators who take turns pointing fingers at one another when we seek answers to the questions of who is to blame for the lack of lending to the construction sector. Our members have been run around a hamster wheel on the question of whether federal banking regulators are pressuring the banks not to lend, whether the local examiners are 'acting rogue against the wishes of the DC chiefs', or if institutions are overhauling and downsizing portfolios independent of regulator/examiner pressure. NAHB believes that Congress has the authority to get to the heart of the problem and to help us to jumpstart our industry and the national economy.

Thus, to remedy this situation, NAHB supports H.R. 1755, the *Home Construction Lending Regulatory Improvement Act of 2011*, which has been introduced by Representatives Gary Miller (R-CA) and Brad Miller (D-NC).

H.R. 1755 offers a solution to the regulatory obstacles to the credit needs of our industry. It directs the banking regulators to issue new guidance in three key areas that have resulted in the credit window being slammed shut on our industry. H.R. 1755 removes the barriers to lending while preserving the regulators' ability to assure the safety and the soundness of the financial institutions they oversee.

The three key components of the bill direct bank regulators to 1) cease implementing a 100 percent capital bank lending limit for AD&C loans as a "hard" limit, and utilize the 100 percent of capital criteria as it was intended; 2) use "as-completed" values when assessing the collateral of residential AD&C loans they intend to fund to completion and use "arms length transactions" standards when assessing new loans; and 3) abstain from compelling a lender to call or curtail AD&C loans where the home builder is making payments in accordance with the loan documents.

EPA's Lead Renovation, Repair and Painting Rule (RRP)

With the new home construction market still at historic lows, the effort to find work in retrofitting and upgrading older housing (remodeling) has been attractive to many builders. Unfortunately, recent amendments and changes to the EPA's Lead Renovation Repair and Painting rule (RRP) have further constrained small businesses in the homebuilding industry, particularly the remodeling industry that are making every effort to comply.

The final rule, which took effect April 22, 2010, requires renovation work that disturbs more than six-square feet in a pre-1978 home to follow new lead-safe work practices supervised by an EPA-certified renovator and performed by an EPA-certified renovation firm. Poor development and implementation by EPA has resulted in considerable compliance costs and has hindered both job growth and energy efficiency upgrades. Moreover, NAHB remains concerned about the lack of availability of reliable lead testing kits. Current test kits can produce up to 60 percent false positives, meaning that in many cases, consumers are needlessly paying additional costs for work practices that are unnecessary.

The first important change to the RRP was finalized on July 6, 2010, when EPA disallowed homeowners in pre-1978 homes that do not have young children or a pregnant woman from waiving a contractor's compliance obligations, or "opt out" of the RRP, when undertaking renovation work. Not only does this change further restrict a consumer's choice about critical renovation work in older homes, but it also dismantles everything EPA originally included its original 2008 RRP to ensure that it was not overly costly to small businesses. The EPA stated that the inclusion of the opt out provision decreased the number of homes subject to the RRP from 77.8 million down to 37.6 million.[1] Furthermore, EPA states that the removal of the opt out costs an additional $507 million for small businesses in the first year alone.[2]

EPA's removal of the opt out provision made it more difficult for small businesses to absorb the regulatory impact. According to the U.S. Census Bureau's American Community Survey, approximately 38,317,131 owner-occupied housing units built before 1979 do not have a child under six living there, roughly 88.5% of all the housing stock in the U.S. built before 1979.[3] With the removal of the opt out provision, those homeowners no longer have the option of

---

[1] *U.S. EPA, Economic Analysis for the TSCA Lead, Renovation, Repair, and Painting Program Opt-Out and Recordkeeping Proposed Rule for Target Housing and Child-Occupied Facilities, ES-2. (October 2009).*
[2] *Economic Analysis for the 2009 Proposed Rule (page ES-4)*
[3] *U.S. Census Bureau, American Community Survey. 2007 Public Use Microdata Files.*

foregoing the costs of compliance with RRP when hiring a professional remodeler to work on an older house. For the small contractors, these additional costs have to be passed onto the consumer which increases the chances a consumer will hire another, likely uncertified, contractor to do the work, or worse, do the work themselves and actually increase the likelihood of disturbing lead-based paint. The restoration of the opt out provision would allow households that do not have young children or pregnant women the chance to undertake professional renovation work – most frequently energy efficiency upgrades – without facing compliance costs for a regulation that legitimately does not apply to anyone in the household.

In addition to incorporating the opt out to reduce the number of homes subject to RRP, the 2008 RRP also relied on the predicted existence of a test kit that, at the time the rule was enacted, was not available. EPA expected the more accurate test kit to be commercially available by September 1, 2010, and explicitly rejected other options to reduce cost of the regulation because of the anticipated test kit.[4] The new test kit (Phase II) was to supposed to replace the first version (Phase I), which EPA acknowledges has a significantly high false-positive result rate. If contractors use the kits to test pre-1978 homes for lead before renovation work begins and results are negative, (meaning there is no presence of lead-based paint) then they can bypass RRP compliance. However, with an overly-sensitive test kit with false positive rates ranging from 47%-78%, RRP requirements will be imposed onto renovations where there is no lead present at regulated levels. EPA said it was committed to having more accurate kits, thereby reducing the number of false positives and saving costs on RRP compliance. In fact, EPA's cost calculations rely upon the availability of the Phase II kits beginning in September 2010. As of today, Phase II test kits are still not available and EPA has no estimate as to when they will be available. When EPA promulgated its final lead paint rule, it offered that if improved test kits were not commercially available, it would initiate a rulemaking to extend for one year the effective date of the rule.

Although EPA is still allowing contractors to use Phase I test kits, the entire benefit of having better kits that would reduce the compliance costs for small businesses has been entirely overlooked. After months of informal pleas to EPA to adjust the RRP to account for the substantially higher compliance costs, NAHB formally petitioned EPA to undertake a rulemaking and develop a revised economic analysis. The EPA has never responded to NAHB's petition or other requests about the test kits. With inaccurate and overly-sensitive test kits, and the removal of the opt out, there is little opportunity for relief for remodelers undertaking renovation work in pre-1978 homes. Given the unreliability of commerically available lead testing kits, NAHB believes EPA should delay the rule's effective date.

EPA and the Army Corps of Engineers Clean Water Act "Guidance"

NAHB remains concerned regarding a forthcoming Clean Water Act "Guidance" from the EPA and the Army Corps of Engineers. This guidance will significantly expand the scope of features, including ditches, mudflats, prairie potholes, considered subject to the Clean Water Act. The

[4] *73 Fed. Reg. 21712 (April 22, 2008).*

agencies responsible for producing this Guidance, which was submitted to the Office of Management and Budget in February 2012, failed to conduct extensive cost-benefit analysis, meaningful small business regulatory impact analysis, and robust regulatory impact analysis. The Guidance will reverse recent Supreme Court decisions, such as the Rapanos case, and will ignore Congressional intent under the Clean Water Act for Congress is the only entity that may expand the scope of water subject to the Act. In practical terms, the Guidance will result in an increase in jurisdictional determinations which will result in an increased need for additional permitting requirements. NAHB is extremely concerned about the direction of this Guidance and encourages increased scrutiny of the Guidance.

DOE Building Codes

Further, our members have been particularly frustrated with efforts by DOE to push for significant increases in energy code requirements at recent model code development hearings, while simultaneously ignoring pleas from the regulated community on how to implement such requirements. Specifically, NAHB and DOE both supported an increase of 30% in minimum energy code compliance for the next edition of the energy code (IECC), but DOE refused to provide NAHB with any information on how it calculated that 30% increase. NAHB made the request both formally (through FOIA) and informally (directly to DOE staff) on numerous occasions. It is unrealistic to expect the regulated community to comply with an energy code mandate if the Agency in charge refuses to share how the mandate is to be achieved.

Green Rating Systems for Federal Buildings

The Energy Independence and Security Act of 2007 (EISA) authorized the Department of Energy (DOE) and the General Services Administration (GSA) to review green building rating systems every five years and determine if any should be adopted by the federal government. To comply with these requirements, an initial determination was made to use the US Green Building Council's (USGBC) LEED rating system. This established a monopoly for LEED, giving the USGBC a significant advantage because of the influx of federal dollars. The federal government should not choose winners and losers in the marketplace. NAHB believes that agencies should be able to use any legitimate, consensus based standard.

One major omission in the GSA/DOE review is consideration of residential construction. Although GSA's portfolio is largely commercial, other agencies participate in residential construction. One option that should be considered is the ICC 700 National Green Building Standard (NGBS), the first and only American National Standards Institute (ANSI) approved residential green rating system. This standard has been independently evaluated and found to be comparable to LEED. In fact, a report from the Cincinnati Chapter of the American Institute of Architects found that both rating systems are essentially equivalent in rigor, but that the NGBS is more affordable and more user friendly. It is important to note that the NGBS is also a consensus based standard and has been certified as such by ANSI. The National Technology Transfer and Advancement Act of 1995 requires the federal government to recognize and incorporate existing consensus standards in policy initiatives. While many claim to be

consensus-based, without a formal, independent, third-party approval, it is hard to know if the process is truly consensus based.

GSA and DOE are currently undergoing an updated review of green rating systems. NAHB would like these agencies to consider the National Green Building Standard as an option to meet the requirements of EISA. Furthermore, NAHB believes that no one system should have a monopoly on federal green buildings and all legitimate, consensus based standards should be options at the federal level.

OSHA's Fall Protection Standard

In December 2010, OSHA changed its residential construction fall protection regulation. OSHA rescinded its Interim Fall Protection Guidelines, which set out a temporary policy that allowed employers engaged in certain residential construction activities to use alternative procedures instead of conventional fall protection, such as guardrail systems, safety net systems, or personal fall arrest systems, for any work that is conducted 6 feet or more above lower levels. Returning to the original fall protection standard has proven to be challenging because OSHA has not provided specific guidance regarding how it will interpret the standard or how builders are expected to comply in determining when the use of conventional fall protection is considered infeasible or its use creates a greater hazard. Given these uncertainties, builders have little assurance that their actions will meet OSHA's requirements and could be saddled with costly fines or citations even though they were making good faith efforts to comply. We believe OSHA's fall protection regulation should be reviewed under Executive Order 13563, "Improving Regulation and Regulatory Review," to help make it more effective and less burdensome for small businesses.

Lacey Act

Prompted by a growing concern about interstate profiteering in illegally taken wildlife, Representative John Lacey of Iowa introduced the Lacey Act in 1900, producing America's first federal wildlife protection law. The original law intended to conserve and protect certain species of wildlife in the states. Through a series of amendments over the last century and most recently in 2008, the current Lacey Act has expanded to criminalize trade in protected species of both plants, including wood products, and animals. Today, the Lacey Act generally makes it unlawful for any person to import, export, transport, sell, receive, acquire or purchase fish, wildlife, or plants taken, possessed, transported, or sold in violation of any federal, state, foreign, or Native American tribal law, treaty or regulation.

NAHB supports the goals of the Lacey Act and the prevention of trade in illegally harvested plant and plant products. Unequivocally, we do not support illegal logging in any place at any time.

NAHB supports H.R. 3210, the *Retailers and Entertainers Lacey Implementation and Enforcement Fairness Act* or "RELIEF Act", legislation that recognizes the essential need to

hold harmless those who, unknowingly and without any culpability, are found to be in possession of products that run afoul of the Lacey Act.

Modern day civil forfeiture law, the Civil Asset Forfeiture Reform Act, was indeed contemplated by Congress as a part of the Lacey Act through the 2008 amendments. Recognizing the need to hold harmless those who exercised due care in the acquisition of wood and plant products, Congress sought to exempt honest business owners, and instead, provide the U.S. government more targeted tools to go after egregious, knowing violators.

The U.S. Department of Justice, however, has virtually eliminated this important defense for honest business owners through a broad misinterpretation of the law. By deeming Lacey-violative wood and plant products "contraband", innocent companies are left without legal standing to challenge a government taking in court. Coupled with a requirement that the U.S. government enforce an almost limitless set of foreign laws, builders, and ultimately consumers, are left at great risk.

The entire supply chain dealing with imported wood products—including builders and consumers—are held personally liable to certify that the timber product did not come from plant material that was taken, transported, possessed or sold in violation of any foreign law. The way the law is currently structured leaves wide open the entire chain of custody of a timber product, including builders who have no way of knowing the origin of a particular piece of lumber, a component of a cabinet, closet door or crown molding, to the details of an enforcement action.

Considering all of the components that may go into the construction of a house, it quickly becomes clear how daunting it would be to identify and track down the source for each component of that final product. The sheer number of different sources of wood that could be included in the finished home makes it nearly impossible for a builder or remodeler to know with certainty where and under what circumstances the individual components were sourced.

Further, because our builders generally buy their products through U.S. suppliers or importers, and all products that enter the United States must pass through U.S. Customs, the products have already gone through the required foreign paperwork, documents and permits to allow them to enter the United States at the outset. For the U.S. government to later determine the products, or a component of a product, violate the Lacey Act after its entry into the United States is unfair and illogical. There is no reasonable expectation that the supply chain should know when or if a violation had occurred, much less the underlying laws that had been violated.

Holding a remodeler, for example, responsible for knowing, much less understanding, the laws of a particular country where his or her wood cabinet was sourced is simply irrational.

With this in mind, it is of the utmost importance that honest business owners, including home builders, have the right to seek the return of goods acquired through the exercise of due care. Amending the Lacey Act to include reaffirmation of civil forfeiture law provides an important liability protection for the business community and ultimately the consumer.

Furthermore, U.S. trade laws give little consideration to the interests of consumers and downstream industries. This bias has limited the ability of American consumers to receive products and services of the highest quality at the lowest cost, and of U.S. businesses to provide jobs and increase production. It also encourages other countries to adopt similar protectionist policies that limit the choices of their citizens and opportunities for U.S. exporters.
To preserve the integrity of the Lacey Act and help advance its policy objectives, NAHB also recommends that the law should be revised to be more focused and transparent about which foreign laws may give rise to a violation. By narrowing the scope of foreign laws covered by the Lacey Act, such as those laws that promote the protection or conservation of threatened or endangered plants or plant products, builders would be provided with greater certainty about the law, their obligations, and subsequently, be able to more accurately estimate and account for costs in building homes.

We appreciate the opportunity to testify before the House Oversight and Government Reform. We have highlighted several key items in the body of this testimony, but also for the sake of thoroughness, we have attached additional examples of burdensome regulations impacting our industry.

Onerous Regulations for Home Building & Remodeling Industries
July 2012

Acquisition, Development and Construction (AD&C) Lending

- **Agencies**. FDIC, Office of the Comptroller of Currency (OCC), Office of Thrift Supervision (OTS), Department of Treasury, Federal Reserve Bank
- **Background.** NAHB urges congressional oversight into federal bank regulator activity that without immediate action will be a major impediment to the housing recovery and an increasing threat to the ability of many small builders to survive the economic downturn. The home building industry continues to experience a significant adverse shift in terms and availability on land acquisition, land development and home construction (AD&C) loans, and builders with outstanding loans are facing mounting challenges.
- **Impact.** Lenders are refusing to extend new AD&C credit or to modify outstanding AD&C loans in order to provide more time to complete projects and pay off loans. Lenders themselves often cite regulatory requirements or examiner pressure on banks to shrink their AD&C loan portfolios as reasons for their actions. While federal bank regulators maintain that they are not encouraging institutions to stop making loans or to indiscriminately liquidate outstanding loans, reports from NAHB members in a number of different geographies suggest that bank examiners in the field are adopting a significantly more aggressive posture. Moreover, some institutions appear to be overhauling and downsizing portfolios independent of regulator/examiner pressure.
- **Impact on Home Building.** As a result of this regulatory pressure, the home building industry is having extreme difficulty in obtaining credit for viable projects. Builders with outstanding construction and development loans are experiencing intense pressure as the result of requirements for significant additional equity, denials on loan extensions, and demands for immediate repayment. In short, the credit window seems to have been slammed shut for builders all over the country.

Mortgage Lending Regulations

- **Agencies:** The Consumer Financial Protection Bureau (CFPB) has the responsibility of issuing a final rule establishing standards for complying with the Dodd-Frank Act's ability-to-repay requirement, by defining a "qualified mortgage" (QM). Six federal agencies (the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Federal Housing Finance Agency, Securities and Exchange Commission and Department of Housing and Urban Development) will likewise finalize another Dodd-Frank rule on the qualified residential mortgage (ORM) exemption.
- **Background:** The Dodd-Frank Wall Street Reform and Consumer Protection Act authorized significant changes to mortgage lending practices. Two of the provisions that will have a major impact on the cost and availability of mortgage financing are the Ability to Repay standard and the Credit Risk Retention Rules. The Ability to Repay provisions set minimum standards for mortgages by requiring lenders to establish that consumers have a reasonable ability to repay at the time the mortgage is consummated, and state that certain high-quality, low-cost loans (defined as Qualified Mortgages) are presumed to meet this standard. The Credit Risk Retention provisions require securitizers to retain 5% of the credit risk on loans packaged and sold as securities. An exemption was

allowed for "Qualified Residential Mortgages" (QRMs) which were not explicitly defined by the Dodd-Frank Act.

- **Impact:** NAHB has concerns about potential adverse impacts on the availability and cost of mortgage credit for both rulemakings. Of the two rules, the Ability to Repay/Qualified Mortgage (QM) rule will have the greater impact because it applies to all residential mortgages, while the QRM only relates to mortgages that are securitized.
- **Impact on Home Building:** A narrowly defined QM would put many of today's sound loans and creditworthy borrowers into the non-QM market, undermining prospects for a housing recovery. NAHB urges the CFPB to include a safe harbor in the definition of a QM that would provide some assurance to lenders that they will not be subject to increased litigation if they use sound underwriting criteria. While consumer advocacy groups are asking the CFPB to finalize a QM definition that provides a "rebuttable presumption of compliance" instead of a safe harbor, NAHB is concerned that without a safe harbor, banks would further restrict home lending because they would be fearful of the risks of litigation if consumers are unable to repay a mortgage. NAHB is concerned that the proposed QRM rule would likewise undermine a housing recovery by negatively impacting the cost and availability of mortgage financing, including underwriting standards for commercial real estate and multifamily loans.

EPA Guidance Concerning Clean Water Act Geographic Jurisdiction

- **Agency**. U.S. Environmental Protection Agency
- **Background.** The Clean Water Act (CWA) provides EPA and Army Corps of Engineers with authority over "navigable waters," which Congress defines as "the waters of the United States." The U.S. Supreme Court has issued three main cases concerning the government's geographic jurisdiction under the Clean Water Act:
    1. *United States* v. *Riverside Bayview Homes, Inc.*, 474 U. S. 121 (1985)
    2. *Solid Waste Agency of Northern Cook Cty. v. Army Corps of Engineers,* 531 U. S. 159 (2001), and
    3. *Rapanos v. United States*, 547 U.S. 715 (2006).
    4. *Sackett v. Environmental Protection Agency (2012)*

  In *Rapanos*, Chief Justice Roberts suggested that the government develop a regulation that establishes the scope of its authority. Subsequently, (December 2007 and June 2008) the EPA and Army Corps of Engineers developed guidance (not a regulation) concerning the government's jurisdiction. These guidance documents attempted to interpret all three of the Court's opinions. NAHB understands that EPA has drafted a new guidance document that focuses on CWA geographic jurisdiction and this third guidance document has been developed without input from the land development community.
- **Impact.** In *Rapanos*, the plurality noted that "[t]he average applicant for an individual [CWA section 404] permit spends 788 days and $271,596 in completing the process, and the average applicant for a nationwide permit spends 313 days and $28,915—not counting costs of mitigation or design changes." Furthermore, the Court recognized that each year over $1.7 billion is spent obtaining wetland permits.
- **Impact on Home Building**. Currently, there is broad interpretation of the term "the waters of the United States" and broad regulations governing stormwater discharges. Subsequently, a large majority of home builders are required to obtain CWA discharge permits and many land developers must often obtain federal permission to use their

private property. Therefore, increasing the number of federal permits required for a construction project would force even more home builders to deal with the federal permitting backlog and the high price of getting a permit. Such costs and time delays will affect the availability and affordability of new homes.

Lead-Based Paint – Renovation, Repair and Painting Rule (RRP), Clearance Testing

- **Agency**. U.S. Environmental Protection Agency
- **Background.** EPA finalized the RRP in 2008 requiring remodelers to be trained and certified, use lead-safe work practices, and keep records for remodeling and renovation work performed in pre-1978 homes. As part of a settlement agreement with interest groups, EPA agreed to amend the 2008 rule by eliminating the "opt-out" provision allowing homeowners with no children under six living in the home to waive the rule's requirements, and doubled the amount of homes subject to the rule. Lastly, EPA's original economic analysis relied heavily upon the availability of an improved pre-renovation test kit, supposed to be available in September 2010, but such kit does not exist and EPA has not agreed to adjust its corresponding economic analysis about the burden on businesses.
- **Impact.** EPA estimated the 2008 RRP rule cost at $490.7 million in the first year and between $279.1–301.2 million in subsequent years once fully implemented with a fully qualifying test kit (identified and commercially available). EPA's removal of the opt-out provision and its failure to develop or identify a test kit has resulted in a regulation that will cost an estimated $826.7 million in the first year and between $722.1–779.2 million in subsequent years. [*The removal of the opt-out, according to EPA, adds $336 million in the first year of the regulation and $194-209 million in subsequent years once fully implemented. The lack of a qualifying test kit alone is responsible for an added cost of $250-270 million per year.*]
- **Impact on remodeling.** The remodeling industry is impacted because the rule does not apply to home owners, who can undertake the work themselves without following the rule, thereby increasing the risks of creating a lead hazard and harming children, or choose uncertified "black market contractors" who do not comply with the rule's requirements and avoid the additional costs, making uncertified work cheaper to consumers. This impairs the ability of professionally-trained and certified remodelers to undertake critical energy efficiency and upgrade work in older homes who must compete with DIY and non-compliant "contractors."

Lacey Act

- **Agencies.** Animal and Plant Health Inspection Service, U.S. Customs and Border Protection, Federal Bureau of Investigation, U.S. Fish and Wildlife Service, U.S. Forest Service, National Oceanic and Atmospheric Administration, Office of the Inspector General, U.S. Coast Guard, U.S. Immigration and Customs Enforcement, U.S. Department of Justice
- **Background.** Recognizing the need to hold harmless those who exercised due care in the acquisition of wood and plant products, Congress in 2008 sought to exempt honest business owners from overzealous government enforcement by including reference to the Civil Asset Forfeiture Reform Act in the 2008 Amendments to the Lacey Act. The U.S. Department of Justice, however, has virtually eliminated this important defense for honest business owners through a broad interpretation of the law. By deeming wood and plant products under Lacey "contraband", innocent companies are left without legal

standing to challenge a government taking in court. The result is that the entire supply chain dealing with imported wood products—including builders and consumers—are held personally liable to certify that the timber product did not come from plant material that was taken, transported, possessed or sold in violation of any foreign law. The way the law is currently structured leaves wide open the entire chain of custody of a timber product, including builders who have no way of knowing the origin of a particular piece of lumber, a component of a cabinet, closet door or crown molding, to the details of an enforcement action.

- **Impact.** The Animal and Plant Health Inspection Service is receiving an estimated 40,000 importation documents each month, and they have calculated that it is costing the Federal Government and the regulated community of importers approximately $56 million annually to comply with the declaration requirement.
- **Impact on Home Building.** The ability to operate effectively in the home building industry and to price a home competitively depends on the degree to which the builder's overall costs are certain and predictable. Predictability is of paramount importance as it allows builders to accurately estimate and account for costs in building homes. Further, the more confidence a builder has in pre- and post-construction costs, the more cost-effective the home building process is, as well as the builder's ability to pass those corresponding savings through to homeowners. This impact is of particular concern in the affordable housing sector where relatively small price increases can have an immediate impact on low to moderate income home buyers who are more susceptible to being priced out of the market. As the price of the home increases, those who are on the verge of qualifying for a new home purchase will no longer be able to afford to purchase a new home. A 2012 priced-out analysis done by NAHB illustrates the number of households priced out of the market for a median priced new home due to a $1,000 price increase. Nationally, this price difference means that when a median new home price increases from $225,000 to $226,000, 232,447 households can no longer afford that home.

EPA Regulation of Greenhouse Gas Emissions

- **Agency**. U.S. Environmental Protection Agency
- **Background.** On May 7, 2010, EPA issued its first regulation setting limits on greenhouse gas (GHG) emissions from cars (the "Auto Rule"), as part of a suite of regulations focused on curbing GHGs. Although the Auto Rule is for mobile sources (cars and trucks), EPA believes this regulation triggers requirements for any stationary sources of GHG. In an effort to temporarily exempt small stationary sources, EPA issued the GHG Tailoring Rule in June 2010; however, the Tailoring Rule still allows EPA to revise emissions' thresholds downward to include small stationary sources such as single family or multifamily projects over time. EPA proposes its first revision to the Tailoring Rule in March 2012.

  NAHB, along with a coalition of others, filed a legal challenge to EPA's interpretation and NAHB's policy opposes using existing environmental statutes to regulate GHGs. In February 2012, the Circuit Court for the District of Columbia heard oral arguments in the case but has not rendered a decision. Previously, the court denied a motion to stay the regulations. NAHB supported legislation (S. 3072), sponsored by Sen. Jay Rockefeller (D-WV), to set a two-year moratorium on EPA regulating stationary sources, preventing EPA from taking any action under the Clean Air Act with respect to stationary source

permitting or standards of performance relating to carbon dioxide or methane, but the legislation did not receive a vote in the 111th Congress.

- **Impact.** By regulating GHGs from mobile sources as a pollutant under the Clean Air Act, EPA believes it is essentially bound to regulate GHGs from stationary sources as well. This establishes the debate over whether or not GHGs are considered traditional "pollutants" for purposes of regulating stationary sources and, if so, it would be extremely challenging for the Agency to propose things like permitting, new source performance standards, and non-attainment areas for naturally-occurring and globally-constant gases like carbon dioxide, for example.
- **Impact on Home Building**. EPA data shows that 515 new single family homes and 6,400 new multifamily dwellings would exceed the statutory 250 ton-per-year threshold triggering pre-construction permitting under the Clean Air Act for prevention of significant deterioration (PSD). If these new developments require federal permitting, it could thwart the delicate housing recovery that appears to have been started.

Stormwater Regulations Revision to Address Discharges from Developed Sites

- **Agency:** U.S. Environmental Protection Agency
- **Background.** Under section 402(p) of the Clean Water Act, the Environmental Protection Agency regulates stormwater discharges from municipal separate storm sewer systems (publicly owned conveyances or systems of conveyances that discharge to waters of the U.S. and are designed or used for collecting or conveying storm water, are not combined sewers, and are not part of a publicly owned treatment works), stormwater discharges associated with industrial activity, and stormwater discharges from construction sites of one acre or larger. Under EPA's regulations, these stormwater discharges are required to be covered by National Pollutant Discharge Elimination System (NPDES) permits. EPA has initiated a national rulemaking to establish more stringent requirements on stormwater discharges from new development and redevelopment and make other regulatory changes to municipal separate storm sewer systems. It is expected that these regulations will take into account the potential discharges from the site after construction is completed, which is an unprecedented level of regulation.
- **Impact.** By developing a new stormwater rule, EPA could significantly increase the costs associated with stormwater management for new development and redevelopment.
- **Impact on Home Building.** The homebuilding industry will have to implement long term stormwater flow controls and design sites to manage long term stormwater flow. The cost of homebuilding could rise as these new systems are implemented. The administrative burden on state and local government will also increase as they adopt and manage the implementation of these new policies.

Proposed Rule for Coal Combustion Residuals (CCR) under RCRA

- **Agency**. U.S. Environmental Protection Agency
- **Background**: In June 2010, EPA proposed a rule to reverse longstanding "beneficial use" policy exempting electric utilities that generate vast quantities of coal combustion residuals (CCR) or coal ash from strict permitting and disposal requirements under the Resource Conservation and Recovery Act (RCRA). The "beneficial use" policy was authorized by Congress (Bevill amendment) and allows EPA to exempt specific waste streams from RCRA based on eight criteria. EPA recognized labeling CCR as a

"hazardous waste" under RCRA could halt the emerging "beneficial use" market for products containing CCR, such as drywall, concrete, soil conditioners, and road material aggregates and conducted two analyses on coal ash. These analyses concluded CCR and products containing CCR wastes did not pose a threat to human health or the environment, and EPA exempted CCR. As a result, CCR wastes are covered under Solid Waste Disposal Act (SWDA) and its disposal is enforced by States, not EPA. EPA's current proposal reverses the two Bevill analyses and seeks to regulate "un-encapsulated" (utility wastes) CCR wastes under RCRA, but not CCR wastes that are "encapsulated" (construction materials); however, EPA does not clarify if it would regulate CCR wastes in disposed building materials (after demolition). While EPA recognizes using CCR waste in construction material (drywall and concrete) actually reduces GHG emissions between 12.5-25 million metric tons of CO_2 equivalent per year, the reversal on the "beneficial use" policy risks undermining EPA's efforts to encourage the use of construction material containing CCR and creates confusion for the industry and consumers about whether or not construction materials containing CCR are considered "hazardous wastes" by EPA.

- **Impact.** According to EPA, approximately 40% of all drywall contains CCR wastes and CCR wastes replaces 15% to 30% of cement binding agents used in the formation of concrete. Because various green building rating systems and standards (including the NGBS) give reference to products containing CCR, and award points for its use in programmatic benchmarks for green construction as a recyclable material, the impact of this regulation could be broad.
- **Impact on Home Building**. NAHB members face regulatory uncertainty under EPA's proposal over the long term RCRA status of CCR containing construction materials at demolition and disposal. Builders also face confusion and potential consumer liability risks arising from EPA's position that drywall and concrete containing CCR wastes could be safe in residential use, but is considered a "hazardous waste" under RCRA if stored on an industrial site.

Other Regulatory Concerns

Federal Energy Efficiency Standard; National Energy Building Code

- **Agency**. U.S. Department of Energy
- **Background**. For years, the home building industry has relied upon and participated in the development of consensus-based building and energy codes for new home construction. Most recently, this process has been managed by the International Code Council (ICC) and the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE). Over the past few years, efficiency advocates, environmentalists, and product manufacturers have used this process to dramatically increase minimum energy code requirements that are replaced before they can even be implemented, not knowing the impact in the environment or to affordability. Furthermore, interest groups have lobbied Congress to pass minimum federal energy code mandates and push States to adopt aggressive energy codes in order to receive federal incentive funding. Because the ever-increasing energy code requirements are disconnected from reasonable energy savings payback to consumers, and unnecessarily increase the cost of new, more energy-efficient homes, NAHB has opposed federal legislation, and has

argued against code proposals with ICC or ASHRAE, that set unreasonable energy efficiency minimums or that have cost increases that are not cost effective. Keep in mind that these requirements are the "minimum," permissible under the law – every single new home must comply. For every $1,000 increase in the price of a mid level new home (nationally), 232,447 buyers will no longer qualify for the mortgage.

- **Impact**. Because the code development process is not a program with federal oversight, there is little recourse. Until recently, Congress had never considered usurping a State's right to set its own building and energy codes. With renewed lobbying by interest groups, and a federal agency that supports the interest groups' efforts, it has become more challenging to forestall the substantial increases. The federalization of the building energy code process will be critical as Congress continues to grapple with setting minimum efficiency standards. While dealing with the greatest downturn since the Great Depression new home construction has all but stopped. There have been 2 code cycles sine the downturn began in 2008 and very few new homes built to evaluate if energy conservation measures work. Codes have been increased by use of computer models, conducted by engineers who may not be "on the ground" seeing how these measures are being implemented in real homes. The stringency for energy codes needs to be pulled back until the housing supply can demonstrate that the increases indeed work. Until housing recovers, no increases should take place and the DOE should maintain their authorized role as technical advisors.
- **Impact on Home Building**. Significant increases in minimum energy code requirements can raise the costs of a new home from $3,000- $15,000, depending on the increase and area. This substantial price jump makes the newest, most energy-efficient homes harder to sell, or completely unaffordable, particularly for lower-to-moderate income families. These families that are the hardest hit by higher energy bills are thus relegated to the least-efficient, older housing. This is unfair and actually wastes energy. Energy efficiency has to be reasonable and affordable to the consumers that ultimately pay the costs for such requirements – i.e., future homebuyers and homeowners.

Federal Sustainability and Transportation Initiatives

- **Agencies**. U.S. Environmental Protection Agency, U.S. Dept. of Housing and Urban Development, U.S. Department of Transportation.
- **Background**. Ongoing efforts by the Administration to promote an urban-centric, dense, and "green" development standard, called "sustainable communities," have been increasing over the past two years. Combining housing, transportation and energy efficiency/green into one initiative under the term "sustainability" would be handled by a joint, intra-agency program to provide grants, funding, and other government support for housing and development projects meeting specific "sustainability" criteria. The Administration has promoted this approach as a way to both address climate change and to calculate the true "cost" of housing by including transportation using a proprietary model ("housing and transportation index" or "H&T index"). This calculation tool and methodology is not peer-reviewed and appears to be disconnected from market realities for both builders and consumers. Additionally, such government programs have proven to be heavily reliant upon LEED and other non-ANSI green rating systems without giving equal recognition for the ANSI-approved National Green Building Standard.
- **Impact**. Because the Administration wants to promote the sustainability, it could easily become a criteria requirement for accessing a variety of federal funding and grant

opportunities for housing and development projects. This process largely exists outside of the legislature and is often voluntary. However, funneling the government's limited resources for housing by forcing developers to use proprietary standards and calculation modules could prove to be unnecessarily costly, restrictive, and unaffordable for consumers in the long term.

- **Impact on Home Building.** Although efforts and initiatives to promote sustainability have been largely voluntary until now, it could become mandatory in the future. If this federalization of land use and "sustainability" concept filters down and becomes the requirement for accessing all federal housing funds, it could create problems for builders using other green programs that are not proprietary (like the NGBS) and that may not use the H&T index, particularly in rural, non-urban areas, for which the H&T index model is unworkable and inappropriate.

Chairman ISSA. Thank you.

I recognize myself for a round of questioning.

If we could have the first slide. I just want to make some point to make this at least understood to be as bipartisan an effort as it is.

[Slide.]

Chairman ISSA. The source is the Office of Management and Budget, Obama Administration. It says there is some evidence that domestic environmental regulation has led to some U.S.-based multinationals to invest in other countries, especially in the domain of manufacturing. And it goes on.

[Slide.]

Chairman ISSA. Next slide, also from the Office of Management and Budget says regulations can also impose significant cost on business, dampening economic competition and capital investment.

[Slide.]

Chairman ISSA. The next slide says, again, Office of Management and Budget, Obama Administration, regulations can place undue burdens on companies, consumers, and workers, and may cause growth and overall productivity to slow.

If I had more than five minutes, I would go on for another five-plus minutes with examples where this Administration has said repeatedly that, in fact, regulations can cost jobs. But let me just I will look at the LEED certification example for a moment. I own a LEED certified silver building; it doesn't have GSA in it, it has a tenant in it that invested several million dollars in redoing the building to meet that standard, and it is a wonderful building. But let me ask a couple of quick questions.

The GSA doesn't pay for TIs. My understanding is they want everything included in the rent, including the utilities, isn't that correct?

Mr. RUSSELL. Yes, Congressman.

Chairman ISSA. So when the GSA puts a mandate on taking half a building, a quarter of a building, or an entire building, aren't they in fact, in a sense, driving up the cost to the taxpayer of capital improvements that may be for as few as, well, in the case of the census that was in my building for less than a year, they can in fact be in there for just one year, isn't that true?

Mr. RUSSELL. That is correct.

Chairman ISSA. So let's go through this. The GSA only has one basic way they like to contract for leased facilities, which is they like to have an all-in strategy. They are telling you to upgrade the utilities, upgrade all of these items, when in fact there may be a partial tenant and only in there for a short period of time; there may be no cost benefit. But even if there was a cost benefit, isn't it true that since they are not paying the utilities, they are in fact already encouraging the building owner to make the changes that are in their best interest to drive down the cost of those utilities?

Mr. RUSSELL. That is absolutely correct.

Chairman ISSA. So they are just not protecting the taxpayer, once again.

Mr. RUSSELL. Well, as many benefits as energy efficient, high performing buildings provide, the question of how the Federal Government goes about mandating the use of a particular system to

get there removes the competition, artificially inflating the cost of having that green building meet higher performance standards.

Chairman ISSA. I guess what we need is maybe a conference to bring all the GSA people together to discuss how they could do this better. I think they had one recently; I am not sure if they have another one planned right now.

Mr. CONNOLLY. Would the Chairman yield on that, Mr. Chairman, for a friendly observation?

Chairman ISSA. Of course.

Mr. CONNOLLY. I would welcome such a suggestion, because there is another aspect of this, and that is GSA practices. When a long-term lease is expired, it exerts the right to stay, nonetheless, until it finds a new location, and that has enormous impact on the owner of a building in terms of financing costs because it is caught in limbo, and it can actually put a company out of business, depending on how many buildings they own. So some of the practices being deployed right now by GSA are, to me, very injurious to business interest.

I thank the Chair for yielding.

Chairman ISSA. Thank you. And the gentleman knows, because he has probably more GSA contracted space than probably any other member of Congress.

Mr. Russell, I am going to stay on this subject and let others go to other subjects. When we look at GSA, both this Committee and other committees of jurisdiction, if GSA came in and said we would like you to meet LEED standards and other standards, we would like you to embrace these, but we want you to do it in a transparent, cost-effective way, I am assuming that your members would be thrilled to run an analysis of energy savings, cost, capital improvements, and so on, so that it would be transparent as to whether, in that one-year lease, it made sense to upgrade or the best value for the taxpayer for a short or part of a building lease might be less, something that currently, I understand, is not in the bidding process.

Mr. RUSSELL. That is correct, Chairman. If I may.

Chairman ISSA. Of course.

Mr. RUSSELL. Our members manufacture the kinds of products that allow buildings to achieve their highest performance. Innovation is at the core of our industry, and the innovative potential of the chemistry industry to deliver the kinds of tools that we need to increasingly improve is at risk because of GSA's continued selection of only one system, rather than setting high bars and letting different systems meet that standard. We would, of course, be in favor of having GSA select performance-based criteria and then encouraging competition on how to reach them, which would, in turn, increase transparency among the various systems and the various materials.

Chairman ISSA. Speaking of transparency, that piece of what we often call bulletproof glass that you held up, my understanding is that is what the President stands behind in order to be protected, something either identical or substantially similar.

Mr. RUSSELL. That is correct.

Chairman ISSA. Well, I am certainly hopeful that GSA understands that we all, when appropriate, want to have that kind of

protection, and if it doesn't meet somebody's environmental questions, I would still save life savings comes in all forms.

With that, I recognize the Ranking Member for his round of questions.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

First of all, I want to thank all of you for being here, and I appreciate everything that you have said.

Mr. Hamby, I understand what you are talking about. And with regard to the banks and our community banks, we see the results of regulations and I have seen it; I know exactly what you are talking about. What we have to keep in mind, too, is I am sitting here and I am thinking about how important balance is in everything that we do. When everything gets out of balance, you have a problem. And the sad part about it is, and I can't think of a better word than some crooks did some very unfortunate things and got us into having to even come up with a Dodd-Frank. So I think probably what happened, in an effort to prevent it from happening again, we found ourselves in this situation. So I can appreciate everything you said.

I can also appreciate what you said, Mr. Williams and Mr. Rutenberg, because as you were talking, Mr. Rutenberg, I could not help but feel a little bit emotional, because when you talk about lead paint, I think about all the children that I grew up with, many of whom inhaled lead paint and many of whom their development was retarded or arrested, and they never grew up to be what God meant for them to be. Some of them are sitting in prisons right now; some of them were, of course, put in special ed, never to escape and their lives were stolen from them, their futures were stolen from them. And to be very frank with you, I mourn for them every day; and it is still going on.

But, again, I go back to what I said to Mr. Hamby: it is a thing of balance and it is a thing of practicality, and the quotes that the Chairman just put up there, this Administration has recognized that there are problems and this Administration has done probably more than any other administration trying to address those issues. President Obama has had a balanced approach towards regulations; he focused on identifying regulations that are unnecessarily burdensome to business and even issued several Executive Orders directing agencies to modify or repeal any existing regulations that are unnecessarily burdensome. The President has also finalized several key regulations that are critical to curb dangerous business practices or reduce harmful pollutants and toxins in our environment. The benefit of these rules far outweigh the costs and their implementation is critical to the health and safety of Americans.

Yes, Mr. Rutenberg. I want you to be brief because I have something else I want to say.

Mr. RUTENBERG. I will be brief. NAHB has policy on record in support of protection against lead. My spouse has spent 20-something years in special education as a speech language pathologist. I understand it. Our problem is with the implementation and execution. The rules were promulgated based upon the assumption that there would be a phase 2 test kit available in August of 2010; it is still not available. That is the one that is giving us false readings.

Mr. CUMMINGS. Mr. Rutenberg, I want you to be clear. I am not going against you. I think that we have a test kit that is inaccurate. We need to deal with that.

Mr. RUTENBERG. Yes, sir.

Mr. CUMMINGS. And I am 100 percent with you on that.

Mr. RUTENBERG. And we are with you on that.

Mr. CUMMINGS. The problem is that, at the same time, though, I have kids that I want to protect, and I have folks who, again, may never grow up to do what they were intended to do when they came upon this earth.

But let me just tell you another little thing. Another reason why, whenever we have these hearings, I always think about when I was a kid in high school. I worked at Bethlehem Steel during the summer. When you would go to Bethlehem Steel, Mr. Williams, if you had been there for about, when you were there, and I didn't think of this because you were just having fun, you were making a few dollars, you were getting a check for the first time. I didn't think about it then, but now I look back at it. When you were there for about 30 minutes, if you blew your nose, black or red mucous came out, in 30 minutes. There was no requirement that I know of, to have a mask over your face. I mean, this is just from walking around the grounds.

And then I think about all the people who have died, who I know have died of lung cancer. Now, these guys were making a lot of money, but they died early. So I think when we talk about regulations, first of all, I want to make sure that we are fair to this President; that he has done what he can to try to address this problem. As I said in my opening statement, it showed down the process of approving all these regulations and acknowledged that there is a problem. But at the same time I just want to point out that there is also this benefit to regulations. I think that is what you were trying to say, Mr. Williams.

I had 50 million questions. My time has run out. But I just wanted to say that. Thank you, Mr. Chairman.

Mr. WALBERG. [Presiding.] I thank the gentleman.

I recognize myself for five minutes of questioning.

Thank you to the panel for being here. So many questions could be asked, with so little time.

Mr. Yarossi, EPA has issued a proposed rule to reclassify coal ash, as you have indicated, as a hazardous waste. How much will this reclassification increase cost for the transportation sector alone?

Mr. YAROSSI. ARTBA study has indicated it will cost $104 billion, about $5.4 billion a year over the next 20 years. Just to put that in context, the bill that was just passed reduced funding for highways by $2 billion a year from what it was at the 2009 levels. If you add that on to it, then we have a significant reduction in our ability to improve our transportation systems.

Mr. WALBERG. To build roads.

Mr. YAROSSI. Yes.

Mr. WALBERG. How does the transportation sector use coal ash? Describe it for us.

Mr. YAROSSI. It is used in many ways, but primarily coal ash is used as a material in cement.

Mr. WALBERG. Does it perform any specific function as a specific material that is used? Does it replace something else?

Mr. YAROSSI. Oh, yes, sure. Absolutely. The EPA, and I am going to look at my statistics here, estimated that using coal ash at the levels we are using now results in annual greenhouse gas reductions in concrete between 12.5 and 25 million tons. But it is actually helping in the reduction of greenhouse gases. It also helps make concrete more durable and stronger, so we get a longer life out of our product.

Mr. WALBERG. And it is a waste product that is being used in a very useful, important function.

Mr. YAROSSI. Yes.

Mr. WALBERG. And the cost factor savings as well. How will the transportation sector deal with increased costs if this proposed rule goes through?

Mr. YAROSSI. That again is going to fall back onto the owners, and that would be varied widely, but I would have to imagine there will be less projects out there. The cost of building anything will go up and the amount of money, until we see some new revenue coming into the transportation system, the answer, I think, is easy: there will be less projects going on.

Mr. WALBERG. So less jobs?

Mr. YAROSSI. Less jobs.

Mr. WALBERG. Less economic opportunity and future as well.

Mr. YAROSSI. Right.

Mr. WALBERG. The rule, as I understand it, will not only increase our utility costs, utility costs as a result of disposing of this byproduct of coal, but it has an adverse impact, as well, on commercial value of coal ash. Mr. Yarossi and Mr. Rutenberg, if I could ask you how much coal ash do your industries use?

Mr. YAROSSI. I don't have that figure with me.

Mr. WALBERG. A lot of it?

Mr. YAROSSI. A lot. Oh, yes I do. In 2008 I have a figure. Again, I am going back to my facts here,12.5 million tons of coal ash was used in the production of concrete.

Mr. WALBERG. Okay. A significant amount.

Mr. YAROSSI. A lot.

Mr. WALBERG. That would have to be disposed of some other way.

Mr. YAROSSI. Exactly. Yes, sir.

Mr. WALBERG. Mr. Rutenberg.

Mr. RUTENBERG. I do not have the number, but I will tell you that it is used extensively and that it varies by region and by specific Ready Mix plant and how they do their concrete mix. So it varies, but we use a lot of it.

Mr. WALBERG. On drywall, for instance, how would the construction continue for that, maintain construction? How would the cost be affected without coal ash?

Mr. RUTENBERG. We are using the byproducts from scrubbers on coal plants to be, we call it synthetics drywall. That is my personal way, it may not be accurate; and it takes the place of mined gypsum. So it has a double benefit: we no longer have to mine as much, we have a byproduct that we don't have to dispose of it, and in some plants they will have cogeneration that will actually locate

the drywall plant with the coal power plant so they can use the steam as a byproduct to run the drywall plant.

Mr. WALBERG. Let me ask a further question on coal ash. Mr. Yarossi, can you talk about how EPA studied the issue of whether coal ash should be regulated as a hazardous waste in the past and the conclusion that they reached?

Mr. YAROSSI. I do know that on four separate occasions EPA has studied coal ash and determined that it didn't warrant regulation as a hazardous waste: 1988, 1993, 1999——

Mr. WALBERG. That it didn't warrant regulation as hazardous waste?

Mr. YAROSSI. It did not warrant regulation as a hazardous waste.

Mr. WALBERG. Has anything changed to merit the EPA's change?

Mr. YAROSSI. To my knowledge, there is no change in any scientific information that would warrant change.

Mr. WALBERG. Thank you. My time has expired.

I recognize Mr. Kucinich.

Oh, excuse me, Mr. Tierney.

Mr. TIERNEY. Thank you, Mr. Chairman.

Thank all of you for your testimony.

You know, I don't object to having a hearing on any one of these areas here; I think we all understand that there is a tension, natural tension between a consumer and a producer, between a person working in the job and the boss and all of that, around safety concerns or whatever. So we ought to have these hearings to make sure whatever rules are out there are fair, they are being enforced fairly, they make sense. So any one of these subjects would be a pretty good hearing in and of themselves.

What I sort of do object to, Mr. Chairman, is that we have a spray of six people in six different industries. Everybody gets about five minutes to sort of delve down a little bit and you don't get any counter-arguments because we have about a five to one ratio here perspective. What I think it would be healthier, to take any one of these subjects and bring on a much more even balance of people so we get the full array of opinion here and perspective, and see whether or not there is something wrong with a given rule on that.

I don't think anybody here thinks that we should have unfair, I was in business for over 20 years and represented a lot of businesses, spent a lot of my life arguing about rules and regulations on that. Yet, I think there should be rules and regulations, and I would bet that everybody on this panel thinks that there ought to be some standards. Three national business organizations took a poll recently. The top problem with the economy right now, in their perspective, anyway, isn't rules and regulations; those are things that constantly aggravate people and they have to deal with it. But their problem is a lack of demand. If I go out in my community and say what is wrong, they will say, I don't have any customers. People are out of work; they don't have the money to spend; they don't have any customers.

Seventy-eight percent of small business people think that government standards are important to level the playing field between their business and big business. Eighty-six percent they are a necessary part of a modern economy. Eighty-four percent say they support food safety standards. You talk to any group of people out in

my neighborhood, you talk to mothers and fathers around the playground and everything like that, they are worried about the kind of food that is being imported and not checked. They are worried about toys coming in and not being checked. Those are legitimate standards on that. They are worried about clean air and clean water.

I grew up in Salem. We used to have the North River run right down the center of Salem. It was purple and blue and green and noxious. We lived over half a mile away. We couldn't sit on our deck. I think it was a good idea to get some standards to clean that up. Now Salem is a vibrant community and you don't smell any of that stuff going down. People are boating and enjoying the water.

So the issue, I think, here is not that we shouldn't have hearings on that to make sure the rules and regulations are effective; it is this notion of putting it under an umbrella that regulations are killing our economy, they are killing our job creators. That is total nonsense and I don't think there is an iota of evidence that we have either heard today or that exists out there for this larger notion. We have sat in here, in this Congress, on that theory and talked about mercury emissions from power plants as somehow being job killers.

We are talking about a 1990 bipartisan amendment to legislation of the Clean Air Act. The bipartisan legislation ordered the EPA to set standards. Seventeen States adopted it on their own. There are 772 million pounds of airborne toxics out there. I would think that none of these witnesses want to be sucking it in at 2.5 pounds per person on that basis. Twenty years it took for the EPA to get to dealing with that issue, and even when it gets passed, it hasn't passed yet, it is going to take four more years for people to get ready to implement it. Thirty-one thousand construction jobs will be created, 9,000 continuing jobs in the utility industry. Yet we are arguing, benefits are 25 times the costs of that in terms of health and 160,000 lives will be saved. What are we arguing about in terms of that? We have hearings on that instead of the things that these gentlemen bring to the table.

We limit toxic emissions from a variety of cement on that, as if the cement thing is going to pack up and go to China if it doesn't get its way on this basis. But those are chemical compounds that do contribute to smog and pollution, and for every $1 we put in on enforcing that rule to clean those up, we get about $19 back in a public health benefit.

We are talking about the import of illegally harvested endangered wood for guitars. This is what we spend our time on, not on the building industry, which has some serious concerns on that; not whether LEED is the good example or whether we have other standards that should be brought in and why; not on the banking industry, what is happening about community banks versus people on Wall Street that basically brought this Country and almost the international community to their knees. That is not what we are talking about. We are talking about guitars, which, incidentally, made $1 billion under this so-called onerous restriction of not letting them bring in illegal, imported wood.

We had a hearing here on invasive foreign snakes. Now, there is something really slowing down the community. The evidence was

one person in Utah who said in 2010 he had to lay off four of his seven employees. In 2008, rather. Of course, 2008 was the height of the recession, and the rule he was complaining about didn't get put in until 2010. But this we had a hearing on.

So it is not the fact that we shouldn't have these hearings; this is what this Committee should be doing, and all of these are legitimate concerns. We can come down on one side or the other, but we ought to have a full hearing on those that we think are important enough to impact the economy so that it takes Congress's attention; not the nit-picking stuff that are left to lawyers and experts that are going to go in front of the rules agencies and argue whether or not it should be amended or changed one way or another, but the ones that make substantial public policy that really do make a difference, and then have a full hearing on all of that, with enough perspective in there that we can all get a reasonable decision made as to what is good and what is bad.

Really, I think the problem with the Majority here is when they acknowledge that that is not really the problem, that the problem is a lack of demand and a lack of customers, then they are going to have to put some attention on the American Jobs Act and get people back to work in excess of 1.9 million people back to work in a very short, relative order on that, and that is their problem. So they have to look for something else to rail about and have to entitle hearings like this with a broad notion that it is job killers and job creators, and that stuff. Let's do our job. Let's have a hearing on each of these things that are important in their own respective and are industries that maybe do impact the economy, not bring in a show of six people, give them barely any time to make their case or have anybody to rebut it so that they can get deep into the weeds, and we can do our job in that way.

With that, I yield back.

Mr. WALBERG. I thank the gentleman. His time has expired. A good history lesson, but we will have opportunities for plenty of hearings, I am sure, and building the economy.

I now recognize the gentleman from Oklahoma, Mr. Lankford.

Mr. LANKFORD. Thank you, Mr. Chairman.

This conversation about red tape is really a big deal. I don't think anyone on this dais or on this panel would disagree that there is an appropriate role for the Federal Government and for State and local governments in setting boundaries and regulations, but there has been a shift, it seems. The increased use of guidance documents, rather than actually doing formal rulemaking so that a guidance hangs out there and doesn't go through all the comment period to make changes; the major rules are now supplemented there, and we have more major rules with $100 million affect on the Country than we have had before. The congressional intent is not being able to be evaluated; that is why bills like UMRA that this Committee dealt with last year, the Unfunded Mandate Reform Act, is such a big deal.

Let me get a chance to bounce off a few questions off a few of you in the time that I have here.

Mr. Hamby, I want to ask you a little bit about Dodd-Frank. There was a lot of conversation about Dodd-Frank, it doesn't apply to community banks, that this applies to the big banks. So when

Dodd-Frank comes down, does it have any effect on you as a community bank?

Mr. HAMBY. Oh, it absolutely does. We were just talking about the qualified mortgage that the gentleman, Mr. Rutenberg, was talking about. That is going to be dramatic for us. If this is not monitored and this part of the bill is not watched very closely, we could come out with a dinosaur, basically, that we can't manage. It can be extremely complex; it can take us out of the business. I understand why it was written; I understand why it was designed. It is all with good intentions. But when you go down and you look at the small community, where the average mortgage is $30,000 to $50,000, the cost is the same to make that mortgage as it is a $500,000 mortgage.

Mr. LANKFORD. Okay, we have a $50,000 mortgage with a tremendous cost burden now that has been added to it. Give me just a thought here on a home loan application, going through the process of that. Has there been a change in the past couple years in the home loan process, the length of time it takes, the difficulty of making the loan?

Mr. HAMBY. Oh, sure. Five years ago I was closing mortgage loans in 10 to 15 days and probably having documents about an inch thick. Now it takes me 40 to 45 days and the documents are about three inches thick. I don't know anyone that reads all the documents because they really can't. They used to read them, but they are hugely burdensome to the consumer.

We want to do what is right. We want to make sure they are protected. We want to make sure they understand the terms and the conditions. I am a big consumer advocate on that. But the way we have it done, we are killing a lot of trees, we are hiring a lot of regulators, I am hiring a lot of lawyers, and I don't think the people are any better protected.

Mr. LANKFORD. What effect does this have on a smaller bank? You are a community bank as well, but let's take a bank of $500 million or less, or $50 million or less.

Mr. HAMBY. Sure. Let's take a little back out in the rural area of the Country that is a $50 million bank. With all the hoops they have to go through to make the mortgage loan and to make sure they are doing it right and they are in compliance with Dodd-Frank, if the qualified mortgage rule gets enacted improperly, it will very well take them out of the mortgage lending market. And they are the only person that makes a loan to people in small rural communities; there isn't any big Wells Fargo or anyone like that to do it out there, it is simply too small.

So they do it. There aren't good appraisals. When you get an appraisal, you have to have comp values, at least three in the last six months. Well, if you are in a small town and the average home price is $50,000 and you have a $100,000 home, you are not going to find three property values in six months, so you are not going to meet Freddie Mac-Fannie Mae guidelines. So the bank is going to make the loan; it is probably going to be adjustable every five years; it is not going to be going out to the secondary market where you can get the 2.85 percent interest. And then part of the rule is to watch what is called the high priced mortgage. It will fall in that category and that will further take away from the community

bank's ability to serve that customer who wants to finance his home or build his home. It is a real issue for community banks.

Mr. LANKFORD. So you are saying in community banks in rural America, this solution that was put out there really is a solution for urban areas that deal with larger banks, but for the community banks and the smaller areas, all those burdens are coming down on them.

Mr. HAMBY. Absolutely. A lot of them are, and it can be very devastating. It is the rule of unintended consequences.

Mr. LANKFORD. How many staff did you have to hire or how many dollars did you have to spend last year dealing with just compliance?

Mr. HAMBY. Just compliance last year? I can't tell you the total dollar I spent on just compliance, but, as I said, it increased in the last three years by $1.4 million.

Mr. LANKFORD. So just the increase. Because, as you mentioned before, banks are some of the most regulated industry in America.

Mr. HAMBY. That is right.

Mr. LANKFORD. Lots of regulations already. But in addition to the regulations that have been there for a long time, you had an additional $1.4 million in cost?

Mr. HAMBY. An additional $1.4 million of cost. Right now regulatory compliance is my third largest expense item. The first is interest expense; the second one is human resources expense; and then the third one, which used to be way down the line, is now regulatory compliance expense.

Mr. LANKFORD. One quick question.

Mr. HAMBY. Yes, sir.

Mr. LANKFORD. The Volker Rule and several other rules that are not supposed to apply to community banks, do you have to prove that it doesn't apply to you, or is it just automatic, if you are a certain size it doesn't apply to you?

Mr. HAMBY. Oh, you have to prove it doesn't apply to you.

Mr. LANKFORD. So how long does it take to prove that this rule doesn't apply to you?

Mr. HAMBY. Well, I don't know yet, but I am sure I am going to get the privilege of finding out.

Mr. LANKFORD. It is a long process, though.

Mr. HAMBY. It is a long process, yes. The community advisor rule, let's talk about that for one second while we are on that. Community advisor rule says if you give advice to counties or municipalities, you need to have a registered advisor. We are going to have a registered advisor, we understand that, but the definition in the regulation that has come down now is anyone that talks to them about it. The teller who says you may want to look at a CD has to be a registered advisor; anyone that does it.

The same thing right now, you have to register all mortgage originators. Well, that is fine, we have five in our bank that originate mortgages. But when it came down through regulation, it is anyone that in any way possible manner talks about the rate on a mortgage. I am registered and so are every one of my officers. Every one of my secretaries, anyone that touches a loan, my administration clerks. I have registered about 28 or 30 people, paid fees, fingerprinted, keep up with it, as mortgage originators even

though they don't have the slightest thing to do with mortgage origination.

Mr. LANKFORD. Thank you for that.

I yield back.

Mr. WALBERG. I thank the gentleman. His time has expired.

We now recognize the gentlelady from D.C., Ms. Norton.

Ms. NORTON. Thank you, Mr. Chairman.

I have a question for Mr. Williams, but I taken by Mr. Russell's testimony and I would like to ask him a question first, because it has always seemed to me that one way to eliminate the public notion that businesses are always for regulations and for the general good, until the first regulation appears, is for the industry to set up its own standard and invite the government to use it . So I was taken by your testimony about the LEED standard. You say in your testimony that it is one of several private sector green building systems that help drive reductions in energy use in public and private sector buildings. So you do understand that as a landlord and as a lessor or lessee, that the Federal Government has an interest in driving down the costs.

Now, let's go to LEED. I take it that LEED was a pioneer in this green technology. Is that why we always hear LEED used?

Mr. RUSSELL. Yes, Congressman. LEED is one, but there were others that have developed alongside.

Ms. NORTON. Yes, but LEED was probably, whoever gets there first probably gets an advantage, and I can understand your concern. But understand what interests me is that GSA didn't go and figure out its own regulations; it looked to see what was best practices. And who did it turn to? It turned to private industry. So it chose LEED. And you want them to choose a number of different standards, and you say that the LEED standard is being revised in a way that could jeopardize U.S. jobs.

Has GSA said it approves of the revisions and will continue with the LEED standards with revisions being made?

Mr. RUSSELL. Congresswoman, thank you for the question. That is precisely the point. The GSA has undertaken, as it is required to do, a review of green building rating systems and has compared several of them side-by-side. In fact, in many cases GSA's review, their own review, found that another building standard was preferable in certain of the criteria.

Ms. NORTON. So what did it do in that case?

Mr. RUSSELL. Well, the review is ongoing and is not complete yet, but GSA, until today, has recommended for federal buildings under the scope of its recommendation they use exclusively LEED.

Ms. NORTON. All right, so the review is ongoing. We had LEED, which was the first, and it did something that it seems to me we like to see done more often, and now you are saying they are reviewing a number of standards and they haven't said they won't use a number. Now that a lot of people have understood that it is good business to be green, we now have lots of companies, that is the American way, saying we can have standards as well, and our standards are just as good and our standards are particularly befitting American industry.

GSA hasn't said it won't use these standards. It is reviewing those standards now that there are more actors in this area.

Well, you don't contradict that.

Mr. RUSSELL. I am sorry, I was waiting. I assumed you were distracted. My apologies.

I would like to respond in that the version of LEED that GSA currently requires exclusively was a version of LEED that has existed until now. LEED's proposed regulations are those which we have been questioning as hurtful to our industry, and perhaps also to——

Ms. NORTON. Well, so government is doing it the right way: they are proposing the regulations; they are reviewing the regulations. You even say that in the DOE headquarters they used cool vinyl roofing that you approved of.

Mr. RUSSELL. DOE has a special exemption and were able to do that. That roofing, however, would not be available to ——

Ms. NORTON. Okay, I just want to put on the record, Mr. Russell, that they are reviewing, that there now are more actors in the field and that is what happens. When they see LEED getting all the business, you have people saying me too, me too, and I don't see how there can be objection to that, particularly if they are under review.

Mr. Williams, you are in a business that ought to know a lot about LEED, and you say that you have created 94 jobs since July 2008, so I have to ask you, first, your view of LEED and how there might be other systems as well that should be used, and also how you were able to increase your business, including a new business startup, apparently, while complying with regulations, and why regulations didn't hinder you. Or if they did, or make it more difficult, I wish you would explain how.

Mr. WILLIAMS. Thank you. Yes, I do have some expertise in that inasmuch as I am a LEED accredited professional. And I think as such there are a few things, certainly Chairman Issa, in his comment as he spoke about the GSA wanting to lease buildings where all utilities are included and that that is problematic, I agree with him on that, and so does the U.S. Green Building Council. The U.S. Green Building Council really wants the tenant to pay the utilities because then the tenant is responsible for being responsible.

Secondly, I think it is really important to note that LEED version 3 is what is in operation today. LEED version 4 is what is being considered. No versions of LEED, 3 or 4, rule any product out of a building. Unequivocal. LEED version 4 brings into play two material and resource credits that deal with the chemistry of materials. A building can be built and not even use or require the use of those two credits. The bulletproof glass is still going to be used as bulletproof glass, until such time as there are alternatives or a architectural owner group that wants to use the material and resource, those options within the material and resource credits.

The jobs that we have been able to create have been because of our position. These are customers. Our customers are asking for building products with certain attributes. We, very early on, invested in those products with those attributes that actually, today, position our materials to be well chosen in version 4 but, again, do not make our materials exclusive for version 4.

So our work in the environment, particularly in the environment within the building construction area, is what has allowed us to

grow through customer demand. Our business growth 2011 over 2010 was 20 percent. No segment of our economy that I am aware of grew 20 percent at that time, and the building sector did not grow 20 percent at that time. We are responding largely to customer demand and understanding, and translating those customer demands are what has allowed us to create jobs, as opposed to issues dealing with regulation. We are regulated and we know there are times when that can be problematic, but that is not what I came today to talk about. I came today to talk about how our business has grown in this economy, and that is why our business has grown in this economy.

And, Representative Issa, you may have missed a comment that I made, and that is that the U.S. Green Building Council would strongly agree with you relative to a tenant leasing where the utilities are included in the lease. The U.S. Green Building Council very specifically wants the tenant to pay for their water and their electricity so that they are aware of what they are using, so that they are better stewards of that.

Chairman ISSA. [Presiding.] And we are going to work on getting GSA to see the light.

With that, we recognize the gentleman from Arizona, Mr. Gosar.

Mr. GOSAR. Thank you, Chairman.

Being from Arizona, we really understand where this is heading. I am also a health care professional. We have to believe that there are rules and regulations that we have to look at, but government, a lot of times, is the problem. It is called that knee jerk reaction. Instead of conscientiously looking at the problem and sorting it out. How does that Hippocratic oath go? Do no harm? We find that over and over again.

I want to direct my first question to Mr. Rutenberg. In your testimony you mentioned that a National Association of Home Builders, NAHB, housing market index survey conducted in January of 2012 found that 69 percent of builders reported that quantifying buyers for mortgages is a significant problem for them. Why is this the case?

Mr. RUTENBERG. It is a continuation of what we have talked about, how the banks are becoming very cautious; that they are having loans sent back to them by the Fannie, Freddie, and other GSEs. To be defensive, the average loan set of documents now exceeds 500 pages. The length of time has grown so long the appraisal has become a problem. Secretary Donovan said, in April, when I was in a meeting with him, that he believes that the pendulum in the housing finance has swung too far the opposite way; it needs to come back in the middle. Whenever we have had problems, we tend to overreact. We have overreacted, and now if we can come back in the middle, it would be much better. We could give the protection that we need and we could focus back on what is pragmatic.

Mr. GOSAR. So a closer analogy, when I was going to health care, instead of using a cleaver with these, we should have used a scalpel.

Mr. RUTENBERG. It would be as if you sent almost everybody for a CT or an MRI.

Mr. GOSAR. Or brain surgery instead of maybe a dose of antibiotic.

Mr. Hamby, would you agree with that?

Mr. HAMBY. Yes, sir, I would.

Mr. GOSAR. Do you see CFPB is on the right track?

Mr. HAMBY. They are in some instances, sir; in others they are not. I think we have to be very careful about how it is implemented. The concerning things are really that there is no oversight board for them and there is really no budgetary constraints; it is a czar system, which is concerning in itself. But we must be diligent. This Committee needs to be diligent to make sure the things like the qualified mortgage that we are talking about are sensible, usable, and do not cause more problems than they create.

Mr. GOSAR. Well, I am very concerned about it. Being from Arizona, in the last year we ranked second in foreclosures again, so the housing market is a huge industry for Arizona, as well as the Nation. Do you think they are on the right track in regards to the ability for the repay rule?

Mr. HAMBY. You know, I think it is too early, quite honestly, to say yet, but I think we should look at it very cautiously.

Mr. GOSAR. If they are not on the right track, how would you say they go about getting back on the right track?

Mr. HAMBY. Well, the right track is to sit down with all the industries, the trade associations, go over it, reach a consensus between everybody as to how we accomplish the goal and, at the same time, make sure that our mortgage market thrives and continues to work well.

Mr. GOSAR. Also what I think include the community bankers, would it not? I mean, I am from rural Arizona——

Mr. HAMBY. Absolutely, sir.

Mr. GOSAR. That is what makes 99 percent of our loans out in rural Arizona.

Mr. HAMBY. Yes, sir, and that is why I am pleased to be able to testify today.

Mr. GOSAR. Thank you for being here.

How would you feel about that, Mr. Rutenberg, as far as that repay rule?

Mr. RUTENBERG. I think that we have to be very careful. I am very concerned that we are going to see the rules for the first time in December, and they are supposed to be implemented in January. We wish we would be more active in the conversations, as you alluded to. One of the things for the qualified mortgage, we very much support the safe harbor, as opposed to rebuttable. We believe that they need to be proscriptive, pragmatic, and something that lenders can do and feel comfortable in, and when they have the comfort, we will see lending become more abundant.

Mr. GOSAR. I am going to kind of skip ahead because I am limited on time. In regards to—you know, I put myself through school as a contractor builder, so I understand a lot of that aspect. One of the things is the AD&C type of loans in regards to contractors buying and financing a house and a start. Tell me how would you see revamping that, or do you see that being the ability to kind of jump start our economy in home building?

Mr. RUTENBERG. There is no question that the small and medium size builders need AD&C to be able to compete with the larger builders. But they are getting their money directly from the large banks and from Wall Street. The regulators in many parts of the Country, in your State, in my State, I am sure in my State, just tell the banks you cannot do any more lending, you have to continue to shrink your real estate assets. So the banks are not able to loan to the builders. It has become almost non-existent. And it is starting to ease up just a little bit, but not enough to take care of the demand, because the inventory of new homes is at an all-time historic low, both percentage and by units.

Mr. GOSAR. Mr. Hamby, I am going to take one more second. You know, the analogy was always made to me that sometimes it is that loan that is made in tough times, probably with not the right information or the best information, that actually is the best loan given. Is that something that you would agree with, that a community bank is much more apt to be able to make that right decision?

Mr. HAMBY. Yes, sir, I would, and many times that is exactly the case. Not always, but most of the time. It gets to the character issue I talked about earlier and the judgment call that we make.

Mr. GOSAR. It is that area of looking somebody in the eye and understanding exactly the fortitude about how they are going to repay that.

Mr. HAMBY. We know what they are going to do; we understand our community; we know what the impact to the community will do; and we have a pretty good feel as if it will work or not.

Chairman ISSA. The gentleman's time has expired. I thank you.

We now go to the gentleman from Virginia, Mr. Connolly.

Mr. CONNOLLY. Thank you, Mr. Chairman. Mr. Chairman, I would also ask that my opening statement be entered into the record at this time.

Chairman ISSA. Without objection, all members' opening statements will be placed in the record, and we will hold the record open until the end of the day for any additional statements.

Mr. CONNOLLY. I thank the Chair. Just two other items. I have a statement from the Virginia Forest Products Industry that is signed by about two dozen private sector companies in the forest products business, the lumber business, hardwood flooring business, and the forestry business, who in fact favor the Lacey Act and want to see its full implementation, because, from their point of view, actually, it protects them, legitimate industry, from illegal logging and the marketing of products from illegal logging. So I would at least like to get from the Commonwealth of Virginia's perspective, Virginia forest industry's perspective in favor of the Lacey Act regulation, their letter entered into the record.

Chairman ISSA. Without objection, that will be placed in the record.

Mr. CONNOLLY. I thank the Chair. Just one other item.

Chairman ISSA. You know, you are on a roll. You are doing real well with these.

Mr. CONNOLLY. I have a letter addressed to yourself, Mr. Chairman, and the Ranking Member, Mr. Cummings, from Transwestern Sustainability Services, and, again, this is a letter by a very large company that has done 20 million square feet with 100

LEED certified buildings, in favor of LEED certification and quite explicit in saying that it is not a job killer, just to get the other point of view. I would also ask that their letter, addressed to you and Mr. Cummings, be entered into the record.

Chairman ISSA. Without objection, so ordered.

Mr. CONNOLLY. I thank the Chair.

Chairman ISSA. Would the gentleman agree that regardless of whether it is a job killer or not, LEED is one of multiple standards for greening up buildings?

Mr. CONNOLLY. I agree with you, Mr. Chairman. Well, let me first say one of the problems I think we have, this is our 28th hearing on the subject of regulation and, frankly, as the Chairman knows, I wish we could have neutrally worded titles for hearing, because I actually think there is a lot of bipartisan concern about regulations that go too far; regulations with the best of intention that have bad results; regulations that do make it hard to do business.

And remember it is not just business. I ran a local government, one of the largest local governments in America, and we were subject to federal regulation or State regulation that sometimes made no sense or just had us do incredible expenditures for very little gain, and you think is there any common sense left on the planet? Everybody with the best of intention, but gone amok. So there is a lot of sympathy for that point of view. But there won't be sympathy for the point of view that all regulation is bad; all regulation is a job killer. And that is the solution if we are worried about high unemployment.

You heard the passionate statement of our Ranking Member, Mr. Cummings, about what it is like in an inner city in America to look at the results of lead poisoning. And if you are a parent who has a kid who has been a victim of lead poisoning, you want more regulation, not less.

Mr. Tierney, from Massachusetts, was talking about this dialectic. There is a famous town in Massachusetts that was devastated because of illegal chemical toxic dumping. Many, many cancer deaths; children. So they wanted protection.

I don't think there is an easy way out of looking at the financial meltdown on Wall Street, though I understand it is arguable, where a reasonable person would not conclude that the problem wasn't over-regulation of the financial industry. No less a figure than Mr. Greenspan testified subsequently to that and admitted he had made a mistake.

So I don't think it is an either/or proposition.

But let me talk about LEED because, Mr. Russell, you said it was a job killer and, Mr. Rutenberg, it is your business. And I have worked with the home builders in my community, and developers, and I agree with the Chairman that sometimes LEED is so rigid that it actually helps defeat the goal we are trying to achieve.

Having said that, does not LEED also sometimes create jobs and give somebody a competitive advantage by marketing a product, saying I am LEED certified?

Mr. Rutenberg?

Mr. RUTENBERG. Well, LEED certainly helped create an industry and advance the cause of energy conservation, which I have person-

ally been working on since the 1970s, and I applaud that. However, there are other standards that have become involved and should see the light of day. The Home Builders spent several million dollars developing a green building standard before we spun it off. I would like to point out it is the only standard that was an ANSI standard by the national standard industry, and LEED participated in our consensus for it, and it is also going through other evolutions. And I think we did it because we thought we could deliver a better product for less money to the consumer, and I hope they get the light.

If I could go for just about another 15 seconds on the lead paint. Before I get into trouble, I want to point out that the exemption that we asked for until we had the right kits was for homes that had no children and could not have a pregnant woman. It was very specific to where it would be safe. We continue to be on record in favor of lead paint abatement.

Mr. CONNOLLY. Mr. Chairman, I would ask that Mr. Russell be allowed to answer.

Mr. RUSSELL. Thank you, Congressman.

Chairman ISSA. I would ask unanimous consent the gentleman have an additional minute.

Mr. CONNOLLY. I thank the Chair.

Chairman ISSA. Without objection, so ordered.

Mr. RUSSELL. Thank you, Mr. Chairman, Mr. Connolly.

To be very clear, the testimony we presented to the Committee is not intended to be interpreted that any particular system is a job killer, LEED included. The testimony is intended to illustrate that the Federal Government's selection of one, and only one from among many, including many that have been demonstrated by the Government's own assessment to perform better, perhaps also including my colleague to the left's system, would be an opportunity for the Government to become more efficient and save money, and toward outcomes that we all share, which are increased energy efficiency and higher building performance. Thank you.

Mr. CONNOLLY. Mr. Chairman, there is just 15 or 20 seconds. I think Mr. Williams also, were you seeing to, all right.

I thank the Chair for the extra time.

Chairman ISSA. I thank the gentleman.

I would now ask unanimous consent that the following statement from page 23 of our report be placed in the record. The settlement agreement required EPA to propose and finalize a new rule to remove the opt-out provision. On June 7th, 2012, bipartisan legislation, the LEED Exposure Reduction Act of 2012, was introduced to restore the opt-out provision pursuant to the settlement. Just in case anyone wanted to make sure they understood that lead paint is not an issue that is partisan.

With that, we go to the gentleman from Pennsylvania, Mr. Kelly.

Mr. KELLY. I thank the Chairman. Before I start, I would like to enter into the record a letter from the Associated Builders and Contractors.

Chairman ISSA. Without objection, so ordered.

Mr. KELLY. And it says at the start, this is the first paragraph: "On behalf of the Associated Builders and Contractors, a national association with 74 chapters representing 22,000 merit shop con-

struction and construction-related firms." I just want to make sure we understand that because, as I heard earlier, we only have six people here and we could probably stay here for weeks and we could viably bring in not just six of you, but 6,000 of you that would have the same concerns, and I think that is what probably bothers me more than anything else.

This hearing is not zip code specific, this hearing is not industry specific, and this hearing is certainly not politically specific. When I am walking in the Third District of western Pennsylvania, to a person, everybody I talk to talks about the crushing boot the government puts on the throat of small business people, and if they would just let off a little bit maybe we could grow jobs; maybe we could go ahead and expand an economy that is only being held back by us internally. There is no place else in the world like this. My goodness, we are awash in natural resources that are a gift from God, and we can't even get to them because of over-regulation.

So when I hear this, Mr. Hamby, especially, you remind me of so many people that I talk to in northwest Pennsylvania, people that have small banks. You and I talked just briefly. Tell me about the qualified borrower definition, and is the definition, this is CFPB, right? And how many pages is it, by the way, the definition?

Mr. HAMBY. I will be honest, I really don't know yet.

Mr. KELLY. It is 1,001 pages, the definition of who a qualified buyer is. Now, I am going to assume that in Ada, Oklahoma, where you grew up, that you probably walked those same streets, go to the same churches, go to the same restaurants, the same schools, and so those people who come in and sit across the desk from you are probably people you know and know whether they are qualified or not qualified.

Mr. HAMBY. Absolutely.

Mr. KELLY. So does somebody from Washington have to give you 1,001 pages to define what a qualified borrower is?

Mr. HAMBY. No, sir.

Mr. KELLY. Does it make it a little bit tough to make your decision?

Mr. HAMBY. Yes, sir, it does. Our lending standards are the same as they have been for the last 30 years. All we have to do now is do a lot more documentation, a lot of papering on the same thing that we——

Mr. KELLY. Okay, so when we talk about a lot more, a lot more, a lot more, what does it actually mean? It is a dollars and cents thing, is it not?

Mr. HAMBY. It is a dollars and cents thing. As I reported earlier, it is a dollars and cents thing. And more than that, it is a time thing for my staff; it takes their eye off the ball, which is taking care of the customer. Instead, we are focused on complying with all the regulations and all the hoops that we have to go through, instead of getting out there and telling people, hey, it is time to refinance your home or how can I help you out?

Mr. KELLY. And a lot of these regs are not based on solid evidence, but they are on conjecture and speculation. They are lacking foundation in any type of sound scientific analysis, is that not true?

Mr. HAMBY. I believe you are correct, sir.

Mr. KELLY. Okay. I think the confusing thing of this is, when we talk about—and Mr. Tierney said the problem is there is a lack of demand. There is a lack of demand because people aren't certain of what is happening to them. Every one of you represent an industry or a business that cannot move forward because you just don't know what is going to happen to you next. It holds you back. I know from being in my business, I am in the automobile business, when I am not here, and thank God I am not here all the time, I get back home to northwest Pennsylvania and I listen to people. When I am on the lot or I am on the showroom, there are people that I sit across from that want to buy a car or a truck, but they can't do it. And you know why they can't? Because they are not sure that they are going to have a job or they are going to have a job that is going to pay at the rate that they need to meet a payment for the next 48 or 60 months.

And I think, Mr. Chairman, thanks for having this hearing because it does come down to how difficult it is. The title of this is Job Creators Still Buried by Red Tape. Is there anybody sitting at this table that would say to me, you know what, we don't have enough regulations? We just need a few more. Anybody? Anybody who would sit there and say, you know, some of the regulations we have right now, could you not produce a list of regulations that absolutely have no intrinsic value to the ultimate user or the consumer? And every one of these regulations adds cost to your final product. I don't care if you are lending money, selling a car, building a car, building a house, working in the chemical business; whatever it is. This all drives your cost of your final product up, does it not?

So when there is a price increase, unless I have been missing things for the last forty-some years that I have been on the lot, every time the price of something raises, goes up, what does it eliminate? The lowest person on the totem pole; it takes them out of the market.

So if we are really concerned about creating jobs, wouldn't it be great to allow you to actually move around in a free market and be able to run your business with some type of certainty? Anybody disagree with that? I mean, I really want to hear from you because I have heard so much about how these regulations don't hurt and don't affect cost. Nobody.

Mr. WILLIAMS. I would say that in the areas of business in which we are regulated we can move freely within our marketplace. It may be an exception, but we can move freely within the marketplace, and the consumer demand for what we are doing is such that it enables us to do that, albeit it one could reasonably argue we are within a niche, but ultimately we are still a small business, central Pennsylvania, and we are being successful.

Mr. KELLY. And I understand. I am in a small business in western Pennsylvania.

Chairman ISSA. I would ask unanimous consent the gentleman have one additional minute. Without objection, so ordered.

Mr. KELLY. I would appreciate that.

Yes, sir.

Mr. RUTENBERG. When you asked about regulations, one of the things I would like to add is that we are now starting to see a lot

of guidance coming out from different agencies, which does not necessarily have the same scrutiny as a regulation before it is issued, and that is becoming a concern.

Mr. KELLY. Okay. Well, let me just say this to you. The CFPB, the people who are coming up with the qualified borrower definition, I wonder if there is any chance of getting those directives or those guidance to the Department of Energy. Probably would have helped them in making some of the decisions of who they lent money to that has ultimately cost the United States taxpayers a ton of money.

Just as a final, I do appreciate you being here, but you know what we need to do? We need to do this. I don't care how many of these hearings we have. We need to do it every day in every way, in every town that we represent because you know what? The message isn't getting back here. It is certainly not getting to this Administration that continues to layer you with more regulations that ultimately drive the cost of whatever it is that you do higher and higher and higher. It eliminates the business, it decreases demand, and when you decrease demand you are also eliminating jobs. And if this is about creating jobs, then, my goodness, we better start looking at where the problem is. I thank you so much.

Mr. Chairman, I yield back.

Chairman ISSA. I thank the gentleman.

We now recognize the gentlelady from the money center banking community of America, New York, Mrs. Maloney.

Mrs. MALONEY. Well, I thank the gentleman for yielding.

I also thank all the panelists for coming here today to share your personal experiences with running your businesses and really participating in the American economy.

I am so tired of this recession. It has been going on since 2007 and, according to most economists, it has cost this Country $18 trillion in household wealth, well over 7 million jobs, and many economies have not even recovered.

Yesterday, Bernanke testified that one area that now, after many years, is picking up, is housing, and that is good news because Professor Zandi says that housing is 25 percent of our economy, our GDP. So without a robust housing market, our economy will remain sluggish.

Now, many economists say that what caused this was lack of regulation, lack of regulation for new products, lack of regulation for subprime loans, and part of the reforms is that a qualified buyer has to be someone who can afford the loan. I call that responsible. And if we had had that common sense regulation in place prior to 2007, possibly we would have averted this financial crisis, which the Bureau of Labor Statistics says it is the first recession in our history that was totally caused by mismanagement of the financial system.

So I would say some regulation that prevents economic downturns is well worth the effort to bring into sunshine, bring into transparency, at the very least, have the ability to pay for whatever it is you are buying.

During the crisis, the joke in New York was if you can't afford to pay your rent, go out and buy a home. It was that easy. And many people are suffering to this day because of it. And I would

say that this lack of regulation contributed to the economic downturn. So a regulation that has passed out of this Committee that says that unemployment has to be below 6 percent before you can pass a regulation would nullify all the regulations we have there to prevent another financial crisis. It truly would.

I would like to ask the panelists if you think it is reasonable to have some reforms there, such as the QE2 that we had a panel and some of your representatives testified before Financial Services that they supported these regulations, ability to pay and others, in order to prevent another economic downturn. So I would like to ask Mr. Rutenberg, do you think that reasonable reforms or regulations to prevent another subprime crisis are reasonable for growing jobs in the future? Do any of you want to go back to the wild west days of any risk you might take, you can take, and you can buy things without any intention of ever even paying for it, and it is sold on the secondary market that brings tragedy to our liquidity and to our capital and our Country?

Mr. Rutenberg, would you support the rule that we are considering that you literally be able to pay for a house if you are buying it? That is one of the reforms. It is literally one of the reforms. You would think that is common sense, but some people are opposed to ability to pay. So I would like to say if that reform was in place, do you think the housing market would be stronger today, possibly we would have averted the entire crisis?

Mr. RUTENBERG. The National Association of Home Builders has put out a paper and worked with Congress and the Administration and Republican candidates suggesting some modifications to the housing finance system, which we believe are important and would go a long way to providing more stability and safety to the system. So, yes, we do believe there needs to be reforms. We do have questions about whether or not we need a 1,000-page definition of a qualified buyer, if that in fact is true, and some of the other things that may be proposed.

So, in general, we do think that it is time to evolve the system to make it better. We think that we should be responsible in the forms that we have; that we should be responsible in qualifying people; that bankers should be doing real banking; and that we should be more responsible.

I think we also want to be careful in what kind of regulations that we are opening the door for and make sure that they are reasonable and that they would be effective.

Mrs. MALONEY. Do you support the qualification that you have the ability to pay before you buy a house?

Mr. RUTENBERG. We believe that and we believe there should be a safe harbor and we think that there should be guidelines. I think we agree with where you are going; the question is what does it look like when we have it and that works. And some things become counterproductive. If we go from a 300- to a 500- to an 800-page loan package, I don't think we have done a lot of good. Obviously there is a ratio between prices of homes and income, and normally we have been about 3.2. Well, in some States we got up to 5.5. That is just stupid. And people are doing things. I had somebody who said they were flipping condo contracts like they used to do NASDAQ stocks. That is inappropriate and that should be stopped.

Mrs. MALONEY. Well, Mr. Williams, you testified that you created 94 new jobs. Congratulations. If every small business had done what you have done, we wouldn't have an unemployment problem. Since July 20, 2008, an additional 29 at a new startup business. Do you believe that complying with regulations has hurt your business or caused your company in any way to lose jobs?

Mr. WILLIAMS. No, it has not.

Mrs. MALONEY. Even you won an award, as I understand, an EPA award for environmental achievements, and you said your company's work on sustainable environment is good for your customers and good for business. So is it fair to say that your company has found that it is good business to be a leader in complying with energy and environmental regulations?

Mr. WILLIAMS. Yes, it is fair to say that. Just a footnote. A very well established environmental consulting group, Five Winds International, years ago developed a model that essentially said if regulation is always viewed as cost, it will always be cost. If regulation is viewed as opportunity, it can create opportunity and can even create competitive advantage. We subscribe to that. It was rather startling to us at first to work through that because it didn't seem to make sense to us, but ultimately adopting that model has helped us to stay out front and, generally speaking, our consumers are asking sometimes more than what the regulations may be.

Mrs. MALONEY. Well, we have heard that the current Administration has imposed a regulatory tsunami on businesses. Have you noticed this regulatory tsunami in the last three years that we keep hearing about? Have you witnessed that or has it been a burden to you?

Mr. WILLIAMS. There are some regulations that we may have gotten splashed by the tsunami, but we have not been overwhelmed by it, so in that respect our industry sector may have, as I said, only been splashed, and none of which we encountered prevented us from moving forward.

Mrs. MALONEY. Well, your presence here today can help convince, I hope, some of my colleagues that regulation and economic prosperity are not mutually exclusive. In fact, they can go hand in hand. And I would say that a good road map of how we are going to operate would help business, help the overall economy, and any regulation that you feel is too onerous or whatever, I think that your Congress member, this Committee and others, would like to look at it. But we don't want to go back to days when there was no regulation, and I am particularly talking about the housing market, which to this day is suffering dramatically and I would say is the major challenge that we now have in our economy, is how to get housing back on track, creating jobs and moving forward.

So, Mr. Rutenberg, do you have any ideas of how to get housing moving? I think the statement by Chairman Bernanke was encouraging yesterday. It isn't in response to my question, but he did say housing was one of the strongest economic indicators in the last economic report.

Chairman ISSA. And I would ask the gentlelady have an additional 20 seconds, making it an even 10 minutes. Without objection, so ordered.

Mrs. MALONEY. What, 10 minutes?

Chairman ISSA. Yes, ma'am.

Mr. RUTENBERG. Housing is now back to about 40 percent of its sustainable level of production. I would like to comment that the recent three or four year history of performance of the new loans has been quite excellent, and even in Fannie and Freddie that is true. NAHB continues to try and be part of the process of reforming the regulations and improving them so that both our consumers and the financial institutions are in a better position. It is ongoing and we look forward to being part of the process. We are getting better slowly.

Mrs. MALONEY. Thank you.

Chairman ISSA. I thank the gentlelady.

We now recognize the gentleman from Pennsylvania, Mr. Platts.

Mr. PLATTS. Thank you, Mr. Chairman. Coming from a House classified briefing, so I apologize for the late arrival. I want to thank the witnesses here and appreciate their written testimony and yield the balance of my time to you, Mr. Chairman.

Chairman ISSA. I thank the gentleman for yielding.

Mr. Williams, since you only got splashed by the tsunami, I thought I would ask a couple more questions. And I appreciate your being a good witness here today. I think we all agree that within LEED certification standards and the efforts they are making lies something that everybody is trying to do. I happen to come from California, where a lot of what you choose to do under LEED we led as a State. And I am concerned about the standardization or the lack of standardization that exists within the industry where, depending upon which standard you go to, you might have different choices; and if one organization, like GSA, mandates that, then by definition they are picking a winner.

Would you agree that in the argument over Betamax versus Sony, so to speak, that the government should try to encourage and allow as many standards as they can so as not to determine the outcome of one versus the other? In other words, promote competition rather than mandating one solution?

Mr. WILLIAMS. I had the opportunity to play back or listen to the May hearing on that subject, and I think one of the things I heard there was performance standard. There are enough differences in several of the green building standards that adoption or picking and choosing without that core base of performance standard I think could lead the GSA down a very windy road.

Chairman ISSA. But you mentioned that you support tenants paying for their water and electricity so that there is a causal relationship. Isn't it true that no matter what the GSA does in the way of defining standards, if the tenant is not responsible, they can abuse those standards; they can run their air conditioning at a lower temperature, they can do it 24 hours a day, they can leave the lights on, and so on?

Mr. WILLIAMS. Absolutely. And I think virtually every green building standard would say no to that, because that is not the core premise or the reason they exist.

Chairman ISSA. Now I am going to ask you a little bit maybe more business personal questions. You have a line of mats in your company, if I read it right.

Mr. WILLIAMS. Yes.

Chairman ISSA. Where do you source them from?

Mr. WILLIAMS. There are two places. One line of mats has been made and is made here in the United States and has been made here since 1968. We also have a line that we source from our factory in China, and the core reason for that factory's existence in China is to have manufacturing base in China, not to take jobs out. The product that you reference is a product that we are physically unable to make that here in the United States.

Chairman ISSA. And why is that?

Mr. WILLIAMS. That is because of the configuration of the product and access to the particular materials. It is about $2 million per year of a $110 million business. It also provides the foundation for our startup in China. Our belief is that——

Chairman ISSA. And I don't want to cut you off. I want to give you all the time in the world; we are sort of at the end. But you made a decision because it was impossible to make something in the U.S. that led to $2 million worth of goods being produced in China. Can you just elaborate on that?

Mr. WILLIAMS. I was beginning to do that, so hopefully I will make sense. I know you will understand it; the question is if I make——

Chairman ISSA. I am an old manufacturer, so I always want to know why something is made one place versus another.

Mr. WILLIAMS. Okay, okay. The product is made there. It formed for us the basis of being able to set up a business in mainland China for the purpose of selling our products into mainland China. Many years ago our founder returned from Saudi Arabia and spoke and said that growing our business in the Middle East was very important to him because he felt it was his patriotic duty to bring some of the oil dollars back to the United States. And he stood there with a great wide grin on his face, just as you grinned at it——

Chairman ISSA. We love exporting, don't we?

Mr. WILLIAMS. Well, yes. Big time. Big time.

Chairman ISSA. When we can.

Mr. WILLIAMS. And the basis of our factory in China is to reach that marketplace with our products and manufacturing in China, and to, to some degree, upon our founder's smiling comment, is to return dollars to the United States; and that niche of our product line being made in China is the foundation of starting that business in China, and that is just bringing those products over.

Chairman ISSA. But you didn't say that it was cheaper to make in China; you said you couldn't make it in the U.S., and I just wondered is it that you couldn't make it cost-effectively in order to hit a price point in a global market, you chose to leverage some of your technology in China?

Mr. WILLIAMS. It is technology that was available to us in China, not here. We could replicate it. The price point on the product, candidly, I don't want to say there is no price point; it is the only product of its type, so the price point was not the issue. That was our decision around a core of being able to begin manufacturing in China.

Chairman ISSA. Well, I will just make a broad question for all of you. If in fact America has extremely low-cost energy, if America

has a well educated workforce available to you, if America has a good transportation infrastructure system, and if America has a tax policy that is competitive with any other country in the world, and a regulatory system that is as streamlined to protect, while at the same time not interfering, then can your companies, your industries, maybe I will leave the banker out for a moment, compete?

Now, last question: Do you believe we have all of those elements today, or can we and should we do better?

Mr. YAROSSI. We absolutely should do better. We could do a lot better in how we could make a lot of those things work.

Chairman ISSA. Mr. Hamby, if I add an access to affordable capital, would you also weigh in?

Mr. HAMBY. Sure. It would be a lot more affordable to help them with and it would be more abundant.

Chairman ISSA. Mr. Pirkle?

Mr. PIRKLE. Currently, I think we import about 60 percent of our fertilizer needs for the domestic agricultural market, so to balance that would be better for American jobs.

Chairman ISSA. And low-cost fossil fuels such as natural gas is a major element to your being able to make it domestically.

Mr. PIRKLE. That is correct.

Chairman ISSA. Mr. Williams?

Mr. WILLIAMS. I think we can do better. Absolutely convinced we can do better. And earlier, if I may, to your point on the trillion, I do think that is an area where Eisenhower's quote is so pertinent, that we have done so much to squander things for future generations. We talk about sustainability in the environment. We need a sustainable economy and we need a sustainable America, and doing better is essential to that.

Chairman ISSA. I believe Eisenhower was the last president to balance the budget in all his years.

Mr. Russell?

Mr. RUSSELL. Mr. Chairman, thank you. We can do better. We look forward to working with the Committee in making that a reality.

Chairman ISSA. Thank you.

Mr. Rutenberg, you have the last word.

Mr. RUTENBERG. Well, my wife is an educator and I am all for improving education, and I look forward to infrastructure. I think we can do better. I think we have great promise and I look forward to the future.

Chairman ISSA. Thank you.

Mr. Platts, thank you for the use of your time.

With that, I want to thank the panel for being patient. I will note that finishing at the stroke of noon is practically a record for a panel this size.

We stand adjourned.

[Whereupon, at 11:57 a.m., the committee was adjourned.]

Insert offset folio 50 here 75465.050

Contributing Authors: Michael A. Livermore,
Elizabeth Piennar, and Jason A Schwartz

Institute for Policy Integrity
New York University School of Law
139 MacDougal Street, Third Floor
New York, New York 10012

Executive Summary

Recent policy debates about environmental regulation have focused on how those rules will affect the labor market. Opponents of regulation argue that increasing production costs will lead to layoffs, while proponents of stronger protections counter that new rules can result in businesses hiring new workers to reduce their environmental impact.

To bolster these competing claims, advocates on both sides have promoted economic studies that purport to examine the employment effects of environmental protection. These job impact analyses are extremely sensitive to data and model structure, but in policy discussions the underlying assumptions and limitations of models are inconsistently reported and too often ignored. In an advocacy context, job impact analyses can tell very different stories, often depending on the narrator. In one revealing example, the American Coalition for Clean Coal Electricity estimated that two EPA rules on power plant emissions would trigger a 1.4 million job *loss*; meanwhile, using a different model and different assumptions, the Political Economy Research Institute predicted the same two rules would generate a 1.4 million job *gain*.

Job impact analysis can and should be used by policymakers when weighing the costs and benefits of a rule. But it should not serve as a trump card. Rather, the positive and negative effects of environmental protection on employment can be used as one of the inputs to a rulemaking's cost-benefit analysis, with the consequences of joblessness evaluated using standard economic techniques. Perhaps most importantly, analysts and policymakers must recognize that even the most sophisticated job impact analyses have only limited predictive power in our complex and dynamic economy. While research should be carried out to refine and improve these models, the degree of uncertainty associated with estimates of employment impacts should be acknowledged.

This report examines the use of job impact analysis by the federal government and advocacy groups, discussing how cost-benefit analysis can incorporate regulatory effects on layoffs and hiring, and how job impact models can be used and misused in the public policy debate. On the basis of this analysis, several recommendations are offered:

1. Job impact analysis is not an alternative to, or substitute for, cost-benefit analysis. Rather, employment effects should be incorporated into cost-benefit analysis on the basis of traditional economic principles.

2. The difference between short-term and long-term unemployment should be taken into account when determining the economic costs of layoffs.

3. The potential for regulations to positively and negatively affect workers should be recognized.

4. Economic models used to predict employment effects should be well suited to the type of regulatory effect being estimated (e.g., regional versus nationwide and multi-sector versus single industry).

5. Uncertainty surrounding model predictions should be acknowledged by analysts and policymakers, and all assumptions and modeling choices should be disclosed.

Part One

Jobs, Politics, and Environmental Policy

The attentions of President Obama, Congress, the media, and the public continue to focus on jobs. While the high unemployment rate—currently at around 8.3%[1]—certainly provides good reason for that focus, too much of the rhetoric and activity on this issue have concentrated on the alleged connection between environmental regulations and unemployment. Environmental regulations have been attacked without consideration of the benefits of regulation, the rigorous process used to develop rules, or crucial distinctions between job losses and unemployment as well as between short-term and long-term unemployment. By better understanding what unemployment means and how consideration of jobs fits into the analysis of regulations, the attentions of the public, press, and politicians can be redirected more productively.

Political Attempts to Link Environmental Protection to Employment

Claims that environmental regulations cause unemployment have been a staple of political discourse for decades.[2] But as the American economy continues to struggle in the aftermath of the 2008 recession, assertions about the negative employment impacts of environmental regulations have resurfaced with increasing volume and frequency. During roughly the first twenty days the 112th U.S. House of Representatives sat in session, congressional committees scheduled at least twenty separate hearings on the purported link between regulations and the nation's job woes.[3] From 2007 to 2011, the phrase "job-killing regulations" underwent a 17,550% increase in usage in U.S. newspapers (from just four appearances in 2007 to over seven hundred in 2011).[4]

Representative Fred Upton—a Republican Congressman from Michigan and Chair of the House Energy and Commerce Committee—provides an example of how this rhetoric has been deployed most aggressively to target environmental regulations. In a 2010 opinion piece, Upton "declar[ed] war on the regulatory state" and singled out for special condemnation "a handful of job-killing regulations the EPA is finalizing."[5] When EPA announced a few months later that it would delay updating its ozone regulations, Upton pressured the agency to curtail regulatory activity even more drastically: "At a time of near double-digit unemployment, the EPA should stand down altogether from any action that will further hamstring our fragile economy."[6]

Since the 112th Congress was gaveled into session in January 2011, numerous bills have been introduced to directly or indirectly weaken EPA's regulatory authority, in the name of job protection. In fact, there are so many pending bills that House Majority Leader Eric Cantor created a website, *Jobs Legislation Tracker*, to keep tabs on the multiple proposals aimed at "remov[ing] onerous regulations that . . . impede private sector growth and job creation."[7] Adding more reviews, analyses, and audits to the rulemaking process in order to "reduce regulatory burdens" is page one of the *House Republican Plan for America's Job Creators*.[8]

Nearly two dozen bills introduced or drafted directly target EPA regulations, seeking to delay implementation of rules or to strip EPA's regulatory authority entirely,[9] with the impact on jobs as a

leading justification.[10] At least a few bills introduced would take the even more draconian measure of imposing across-the-board moratoria on rulemakings.[11] Multiple other bills have sought to add new procedural constraints to the regulatory process. At least nine bills have proposed new impact analysis requirements for rulemakings, including general mandates for job impact statements and additional analysis on cumulative costs, energy prices, and jobs.[12] Another nine bills have proposed modifying or expanding existing regulatory analysis and review processes.[13] Finally, at least four bills would create new congressional regulatory approval mechanisms.[14] These legislative proposals would add requirements on top of the extensive economic analysis and regulatory review procedures already in place.

Even without passing legislation, Congress has a variety of means to apply political pressure, such as committee hearings and public statements.[15] For example, in late 2010, over 150 Members of Congress signed letters urging EPA to balance environmental protections with job preservation, and specifically to scale back its proposed controls for hazardous air pollutants from industrial boilers (the "Boiler MACT Rule").[16] They were spurred to action in part by economic analyses released by industry groups, predicting that the Boiler MACT Rule would jeopardize tens of thousands of jobs.[17] In March 2011, EPA issued a final rule, having scaled back its proposed standards;[18] a few months later, EPA suspended the rule's effective date,[19] and the agency proposed even further modifications in December 2011.[20] Similarly, last summer, thirty-four Senators circulated a letter claiming that EPA's proposed revisions to the standards for ozone pollution would threaten tens of thousands of jobs.[21] Again, interest groups' dire job predictions played a key role in attracting congressional attention.[22] In August 2011, the White House Office of Information and Regulatory Affairs refused to grant EPA's proposal the green light, explaining that the President "does not support finalizing the rule at this time."[23]

More recently, the Keystone XL oil pipeline has been a flashpoint in the debate over jobs and the environment. Though the State Department estimates the pipeline would only create a few thousand temporary construction jobs and "would not have a significant impact on long-term unemployment,"[24] supporters of the pipeline insist over 100,000 direct and indirect jobs would result from the project.[25] Representative Upton sharply criticized the President's decision in January 2012 to not approve the pipeline, saying "the American people should not have to keep waiting for jobs and energy security. If President Obama cannot say yes to jobs, Congress will."[26] Sean Sweeney of Cornell's Global Labor Institute reported that the pipeline's backers are inflating job numbers: "The problem is that this is being depicted as an economic game changer, as a get-America-back-to-work project that has an almost miraculous capacity to fight our employment problem."[27]

Supporters of environmental policies have also capitalized on job impact arguments to bolster their agenda. President Obama has frequently placed green jobs at the center of his economy recovery plan, arguing "the country that leads in clean energy and energy efficiency, I'm absolutely convinced, is going to lead the global economy tomorrow."[28] Much attention has focused on stimulus spending,[29] but promoting new regulations is also part of the strategy. Pro-biofuel rules from EPA and Agriculture were released in 2010 as part of a green jobs package.[30] When EPA took its first steps to regulate greenhouse gases, Administrator Jackson promised "this pollution problem has a solution—one that will create millions of green jobs."[31]

Congress has also touted the employment benefits of environmental protections, perhaps increasingly so since 2009, when the Senate created a subcommittee specifically on "Green Jobs and the New Economy."[32] In congressional debates over EPA regulations, supporters are quick to cite studies from academic and environmental groups estimating hundreds of thousands of new "American jobs in manufacturing, installing and operating modern pollution control technology and producing clean energy."[33] Employment benefits were a central argument during the Democrats' pushes to pass Renewable Electricity Standards and climate legislation.[34] More recently, everything from e-waste recycling bills[35] to renewable fuel tax incentives[36] have been cited as job creators.

Unfortunately, when politicians or policy advocates remark on how new EPA regulations are fueling the rising unemployment rates[37] or how climate legislation will "significantly lower the national unemployment rate,"[38] their rhetoric often clouds the discussion. To understand whether and how job impact analysis can inform environmental policymaking, it is important to understand some basics about dynamic labor markets, and how job impacts differ from traditional costs and benefits.

The Difference between Job Loss, Short-Term, and Long-Term Unemployment

The labor market is dynamic. When the U.S. Department of Labor measures unemployment, it is taking a snapshot of a constantly changing, cyclical process. The Department surveys a sample of U.S. households and counts the number of adults trying to find employment who, at that instant, are not employed. At any given moment, the stock of unemployed individuals includes not only those individuals who have been laid off, but also new entrants (e.g., young workers and college graduates), re-entrants (e.g., older workers coming out of retirement or individuals returning from time spent caring for family members), and workers who quit jobs without finding new employment first.[39] In short, job loss contributes to—but is not the same as—unemployment.

In a dynamic economy, workers flow into and out of the stock of unemployed individuals. During a period of economic downturn, the flow of people into unemployment exceeds the flow of people out of unemployment, and so the stock of unemployed individuals increases. During an economic expansion, the flow of people coming out of unemployment exceeds the flow of people into unemployment, and the stock of unemployed people decreases.

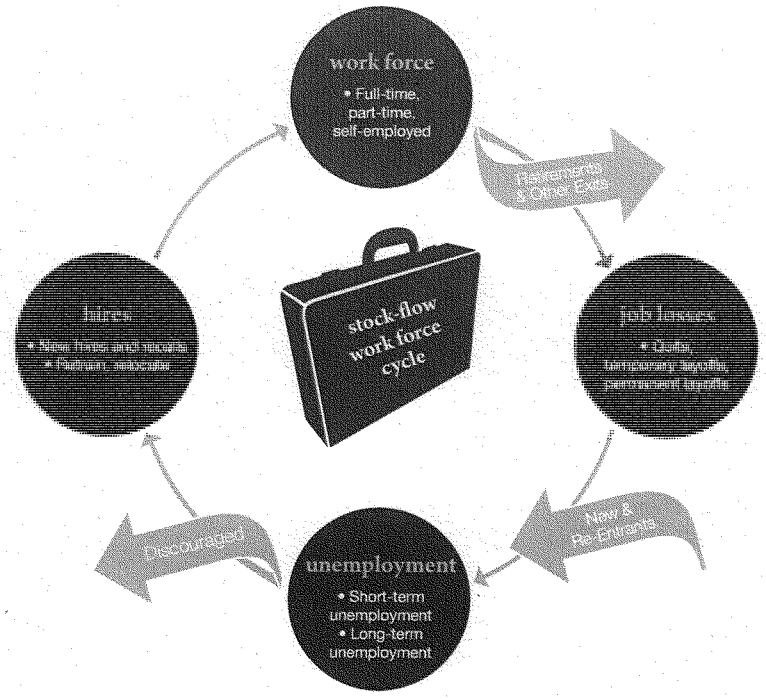
Even during economic booms, unemployment exists. The unemployment rate during economic expansions is typically between five and six percent in the United States.[40] Indeed, some temporary unemployment is part of a healthy economy, as new entrants join the workplace, individuals choose to exit current positions to seek different or better-paying work, and businesses shift their labor needs in response to market demands—all causing individuals to join the stock of unemployed people for at least short periods of time.

Quite often, large numbers of unemployed individuals and job vacancies coexist.[41] Unemployed individuals may be viewed as available workers moving through the labor market on their way to job vacancies. But they need time to search for a new job and to be selected by a new employer; some new positions will also require retraining or relocation.

Not only is "unemployment" therefore too broad a term for debating the nation's current employment problems, it is also too narrow. It omits important categories of individuals: discouraged workers (those who would be unemployed but have given up looking for work), the underemployed (those who have a job, but would prefer to work more hours), and the inadequately employed (those whose skills exceed what is required for the job they hold and who are therefore not as productive as they could otherwise be).[42]

Another key distinction is between short-term and long-term unemployment, which have very different consequences. Some short-term unemployment is inevitable. In a dynamic economy, people may switch jobs, and employers' demand for labor may expand or contract. Owing to imperfect information, it can take time for available workers to find appropriate jobs and for employers to interview and hire workers. Workers do not have complete and perfect information about the benefits and responsibilities of all job openings across the country; employers do not have complete and perfect information about the skills and qualifications of all job seekers. These factors are referred to as "friction" in the labor market, and result in some level of unemployment.[43]

FIGURE 1. Flow of Workers through the Dynamic U.S. Labor Market



Long-term unemployment, by contrast, results when labor supply persistently exceeds labor demand in at least some regions or sectors of the economy. It can be driven by a number of factors, including inflexible wage rates,[44] technological change,[45] and foreign competition.[46] Potential causes for the nation's current unemployment troubles include the immobility of the workforce across sectors and geographic regions as the composition of labor demand shifted; long-term structural changes to the U.S. economy associated with technological advances and globalization; and the prolonged reduction in consumer demand during the recent economic recession.[47]

Classic economic theory indicates that if labor were perfectly mobile, workers would relocate or retrain until wage differences among sectors and regions exactly offset the costs to the worker of relocating.[48] Real world imperfections in the inter-sectoral mobility of labor occur for a number of reasons. For example, relocation costs money and time, which workers may be hesitant to invest for uncertain returns.[49] Individuals who are laid off from one industry may not be able to fill positions in another industry (even if that sector is actively hiring workers) because they do not have the necessary skills.[50] These individuals will require training, which is also costly, takes time, and has uncertain returns.

Laid-off workers also cannot easily relocate their housing and other immobile region-specific assets, notably social and family groups. Relocation costs therefore include the costs of cutting social and psychological ties to the current geographical location.[51] While certain regions may be hiring, laid-off

workers may not want to move there because of the costs involved, especially if they are carrying large mortgages during a time of falling housing prices or have children in school.

The effort necessary to find new employment depends in part on the distance required for relocation.[52] If relocation costs are high, then unemployed individuals are unlikely to relocate to obtain new employment. Empirical studies show that there is a negative relationship between search intensity and distance to jobs—that is, the further the position is away from a worker's current location, the less likely a worker is to find it, which may increase the duration of unemployment.[53]

Long-term unemployment tends to be higher during periods of economic contraction.[54] Low aggregate demand for goods and services reduces production. When production drops, it lowers the demand for labor. Employers may respond in several ways, including by reducing wages, reducing hours, or incentivizing early retirement, but layoffs are also likely. Even if wages can be reduced (minimum wage laws or union contracts may prevent salary cuts), employers may fear that reducing wages or cutting hours will adversely affect employee morale and productivity.[55] As such, employers tend to lay off workers when aggregate marketplace demand is low. Unfortunately, because total demand for labor has fallen, it is difficult for these laid off workers to find new jobs, which means that they are more likely to transition from short-term to long-term unemployment. In other words, if an environmental regulation does cause some layoffs, during an economic downturn the negative consequences are likely to be greater because those workers will probably face additional difficulties finding new employment.

On the other hand, during an economic downturn, regulated industries may hire otherwise unemployed workers to design, fabricate, and install the necessary pollution control equipment.[56] Typically when firms hire new workers to comply with regulations, the new wages paid are calculated as a cost of the regulation, because those workers could have been allocated in other productive functions in the economy. However, during periods of high unemployment, those workers may otherwise remain jobless, meaning their opportunity costs are very low. In such cases, concentrating just on wages paid may overstate the overall social costs, because otherwise idle workers are being put back into the productive workforce.

If the regulatory costs are higher in some respects and lower in others during an economic downturn, the net effect is ambiguous. Whether or not a rule should be delayed during a period of unemployment, then, is highly contingent on the specific circumstances of the rule. While delaying a rule until employment levels recover may decrease some costs associated with production-related layoffs, it may also increase other costs associated with new compliance-driven hiring. And, of course, delaying implementation of a rule foregoes the net social benefits it would have generated in the meantime by improving environmental quality.

Long-term unemployment imposes greater economic costs than temporary layoffs. As the duration of unemployment increases, individuals become less attractive to employers.[57] Any loss of skills or productivity during periods of unemployment may result in lower wages once work is found. The longer an individual remains unemployed (without training or the acquisition of skills that employers value), the greater the likelihood that he will be eligible for only low-skilled, low-wage employment.[58] The long-term unemployed may need to attend training or education programs to increase their marketability. The largest costs from job loss tend to be experienced by older workers, who may have acquired considerable seniority with employers, and may be viewed as more difficult to train or costly to hire.[59]

Unemployment insurance, Social Security, private pensions, and other sources of household income may mitigate the individual harms associated with job loss. To the extent that laid-off workers may not be able to find full-time employment, but rather must accept part-time or temporary employment, household income will likely fall. Empirical analysis of the income effects of layoffs is mixed, but there does appear

to be consensus that the costs of unemployment increase as the length of unemployment increases, and are likely to be lower for individuals who have skills that can be transferred across industries, sectors, or geographic regions.[60] In addition to earnings losses, laid-off workers may experience a range of social-psychological problems, including reduced health, loss of self-confidence, depression and alcoholism. The likelihood of such consequences again tends to increase with duration of unemployment.[61]

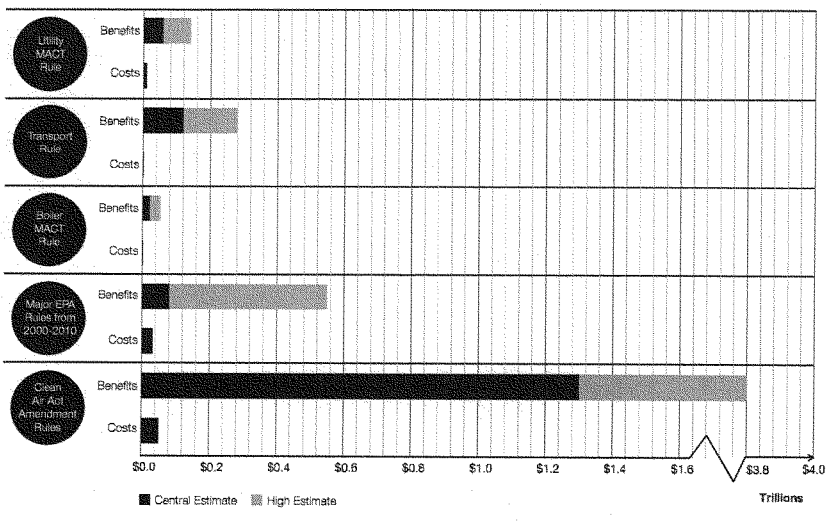
To summarize, job loss and unemployment are related, but are different phenomena. In addition, long-term unemployment and short-term employment have different causes and effects. How job loss or creation may contribute to the redistribution of the workforce, and how long-term unemployment may generate significant costs, are both factors that policymakers may want to consider in their decisions on environmental regulation. However, such considerations need to be properly incorporated into the broader, existing mandates for regulatory impact analysis.

Existing Regulatory Impact Requirements and the Role of Jobs Analysis

When a federal agency proposes a new regulation, it is because a statute passed by Congress authorized it to do so. Often, at that point, many of the broad policy considerations have already been debated by Congress; it is then left to the agency to implement that decision in the best possible manner. Under executive orders in place since the presidency of Ronald Reagan, federal agencies are required to exercise their regulatory discretion by studying a range of alternative actions, considering the costs and benefits of each, and selecting the most efficient option that will maximize net social benefits.[62]

EPA's recent regulations, which have come under attack for "killing jobs," have all gone through economic analysis and have been vetted by the White House Office of Information and Regulatory Affairs. For example, the Boiler MACT Rule discussed above is estimated to deliver between $22.2 billion and $54.5 billion in benefits per year, including the avoidance of thousands of premature deaths and cardiopulmonary illnesses annually (as well as significant, non-monetized ecosystem and mercury reduction benefits); by comparison, only about $1.9 billion in costs are expected.[63]

Figure 2: Annual Costs and Benefits of Sample EPA Regulations



Besides a cost-benefit analysis and White House review, the Boiler MACT rule—like all significant environmental rules—was also subject to a small business impact analysis, an unfunded mandates assessment, a review of the impacts to children's health, an energy effect statement, and an environmental justice review.[64] The presidential orders on regulatory review also mention consideration of job impacts,[65] and in light of the current economic downturn, job effects are particularly salient.[66] EPA has therefore been including job impact analyses in its most recent significant environmental regulations.[67] These additional impact analyses are done separately from the cost-benefit analysis conducted by the agency.

EPA's job impact analyses attempt to forecast the effect of a rule on layoffs and hiring in the regulated industry. To conduct these analyses, EPA employs a type of forecasting model, which is discussed in the following section. The agency sometimes uses the results of its job impact analyses in its feasibility analyses, attempting to determine if the job losses associated with a regulation are too high.[68] This practice has been criticized as inconsistent with the goals of maximizing economic efficiency, because job losses are not compared to the regulatory benefits that are forgone when the regulation is adjusted.[69]

Jobs created or lost are often not considered in standard cost-benefit analysis,[70] based on the assumption that labor markets are relatively efficient, meaning the costs associated with layoffs should be transitory.[71] If labor markets operate smoothly, workers laid off as a result of a regulation will obtain employment elsewhere. Under this assumption, regulation results in reallocation of labor, rather than a benefit or cost.

The traditional view is captured by the example of a broken window's effects on spending and economic activity. Imagine an errant baseball flies through the window of a local storekeeper. The storekeeper must now bear the cost of the necessary labor and materials to repair her damaged storefront. It is tempting to argue that this financial loss is balanced out by a corresponding benefit. Indeed, the baseball mishap has created a day's worth of work for the window repairman: he now stays employed, collects wages, and spends those wages on more goods and services, with positive effects rippling through the economy. The fallacy, however, is to think that the broken window has produced a gain, while in reality it has only resulted in a redistribution of money. If the batter had instead struck out, the storekeeper may not have hired the repairman, but she would have put that money to some use—a different business improvement, perhaps, or a personal purchase, which also would have generated positive ripple effects through the economy. If she chose to save the money, then it would add to the capital pool available for borrowers to engage in consumption or investment. In any case, just as much money would be available to circulate through the economy and generate employment whether or not the window is broken: the broken window merely determines who will benefit (namely, the repairman); it does not create any net benefit. Indeed, by forcing the business owner to reallocate resources from some other welfare-enhancing use (like a necessary home improvement) to window repairs for her store, the batter's foul ball has reduced the storekeeper's overall well-being.

Compare these labor effects to more standard costs and benefits. If a regulation reduces the air pollution from an industrial boiler, the resulting cleaner air delivers health and environmental benefits, such as fewer cardiopulmonary ailments and less acid rain. Those benefits come at a cost: the industry must install pollution control technologies or processes, and the government must administer the regulation. If the positive consequences outweigh the negative consequences, then the rule is cost-benefit justified. The labor costs associated with installing those control technologies are typically treated as costs, not as beneficial job creation, for the reason discussed above—the new employment is created by a reallocation of labor resources from other uses.

If workers are displaced by regulation (for example, if a factory closes as a result of a pollution control requirement), neoclassical economic theory predicts that in a flexible labor market, they will move from one firm or sector of the economy to another in response to job openings, and wages will adjust to restore employment levels. If this assumption holds and workers are quickly hired by another firm or industry,

then the costs associated with the labor reallocation caused by the regulation are nonexistent or minimal.

On the other hand, if the classical assumption of rapid rehiring does not hold, and workers have difficulty finding replacement employment, then the transition costs associated with layoffs—including psychological, emotional, relocation and training costs—may be considerable.[72] As the duration of unemployment increases, loss of skills or productivity may result in lower future wages and a decrease in lifetime earnings. Being out of work for a substantial amount of time also increases risk of serious social-psychological problems, including health impacts, loss of self-confidence, depression, and alcoholism. Importantly, long-term unemployment tends to be higher during periods of economic contraction, such as the country has experienced since 2008.[73]

There are good reasons to be concerned that, in reality, labor markets do not always operate smoothly and that, therefore, cost-benefit analysis should take employment effects into account. Workers who are laid off cannot easily relocate their housing and other region-specific assets like social and family groups. Information barriers to identifying open positions in unfamiliar geographic regions or economic sectors, as well as skill barriers to transitioning into a new field of employment, may further inhibit workers' ability to quickly and easily find new jobs.

The efficiency consequences of employment impacts are easily incorporated directly into cost-benefit analysis. The transition costs associated with a rule are, ultimately, costs. Though cost-benefit analyses in the past have rarely examined the reallocation of labor, the standard methodology has the tools to do so. The transition costs that cost-benefit analysis could reflect include relocation or retraining costs, long-term productivity effects, and any negative effects on psychological or physical health resulting from long-term unemployment. If these transition costs are substantial, they may be enough to raise total costs above benefits, making the rule inefficient. On the other hand, if net benefits remain positive, that means that any negative impact from layoffs and associated transition costs are outweighed by other social benefits.

At the same time, transition benefits could be associated with environmental regulation. Regulation can spur demand in a local labor market by, for example, requiring facilities to retrofit pollution control technology. If that market had recently experienced a labor demand shock resulting in a substantial number of underutilized workers, then increased hiring could cause an important sector- or region-specific welfare gain. Even if aggregate, economy-wide demand for labor is not increased by the rule, expanding employment opportunities in specific markets may have particularly significant consequences for workers—especially in areas in which the regional or local economy is depressed.

If the assumption of well-functioning labor markets is relaxed for the purpose of calculating transition costs associated with layoffs, the same should hold true for determining transition benefits associated with hiring. Examining only one type of transition effect in a cost-benefit analysis would create an unjustified anti-regulatory bias. If currently underutilized workers are hired into new positions with higher productivity because of a rule, this fact should be reflected in the analysis. The best way to do so would be to calculate compliance costs on the basis of the opportunity costs of the workers who are hired in order to comply with a regulation. A standard assumption is that those opportunity costs are exactly equal to the wage paid for the workers, but in imperfect labor markets, this may not always be the case. If a worker is currently unemployed, then the opportunity costs associated with allocating that person to a new position are low, because unemployed workers generate very little productivity. Wages could come down in times of high unemployment to reflect this reality, but in the real world, wages are slow to adjust to change in labor demand. Because the social cost of allocating unemployed workers to a new position is low, compliance costs from a social perspective are lower than the wages that are paid.

There are also distributional effects related to employment that may be important for policymakers to

consider. For example, a rule may help relatively affluent customers but harm low-skill, low-income workers. So long as the aggregate benefits outweigh the harms, standard cost-benefit analysis would show such a rule to be efficient. Only a subsequent distributional analysis would scrutinize exactly who benefits and who is burdened. Policymakers may then choose to leave such considerations to the political process or may try to adjust the regulation to minimize or offset the unbalanced distributive effects.

If the negative employment effects are mostly distributional, it is not clear that altering or revoking the rule is the optimal response. Rather, direct compensation for disproportionate regulatory costs may be a more desirable way to achieve distributional goals.[74] There are, however, important practical and political limitations to such compensation schemes. In those cases where compensation for non-wage losses from unemployment—like lost skills and psychological harms—is difficult, altering a rule to reduce labor transition costs may be the best option.

These are complex considerations, which require good analysis. The risk is that policymakers, in a bid to minimize the transition costs of a regulation, may change the rule in a way that causes even larger unintended efficiency losses. Indeed, the most significant past attempt to reduce transition costs associated with environmental protection—the grandfathering of existing, coal-fired power plants under Clean Air Act regulations—has resulted in massive inefficiencies that were not anticipated at the time the policy was made.[75] This is why the vast majority of economists now prefer flexible, market-based regulatory tools with compensation for distributional effects, rather than command-and-control regulation with transitional regulatory relief. Market-based regulations allow firms to respond in the most efficient manner, minimize the administrative burden on government, and often simplify compensation schemes for any negative distributive effects.[76]

To conclude, the labor effects of rules are sometimes important, and examination of the costs and benefits associated with layoffs and hiring can play a useful role in regulatory impact analyses. Cost-benefit analysis is already a complex and time-consuming task: cost estimates require engineering analyses and technology forecasts; benefit estimates require detailed scientific models, dose-response curves, and careful surveys of the value of health or environmental gains. Adding an examination of secondary effects on labor markets—dynamic, complex systems that are extremely difficult to model—will increase the analytic burden faced by agencies, but can also generate valuable information that should be considered by policymakers. To ensure that this kind of analysis actually helps improve regulatory decisionmaking, careful attention must be paid to the nature of the labor market, and especially the welfare effects associated with different potential jobs effects of regulation. In other words, if employment effects are to be taken into consideration when setting regulatory policy, then the accuracy, transparency, and potential limitations of the economic models used to estimate employment effects matter.

Part Two

The Limitations of Employment Models for Setting Environmental Policy

All of the models used to estimate the effect of environmental regulations on layoffs, hiring, and overall employment have limitations, which means that the picture they provide is necessarily incomplete. Currently, most models are best able to examine only part of the picture—like layoffs or hiring in a particular sector—and cannot accurately model the dynamic, economy-wide effects of a policy on aggregate employment levels. Because overall employment responds to large, macroeconomic factors, individual environmental regulations will rarely have lasting effects on aggregate employment. Environmental regulations that do not affect marginal labor productivity in the general economy are more likely to influence only the geographic or sectoral distribution of employment opportunities, rather than national employment levels. Current employment models are better suited to measuring these effects than forecasting economy-wide consequences. While this information may be useful for policymakers, especially when designing mechanisms to reduce transition costs and protect against long-term unemployment, it should not be mistaken for an accurate picture of the net effects of an environmental policy on employment in the economy as a whole.

Overview of Model Varieties

Multiple frameworks can analyze employment effects—from simplistic supply-and-demand curve analysis to complex computable general equilibrium models. Each technique has its own strengths and weaknesses; therefore, particular models may not be ideal for analyzing certain public policies.

Single Market Supply-and-Demand Analysis: If a policy has only small effects on a single market, analysts can turn to the most elementary of economic tools and plot the supply and demand curves.[77] This approach has the advantage of being inexpensive and fast. Assuming the regulation causes production costs to increase, the higher price may then be passed on to consumers, some of whom may decrease their demand. By assuming a drop in consumer demand for a good or service decreases output, which in turn triggers a proportional drop in labor demand, basic job impacts can be estimated. Of course, the simplicity of this analysis is also its shortcoming: by ignoring all but a single market, the technique overlooks the possibility of simultaneous job creation in other sectors, either because regulatory compliance requires new goods and services, or because consumers seek out substitute goods as they lower their demand for the regulated product.[78] Consequently, this kind of analysis is really only suitable for "very small-scale regulations,"[79] and even then can only offer an incomplete estimate of total employment effects. To capture more complex market interactions requires, at minimum, a multiple-market partial equilibrium analysis.

Multiple-Market Partial Equilibrium Analysis: A strictly partial equilibrium analysis studies only one market, holding the prices and quantities of goods and services in other markets constant. A multiple-market partial equilibrium analysis, however, can capture a finite set of important linkages between several markets, while still assuming the absence of broader effects to the general economy.[80] By assessing a few closely related markets for substitutes and complementary goods, multiple-market partial equilibrium analysis can paint a clearer picture of the effects of certain regulations; it can be especially

useful to evaluate policies that change the relative price of a specific good.[81] But for regulations with economy-wide impacts, this approach cannot capture the complex interactions between various markets, and an economy-wide general equilibrium model is necessary.

Fixed-Price General Equilibrium Simulations (I-O Models): Fixed-price simulations are the most widely used tool to assess the employment effects of environmental policies.[82] These models hold prices constant, which, though unrealistic, allows researchers to easily estimate economy-wide effects and break down results by sector or region. These simulations are designed to focus on impacts to specific sectors of the economy, while still estimating how changes in the demand for goods and services ripple through the entire economy.

These models are built around input-output (I-O) tables, which are essentially accounting matrices that show the flow of goods and services through the economy: the output of one sector is the input for another. The tables are ideally built from data derived from detailed surveys of manufacturers;[83] however, sometimes surveys may prove too costly, and I-O table may instead be built around shortcuts, which undermines their reliability.[84] From these tables, I-O analysis derives "multipliers" that indicate how an increase or decrease in activity in one industry affects business activity and jobs at all other industries.[85]

I-O simulations have important limitations. It is more difficult to model policies that change supply compared to policies that change demand. These simulations also cannot reflect long-term, structural changes to the economy, like globalization and industrialization. Moreover, because these models require constant prices, there is no room for price adjustments, and so they cannot account for substitution between goods and services consumed. As a result, I-O models tend to overstate employment effects.[86]

Some examples of popular fixed-price models are IMPLAN (IMpact analysis for PLANning, created by MIG, Inc. using data from federal government sources)[87] and RIMS-II (Regional Input-output Modeling System, developed by the U.S. Bureau of Economic Analysis).[88] Such models may provide good estimates for the short-run effects of policies in small economies; but for policies with a large enough impact to affect relative prices, a more sophisticated approach is likely required. For example, the RIMS website cautions that "RIMS multipliers are best suited for estimating the impact of small changes on a regional economy,"[89] and some analysts have advised that since it cannot capture changes over time, "IMPLAN is not readily suitable for forecasting the effects of public policy changes."[90] In particular, for "policies that have large, widespread impacts, like carbon taxes to address global warming, the [assumptions about] prices implicit in the linear model can lead to significant inaccuracy in policy analysis."[91]

Computable General Equilibrium (CGE) Simulations: Computable General Equilibrium models use the same data as I-O analysis, but CGEs permit for fluctuating prices and more complex interactions among economic sectors.[92] In particular, CGEs allow for substitution of goods and services, creating a more realistic picture of employment—and "less extreme assessments of employment impacts."[93]

CGEs first emerged in the 1960s, and by the 1980s they had gained widespread use among analysts seeking more powerful, sophisticated tools to estimate economic impacts.[94] Common CGEs include REMI (Regional Economic Models, Inc.)[95] and Global Insight (developed by IHS, Inc.).[96]

Unfortunately, the main strength of CGE models—complexity—is also their chief disadvantage. A CGE model is composed of multiple equations solved simultaneously;[97] the more sophisticated the CGE model, the greater the number of equations to be estimated and the greater the degree of model calibration required. They are therefore more expensive to purchase or construct; they require more data and more analysis; and their complexity makes them less transparent to a lay or policy audience.[98]

In particular, hidden within the CGE's structure are multiple decisions about the correct values for additional terms, decisions typically left up to the modelers' judgment.[99] Often the values of key

parameters amount to guesstimates about the rate of substitution between goods or the development of technology,[100] raising concerns about consistency and accuracy.[101] Since CGEs often do not explicitly define all their assumptions, the models are frequently characterized as "black boxes"[102]—though some argue that the chief problem with CGEs is not their inherent complexity or hidden assumptions, but rather a miscommunication of the models' structures and results to policy audiences.[103]

Because CGEs are focused on large, economy-wide effects, only policies with impacts on the scale of $100 million or more can be accurately assessed using such models. CGEs work especially well for policies that change tax rates or the use of technology (like adding new emissions controls to smokestacks).[104]

Despite their sophistication, standard CGE models are still static models, meaning they assume all economic activity occurs at a fixed point in time, and they cannot capture changes in variables over time. They are typically built around macroeconomic data from a single reference year, making it difficult for the model to capture major economic fluctuations, dynamic economic components like changes in investment and savings, or effects of financial and monetary policies.[105] Dynamic CGE models, by contrast, can reflect changes to the population and capital stock to simulate long-run equilibria. For dynamic CGE models there is a tradeoff between the length of time that the model covers and the degree of sector-specific detail that may be incorporated into the model.[106] To more directly analyze how variables move over time, a different approach may be required.

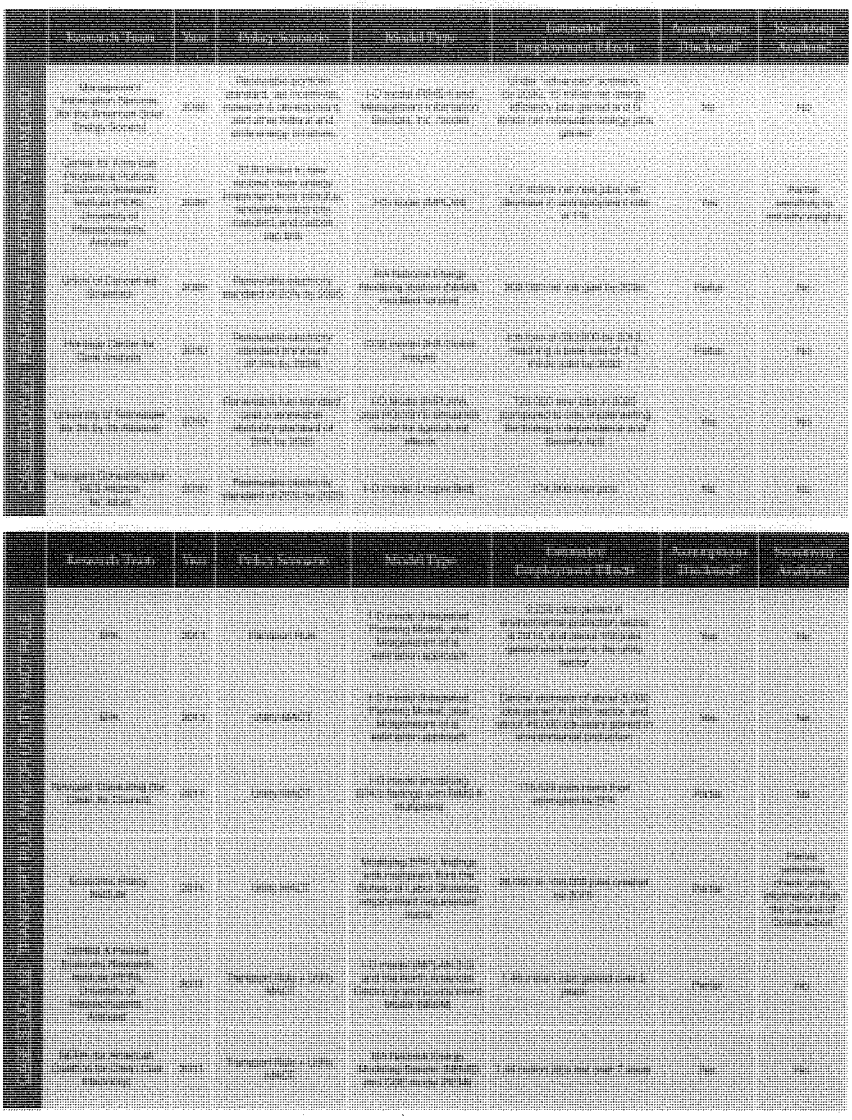
Econometric Estimation of Adjustment (Time-Series Models): For long-run relationships among employment in various sectors, time-series analysis may be appropriate. Whether linear or non-linear, simulated models do just that: they simulate, rather than directly estimate, economic variables. By contrast, time-series models allow for direct estimation of long-run relationships, based on data like historical monthly employment rates. But again, there is a tradeoff between the time horizon covered and the number of sectors that can be studied, due to data and computational limits,[107] and any increase in model detail or the time horizon will increase the complexity and potential for errors. Many economists have argued that forecasting models should not be used in policy analysis because the results are highly sensitive to the model's structure, such as how it responds to economic shocks.[108] In general, forecasting models should be regarded with caution, and time-series analysis should typically only be a supplement to other types of employment estimates.[109]

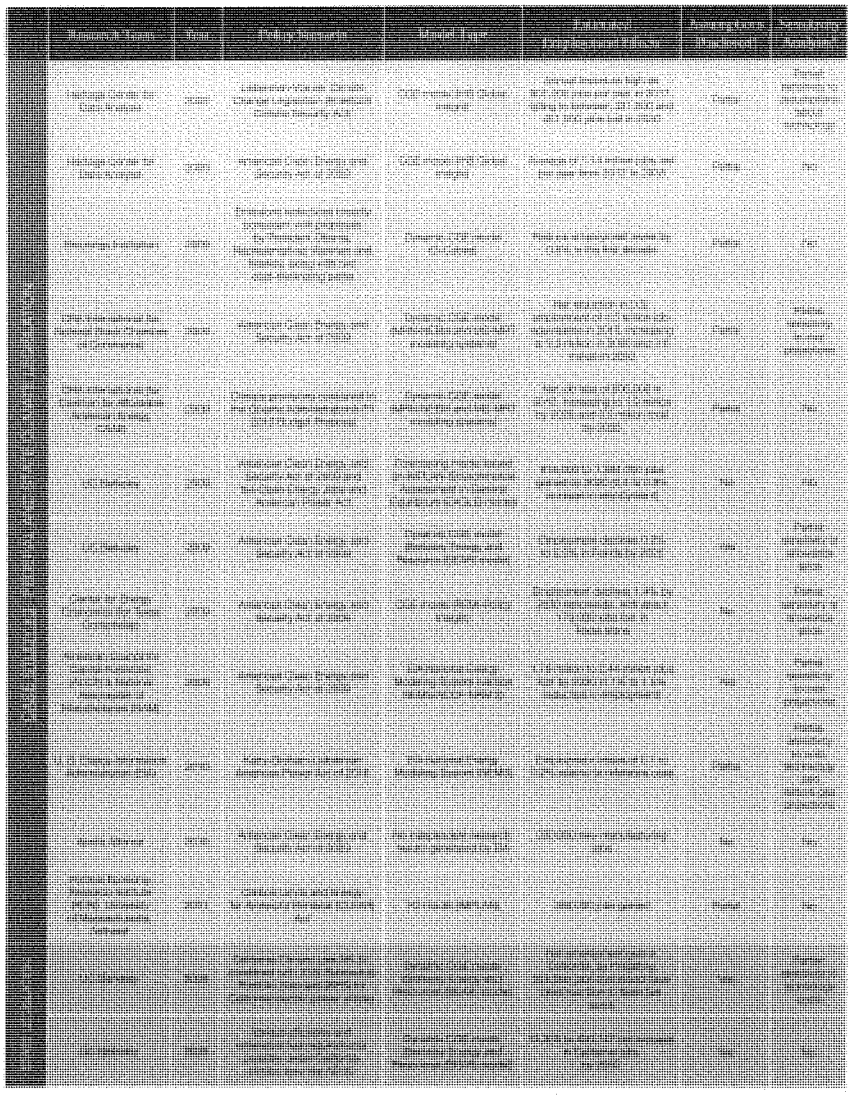
Case Studies on Employment Estimate Models in Environmental Policy Debates

Nearly every controversial environmental policy proposed during the last several years has featured a debate over the possible employment effects. Unfortunately, few of the studies used to support either side in these debates meet the criteria for well-executed models, and even less frequently do the political debates mention the potential limitations of the results. A few case studies will illustrate how very different estimates can be generated for similar policies or interventions. The purpose of these case studies is not to pick out which estimates may be more reliable and which may be more suspect, nor is the purpose to criticize the authors of any of the studies included, who may have clearly stated the assumptions used and limitations of the results. This report takes no position on the validity of the studies discussed below. And the fact that the models can produce a wide range of outcomes does not mean they have no place in legitimate policy debates. Rather, the point is to caution anyone who would use a single study or model as definitive proof of the aggregate employment effects of a regulation or investment—rules can often have contradictory effects on demand for labor that will interact in complex ways. Models that cannot accurately account for these opposing tendencies risk overstating or understating net effects.

Figure 3 provides a brief summary of several recent analyses of the effect of environmental policies on labor markets, and the case studies that follow summarize the role that these analyses played in the policy discourse on these subjects.[110]

Figure 3: Case Studies on the Limitations of Employment Models





Case Study #1: Renewable Electricity Standards

A national Renewable Electricity Standard (RES, also known as the Renewable Portfolio Standard or, more recently, the Clean Energy Standard) would require that electricity suppliers include a certain fraction of their electricity from renewable energy sources like solar generators or wind farms. Though several states have their own RES programs, there is currently no federal RES (even though each House of Congress has individually passed several versions, no single bill has ever passed both chambers).[111] A federal RES has been proposed for years, with President Obama most recently calling for 80% clean energy generation (including renewables, but also natural gas, nuclear power, and coal accompanied by carbon capture and storage) by 2035.[112]

Claims about job impacts have featured prominently in the RES debates. While most studies predict job growth from a federal RES, at least one study—by the Heritage Foundation—estimates significant job losses. That Heritage Foundation study has been cited in the Republican Staff Commentary of the U.S. Congressional Joint Economic Committee[113] and presented in testimony before the U.S. House Committee on Oversight and Government Reform.[114] On the other side of the debate, various groups have produced positive but still highly variable reports, even when using similar models to analyze the same underlying policy. Several of these findings were included in Senate Majority Leader Harry Reid's report on "Job Growth from Investment in Renewable Energy."[115] In all cases, on both sides of the debate, the results were reported as definitive, raw numbers, with no discussion of methodology, assumptions, or limitations.

Case Study #2: Transport Rule and Utility MACT Rule

To address the serious problem of upwind states contributing to the poor air quality in downwind states, EPA proposed the "Transport Rule" in 2010 under statutory direction from the Clean Air Act; the rule was finalized in 2011.[116] Under similar statutory direction, EPA proposed the "Utility MACT Rule" in 2011 to regulate hazardous air pollutants (like mercury) from utilities.[117] Together, EPA estimates that these two rules will deliver annual net benefits of $166-407 billion, including up to 51,000 avoided premature deaths per year.[118]

Though there have been few estimates of the job impacts of these two rules, the reports that exist are surprisingly inconsistent. EPA, for example, predicts low potential impacts: in the range of about 2,200 one-time jobs and 700 annual jobs created by the Transport Rule,[119] and for the Utility MACT rule a one-time gain of about 46,000 jobs, with another 8,000 jobs created annually.[120] Other estimates, however, are less modest. In particular, a report commissioned by the American Coalition for Clean Coal Electricity estimates that the two combined rules will generate a 1.4 million job *loss*, while a Political Economy Research Institute study predicts the same two rules will trigger a 1.4 million job *gain*.[121]

Senator James Inhofe has cited the American Coalition for Clean Coal Electricity's pessimistic report when opposing the EPA's Transport Rule and pledging to "keep a close eye" on developments.[122] The same study is also being circulated by utility lobbyists, who have encouraged lawmakers like Representative Ed Whitfield to draft legislation seeking to block both the Transport Rule and the Utility MACT Rule; one lobbyist gave his political pitch as: "The notion that a very expensive rule is a great way to create jobs—give me that money and I will create far more jobs."[123] Proponents of the rules are just as quick to cite only the studies that most support their position.[124]

Case Study #3: Federal and State Climate Legislation

As passage of federal climate legislation seemingly grew more likely in 2009 and 2010 (before abruptly running off the rails in late 2010),[125] a myriad of reports on job impacts came out. Though none of the various legislative proposals became law, the range of job estimates still demonstrates the wildly

contradictory results that different models can generate when analyzing the same underlying policy. For example, for one legislative proposal—the American Clean Energy and Security Act (ACES, also known as the Waxman-Markey bill, which passed the House in 2009 but stalled out in the Senate)[126]—everything from a 3.6 million job loss to a 1.9 million job gain has been predicted.[127] These reports were frequently cited and debated at congressional hearings and were often featured in media reports on the fate of the climate legislation.[128] Perhaps unsurprisingly, each side of the debate tended to rely exclusively on the analyses that supported their positions.

A similar debate played out in California over the implementation of its climate law, A.B. 32. One team from the University of California-Berkeley used the same model to generate two different results, but both studies generally predicted job gains. The studies were "cited repeatedly" by opponents of the climate law, who backed a proposition seeking to suspend the law's implementation until unemployment dropped below 5.5%, and who used the Berkeley studies to claim that the climate legislation would hurt employment.[129] The studies' authors took to the local editorial pages to set the record straight: "They claim that our study says A.B. 32 will 'threaten' more than 3 million jobs in California, but the report says no such thing. In fact, it shows that A.B. 32 will generate enormous opportunities for California."[130]

The proposition to overturn A.B. 32 failed at the polls, but the debate continued over jobs and the state's efforts to curb greenhouse gas emissions. California's Air Resources Board predicted a 120,000 job gain by 2020, only to have their results called in to question by a report from the state's non-partisan Legislative Analysts Office—whose findings were in turn dismissed by Governor Schwarzenegger. In defense of the law, Schwarzenegger announced he was "absolutely convinced [A.B. 32] will create jobs more than kill jobs," explaining that "[u]nlike others that only have theoretical opinions, I travel up and down the state to see first-hand."[131]

Toward a More Productive Use of Employment Models in Environmental Policy Debates

Not all models are created equal, and the various models available can be used in more or less informative ways. To ensure that employment forecasting models play a productive role in policymaking, there are several steps that analysts can take, from model selection to results communication, that will help produce more reliable estimates and reduce the risks of confusion. Using the right models in the right ways to report appropriately limited results can help inform public debate and decisionmaking. But the wrong models, used to answer the wrong questions, reported without caveat, will only obscure the important tradeoffs at stake in environmental policymaking.

Ideally, analysts should simply choose the best tool for the question they are trying to answer, matching the type and scale of the policy under evaluation to the appropriate model as closely as possible.[132] For example, because CGE models are focused on large, economy-wide effects, they are well suited to analyze policies with national, annual impacts on the scale of $100 million or more. CGEs work especially well for policies that will lead to a change in taxes or in the use of technology (like adding new emissions controls to smokestacks).[133] By contrast, both the makers and users of fixed-price models caution that these tools are best suited to estimating regional impacts and have limited application to policies with large, widespread effects.[134]

Unfortunately, cost, time, and analytical skill are often the driving factors in model selection.[135] For example, CGE models are costly, either to purchase off the shelf or to build from scratch; they are also time-consuming to run and may require special training to adjust and interpret the model. Input-output models are therefore sometimes seen as the more affordable choice, even though they may be less robust.[136]

The choice of model, assumptions, and data is crucial.[137] For example, a 1996 study for the California Energy Commission looked at a hypothetical policy (a 40% cut in federal defense spending in the state) under three models that differed only in their treatment of which variables were explained by the model and which were treated as a given. Under the model variation that most operated like a classic CGE model, the study predicted no change in gross state product and little effect on wages; under the model that most operated like an input-output analysis, however, the study predicted a 9-12% drop in employment across all classes; and under the model most like an econometric forecasting approach, the study predicted a 2.4% employment gain in some sectors and a 6% decrease in others.[138] Clearly, model choice matters.

All models are subject to limitations, and it is extremely important to communicate those limitations to policymakers in a transparent fashion when reporting model results. Analysts should disclose all their assumptions and data sources, including a description of how realistic the assumptions are and how complete and accurate the data is. Reports should also include a sensitivity analysis, to identify how sensitive the results are to changes in the underlying assumptions and structure of the model. All final results should be accompanied by a clear indication of the limitations of the model, any weaknesses in the results, and any other relevant caveats. Policymakers should rely only on studies that meet these criteria, and even then should only do so after fully acknowledging all the studies' potential limitations. Modelers, politicians, and commentators should all avoid translating the complex model outputs into a single, often very misleading, sound bite about "jobs" that could be created or lost by a policy choice.

Unfortunately, the way employment models are cited in political debates about environmental regulations is often not particularly illuminating—each side simply picks the study that justifies the position it already supports. Though practical and political obstacles may get in the way, in theory this problem has a straightforward solution: choose the right model for the job; disclose the assumptions and limitations of the model selected; and acknowledge any reliable, conflicting estimates.

Particularly problematic has been the use of models best suited for understanding regional or sector-specific impacts to make predictions about the nationwide, aggregate effects of regulations on employment. These models are poorly suited to making these kinds of predictions, because they do not take into account the primary factors that drive national employment levels, like aggregate demand or wage price rigidity. When they attempt to extrapolate regional and sector-specific estimates to the economy as a whole, they run up against the reality that dynamic market forces interact in complex ways that make predictions of aggregate effects extremely difficult. It is unsurprising that employment models using different assumptions and methodologies can predict both job losses and new hiring: both effects may simultaneously be caused by an environmental policy. Yet so long as the environmental policy does not fundamentally alter labor supply or demand at the national level—which will rarely be the case—the net effects on employment are likely to largely cancel each other out, or to be corrected by monetary and fiscal policy. Unless employment models can take these factors into account, they will be ill suited to predicting economy-wide effects, and their use to estimate large-scale job losses or gains is inappropriate.

The employment models that currently exist can continue to play a useful role in examining environmental policy, primarily to estimate regional or sector-specific impacts on hiring and layoffs. This information can help to determine what policies, if any, are appropriate to facilitate labor market transitions (like helping workers move or retrain to prepare for a new job in a new region or sector) or to craft effective distributional policies. Labor transition costs can and should be incorporated into cost-benefit analysis using standard economic principles, and the relationship between economy-wide unemployment on those costs (both positive and negative) should be taken into account. But if used improperly, these models can easily lead to misunderstanding. In all cases, analysts have to be especially careful to acknowledge their model limitations, and policymakers and advocates should be sure to use their findings with caution and in a responsible manner.

Recommendations

Federal agencies are beginning to rethink the place of job effects in regulatory impact analysis, prompted by executive order, congressional pressure, public interest, and their own reevaluations. At the same time—and likely for at least as long as unemployment levels remain elevated—both the opponents and the proponents of environmental regulations will continue to commission and publicize studies estimating job losses or gains as part of their advocacy strategies. Job impact analysis can and should be used by policymakers and advocates when weighing the costs and benefits of a rule. But it should not serve as a trump card, and both policymakers and advocates must recognize that even the most sophisticated job impact analyses have only limited predictive power in our complex and dynamic economy.

If job impact analyses are to play a useful role in regulatory decisionmaking, then analysts, advocates, and policymakers should adhere to the following recommendations for best practices:

1. Job impact analysis is not an alternative to or substitute for cost-benefit analysis. Rather, employment effects should be incorporated into cost-benefit analysis on the basis of traditional economic principles. If a regulation causes labor transitions resulting in layoffs, any costs of relocation or retraining, long-term productivity effects, and negative health effects associated with unemployment should be calculated. Likewise, if labor transitions result in hiring, especially of underutilized workers, this should be factored into estimates of regulatory costs. Crucially, these employment-related costs and benefits will be just one input into the broader cost-benefit analysis, to be weighed against all traditional compliance costs and the full range of environmental, health, and safety benefits. Employment-related distributional effects may need to be analyzed separately along with other distributional effects.

2. The difference between short-term and long-term unemployment should be taken into account when determining the economic costs of layoffs. Short-term unemployment may entail relatively minor costs for job search, relocation, and retraining. Long-term unemployment, by contrast, may entail more substantive costs, such as more intense retraining, long-term income and productivity effects, and negative health consequences. Conflating these two distinct types of consequences in a job impact analysis leads to incorrect cost calculations and misleading rhetoric.

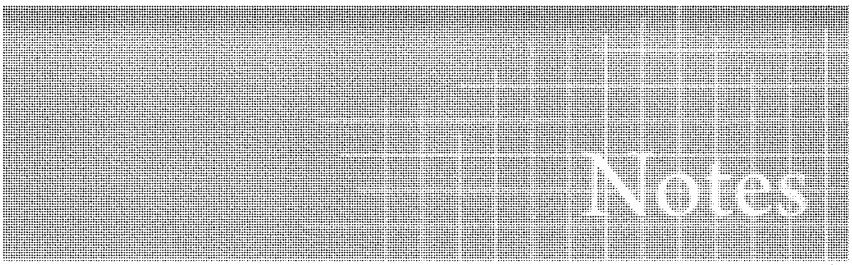
3. The potential for regulations to positively and negatively affect workers should be recognized. In our dynamic labor market, regulations may produce multiple effects simultaneously. Layoffs in one sector or region may be accompanied by hiring in another sector or region. Analysts, as well as advocates on both sides of the debate, should be careful to look at the whole picture and not cherry-pick data or results.

4. Economic models used to predict employment effects should be well suited to the type of regulatory effect being estimated. Some models are better suited to estimating effects in a single region or industry, while others can better handle multi-sector or nationwide analysis. While a model less suited to the regulatory effect in question may be appealing as a cheaper or less time-consuming option, analysts should strive to select the best tool for the task.

5. Uncertainty surrounding model predictions should be acknowledged by analysts and policymakers, and all assumptions and modeling choices should be disclosed. Far too often, data sources and model assumptions are buried in an economic report, or not disclosed at all. Sensitivity analyses are conducted and disclosed inconsistently at best. Advocates then tend to discuss only those studies that most support their positions, without reference to the study's limitations, uncertainty, or the existence of other reliable but contradictory results. For job impact analysis to play a useful role in policy debates, more transparency and disclosure is necessary.

One final recommendation should be directed to government officials and academic scholars: more research is needed to refine and improve the models for measuring employment effects, as well as to develop the techniques for incorporating those effects into cost-benefit analysis.

If employment analyses and policy debates remain on their current trajectories, job impact analyses will continue to conflate short-term and long-term unemployment, to ignore either a policy's positive or negative employment effects, to select the wrong model for the task, to report results without disclosure of assumptions or limitations, and to encourage the use of results as a trump card against cost-benefit analysis. If analysts and advocates cannot reverse course, then the use of job impact analyses will remain a misleading distraction—nothing more than a red herring. But by following the simple recommendations listed above, we can begin to put job impact analysis into its proper context in the debate over environmental protection and employment.



1 *See* Bureau of Labor Statistics, USDL-12-0402, News Release, *The Employment Situation—February 2012* (Mar. 9, 2012), *available at* http://www.bls.gov/news.release/pdf/empsit.pdf (last visited Mar. 9, 2012).

2 *See, e.g.*, Letter from Rep. David Stockman (1981), *cited in* MARISSA MARTINO GOLDEN, WHAT MOTIVATES BUREAUCRATS?: POLITICS AND ADMINISTRATION DURING THE REAGAN YEARS 118 (2000) ("EPA and its minions in the press and the professional environmental lobbies have assumed an absolute monopoly right to flood the American economy with regulations, litigation, and compliance costs . . . [that] bleed American industry of scarce funds needed for investment, modernization, and job creation."). Stockman later went on to serve as director of the Office of Management and Budget under President Reagan.

3 The following hearings took place during roughly the first twenty legislative days in 2011:

- House Appropriations Comm., *Budget Hearing-Environmental Protection Agency* (March 3), http://appropriations.house.gov/Calendar/?EventTypeID=316 (last visited July 1, 2011).
- House Energy & Commerce Comm., *The Views of the Administration on Regulatory Reform* (January 26); *Energy Tax Prevention Act of 2011* (February 9); *Environmental Regulations, the Economy, and Jobs* (February 15); *Network Neutrality and Internet Regulations: Warranted or More Economic Harm than Good?* (February 16); *Impact of Medical Device Regulation on Jobs and Patients* (February 17); *EPA's Greenhouse Gas Regulations and Their Effect on American Jobs* (March 1), http://energycommerce.house.gov/hearings/default.aspx (last visited July 1, 2011).
- House Education & Workforce Comm., *State of the American Workforce* (January 26); *Impact of the Health Care Law on the Economy, Employers, and the Workforce* (February 9); *Investigating OSHA's Regulatory Agenda and Its Impact on Job Creation* (February 15), http://edworkforce.house.gov/Calendar/List.aspx?EventTypeID=189 (last visited July 1, 2011).
- House Financial Services Comm., *Promoting Economic Recovery and Job Creation: The Road Forward* (January 26), http://financialservices.house.gov/Calendar/?EventTypeID=309 (last visited July 1, 2011).
- House Judiciary Comm., *The REINS Act: Promoting Jobs and Expanding Freedom by Reducing Needless Regulations* (January 24); *Regulatory Flexibility Improvement Act of 2011—Unleashing Small Business to Create Jobs* (February 10); *The APA at 65—Is Reform Needed to Create Jobs, Promote Economic Growth, and Reduce Costs* (February 28), http://judiciary.house.gov/hearings/hearing112.html (last visited July 1, 2011).
- House Natural Resources Comm., *Impact of the Administration's Wild Lands Order on Jobs and Economic Growth* (March 1), http://naturalresources.house.gov/Calendar/List.aspx?EventTypeID=264 (last visited July 1, 2011).
- House Oversight & Government Reform Comm., *Regulatory Impediments to Job Creation* (February 10), http://oversight.house.gov/index.php?option=com_content&view=article&id=1089&Itemid=20 (last visited July 1, 2011).
- House Rules Comm., *H. Res. 72—Directing... committees to... review existing... regulations... particularly with respect to their effect on jobs and economic growth* (February 3), http://www.rules.house.gov/Legislation/Hearings.aspx (last visited July 1, 2011).
- House Small Business Comm., *Putting Americans Back to Work: The State of the Small Business Economy* (February 16), http://smallbusiness.house.gov/Calendar/List.aspx?EventTypeID=253 (last visited July 1, 2011).
- House Transportation Comm., *FY 2012 Budget and Priorities of the EPA: Impacts on Jobs, Liberty, and the Economy* (March 2), http://transportation.house.gov/hearings/ (last visited July 1, 2011).

- House Ways & Means Comm., *Health Care Law's Impact on Jobs, Employers, and the Economy* (January 25), http://waysandmeans.house.gov/Calendar/ (last visited July 1, 2011).

4 Results were calculated by a LexisNexis search of U.S. newspapers and wires. The search term "job-killing w/1 (regulation! or rule!)" was entered for each year, with a duplication filter eliminating highly-similar results. In 2007, the phrase appeared 4 times. In 2008, the count was at 17. By 2009, it had more than doubled, to 38. The frequency of use increased dramatically in 2010, to 206 times, and then again in 2011, to 706 times. As of March 8, 2012, the phrase has appeared 78 times already this year. *See also* Steven Pearlstein, *'Job-killing' regulation? 'Job-killing' spending? Let's kill this GOP canard*, WASH. POST, Jan. 6, 2011 (calculating that the more generic phrase "job-killing" appeared over 11,000 times in news articles from 2009-2010).

5 Rep. Fred Upton, *Declaring War on the Regulatory State*, WASH. TIMES, Oct. 18, 2010.

6 Rep. Fred Upton, Press Release, *Upton Comments on EPA Delay of Devastating Ozone Regulations*, Dec. 8, 2010.

7 Rep. Eric Cantor, Jobs Legislation Tracker, http://majorityleader.gov/jobstracker/ (last visited Mar. 9, 2012).

8 HOUSE REPUBLICAN CONF., THE HOUSE REPUBLICAN PLAN FOR AMERICA'S JOB CREATORS 1 (2011), *available at* http://www.gop.gov/resources/library/documents/jobs/theplan.pdf.

9 For example, the following bills were proposed during 2011 by the 112th Congress: H.R. 1 (a continuing appropriations resolution for FY2011, which passed the House in February, containing more than twenty riders restricting or prohibiting the use of funds to implement various regulatory activities under EPA's jurisdiction); H.R. 199, Protect America's Energy and Manufacturing Jobs Act of 2011 (proposing a two-year suspension of climate rules); H.R. 457, H.R. 517, H.R. 2018, & S. 272 (to modify EPA's authority under the Clean Water Act); H.R. 750 & S. 228, Defending America's Affordable Energy and Jobs Act (preempting any regulation to mitigate climate change); H.R. 872, Reducing Regulatory Burdens Act of 2011 (amending the Clean Water Act and FIFRA to alter EPA regulation of pesticide discharge into water); H.R. 910, Energy Tax Prevention Act (to prevent greenhouse gas regulations under the Clean Air Act); H.R. 960 & S. 468, Mining Jobs Protection Act (amending EPA's consultation procedure under the Clean Water Act); H.R. 1391, Recycling Coal Combustion Residuals Accessibility Act of 2011, & H.R. 1405 (prohibiting coal ash from being regulated under Subtitle C of RCRA); H.R. 2021, Jobs and Energy Permitting Act of 2011 (amending the Clean Air Act to change permitting of offshore sources); H.R. 2250 & S. 1392, EPA Regulatory Relief Act of 2011 (to delay the Boiler MACT rules); H.R. 2584 (an appropriations bill with various riders); H.R. 2681, Cement Sector Regulatory Relief Act (to delay the Cement MACT rules); H.R. 3400 & S. 1720, Jobs Through Growth Act (incorporating several of the above restrictions on EPA authority); and S.J. Res. 27 (a resolution to disapprove EPA's cross-state air pollution rule).

10 As just one example, when Senator Susan Collins drafted legislation to delay regulation of hazardous air pollution, she said, "To impose that kind of costs on manufacturing at a time when the economy is very fragile would cost us thousands of jobs." Jean Chemnick, *Sen. Collins to Offer Bill to Delay "Boiler MACT,"* E&E DAILY, July 19, 2011. Many of the titles of the legislation listed *supra* note 9 explicitly try to convey a direct link between jobs and environmental regulation.

11 In January 2011, Representative Don Young proposed the Regulation Audit Revive Economy (RARE) Act of 2011, H.R. 213, seeking to create a two-year moratorium on rulemakings. Senator Ron Johnson introduced the Regulation Moratorium and Jobs Preservation Act of 2011, S. 1438, which would prevent agencies from taking any significant regulatory action until the national unemployment rate drops below 7.7%. Senator Warner has also started drafting a "regulatory paygo" bill, which would require that for every new regulation an agency wants to propose, it first must eliminate one existing regulation with similar economic impacts. Luke Burns, *PAYGO Proposed to Manage Agency Regulations*, REGBLOG, May 5, 2011, http://www.law.upenn.edu/blogs/regblog/2011/05/paygo-proposed-to-manage-agency-regulations.html; Emily Yehle, *Democratic Senator Offers Sweeping Regulatory Reform Proposal*, E&E DAILY, Feb. 16, 2012.

12 The following bills were proposed during 2011 by the 112th Congress: H.R. 1049, Regulatory Openness, Accountability, and Disclosure to Jobs Act of 2011 (requiring CEQ to report on the number of permits not issued because an environmental impact statement has not been completed, including the economic impact of not issuing those permits); H.R. 1705 & H.R. 2401, Transparency in Regulatory Analysis of Impacts on the Nation Act (TRAIN) of 2011 (requiring new impact analyses for about a dozen specifically listed EPA rules, focusing on cumulative costs and benefits, energy prices, and job impacts); H.R. 1872 & S. 1292, Employment Protection Act of 2011 (requiring EPA to consider the impact on employment levels and economic activity prior to issuing a regulation, policy statement, guidance, or other requirement; implementing any new or substantially altered program; or issuing or denying any clean water or other permit); H.R. 2204 & S. 1219, Employment Impact Act (requiring agencies to complete jobs impact statement); S. 609, Comprehensive Assessment of Regulations on the Economy Act of 2011 (directing the Department of Commerce to form a panel to review the cumulative energy and economic impacts of specific rules proposed or finalized by EPA or expected soon); and S. 1720, Jobs Through Growth Act (incorporating several of the above provisions).

13 The following bills were proposed during 2011 by the 112th Congress: S. 128, Small Business Paperwork Relief Act; S. 358, Regulatory Responsibility for our Economy Act of 2011 (codifying and modifying Executive Order 12,866); S. 474, Small Business Regulatory Freedom Act of 2011 (expanding the Regulatory Flexibility Act); S. 602, Clearing Unnecessary Regulatory Burdens (CURB) Act (largely codifying Executive Order 12,866); S. 617 (expanding the Unfunded Mandates Reform Act to cover independent agencies); S. 1030, Freedom from Restrictive Excessive Executive Demands and Onerous Mandates (FREEDOM) Act of 2011, (expanding the Regulatory Flexibility Act); S. 1189, Unfunded Mandates Accountability Act (requiring impact analyses for major rules); and S. 1606 & H.R. 3010, Regulatory Accountability Act of 2011 (codifying Executive Order 12,866, adding judicial review for cost-benefit analysis, and adding special hearings for "high-impact," billion-dollar rules).

14 For example, the following bills were proposed during 2011 by the 112th Congress: H.R. 10 & S. 299, Regulations from the Executive in Need of Scrutiny (REINS) Act (requiring congressional approval of all major rules); H.R. 214, Congressional Office of Regulatory Analysis Creation and Sunset and Review Act of 201 (creating a new congressional office to analyze and report on the costs and benefits of rules, as well as a new sunset review process for agencies to examine the ongoing necessity of their existing rules); and H. Res. 72 (requiring various congressional committees to review and report on all regulations, particularly with respect to their effects on jobs and economic growth).

15 *See* Mathew D. McCubbins, Roger G. Noll & Barry R. Weingast, *Administrative Procedures as Instruments of Political Control*, 3 J.L. ECON. & ORG. 243 (1987).

16 *See*, Letter from Various Senators to Lisa Jackson, EPA Admin., Sept. 24, 2010, *available at* http://www.afandpa.org/Temp/Newsreleases/Senate_Boiler_MACT_Letter_to_EPA_with_signatures.pdf; Letter from Various Representatives to Lisa Jackson, EPA Admin., Aug. 2, 2010, *available at* http://www.washingtonpost.com/wp-srv/politics/documents/boilerletter.pdf. Rep. Upton in particular called the Boiler MACT Rule part of a "regulatory train wreck" that was stifling economy recovery. Gabriel Nelson, *How EPA's Regulatory Surge Missed a Primary Target*, GREENWIRE, Dec. 8, 2010.

17 *See* IHS & Council of Industrial Boiler Owners, *The Economic Impact of Proposed EPA Boiler/Process Heater MACT Rule* (2010), *available at* http://www.cibo.org/pubs/boilermact_jobsstudy.pdf; Fisher Int'l & American Forest & Paper Assoc., *Economic Impact of Pending Air Regulations on the U.S. Pulp and Paper Industry* (2011, updating an Aug. 2010 version), *available at* http://www.afandpa.org/Temp/Docs/FinalCumulativeAirBurdenEconomicImpactSummary.pdf. The Council of Industrial Boiler Owners won considerable press attention for its job impact estimate, and the American Forest and Paper Association met with the head of EPA's air office, Gina McCarthy, after issuing its own report. Gabriel Nelson, *18 Senate Dems Join GOP in Assault on EPA's Boiler Proposal*, GREENWIRE, Sept. 28, 2010; *see also* Olga Belogolova, *Clean Air or Jobs Debate Dominates House Hearing*, NATIONAL JOURNAL, Sept. 8, 2011 (noting citation to both studies in House hearing the rule). Those studies were also regularly cited by the Members of Congress opposing the rule. *E.g.*, SENATOR JAMES INHOFE, EPA'S ANTI-INDUSTRIAL POLICY: THREATENING JOBS AND AMERICA'S MANUFACTURING BASE 4 (2010) (citing Council of Industrial Boiler Owner's study). Environmental groups have attacked these studies as being "fundamentally flawed." Natural Resources Defense Council, Press Release, *Economists Grade Reports*, Oct. 26, 2010 (citing evaluations by Jason F. Shogren and Charles D. Kolstad, giving these reports D's and F's). The limitations of such economic models are discussed, *infra* Part Two.

18 Notice of Reconsideration of Final Rule, National Emission Standards for Hazardous Air Pollutants, 76 Fed. Reg. 15,266, 15,266 (Mar. 21, 2011).

19 Delay of Effective Dates, Industrial, Commercial, and Institutional Boilers and Process Heaters and Commercial and Industrial Solid Waste Incineration Units, 76 Fed. Reg. 28,662, 28,662 (May 18, 2011); *see also* Gabriel Nelson, *EPA Sets New Schedule for Controversial Boiler Rule*, GREENWIRE, JUNE 24, 2011.

20 Proposed Rule and Reconsideration of Final Rule, National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters, 76 Fed. Reg. 80,598 (Dec. 23, 2011).

21 Gabriel Nelson, *Ozone Decision Waits as Senators, Businesses Pressure EPA*, GREENWIRE, July 26, 2011. Senator Barrasso in particular has criticized the ozone proposal by claiming, "This administration ought to take this 9.2% unemployment a lot more seriously." Jean Chemnick, *Barrasso Calls EPA Ozone Rule "Most Expensive" in History*, E&E News PM, July 19, 2011.

22 The Manufacturers' Alliance released a report predicting millions of jobs lost by 2020. DONALD A. NORMAN, MAPI & MANUFACTURERS ALLIANCE, ER-707, ECONOMIC IMPLICATIONS OF EPA'S PROPOSED OZONE STANDARDS (2010). Subsequently, the *WALL STREET JOURNAL* published an opinion piece from the Business Roundtable, calling the ozone rule the "latest job killer." John Engler, Opinion, *The Latest Job Killer from the EPA*, WALL STREET JOURNAL, July 26, 2011; *see also* Gabriel Nelson, *Businesses Groups Decry "Job-Killing" Smog Crackdown*, GREENWIRE, July 19, 2011. Environmental groups have attacked this study as "fundamentally flawed." Natural Resources Defense Council, Press Release, *Economists Grade Reports*, Oct. 26, 2010 (citing an evaluation by Richard B. Howarth, giving the report a "incomplete" grade). The limitations of such economic models are discussed, *infra* Part Two.

23 Letter from Cass Sunstein, OIRA Admin., to Lisa Jackson, EPA Admin., Sept. 2, 2011, *available at* https://content.govdelivery.com/attachments/USEOPWHPO/2011/09/02/file_attachments/86091/Letter.pdf.

24 Elana Schor, *Obama's Denial Opens New Chapter in Keystone XL Drama*, GREENWIRE, Jan. 19, 2012 (quoting a State Department report).

25 *Id.*; Christa Marshall, *State Department Retracts Job Number Figure for Keystone XL*, CLIMATEWIRE, Jan. 27, 2012.

26 Elana Schor, *Obama Rejects Pipeline, Blames Republicans*, E&E PM, Jan. 18, 2012.

27 Christa Marshall, *Keystone XL Supporters Are Inflating Job Numbers -- report*, CLIMATEWIRE, Sept. 29, 2011.

28 President Barack Obama, Remarks on Clean Energy Jobs, Mar. 5, 2010, http://www.whitehouse.gov/the-press-office/remarks-president-clean-energy-jobs.

29 *E.g.*, Michael Burnham, *Obama Admin. Announces $500M Grants for "Green" Jobs*, GREENWIRE, June, 25, 2009.

30 *See* EPA, News Release, *Obama Announces Steps to Boost Biofuels, Clean Coal*, Feb. 3, 2010, http://yosemite.epa.gov/opa/admpress.nsf/0/3a91d20f44b4b2d2852576bf00711782?OpenDocument.

31 Robin Bravender, *EPA Sets Stage for Regulation of Greenhouse Gases*, GREENWIRE, Apr. 17, 2009.

32 Katherine Boyle, *EPW Panel Reveals New Subcommittee Members, Outlines Priorities*, E&E DAILY, Feb. 13, 2009; U.S. Senate Comm. on Env't & Pub. Works, Subcommittees, http://epw.senate.gov/public/index.cfm?FuseAction=Subcommittees.Subcommittees (last visited Mar. 1, 2012).

33 *See* Gabriel Nelson, *With Toxics Rule Expected, EPW Panel to Probe Clean Air Act's Job Effects*, E&E DAILY, Mar. 14, 2011 (quoting Sen. Tom Carper); Sen. Tom Carper, Press Release, *Sen. Carper Reacts to "New Jobs-Cleaner Air: Employment Effects under Planned Changes to EPA's Air Pollution Rules" Report*, Feb. 8, 2011 (reacting to job impact report released by Ceres).

34 See case studies *infra* Part Two.

35 Elana Schor, *Major Electronics Companies Back E-Waste Bill*, E&E DAILY, Oct. 10, 2010 (quoting Rep. Gene Green, "It's a green jobs bill.").

36 H.R. 851, 112th Cong., Clean Energy Jobs Act (2011).

37 For example, Rep. Marsha Blackburn of Tennessee said that new regulations from EPA and other agencies were "killing the growth of jobs. The [new unemployment] figures this morning attest to that." Gabriel Nelson, *GOP Hammers Jobs Numbers as Sunstein Defends Red Tape Review*, E&E NEWS PM, June 3, 2011.

38 *See* Natural Resources Defense Council, Press Release, *Clean-Energy Investment Provides Economic Boost, More Jobs, and Expanded Opportunities*, June 18, 2009, http://www.nrdc.org/media/2009/090618.asp (linking climate legislation with clean energy investment and a "significantly lower national unemployment rate").

39 BUREAU OF LABOR STATISTICS, U.S. DEPT. OF LABOR, HOW THE GOVERNMENT MEASURES UNEMPLOYMENT (2009), *available at* http://www.bls.gov/cps/cps_htgm.pdf; *see also* N. GREGORY MANKIW, PRINCIPLES OF ECONOMICS 614-15 (2008, 5th ed.).

40 *See* Bureau of Labor Statistics, Household Data Annual Averages: Employment Status of the Civilian Noninstitutional Population, 1940 to Date (2012), *available at* http://www.bls.gov/cps/cpsaat01.pdf.

41 *See* Bureau of Labor Statistics, News Release, USDL-11-1304, *Job Openings and Labor Turnover—July 2011*, Sept. 7, 2011, http://www.bls.gov/news.release/archives/jolts_09072011.pdf (noting 3.2 million job openings in July 2011, even as unemployment stayed above 9% that month); MANKIW, *supra* note 39, at 620-24; Daron Acemoglu & Robert Shimer, *Efficient Unemployment Insurance* at 4 (NBER Working Paper 6686, 1998) ("Standard matching frictions ensure that within an individual labor market, unemployment and vacancies coexist.").

42 *See* Steven E. Haugen, Bureau of Labor Statistics, Measures of Labor Underutilization from the Current Population Survey (BLS Working Paper 424, Mar. 2009), http://www.bls.gov/osmr/pdf/ec090020.pdf.

43 MANKIW, *supra* note 39, at 623-24; DON BELLANTE & MARK JACKSON, LABOR ECONOMICS: CHOICE IN LABOR

MARKETS (1979); Robert E. Hall, *Why is the Unemployment Rate So High at Full Employment?*, 1 BROOKINGS PAPERS ON ECONOMIC ACTIVITY 369, 388 (1970) ("Economists have generally recognized that a certain amount of unemployment will always arise in the normal operation of a labor market.").

44 Traditionally, both minimum wage legislation and collective bargaining have been understood to contribute to unemployment, by setting wage rates above the market equilibrium level. When individuals are willing to remain in the labor force to gain access to jobs with above-market wages, rather than accepting lower paid jobs or exiting the labor force, the excess supply of labor contributes to unemployment. However, even in the absence of interventions, employers may set wages above the equilibrium level. Companies may hope to increase labor productivity by increasing the wage rate above the equilibrium level. Above-market wages may raise labor productivity by reducing the probability that employees shirk their duties, because they fear being laid off and losing the higher wage. Employees may have an incentive to work harder, as a means of cooperating with the employer in return for treating them fairly. To the extent that increased revenues from this additional labor productivity exceed the costs of higher wages, it is in the best interests of a profit-maximizing firm to pay such above-market wages, even though they contribute to unemployment. *See* LLOYD G. REYNOLDS, STANLEY H. MASTERS & COLLETTA H. MOSER, LABOR ECONOMICS AND LABOR RELATIONS (1998).

45 If technological change results in the mechanization of work, then labor demand can decrease. *See id.*; Edward E. Leamer, *Wage Inequality from International Competition and Technological Change: Theory and Country Experience*, 86 AM. ECON. REV. 309 (1996); NATIONAL RESEARCH COUNCIL CENTER FOR EDUCATION, RESEARCH ON FUTURE SKILL DEMANDS: A WORKSHOP SUMMARY at Chapter Two: Labor Market Trends: A Loss of Middle-Class Jobs? (2008), *available at* http://www.ncbi.nlm.nih.gov/books/NBK4064 (last visited Sept. 1, 2011) (reporting David Autor's findings that "[c]ompared with 1960, jobs requiring high levels of abstract tasks have increased, jobs compromised mostly of routine tasks have decreased, and jobs including many manual tasks initially decreased but then leveled off"). On the other hand, if technological change increases marginal productivity per hour worked, demand for labor may increase as a result. The advent of new technology might replace certain mid-level positions, but it also might increase productivity at the higher and lower ends of the labor market. *See id.*; David Autor, *Technological Change and Job Polarization: Implications for Skill Demand and Wage Inequality* (presented at the Nat'l Acad. Workshop on Research Evidence Related to Future Skill Demands, 2007), http://www7.nationalacademies.org/cfe/Future_Skill_Demands_Presentations.html.

46 If the productivity of certain industries is higher in foreign countries and relative wages in the United States do not adjust to offset these differences in productivity, then the price of imports (for those industry) will be lower than the price of domestic output. In the absence of import restrictions, demand for the cheaper imports will rise, the domestic products will lose market share, output by domestic industry will fall, and this will result in less labor demand in that industry. Consider the textiles, apparel, and shoe industries, which employ low-skilled individuals, but must pay higher wages in the United States than overseas. Foreign competition in the textiles, apparel, and shoe industries has driven down demand for labor in these industries in the United States. *See* Timothy J. Minchin, *The Decline of the U.S. Textile Industry*, 50 LABOR HISTORY 287 (2009); Cynthia D. Anderson et al., *Globalization and Uncertainty: The Restructuring of Southern Textiles*, 48 SOCIAL PROBLEMS 478 (2001); *see also* COUNCIL ON FOREIGN RELATIONS, INDEPENDENT TASK FORCE REPORT NO. 67, U.S. TRADE AND INVESTMENT POLICY 22 (2011).

47 *See* Christina D. Romer, *Jobless Rate is Not the New Normal*, N.Y. TIMES, Apr. 9, 2011; Christina D. Romer, Speech at Washington University, *The Continuing Unemployment Crisis: Causes, Cures, and Questions for Further Study*, Apr. 12, 2011, http://elsa.berkeley.edu/~cromer/Washington%20University%20final.pdf; Lawrence F. Katz, *Long-Term Unemployment in the Great Recession*, Testimony for the Joint Economic Comm. of the U.S. Congress, *Hearing on Long-Term Unemployment: Causes, Consequences, and Solutions* (Apr. 29, 2010), *available at* http://www.economics.harvard.edu/faculty/katz/files/jec_testimony_katz_042910.pdf; Paul Krugman, *Degrees and Dollars*, N.Y. TIMES, Mar. 6, 2011; Robert B. Reich, *How to End the Great Recession*, N.Y. TIMES, Sept. 2, 2010; Serge L. Wind, *Unemployment: Structural vs. Cyclical—and Globalization's Adverse Impact* (Working Paper, May 9, 2011), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1838365.

48 *See* REYNOLDS, MASTERS & MOSER, *supra* note 44.

49 Etienne Wasmer & Yves Zenou, *Equilibrium Search Unemployment with Explicit Spatial Frictions*, 13 LABOR ECON. 143 (2006); Yves Zenou, *Urban Search Models under High-Relocation Costs: Theory and Application to Spatial Mismatch*, 16 LABOR ECON. 534 (2009).

50 REYNOLDS, MASTERS & MOSER, *supra* note 44.

51 Zenou, *Urban Search Models under High-Relocation Costs*, *supra* note 49.

52 To read further on unemployment and the costs of relocation, see Lawrence A. Leger & James D. Gaisford, *Imperfect Intersectoral Labor Mobility and Welfare in International Trade*, 15 J. ECON. SURVEYS 463 (2001); Jos Van Ommeren & Piet Ri-

etveld, *Commuting and Reimbursement of Residential Relocation Costs*, 41 J. TRANSPORT ECON. & POL'Y 51 (2007); Wasmer & Zenou, *Equilibrium Search Unemployment with Explicit Spatial Frictions*, *supra* note 49; Zenou, *Urban Search Models under High-Relocation Costs*, *supra* note 49.

53 Zenou, *Urban Search Models under High-Relocation Costs*, *supra* note 49.

54 REYNOLDS, MASTERS & MOSER, *supra* note 44.

55 *Id.*

56 *See* Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone, 76 Fed. Reg. 48,208, 48,318 (Aug. 8, 2011).

57 *See* Louis Jacobson, Robert LaLonde & Daniel Sullivan, *The Costs of Worker Dislocation* (W.E. Upjohn Institute for Employment Research, 1993); Louis Jacobson, Robert LaLonde & Daniel Sullivan, *Earnings Losses of Displaced Workers*, 83 AM. ECON. REV. 685 (1993).

58 Tom Krebs, *Job Displacement and the Cost of Business Cycles*, 97 AM. ECON. REV. 664 (2007).

59 *Id.*

60 See *id.* for a review of the empirical literature on the long-term income and welfare effects of job loss. According to empirical studies, the long-term earnings losses for high-tenure workers may be as much as 25 percent of earnings prior to job loss, while the earnings losses for low-tenure workers average 10 percent of earnings prior to job loss. Those studies that do not separate out low- and high-tenure workers find that the average earnings losses are 13 percent of earnings prior to job loss. These negative income shocks are higher when the economy is in a recession.

Further research has shown that the income effects of job loss are higher in depressed geographic areas, in which there are few employment alternatives. *See* Jacobson, LaLonde & Sullivan, *The Costs of Worker Dislocation*, *supra* note 57; Jacobson, LaLonde & Sullivan, *Earnings Losses of Displaced Workers*, *supra* note 57.

A 1989 study of job loss costs found that the median reemployed worker (who was previously employed for at least three years and was laid off because of slack work, elimination of the job, or plant closure) likely experienced a 5 to 15 percent decrease in earnings. See Daniel S. Hamermesh, *What Do We Know About Worker Displacement in the U.S.?*, 28 INDUSTRIAL RELATIONS 51 (1989).

Interestingly, an Austrian study has shown that while the reduction in employment rates for blue-collar workers immediately following job loss is higher than for white-collar workers, employment rates for laid-off blue-collar workers increase much faster. Within six years the employment rate for these laid-off workers was only slightly lower than for blue-collar workers who were not laid off. Earnings losses are also higher for white-collar workers than for blue-collar workers in both the short and the long run. See Guido Schwerdt et al., *Does the Color of the Collar Matter? Employment and Earnings After Plant Closure*, 108 ECON. LETTERS 137 (2010).

61 Daniel Sullivan & Till von Wachter, *Mortality, Mass-Layoffs, and Career Outcomes: An Analysis Using Administrative Data* (National Bureau of Economic Research Working Paper 13,626, 2007).

62 For the currently operational executive orders, *see* Exec. Order 12,866, 58 Fed. Reg. 51,735 (Sept. 30, 1993); Exec. Order 13,563, 76 Fed. Reg. 3,821 (Jan. 21, 2011).

63 EPA, Fact Sheets on Final Air Toxics Standards for Industrial, Commercial, and Institutional Boilers at Major and Area Source Facilities (2011), http://www.epa.gov/ttn/atw/hoiler/major_final_fs.pdf and http://www.epa.gov/ttn/atw/boiler/area_final_fs.pdf.

Sources for Figure 2: EPA, REGULATORY IMPACT ANALYSIS OF THE PROPOSED TOXICS RULE: FINAL REPORT (2011), http://www.epa.gov/ttn/atw/utility/ria_toxics_rule.pdf [hereinafter "Final Utility MACT RIA"]; OFFICE OF AIR AND RADIATION, EPA, REGULATORY IMPACT ANALYSIS FOR THE FEDERAL IMPLEMENTATION PLANS TO REDUCE INTERSTATE TRANSPORT OF FINE PARTICULATE MATTER AND OZONE IN 27 STATES (2011) [hereinafter "Final Transport RIA"]; Fact Sheets on Final Air Toxics Standards for Industrial, Commercial, and Institutional Boilers, *supra* note 63; OFFICE OF INFORMATION & REGULATORY AFFAIRS, 2011 REPORT TO CONGRESS ON THE BENEFITS AND COSTS OF FEDERAL REGULATIONS AND UNFUNDED MANDATES, AT 13 (2011); OFFICE OF AIR AND RADIATION, EPA, THE BENEFITS AND COSTS OF THE CLEAN AIR ACT FROM 1990 TO 2020, tbl. on Estimated Monetized Benefits and Costs of the 1990 Clean Air Act Amendments (2011).

64 National Emissions Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters: Final Rule, 76 Fed. Reg. 15,608, 15,655, 15,658, 15,659, 15,662 (Mar. 21, 2011).

65 *See* Exec. Order 12,866 §§ 3(f)(1), 6(a)(3)(C), 58 Fed. Reg. 51,735 (Sept. 30, 1993) (noting that an adverse impact on jobs makes a rule "significant," and requiring an assessment of adverse effects on employment); Exec. Order 13,563 § 1, 76 Fed. Reg. 3,821 (Jan. 21, 2011) (calling for the regulatory system to protect job creation).

66 Final Transport RIA, *supra* note 63, at 286 ("such an analysis is of particular concern in the current economic climate").

67 *Id.*; Final Utility MACT RIA, *supra* note 63.

68 *See* David M. Driesen, *Two Cheers for Feasible Regulation*, 35 HARVARD ENVTL. L. REV. 313, 331 (2011); David M. Driesen, *Distributing the Costs of Environmental, Health, and Safety Protection: The Feasibility Principle, Cost-Benefit Analysis, and Regulatory Reform*, 32 B.C. ENVTL. AFFAIRS L. REV. 1 (2005).

69 *See* Jonathan S. Masur & Eric A. Posner, *Against Feasibility Analysis*, 77 U. CHI. L. REV. 657 (2010).

70 *See* Jonathan S. Masur & Eric A. Posner, *Regulation, Unemployment, and Cost-Benefit Analysis* (U. of Chi. Law School, John M. Olin Law & Economics Working Paper No. 571, 2011); Final Transport RIA, *supra* note 63, at 286 ("a standalone analysis of employment impacts is not included in a standard cost-benefit analysis").

71 NAT'L CTR. FOR ENVTL. ECON., EPA, GUIDELINES FOR PREPARING ECONOMIC ANALYSIS AT 8-6 TO 8-7, 9-8 (2010).

72 *See generally* Masur & Posner, *Regulation, Unemployment, and Cost-Benefit Analysis*, *supra* note 70; Robert H. Haveman & Scott Farrow, *Labor Expenditures and Benefit-Cost Accounting in Times of Unemployment*, J. BENEFIT-COST ANALYSIS, vol. 2, iss. 2 (2011).

73 *See generally* Masur & Posner, *Regulation, Unemployment, and Cost-Benefit Analysis*, *supra* note 70; *see also supra* Part I(B).

74 Redistribution through regulatory policy can distort labor-leisure tradeoffs in the economy (similar to the income tax) and also reduces efficiency in the regulated market. *See* Louis Kaplow & Steven Shavell, *Why the Legal System is Less Efficient than the Income Tax in Redistributing Income*, 23 J. LEGAL STUD. 667 (1994).

75 *See* Richard Revesz & Allison Kong, *Regulatory Change and Optimal Transition Relief*, 105 Nw. U. L. REV. 1581 (2011).

76 *See, e.g.*, Inimai Chettiar & Jason Schwartz, *The Road Ahead: EPA's Options and Obligations for Regulating Greenhouse Gases* 61-64 (Policy Integrity Report No. 3, 2009) (discussing the efficiency, workability, and fairness of cap-and-trade systems and citing the relevant economic literature).

77 *See* Martin Ross et al., *Assessing the Economy-Wide Effects of the PSA Program*, in ECOMARKETS: COSTA RICA'S EXPERIENCE WITH PAYMENTS FOR ENVIRONMENTAL SERVICES 2 (Gunars Platais & Stefano Pagiola, eds., World Bank Report, 2007); Peter Berck & Sandra Hoffman, *Assessing the Employment Impacts of Environmental and Natural Resource Policy*, 22 ENV'T & RES. ECON. 133, 136 (2002).

78 A second step can be added to compensate, by calculating the increased output and related job gains in the sector that supplies products for regulatory compliance. But even this more advanced analysis cannot fully reflect the possibility that consumers may find substitute products.

79 Berck & Hoffman, *supra* note 77, at 136.

80 Air Economics Group, EPA, Alternative Approaches for Economic Impact Analysis, http://www.epa.gov/ttnecas1/econdata/Rmanual2/5.1.html (last visited Mar. 1, 2012).

81 Jehan Arulpragasam & Patrick Conway, *Partial Equilibrium Multi-Market Analysis*, *in* TOOL KIT FOR EVALUATING THE POVERTY AND DISTRIBUTIONAL IMPACT OF ECONOMIC POLICIES at 12-2 (World Bank, 2003); *see also* Berck & Hoffman, *supra* note 77, at 136-37.

82 Berck & Hoffman, *supra* note 77, at 137.

83 *Id.* at 140.

84 *See* Harry W. Richardson, *Input-Output and Economic Base Multipliers: Looking Backward and Forward*, 25 J. REGIONAL SCI. 607 (1985).

85 Social accounting matrix (SAM) multiplier analysis builds off of I-O tables by including more detailed disaggregation of households (by income or demographics) and institutions (like level of government). SAM models also tend to treat more terms as endogenous than I-O models do (endogenous variables are the interconnected values that the model is trying to estimate; exogenous variable are independent terms that the model takes as a given). As a result "there is more money circulating in a SAM model of a region's economy than in an I-O model . . . [and] SAM [employment] multipliers tend to be slightly larger than I-O multipliers." Berck & Hoffman, *supra* note 77, at 138, 143. This distinction shows how sensitive employment estimates are to model assumptions like the endogeneity of variables.

86 *Id.* at 144-45.

87 MIG, Inc., About Us, http://implan.com/V4/index.php (last visited Sept. 1, 2011). IMPLAN originally built off resources from USDA Forest Service and FEMA, *id.*, and now uses data from the U.S. Bureaus of Labor Statistics and Economic Analysis. Jonathan Q. Morgan, *Analyzing the Costs and Benefits of Economic Development Projects*, UNC School of Government Community & Economic Development Bulletin No. 7, p.4 (2010).

88 U.S. Bureau of Economic Analysis, Regional Multipliers from the Regional Input-Output Modeling System (RIMS-II): A Brief Description, http://www.bea.gov/regional/rims/brfdesc.cfm (last visited Sept. 1, 2011).

89 *Id.*

90 Morgan, *supra* note 87, at 5.

91 Berck & Hoffman, *supra* note 77, at 145.

92 Xie and Saltzman describe four major features of a typical CGE model: (1) prices are endogenous to the model and determined by the market; (2) supply and demand for goods or production factors are determined by adjusting prices based on Walrasian general equilibrium theory; (3) supply and demand functions are derived from profit/utility maximizing producers/consumers; and (4) the model is multi-sectorial and non-linear, containing resource constraints. J. Xie & S. Saltzman, *Environmental Policy Analysis: An Environmental Computable General Equilibrium Approach for Developing Countries*, 22 J. POL'Y MODELLING 453 (2000).

93 Berck & Hoffman, *supra* note 77, at 146. Some CGEs would follow perfect neoclassical assumptions and predict no aggregate employment changes: under the neoclassical assumption of no barriers to labor movement, wages, demand, and supply will all adjust to each other, and any workers laid off will be quickly hired in other jobs. But migration and labor force participation equations can be added to the model, thereby generating employment change estimates based on wage impacts. *Id.* at 135.

94 *See* Ricardo Teixeira & Tiago Domingos, *Computable General Equilibrium Models and the Environment: Framework and Application to Agricultural Policies* 2 (AERNA Conference Paper, 2006), *available at* http://aerna2006.de.iscte.pt/papers/S4C_Teixeira.pdf.

95 REMI.com says the model "can be variously referred to as an econometric model, an input-output model, or even a computable general equilibrium model." REMI, Overview, http://www.remi.com/the-remi-model/overview (last visited Mar. 9, 2012).

96 IHS Global Insight, http://www.ihs.com/products/global-insight/index.aspx (last visited Mar. 9, 2012); *see* Dept. of Transportation, *Guide to Quantifying the Economic Impacts of Federal Investment in Large-Scale Freight Transportation Projects* (2006), *available at* http://www.dot.gov/freight/guide061018/sect06.htm (discussing the more well-known CGE models used in the United States).

97 The underlying database for the model includes tables of transaction values (in the form of an input-output table or a social accounting matrix) and elasticities that capture how changes in economic conditions change behavior (e.g., substitution between inputs to production and income-based changes to demand).

98 *See* Frank Ackerman et al., *The Limits of Economic Modeling in the FTAA Environmental Review* 5-6 (Tufts University Globalization and Sustainable Development Program Background Paper, 2001), *available at* http://ase.tufts.edu/gdae/policy_research/USTRComments&Summary.pdf.

99 Berck & Hoffman, *supra* note 77, at 146.

100 *See* Lars Bergman & Magnus Henrekson, *CGE Modeling of Environmental Policy and Resource Management*, *in* HANDBOOK OF ENVIRONMENTAL ECONOMICS (Karl-Goran Maler & Jeffrey Vincent eds., 2005).

101 For an overview of the evolution of CGE models and criticisms of these models, *see* Jayatilleke S. Bandara, *Computable General Equilibrium Models for Development Policy Analysis in LDCs*, 5 J. ECON. SURVEYS 3 (1991); *see also id.* at 31 ("The values of major parameters in many CGE models are little more than best guesses.").

102 For this reason, sensitivity analysis is especially important for CGE models. *See* Teixeira & Domingos, *supra* note 94, at 3 (listing sensitivity analysis as the last required step in the process of using a CGE model); Arvind Panagariya & Rupa Duttagupta, *The 'Gains' from Preferential Trade Liberalization in the CGE Model: Where Do They Come From?* 3 (Working Paper, 2001), http://www.columbia.edu/~ap2231/technical%20papers/cge-critique.pdf (noting that in the context of trade liberalization, "Unearthing the features of CGE models that drive [their results] is often a time-consuming exercise. This is because their sheer size, facilitated by recent advances in computer technology, makes it difficult to pinpoint the precise source of a particular result. They often remain a black box. Indeed, frequently, authors are themselves unable to explain their results intuitively and, when pressed, resort to uninformative answers."); C. Böhringer, T. Rutherford & W. Wiegard, *Computable General Equilibrium Analysis: Opening a Black Box* (Centre for European Economic Research Discussion Paper No. 03-56, 2003).

103 Ian Sue Wang, *Computable General Equilibrium Models and Their Uses in Economy-Wide Policy Analysis: Everything You Ever Wanted to Know (But Were Afraid to Ask)* 3 (MIT Joint Program on the Science and Policy of Global Change Technical Note 6, 2004).

104 Berck & Hoffman, *supra* note 77, at 146, 154.

105 NOBUHIRO HOSOE, KENJI GASAWA & HIDEO HASHIMOTO, TEXTBOOK OF COMPUTABLE GENERAL EQUILIBRIUM MODELLING: PROGRAMMING AND SIMULATIONS (2010).

106 *See* Sergey Paltsev, *Moving from Static to Dynamic General Equilibrium Economic Models* 14 (MIT Science and Policy of Global Change, Technical Note No. 4, 2004) ("We cannot solve numerically for an infinite number of periods.").

107 *See* Jorgen Dejgard Jensen et al., *A Regional Econometric Sector Model for Danish Agriculture* 23 (Statens Jordbrugs-og Fiskeriokonomiske Institut, Report No. 129, 2001) ("[T]he model can only be validated within the data intervals spanned by the historical observations. Thus, applying an econometric model for analysing changes beyond historical variations is always problematic. Another limitation to the econometric approach is that econometric estimation is restricted by the amount of available data.").

108 For an overview of the potential limitations of forecasting models, see Christopher A. Sims, *Are Forecasting Models Usable for Policy Analysis*, FEDERAL RESERVE BANK OF MINNEAPOLIS QUARTERLY REVIEW 2 (1986); Christopher A. Sims, Stephen M. Goldfeld & Jeffrey D. Sachs, *Policy Analysis with Econometric Models*, 1982 BROOKINGS PAPERS ON ECONOMIC ACTIVITY 107 (1982); *see also* Dan Rickman, *Modern Macroeconomics and Regional Economic Modeling*, 50 J. REGIONAL SCI. 23 (2010), http://onlinelibrary.wiley.com/doi/10.1111/j.1467-9787.2009.00647.x/pdf; DAVID F. HENDRY & NEIL R. ERICSSON, UNDERSTANDING ECONOMIC FORECASTS (2001).

109 Berck & Hoffman, *supra* note 77, at 150.

110 Sources for Figure 3:

- Case Study #1 (Renewable Electricity Standard):MGMT. INFO. SERV. & AM. SOLAR ENERGY SOCIETY, DEFINING, ESTIMATING, AND FORECASTING THE RENEWABLE ENERGY AND ENERGY EFFICIENCY INDUSTRIES IN THE U.S. AND IN COLORADO (2008); ROGER H. BEZDEK, MGMT. INFO. SERV. & AM. SOLAR ENERGY SOCIETY, GREEN COLLAR JOBS IN THE U.S. AND COLORADO (2009), *AVAILABLE AT* HTTP://WWW.MISI-NET.COM/PUBLICATIONS/ASES-JOBSRPT09.PDF; ROBERT POLLIN ET AL., POL. ECON. RES. INST. & CTR. FOR AM. PROGRESS, THE ECONOMIC BENEFITS OF INVESTING IN CLEAN ENERGY (2009); UNION OF CONCERNED SCIENTISTS, GREEN JOBS: A NATIONAL RENEWABLE ELECTRICITY STANDARD WILL BOOST THE ECONOMY AND PROTECT THE ENVIRONMENT (2009); DAVID W. KREUTZER ET AL., HERITAGE CTR. FOR DATA ANALYSIS, A RENEWABLE ELECTRICITY STANDARD: WHAT IT WILL REALLY COST AMERICANS (2010); BURTON C. ENGLISH ET AL., BIO-BASED ENERGY ANALYSIS GROUP AT UNIV. OF TENN. & 25X25 ALLIANCE, IMPLICATIONS OF ENERGY AND CARBON POLICIES FOR THE AGRICULTURE AND FORESTRY SECTORS (2010); and NAVIGANT CONSULTING, JOBS IMPACT OF A NATIONAL RENEWABLE ELECTRICITY STANDARD (2010).
- Case Study #2 (Transport Rule and Utility MACT Rule): FINAL TRANSPORT RIA, *supra* note 63; UTILITY MACT

RIA, *supra* note 63; Charles J. Cicchetti, Navigant Consulting Inc. & Clean Air Council, Why EPA's Mercury and Air Toxics Rule is Good for the Economy and America's Workforce (2011); Josh Bivens, Econ. Policy Inst., A Lifesaver, Not a Job Killer: EPA's Proposed "Air Toxics Rule" Is No Threat to Job Growth (EPI Briefing Paper No. 312, 2011); James Heintz et al., Pol. Econ. Res. Inst. & Ceres, New Jobs—Cleaner Air: Employment Effects under Planned Changes to the EPA's Air Pollution Rules (2011); and NERA Econ. Consulting & Am. Coalition for Clean Coal Electricity, Proposed CATR + MACT (2011).

- Case Study #3 (Federal and State Climate Legislation): William W. Beach et al., Heritage Ctr. for Data Analysis, The Economic Costs of the Lieberman-Warner Climate Change Legislation (2008); David W. Kreutzer et al., Heritage Ctr. for Data Analysis, The Economic Consequences of Waxman-Markey (2009); Warwick J. McKibbin et al., Brookings Inst., Consequences of Alternative U.S. Cap-and-Trade Policies (2009); David Montgomery et al., CRA Int'l. & Nat'l. Black Chamber of Commerce, Impact on the Economy of the American Clean Energy and Security Act of 2009 (2009); David Montgomery et al., CRA Intl. & Coal. for Affordable American Energy, Impact on the Economy of the Climate Provisions in the Obama Administration's FY 2010 Budget Proposal (2009); David Roland-Holst & Fredrich Kahrl, Clean Energy and Climate Policy for U.S. Growth and Job Creation (2009); David Roland-Holst & Fredrich Kahrl, The Florida Economy and a Federal Carbon Cap (2009); Michelle Michot Foss & Gurcan Gulen, Ctr. for Energy Econ. at Univ. of Texas-Austin, The Proposed American Clean Energy and Security Act of 2009: Considerations for the Texas Economy (2009); Sci. Applications Intl. Corp., Analysis of the Waxman-Markey Bill Using the National Energy Modeling System (2009); U.S. Energy Info. Admin., Energy Market and Economic Impacts of the American Power Act of 2010 (2010); Apollo Alliance & Good Jobs First, Winning the Race: How American Can Lead the Global Clean Energy Economy (2010); James K. Boyce & Matthew E. Riddle, Pol. Econ. Res. Inst., Clear Economics: State-Level Impacts of the Carbon Limits and Energy for America's Renewal Act on Family Incomes and Jobs (2011); David Roland-Holst, *Energy Prices and California's Economic Security* (UC-Berkeley Research Paper No. 0910071, 2009); and David Roland-Holst & Fredrich Kahrl, *Energy Pathways for the California Economy* (UC-Berkeley Research Paper No. 0903241, 2009).

111 *See* Union of Concerned Scientists, National Renewable Electricity Standard Campaign, http://www.ucsusa.org/clean_energy/solutions/renewable_energy_solutions/national-renewable-electricity-campaign.html (last visited Sept. 1, 2011); Ctr. for Climate & Energy Solutions, Clean Energy Standards, http://www.c2es.org/federal/policy-solutions/clean-energy-standards (last visited Mar. 8, 2012).

112 President Barack Obama, 2011 State of the Union (2011), *available at* http://www.whitehouse.gov/the-press-office/2011/01/25/remarks-president-state-union-address.

113 Republican Staff Commentary, U.S. Congress Joint Economic Committee, *Regulating Greenhouse Gas Emissions: Small and Uncertain Benefits at Large Economic Costs* 2 (2011), *available at* http://jec.senate.gov/republicans/public/?a=Files.Serve&File_id=e1359335-536e-4c6d-95c5-44d4f09f34c2.

114 *Job Creation and Carbon Dioxide Regulation, Hearing Before the U.S. House of Representatives Subcommittee on Regulatory Affairs, Stimulus Oversight, and Government Spending* (testimony of David Kreutzer, Research Fellow, Heritage Foundation) (2011), *available at* http://www.heritage.org/research/testimony/2011/04/job-creation-and-carbon-dioxide-regulation#_ftnref5.

115 Office of Senator Harry Reid, Job Growth from Investment in Renewable Energy: An Overview (2011), *available at* http://reid.senate.gov/issues/upload/Energy-RnwblEnergyJobGrwth.pdf.

116 *See generally* EPA, Regulatory Actions: Air Transport, http://www.epa.gov/airtransport/actions.html; Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals; Final Rule, 76 Fed. Reg. 48,208 (Aug. 8, 2011) (to be codified at 40 C.F.R. pts. 51, 52, 72, 78, and 97).

117 National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards for Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units; Proposed Rule, 76 Fed. Reg. 24,976 (proposed May 3, 2011) (to be codified at 40 C.F.R. pts. 60 and 63).

118 EPA, Cross-State Air Pollution Rule, http://www.epa.gov/airtransport/ (last visited Sept. 8, 2011) (giving annual costs and benefits in 2014); EPA, Fact Sheet: Proposed Mercury and Air Toxics Standards (2011), *available at* http://www.epa.gov/mats/pdfs/proposalfactsheet.pdf (giving annual costs and benefits in 2016).

119 Final Transport RIA, *supra* note 63 (describing a net increase of about 2,230 job-years in environmental protection employment in 2014, as well as about 700 job-years gained each year in the utility sector). EPA's employment analysis has been criticized by Masur & Posner, *supra* note 70.

120 Utility MACT RIA, *supra* note 63, (reporting the central estimate).

121 *See supra* Fig. 3; JAMES HEINTZ ET AL., POL. ECON. RES. INST. & CERES, NEW JOBS—CLEANER AIR: EMPLOYMENT EFFECTS UNDER PLANNED CHANGES TO THE EPA'S AIR POLLUTION RULES (2011); NERA ECON. CONSULTING & AM. COALITION FOR CLEAN COAL ELECTRICITY, PROPOSED CATR + MACT (2011).

122 Senator James Inhofe, Press Release, *Obama EPA's Transport Rule Latest Impediment to Job Growth* (July 7, 2011), http://epw.senate.gov/public/index.cfm?FuseAction=PressRoom.PressReleases&ContentRecord_id=055f25e5-802a-23ad-488b-36db8fda09b9.

123 Gabriel Nelson, *Utility Groups Trade Blows on New EPA Emissions Rules*, N.Y. TIMES (via GREENWIRE), June 8, 2011, http://www.nytimes.com/gwire/2011/06/08/08greenwire-utility-groups-trade-blows-on-new-epa-emission-87246.html. Whitfield has already tried introducing a temporary delay to both rules via an amendment to the TRAIN Act, citing the American Coalition for Clean Coal Electricity estimate as evidence that "the Utility MACT and new Transport rules will have devastating effects on our economy as it continues to work toward recovery." Rep. Ed Whitfield, Press Release, *Whitfield Amendment Delays EPA Rules, Allows Study of Impact on Jobs, Economy*, July 12, 2011, http://whitfield.house.gov/2011/07/whitfield-amendment-delays-epa-rules-allows-study-of-impact-on-jobs-economy.shtml.

124 *See, e.g.*, Iowa Environmental Council, Job Creation and Air Quality Regulations (2011), http://www.iaenvironment.org/documents/AQ_Job%20Creation_Feb2011.pdf (citing the PERI study).

125 *See* Ryan Lizza, *As the World Burns: How the Senate and the White House Missed Their Best Chance to Deal with Climate Change*, THE NEW YORKER, OCT. 11, 2010.

126 *Id.*

127 *See supra* Fig. 3.

128 *See, e.g., Climate Change Legislation: Considerations for Future Jobs, Hearing Before the U.S. Senate Comm. On Finance*, 111th Cong., Nov. 10, 2009, http://finance.senate.gov/hearings/hearing/?id=d78bd542-c0af-6b4a-c184-06e7b4f992e9; *Hearing Before the U.S. House Subcomm. On Regulatory Affairs, Stimulus Oversight, and Government Spending*, 112th Cong., Apr. 6, 2011 (testimony of David Kreutzer, Heritage Foundation Research Fellow), http://www.heritage.org/research/testimony/2011/04/job-creation-and-carbon-dioxide-regulation; MINORITY STAFF REPORT OF THE HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM, COMPREHENSIVE STAFF ANALYSIS OF THE ECONOMIC IMPACT OF THE WAXMAN-MARKEY CAP-AND-TRADE LEGISLATION (2009) (citing the Heritage Foundation study); *Ensuring and Enhancing U.S. Competitiveness While Moving Toward a Clean Energy Economy, Hearing Before the U.S. Senate Comm. On Environment & Public Works*, 111th Cong., July 16, 2009 (testimony of Harry C. Alford, CEO of Nat'l Black Chamber of Commerce); Christa Marshall, *Sens. Cantwell and Collins Continue to Push Their Climate Alternative*, CLIMATEWIRE, Mar. 25, 2010 (citing the PERI report).

129 Carol Zabin & Lisa Hoyos, Opinion, *Setting the Record Straight on AB32 and Jobs*, SAN FRANCISCO CHRONICLE, Oct. 6, 2010.

130 Carol Zabin & Lisa Hoyos, *A Green Jobs Generator*, L.A. TIMES, APR. 21, 2010.

131 Craig Miller, *Governor Rejects LAO Jobs Report on AB-32*, KQED News, Mar. 9, 2010, http://blogs.kqed.org/climate-watch/2010/03/09/governor-rejects-lao-jobs-report-on-ab-32.

132 Ross et al., *supra* note 77, at 2 ("The ultimate choice should be driven several considerations: What is the size of the policy shock? Are economically important sectors impacted? How many markets are affected by the policy change?").

133 Berck & Hoffman, *supra* note 77, at 146, 154.

134 *See* U.S. Bureau of Economic Analysis, Regional Multipliers from the Regional Input-Output Modeling System (RIMS-II): A Brief Description, http://www.bea.gov/regional/rims/brfdesc.cfm; Morgan, *supra* note 88, at 5; Berck & Hoffman, *supra* note 77, at 145.

135 Berck & Hoffman, *supra* note 77, at 134.

136 Morgan, *supra* note 88, at 4.

137 *Id.* at 5-6 ("The results of any economic impact model will be only as accurate and realistic as the assumptions and data used to produce them. . . . When used 'off-the-shelf' with their default values, different models are likely to produce widely varying multipliers for the same project in the same geographic area.").

138 S. Hoffmann, S. Robinson & S. Subramanian, *The Role of Defense Cuts in the California Recession: Computable General Equilibrium Models and Interstate Factor Mobility*, 36 J. REGIONAL SCI. 571 (1996).

Institute *for*
Policy Integrity
new york university school of law

Opening Statement
Rep. Elijah E. Cummings, Ranking Member
Hearing on "Continuing Oversight of Regulatory Impediments to Job Creation: Job Creators Still Buried by Red Tape"

July 19, 2012

One of the first hearings this Committee held this Congress was a hearing much like this one. The title of the hearing was even similar, "Regulatory Impediments to Job Creation." I said then that an effective regulatory review should include several basic elements. It should examine both costs and benefits, it should base conclusions on solid data, and it should seek input from a wide variety of sources.

Eighteen months have passed, but unfortunately not much has changed. Today's hearing is the 29th hearing our Committee has held during this Congress on the impact of regulations. Yet in every single one of those hearings, the Committee's approach has been lopsided and unbalanced.

The Committee has focused on the costs of regulations without considering the benefits. The Committee has solicited input only from witnesses who want to weaken or repeal regulations, but not those who wish to strengthen protections for children, small businesses, the economy, and American families.

In these 29 hearings, the Committee invited 107 witnesses to testify in favor of rolling back health, safety, and economic protections. We in the minority were left to bring some semblance of balance to these proceedings, but we were permitted to invite only 17 witnesses to provide alternative perspectives. Again, today you invited five industry representatives to discuss their desire to weaken or repeal regulations, and we were allowed only a single witness to represent the other side of this question.

In May, the Committee sent 187 letters almost exclusively to industry organizations asking for examples of regulations that "continue to negatively impact job growth." These letters went to companies like ConocoPhillips and industry groups like the Society of Chemical Manufacturers and Affiliates, and the American Fuel & Petrochemical Manufacturers.

In response, these industry groups targeted a host of regulations that provide basic health and safety protections, such as child labor laws, standards for lead in children's toys, air and water quality standards, and lead paint renovation rules.

But the Committee sent no letters to organizations representing the other side, such as the American Academy of Pediatrics or other children's advocacy groups that could testify about the benefits of those rules and how children could be harmed by weakening them.

Of course, the Chairman has every right to conduct this Committee's activities as he sees fit. But in my opinion, the Committee loses credibility when its actions are so blatantly and explicitly one-sided. And losing that credibility means the American public is less likely to take our results seriously.

In the Committee's letter, the Chairman referred to a "regulatory tsunami" that "does not appear to be slowing down." If this is a tsunami, then I wonder what a draught looks like. OMB data shows that the current Administration has approved fewer rules than in either of President Bush's terms. A report published last month by Public Citizen found that 78% of rules with statutory deadlines last year were not, in fact, issued by the statutory deadline, and that OMB's Office of Information and Regulatory Affairs is taking longer to review rules than ever before.

It is this kind of inaccurate rhetoric that drives the constant stream of anti-regulatory legislation considered by the House this Congress. Next week, the House will consider legislation to prevent federal agencies from issuing regulations until the unemployment rate is under 6%. This bill does not make any sense. Why in the world would you take a regulation to protect children from toxic chemicals, for example, and prevent it from taking effect until the national employment rate reaches some arbitrary threshold?

The problem is that the Republican approach is based on a faulty premise—that regulations kill jobs. This myth has been widely discredited by economists on both sides of the aisle. I ask unanimous consent to insert in the record a report issued in April by the Institute for Policy Integrity entitled, "The Regulatory Red Herring: The Role of Job Impact Analyses in Environmental Policy Debates." This report found that the current rhetoric linking regulations to job losses is misleading.

Mr. Chairman, the time has come for Congress to change course and focus on reality instead of myths and inaccurate rhetoric. We need to work together to conduct legitimate oversight that is focused on creating jobs AND protecting the health and safety of American families. We do not have to choose one or the other. We can and must do both.

U.S. House of Representatives
Committee on Oversight and Government Reform
Darrell Issa (CA-49), Chairman

Continuing Oversight of Regulatory Impediments to Job Creation: Job Creators Still Buried by Red Tape

STAFF REPORT
U.S. HOUSE OF REPRESENTATIVES
112TH CONGRESS
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
JULY 19, 2012

Summary

Rules and red tape imposed by the federal government choke economic expansion and job growth, according to job creators themselves. Despite hearing this message loud and clear, regulations implemented during the Obama Administration have moved aggressively in the opposite direction—the regulatory state continues to grow, adding billions of dollars in compliance costs to businesses and job creators. These costs will ultimately be paid by consumers.

Although Obama Administration officials frequently proclaim it has issued fewer regulations than its predecessors, analysis by the Committee on Oversight and Government Reform reaches a far different conclusion: the Obama Administration has issued far more of the most expensive group of regulations with a higher overall economic cost.

The aggressive march of the regulatory state has been the subject of an ongoing, multi-year examination by the Committee. This staff report expands on earlier Committee work and documents how the regulatory state is proliferating with dire consequences for the economy, and how federal regulations continue to impede job growth and business expansion.

From 2010 to 2011, the number of final rules issued by federal agencies rose from 3,573 to 3,807—a 6.5 percent increase. During that same time frame, the number of proposed rules that will be finalized increased 18.8 percent. The published regulatory burden for 2012 could exceed $105 billion, according to the American Action Forum, headed by a former director of the Congressional Budget Office. Since January 1, the federal government has imposed $56.6 billion in compliance costs and more than 114 million annual paperwork burden hours.

Beyond this "routine" rulemaking, the number of rules with significant costs is on the rise. Analysis from the Heritage Foundation indicates that the Obama Administration issued 106 new rules in its first three years that collectively cost taxpayers more than $46 billion annually—four times the number of "major" regulations and five times the cost of rules issued in the prior administration's first three years.

Workers and job creators confirm that the oppressive regulatory red tape environment continues to hinder improvement. A recent Gallup poll found that nearly half of small businesses are not hiring because they are worried about new government regulations. Forty-four percent of likely voters say they believe regulations from the Environmental Protection Agency (EPA) hurt the economy.

Research conducted by The Winston Group found that 53 percent of voters say federal regulations are one of the major reasons the economy is struggling; 59 percent think that cutting regulations is vital to improving the economy, and 52 percent indicate that stopping new regulations would free employers to begin hiring. According to the National Federation of Independent Business, the issue of regulation and red tape is one of the single most important problems for small businesses.

These views are held not just by poll respondents or business group members—senior Obama Administration officials have spoken out on the need to actively address regulatory impacts on job creation and economic growth.

The White House has praised the Committee for pointing out deficiencies in its approach to regulations. Office of Information and Regulatory Affairs (OIRA) Administrator Cass Sunstein said "I'm especially grateful to you Mr. Chairman and to the committee as a whole for its constructive and important work on this issue over the past months. It's very significant to try to get regulation in a place where it's helpful to the economic recovery."

The OIRA Administrator has also said that expensive regulations can "increase prices, reduce wages, and increase unemployment (and hence poverty)."

OIRA's 2012 Draft Report to Congress on Federal Regulations concedes that "regulations...can place undue burdens on companies, consumers, and workers, and may cause growth and overall productivity to slow." It also notes that "evidence suggests that domestic environmental regulation has led some U.S. based multinationals to invest in other nations (especially in the domain of manufacturing), and in that sense, such regulation may have an adverse effect on domestic growth."

Finally, OIRA agrees that "regulations can also impose significant costs on businesses, potentially damaging economic competition and capital investment," if not carefully designed.

This staff report examines three types of regulations (energy and environmental, labor, and financial services), and looks at both current and new/proposed rules, their costs and impacts on job creators. It concludes that until the government addresses the overwhelming cost, scope and impact of the ever-expanding regulatory state, it is not in a position to aid job creators and spur economic recovery. Moreover, the staff report suggests that until these regulations are addressed, high unemployment and slow economic growth will persist.

Key Findings

- From 2010 to 2011, the number of final rules issued by federal agencies rose from 3,573 to 3,807—a 6.5 percent increase. During that same time frame, the number of proposed rules increased 18.8 percent.
- The published regulatory burden for 2012 could exceed $105 billion, according to the American Action Forum, headed by a former director of the Congressional Budget Office.
- Analysis from the Heritage Foundation indicates that that Obama Administration issued 106 new rules in its first three years that collectively cost taxpayers more than $46 billion annually—four times the number of "major" regulations and five times the cost of rules issued in the prior administration's first three years.
- In the past decade, the number of economically significant rules in the pipeline—those that could cost $100 million or more annually—has increased by more than 137 percent.

- Over 40 EPA regulations cited by job creators as barriers to growth and expansion in the Committee's February 2011 staff report remain a problem.

- The Boiler Maximum Achievable Control Technology (MACT) rule proposed in 2010 will cost job creators up to $15 billion in regulatory compliance costs. A similar "Utility" MACT rule would cost providers $9.6 billion annually and result in the shutdown of 25 percent of U.S. power generating units.

- EPA's proposal to regulate coal combustion residuals ("coal ash") usurps states' previous role and exerts unprecedented federal control over the utility industry. More than half of the complaints received from business and industry groups expressed concern last year, while half of the complaints are new. Compliance costs range from $78-110 billion over the next 20 years while job loss estimates range from 39,000, under a low estimate, to 316,000, under a high estimate.

- EPA's E15 ethanol rule "places consumers and vehicle manufacturers at significant risk" but is proceeding despite these concerns. EPA estimates industry compliance at $3.64 million per year but also notes that half of existing retail outlets are incompatible with the fuel, and would need to purchase and install new equipment.

- Proposed fuel economy standards will increase the cost of new vehicles by at least $4000 per vehicle while delivering less than half that amount in fuel savings and could result in the loss of as many as 220,000 automotive jobs.

- Tier 3 gasoline standards proposed by EPA would impose a total economic cost of approximately $8 billion on the industry and raise the cost of gasoline by six to nine cents per gallon for consumers.

- Rules attributed to the Dodd-Frank Act will grow from 36 implemented today to roughly 400 required under the act. Rules governing "conflict minerals" such as gold, tin, tantalum and tungsten will cost the industry $71 million per year and impact as many as 5,000 companies. The National Association of Manufacturers estimates true compliance costs for the rule to be $9-16 billion.

- A U.S. Chamber of Commerce/Business Roundtable survey notes that those impacted by a proposed "end user" rule effecting derivatives would have to sideline up to $6.7 billion in working capital and cost 100,000 jobs.

- The National Labor Relations Board's "notice posting rule" promoting unionization in the workplace will cost employers an estimated $386.4 million and in the words of one industry organization, "could set a disturbing precedent and chill job creation."

The Committee is publishing this staff report to tell the American people directly what job creators say is the true cost and impact of the Obama Administration's regulatory agenda.

TABLE OF CONTENTS

I. Introduction

At the end of the 111th Congress, the House Committee on Oversight and Government Reform commenced a major effort to discover burdensome regulations negatively affecting job growth and the economy. The Committee launched AmericanJobCreators.com and received information from job creators and business groups, which it has used to inform its efforts. As a result, the Committee issued two staff reports—*Assessing Regulatory Impediments to Job Creation*[1] and *Broken Government: How the Administrative State has Broken President Obama's Promise of Regulatory Reform,*[2]—held ten full committee hearings, nearly 20 subcommittee hearings, sent a host of letters to agencies inquiring about their regulatory policies, and passed three regulatory reform bills. President Obama's chief regulatory officer, Office of Management and Budget Office of Information and Regulatory Affairs (OIRA) Administrator Cass Sunstein, has called the Committee's work on this subject "constructive" and "important."[3] Moreover, the Committee's work has yielded gains and achieved some regulatory relief.

However, the economy continues to struggle as job growth remains stagnant, small businesses continue to be hesitant to hire, and regulations rise. Therefore, in May 2012, the Committee renewed its efforts to examine burdensome and job-stifling regulations by repeating its request to job creators and business organizations.[4]

a. Some Progress in Moderating New Regulatory Burdens

Pressure from Congress and job creators has resulted in some improvements to the burdensome regulatory state. In January 2011, President Obama issued Executive Order 13563, "Improving Regulation and Regulatory Review," to reaffirm existing cost-benefit principles and launch a "look-back" analyses of existing rules.[5] Subsequently, in July 2011, President Obama issued Executive Order 13579, "Regulation and Independent Regulatory Agencies," recommending that independent regulatory agencies also conduct look-back analyses and comply with the requirements of Executive Order 13563.[6] In May 2012, President Obama issued Executive Order 13610, "Identifying and Reducing Regulatory Burdens," to promote public participation in retrospective reviews and to order agencies to provide regular status reports to OIRA on these efforts.[7]

---

[1] H. Comm. on Oversight & Gov't Reform Preliminary Staff Report, *Assessing Regulatory Impediments to Job Creation,* 112th Cong. (2011) *available at* http://oversight.house.gov/wp-content/uploads/2012/02/Preliminary_Staff_Report__Regulatory_Impediments_to_Job_Creation.pdf.

[2] H. Comm. on Oversight & Gov't Reform Staff Report, *Broken Government: How the Administrative State has Broken President Obama's Promise of Regulatory Reform,* 112th Cong. (2011) *available at* http://oversight.house.gov/wp-content/uploads/2012/01/9.13.11_Broken_Government_Report1.pdf.

[3] *"How a Broken Process Leads to Flawed Regulations": Hearing Before the H. Comm. on Oversight & Gov't Reform*, 112th Cong. (2011) (testimony of Cass Sunstein, Administrator, Office of Information and Regulatory Affairs).

[4] *See* Letter from Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Govt. Reform to Stephen Ubl, Advanced Medical Technology Association, May 16, 2012.

[5] Exec. Order No. 13,563, 76 Fed. Reg. 3,821 (Jan. 18, 2011).

[6] Exec. Order No. 13,579, 76 Fed. Reg. 41,587 (July 11, 2011).

[7] Exec. Order No. 13,610, 77 Fed. Reg. 28,469 (May 10, 2012).

Also, in response to outside pressure, the Obama Administration reversed course on some regulatory actions that would have stifled economic growth. In January 2011, the Occupational Safety and Health Administration (OSHA) withdrew a proposal to alter workplace noise standards because the proposal would have unnecessarily required employers to purchase costly administrative or engineering controls.[8] The Committee's preliminary staff report, *Assessing Regulatory Impediments to Job Creation*,[9] documented a significant outcry from 30 business groups speaking out against this proposal. Also, in January 2011, OSHA temporarily withdrew a proposed rule to require businesses to record work-related musculoskeletal disorders (MSDs), which would have saddled employers with onerous and unnecessary reporting requirements.[10] However, this reprieve was short lived. Despite continued concern from many segments of the business community, OSHA reopened the public comment period in May 2011, with hopes of finalizing the rule.[11]

In another victory for job creators, the White House rejected an Environmental Protection Agency (EPA) draft final rule regarding ozone National Ambient Air Quality Standards on September 2, 2011. The White House agreed with the Committee and recognized that the EPA's rule would impose an oppressive burden on businesses and local governments.[12] The *New York Times* reported that this decision followed a series of meetings with industry leaders and governors of the "red" states in the Midwest and on the East Coast that would face the hardest compliance burdens of the rule.[13]

House Committee on Oversight and Government Reform hearings have also brought about regulatory victories for job creators. At a May 2011 hearing, Rep. Jason Chaffetz (R-UT) questioned a Department of the Interior (DOI) witness about the Obama Administration's recent conflicting actions on "Wild Lands" policy.[14] In reaction to this pressure, the Bureau of Land Management (BLM) Director Bob Abbey and Secretary of the Interior Ken Salazar confirmed in a June 1, 2011, memo that, pursuant to the 2011 Continuing Resolution, the BLM will not designate any lands as "Wild Lands," and outlined how DOI will work in collaboration with Members of Congress, states, tribes, and local communities to identify public lands that may be appropriate candidates for protection under the Wilderness Act.[15] Separately, in response to testimony from small business owners at a September 14, 2011, hearing, DOI reduced the number of species proposed to be covered by the Lacey Act, which helped to limit the impact on

---

[8] News Release, U.S. Department of Labor, US Department of Labor's OSHA Withdraws Proposed Interpretation on Occupational Noise (Jan. 19, 2011) *available at* http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=19119.

[9] H. Comm. on Oversight & Gov't Reform Preliminary Staff Report, *Assessing Regulatory Impediments to Job Creation,* 112th Cong. (2011) *available at* http://oversight.house.gov/wp-

[10] News Release, U.S. Department of Labor, U.S. Labor Department's OSHA Temporarily Withdraws Proposed Column for Work-Related Musculoskeletal Disorders, Reaches Out to Small Businesses (Jan. 25, 2011).

[11] News Release, U.S. Department of Labor, U.S. Labor Department's OSHA reopens public record on proposed record-keeping rule to add work-related musculoskeletal disorders column (May 16, 2011).

[12] Press Release, White House, Statement by the President on the Ozone National Ambient Air Quality Standards (Sep. 2, 2011).

[13] John M. Broder, *Re-election Strategy Is Tied to a Shift on Smog*, NY TIMES (Nov. 16, 2011).

[14] *Pain at the Pump: Policies that Suppress Domestic Production of Oil and Gas: Hearing before H. Comm. on Oversight and Gov't Reform* , 112th Cong. (2011).

[15] Press Release, U.S. Department of the Interior, Salazar Outlines Broad Opportunities for Common Ground on Wilderness (June 1, 2011).

small businesses in the reptile industry.[16] Additionally, the Department of Agriculture scrapped the most controversial parts of its proposed "GIPSA rule" by issuing a final rule that was more aligned with Congressional intent.[17] Finally, in December 2011, shortly after a hearing in the Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending highlighting the high costs of the Department of Transportation's (DOT) proposed Hours-of-Service rule,[18] DOT altered the final rule to cut the costs nearly in half.[19] This was a positive development; however, industries affected by the rule assert it remains flawed and have filed suit to challenge it.[20]

Also in response to the efforts of this Committee, the Securities and Exchange Commission (SEC) is poised to make a very important historic change in its regulatory policy. Over the last two years, significant and inexcusable deficiencies in the SEC's cost-benefit analysis have drawn strong criticism from the U.S. Court of Appeals for the District of Columbia Circuit,[21] this Committee,[22] the Office of Information and Regulatory Affairs,[23] stakeholders,[24] and scholarly commentators.[25] Therefore, on March 16, 2012, the SEC's Office of the General Counsel and the Division of Risk, Strategy, and Financial Innovation circulated a memorandum entitled Current Guidance on Economic Analysis in SEC Rulemakings ("Current Guidance").[26] The Current Guidance contains a set of clear procedural directives to all SEC rulewriting staff, and the Committee is hopeful the Current Guidance will help ensure proposed and final Commission rules are subjected to rigorous economic analysis. In an effort to inform SEC staff of the finality and mandatory nature of the Current Guidance, the Commission has posted the document on its website.[27] If implemented properly, the Current Guidance has the potential to significantly improve the process by which the SEC regulates U.S. capital markets.

Legislation has also been enacted to remedy some burdensome policies. On April 14, 2011, the President signed the Comprehensive 1099 Taxpayer Protection and Repayment of

---

[16] News Release, U.S. Fish & Wildlife Service, Salazar Announces Ban on Importation and Interstate Transportation of Four Giant Snakes that Threaten Everglades (Jan. 17, 2012).
[17] Capital Update, *New GIPSA Rule Issued*, National Pork Producers Council (Dec. 9, 2011).
[18] *The Price of Uncertainty: How Much Could DOT's Proposed Billion Dollar Service Rule Cost Consumers this Holiday Season?: Hearing before Subcomm. on Regulatory Affairs, Stimulus Oversight and Gov't Spending of the H. Comm. on Oversight and Gov't Reform* , 112th Cong. (2011).
[19] News Release, U.S. Department of Transportation Takes Action to Ensure Truck Driver Rest Time and Improve Safety Behind the Wheel (Dec. 22, 2011).
[20] Trucking Info Staff, *HOS Court Battle Starts Next Month*, Truckinginfo.com (June 19, 2012).
[21] *See, e.g., Business Roundtable v. SEC*, 647 F. 3d 1144, 1148-49 (D.C. Cir. 2011)
[22] *See generally The SEC's Aversion to Cost-Benefit Analysis: Hearing Before the Subcomm. on TARP, Financial Services and Bailouts of Public and Private Programs of the H. Comm. on Oversight and Gov't Reform*, 112th Cong. (2012) [hereinafter *Hearing I*].
[23] Memorandum from Cass R. Sunstein, Administrator, Office of Information and Regulatory Affairs, July 22, 2011.
[24] Exec. Order No. 13,563, 76 Fed. Reg. 3,821 (Jan. 21, 2011).
[25] *See, e.g., Hearing I, supra* note 2 (statements of Dr. Henry Manne, Dean Emeritus, George Mason University School of Law, and J.W. Verrett, Assistant Professor, George Mason University School of Law).
[26] Memorandum from RSFI and OGC to Staff of the Rulewriting Divisions and Offices (Mar. 16, 2012), *available at* http://www.sec.gov/divisions/riskfin/rsfi_guidance_econ_analy_secrulemaking.pdf.
[27] *Id.*

Exchange Subsidy Overpayments Act of 2011,[28] repealing the Patient Protection and Affordable Care Act provision that expanded Form 1099 information reporting requirements for payments of $600 or more to corporations. A number of trade associations representing a wide range of industries reported this looming rule as a concern in the Committee's preliminary staff report.[29] Moreover, on November 21, 2011, Obama signed into law the 3 Percent Withholding Repeal and Job Creation Act.[30] The law permanently repeals the requirement that federal, state, and large local governments begin withholding three percent of each payment of $10,000 or more to a contractor after January 1, 2013, which was also a substantial concern to groups as discussed in the Committee's preliminary staff report.

Unfortunately, the Obama Administration has not rolled back all of its problematic rules on its own volition. Indeed, the judicial branch has taken an active role revoking or delaying overreaching regulations and agency actions. On March 23, 2011, the U.S. District Court for the District of Colombia overturned an EPA decision to revoke a mining permit in West Virginia because the court found EPA's action was "contrary to the language, structure, and legislative history of section 404 [of the Clean Water Act]."[31] On July 23, 2011, the U.S. Court of Appeals for the District of Columbia tossed out the Securities and Exchange Commission's (SEC) proxy access rule, ruling that the SEC did not adequately consider the rule's effect on companies.[32] Additionally, on September 6, 2011, the SEC announced that it would not seek a rehearing or Supreme Court review and would study the appeals court decision before pursuing another version of the rule.[33] On April 13, 2012, the U.S. District Court for the District of Colombia delayed implementation of a notice posting rule because the U.S. District Court for the District of South Carolina found the National Labor Relations Board (NLRB) "lack[ed] authority . . . to promulgate the rule."[34] However, an earlier federal court decision ruled in favor of the NLRB. Because appeals are pending to resolve the jurisdictional split, the fate of the rule remains uncertain.[35] Finally, on May 14, 2012, the U.S. District Court for the District of Columbia invalidated a NLRB rule intended to speed up union elections on the basis that the NLRB lacked the quorum required under the National Labor Relations Act when it issued the rule.[36] The fate of this rule is also uncertain as the NLRB could reissue it with a quorum.

---

[28] H.R. 4--112th Congress: Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011. (2011). In GovTrack.us (database of federal legislation). Retrieved June 20, 2012, from http://www.govtrack.us/congress/bills/112/hr4

[29] H. Comm. on Oversight & Gov't Reform Preliminary Staff Report, *Assessing Regulatory Impediments to Job Creation,* 112th Cong. (2011) *available at* http://oversight.house.gov/wp-content/uploads/2012/02/Preliminary_Staff_Report__Regulatory_Impediments_to_Job_Creation.pdf.

[30] H.R. 674--112th Congress: 3% Withholding Repeal and Job Creation Act. (2011). In GovTrack.us (database of federal legislation). Retrieved June 20, 2012, from http://www.govtrack.us/congress/bills/112/hr674

[31] Alan Kovski, *Federal Court Strikes Down EPA Decision To Retroactively Veto Dredge-and-Fill Permit*, BNA (Mar. 26, 2012) *available at* http://www.bna.com/federal-court-strikes-n12884908597/.

[32] *Business Roundtable and Chamber of Commerce of the United States v. SEC*, No. 10-1305 (D.C. Cir. July 22, 2011).

[33] Press Release, U.S. Securities and Exchange Commission, Statement by SEC Chairman Mary L. Schapiro on Proxy Access Litigation (Sep. 6, 2011).

[34] *Chamber of Commerce of the United States and South Carolina Chamber of Commerce v. National Labor Relations Board*, Order, No. 2: 11-cv-02516-DCN (S.C. Dist. Ct. Apr. 13, 2012).

[35] Andrew Harris and William McQuillen, *NLRB Union Poster Rule Delayed While Challenge Proceeds*, BLOOMBERG NEWS (April 18, 2012).

[36] *Chamber of Commerce of the United States and Coalition for a Democratic Workplace v. National Labor Relations Board*, Memorandum Opinion, No. 11-2262 (JEB) (D.C. Dist. Ct. May 14, 2012).

b. Regulations Continue to Plague the Economy

Notwithstanding the aforementioned positive developments, burdensome federal regulations continue to drag down our economy. The national unemployment rate currently stands at a staggering 8.2 percent,[37] and the regulatory environment continues to hinder its improvement. Indeed, a recent Gallup poll found that nearly half of small businesses are not hiring because they are "worried about new government regulations,"[38] and 44 percent of likely voters believe EPA regulations and actions hurt the economy.[39] According to the National Federation of Independent Business, "regulations and red tape" is one of the "single most important problem[s]" for small business.[40] Moreover, 53 percent of registered voters say "federal regulations are one of the major reasons the economy is struggling," 59 percent think that cutting regulations is vital to improving the economy, and 52 percent believe that stopping new government regulations would "free employers to begin hiring,"[41]

Even the Obama Administration concedes that regulations can negatively affect job creation and investment. OIRA Administrator Sunstein has said that expensive regulations can "increase prices, reduce wages, and increase unemployment (and hence poverty)."[42] OIRA's 2012 Draft Report to Congress on Federal Regulations concedes that "regulations . . . can place undue burdens on companies, consumers, and workers, and may cause growth and overall productivity to slow."[43] In the draft report, OIRA also admits that "evidence suggests that domestic environmental regulation has led some U.S. based multinationals to invest in other nations (especially in the domain of manufacturing), and in that sense, such regulation may have an adverse effect on domestic growth."[44] Finally, OIRA agrees that "regulations can also impose significant costs on businesses, potentially damaging economic competition and capital investment," if not carefully designed.[45]

Despite acknowledgement that regulations can impede the economy, the federal regulatory state under the Obama Administration continues to grow. From 2010 to 2011, the number of final rules issued by federal agencies rose from 3,573 to 3,807—a 6.5 percent

---

[37] U.S. Dept. of Labor, Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey, date extracted July 9, 2012.
[38] Dennis Jacobe, Health Costs, Gov't Regulations Curb Small Business Hiring, Gallup, Feb. 15, 2012 *available at* http://www.gallup.com/poll/152654/health-costs-gov-regulations-curb-small-business-hiring.aspx.
[39] 44% Think EPA Actions Hurt The Economy, Rasmussen Reports, Apr. 10, 1012 *available at* http://www.rasmussenreports.com/public_content/politics/current_events/environment_energy/44_think_epa_actions_hurt_the_economy.
[40] William C. Dunkelberg and Holly Wade, NFIB Small Business Economic Trends, NFIB Research Foundation (June 2012).
[41] Jake Sherman and Seung Min Kim, *Dems face month of perilous votes*, Politico (July 8, 2012).
[42] Robert W. Hahn & Cass R. Sunstein, *A New Executive Order for Improving Federal Regulation? Deeper and Wider Cost-Benefit Analysis*, 150 U. PA. L. REV. 1489 (2002).
[43] U.S. Office of Mgmt. & Budget, Office of Information and Regulatory Affairs, *Draft 2012 Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities* (March 2012).
[44] *Id.*
[45] *Id.*

increase.[46] During the same time frame, the number of proposed rules increased 18.8 percent.[47] According to the American Action Forum, headed by a former director of the Congressional Budget Office, the published regulatory burden for 2012 could exceed $105 billion.[48] Moreover, since the beginning of 2012, the federal government has imposed $56.6 billion in compliance costs and more than 114 million annual paperwork burden hours.[49]

The most costly rules are also on the rise. The Heritage Foundation found that the Obama Administration issued 106 new major rules in its first three years that collectively cost taxpayers more than $46 billion annually.[50] To compare, this is nearly four times the *number* of major regulations and more than five times the *cost* of major rules issued by the George W. Bush Administration during its first three years.[51] In the past decade, the number of economically significant rules in the pipeline—those that could cost $100 million or more annually—has increased by more than 137 percent, rising from 56 in the spring of 2001 to 133 in the fall of 2011.[52] Accordingly, claims by the Obama Administration that it has issued fewer regulations than the George W. Bush Administration are clearly misleading. [53] While the Obama Administration may have issued fewer total regulations, they have issued far more of the most expensive regulations at a higher cost.

In September 2011, President Obama declared that "we should have no more regulation than the health, safety and security of the American people require."[54] Yet, this staff report outlines many rules that arguably have no bearing on the health, safety, or security of the American people. Instead, they are gifts to the President's environmental and union allies.

To the detriment of job creators, the President may be under the impression that he has achieved his regulatory goals since he recently declared "the private sector is doing fine."[55] Yet, the input the Committee received gives no such indication. As the Non-Ferrous Founders' Society (NFFS) observed:

> [T]he more things change in Washington, the more they stay the same. Several of the rules that NFFS and other industry groups took issue with in January of 2011 were withdrawn, only later to be re-proposed, reintroduced, or remanded for further consideration. Others continue to languish in legislative limbo pending the incorporation of and/or response to stakeholder comments, or awaiting additional cost or regulatory

---

[46] Wayne Crews, Ten Thousand Commandments: An Annual Snapshot of the Federal Regulatory State, Competitive Enterprise Institute (2012).
[47] *Id.*
[48] Sam Batkins, The Week in Regulation: July 9-13, American Action Forum, July 16, 2012 *available at* http://americanactionforum.org/topic/week-regulation-july-9-13.
[49] *Id.*
[50] James Gattuso and Diane Katz, Red Tap Rising: Obama-Era Regulation at the Three-Year Mark, The Heritage Foundation (Mar. 13, 2012).
[51] *Id.*
[52] *Id.*
[53] *See* Josh Hicks, *Who has the better regulatory record—Obama or Bush?*, The Washington Post, Mar. 27, 2012.
[54] Office of the Press Secretary, The White House, Address by the President to a Joint Session of Congress (Sept. 2011).
[55] Devin Dwyer, *Obama Says 'Private Sector Doing Fine,' Calls for Aid to States*, ABC News (June 8, 2012)

impact analyses. ... Meanwhile, a plethora of new rules and regulations from agencies all across the government have been proposed.[56]

As this staff report documents, a host of other business groups echo NFFS's sentiment that the regulatory state is out of control and that federal government regulations continue to negatively affect job growth and the economy. According to the Associated Builders and Contractors, "the administration's efforts to address overregulation have largely failed to offer tangible relief to construction business owners."[57] As previously stated, not only do many of the regulations identified in the Committee's preliminary staff report remain a problem, this staff report identifies additional problematic regulations.

II. Regulations That Remain Problematic for Job Creators

This section discusses several regulations that were identified in the Committee's February 2011 preliminary staff report, which remain a concern to multiple organizations. While the focus is on energy, environmental, labor, and financial services regulations, many other regulations previously brought to the Committee's attention also remain a concern. The attached appendix identifies all the regulations and policies that job creators continue to believe are problematic.

a. Energy and Environmental Regulations

Similar to the Committee's preliminary staff report, respondents overwhelmingly identified the EPA as the agency imposing the heaviest regulatory burden. Over 40 EPA regulations that were a problem for job creators in February 2011 remain a problem. In particular, Boiler Maximum Achievable Control Technology (MACT), numeric water quality standards, Coal Combustion Residuals, the E15 ethanol rule, fuel economy standards, greenhouse gas regulations, the Lead Renovation, Repair and Painting rule, National Ambient Air Quality Standards (NAAQS) for particulate matter, and Utility MACT received the most complaints. The following section provides an update on the status of these rules.

i. EPA Boiler MACT

Job creators continue to identify EPA's Boiler MACT regulation as a significant threat to both existing jobs and job creation. EPA proposed the rule in June 2010, issued a final rule in March 2011, and on the same day, in an unprecedented action, also issued a notice of reconsideration.[58] On May 18, 2012, EPA submitted a revised rule to the Office of Management

[56] Letter from James L. Mallory, Executive Director, Non-Ferrous Founders' Society to Chairman Darrell Issa, H. Comm. on Oversight & Gov't Reform, June 1, 2012 (on file with author).
[57] Letter from Geoffrey Burr, Vice President, Federal Affairs, Associated Builders and Contractors, Inc. to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov't. Reform, May 31, 2012 (on file with author).
[58] Environmental Protection Agency, Emissions Standards for Boilers and Process Heaters and Commercial / Industrial Solid Waste Incinerators, Regulatory Actions, *available at* http://epa.gov/airquality/combustion/actions.html.

and Budget signaling that the reconsidered rule should be finalized within 90 days.[59] According to EPA, the agency will not enforce a new Boiler MACT standard until the revised rule is finalized.

While industry groups acknowledge that EPA has made Boiler MACT less stringent than the final rule published in March 2011, the costs and burdens of the reconsidered rule are still substantial. According to a study performed by the Council of Industrial Boiler Owners (CIBO), job creators will be on the hook for up to $15 billion in regulatory compliance costs under the reconsidered rule.[60] The Anthracite Region Independent Power Producers Association (ARIPPA), the trade association that represents electric generating plants that use stockpiled coal refuse, sees Boiler MACT as a clear threat to existing jobs, stating, "the emission standards identified in the proposed Boiler MACT rule are not reflective of achievable emissions for ARIPPA plants."[61] Furthermore, CF Industries informed the Committee that "the primary concern with the rule . . . is the proposed timetable for boiler inspections, which would interrupt established inspection schedules, leading to extended production outages."[62] Accordingly, Boiler MACT continues to be a rule whose uncertainty and high cost cause concerns amongst job creators.

ii. EPA Numeric Water Quality Standards: Chesapeake Bay Total Maximum Daily Load (TMDL) and Florida Numeric Nutrient Criteria

In late 2010, the EPA established the Chesapeake Bay Total Maximum Daily Load (TMDL) ostensibly to restore clean water to the Bay and surrounding waters.[63] The TMDL, which is required under the Clean Water Act, sets forth pollution limits for nitrogen, phosphorous, and sediment across Delaware, Maryland, New York, Pennsylvania, Virginia, West Virginia and the District of Columbia.[64] It specifically requires a 25 percent reduction in nitrogen, a 24 percent reduction in phosphorus, and a 20 percent reduction in sediment.[65]

Similarly, the EPA has begun to impose federal numeric nutrient water quality standards for the state of Florida – one rule for inland water bodies, published December 6, 2010, and one for estuaries, coastal waters, and flowing waters, scheduled to be proposed in July 2012.[66] These

---

[59] Jeremy P. Jacobs, *EPA Sends Boiler Rules to White House*, Greenwire, May 18, 2012 *available at* http://www.eenews.net/Greenwire/2012/05/18/archive/3?terms=boiler+mact.

[60] Letter from Jay Timmons, President and CEO, National Association of Manufacturers to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov't Reform, June 4, 2012 (on file with author).

[61] Letter from Jeff McNelly, Executive Director, ARIPPA to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov't Reform, May 31, 2012 (on file with author).

[62] Letter from Stephen R. Wilson, Chairman & CEO, CF Industries to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov't Reform, June 15, 2012 (on file with author).

[63] U.S. Environmental Protection Agency, Chesapeake Bay Total Maximum Daily Load for Nitrogen, Phosphorous and Sediment (Dec. 29, 2010), *available at* http://www.epa.gov/reg3wapd/pdf/pdf_chesbay/FinalBayTMDL/CBayFinalTMDLExecSumSection1through3_final.pdf.

[64] *Id.*

[65] *Id.*

[66] U.S. Environmental Protection Agency, Federal Water Quality Standards for the State of Florida (last updated June 8, 2012), *available at* http://water.epa.gov/lawsregs/rulesregs/florida_index.cfm.

standards are pursuant to a consent decree entered into with the Florida Wildlife Federation (FWF) to settle a 2008 lawsuit in which FWF argued that the State's own narrative water quality standards were insufficient and that EPA, therefore, had an obligation to promulgate standards itself.[67] The Florida Department of Environmental Protection (FDEP) has since petitioned the EPA to withdraw its rulemakings, as well as proposed to undertake its own rulemaking for nutrient criteria for state waters,[68] which it formally submitted for EPA approval on June 13, 2012.[69]

The Committee received a number of responses voicing concerns about these new water quality criteria, both in the Chesapeake Bay region and the extension of those efforts in states like Florida. With respect to the Chesapeake Bay TMDL, both the Fertilizer Institute (TFI) and the Agricultural Retailers Association (ARA) are fundamentally concerned that the model upon which the nutrient water quality standards is built is inaccurate and significantly flawed.[70] As a result, EPA has adopted unachievable goals, set "impossibly high expectations" for water quality in the region, and overlooked the "real cost of achieving the goals it has set."[71] Moreover, respondents argued that the process by which these criteria were arrived at usurped state authority, lacked transparency and a meaningful public review.[72] As TFI pointed out, EPA's substitution of federal water quality standards for state standards usurps states' authority to regulate the waters within their own borders.[73]

Aside from the procedural issues, respondents are also apprehensive of the negative impact the TMDL standards will have on the area's residents, communities, and economy. Responsible Industry for a Sound Environment (RISE) asserts that "the TMDL has the potential to arbitrarily take away people's ability to maintain their home property values and surroundings through unnecessary restrictions on pesticide and fertilizer products."[74] Data show that these restrictions will not even be meaningful to Bay restoration efforts.[75] In addition to making farming economically unviable for local farmers,[76] the TMDL "will have a significant economic

---

[67] *Id.*

[68] *Id.*

[69] Letter from Thomas M. Beason, General Counsel, Florida Department of Environmental Protection, to Gwendolyn Keyes Fleming, Region 4 Administrator, Environmental Protection Agency (June 13, 2012), *available at* http://www.dep.state.fl.us/water/wqssp/docs/cert_ltr_epa_numeric_nutrient_standards-0612.pdf.

[70] Letter from Ford B. West, President, The Fertilizer Institute, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform (June 5, 2012) (on file with author); Letter from Darren Coppock, President and CEO, Agricultural Retailers Association, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform (June 7, 2012) (on file with author).

[71] Letter from Darren Coppock, President and CEO, Agricultural Retailers Association, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform 8 (June 7, 2012) (on file with author).

[72] *Id.*; Letter from Aaron Hobbs, President, Responsible Industry for a Sound Environment, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform (June 1, 2012) (on file with author); Letter from Ford B. West, President, The Fertilizer Institute, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform (June 5, 2012) (on file with author).

[73] Letter from Ford B. West, President, The Fertilizer Institute, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform (June 5, 2012) (on file with author).

[74] Letter from Aaron Hobbs, President, Responsible Industry for a Sound Environment, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform 4 (June 1, 2012) (on file with author).

[75] *Id.*

[76] Letter from Ford B. West, President, The Fertilizer Institute, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform (June 5, 2012) (on file with author).

impact on the numerous lawn and landscape companies . . . in the region, golf courses that need products to maintain playing surfaces, and homeowners whose property values will suffer...."[77] The TMDL will also result in major costs to state and local governments, which will likely be passed on to the individual taxpayer.[78]

EPA's Numeric Nutrient Criteria (NNC) for the state of Florida will also have harmful consequences. TFI maintains that EPA's NNC "will severely impact the ability of Florida's phosphate fertilizer mining and production facilities to obtain and/or renew stormwater and wastewater permits[,] which could lead to reduced availability of critical nutrient inputs for America's farmers. In addition, the rule will force agricultural stakeholders to take measures beyond reasonable and economically viable levels."[79] Florida has recently taken measures to develop and ratify its own State-derived water quality standards, which TFI urges EPA to adopt.[80]

iii. EPA Coal Combustion Residuals

EPA is expected to finalize a proposed rule to regulate coal combustion residuals (CCRs), often referred to as "coal ash," by the end of this year.[81] Broached by the EPA in June 2010, the finalized rule will usurp the states' previous role and exert unprecedented federal control over the utility industry's handling of CCRs through the Resource Conservation and Recovery Act (RCRA). For the past two years, EPA has considered whether to re-classify CCRs as a hazardous material under subtitle C of RCRA, or alternatively, as a nonhazardous solid waste with specific restrictions on the disposal of CCRs under subtitle D of RCRA.[82]

Both classifications have initiated widespread industry concern regarding the production and commercial value of CCRs with 20 organizations reporting the issue as a priority to the Committee.[83] In this year's staff report, more than half of the complaints received were from organizations that expressed concern about the CCR regulation last year, while half of the complaints are new.[84]

At the crux of EPA's proposal, coal-fired power plants will be forced to adjust core operations or switch to alternatives fuels. Adjusting operations is an expensive avenue likely to result in power plant closures. The Utility Solid Waste Activities Group (USWAG) estimated the subtitle C option will cost the utility industry's ash management as much as $78 billion to $110 billion over the next 20 years.[85] Even under subtitle D classification, the USWAG

[77] Letter from Aaron Hobbs, President, Responsible Industry for a Sound Environment, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform (June 1, 2012) (on file with author).
[78] Letter from Ford B. West, President, The Fertilizer Institute, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform (June 5, 2012) (on file with author).
[79] Letter from Ford B. West, President, The Fertilizer Institute, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform 2 (June 5, 2012) (on file with author).
[80] *Id.*
[81] 75 Fed. Reg. 35127 (proposed June 21, 2010) (to be codified at 40 C.F.R. pt. 257, 261, 264 et al.).
[82] *Id.*
[83] See Appendix I.
[84] *Id.*
[85] Letter from Thomas R. Kuhn, President, Edison Electric Institute, to Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, 2-3 (June 1, 2012) (on file with author).

estimated $22 billion to $34 billion in increased costs over the next 20 years. As such, it is no surprise that ARIPPA, a Pennsylvania-based association representing electric power plants, wrote to the Committee expressing that "the ash management costs would exceed the existing revenue stream of the plants resulting in the plants operating at a loss, meaning the plants would not continue to operate." [86] ARIPPA's concern is substantiated by another USWAG estimate that heightened costs will result in net job losses of 39,000 to 64,700 jobs under subtitle D, or even worse – 183,900 to 316,000 utility sector jobs under subtitle C.[87]

Switching to alternative fuels, however, will restrain a lucrative market for the use of CCRs in products such as cement, drywall, soil conditioners, and even carpet. Indeed, the Carpet and Rug Institute noted that "coal fly ash is used in carpet backing for several beneficial uses [and] stricter regulation of coal combustion byproducts will increase manufacturing costs, provide a lesser degree of protection to public health and the environment and potentially sacrifice important jobs."[88] Moreover, the transportation sector emphasized that "every element of the transportation construction process, from the suppliers of concrete to the contractors who handle construction materials would be affected by the stigma of a "hazardous waste" label for coal ash."[89] Specifically, an American Road and Transportation Builders' Association (ARTBA) study found that the nation's transportation infrastructure would suffer an annual $5.23 billion increase in direct costs to build roads, runways and bridges.[90] Over the next 20 years, the ARTBA projects this increase would mount to over $104.6 billion in additional transportation costs.[91] Such heightened production costs will only get passed onto consumers through higher prices and the loss of jobs.

It is also believed that EPA's promulgation of this discretionary rulemaking was unnecessary. On at least four previous occasions the EPA determined that CCRs did not warrant re-classification as a hazardous waste.[92] In addition, 30 years of scientific study, including that of the National Academy of Sciences, has concluded there is no basis for the hazardous waste designation.[93] Thus, with no new scientific studies on CCRs and widespread industry concern, now does not seem the time for the Administration to finalize the proposed rule.

---

[86] Letter from Jeff A. McNelly, Executive Director, ARIPPA, to Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, 4 (May 31, 2012) (on file with author).
[87] Letter from Thomas R. Kuhn, President, Edison Electric Institute, to Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, 2-3 (June 1, 2012) (on file with author).
[88] Letter from Werner Braun, President, Carpet & Rug Institute, to Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, 3-4 (June 8, 2012) (on file with author).
[89] Letter from T. Peter Ruane, President & Chief Executive Officer, American Road & Transportation Builders Association, to Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, 11-13 (June 1, 2012) (on file with author).
[90] *Id.*
[91] *Id.*
[92] Letter from Thomas R. Kuhn, President, Edison Electric Institute, to Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, 2-3 (June 1, 2012) (on file with author).
[93] *Id.*

iv. EPA E15 Ethanol Rule

On June 15, 2012, EPA authorized the first set of companies to begin introducing E15 into the marketplace.[94] This rulemaking signified EPA's final step in the implementation of two partial waivers that increased the amount of ethanol in gasoline from 10 percent (E10) to 15 percent (E15) for model year (MY) 2001 and newer light-duty motor vehicles.[95] During the past two years, over a dozen industry organizations submitted letters to the Committee expressing grave concerns that the agency's authorization was premature.[96]

At the outset, industry organizations are concerned about the E15 "partial" waivers because "this is the first time that EPA has allowed the use of a fuel that is not fully compatible with the entire existing fleet."[97] When granting the waivers, EPA excluded vehicles predating MY 2001, motorcycles, heavy-duty vehicles and non-road engines because E15 will damage those engines.[98] This exclusion has raised legal questions over EPA's compliance with Sec. 211(f)(4) of the Clean Air Act (CAA).[99] Under CAA, EPA must determine if a fuel or fuel additive will cause or contribute to the failure of *any* emission control device or system; however, EPA has conceded that E15 will cause damage to engines in vehicles manufactured before 2001.[100] As such, industry organizations initiated litigation against EPA.[101] Oral arguments took place before the U.S. Court of Appeals for the D.C. Circuit on April 17, 2012; the Court's decision remains pending.[102]

Aside from the legal issues, respondents believe that as a practical matter, EPA failed to conduct proper research of the effects of E15. Initially, EPA and the Department of Energy (DOE) worked with the Coordinating Research Council (CRC) to conduct a multi-year series of tests.[103] CRC had received $40 million in federal funding for the testing, but for reasons unknown, EPA relied on a 2008 DOE study and hastily granted the waivers before the CRC was able to publish their results.[104] In May 2012, CRC released results from the two-year study that corroborated the industry's concern that EPA acted prematurely and should have waited for the CRC testing to conclude.[105] Of utmost concern, the CRC study found that E15 caused engine failure in 25 percent of the vehicles tested – representing about five million vehicles on U.S. roads.[106] In addition, the CRC study identified other mechanical failures in vehicles EPA

---

[94] EPA, *E15 (a blend of gasoline and ethanol), available at* http://www.epa.gov/otaq/regs/fuels/additive/e15/ (last visited July 2, 2012).
[95] 76 Fed. Reg. 4,662 (Jan. 26, 2011).
[96] See Appendix I.
[97] Letter from Charles T. Drevna, President, American Fuel & Petrochemical Manufacturers, to Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, 2 (June 5, 2012) (on file with author).
[98] *Id.*
[99] *Id.*
[100] *Id.*
[101] Letter from Thomas J. Lehner, Vice President, Gov't & Indus. Affairs, Toyota Motor North America, Inc., to Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, 3 (Jan. 10, 2010) (on file with author).
[102] *Grocery Manufacturers Ass'n v. EPA*, No. 11-1072 (D.C. Cir. oral arguments Apr. 17, 2012).
[103] Letter from Mitch Bainwol, President & CEO, Alliance of Automobile Manufacturers, to Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, 2 (June 1, 2012) (on file with author).
[104] *Id.*
[105] *Id.*
[106] *Id.*

approved for E15 usage, including the potential loss of compression and power, diminished vehicle performance, poor fuel economy and misfires.[107]

EPA's partial waiver will also cause confusion for consumers at the gas pump. According to the Association of Fuel and Petroleum Manufacturers, "[b]ecause E15 would theoretically be sold under the same canopy as regular gasoline, there is a high likelihood of consumer misfueling," in other words using the wrong fuel for their vehicle.[108] To mitigate the potential misfueling of vehicles, engines, and equipment excluded from the E15 waivers, EPA simultaneously issued a final rule in June 2011, that requires a warning label to notify consumers about the vehicles approved for E15.[109] This "mitigation rule," however, may not be sufficient. Specifically, the American Fuel and Petrochemical Manufacturers emphasized that, "the mitigation rule, which is nothing more than a cautionary label posted on the gasoline pump, is a woefully ineffective warning device."[110]

Some organizations contend that EPA's push for E15 "places consumers and vehicle manufacturers at significant risk."[111] According to the Association of Global Automakers, "[v]ehicle manufacturers have serious concerns about the impact of misfueling on our customers due to potential product damage, emissions increases, and safety problems, as well as the liabilities these consequences may create for auto manufacturers."[112] In particular, studies have shown that ethanol levels exceeding E10 may cause engine damage in vehicles and non-road engines such as chainsaws, lawnmowers, boats, and snowmobiles.[113] These repairs are costly, and even the most likely repair of a cylinder head replacement will cost $2,000 to $4,000 for a single cylinder head engine and $4,000 to $8,000 for a V-type engine.[114] As a result, automobile manufacturers, such as Toyota, have adopted policies that deny warranty coverage for issues related to the misuse of fuels exceeding ten percent ethanol volume.[115]

In addition to costly repair bills, the introduction of E15 will increase industry compliance costs that may get shifted to consumers through increased fuel prices. In particular, EPA has estimated the cost of industry compliance with the mitigation rule at $3.64 million a year.[116] Moreover, the American Petroleum Institute, an association representing over 500

---

[107] *Id.*
[108] Letter from Charles T. Drevna, President, American Fuel & Petrochemical Manufacturers, to Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, 2 (June 5, 2012) (on file with author).
[109] 76 Fed. Reg. 44,406 (July 25, 2011).
[110] Letter from Charles T. Drevna, President, American Fuel & Petrochemical Manufacturers, to Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, 3 (June 5, 2012) (on file with author).
[111] Letter from Michael J. Stanton, President & CEO, Association of Global Automakers, to Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, 2 (June 5, 2012) (on file with author).
[112] *Id.*
[113] Letter from Charles T. Drevna, President, American Fuel & Petrochemical Manufacturers, to Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, 2 (June 5, 2012) (on file with author).
[114] Letter from Mitch Bainwol, President & CEO, Alliance of Automobile Manufacturers, to Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, 3 (June 1, 2012) (on file with author).
[115] Letter from Thomas J. Lehner, Vice President, Gov't & Indus. Affairs, Toyota Motor North America, Inc., to Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, 3 (Jan. 10, 2010) (on file with author).
[116] *Regulatory Announcement: EPA Finalizes Regulations to Mitigate the Potential for Misfueling of Vehicles, Engines and Equipment with E15*, U.S. ENVIRONMENTAL PROTECTION AGENCY (June 2011), *available at* http://www.epa.gov/otaq/regs/fuels/additive/e15/420f11023.pdf.

companies involved in all aspects of the oil and natural gas industry, recently completed a review of studies on service station equipment and reported that half of the existing retail outlets are incompatible with E15.[117] Aside from increased costs, ethanol blends have proven to burn at higher temperatures and to corrode faster, which may result in serious physical injury to persons using outdoor power equipment.[118]

v. DOT and EPA Fuel Economy Standards

On May 19, 2009, the White House announced the "Historic Agreement" between the auto manufacturers, labor unions, the State of California, the Department of Transportation (DOT), and the EPA to set fuel economy standards for MY2012–2016.[119] On July 29, 2011, President Obama announced an agreement to set fuel economy standards for MY 2017-2025.[120] On November 16, 2011, DOT and EPA officially announced the proposed rule for MY 2017-2025 fuel economy standards.[121]

These higher fuel economy standards could generate significant negative impacts on consumers and job creators. If consumers do not buy the vehicles that manufacturers are forced to produce, sales will fall, production will slow, and manufacturers and dealers will be forced to eliminate jobs. According to Ward's Automotive survey of 1,100 engineers, in order to meet these standards "most cars will have to be smaller, more expensive and less varied than they are today."[122] Moreover, it is unlikely "the goals can be met without sacrifices in vehicle cost, size, safety and choice."[123] Indeed, the Defour Group has found vehicle cost increases associated with the proposal could depress light vehicle sales by 25 percent and result in the loss of as many as 220,000 automotive jobs.[124] According to the Center for Automotive Research (CAR), compliance with these higher standards will cost American car buyers between $4,190 and $6,435 per vehicle while delivering a lifetime fuel savings of only $1,690 to $2,693.[125]

Another concern is the MY 2017-2025 standards are being issued three years ahead of schedule and without any compelling reason to act under such an accelerated timeline. Mazda is concerned about the extended period of time covered by the rules. Mazda states, "[t]he extended time frame creates a critical need for the regulations to be thoroughly re-examined, and mid-

[117] Letter from Marty Durbin, Executive Vice President, American Petroleum Institute, to Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, 2 (June 6, 2012) (on file with author).
[118] Letter from Mitch Bainwol, President & CEO, Alliance of Automobile Manufacturers, to Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, 3 (June 1, 2012) (on file with author).
[119] Light-Duty Greenhouse Gas Standards and Corporate Average Fuel Economy Standards, Final Rule, 75 Fed. Reg. 25324 (May 7, 2010).
[120] Press Release, White House, *President Obama Announces Historic 54.5 mpg Fuel Efficiency Standard,* (July 29, 2011)
[121] 76 Fed. Reg. 74,854 (December 1, 2011).
[122] Peter Valdes-Dapena, *Auto engineers: Mileage rules will hurt safety,* CNNMoney, (August 3, 2011) (Available at http://money.cnn.com/2011/08/03/autos/wards_auto_CAFE_engineer_survey/ -).
[123] Peter Valdes-Dapena, *Auto engineers: Mileage rules will hurt safety,* CNNMoney, (August 3, 2011) (Available at http://money.cnn.com/2011/08/03/autos/wards_auto_CAFE_engineer_survey/ -).
[124] Defour Group LLC, *STUDY: 56 MPG Standard by MY2025 to Cost 220,000 jobs,* (July 7, 2011) (Available at http://www.defourgroup.com).
[125] Jay Baron, Sean McAlinden, Greg Schroeder, & Yen Chen, *The U.S. Automotive Market and Industry in 2025,* The Center for Automotive Research, (June 2011) (Available at http://www.cargroup.org/pdfs/ami.pdf).

course corrections made, at regular intervals. The impact . . . on the auto industry, and particularly on smaller automakers such as Mazda, cannot be overstated."[126] The Alliance of Automobile Manufacturers also cites the long lead time for this rule as problematic: "[a]ny future regulation that encompasses long lead-times, significant potential regulatory burden/cost, and/or uncertain consumer acceptance of new and more costly technologies should also include a mechanism for midpoint adjustments."[127]

Additionally, on August 9, 2011, President Obama announced new fuel economy standards for heavy duty vehicles for MY 2014-2016.[128] These standards will negatively affect small businesses and independent truckers. According to the Owner-Operator Independent Drivers Association (OOIDA), "the EPA took a one-size-fits-all approach to this regulation, forcing down technologies that may save fuel."[129] The new regulations will drive up the price of new trucks by at least $6,200 according to EPA's own calculations.[130]

vi. EPA Greenhouse Gas Tailoring Rule

One of the most significant regulatory undertakings by the EPA is its series of greenhouse gas (GHG) regulations stemming from the *Massachusetts v. EPA*[131] U.S. Supreme Court decision. In that decision, the Court held that EPA must determine whether GHGs endanger human health and safety.[132] After this ruling, EPA ultimately determined that GHGs from mobile sources are "pollutants," automatically triggering sections of the Clean Air Act (CAA). Therefore, the law required EPA to regulate GHG emissions from stationary sources under Prevention of Significant Deterioration (PSD) and Title V sections of the CAA.

Under the CAA, emissions thresholds for criteria pollutants are 100 and 250 tons per year (tpy). Using these criteria to regulate GHG emissions, EPA estimates that 82,000 PSD permits would be required each year and six million facilities would need Title V operating permits.[133] Therefore, many commercial establishments, apartment buildings, hospitals, and schools could find themselves subject to EPA regulations. In an effort to avoid this result, EPA finalized its tailoring rule for GHG emissions on May 13, 2010.[134] Following a challenge of all of EPA's GHG rules, the U.S. Court of Appeals for the District of Columbia Circuit upheld the tailoring

[126] Letter from Shawn W. Murphy, Vice President and General Counsel, Mazda, to Darrell E. Issa, Chairman, H. Comm. on Oversight and Govt. Reform (June 1, 2012).
[127] Letter from Mitch Bainwol, President and CEO, Alliance of Automobile Manufacturers, to Darrell E. Issa, Chairman, H. Comm. on Oversight & Govt. Reform (June 1, 2012).
[128] Press Release, White House, *White House Announces First Ever Oil Savings Standards for Heavy Duty Trucks, Buses* (August 9, 2011)
[129] Letter from Todd Spencer, Executive Vice President, Owner-Operator Independent Drivers Association, to Darrell E. Issa, Chairman, H. Comm. on Oversight and Govt. Reform (June 1, 2012).
[130] *Id.*
[131] *Massachusetts v. EPA*, 549 U.S. 497 (2007).
[132] *Id.*
[133] Business Roundtable, Background Paper on Significant EPA Regulations Pending or Proposed, March 24, 2011, *available at* http://businessroundtable.org/uploads/studies-reports/downloads/20110324_Background_on_Regulation_of_GHG_Under_the_CAA.pdf.
[134] H. Comm. on Oversight & Gov't Reform Preliminary Staff Report, *Assessing Regulatory Impediments to Job Creation,* 112th Cong. (2011) *available at* http://oversight.house.gov/wp-content/uploads/2012/02/Preliminary_Staff_Report__Regulatory_Impediments_to_Job_Creation.pdf.

rule on June 26, 2012.[135] However, the court did not reach the merits of the rule; instead, the court denied petitioners standing asserting that they were not harmed by the rule.[136]

Under the tailoring rule, EPA now requires sources that are already subject to PSD requirements for other sources of pollution to implement GHG Best Available Control Technology (BACT) requirements.[137] On July 1, 2011, EPA activated "step two" of the tailoring rule. Under this phase of the regulation, new projects that emit at least 100,000 tpy are subject to PSD permitting requirements. EPA indicated in its final rule that it would revisit the emissions threshold and make future determinations that could increase the number of businesses subject to the onerous permitting requirements.[138]

The uncertainty of the tailoring rule continues to generate concern among job creators who are unclear whether or not their industries will be included in GHG regulations. For example, members of the Agricultural Retailers Association "fear that their farmer customers and their businesses will eventually be brought into the rule."[139] The rule would increase electricity costs for farms, which in turn could cause farms to shut down, depleting the customer base for the Agricultural Retailers Association's members.[140] Furthermore, the National Federation of Independent Businesses raised concerns about the uncertainty that the tailoring rule provides small business because the "small business protections provided in this rule could be thrown out by a court at any time."[141] The Associated Builders and Contractors are similarly concerned that an expanded application of the GHG rules could increase energy costs.[142] It is clear that the changing nature of the tailoring rule, as well as the uncertainty as to whether it will apply to more sources, is of great concern to job creators.

vii. EPA Lead Renovation, Repair and Painting Rule

In 2008, EPA issued the Lead Renovation, Repair and Painting (LRRP) rule pursuant to the Toxic Substances Control Act to address lead-based paint hazards in housing and child-occupied facilities built before 1978.[143] The rule requires that renovations to a home built before 1978 follow certain work practices supervised by an EPA-certified renovator and performed by

---

[135] Tiffany Stecker, *Appeals Court Gives EPA a Big Win on Greenhouse Gas Rules,* ClimateWire, June 27, 2012, *available at* http://www.eenews.net/climatewire/2012/06/27/archive/4?terms=tailoring+rule.
[136] *Id.*
[137] H. Comm. on Oversight & Gov't Reform Preliminary Staff Report, *Assessing Regulatory Impediments to Job Creation,* 112th Cong. (2011) *available at* http://oversight.house.gov/wp-content/uploads/2012/02/Preliminary_Staff_Report__Regulatory_Impediments_to_Job_Creation.pdf.
[138] Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, 75 Fed. Reg. 31,514 (June 3, 2010) (to be codified at 40 C.F.R. pts 51, 52, 70, 71).
[139] Letter from Daren Coppack, Agricultural Retailers Association, the Honorable Darrell E. Issa, Chairman, H. Comm. on Oversight and Gov't. Reform, June 7, 2012 (on file with author).
[140] *Id.*
[141] Letter from Susan Eckerly, Senior Vice President, Public Policy, National Federation of Independent Businesses to the Honorable Darrell E. Issa, Chairman, H. Comm. on Oversight and Gov't Reform, May 31, 2012 (on file with author).
[142] Letter from Geoffrey Burr, Vice President, Federal Affairs, Associated Builders and Contractors, Inc. to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov't. Reform, May 31, 2012 (on file with author).
[143] Lead; Renovation, Repair, and Painting Program, 73 Fed. Reg. 21692 (Apr. 22, 2008).

an EPA-certified firm.[144] After a review of the science and consultation with small businesses, EPA determined that an opt-out provision in the rule, exercised at the election of a homeowner, could still protect from the dangers of lead paint.[145] The opt-out provision allowed contractors to forgo the training and work practice requirements if they obtained a certificate from the homeowner stating that no children under age six or a pregnant woman resided in the home.[146] This balanced approach was challenged by special interest environmental groups, and instead of defending the rule in court, EPA opted to enter into a settlement agreement. The settlement agreement required EPA to propose and finalize a new rule that removed the opt-out provision.[147] On October 28, 2009, EPA proposed the rule, and it was finalized on May 6, 2010.[148] On June 7, 2012, bipartisan legislation, the Lead Exposure Reduction Amendments Act of 2012, was introduced to restore the opt-out provision.[149]

The removal of the opt-out provision is likely not the end of changes to the LRRP rule. The settlement agreement also mandated that additional lead paint rules be considered.[150] One rule, that was scheduled to be finalized in 2011, would have mandated "lead clearance testing," which would have required a jobsite be wiped-down with a special EPA-approved wipe and then sent to an EPA-approved lab for lead testing.[151] While EPA recognized the burdens associated with this proposed rule and decided not to finalize the clearance testing requirements in the proposed rule,[152] additional rules, applicable to non-residential buildings, are still on schedule to be proposed. The EPA issued an Advance Notice of Proposed Rulemaking to require that exterior renovations to public and commercial buildings, other than those that are child-occupied, adhere to the same lead paint practices as residential buildings.[153] Another rule may be proposed that requires these practices be applied to the interior renovations of non-residential buildings as well.[154]

Despite sharing EPA's objective of protecting children and pregnant women from lead paint hazards, a broad array of groups from the Business Roundtable to the Window & Door Manufacturers Association continue to identify problems associated with the well-intentioned LRRP rule. In particular, many groups attest that EPA "has not met the requirements of its own rule by failing to recognize an accurate lead test kit, which produces no more than 10 percent

---

[144] *Id.*
[145] Letter from Susan Walthall, Acting Chief Counsel, & Kevin Bromberg, Chief Counsel for Envtl Policy, Small Bus. Admin. Office of Advocacy, to the Honorable Lisa Jackson, Administrator, Envtl Prot. Agency (Nov. 27, 2009).
[146] Lead; Renovation, Repair, and Painting Program, 73 Fed. Reg. 21692 (Apr. 22, 2008).
[147] Motion to Sever and Hold in Abeyance Nos. 08-1235 and 08-1258, *Nat'l Assoc. of Homebuilders v. Envtl Prot. Agency*, No. 08-1193 (D.C. Cir. Aug. 26, 2009) (settlement agreement between the EPA and public interest groups).
[148] EPA, Lead; Amendment to the Opt-Out and Recordkeeping Provisions in the Renovation, Repair, and Painting Program Final Rule, 75 Fed. Reg. 24802, May 6, 2010.
[149] H.R. 5911, Lead Exposure Reduction Amendments Act of 2012.
[150] Public Interest Petitioners (Sierra Club and New York City Coalition to End Lead Poisoning), et. al. v. Environmental Protection Agency, Settlement Agreement, Case No. 08-1193.
[151] *Id.*
[152] Jeremy Jacobs, *EPA Backs Away From Dust Testing Renovation Proposal*, E&E Reporter (July 18, 2011).
[153] EPA Lead; Renovation, Repair, and Painting Program for Public and Commercial Buildings Advance notice of proposed rulemaking, 75 Fed. Reg. 24848, May 10, 2010.
[154] Public Interest Petitioners (Sierra Club and New York City Coalition to End Lead Poisoning), et. al. v. Environmental Protection Agency, Settlement Agreement, Case No. 08-1193.

false positives."[155] The National Lumber and Building Material Dealers Association and the National Association of Home Builders, among others, emphasize that no test kit is currently available that meets EPA's requirements. Instead, "[c]urrent test kits can produce up to 60 percent false positives, meaning that in many cases, consumers are needlessly paying additional costs for work practices that are unnecessary."[156] According to these groups, EPA promised in its rulemaking that "if the improved test kits [were] not commercially available by September 2010, EPA [would] initiate a rulemaking to extend the effective date of [the] final rule for one year with respect to owner-occupied target housing built after 1960."[157] Despite being petitioned under the Administrative Procedures Act to do this, EPA has failed to keep its commitment.[158]

The National Federation of Independent Business (NFIB) adds that the removal of the opt-out provision "ha[s] led homeowners to explore using 'underground' contractors that do not comply with the EPA's requirements at all."[159] Indeed, a survey conducted by the National Association of the Remodeling Industry shows that 77 percent of homeowners are avoiding the rule by doing remodeling work on their own, or hiring a non-certified contractor to perform the work.[160] Therefore, the rule may be increasing the risk of exposure to lead paint, as well as negatively affecting certified contractors' ability to compete. As evidence, the National Lumber and Building Material Dealers Association states that "legitimate businesses complying with the LRRP rule cannot compete for much needed work against non-compliant contractors that, ironically, lack the training to actually perform lead-safe renovations and prevent lead hazard exposures."[161] The Small Business Administration Office of Advocacy comments that "[r]eform of the expensive requirements of the current LRRP rule continues to be one of the highest priorities of the small business community."[162] This is unsurprising as the opt-out provision had saved the industry approximately $500 million in compliance costs.[163]

---

[155] *See e.g.*, Letter from Ben Gann, Director of Legislative Affairs, Ntl. Lumber and Building Material Dealers Association to Chairman Issa and Subcommittee Chairman Jim Jordan, June 1, 2012 (on file with author).
[156] Letter from James W. Tobin III, Senior Vice President and Chief Lobbyist, Ntl. Assn. of Home Builders to Chairman Darrell Issa, H. Comm. on Oversight & Gov't. Reform, June 13, 2012 (on file with author).
[157] Letter from Michael P. O'Brien, President & CEO, Window & Door Manufacturers Association to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, June 1, 2012 (on file with author).
[158] Letter from Michael P. O'Brien, President & CEO, Window & Door Manufacturers Association to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, June 1, 2012 (on file with author); Letter from Ben Gann, Director of Legislative Affairs, Ntl. Lumber and Building Material Dealers Association to Chairman Issa and Subcommittee Chairman Jim Jordan, June 1, 2012 (on file with author).
[159] Letter from Susan Eckerly, Senior Vice President, Public Policy, National Federation of Independent Businesses to the Honorable Darrell E. Issa, Chairman, H. Comm. on Oversight and Gov't Reform, May 31, 2012 (on file with author).
[160] National Association of the Remodeling Industry, Summary of Survey about the EPA's Lead Renovation, Repair, Painting (LRRP) Rule (June 2011).
[161] Letter from Ben Gann, Director of Legislative Affairs, Ntl. Lumber and Building Material Dealers Association to Chairman Issa and Subcommittee Chairman Jim Jordan, June 1, 2012 (on file with author).
[162] SBA Office of Advocacy, Report on the Regulatory Flexibility Act FY 2011: Annual Report of the Chief Counsel of Advocacy on Implementation of the Regulatory Flexibility Act and Executive Order 13272 (Feb. 2012) *available at* http://www.sba.gov/sites/default/files/11regflx_0.pdf
[163] Letter from Susan Eckerly, Senior Vice President, Public Policy, National Federation of Independent Businesses to the Honorable Darrell E. Issa, Chairman, H. Comm. on Oversight and Gov't Reform, May 31, 2012 (on file with author).

NFIB also remains concerned about the upcoming rulemaking which will require work performed on the exterior of commercial and public buildings to adhere to the LRRP rule requirements. NFIB states that "despite a lack of data about how environmental factors like wind can affect the spread of lead dust from these structures . . . . This rule will affect not only the construction industry but small-business owners looking to upgrade their facilities to compete economically."[164]

viii. EPA NAAQS PM

Under the Clean Air Act (CAA), EPA has the authority to set National Ambient Air Quality Standards (NAAQS) for several pollutants. If a region is out of compliance with a NAAQS standard, the law imposes stiff penalties including a process whereby EPA takes over a state's regulatory process and institutes a "federal implementation plan."[165] EPA is currently contemplating issuing new standards for Particulate Matter (PM), under two separate designations: $PM_{2.5}$, for smaller or "fine" particles, and PM_{10}, for larger or "coarse" particles. PM is more commonly known as dust, dirt, soot, smoke, and liquid droplets that are emitted from sources ranging from factories to lawn mowers.[166] On June 15, 2012, EPA announced a plan to tighten annual $PM_{2.5}$ regulations, lowering the standard from 15 micrograms per cubic meter to between 12 and 13 micrograms. EPA issued a proposed rule to this effect on Friday, June 29, 2012.[167] The limits for daily measured $PM_{2.5}$ and PM_{10} would remain the same. EPA proposed this rule as the result of a "sue and settle" agreement with environmental groups and states.[168]

The annual $PM_{2.5}$ monitoring system is one that will take three years to determine regional compliance.[169] Given the length of time to determine PM levels, it is unclear which regions would be able to achieve attainment under the new proposed standards for $PM_{2.5}$ and thereby which states would have to face a federal implementation plan from EPA.

As a result of the uncertainty of the regional impact of a new NAAQS for $PM_{2.5}$, it is unclear what the implications on job creators will be. As the Non-Ferrous Founders' Society commented, "the exact scope of the proposed revisions is not known."[170] The Business Roundtable points out that EPA's other regulations such as Utility MACT and the Cross State Air Pollution rule already create substantial reductions in PM.[171] Moreover, they state, "[a]dditional measures to further control for PM are likely to be extremely expensive. The EPA

---

[164] *Id.*

[165] Staff Report, H. Comm. on Oversight & Gov't Reform, Assessing Regulatory Impediments to Job Creation, Feb. 9, 2011.

[166] Environmental Protection Agency, Fine Particle ($PM_{2.5}$) Designations, Frequent Questions, *available at* http://www.epa.gov/pmdesignations/faq.htm.

[167] Environmental Protection Agency, National Ambient Air Quality Standards for Particulate Matter, Proposed Rule, 77 Fed. Reg. 38890 (June 29, 2012).

[168] Jeremy P. Jacobs & Gabriel Nelson, *EPA Proposes Tighter Limits on Soot,* Greenwire, June 15, 2012, *available at* http://www.eenews.net/Greenwire/2012/06/15/archive/2.

[169] *Id.*

[170] Letter from James L. Mallory, Executive Director, Non-Ferrous Founders' Society to Chairman Darrell Issa, H. Comm. on Oversight & Gov't Reform, June 1, 2012 (on file with author).

[171] Letter from John Engler, President, Business Roundtable, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending, p. 12, (June 1, 2012) (on file with the author)

should consider the PM emission reduction benefits from rules already promulgated before deciding whether to lower the PM standard even more."[172] The National Oilseed Processors Association pointed out that, "[f]or local communities, a nonattainment designation can mean a loss of industry and economic development; plant closures; loss of federal highway and transit funding; and increased fuel and energy costs."[173] The uncertainty surrounding the potential for nonattainment and the impact of a new regulation for $PM_{2.5}$ leaves job creators worried about the impact on their region and ultimately their businesses.

ix. EPA Utility MACT

As a result of a court order, EPA finalized the Mercury Air Toxic Rule, also known as Utility MACT, in December 2011.[174] The court originally required that EPA finalize the rule by November 16, 2011; however, the agency requested an additional month from the court in order to respond to the nearly one million comments that it had received on the rule.[175] Under the new rule, coal-fired utilities have three years to install the required technology. In addition, EPA suggests that it will consider a one-year extension for those utilities that are important for electric grid reliability and cannot comply with the timing of the rule.[176] EPA's own estimates predict that the rule will cost utilities $9.6 billion annually and will cause electric generating units to shut down.[177]

Industry groups predict that nearly 25 percent of the United States electric generating units will go offline as a result of Utility MACT. This could cause reliability gaps in the electricity grid and more expensive electricity rates. The National Black Chamber of Commerce states, "[t]he most vulnerable members of our community will be forced to bear the burdens of the Utility MACT rule. Low- and very-low income persons will have to deal with higher electricity costs and the potential for more interruptions during heat waves and cold weather."[178] The U.S. Chamber of Commerce points out that "[a]lthough the rule is supposedly designed to reduce emissions of *mercury* and other *toxic air pollutants*, more than 99.9 percent of the rule's purported health benefits come from requiring reductions in fine particulate matter (which is already adequately regulated under several existing rules)."[179] The Fertilizer Institute argues that the rule exceeds EPA's authority under the Clean Air Act because it would effectively require fuel-switching from coal to natural gas that could, "unnecessarily distort market demand for

---

[172] *Id.*
[173] Letter from Thomas A. Hammer, President, National Oilseed Processors Association to the Honorable Darrell E. Issa, Chairman, H. Comm. Oversight and Gov't. Reform, June 1, 2012 (on file with author).
[174] Gabriel Nelson, *Obama Admin Holds Firm on Toxic Power-plant Emissions, E&E News,* Dec. 21, 2011, *available at* http://www.eenews.net/eenewspm/2011/12/21/archive/1?terms=utility+mact/.
[175] Gabriel Nelson, *EPA Gets One-Month Extension to Finish Toxics Rule*, E&E News, Oct. 21, 2012, *available at* http://www.eenews.net/eenewspm/2011/10/21/archive/2?terms=utility+mact.
[176] Gabriel Nelson, *Obama Admin Holds Firm on Toxic Power-plant Emissions, E&E News,* Dec. 21, 2011, *available at* http://www.eenews.net/eenewspm/2011/12/21/archive/1?terms=utility+mact/.
[177] *Id.*
[178] Letter from Harry C. Alford, President/CEO, Ntl. Black Chamber of Commerce to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov't. Reform, May 30, 2012 (on file with author).
[179] Letter from Thomas J. Donohue, President and CEO, U.S. Chamber of Commerce to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov't. Reform, June 1, 2012 (on file with author).

natural gas."[180] Utility MACT's broad impact on the nation's electricity generation means this rule will affect nearly every industry sector, and job creators across America will ultimately struggle to deal with higher energy prices and a greater risk of an unreliable supply of electricity.

b. Labor Regulations

As discussed earlier in this staff report, OSHA backed down from two regulations highlighted in the Committee's preliminary staff report; however, respondents remain wary of the negative impact of OSHA's combustible dust rule, the Injury Illness and Prevention Program, and the Silica Rule.

i. OSHA Combustible Dust Rule

A rule to proscribe a combustible dust standard for all industries remains under consideration by OSHA, and regulated entities continue to fear it.[181] OSHA has proposed to define combustible dust as "all combustible particulate solids of any size, shape, or chemical composition that could present a fire or deflagration hazard when suspended in air or other oxidizing medium."[182] Further, in March 2012, in another rulemaking, OSHA designated combustible dust as a hazardous chemical without defining it.[183] The U.S. Chamber expressed frustration that "OSHA added the combustible dust provision to the final regulatory text although it was not in the proposed regulatory text; it was only mentioned in the preamble commentary."[184]

Categorizing combustible dust as a hazardous chemical appears to be a back-door effort to avoid a controversial rulemaking. The National Association of Manufacturers states that "combustible dust does not yet have a formal definition through a rulemaking . . . . By including terms not recognized by [an] international standards-setting organization, OSHA abused its discretion and will ultimately creation more confusion, uncertainty and costs."[185]

Others believe that OSHA has failed to show a need for a combustible dust standard applicable to all industries. The American Chemistry Council (ACC) states that OSHA has not "demonstrat[ed] that combustible dust poses a significant risk in the chemical manufacturing

---

[180] Letter from Ford B. West, President, The Fertilizer Institute to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov't. Reform, June 5, 2012 (on file with author).
[181] Department of Labor, Occupational Safety and Health Administration, Combustible Dust, Advanced Notice of Proposed Rulemaking, 74 Fed. Reg. 54334 (Oct. 21, 2009).
[182] *Id.*
[183] Letter from Jay Timmons, President & CEO, National Association Manufacturers, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending, June 4, 2012 (on file with the author).
[184] Letter from Thomas J. Donohue, President and CEO, U.S. Chamber of Commerce to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov't. Reform, June 1, 2012 (on file with author).
[185] Letter from Jay Timmons, President & CEO, National Association Manufacturers, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending, June 4, 2012 (on file with the author).

sector."[186] Instead, ACC asserts that OSHA can currently meet safety objectives by enforcing existing rules; thus, a combustible dust standard "will only add onerous requirements to existing regulation."[187] The American Forest and Paper Association believes the most cost-effective solution is to "rely on performance-based approaches rather than proscriptive standards[,]" which could limit the "many millions of dollars in capital expenditures and higher operating costs" that would cut across the forest products and numerous other industries if the rule is adopted.[188]

OSHA is also causing angst for job creators about whether it plans to conduct a statutorily required Small Business Regulatory Enforcement Fairness Act (SBREFA) panel to assess the impact of the rule on small business. The Non-Ferrous Founders' Society appreciates that OSHA told stakeholders it would conduct a SBREFA panel and held an "experts forum" in May 2011, to discuss "regulatory options that might minimize the costs of reducing or preventing combustible dust hazards for small- and medium-sized businesses while protecting workers from these hazards."[189] However, it is unclear whether OSHA intended the "experts forum" to be a substitute for the SBREFA panel and if OSHA still intends to meet its statutory SBREFA obligations.[190]

ii. OSHA Injury Illness and Prevention Program (I2P2)

Business groups remain concerned about OSHA's Injury Illness and Prevention Program (I2P2) which would mandate how companies, both large and small, plan, implement, evaluate, and improve processes and activities that protect employee safety and health.[191] I2P2 is a high priority for OSHA; yet, OSHA has not formally proposed a rule. It was recently reported that Assistant Secretary of Labor for Occupational Safety and Health, David Michaels, was asked if OSHA would propose the rule before the 2012 elections, and he responded that it was a possibility, but added "but I'm not allowed to say that."[192]

Employers support improvements to safety and health management; however, they do not believe that government mandates are necessary to achieve these goals. In particular, business groups "have voiced concerns about OSHA's decision to take a regulatory approach, rather than utilize cooperative tactics to better proliferate . . . useful programs."[193] Further, many employers

---

[186] Letter from Cal Dooley, President and CEO, American Chemistry Council to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov't. Reform, June 12, 2012 (on file with author).
[187] *Id.*
[188] Letter from Donna Harman, President and CEO, American Forest & Paper Association to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov't. Reform, June 6, 2012 (on file with author).
[189] Letter from James L. Mallory, Executive Director, Non-Ferrous Founders' Society to Chairman Darrell Issa, H. Comm. on Oversight & Gov't Reform, June 1, 2012 (on file with author).
[190] *Id.*
[191] Injury and Illness Prevention Program, 75 Fed. Reg. 23637 (May 4, 2010).
[192] MSDS Online, OHSA's Injury and Illness Prevention Program (I2P2) Rising (June 11, 2012), *available at* http://blog.msdsonline.com/2012/06/osha%E2%80%99s-injury-and-illness-prevention-program-i2p2-rising/.
[193] Letter from Geoffrey Burr, Vice President, Federal Affairs, Associated Builders and Contractors, Inc. to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov't. Reform, May 31, 2012 (on file with author).

voluntarily conduct programs similar to I2P2 to improve health and safety.[194] Member companies of the Associated Builders and Contractors and the American Forest and Paper Association (AFPA) fear that "the proposal could negatively impact employers that already have effective I2P2 programs in place"[195] and believe "it does not make sense for the federal government to . . . add an additional layer of bureaucracy and command-and-control."[196] AFPA emphasizes that "each company's workplace environment is unique and in many respects the employer is in the best position to understand what types of programs would meet the needs of its employees."[197] Therefore, a collaborative approach between OSHA and employers may be a more effective method to improving health and safety.

The cost of the I2P2, especially to small businesses, is also a concern. The Associated Builders and Contractors worries that "significant cost and compliance burdens could be imposed on businesses, and the proposal could lead to 'double dip' citations for infractions (once under existing rules, and once under the new I2P2 requirements)."[198] The National Federation of Independent Business believes that "[d]eveloping a formal program could be a costly exercise for small businesses and become a paperwork nightmare."[199] Moreover, I2P2 "would likely require small businesses to address all 'foreseeable' hazards – meaning that any workplace accident, no matter how unlikely, could be interpreted as foreseeable and expose small firms to fines and penalties."[200] The uncertainty of the cost appears to be a legitimate concern as the Associated Builders and Contractors notes that "OSHA has been known to significantly underestimate employer costs."[201]

iii. OSHA Silica Rule

In the fall of 2010, OSHA announced it intended to pursue a new comprehensive standard for crystalline silica to require methods of compliance, exposure monitoring, worker

---

[194] Letter from Geoffrey Burr, Vice President, Federal Affairs, Associated Builders and Contractors, Inc. to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov't. Reform, May 31, 2012 (on file with author); Letter from Donna Harman, President and CEO, American Forest & Paper Association to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov't. Reform, June 6, 2012 (on file with author).

[195] Letter from Geoffrey Burr, Vice President, Federal Affairs, Associated Builders and Contractors, Inc. to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov't. Reform, May 31, 2012 (on file with author).

[196] Letter from Donna Harman, President and CEO, American Forest & Paper Association to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov't. Reform, June 6, 2012 (on file with author).

[197] *Id.*

[198] Letter from Geoffrey Burr, Vice President, Federal Affairs, Associated Builders and Contractors, Inc. to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov't. Reform, May 31, 2012 (on file with author).

[199] Letter from Susan Eckerly, Senior Vice President, Public Policy, National Federation of Independent Businesses to the Honorable Darrell E. Issa, Chairman, H. Comm. on Oversight and Gov't Reform, May 31, 2012 (on file with author).

[200] *Id.*

[201] Letter from Geoffrey Burr, Vice President, Federal Affairs, Associated Builders and Contractors, Inc. to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov't. Reform, May 31, 2012 (on file with author).

training, and medical surveillance.[202] It is believed that the proposed rule will include a reduction of up to 50 percent from current levels in the permissible exposure limit (PEL) of silica as well as set new requirements for engineering controls and other regulated areas.[203] On February 14, 2011, OSHA sent its proposed rule to OIRA where it remains in limbo, causing uncertainty for job creators.[204]

In the Committee's preliminary staff report, three organizations expressed concern about this rule. Since then, that number has more than doubled. The Associated Builders and Contractors (ABC) points out that "the construction industry has numerous concerns about this anticipated rulemaking, including the economic and technological feasibility of compliance with such a drastic PEL reduction and the possibility of inconsistency or conflict with other federal regulatory requirements from agencies such as the EPA."[205] ABC also believes that "OSHA has failed to explain how a lowered PEL will be effective at reducing the number of silica-related illnesses when the agency also has acknowledged it has failed to properly enforce the existing standard."[206]

Preventing silica diseases is an important goal; yet, the National Association of Manufacturers notes that "signficant progress has been made in preventing silica-related diseases under existing regulations, making proposed changes unnecessary and overly burdensome."[207] Indeed, the National Sand, Stone & Gravel Association (NSSGA) states that the data does not support the need for the rule. According to NSSGA, "CDC-NIOSH data show a precipitous, downward trend in silicosis cases since the current PEL was established in the early 1970s."[208] Moreover, the Non-Ferrous Founders' Society believes that OSHA may have neglected its Small Business Regulatory Enforcement Fairness Act requirements by not selecting the most cost-effective alternative.[209] Finally, many groups suggest that because OSHA's proposed rule has been at OIRA for more than 15 months, OIRA may be skeptical of the merits of the rule and the Obama Adminsitration is likely postponing publication of the rule until after the election because the Administration recognizes the rule is a "political liability."[210]

---

[202] Occupational Exposure to Crystalline Silica, Proposed Rule, RIN: 1218-AB70.
[203] Letter from Geoffrey Burr, Vice President, Federal Affairs, Associated Builders and Contractors, Inc. to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov't. Reform, May 31, 2012 (on file with author).
[204] Letter from Jay Timmons, President & CEO, National Association Manufacturers, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending, June 4, 2012 (on file with the author).
[205] Letter from Geoffrey Burr, Vice President, Federal Affairs, Associated Builders and Contractors, Inc. to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov't. Reform, May 31, 2012 (on file with author).
[206] *Id.*
[207] Letter from Jay Timmons, President & CEO, National Association Manufacturers, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending, June 4, 2012 (on file with the author).
[208] Letter from Jennifer Joy Penniger, President and CEO, Ntl. Sand, Stone & Gravel Association to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov't. Reform, June 1, 2012 (on file with author).
[209] Letter from James L. Mallory, Executive Director, Non-Ferrous Founders' Society to Chairman Darrell Issa, H. Comm. on Oversight & Gov't Reform, June 1, 2012 (on file with author).
[210] *See* Letter from Jennifer Joy Penniger, President and CEO, Ntl. Sand, Stone & Gravel Association to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov't. Reform, June 1, 2012 (on

OSHA has categorized the rule as economically signficant—meaning it could cost $100 million annually or more; however, business organizations believe the benefits will not outweigh the costs.[211] While OSHA reportedly estimates the cost of the rule could range from $500 million to $600 million,[212] a study commissioned by the American Chemistry Council estimates that a 50% reduction in the current PEL would have a *net negative impact* of $2.45 billion annually on the general industry, maritime, and construction industries.[213] NSSGA believes that the cost to their members, operators of stone, sand and gravel facilities, "a sector in which compliance with the current PEL is much higher, would . . . likely reach tens or hundreds of millions of dollars since the limits of practical dust-control technology have been reached."[214] Finally, another economic analysis performed by engineering and economic experts estimates that the annual compliance costs of the rule could reach $5.5 billion on the manufacturing, construction, transportation, defense, and high-tech industries.[215] The Portland Cement Association worries that this could "potentially contribut[e] to historic levels of construction unemployment at a very inopportune time," and at the very least it should be delayed.[216]

c. Financial Services Regulations

As outlined in the Committee's preliminary staff report, much of the current regulatory activity in the financial services industry can be directly attributed to implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").[217] Although only about 36 percent of the roughly 400 rulemakings the Dodd-Frank Act requires have been implemented to date,[218] there is considerable evidence that regulations stemming from the Dodd-Frank Act may limit competitiveness, job creation and economic growth capabilities. Respondents have noted increased concerns over the past year about three regulatory areas in particular.

---

file with author); Letter from James L. Mallory, Executive Director, Non-Ferrous Founders' Society to Chairman Darrell Issa, H. Comm. on Oversight & Gov't Reform, June 1, 2012 (on file with author); Letter from Charles A. McGrath, Executive Director, Interlocking Concrete Pavement Institute to Chairman Darrell Issa, H. Comm. on Oversight & Gov't Reform, May 29, 2012 (on file with author).

[211] Letter from Jay Timmons, President & CEO, National Association Manufacturers, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending, June 4, 2012 (on file with the author).

[212] Letter from James L. Mallory, Executive Director, Non-Ferrous Founders' Society to Chairman Darrell Issa, H. Comm. on Oversight & Gov't Reform, June 1, 2012 (on file with author).

[213] Letter from Jennifer Joy Penniger, President and CEO, Ntl. Sand, Stone & Gravel Association to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov't. Reform, June 1, 2012 (on file with author).

[214] *Id.*

[215] Letter from Jay Timmons, President & CEO, National Association Manufacturers, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending, June 4, 2012 (on file with the author).

[216] Letter from Brian A. McCarthy, President and CEO, Portland Cement Association to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov't. Reform, June 1, 2012 (on file with author).

[217] P.L. 111-203, (July 21, 2010).

[218] *See* Davis Polk, *Dodd-Frank Progress Report*, p.4, (June 2012).

i. CFPB Structure, Oversight and Regulatory Authorities

The Consumer Financial Protection Bureau (CFPB) is a newly created independent agency empowered by the Dodd-Frank Act with wide-ranging supervisory, enforcement, and rulemaking authority over financial consumer products and services.[219] In the Committee's preliminary staff report, at least three organizations expressed concerns about some aspect of the CFPB, which has been called the "most powerful agency in American history."[220] Since the report's release, the CFPB has assumed statutory power, and that number of organizations expressing concern has almost tripled.

The American Financial Services Association (AFSA) is concerned that, unlike other independent agencies, the CFPB is "directed by a single regulator," lacks "congressional oversight through the normal budget process" and has "independent litigating authority."[221] There is also discomfort about the CFPB's plans to coordinate and streamline the authorities it is assuming from six different federal entities. For instance, the Debt Buyers Association International (DBA) is worried that the CFPB and the Federal Trade Commission "could pursue inconsistent policies" when enforcing the Federal Debt Collection Protections Act (FDCPA),[222] thereby creating "additional uncertainty" for member companies.[223] AFSA is also concerned that the CFPB can enforce rulemakings on individuals and institutions without first determining "the adequacy of existing state laws and regulations under which these companies operate."[224]

Uncertainty regarding the CFPB's regulatory agenda also threatens to decrease credit availability and affordability, harm small businesses, stunt job creation, and jeopardize full economic recovery. For debt buyers, "uncertainty over how the CFPB will exercise its unprecedented powers . . . has stalled industry growth and chilled hiring among DBA member companies."[225] Since companies typically pass compliance costs on to consumers through increased prices, the CFPB's actions will invariably increase the costs of financial products and services, which could harm small businesses disproportionately. For this reason, the Credit Union National Association (CUNA) and other representatives of small businesses encourage the CFPB to convene panels in accordance with Small Business Regulatory Enforcement Fairness Act (SBREFA) and to use its authority under Section 1022 of the Dodd-Frank Act "to exempt small financial institutions, such as credit unions, from its rulemaking."[226]

---

[219] P.L. 111–203, Title X, § 1011 (July 21, 2010).
[220] Mary Kissel, *Cordray's Charm Offensive*, Wall. St. J., Jan. 13, 2012.
[221] Letter from Bill Himpler, President, Executive Vice President, American Financial Services Association, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform (June 1, 2012) (on file with the author).
[222] P.L. 104-208 (Sep. 30, 1996).
[223] Letter from Jan Stieger, Executive Director, DBA International, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending (June 1, 2012) (on file with the author).
[224] Letter from Bill Himpler, President, Executive Vice President, American Financial Services Association, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform (June 1, 2012) (on file with the author).
[225] Letter from Jan Stieger, Executive Director, DBA International, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending (June 1, 2012) (on file with the author).
[226] Letter from Bill Cheney, President & CEO, Credit Union National Association, Executive Director, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending (June 1, 2012) (on file with the author).

ii. SEC Disclosure Regulations for Resource Extraction Industries

The U.S. Securities and Exchange Commission (SEC) has issued two proposed rules implementing certain disclosure requirements for public companies as required by the Dodd-Frank Act. The "conflicts minerals" rule requires public companies whose products derive from "conflict minerals" (i.e., gold, tin, tantalum and tungsten) to disclose annually whether these "conflicts minerals" originated in Democratic Republic of Congo (Congo) or an adjoining country.[227] The "disclosure by resource extraction issuers" rule requires public companies in the U.S. to annually report payments made to U.S. and foreign governments related to the development of oil, natural gas, and mineral extraction.[228] In the Committee's preliminary staff report, at least five organizations took issue with these rules; since that time, the concerns have tripled.

Several respondents pointed out that compliance with the "conflict minerals" rule will be burdensome and costly. For instance, IPC-Association Connecting Electronics Industries (IPC) states that the rule "could impose extremely burdensome reporting requirements" on certain electronics manufacturers.[229] The National Tooling and Machining Association (NTMA) also notes that compliance costs fall disproportionally on small manufacturers, which often "lack knowledge" about where materials they use originate, and the unintended effects of this rule could "strain customer relationships and lead to lost business for smaller companies." The Small Business Administration (SBA) has raised similar concerns to the SEC about the cost.[230]

While the SEC estimates that actual compliance costs for the "conflict minerals" rule will be around $71 million and that the rule will "impact between 1,199 and 5,551 companies," the Business Roundtable attests that these figures "vastly underestimate" true costs.[231] Both the U.S. Chamber of Commerce and the National Association of Manufacturers (NAM) reveal that businesses themselves estimate true compliance costs for the rule to be between $9-16 billion and state that the rule could affect "hundreds of thousands of companies."[232] The Business Roundtable and American Express state that these costs are so high that, for some companies, "achieving compliance" will be "extremely difficult, if not impossible."[233]

---

[227] Conflict Minerals, 74 Fed. Reg. 80948 (proposed Dec. 23, 2010) (to be codified at 17 C.F.R. pt. 229, 249).
[228] Discloser of Payments by Resource Extraction Issuers, 75 Fed. Reg. 80978 (proposed Dec. 23, 2010) (to be codified at 17 C.F.R. pt. 229, 249).
[229] Letter from John W. Mitchell, President and CEO, IPC-Association Connecting Electronics Industries, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending (June 1, 2012) (on file with the author).
[230] *See* Letter from Thomas Donahue, President and CEO, U.S. Chamber of Commerce, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending, p. 12, (June 1, 2012) (on file with the author).
[231] Letter from John Engler, President, Business Roundtable, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending, p. 12, (June 1, 2012) (on file with the author).
[232] Letter from Thomas Donahue, President and CEO, U.S. Chamber of Commerce, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending, p. 12, (June 1, 2012) (on file with the author); Letter from John Engler, President, Business Roundtable, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending, p. 12, (June 1, 2012) (on file with the author).
[233] BR Letter; Letter from Arne Christenson, Senior Vice President, Government Affairs, American Express, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform (May 23, 2012) (on file with the author).

Many respondents also urge the SEC to rework the proposed "conflicts minerals" rule before it releases a final ruling. CTIA-The Wireless Association calls implementation of the rule "confusing," the Consumer Electronics Association (CEA) says the rule's reporting requirements are too "vaguely worded" and the Business Roundtable implores the SEC to promulgate a rule that is "cost-effective and workable."[234] According to NAM, "the necessary infrastructure" is not even currently in place "to trace the origin of the minerals or to determine with certainty that they are not conflict minerals . . . ." As such, the Motor and Equipment Manufacturers Association (MEMA) and the NTMA suggest the SEC adopt a "phased-in" approach of rule compliance. Others, like the Manufacturing Jewelers & Suppliers of America (MJSA) and the Jewelers of America (JA), question why the SEC is attempting to regulate the minerals trade at all, noting that "using the regulatory authority of the SEC to impact the use of raw materials . . . is troubling and perhaps the wrong approach."[235]

Respondents also expressed concerns that the SEC's disclosure regulations would put their member companies at a competitive disadvantage internationally. CTIA-The Wireless Association argues that publicly-traded U.S. companies will be at a disadvantage thanks to the "conflicts minerals" rule because "companies that do not file with the SEC will not be required to comply" with the rule.[236] American Express, the Business Roundtable and ConocoPhillips all point out that the one-sided disclosure requirements in the "disclosure by resource extraction issuers" rule could "erode the competitiveness of U.S. companies in global markets" by allowing foreign competitors access to sensitive information on U.S. companies.[237] The American Petroleum Institute provides an example, describing how foreign energy companies, "which control about 78 percent of the world's oil resources," would have access to proprietary information without having to disclose similar details.[238]

iii. SEC/CFTC Over-the-Counter (OTC) Derivatives Regulation

The SEC and the U.S. Commodities Future Trading Commission (CFTC) are given significant discretion to regulate over-the-counter (OTC) derivatives trade by the Dodd-Frank Act.[239] Although this new regulatory structure is far from complete, the rules proposed so far have caused a significant amount of alarm within the U.S. business community. In the Committee's preliminary staff report, at least five organizations claimed that OTC derivatives rules were problematic; since the report's release, three more organizations have expressed concerns.

---

[234] Letter from Michael Petricone, Senior Vice President, Consumer Electronics Association to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending, p. 12, (June 1, 2012) (on file with the author).

[235] Letter from David Cochran, President & CEO, Manufacturing Jewelers & Suppliers of America (MJSA) and Matthew Runci, President & CEO, Jewelers of America, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform (May 25, 2012) (on file with the author).

[236] Letter from Steve Largent, President & CEO, CTIA Wireless Association, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending, p. 12, (June 1, 2012) (on file with the author).

[237] Letter from Red Cavaney, Senior Vice President, Government Affairs, ConocoPhillips Company, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform (June 7, 2012) (on file with the author).

[238] Letter from Marty Durbin, Executive Vice President, American Petroleum Institute, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform (June 6, 2012) (on file with the author).

[239] P.L. 111–203, Title VII, (July 21, 2010).

Respondents are generally worried that new OTC derivatives regulations "will create a burdensome structure that will make it more costly" to enter into derivatives transactions, which companies use to "hedge," or mitigate, business related risks.[240] There is also concern that these rules "will create uncertainty in overseas markets," which could put U.S. businesses at a competitive disadvantage internationally.[241] ConocoPhillips is also concerned that the CFTC and SEC's new definitions of "swap dealers" and "major swap participants" entail large compliance costs and may cause companies to "curtail their risk management hedging activities" to avoid classification.[242] If companies are less willing to transact financial derivatives, market liquidity could be reduced, which could have dire consequences for economic growth and job creation.[243]

The main point of contention for respondents, however, is the CFTC's recently finalized "end user exception to the mandatory clearing of swaps" rule. (For an explanation of this rule, see p. 48-9 of the preliminary staff report). American Express, AFSA, and the Business Roundtable believe that this rule will divert resources from business investment and job creation because it requires certain non financial companies that use derivatives to hedge, or mitigate, their exposure to commercial risk (so-called "end-users") to "post margin," or set aside capital in case they fail. Respondents believe this diversion of resources could "seriously harm" economic recovery, increase risk and volatility stall economic growth and, as NAM adds, possibly "driv[e] up the cost of capital."[244] A U.S. Chamber of Commerce/Business Roundtable survey revcals that, if "end-users" are required to post margin, or set cash aside, under this rule, that would force U.S. businesses "to sideline up to $6.7 billion in working capital . . . and lead to over 100,000 jobs lost."[245]

III. New Problematic Regulations for Job Creators

In addition to the rules that business groups brought to the Committee's attention for a second time, a plethora of new job-stifling regulations were also identified. While it is beyond the scope of this staff report to discuss all the new regulations that respondents identified as problematic, the appendix identifies them in their entirety. The following section discusses

[240] Letter from John Engler, President, Business Roundtable, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending, p. 12, (June 1, 2012) (on file with the author).

[241] Letter from John Engler, President, Business Roundtable, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending, p. 12, (June 1, 2012) (on file with the author); Letter from Arne Christenson, Senior Vice President, Government Affairs, American Express, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform (May 23, 2012) (on file with the author).

[242] Letter from Red Cavaney, Senior Vice President, Government Affairs, ConocoPhillips Company, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform (June 7, 2012) (on file with the author).

[243] *Id.*

[244] Letter from Jay Timmons, President & CEO, National Association Manufacturers, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending, p. 12, (June 4, 2012) (on file with the author).

[245] Letter from Thomas Donahue, President and CEO, U.S. Chamber of Commerce, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending, p. 12, (June 1, 2012) (on file with the author).

several regulations that were of concern to multiple organizations with a focus on energy, environmental, labor, and financial services regulations.

a. Energy and Environmental Regulations

A wide variety of industries—including agriculture, automobile, construction, energy, forestry, manufacturing, transportation, and small business—view energy and environmental regulations and policies as extremely harmful to jobs and investment. The regulations identified below, stemming from the EPA, the Department of Interior (DOI), and the General Services Administration, received the most complaints.

i. EPA Clean Water Act 404(c) Permitting – Pebble Mine

The EPA continues to attempt to expand its statutory authority under section 404 of the Clean Water Act (CWA) to regulate mining opperations. In 2011, EPA cited Section 404(c) of the CWA when it retroactively vetoed a duly issued Army Corps of Engineers permit for mining operations in West Virginia.[246] In April 2012, a U.S. District Court judge struck down EPA's retroactive veto.[247] The judges' ruling stated that EPA had no authority under the CWA to carry out a retroactive veto.[248] Despite the federal court's ruling, EPA appears ready to attempt to expand its 404 permitting authority yet again.

In 2011, the EPA received petitions from anti-mining activists calling for a preemptive veto of a permit for the Pebble Mine Project under Section 404 of the Clean Water Act. The Pebble Mine project is a copper and other mineral extraction project that would be located in Southwest Alaska near Bristol Bay. The Pebble Mine would create 1,000 permanent jobs and 2,000 construction jobs in an area of Alaska with high unemployment and low job growth and opportunity.[249] These jobs would pay an average of $90,000 per year.[250] Moreover, the Pebble Mine would represent an investment of billions of dollars into the economy of Alaska. Currently, the project is undertaking environmental studies focusing on environmental impacts and exploratory drilling. The Pebble Project has not yet applied to EPA for a CWA permit, nor has it begun the National Environmental Policy Act (NEPA) process. However, the EPA appears poised to strike down the project before it has the opportunity to apply for CWA permits.

It appears that EPA is considering using an unprecedented and legally questionable interpretation of the CWA to preemptively veto permits for the Pebble Mine. In apparent preparation of this veto, EPA released a draft Watershed Assessment on May 18, 2012. This watershed assessment may be used as justification to deny permits to the Pebble Mine before a plan is even submitted to the agency. In fact, EPA believes that it possesses the authority to deny

---

[246] Manuel Quinones, *Judge Scraps EPA Veto, Greenlights W.Va. Mountaintop Coal Project, Energy & Environment News PM*, Mar. 23, 2012, *available at* http://www.eenews.net/eenewspm/2012/03/23/archive/1?terms=404.

[247] *Id.*

[248] Mingo Logan Coal Company, Inc., v. U.S. EPA, No. 10-0541, slip op. at 10 (D.D.C. Mar. 23, 2012).

[249] The Pebble Partnership, Opportunity, *available at* http://www.pebblepartnership.com/opportunity.php.

[250] Letter from John Shively, CEO, The Pebble Partnership, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight &Gov't Reform, June 29, 2012 (on file with author).

a permit before a sponsor even applies under Section 404(c) of the CWA, as indicated in a letter sent by EPA in response to Chairmen Issa and Jordan.[251]

The Pebble Partnership has spent over $500 million in studying the environmental impacts of a potential mine and in preparing for the 404 permitting process.[252] However, the Pebble Project has "encountered an EPA that has seemingly embraced the actions sought by our organized opposition and is now helping them to build a justification (through a flawed watershed assessment) for EPA to expand their jurisdiction using a legally questionable interpretation of the Clean Water Act."[253] Moreover, the Pebble Partnership wrote that "[i]f a 404(c) preemptive veto is granted or conditions are imposed by the EPA, it will chill additional investment in and attendant jobs from mining projects nationwide."[254] EPA may also extend its justification beyond the mining sector; for example, environmental groups have similarly petitioned EPA to perform a watershed assessment of the Great Lakes area.[255] The Pebble Project is simply calling for "due process" and to "understand why, in these challenging economic times, a federal agency can operate outside of the standard NEPA process to potentially stop a project before it has been defined or filed for a single permit."[256]

ii. EPA Clean Water Act Definition of "Waters of the United States"

On April 27, 2011, the EPA issued draft guidance to provide "clarification" on the question of which bodies of water are subject to federal regulation by EPA and the Army Corps of Engineers (Corps) under the Clean Water Act (CWA).[257] In the draft guidance, EPA expands its reach and seeks to regulate a broad category of wetlands, regardless of its status as navigable water. This guidance document is intended to replace and supersede similar guidance issued in 2008, in response to the U.S. Supreme Court's *Rapanos v. United States*[258] decision. In *Rapanos*, the Court rejected the position of the Corps that its authority over water was essentially limitless under the CWA.[259] Rather, the Court found that the term "waters of the United States" "includes only those relatively permanent, standing or continuously flowing bodies of water 'forming geographic features' that are described in ordinary parlance as 'streams[,] ... oceans, rivers, [and] lakes.'"[260] In addition, the Court held that all waters with a "significant nexus" to "navigable waters" are covered under the CWA.[261] The words "significant nexus" remain open to judicial interpretation and considerable controversy. Legislation was introduced in the 110th and 111th Congress that would have expanded the definition of waters of the US to include

---

[251] Letter from Arvin Ganesan, Associate Administrator, EPA, to Hon. Darrel Issa, Chairman, H. Comm. on Oversight & Gov't Reform, June 22, 2012 (on file with author).
[252] Letter from John Shively, CEO, The Pebble Partnership, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight &Gov't Reform, June 29, 2012 (on file with author).
[253] *Id.*
[254] *Id.*
[255] *Id.*
[256] *Id.*
[257] Environmental Protection Agency and Army Corps of Engineers, "Draft Guidance on Identifying Waters Protected by the Clean Water Act," April 27, 2011, p. 2, *available at* http://water.epa.gov/lawsregs/guidance/wetlands/upload/wous_guidance_4-2011.pdf.
[258] *Rapanos v. United States*, 547 U.S. 715 (2006).
[259] *Id.*
[260] *Id.*
[261] *Id.*

intrastate waters and reaffirmed the original Corps interpretation struck down by the Supreme Court.[262] These measures never gained sufficient support to pass through either Chamber of Congress.

The definition of what is legally a "Water of the US" is extremely important as is triggers multiple responsibilities under the CWA, including a federal prohibition on discharges of pollutants (Section 301), requirements to obtain a permit prior to discharge (Sections 402 and 404), water quality standards and measures to attain them (Section 303), oil spill liability and oil spill prevention and control measures (Section 311), certification that federally permitted activities comply with state water quality standards (Section 401), and enforcement (Section 309).[263] EPA and the Corps acknowledge that, compared with the existing guidance, the proposed revisions are likely to increase the number of waters identified as protected by the CWA.[264]

Multiple job creators expressed their concern for EPA's draft guidance. According to NFIB, the EPA is aiming to expand the definition of U.S. waters that are "navigable" in some cases to even small depressions or farm ponds that do not impair the flow of rivers."[265] According to the National Association of Manufacturers, "[t]he EPA and the Corps are trying to accomplish through revised guidance what the 110th and 111th Congress refused to do: an unprecedented expansion of federal jurisdiction under the CWA."[266] The National Soy Bean Processors Association argues that the extremely broad view of the scope of federal authority would encompass many natural landscape features not readably recognizable as "water" and thwart any rational limits established by Congress or the U.S. Supreme Court."[267] They also note that EPA has failed to explain how the new expanded definition will apply to the many CWA provisions that would be implicated by the guidance.[268] The American Forest and Paper Association points out that it is, "an excellent example of 'regulation by guidance' -- the Administration began, but never concluded, a rulemaking process covering very similar issues"[269] The Agricultural Retailers Association worries that the guidance has serious legal implications and will open farmers up to CWA citizen and third-party lawsuits through other policies like the National Pollutant Discharge Elimination System (NPDES) permits for pesticides and application and spray drift.[270]

---

[262] Claudia Copeland, Legislative Approach to Defining Waters of the United States, Dec. 29, 2010, *available at* http://www.fas.org/sgp/crs/misc/R41225.pdf.

[263] *Id.*

[264] Environmental Protection Agency and Army Corps of Engineers, "Draft Guidance on Identifying Waters Protected by the Clean Water Act," April 27, 2011, p. 2, *available at* http://water.epa.gov/lawsregs/guidance/wetlands/upload/wous_guidance_4-2011.pdf.

[265] Letter from Susan Eckerly, Senior Vice President, Public Policy, National Federation of Independent Businesses to the Honorable Darrell E. Issa, Chairman, H. Comm. on Oversight and Gov't. Reform, May 31, 2012 (on file with author).

[266] Letter from Jay Timmons, President, National Association of Manufacturers to the Honorable Darrell E. Issa, Chairman, H. Comm. on Oversight and Gov't. Reform, June 4, 2012 (on file with author).

[267] Letter from Thomas A. Hammer, President, National Oilseed Processors Association to the Honorable Darrell E. Issa, Chairman, H. Comm. Oversight and Gov't. Reform, June 1, 2012 (on file with author).

[268] *Id.*

[269] Letter from Donna Harman, President, American Forest & Paper Association to the Honorable Darrell E. Issa, Chairman, H. Comm. on Oversight and Gov't. Reform, May 31, 2012 (on file with author).

[270] Letter from Daren Coppack, Agricultural Retailers Association, the Honorable Darrell E. Issa, Chairman, H. Comm. on Oversight and Gov't. Reform, June 7, 2012 (on file with author).

iii. EPA Resource Conservation and Recovery Act Definition of "Solid Waste"

On July 22, 2011, EPA proposed to revise the definition of "solid waste" under the hazardous waste provisions of the Resource Conservation and Recovery Act (RCRA).[271] The revisions affect how EPA determines whether secondary materials are being *recycled* or *discarded,* and hence qualify as "waste." The proposed amendments remove specific recycling exclusions from the current regulations, thereby increasing the burden on manufacturers seeking to recycle or reclaim secondary materials. The Non-Ferrous Founders' Society called attention to an absurdity of the rule, pointing out that the regulation would even apply to "in-plant recycling of materials intended for internal use."[272] The Non-Ferrous Founders' Society urged EPA to recognize the obvious: "solid waste definitions [should] only be applied to materials that are abandoned or otherwise destined for disposal."[273]

The process that led to this proposed redefinition of solid waste is a classic example of EPA's use of sue-and-settle rulemaking. The most recent definition of solid waste, promulgated in 2008, "was the product of two years of collaboration between the EPA and stakeholders."[274] Nonetheless, on January 29, 2009, the Sierra Club petitioned the Obama Administration to reconsider the rule.[275] In a settlement agreement filed on September 10, 2010, EPA voluntarily committed to address all of the issues raised in the Sierra Club's petition, and to issue a proposed redefinition by June 30, 2011.[276] EPA could not meet this deadline, demonstrating the impracticality of the settlement's prescribed timeline.

Ironically, the rule will operate to defeat one of the fundamental tenets of environmentalism: recycling. The American Coatings Association noted that as currently written, "the regulations will discourage sustainable materials management and lead to an increase in the incineration, waste treatment, and landfill disposal of secondary materials."[277] The The IPC–Association Connecting Electronic Industries concurs, stating that the new definition will "impose significant regulatory burdens on recycling."[278]

Ultimately the proposed redefinition will impose extraordinary costs with few discernible benefits: the American Forest and Paper Association writes that the new rule "will add significant administrative burdens to the industry with *no environmental benefit* and possibly would disrupt the industry's practices which have proven to be effective, efficient, and

---

[271] Definition of Solid Waste, 76 Fed. Reg. 44,094, July 22, 2011.
[272] Letter from James L. Mallory, Executive Director, Non-Ferrous Founders' Society, to Darrell Issa, Chairman, H. Comm. on Oversight and Gov't. Reform, June 1, 2012 (on file with author).
[273] *Id.*
[274] *Id.*
[275] EPA's and Sierra Club's Lodging of Settlement and Motion to Sever and Hold Case in Abeyance, Sierra Club v. Environmental Protection Agency, No. 09-1041 (D.D.C. Sept. 9, 2010).
[276] *Id.*
[277] Letter from J. Andrew Doyle, President, American Coatings Association, to Darrell Issa, Chairman, H. Comm. on Oversight and Gov't. Reform, June 1, 2012 (on file with author).
[278] Letter from Dr. John W. Mitchell, President and CEO, IPC–Association Connecting Electronics Industries, to Darrell Issa, Chairman, H. Comm. on Oversight and Gov't. Reform, June 1, 2012 (on file with author).

environmentally protective."[279] The Business Roundtable estimates that EPA's proposed definition of solid waste "will cost more than $100 million a year in documentation and analysis costs."[280] The National Federation of Independent Business highlighted the rule's unique harms to small businesses: "[m]any scrap yards and other small business love to recycle scrap metal because of its high value .... EPA is seeking to impose a significant new paperwork requirement on these small-business owners."[281]

iv. EPA Chemical Data Reporting Rule

The Chemical Data Reporting (CDR) rule is a periodic reporting rule under the Toxic Substance Control Act that requires manufacturers and importers to submit information to the EPA on the chemicals they manufacture or import. On August 16, 2011, EPA issued a new rule that dramatically expanded the program's reporting requirements.[282] EPA asserted the new standards will "better address Agency and public information needs, improve the usability and reliability of the reported data, and ensure that data are available in a timely manner." [283] In fact, the revised CDR will significantly increase the regulatory burden on affected businesses.

The revised CDR imposes unjustifiable burdens by slashing the reporting threshold and requiring the disclosure of confidential business information.[284] The previous rule required detailed reporting for substances manufactured or imported in quantities above 100,000 pounds per year. The new CDR will decrease this threshold to 25,000 pounds per year in future reporting cycles.[285] The National Oilseed Processors Association observes that its members *already* "spen[d] considerable resources compiling this processing and use information."[286] Lowering the reporting threshold to such a low level will exponentially increase compliance costs.

A major flaw of the new CDR rule is that it repetitively counts chemicals regenerated from a byproduct in a loop or cycling process.[287] The American Forest & Paper Association observes that "repetitive counting leads to grossly misleading information, which serves neither the public interest nor the purposes of the CDR."[288] The IPC–Association Connecting Electronic Industries concurs, noting that the CDR rule "results in duplicate, and in some cases triplicate,

---

[279] Letter from Donna Harman, President and CEO, American Forest & Paper Association, to Darrell Issa, Chairman, H. Comm. on Oversight and Gov't Reform, June 6, 2012 (on file with author) (emphasis in original).
[280] Letter from John Engler, President, Business Roundtable, to Darrell Issa, Chairman, H. Comm. on Oversight and Gov't. Reform, June 1, 2012 (on file with author).
[281] Letter from Susan Eckerly, Senior Vice President for Public Policy, National Federation of Independent Businesses, to Darrell Issa, Chairman, H. Comm. on Oversight and Gov't. Reform, May 31, 2012 (on file with author).
[282] TSCA Inventory Update Reporting Modifications; Chemical Data Reporting, 76 Fed. Reg. 50,815, 50,816, Aug. 16, 2011.
[283] *Id.*
[284] Letter from Donna Harman, President and CEO, American Forest & Paper Association, to Darrell Issa, Chairman, H. Comm. on Oversight and Gov't. Reform, June 6, 2012 (on file with author).
[285] TSCA Inventory Update Reporting Modifications; Chemical Data Reporting, 76 Fed. Reg. 50,815, 50,816, Aug. 16, 2011.
[286] Letter from Thomas A. Hammer, President, National Oilseed Processors Association, to Darrell Issa, Chairman, H. Comm. on Oversight and Gov't. Reform, June 1, 2012 (on file with author).
[287] *Id.*
[288] *Id.*

annual reporting of many of these byproducts which are already reported under the EPA Toxic Release Inventory program and under RCRA biennial reporting."[289] Furthermore, as written the rule creates great uncertainty among industry. The Non-Ferrous Founders' Society observes:

> [F]acilities that recycle, reprocess, reclaim or reuse byproducts (or send the material offsite for reuse) – such as foundries – may or may not be subject to the reporting requirements depending on whether under the applicable regulatory criteria their generated byproducts are considered reportable chemical substances that are 'manufactured' and thus subject to the rule.[290]

IPC–Association Connecting Electronic Industries succinctly captures the fundamental indictment of the CDR as currently written: "by requiring all manufacturers that recycle byproducts to report those byproducts as new chemicals, the EPA will create burdensome, costly and unnecessary regulatory requirements that penalize manufacturers for doing the right thing – recycling."[291]

v. EPA Tier 3 Gasoline Standards

EPA is considering new Tier 3 gasoline standards that would reduce the sulfur content of gasoline from the current 30 parts per million (ppm) to as low as 10 ppm.[292] The anticipated Tier 3 standards appear to be closely related to the MY 2017-2025 fuel economy/greenhouse gas emissions regulations. In fact, one industry official explains that the Tier 3 standards are necessary for the auto industry to meet the Administration's proposed emissions regulations: "gasoline quality improvements nationwide will enable automakers to develop and refine advanced engine technologies needed to meet the stringent [greenhouse gas] emissions standards which EPA has proposed for 2017-2025 model years."[293]

Section 209 of the Energy Independence and Security Act (EISA) required EPA to conduct a study to determine whether "renewable fuel volumes . . . will adversely impact air quality as a result of changes in vehicle and engine emissions of air pollutants."[294] Although EISA required the study to be issued eighteen months after EISA's enactment in December 2007

---

[289] Letter from Dr. John W. Mitchell, President and CEO, IPC–Association Connecting Electronics Industries, to Darrell Issa, Chairman, H. Comm. on Oversight and Gov't. Reform, June 1, 2012 (on file with author).
[290] Letter from James L. Mallory, Executive Director, Non-Ferrous Founders' Society, to Darrell Issa, Chairman, H. Comm. on Oversight and Gov't. Reform, June 1, 2012 (on file with author).
[291] Letter from Dr. John W. Mitchell, President and CEO, IPC–Association Connecting Electronics Industries, to Darrell Issa, Chairman, H. Comm. on Oversight and Gov't. Reform, June 1, 2012 (on file with author).
[292] *See* U.S. Envtl. Prot. Agency, Progress Report, January 2012, http://www.epa.gov/lawsregs/rulemaking/retrospective/documents/eparetroreviewprogressrpt-jan2012.pdf; Baker & O'Brien, Inc., Addendum to Potential Supply and Cost Impacts of Lower Sulfur, Lower RVP Gasoline 12 (Mar. 2012); Letter from James M. Inhofe, Ranking Member, S. Comm. on Environment and Public Works, et al. to Lisa Jackson, Administrator, Envtl. Prot. Agency 1 (Jan. 12, 2012).
[293] Letter from Michael J. Stanton, Global Automakers, to Lisa P. Jackson, Envtl. Prot. Agency (Feb. 17, 2012).
[294] Pub. L. 110-140 § 209, 121 Stat. 1492, 1531 (2007).

(by the summer of 2009),[295] EPA has still not completed the study and there are indications that EPA will release the study simultaneously with its Tier 3 proposal.[296]

In addition, much like the MY 2017-2025 fuel economy/greenhouse gas emissions regulations, EPA's expected regulatory action on the Tier 3 standards comes only after the State of California has created the potential for a patchwork of regulations through its independent rulemaking. The anticipated Tier 3 gasoline standards are intended to align the federal standards with California's updated Low Emission Vehicle (LEV III) regulations, which were approved by the California Air Resources Board (CARB) on January 27, 2012.[297] Global Automakers reported that "[i]t is critical to vehicle manufacturers that the Federal and California standards are fully harmonized within the earliest possible timeframe so that wasteful, duplicate certification processes can be avoided. Even relatively small differences between Federal and California regulations could necessitate separate manufacturer certification processes, creating additional resource needs and compliance cost to be borne by the vehicle manufacturers and ultimately consumers."[298]

The costs that could be imposed, including the price at the pump, are a main concern surrounding Tier 3 standards. The total cost could reach $8 billion,[299] and a recent independent study concludes the costs for the needed reduction in sulfur to meet the standards would raise the cost of gasoline by six to nine cents per gallon.[300] American Fuel & Petrochemical Manufacturers reported to the Committee that the rule could also "lead to significant domestic fuel supply reductions, higher petroleum product imports, potentially increased consumer costs, increased refinery emissions, closed U.S. refineries and reduced energy security."[301]

vi. DOI Bureau of Land Management (BLM) Hydraulic Fracturing on Federal Lands

This past spring, the U.S. Department of Interior Bureau of Land Management (BLM) issued a proposed rule regulating hydraulic fracturing on Federal land and Indian land.[302] Most notably, the rule would require public disclosure of the chemicals companies use in hydraulic fracturing operations on public and Indian lands.[303] The rule also proposes to strengthen well-

---

[295] *Id.*

[296] *See, e.g., "The American Energy Initiative: A Focus on Rising Gasoline Prices": Hearing before the H. Subcomm. on Energy and Power of the H. Comm. on Energy and Commerce*, 112th Cong. (2012) (prepared testimony of Charlie Drevna, American Fuel and Petrochemical Manufacturers).

[297] Press Release, Cal. Air Resources Bd., California Air Resources Board Approves Advanced Clean Car Rules (Jan. 27, 2012).

[298] Letter from Michael J. Stanton, President and CEO, Global Automakers, to Darrell E. Issa, Chairman, H. Comm. on Oversight and Govt. Reform, June 5, 2012 (on file with author).

[299] *See* Sam Batkins, Regulatory Freeze Could Save At Least $22.1 Billion, 2.6 Million Hours, and Thousands of Jobs, American Action Forum (July 2012).

[300] Baker & O'Brien, Inc., Addendum to Potential Supply and Cost Impacts of Lower Sulfur, Lower RVP Gasoline 12 (Mar. 2012).

[301] Letter from Charles T. Drevna, President, American Fuel & Petrochemical Manufacturers, to Darrell E. Issa, Chairman, H. Comm. on Oversight & Govt. Reform, June 5, 2012 (on file with author).

[302] Oil and Gas; Well Stimulation, Including Hydraulic Fracturing, on Federal and Indian Lands, 77 Fed. Reg. 92 (proposed May 11, 2012) (to be codified at 43 C.F.R. pt. 3160).

[303] *Id.*

bore integrity regulations to ensure certain construction standards are met, as well as address flowback water issues by requiring operators to develop flowback management plans.[304] No specific public disclosure requirement for hydraulic fracturing currently exists, making this rule a new precedent for the industry. On June 25, 2012, in a limited reprieve for jobs creators, and shortly after a Subcommittee on Technology, Information Policy, Intergovernmental Relations and Procurement Reform hearing highlighting the problems with the rule,[305] the BLM announced that it is extending the public comment period until September 10, 2012.[306]

Of the concerns expressed by various groups regarding BLM's proposed rule, the most frequent dealt with the role that states have historically played in regulating the hydraulic fracturing activity that occurs within their borders. With a unique understanding of the risks and challenges posed by the particular geography and geology of any given area, "states have historically and effectively regulated hydraulic fracturing and have demonstrated an ability to modify their regulatory programs as appropriate as shale development expands."[307] The states understand the unique circumstances surrounding the lands within their borders better than the federal government and, accordingly, have regulated the industry successfully for many years. According to the American Petroleum Institute, "[i]t simply isn't necessary to add a new regime of federal regulation on top of what is already highly competent management and oversight."[308] Federal regulation in this instance could result in standards and requirements that are duplicative or inconsistent with current state regulations.[309]

The other predominant concern raised about the proposed hydraulic fracturing rule was its potential impact on the nation's energy security, deficit, and economic growth. According to API, "[t]he shale revolution is changing the face of American energy development . . . [and] the potential is there to do far more[;] how much more will depend in part on government regulations."[310] The Business Roundtable agrees, stating that "[t]hese resources, if they are allowed to be developed, promise to dramatically improve U.S. energy security, reduce the balance of [the] payments deficit and accelerate economic growth."[311] BLM's proposed rule, however, mandates a one-size-fits all regulation on various aspects of hydraulic fracturing operations on public and Indian lands.[312] The Independent Petroleum Association of America

---

[304] *Id.*

[305] *Rhetoric vs. Reality, Part II: Assessing the Impact of New Federal Red Tape on Hydraulic Fracturing and American Energy Independence: Hearing Before the Subcomm. on Technology, Information Policy, Intergovernmental Relations and Procurement Reform of the H. Comm. on Oversight and Gov't Reform*, 112th Cong. (2012).

[306] BLM News Release, BLM Extends Public Comment Period for Proposed Hydraulic Fracturing Rule (June 25, 2012), *available at* http://www.blm.gov/or/news/files/hydraulic-fracturing.pdf.

[307] Letter from Marty Durbin, Executive Vice President, American Petroleum Institute, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform , June 6, 2012 (on file with author).

[308] *Id.*

[309] *See, e.g.*, Letter from Red Cavaney, Senior Vice President of Governmental Affairs, Conoco Phillips Company, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform, June 7, 2012 (on file with author).

[310] Letter from Marty Durbin, Executive Vice President, American Petroleum Institute, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform, June 6, 2012 (on file with author).

[311] Letter from John Engler, President, Business Roundtable, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform, June 1, 2012 (on file with author).

[312] Letter from Barry Russell, President and CEO, Independent Petroleum Association of America, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform, May 31, 2012 (on file with author).

believes that this rule and the time delays and uncertainty it brings makes conducting operations on federal lands less appealing to America's oil and natural gas producers.[313]

vii. General Services Administration Adoption of Leadership in Energy and Environmental Design (LEED) Program

A number of responses specified concerns about the General Services Administration's (GSA) adoption and implementation of the Leadership in Energy and Environmental Design (LEED) system. In the fall of 2010, GSA announced its upgraded requirement for LEED Gold certification as the minimum standard for all new federal building construction and renovation products.[314] The latest proposed version, LEED v4, moves toward a green chemistry approach, identifying "chemicals of concern" and providing credits for avoidance of those substances.[315] By requiring LEED certification for all federal buildings, GSA mandates compliance from any company wishing to do business with the government.

The Energy Independence and Security Act of 2007 (EISA) requires GSA to review and recommend green building rating systems to assess how well a building meets green criteria and to enable the federal government to achieve a greater level of energy efficiency.[316] Since EISA's enactment, GSA has overwhelmingly favored the LEED system, developed by the independent United States Green Building Council (USGBC), as its standard for federal building initiatives. LEED is a certification system that focuses on a number of specific green building elements to provide building owners and operators with a framework for implementing green building design, construction, operation, and maintenance solutions.[317] Certification provides independent, third-party verification that a particular structure was designed and built using strategies aimed at environmental efficiency at one of four possible levels.[318]

Various groups contend that the proposed LEED v4 program is a significant departure from current standards. Therefore, it has the potential to distort the marketplace by eliminating the use of numerous useful construction materials and proven building products that may not be incorporated into the new LEED program or eligible for LEED credits.[319] According to the American Chemistry Council (ACC), the standards imply to the market that "materials otherwise at the forefront of improving environmental performance and occupant safety in buildings should no longer be used. The credits encourage or reward [the] elimination of chemicals in building

---

[313] *Id.*

[314] Press Release, GSA, GSA Moves to LEED Gold for All New Federal Buildings and Major Renovations (October 28, 2010), *available at* http://www.gsa.gov/portal/content/197325.

[315] Letter from Cal Dooley, President and CEO, American Chemistry Council, to the Honorable Rodney M. Alexander, U.S. House of Representatives (May 31, 2012), *available at* https://www2.buildinggreen.com/sites/buildinggreen.com/files/Blog_Images/PDFs/LeedFollowup.pdf.

[316] Letter from Cal Dooley, President and CEO, American Chemistry Council, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform (June 12, 2012) (on file with author).

[317] U.S. Green Building Council: What LEED Is, *available at* http://www.usgbc.org/DisplayPage.aspx?CMSPageID=1988.

[318] *Id.*

[319] Letter from Cal Dooley, President and CEO, American Chemistry Council, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform (June 12, 2012) (on file with author); Letter from Mike Acott, President, National Asphalt Pavement Association, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform (June 4, 2012) (on file with author).

products without regard to how they help energy-efficient building products perform their purpose."[320] By imposing building standards based on the particular materials and methods used in construction, federal implementation of the LEED v4 program amounts to the government picking winners and losers in the construction materials industry. The LEED v4 program, as currently proposed, will drive up federal building costs for the taxpayer and eliminate jobs,[321] all for speculative savings and benefits.[322] Indeed, the American Coatings Association believes LEED v4 "would increase the cost of construction and prohibit the use of a wide-range of architectural paint and coatings without a strong scientific basis."[323]

In addition to potential market implications, respondents also expressed concerned about the process USGBC uses to develop LEED standards that have since been adopted and implemented by the federal government. ACC, the American Coatings Association, and the National Asphalt Pavement Association (NAPA) took issue with the lack of formality and transparency in a process used to develop what essentially amount to federal mandates.[324] ACC is troubled by the fact that "the Federal government is requiring its buildings to achieve certification from a system which is developed through a process that is not sufficiently open or transparent, and does not maintain an appropriate balance of interests or an appeals process."[325] NAPA adds that USGBC "is not overseen by elected representatives and there is no formal process for accountability to Congress."[326] Despite these realities, however, this non-governmental group has grown to exert a great deal of influence and power within the federal government, and its "decisions have a direct bearing on commerce in the United States."[327]

NAPA pointed out that Members of Congress have also recognized these potential impacts and process issues in a May 18, 2012, letter to GSA Acting Administrator Daniel M. Tangherlini. The letter specifically expresses concern that the proposed LEED v4 rating system will eliminate the use of various proven building products and become "a tool to punish chemical companies and plastics makers and spread misinformation about materials that have been at the forefront of improving environmental performance—and even occupant safety—in buildings."[328] Moreover, USGBC, in developing LEED v4 standards, failed to conduct any concrete analysis that indicates its preferred alternative materials would perform effectively.[329] In sum, this

[320] Letter from Cal Dooley, President and CEO, American Chemistry Council, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform 3 (June 12, 2012) (on file with author).
[321] *Id.*
[322] Letter from Mark A. Casso, President, Construction Industry Round Table, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform (June 1, 2012) (on file with author).
[323] Letter from J. Andrew Doyle, President and CEO, American Coatings Association Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform 3 (June 1, 2012) (on file with author).
[324] Letter from Cal Dooley, President and CEO, American Chemistry Council, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform (June 12, 2012) (on file with author); Letter from Mike Acott, President, National Asphalt Pavement Association, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform (June 4, 2012) (on file with author).
[325] Letter from Cal Dooley, President and CEO, American Chemistry Council, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform 3 (June 12, 2012) (on file with author).
[326] Letter from Mike Acott, President, National Asphalt Pavement Association, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform 1 (June 4, 2012) (on file with author).
[327] *Id.*
[328] Letter from Members of the House of Representatives to Daniel M. Tangherlini, Acting Administrator, GSA 1 (May 18, 2012) (on file with author).
[329] *Id.*

bipartisan group of Members of Congress believe that GSA's adoption of proposed LEED v4 standards "would amount to the federal government sanctioning an unscientific, arbitrary, and discriminatory program of materials selection" that would be "counterintuitive to [its] mission, and will cost numerous American jobs, while wasting taxpayer dollars."[330]

b. Labor Regulations

This year, two rules issued by the National Labor Relations Board (NLRB), the notice posting rule and the "quickie election" rule, were frequently criticized by job creators. Both rules have been struck down by the courts, but continue to create uncertainty for respondents as the NLRB intends to pursue them despite the court decisions. The Department of Labor's persuader activity rule also received numerous complaints. These rules, in particular, which have no direct bearing on the health, safety, or security of the American people, go against President Obama's promise of limiting regulations to those necessities. Instead, many view these rules as an effort to boost the declining population of private-sector labor unions.

i. NLRB Notice Posting Rule

On August 30, 2011, the National Labor Relations Board issued a final rule that requires employers subject to the National Labor Relations Act (NLRA) to post a notice of select employee rights under the NLRA.[331] In particular, the notice emphasizes employees' right to unionize and collectively bargain, but it does not include workers' rights to object to the use of their union dues and fees for political purposes.

A broad array of industries, spearheaded by the U.S. Chamber of Commerce and the National Association of Manufacturers, disputed the NLRB's authority to issue the rule and filed suit. On March 2, 2012, the U.S. District Court for the District of Columbia found that the NLRB had the authority to issue the rule; however, the court invalidated most of the enforcement mechanisms as improper under the NLRA.[332] On April 13, 2012, the U.S. District Court for the District of South Carolina reached the opposite conclusion—finding that under the "plain language and structure of the [NLRA]" the NLRB "lack[ed] authority . . . to promulgate the rule."[333] Subsequent to this ruling, the D.C. District Court directed the NLRB to delay implementation of the rule pending the outcome of appeals. The NLRB continues to believe it has the authority to issue the rule and intends to fight business representatives throughout the appeals process.[334]

Business organizations argue that the rule is a ploy by the NLRB to achieve private-sector unionization by regulation, and they are emphatic in their belief that the NLRB is

---

[330] *Id.*

[331] Notification of Employee Rights Under the National Labor Relations Act, Final Rule, 76 Fed. Reg. 54006 (Aug. 30, 2011).

[332] *National Association of Manufacturers v. National Labor Relations Board*, Memorandum Opinion, No. 11-1629 (ABJ) (D.C. Dist. Ct. Mar. 2, 2012).

[333] *Chamber of Commerce of the United States and South Carolina Chamber of Commerce v. National Labor Relations Board*, Order, No. 2: 11-cv-02516-DCN (SC Dist. Ct. Apr. 13, 2012).

[334] Office of Public Affairs, National Labor Relations Board, NLRB Chairman Mark Gaston Pearce on recent decisions regarding employee rights posting, Apr. 17, 2012, *available at* http://www.nlrb.gov/news/nlrb-chairman-mark-gaston-pearce-recent-decisions-regarding-employee-rights-posting.

exceeding its statutory bounds under the NLRA. The Western Growers Association believes the rule "will make it easier for traditional union organizing efforts[,]" and the Agricultural Retailers Association notes that "legislative history makes clear the intent of Congress that the NLRB does not have the authority to issue a notice posting rule since Congress explicitly grants such authority to other agencies in relevant statutes."[335] However, Congress did not grant such authority in the NLRA. Moreover, the National Council of Textile Organizations (NCTO) "believes that workers are fully aware of their rights in the workplace and clearly understand that workplace complaints can be filed with the NLRB, the U.S. Department of Labor, and the Equal Employment Opportunity Commission (EEOC)[;]" therefore, the rule not only exceeds statutory authority, but it is also unnecessary.[336] Indeed, "NCTO members strive to fulfill the letter and spirit of the laws meant to protect the health and safety of the workers who are employed by the industry."[337]

Notwithstanding the status of the rule, business organizations are concerned about the cost and practical implications if it is allowed to move forward. According to the NLRB's own estimates, six million employers could be affected by the rule imposing a compliance burden of $386.4 million.[338] The Brick Industry Association believes the rule "could set a disturbing precedent and chill job creation."[339] The National Federation of Independent Business argues that "since the NLRB can only investigate matters brought to its attention by employees, the [rule] serves as a mechanism for the Board to increase its caseload and influence over small businesses."[340] The Non-Ferrous Founders' Society notes that the rule is especially problematic because it is "not subject to the same open and candid . . . review as are those [rules] of other agencies . . . ."[341] At a broader level, some fear "there is a danger that [the] politically-motivated Board will continue to issue decisions and propose rules that run counter to an effective employer-employee relationship."[342] The Non-Ferrous Founders' Society hopes that Congress will step in to return the NLRB to an "unbiased and non-evangelistic judge" of labor-management disputes.[343]

---

[335] Letter from Daren Coppack, Agricultural Retailers Association, the Honorable Darrell E. Issa, Chairman, H. Comm. on Oversight and Gov't. Reform, June 7, 2012 (on file with author).
[336] Letter from Cass Johnson, President, National Council of Textile Organizations to Darrell Issa, Chairman, H. Comm. on Oversight and Gov't. Reform, June 1, 2012 (on file with author).
[337] *Id.*
[338] National Labor Relations Board, Notification of Employee Rights Under the National Labor Relations Act, Final Rule, 76 Fed. Reg. 54006 (Aug. 30, 2011).
[339] Letter from J. Gregg Borchelt, President and CEO, Brick Industry Association to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight and Gov't. Reform, May 25, 2012 (on file with author).
[340] Letter from Susan Eckerly, Senior Vice President, Public Policy, National Federation of Independent Businesses to the Honorable Darrell E. Issa, Chairman, H. Comm. on Oversight and Gov't Reform, May 31, 2012 (on file with author).
[341] Letter from James L. Mallory, Executive Director, Non-Ferrous Founders' Society to Chairman Darrell Issa, H. Comm. on Oversight & Gov't Reform, June 1, 2012 (on file with author).
[342] Letter from Robert E. McKenna, President and CEO, Motor & Equipment Manufacturers Association to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight and Gov't. Reform, June 1, 2012 (on file with author).
[343] Letter from James L. Mallory, Executive Director, Non-Ferrous Founders' Society to Chairman Darrell Issa, H. Comm. on Oversight & Gov't Reform, June 1, 2012 (on file with author).

ii. NLRB "Quickie Election" Rule

On December 22, 2011, the NLRB issued a final rule that alters the procedures for union organizing elections.[344] The rule, commonly known as the "quickie election" rule, allows an organizing election to occur in 15 to 20 days versus the current average of 39 days and the NLRB's own target of 42 days. It also postpones certain pre-election challenges until after the union election. The U.S. Chamber of Commerce and the Coalition for a Democratic Workplace challenged the rule on multiple procedural and substantive grounds. On May 14, 2012, the U.S. District Court for the District of Columbia invalidated the rule on the basis that the NLRB lacked the quorum required under the National Labor Relations Act when it issued the rule. The court quipped that, "[a]ccording to Woody Allen, eighty percent of life is just showing up. When it comes to satisfying a quorum requirement, though, showing up is even more important than that. Indeed, it is the only thing that matters . . . ."[345] The court chose not to rule on the additional challenges and indicated that its ruling "need not necessarily spell the end of the final rule for all time."[346] The NLRB has indicated it will likely continue to pursue the rule.[347]

Business organizations argue that the rule greatly limits an employer's ability to lawfully educate employees and "tilt[s] the playing field in favor of organized labor" at the expense of free speech and due process rights.[348] The American Frozen Food Institute and the Interlocking Concrete Pavement Association stress that the current labor environment is fair and balanced which provides an adequate opportunity for unions and employers to discuss their views, for or against, unionization in the workplace. In contrast, employers believe the new rule is an attempt by "union sympathizers," who failed to achieve "card check," to undermine the will of Congress by allowing unions to be certified before employers have a chance to communicate with employees "creat[ing] opportunities for mischief and misconduct . . . ."[349] The Brick Industry Association attests that the rule "restrict[s] employees full access to important facts and employers' free speech and due process rights during union representation elections."[350] Indeed, "[b]y rushing the timeframe . . . employees will be forced to make a decision without relevant details, and employers will be unable to offer balanced information on collective bargaining."[351]

---

[344] National Labor Relations Board, Representation—Case Procedures, Final Rule, 76 Fed. Reg. 80138 (Dec. 22, 2011).
[345] *U.S. Chamber of Commerce and Coalition for a Democratic Workplace v. National Labor Relations Board*, Memorandum Opinion, No. 11-2262 (JEB) (D.C. Dist. Ct. May 14, 2012).
[346] *Id.*
[347] *See* Office of Public Affairs, National Labor Relations Board, NLRB suspends implementation of representation case amendments based on court ruling, May 15, 2012, *available at* http://www.nlrb.gov/news/nlrb-suspends-implementation-representation-case-amendments-based-court-ruling.
[348] Letter from Thomas J. Donohue, President and CEO, U.S. Chamber of Commerce to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov't. Reform, June 1, 2012 (on file with author).
[349] Letter from Charles A. McGrath, Executive Director, Interlocking Concrete Pavement Institute to Chairman Darrell Issa, H. Comm. on Oversight & Gov't Reform, May 29, 2012 (on file with author); Letter from Kraig R. Naaz, President and CEO, American Frozen Food Institute to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov't. Reform, June 1, 2012 (on file with author).
[350] Letter from J. Gregg Borchelt, President and CEO, Brick Industry Association to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight and Gov't. Reform, May 25, 2012 (on file with author).
[351] *Id.*

It is also believed that the NLRB significantly underestimated the cost of the rule and that small businesses, in particular, will be hit hard by costly legal fees. The U.S. Chamber of Commerce emphasizes that the NLRB estimated the costs based on the limited number of employers who have faced election petitions in the past, but "ignored the facts" that the rule could increase the filing of petitions and that a shortened schedule imposes preparation costs on employers who have to anticipate the risk of a petition in advance of actual filing.[352] The National Association of Manufacturers emphasizes that "smaller-sized manufacturers who lack the legal expertise to navigate complex and detailed labor laws" could see a significant increase in violations for unknowing employers.[353] The NFIB had similar concerns stating "[t]his shortened timeframe would hit small businesses particularly hard, since small employers usually lack labor-relations expertise and in-house legal departments."[354]

Others stress that the rule could have a negative effect on the economy. The American Bakers Association believes that the rule "will continue to deter economic growth," and it is just another example of the NLRB's "willingness to . . . to circumvent regular order to advance a specific agenda."[355] Indeed, the Brick Industry Association believes that "[s]uch extreme and unnecessary changes to long-standing election procedures disrupt business and jeopardize job creation as the brick industry struggles to rebound."[356]

iii. DOL Persuader Activity Rule

On June 21, 2011, the U.S. Department of Labor's (DOL) Office of Labor-Management Standards proposed a rule to revise its reporting requirements for employer and consultant "persuader activity" under the Labor Management Reporting and Disclosure Act (LMRDA).[357] Section 203 of the LMRDA outlines reporting requirements for employers and their consultants who enter into an agreement aimed at affecting employees' decisions to unionize.[358] Currently, attorneys and other third parties who are not in direct contact with employees are exempt from reporting requirements under the "advice" exemption.[359] The proposed rule revises DOL's long-

[352] Letter from Thomas J. Donohue, President and CEO, U.S. Chamber of Commerce to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov't. Reform, June 1, 2012 (on file with author).
[353] Letter from Jay Timmons, President & CEO, National Association Manufacturers, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending, June 4, 2012 (on file with the author).
[354] Letter from Susan Eckerly, Senior Vice President, Public Policy, National Federation of Independent Businesses to the Honorable Darrell E. Issa, Chairman, H. Comm. on Oversight and Gov't Reform, May 31, 2012 (on file with author).
[355] Letter from Robb MacKie, President and CEO, American Bakers Association to Darrell Issa, Chairman, H. Comm. on Oversight and Gov't Reform, June 1, 2012 (on file with author).
[356] Letter from J. Gregg Borchelt, President and CEO, Brick Industry Association to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight and Gov't. Reform, May 25, 2012 (on file with author).
[357] Department of Labor OLMS News Release, US Labor Department announces proposed rule concerning reporting on use of labor relations consultants, June 20, 2011.
[358] Department of Labor Office of Labor-Management Standards, Labor-Management Reporting and Disclosure Act; Interpretation of the ``Advice" Exemption, Proposed Rule 76 Fed. Reg. 36178 (June 21, 2011).
[359] Letter from Geoffrey Burr, Vice President, Federal Affairs, Associated Builders and Contractors, Inc. to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov't. Reform, May 31, 2012 (on file with author).

standing interpretation of, and significantly narrows, the "advice" exemption, thus expanding reporting requirements beyond active union organizing and collective bargaining activities.[360]

Business groups assert that the proposed rule is a "drastic expansion" of communications that trigger the reporting requirements, which will infringe upon free speech and attorney-client confidentiality.[361] In a reverse of long-standing practice, "even the most routine advice from a lawyer to an employer facing an organizing drive would be subject to disclosure. The end result will be a chilling effect on the number of lawyers providing labor relations advice and increased pressure on employers not to exercise their legally protected rights, such as free speech."[362] Indeed, a shareholder at Littler Mendelson, P.C., a law firm providing advice to employers in labor and employment law, has expressed concern about the "extensive" substantive problems with the rule because it may require both the attorney and the client to report vast amounts of confidential and financial data discouraging attorneys from assisting employers.[363]

According to the National Association of Manufacturers, the Brick Industry Association, and the Retail Industry Leaders Association, the practical effect of the rule is an attempt to "ga[g]" small businesses so that they "will not have essential information on what can and cannot be legally said or done during the election process, limiting legitimate education efforts so employees hear both sides before voting on union representation."[364] The National Federation of Independent Business argues:

> For nearly 50 years the DOL has recognized that legal advice is excluded from reporting under federal labor law. The proposed new rule would force lawyers and law firms that counsel a small business on most labor relations matters, and whether the business has a union or not, to disclose not only their work with that client, but also all fees and arrangements for all clients for all labor-relations services. The net result could well be that many lawyers will no longer take on clients seeking labor-relations counsel.[365]

The Motor & Equipment Manufacturers Association echoes NFIB's sentiment, viewing the proposed rule "as potentially devastating to employers, particularly smaller employers, who need

---

[360] Department of Labor OLMS News Release, US Labor Department announces proposed rule concerning reporting on use of labor relations consultants, June 20, 2011.

[361] Letter from Geoffrey Burr, Vice President, Federal Affairs, Associated Builders and Contractors, Inc. to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov't. Reform, May 31, 2012 (on file with author); Letter from Jay Timmons, President & CEO, National Association Manufacturers to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending, June 4, 2012 (on file with author).

[362] Letter from Thomas J. Donohue, President and CEO, U.S. Chamber of Commerce to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov't. Reform, June 1, 2012 (on file with author).

[363] *See* Letter from Michael J. Lotito, Littler Mendelson, P.C. to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov't. Reform, May 31, 2012 (on file with author).

[364] Letter from Jay Timmons, President & CEO, National Association Manufacturers, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending, June 4, 2012 (on file with the author); Letter from J. Gregg Borchelt, President and CEO, Brick Industry Association to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight and Gov't. Reform, May 25, 2012 (on file with author).

[365] Letter from Susan Eckerly, Senior Vice President, Public Policy, National Federation of Independent Businesses to the Honorable Darrell E. Issa, Chairman, H. Comm. on Oversight and Gov't Reform, May 31, 2012 (on file with author).

the advice of counsel to make appropriate decisions on how to communicate with their employees within the confines of labor law."[366]

It is also believed that DOL significantly underestimated the cost of the rule. While DOL estimated that the rule would impose a cost of $826,000 annually,[367] business groups estimate the proposed rule is economically significant—meaning it could have an effect of $100 million or more annually on the economy.[368] According to the U.S. Chamber of Commerce, who conducted interviews and received input from actual employers who must comply with the current requirements, the amount of time required to determine whether a form must be filed is more than double DOL's "arbitrary" estimate.[369] Moreover, it is argued that DOL vastly underestimated the number of employers who would need to make the determination of whether the required form should be filed.[370] Accounting for these deficiencies, the U.S. Chamber estimates that the compliance costs could be more than $203 million annually—well within the barometer for an economically significant rule.[371] Moreover, contrary to Executive Order requirements, DOL does not justify the costs of the rule by providing a monetary estimate of the benefits.[372]

c. Financial Services Regulations

The majority of the new financial services regulations identified as problematic stem from implementation of the Dodd-Frank Act, with which most respondents agree is "too costly and cumbersome to comply."[373]

i. CFPB Remittance Transfers Rule

The first official final rulemaking released by the CFPB relates to the regulation of "remittance transfers," which are monetary payments that workers in one country send abroad.[374] The CFPB's final rule, which was originally proposed by the Federal Reserve Board (FRB), requires remittance transfer providers to make certain pre-transaction disclosures to consumers (i.e., all fees charged by institutions, all taxes charged by foreign governments, precise exchange rate used, and the exact date funds will be received, among others).[375] "Remittance transfers," which account for billions of dollars annually in the U.S., were not covered by any consumer

[366] Letter from Robert E. McKenna, Motor & Equipment Manufacturers Association to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov't. Reform, June 1, 2012 (on file with author).
[367] Department of Labor Office of Labor-Management Standards, Labor-Management Reporting and Disclosure Act; Interpretation of the ``Advice'' Exemption, Proposed Rule 76 Fed. Reg. 36178 (June 21, 2011).
[368] Letter from Thomas J. Donohue, President and CEO, U.S. Chamber of Commerce to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov't. Reform, June 1, 2012 (on file with author).
[369] *Id.*
[370] *Id.*
[371] *Id.*
[372] Letter from Michael J. Lotito, Littler Mendelson, P.C. to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov't. Reform, May 31, 2012 (on file with author).
[373] Letter from Timothy Farrell, President & CEO, American Hardware Manufacturers Association, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform (June 1, 2012) (on file with the author).
[374] Remittance Transfers, 77 Fed. Reg. 6194, (final rule Feb. 7, 2012) (to be codified at 12 C.F.R. pt 1005).
[375] *Id.*

protection laws until the enactment of the Dodd-Frank Act.[376] Instead of protecting consumers from unscrupulous providers, however, respondents suggest this rule could instead "cut a lifeline" to individuals abroad who oftentimes depend on remittance transfer payments for survival.[377]

The Independent Community Bankers Association (ICBA) calls this rule a "daunting compliance challenge," adding that it is "impossible" for banks and credit unions (which service about 95 percent of all remittance transfers in the U.S.) to comply with required consumer disclosures because they do not even have access to all of the necessary information (i.e., fees charged by foreign institutions, precise exchange rate used, and the exact date funds will be received, among others).[378] ICBA estimates that, because of this rule, "some 3,000 to 4,000 banks, and perhaps an equal number of credit unions, will exit the remittance business."[379] ICBA adds that the remaining providers "will enjoy extraordinary, government-conferred, market power" and that lack of competition in the market "will cause prices to spike" and eventually reduce "product availability."[380] The U.S. Chamber of Commerce is also concerned because "[t]he final rule did not include a quantitative cost benefit analysis."[381] For all of these reasons, ICBA urges the CFPB "to delay" implementation of this final rule and to "undertake a comprehensive study of consumer impact, pricing for remittances of a range of dollar amounts, and product accessibility."[382]

ii. CFPB Defining Larger Participants Rule

The CFPB recently issued a proposed rule to assert its broad supervisory authority over certain non-bank entities that offer consumer financial products and services.[383] These non-depository companies, like mortgage lenders, check cashers, payday lenders, consumer reporting agencies and debt collectors, have never before been under a federal supervision program. The "defining larger participants" rule expands the CFPB's nonbank supervision program to the latter two entities in particular.[384] The CFPB determined that "large participants" in the debt collecting industry are those companies with more than $10 million in "annual receipts," a threshold that DBA thinks "has been set too low."[385] For its member entities determined to be

---

[376] See, e.g., Paul Hastings, *CFPB's First Final Rule Addresses International Remittance Transfers*, January 20, 2012.

[377] Letter from Camden Fine, President & CEO, Independent Community Bankers of America, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending (June 1, 2012) (on file with the author).

[378] *Id.*

[379] *Id.*

[380] *Id.*

[381] Letter from Thomas J. Donohue, President and CEO, U.S. Chamber of Commerce to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov't. Reform, June 1, 2012 (on file with author).

[382] Letter from Camden Fine, President & CEO, Independent Community Bankers of America, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending (June 1, 2012) (on file with the author).

[383] Defining Larger Participants in Certain Consumer Financial Products and Services Markets, 77 Fed. Reg. 9592 (proposed Feb. 17, 2012) (to be codified at 12 C.F.R. pt 1090).

[384] *Id.*

[385] Letter from Jan Stieger, Executive Director, DBA International, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending (June 1, 2012) (on file with the author).

"larger participants," DBA is also concerned about the "potential costs associated with CFPB supervision" and is concerned that some of these companies "may be choosing to wait and see what CFPB supervision will cost instead of seeking to grow and hire new employees."[386] These concerns are problematic because the number of consumers who rely on debt collection services is significant: according to this proposed rule, roughly 30 million Americans owe debt subject to the collection process.[387]

iii. CFPB Ability to Repay Rule

The CFPB has the responsibility to issue a final rule that assesses a consumer's ability to repay a residential mortgage loan.[388] Initially proposed by the FRB, the "ability-to-repay" rule must provide a federal definition for what constitutes a high quality, low cost "qualified mortgage" (QM). This rule is meant to ensure that borrowers are not sold mortgages they cannot afford. However, if the CFPB is not careful, this rule could price millions of Americans out of the mortgage market at a time where it has already become more difficult to qualify for affordable home loans. Since the QM standard "will form the foundation for mortgage lending for years to come," respondents like the National Association of Homebuilders (NAHB) want to ensure that the "ability-to-pay" rule is implemented "in a manner that causes minimum disruptions to the mortgage lending process."[389]

Respondants believe that the CFPB should formulate a broad QM rule with a "safe harbor" provision to ensure that access to loans is open to the largest number of creditworthy borrowers. The U.S. Chamber of Commerce contends that if the QM definition is too narrow, "credit would contract and millions of Americans will be frozen out of the mortgage market."[390] AFSA agrees, adding that a narrowly defined QM rule could "undermine prospects for a housing recovery and threaten the redevelopment of a sound mortgage market."[391] Moreover, since "there is substantial uncertainty over the level of legal protection provided to qualified mortgages,"[392] NAHB and AFSA argue that, without a "safe harbor" provision in the QM definition, "banks would further restrict home lending because they would be fearful of the risks of litigation if consumers are unable to repay a mortgage."[393]

---

[386] *Id.*
[387] Defining Larger Participants in Certain Consumer Financial Products and Services Markets, 77 Fed. Reg. 9592 (proposed Feb. 17, 2012) (to be codified at 12 C.F.R. pt 1090) at19.
[388] Ability to Repay (Qualified Mortgage), 76 Fed. Reg. 27390 (proposed May 11, 2011) (to be codified at 12 C.F.R. pt 226).
[389] Letter from James Tobin III, Senior Vice President and Chief Lobbyist, Government Affairs, Nat'l Ass'n of Home Builders, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform, (June 13, 2012) (on file with the author).
[390] Letter from Thomas Donohue, President and CEO, U.S. Chamber of Commerce, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending, p. 12, (June 1, 2012) (on file with the author).
[391] Letter from Bill Himpler, President, Executive Vice President, American Financial Services Association, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform (June 1, 2012) (on file with the author).
[392] Letter from Richard Jennison, President & CEO, Manufacturing Housing Institute, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform, (June 5, 2012) (on file with the author).
[393] Letter from James Tobin III, Senior Vice President and Chief Lobbyist, Government Affairs, Nat'l Ass'n of Home Builders, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform, (June 13, 2012) (on file with the author).

iv. Credit Risk Retention Rule

Six federal agencies recently proposed a "credit risk retention" rule, which implements a different, but related, mortgage lending requirement from the Dodd-Frank Act.[394] The "credit risk retention" rule requires "securitizers" to retain five percent of the credit risk for asset-backed securities (ABS) they package.[395] The "credit risk retention" rule is supposed to ensure that these issuers have some "skin in the game," so they are less inclined to create risky ABSs, which contributed to the financial crisis. This five percent requirement allows an exemption for issuers that securitize Qualified Residential Mortgages (QRMs), which require borrowers to meet at least a 20 percent down payment requirement. Although the "credit risk retention" rule affects a smaller amount of residential mortgages than the "ability to pay" rule, namely only those that are securitized, respondents are still concerned that the rule is not being fashioned carefully.

Namely, AFSA, ICBA and NAHB are all concerned that the agencies will define QRMs too narrowly. ICBA in particular warns that an "unreasonably narrow definition of QRM will drive thousands of community banks and other lenders from the residential mortgage market" and "severely limit credit availability to many borrowers who do not have significant down payments or who, despite high net worth, have relatively low incomes and high debt-to-income ratios."[396] As is the case with the ability to repay rule, if the CFPB is not careful, this rule could make it more difficult, if not imposible, for millions of Americans to purchase homes. Since normalizing conditions in U.S. housing markets are crucial to the nation's overall economie recovery, the CFPB must be cautious in fashioning rules that have such a profound impact on mortgage lending. To define QRM any other way, respondents argue, would "undermine a housing recovery by negative impacting the cost and availability of mortgage financing . . . ."[397]

v. CFPB TILA-RESPA Integration Rule

The CFPB is required to integrate the conflicting mortgage purchasing disclosure requirements that currently exist from the Real Estate Settlement and Procedures Act ("RESPA") and the Truth in Lending Act ("TILA").[398] Specifically, the Dodd-Frank Act requires the CFPB to propose a single, integrated disclosure form for mortgage loan transactions.[399] TILA and RESPA have required mortgage lenders and settlement agents to provide homebuyers

---

[394] The six agencies are the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, the Securities and Exchange Commission and the Department of Housing and Urban Development; P.L. 111–203, § 941 (July 21, 2010).

[395] Credit Risk Retention (Qualified Residential Mortgage), 76 Fed. Reg. 24090 (proposed April 29, 2011) (to be codified at 24 C.F.R. pt 267).

[396] Letter from Camden Fine, President & CEO, Independent Community Bankers of America, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending (June 1, 2012) (on file with the author).

[397] Letter from James Tobin III, Senior Vice President and Chief Lobbyist, Government Affairs, Nat'l Ass'n of Home Builders, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform, (June 13, 2012) (on file with the author); *see* also Letter from Bill Himpler, President, Executive Vice President, American Financial Services Association, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform (June 1, 2012) (on file with the author).

[398] Mortgage Disclosure Integration (Regulation X; Regulation Z), (proposed July 2012).

[399] P.L. 111–203Title XIV (July 21, 2010).

duplicative disclosure forms regarding loan terms and costs for over thirty five years.[400] The ostensible purpose of this effort, which is known as "Know Before You Owe" at the CFPB, is to improve customers' understanding of mortgage purchases and to reduce settlement, or closing, costs; however, respondents have raised several concerns.

Chiefly, the American Land Title Association (ALTA) is concerned that the "TILA-RESPA integration" rule will be costly, disproportionately burdensome to small businesses and hard to integrate with other mortgage related provisions outlined in the Dodd-Frank Act.[401] ALTA calls increased compliance costs required of settlement agents ($800 per employee, $2,360 to train leaders, 20% increase in software maintenance) "debilitating," as the typical settlement agents gross "less than $500,000 per year," and notes that annual revenue would decrease by 20 percent "due to decreased productivity."[402] ALTA is concerned that the CFPB's proposed rule could drive local small business settlement agents out of the marketplace completely, giving the competitive advantage to large, national vendors instead. ALTA and AFSA are also concerned whether the CFPB is taking a "coordinated, deliberate approach" to implementing the "TILA-RESPA integration" rule with other mortgage rules.[403] Finalizing this rule before other lending rules required by the Dodd-Frank Act could "add unnecessary costs and delays to industry's implementation and . . . confuse consumers." ALTA also sees this approach as not meeting the goals of President Obama's E.O. 13563, which urged agencies to "identify and use the best, most innovative and least burdensome tools for achieving regulatory ends."[404]

vi. FRB Enhanced Prudential Standards Rule

The FRB proposed an "enhanced prudential standards" rule as required by the Dodd-Frank Act.[405] The rule includes a wide variety of measures, including risk-based capital and leverage limits, liquidity requirements, stress test requirements, and early remediation requirements. The rule applies to U.S. bank holding companies with assets of $50 billion or more and any nonbank financial firms designated as systemically important companies (SIFIs) by the Financial Stability Oversight Council (FSOC).[406] Although these enhanced prudential standards were intended to prevent or mitigate the risks to financial stability that could arise from the failure of large, interconnected financial entities, respondent feedbacks suggests the rule may end up doing more harm than good.

The Business Roundtable and American Express contend that "[a]ny excessive charges on banks make it more expensive for banks to lend money and costs businesses more to borrow

---

[400] *See* TILA (P. L. 90-321, May 29, 1968); RESPA (P. L. 93-533, December 22, 1974).
[401] Letter from Steven Buckman, Pam Day, Celia Flowers and David Windle, American Land Title Association, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending (May 30, 2012) (on file with the author).
[402] *Id.*
[403] Letter from Bill Himpler, President, Executive Vice President, American Financial Services Association, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform (June 1, 2012) (on file with the author).
[404] Letter from Steven Buckman, Pam Day, Celia Flowers and David Windle, American Land Title Association, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending (May 30, 2012) (on file with the author).
[405] Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies, (April 3, 2012) (codified at 12 C.F.R. pt 1310).
[406] *Id.*

money."[407] As such, they argue that the rule is "poorly constructed and will impose costs on economic growth with no evidence of corresponding benefits."[408] The Financial Services Roundtable similarly argues that the "enhanced prudential standards" rule "has the potential to negatively affect job creation and economic recovery by making credit less available and more costly."[409] Since the rule forces certain non-bank companies into bank-like regulations for the first time, "despite many of their non-bank like activities," the U.S. Chamber of Commerce has concerns that it "will imperil the diversity of capital and tighten up liquidity in the marketplace."[410] Similarly, the Financial Services Roundtable actually argues that "the tenor of the proposed rule suggests that the FRB "may be using the proposed standards to cause a reduction in the size of large banks through size-based regulation."[411] Since "it is important for the American and global economies that there be banks of all sizes," as it allows the banking industry "to serve customers from the very smallest firms to the largest, including multinational companies, with convenience that matches the needs of our customers, innovation that all types of banks can provide, and financings to bolster economic growth and job creation by meeting the demands of customers of all sizes."[412]

vii. FSOC Nonbank Systematically Important Financial Institution (SIFI) Designation

The FSOC recently finalized rules and guidelines on the designation process of nonbank systemically important financial institutions ("SIFIs").[413] FSOC will likely designate nonbank firms as "SIFIs" by the end of the year, at which time they will be placed under supervision by the FRB and become subject to the "enhanced prudential standards" rule that is described in more detail above. The intention of regulating large, interconnected nonbanks for the first time is to prevent the next financial crisis; however, respondents question whether efforts by the FRB will be more costly than they are effective.

To qualify as a nonbank SIFI, a company must be "predominantly engaged in financial activities."[414] The Dodd-Frank Act provides that a nonbank qualifies here if 85% of its assets

---

[407] Letter from John Engler, President, Business Roundtable, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending, p. 12, (June 1, 2012) (on file with the author); Letter from Arne Christenson, Senior Vice President, Government Affairs, American Express, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform (May 23, 2012) (on file with the author).

[408] *Id.*

[409] Letter from Steve Bartlett, President & CEO, Financial Services Roundtable, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending, p. 12, (June 8, 2012) (on file with the author).

[410] Letter from Thomas Donohue, President and CEO, U.S. Chamber of Commerce, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending, p. 12, (June 1, 2012) (on file with the author).

[411] Letter from Steve Bartlett, President & CEO, Financial Services Roundtable, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending, p. 12, (June 8, 2012) (on file with the author).

[412] *Id.*

[413] Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies, (April 3, 2012) (to be codified at 12 C.F.R. pt 1310).

[414] Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies, (April 3, 2012) (to be codified at 12 C.F.R. pt 1310).

involve financial activities, but the FRB has broad discretion in drafting this rule. As AFSA mentions, a SIFI designation "will have significant and far-reaching regulatory implications and costs, both in terms of time and resources, for nonbank financial companies."[415] For this reason, AFSA implores the FSOC to exercise discretion when naming nonbank SIFIs, and hopes the FSOC "will provide companies with a meaningful opportunity to contest a proposed designation, including the right to an oral evidentiary hearing."[416] The U.S. Chamber of Commerce has concerns this is not occurring because they content that the FRB "has circumvented congressional intent and expanded the list of activities considered to be "financial activities."[417]

viii. Duplicative ATM Fee Disclosure Requirement

Automated Teller Machine (ATM) operators that impose fees on customers are required by the FRB to disclose this fee amount both electronically, on the ATM screen, and physically, on a placard placed on the outside of the ATM machine.[418] Respondents who recognize this duplicative condition in their letters overwhelmingly support the elimination of the physical placard fee notice requirement.[419] On July 9, 2012, the U.S. House of Representatives voted unanimously to pass H.R. 4367, a bill that would eliminate this duplicative ATM placard fee disclosure requirement.[420] As of the release of this staff report, the companion version of this bill awaits action in the Senate.

Business groups are primarily concerned that litigation risks from this requirement far "outweigh any purported benefits to consumers."[421] The relevant statute prescribes that, if the placard notices is not attached, plaintiffs are entitled to recover "the lesser of $500,000 or 1 per cent of the net worth of the [ATM operator], plus attorneys' fees and costs" in successful class action suits.[422] CUNA and ICBA have noted that this has led to situations where individuals remove affixed placards and file "spurious lawsuits."[423] From May 2010-April 2012, credit unions alone faced "over 100 such class action suits and the resources expended to fight these

---

[415] Letter from Bill Himpler, President, Executive Vice President, American Financial Services Association, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform (June 1, 2012) (on file with the author).
[416] *Id.*
[417] Letter from Thomas Donohue, President and CEO, U.S. Chamber of Commerce, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending, p. 12, (June 1, 2012) (on file with the author).
[418] Electronic Fund Transfer Act, P.L. 111-209, §205.16.
[419] Letter from Bill Cheney, President & CEO, Credit Union National Association, Executive Director, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending (June 1, 2012) (on file with the author).
[420] H.R. 4367, Amending the Electronic Fund Transfer Act to Limit the Fee Disclosure Requirement for an Automatic Teller Machine to the Screen of that Machine, 112th Cong., 2nd Session, (June 27, 2012).
[421] *Id.*
[422] Electronic Fund Transfer Act, P.L. 111-209, §205.16.
[423] Letter from Bill Cheney, President & CEO, Credit Union National Association, Executive Director, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending (June 1, 2012) (on file with the author); Letter from Camden Fine, President & CEO, Independent Community Bankers of America, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending (June 1, 2012) (on file with the author).

suits "reduces available resources to their consumer-members."[424] Cardtronics, the leading ATM operator in the U.S., expressed similar concerns that "lawsuits are multiplying and harming ATM companies financially."[425]

IV. Conclusion

This staff report is a continuation of the Committee's dialogue with the American people about the Obama Administration's regulations and policies that are seen by job creators as counterproductive to job growth and economic recovery. The feedback the Committee received demonstrates that the regulatory environment and the private sector are far from "doing fine." As documented in the Committee's preliminary staff report, and this staff report, a host of regulations, both old and new, are at the forefront of job creators' concerns. It appears that the Obama Administration is going against its promise and promoting substantially more regulation than the "health, safety and security of the American people require."[426]

[424] Letter from Bill Cheney, President & CEO, Credit Union National Association, Executive Director, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending (June 1, 2012) (on file with the author).
[425] Oversight Staff Briefing with Mike Keller, General Counsel of Cardtronics, and associates, (Feb.9, 2012).
[426] Office of the Press Secretary, The White House, Address by the President to a Joint Session of Congress (Sept. 2011).

APPENDIX

REGULATIONS BY AGENCY

COMMODITIES FUTURES TRADING COMMISSION			
REGULATION/STATUTES/POLICIES	ORGANIZATION/BUSINESS	2011	2012
Confirmation, Portfolio Reconciliation, and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants 75 Fed. Reg. 81519 (proposed Dec. 28, 2010) (to be codified at 17 C.F.R. pt. 23): CTFC issued a proposed rule prescribing standards for swap dealers and major swap participants related to the confirmation, processing, netting, documentation, and valuation of swaps.	Commodity Markets Council	✓	✓
Registration of Swap Dealers and Major Swap Participants 77 Fed. Reg. 2613 (final rule Jan. 19, 2012) (to be codified at 17 C.F.R. pts. 1, 3, 23, 170): CFTC issued this final rule to establish a process for registering swap dealers and major swap participants and to require swap entities to become and remain members of the registered futures association (RFA).	ConocoPhillips	✓	
Position Limits for Futures and Swaps, 76 Fed. Red. 71626 (final rule Nov. 18, 2011) (to be codified at 17 C.F.R. pts. 1, 150, 151): CFTC issued a final rule to establish position limits for twenty eight exempt and agricultural commodity futures and options contracts and the physical commodity swaps that are economically equivalent to such contracts.	Commodity Markets Council	✓	✓
	Independent Petroleum Association of America	✓	
Agricultural Commodity Definition, 75 Fed. Reg. 65586 (proposed Oct. 26, 2010) (to be codified at 17 C.F.R. pt. 1): CFTC issued a proposed rule to define "agricultural commodity" under the Commodity Exchange Act (CEA) as amended by Dodd-Frank.	Commodity Markets Council	✓	
Agricultural Swaps, 75 Fed. Reg. 59666 (proposed Sept. 28, 2010) (to be codified at 17 C.F.R. pt. 35): CFTC issued an advance notice of proposed rulemaking to request comment on the appropriate conditions, restrictions or protections to be included in a rule it must issue under Dodd-Frank governing the trading of agricultural swaps.	Commodity Markets Council	✓	
Antidisruptive Practices Authority, 75 Fed. Reg. 14943 (proposed March 18, 2011) (to be codified at 17 C.F.R. Chapter 1): CTFC issued an advance notice of proposed rulemaking to request comment on issuing rules necessary to prohibit trading practices deemed disruptive of fair and equitable trading.	Commodity Markets Council	✓	
Prohibition of Market Manipulation, 75 Fed. Reg. 67657 (proposed Nov. 3, 2010) (to be codified at 17 C.F.R. pt. 180): CFTC issued a proposed rule to implement new anti-manipulation authority as required by Dodd-Frank.	Commodity Markets Council	✓	
End User Exception to Mandatory Clearing of Swaps 75 Fed. Reg. 80747 (rule finalized on July 10, 2012,) (to be codified at 17 C.F.R. pt. 39): CFTC issued a proposed rule to provide new requirements governing the elective exception to the mandatory clearing of swaps for non-financial entities that enter into swaps to hedge or mitigate commercial risk.	American Express		✓
	American Financial Services Association		✓

	Business Roundtable		✓
	National Association of Manufacturers		✓
	U.S. Chamber of Commerce		✓
Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants 76 Fed. Reg. 23732 (proposed April 28, 2011) (to be codified at 17 C.F.R. pt. 23): CFTC issued a notice of proposed rulemaking to implement a new statutory framework that requires adoption of capital and initial and variation margin requirements for certain swap dealers and major swap participants.	American Financial Services Association		✓
	Business Roundtable		✓
	U.S. Chamber of Commerce		✓
Exclusion for Certain Otherwise Regulated Persons from the definition of the term "Commodity Pool Operator" (codified at 17 C.F.R. pt 4): CFTC issued this rule to eliminate the exemptions granted investment companies that utilize derivatives to manage their investment portfolios from having to register with the agency as a "commodity pool operator."	U.S. Chamber of Commerce		✓
Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant," and "Eligible Contract Participant", 77 Fed. Reg. 30596 (rule finalized on July 10, 2012): CFTC and SEC issued a rule further defining a series of terms related to the security-based swaps market, including "swap dealer," "security-based swap dealer," "major swap participant," "major security-based swap participant" and "eligible contract participant."	American Express	✓	✓
	Business Roundtable	✓	✓
	Commodity Markets Council	✓	✓
	ConocoPhillips	✓	✓
	Edison Electric Institute	✓	

CONSUMER FINANCIAL PROTECTION BUREAU			
REGULATION/STATUTES/POLICIES	**ORGANIZATION/BUSINESS**	**2011**	**2012**
CFPB Structure and Oversight: Unlike other independent agencies, CFPB is directed by a single regulator, does not have congressional oversight through the normal budget process, has independent litigating authority, and may promulgate regulations impacting companies without determining the adequacy of existing state laws, among other things.	American Financial Services Association		✓
Overdraft Protection: CFPB launched an inquiry into checking account overdraft programs this year to determine how these practices are impacting consumers. CFPB will use input collected through this inquiry to assist with rulemaking on	Credit Union National Association		✓

overdraft practices.			
"Unfair," Deceptive," or "Abusive" (UDAAP) Designation: CFPB has broad authority over "unfair, deceptive, and abusive" practices (UDAAPs) that may impact consumers. Although the two former terms have established meanings in case law and regulations, "abusive" has no established definition.	Credit Union National Association		✓
Consumer Complaint Database: CFPB recently launched a searchable, publically available database that lists names of "covered persons" about whom consumers have complained, as required by Dodd-Frank §1034 (debt buyers are included).	Debt Buyers Association International		✓
Mortgage Reform and Anti-Predatory Lending Act: Title XIV of Dodd-Frank amends the Truth in Lending Act (TILA) to reform consumer mortgage practices and to provide certain minimum standards for consumer mortgage loans, and for other purposes.	American Financial Services Association		✓
Amendments to the Homeowners Equity Protection Act (HOEPA), Pub. Law. No 103- 325: § 1431 of Dodd-Frank adds high-cost mortgage triggers to HOEPA, the part of TILA that specifically governs "high-cost" mortgages.	Credit Union National Association		✓
	Manufacturing Housing Institute		✓
	National Association of Home Builders		✓
"Qualified Mortgage" Rule, 76 Fed. Reg. 27390 (proposed May 11, 2011) (to be codified at 12 C.F.R. pt 226): FRB proposed this rule, which will be finalized by CFPB, to establish a federal definition of a "qualified mortgage" that lenders will use to demonstrate a customer's ability to afford a home.	American Financial Services Association		✓
	Credit Union National Association		✓
	Manufacturing Housing Institute		✓
	National Association of Home Builders		✓
	U.S. Chamber of Commerce		✓
Integrated Mortgage Disclosures under RESPA (Regulation X) and TILA (Regulation Z), (to be codified at 12 C.F.R. pts 1024 and 1026) (proposed July 9, 2012): CFPB published this proposed rule, and released model mortgage disclosure forms that integrate disclosure requirements of the Real Estate Settlement Procedures Act, or RESPA (Regulation X), and TILA (Regulation Z).	American Financial Services Association		✓
	American Land Title Association		✓
	Credit Union National Association		✓
Defining Larger Participants in Certain Consumer Financial Products and Services Markets, 77 Fed. Reg. 9592 (proposed Feb. 17, 2012) (to be codified at 12 C.F.R. pt 1090): CFPB proposed this rule, which includes consumer debt	Debt Buyers Association International		✓

collectors and consumer reporters in the definition of "larger participants" for the purpose of CFPB supervision.			
Electronic Fund Transfers (Regulation E), 77 Fed. Reg. 6194, (final rule Feb. 7, 2012) (codified at 12 C.F.R. pt 1005): CFPB proposed this rule to provide new protections, including disclosures and error resolution and cancellation rights to consumers who send remittance transfers to other consumers or businesses in a foreign country.	Credit Union National Association		✓
	Independent Community Bankers of America		✓
	U.S. Chamber of Commerce		✓
Procedural Rules to Establish Supervisory Persons Based on Risk Determination, 77 Fed. Reg. 31226 (proposed May 25, 2012) (to be codified at 12 C.F.R. pt 1091): CFPB proposed this rule, which sets forth the procedures by which it may subject a nonbank covered entity to its supervisory authority (i.e. bank-like examinations).	U.S. Chamber of Commerce		✓
Small Business Loan Data Collection Requirements: Dodd-Frank amends the Equal Credit Opportunity Act (Regulation B) to create a set of requirements for small business credit applicants. The provision requires lenders to ask credit applicants if the business is women or minority owned and whether it is a small business (< $750,000 in annual sales).	Independent Community Bankers of America		✓
Prepaid Access/ Gift Card Regulation: CFPB released a request for comment on regulating prepaid access/gift cards with respect to consumer protection, transparency, and fees.	Retail Industry Leaders Association		✓
Enforcement of the Fair Debt Collection Practices Act (FDCPA), Pub. L. No. 109-351: §1022 of Dodd-Frank transfers FDCPA rulemaking authority from FTC to CFPB and grants CFPB rulemaking authority to prescribe rules "as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives" of the FDCPA. Both agencies have entered into a Memorandum of Understanding (MOU) to coordinate their respective enforcement activities.	DBA International	✓	✓
Conflicting Definition of "Mortgage Originator:" §1401 of Dodd-Frank adds a definition of "mortgage originator" within TILA that is potentially inconsistent with existing federal definitions, most notable the SAFE Act (P.L. 110-289).	Manufacturing Housing Institute		✓

CONSUMER PRODUCT SAFETY COMMISSION			
REGULATION/STATUTES/POLICIES	**ORGANIZATION/BUSINESS**	**2011**	**2012**
Testing and Labeling Pertaining to Product Certification, 75 Fed. Reg. 28336 (proposed May 20, 2010) (to be codified at16 C.F.R. pt. 1107): On May 20, 2010, CPSC proposed a rule that would establish requirements for compliance evaluations and continuing testing for children's products.	International Sleep Products Association	✓	

American National Standard for Recreational Off-Highway Vehicles, ANSI/ROHVA 1-200X. Proposed Rule. 74 Fed Reg. 207 (to be codified at 14 CFR 39): Seeks to establish mandatory safety standards for new class of vehicles despite the absence of reliable data to guide the development of such standards. Aspects of the standards would include protective gear requirements, a roll-over protective structure and three-point seatbelt for each chair.	Association of Manufacturers		✓
Standard for Table Saws. Proposed Rule. 76 Fed. Reg. 62678 (to be codified at 16 CFR 11): In October 2011, the CPSC proposed a rule that would establish mandatory safety standards for table saws, requiring all newly manufactured table saws to have flesh-sensing technology.	Association of Manufacturers		✓
The Consumer Products Safety Improvement Act of 2008 Pub. L. No. 110-314: Specifies acceptable lead levels in children's products and requires third party testing to ensure that the standard is met. The CPSC has broadly interpreted the legislation to apply to any product that children might come in contact with.	Fashion Jewelry and Accessories Trade Association		✓
	Manufacturing Jewelers & Suppliers of America	✓	✓
	Motorcycle Industry Council	✓	
	National Council of Textile Organizations	✓	✓
	Non-Ferrous Founders Society		✓
Cadmium Petition: The Consumer Product Safety Commission is weighing whether to establish cadmium limits for manufacturers. Many companies that stopped using lead in their products have since replaced it with cadmium, which can also pose a health risk. There is concern that the standards may be unreasonably stringent	Fashion Jewelry and Accessories Trade Association		✓
	Manufacturing Jewelers and Suppliers of America		✓

CUSTOMS AND BORDER PROTECTION			
REGULATION/STATUTES/POLICIES	**ORGANIZATION/BUSINESS**	**2011**	**2012**
Import/Export Cargo Paperwork: 47 different agencies possess authority to request documentation before cargo can be imported or exported through a United States port.	Global Automakers		✓
	Toyota Motors North America, INC		✓
Illegal Entry of Textile and Apparel into U.S: Customs and Border Protection has failed to catch many importers engaging in fraudulent activity. Many foreign companies lie about where their product were made in order to pay low tariffs, thus cheating the U.S. government.	National Council of Textile Organizations		✓

DEPARTMENT OF AGRICULTURE			
REGULATION/STATUTES/POLICIES	**ORGANIZATION/BUSINESS**	**2011**	**2012**
"Buy America" Policy	Bumble Bee Foods, LLC	✓	
	Construction Industry Roundtable		✓
Implementation of Regulations Required Under Title XI of the Food, Conservation and Energy Act of 2008 (Proposed) 75 Fed. Reg. 44163 (proposed July 28, 2010) (to be codified at 9 C.F.R. pt. 201): The Department of Agriculture (USDA), Grain Inspection, Packers and Stockyards Administration (GIPSA) is proposing to add several new sections to the regulations under the Packers and Stockyards Act, 1921, as amended and supplemented (PS Act). A final rule was adopted in December 2011.	American Meat Institute Pork Producers Council	✓ ✓	
Plant Protection Act (PPA) of 2000 as part of the Agricultural Risk Protection Act: The PPA consolidates all or part of 10 existing USDA plant health laws into one comprehensive law, including the authority to regulate plants, plant products, certain biological control organisms, noxious weeds, and plant pests.	Agricultural Retailers Association		✓
	Biotechnology Industry Organization	✓	
U.S. Sugar Program	American Bakers Association	✓	✓
Frozen Food Level Pre-Approval Process: Food labels must be reviewed by the Food Service and Inspection Service before being marketed. The approval process may take as long as many months.	American Frozen Food Institute		✓
Restriction on Shiga Toxin-Producing E. Coli in Certain Raw Beef Products. 76 Fed. Reg. 58157 (to be codified at 9 CFR 416, 417, and 430) The Food Safety and Inspection Service established a rule barring all raw meats containing any trace of E.Coli (serogroups O26, O45, O103, O111, O121, and O145) from entering the market.	American Meat Institute		✓
Electronic Export Application and Certification Charge Proposed Rule. 77 Fed. Reg. 3159 (to be codified at 9 CFR 312, 322, 350, 362, 381, 590, 592): Would change the meat and poultry inspection regulation to create an electronic export application and certification system. The Food Safety and Inspection Service would charge users based on a formula, which would be updated annually.	American Meat Institute		✓
Common or Usual Name for Raw Meat and Poultry Products Containing Added Solutions Proposed Rule. 76 Fed. Reg. 44855 (to be codified at 9 CFR 319 and 381): Food Safety and Inspection Service proposed rule would establish common names for raw meat and poultry that contain added solutions. Meat and poultry packaging companies would be required to display the established language on their products.	American Meat Institute		✓
Food, Conservation, and Energy Act of 2008/The Farm Bill. Title IX. Established a broad definition for renewable biomass.	Composite Panel Association		✓
Food, Conservation, and Energy Act of 2008/ The Farm Bill. Section 8204: Amends the Lacey Act to protect a broader range of plants and plant products. Specifically, makes it illegal to import any plant product or plant without a declaration, including items	National Association of Home Builders National Association of Manufacturers		✓ ✓

that contain only traces of plant materials.			
Agriculture Acquisition Regulation. 76 Fed Reg. 231 (to be codified at 48 CFR 422) Direct final rule withdrawn on February 6, 2012: Would have required USDA contractors to file paperwork confirming compliance with applicable labor laws.	U.S. Chamber of Commerce		✓

DEPARTMENT OF ENERGY			
REGULATION/STATUTES/POLICIES	**ORGANIZATION/BUSINESS**	**2011**	**2012**
National Environmental Policy Act Implementing Procedures (Proposed) 76 Fed. Reg. 214 (proposed Jan. 3, 2011) (to be codified at 10 C.F.R. pt. 1021): The U.S. Department of Energy proposes to amend its existing regulations governing compliance with the National Environmental Policy Act (NEPA). The majority of the changes are proposed the categorical exclusions provisions contained in NEPA Implementing Procedures, with a small number of related changes proposed for other provisions.	Plumbing Manufacturers Institute	✓	
Energy Conservation Program: Certification, Compliance, and Enforcement for Consumer Products and Commercial and Industrial Equipment. 76 Fed. Reg. 12,422. (final rule issued Mar. 7, 2011).	American Express		✓
	American Lighting Association		✓
	Business Roundtable		✓
	Consumer Electronics Association		✓
Energy Conservation Standards for Certain Ceiling Fan Light Kits. 72 Fed. Reg. 1,270. (final rule issued Jan. 11, 2007).	American Lighting Association		✓
Energy Conservation Program: Test Procedures for Television Sets. 77 Fed. Reg. 2,830. (notice of proposed rulemaking Jan. 19, 2012).	Consumer Electronics Association		✓
Energy Efficiency Standards for Manufactured Housing; 75 Fed. Reg. 7,556. (advanced notice of proposed rulemaking Feb. 22, 2010).	Manufactured Housing Institute		✓

DEPARTMENT OF HEALTH AND HUMAN SERVICES			
REGULATION/STATUTES/POLICIES	**ORGANIZATION/BUSINESS**	**2011**	**2012**
Accounting of Disclosures: Health Information Technology for Economic and Clinical Health (HITECH) Act	National Association of Chain Drug Stores	✓	
Centers for Medicare and Medicaid (CMS): Health IT Interim Final Rule	American Express	✓	
	Business Roundtable	✓	
Centers for Medicare and Medicaid (CMS): Medicare Provider Enrollment, Chain and Ownership System	National Association of Chain Drug Stores	✓	
Centers for Medicare and Medicaid (CMS): Medical Equipment and Supplies Competitive Bidding Medicare Modernization Act of 2003. Section 302. Durable Medical	National Association of Chain Drug Stores	✓	

Equipment Competitive Bidding Regulation: Competitive bidding program set up by Medicare so that prices are determined by supplier's bids rather than a traditional fee schedule.	Center for Regulatory Effectiveness		✓
Centers for Medicare and Medicaid (CMS): Medicare/Medicaid Recovery Audit Contractor (RAC) Program	American Hospital Association	✓	✓
Centers for Medicare and Medicaid (CMS): Clinical Laboratory Signature on Requisition	American Hospital Association	✓	
Centers for Medicare and Medicaid (CMS): Retiree Drug Subsidy under Patient Protection and Affordable Care Act (PPACA)	American Express	✓	
	Business Roundtable	✓	
The Civil Monetary Penalty Law. Section 1128A: Places restrictions on rewarding physicians for the quality of care they provide.	American Hospital Association	✓	✓
Employer Mandate: Patient Protection and Affordable Care Act (PPACA)	American Express	✓	
	Business Roundtable	✓	
	Small Business & Entrepreneurship Council	✓	
The Ethics in Patient Referrals Act. Section 1877 of the Social Security Act/Physician Self-Referral Law (The Stark Law): administered jointly with the Department of Justice: Mandates that physician compensation be set in advance and that they be paid by the hour. As a result, tying compensation to quality and care improvement would violate law.	American Hospital Association	✓	✓
Grandfathering Rule: Patient Protection and Affordable Care Act (PPACA)	American Express	✓	
	Business Roundtable	✓	
	Small Business & Entrepreneurship Council	✓	
Medical Loss Ratio Rule: Patient Protection and Affordable Care Act. Section 1251: Health insurance issuers must grant a rebate to all individuals whose health insurance issuer spends less than 85% of premiums (large group market) or 80% of premiums (small group market).	American Express	✓	
	Business Roundtable	✓	
	Small Business & Entrepreneurship Council	✓	
	U.S. Chamber of Commerce		✓
Regulation Abolishing "Mini-Medical" Plans: Patient Protection and Affordable Care Act (PPACA)	American Express	✓	
	Business Roundtable	✓	
	Small Business & Entrepreneurship Council	✓	
Patient Protection Affordable Care Act. Section 6002 "Sunshine Provisions": Establishes new requirements for processing and reporting pharmaceutical company payments to physicians. Also requires physicians to disclose investments and connections to the pharmaceutical industry.	Advanced Medical Technology Association		✓
	American Express		✓
	Business Roundtable		✓
Health Care and Education Reconciliation Act. Section 1405: Beginning in 2013, imposes a 2.3% excise tax on the first sale of medical devices.	Advanced Medical Technology Association		✓
Unique Device Identification. Proposed Rule.77 Fed. Reg. 40735 (to be codified at 21 CFR 16): Would require medical devices to have a unique identifier for tracking purposes.	Advanced Medical Technology Association		✓
Patient Protection and Affordable Care Act. Taxes on "Cadillac Plans"	American Express American Bakers Association Business Roundtable	✓ ✓	✓

Food Safety Modernization Act of 2010: Increases FDA's regulatory authority over food handling and production	American Bakers Association		✓
	American Express		✓
	American Frozen Food Institute		✓
	Business Roundtable		✓
	International Bottled Water Association		✓
	Western Growers Association		✓
American Recovery and Reinvestment Act of 2009. Title VIII: CDC used portion of grant money to fund a project called "Communities Putting Prevention to Work," which featured ads discouraging soft drink consumption.	American Beverage Association		✓
Medicare Secondary Payer. 77 Fed. Reg. 116 (to be codified at 42 CFR Part 411): Requires some insurers to be the primary payer for health care services for certain claims.	American Express		✓
	Business Roundtable		✓
HIPAA Privacy Rule: Gives individuals the right to find out who has electronically accessed their protected health information.	American Express		✓
	American Hospital Association		✓
	Business Roundtable		✓
Patient Protection and Affordable Care Act. Final Rule on Health Care Exchanges. 77 Fed. Reg. 59 (to be codified at 45 CFR 155, 156, and 157): Established "exchanges"--marketplaces where small employers and individuals can compare private health insurance options. Also, set specific guidelines for determining which insurance companies participate.	American Express		✓
	Business Roundtable		✓
	U.S. Chamber of Commerce		✓
Patient Protection and Affordable Care Act. Section 4205. FDA Nutrition Labeling of Foods. 75 Fed. Reg. 141. (to be codified at 21 CFR 101.10): Requires restaurants with more than twenty locations to list calorie content information on menus. Vending machine operators must display a sign near food items that inform the customer the calorie contents of items.	American Express		✓
	Business Roundtable		✓
Patient Protection and Affordable Care Act. Section 2705. HIPAA Wellness Program. Allows employers to continue rewarding employees for being in a wellness program. The value of these rewards can be increased by 30% of the cost of coverage after January 1, 2014.	American Express		✓
	Business Roundtable		✓
CMS Claims Data Rule. 76 Fed. Reg. 76541 (to be codified at 42 CFR 401): Established performance measures to rate organizations in order for CMS to determine whether or not they should receive claims data under Medicare Parts A, B, and D.	American Express		✓
	Business Roundtable		✓
Patient Protection and Affordable Care Act Actuarial Value Penalty: Subjects employers to a penalty if the employer-sponsored health plan they provide covers less than 60% actuarial value.	American Express		✓
	Business Roundtable		✓
Patient Protection and Affordable Care Act. Automatic Enrollment. Section 1511: Requires some employers with more than 200 full-time employees to place new employees in an employee-provided health plan.	American Express		✓
	Business Roundtable		✓
Patient Protection and Affordable Care Act. Section 2714: Individuals allowed to stay on their parent's healthcare plan until the age of 26.	American Manufacturers Association		✓

Medicare and Medicaid Electronic Health Record Rules: Both CMS and the Office of the National Coordinator for Health Information Technology released differing rules to manage the program.	American Hospital Association		✓
Medicare and Medicaid Conditions for Participation for Hospitals and Critical Access Hospitals. 76 Fed. Reg. 65891 (to be codified at 42 CFR 482 and 485: Requires all hospitals to include a member of medical staff on the governing board. Also, prohibits multi-hospital systems from operating with a single medical staff.	American Hospital Association		✓
CMS Condition Code 44: Upon approval by the hospital's Utilization Review Committee, allows for a patient to be changed from inpatient to outpatient if patient does not meet CMS medical necessity requirements for inpatient care. Condition Code 44 is currently rarely used for short-term stays, as Utilization Review Committees tend not to be immediately available.	American Hospital Association		✓
Clinical Laboratory Improvement Act of 1988. Regulations. 65 Fed. Reg. 251 (to be codified at 42 CFR 493): CMS' Clinical Laboratory Improvement regulations impose severe penalties for minor infractions.	American Hospital Association		✓
Beneficiary Notices	American Hospital Association		✓
Patient Protection and Affordable Care Act	Associated Builders and Contractors		✓
Expectation of substance testing requirements	International Bottled Water Association		✓
FDA Guidance for Industry #209: The agency labeled some widely accepted uses for antibiotics on animals as "injudicious."	National Pork Producer Council		✓
Extra Label Antibiotics Ban. 73 Fed. Reg. 129. (to be codified at 21 CFR 530): FDA ban of extra-label use of cephalosporins on all animals.	National Pork Producer Council		✓
Expectation of FDA regulations on salt	Salt Institute		✓
Patient Protection Affordable Care Act. Benefit and Coverage Rule. 77 Fed. Reg. 8668 (to be codified at 26 CFR 54 and 602, 29 CFR 2590 and 45 CFR 147): Imposes new disclosure requirements on health insurance providers regarding available plans. Final rule effective April 2012.	U.S. Chamber of Commerce		✓
Patient Protection and Affordable Care Act. Essential Health Benefits Package December 16, 2011 Guidance Bulletin: Provides an outline of how states should implement PPACA. A rulemaking was never initiated and, therefore, implementation proposals were never reviewed by the public.	U.S. Chamber of Commerce		✓
Patient Protection and Affordable Care Act Seasonal Workers Guidelines: PPACA does not explicitly address whether employers with seasonal workers are required to provide these workers with health insurance.	Western Growers Association		✓

DEPARTMENT OF HOMELAND SECURITY			
REGULATION/STATUTES/POLICIES	**ORGANIZATION/BUSINESS**	**2011**	**2012**
Aircraft Repair Station Security, 74 Fed. Reg. 59874) (proposed Nov. 18, 2009) (to be codified at 49 C.F.R. pts. 1520 and 1554): Transportation Security Administration (TSA) is proposing a rule to codify the scope of its existing inspection program and to require regulated parties to allow TSA and Department of Homeland Security (DHS) officials to enter, inspect, and test property, facilities, and records relevant to repair stations. The proposed regulations also provide procedures for TSA to notify repair stations of any deficiencies in their security programs and to determine whether a particular repair station presents an immediate risk to security.	Aircraft Owners and Pilots Association	✓	
Maryland Three Airports: Enhanced Security Procedures at Certain Airports in the Washington, D.C., Area, 49 C.F.R. § 1562: TSA published an interim final rule (IFR) on February 10, 2005 (70 FR 7150), codified and transferred responsibility from the Federal Aviation Administration (FAA) to TSA for ground security requirements and procedures at three Maryland airports that are located within the Washington, DC, Metropolitan Area Flight Restricted Zone (Maryland Three Airports), and for individuals operating aircraft to or from these three airports.	Aircraft Owners and Pilots Association	✓	
Chemical Facility Anti-Terrorism Security as part of the Homeland Security Appropriations Act of 2007 (Section 550 of P.L. 109-295)(to be codified at 6 CFR 27): Set risk-based performance standards for security chemical facilities. All chemical facilities identified as high risk must craft and launch Site Security Plans unique to the vulnerabilities that particular facility faces.	Agricultural Retailers Association		✓
Personnel Surety Program 74 Fed. Reg. 110. Proposed Rule (to be codified at 5 CFR 1320.8): Would require companies to submit names to the Department of Homeland Security for review 48 hours before an individual can have full unescorted access to a chemical facility.	Agricultural Retailers Association		✓
	American Coatings Association		✓
	Institute of Makers of Explosives		✓
Homeland Security Appropriations Act of 2007 (Section 550 of P.L. 109-295). Chemicals of Interest Rule: The Department of Homeland Security interprets chemicals of interest to include all those chemicals with an active ingredient that has been identified by the Department.	Agricultural Retailers Association		✓
Chemical Facility Anti-Terrorism Security Act. Alternative Security Programs: All chemical facilities must abide by DHS Security programs despite existence of industry-created security programs.	Agricultural Retailers Association		✓
Chemical Facility Anti-Terrorism Security Act. Material Modification: Regulations do not allow for seasonal and emergency use of banned chemicals under the Chemical Facility Anti Terrorism Security Act that could otherwise be helpful.	Agricultural Retailers Association		✓
TSA Security Directive SD 08 F: Requires general aviation pilots to submit fingerprints and get an airport identification badge for each regular airport visit.	Aircraft Owners and Pilots Association		✓

Instruments of International Traffic Imported with Residue. Ruling H026715: Under the proposed rule, containers with residue at or above 7% of rail car capacity would be designated as regular loads for reporting purposes.	American Chemistry Council		✓
	Institute of Makers of Explosives		✓
L-1B/ "Specialized Knowledge" Visas 8 CFR 214.2 (h): Visa allows an employer to transfer an employee with "specialized knowledge" from a foreign office to a U.S. office. "Specialized knowledge" is undefined.	American Express		✓
	Business Roundtable		✓
Security Threat Assessments: Truck drivers must undergo redundant threat assessments and credentialing requirements.	American Trucking Association		✓
Ammonium Nitrate Security Program. Proposed Rule. 76 Fed. Reg. 46908 (to be codified at 6 CFR 31): Seeks to regulate sale and transfer of ammonium nitrate.	Institute of Makers of Explosives		✓
Chemicals of Interest Fuel Mixture Rule: Classifies gas as a chemical of interest, thus making it potentially subject to regulation.	International Liquid Terminal Association		✓
Changes to the In-Bond Process. 77 Fed. Reg. 35. Proposed Rule (to be codified at 19 CFR 4): Would replace the paper in-bond application with an electronic version. The new application will ask for more information than previously requested. Also reduces the maximum transit time of 60 days to 30 days.	National Association of Manufacturers		✓
Cold War Era Export Control Regulations: Current regulations do not reflect needs for national security and technological advancements.	National Association of Manufacturers		✓
New I-9 Form (to be codified at 8 CFR Part 274a): Updated the I-9 Form.	U.S. Chamber of Commerce		✓
Process for Issuing the New I-94 Card: U.S. Customs and Border Protection did not issue a Notice of Proposed Rulemaking, but simply announced the new system.	U.S. Chamber of Commerce		✓

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT			
REGULATION/STATUTES/POLICIES	**ORGANIZATION/BUSINESS**	**2011**	**2012**
HUD Rule on Obtaining Mortgages and Settlement Costs as part of the Real Estate Settlement Procedures Act (RESPA). 73 Fed. Reg. 222.(to be codified at 24 CFR Parts 203 and 3500): Requires disclosure for certain mortgage settlement expenses for federally supported mortgage loans to consumers.	American Land Title Association		✓
HUD Quality Assurance and Safety Standards for Manufactured Homes: The U.S. Department of Housing and Urban Development HUD (through its administration of the HUD Code (the Manufactured Housing Construction and Safety Standards Act, 42 U.S.C 5401 et seq.) has set quality assurance and safety standards for manufactured homes.	Manufactured Housing Institute		✓
Manufactured Housing and Improvement Act of 2000: Established the Manufactured Housing Consensus Committee, an advisory committee, to improve HUD rules regarding regulations impacting manufactured housing industry. However, MHCC recommendations are often ineffective due to HUDs rulemaking procedures, a lengthy internal review process and failure to fill	Manufactured Housing Institute		✓

vacancies on MHCC.			
HUD, Preferred Providers for REO Transactions: The policy of the U.S. Department of Housing and Urban Development (HUD) is that buyers of homes owned by HUD, as a result of a foreclosure of a Federal Housing Administration insured mortgage, are forced to close their transaction through a HUD preferred provider settlement agent.	American Land Title Association		✓

DEPARTMENT OF THE INTERIOR			
REGULATION/STATUTES/POLICIES	**ORGANIZATION/BUSINESS**	**2011**	**2012**
Backlog of applications for Deepwater Offshore Drilling Permits	American Express		✓
	Business Roundtable		✓
Well Simulation, Including Hydraulic Fracturing on Federal and Indian Lands. Proposed Rule. 53 Fed. Reg. 223 (to be codified at 43 CFR 3160): Proposed rule would regulate hydraulic fracturing on public land and Indian land, including the contents of flowback water and would require the disclosure of drilling techniques.	Conoco Phillips, INC		✓
	Independent Petroleum Association of America		✓
	National Association of Manufacturers		✓
BLM Inspection Fee. The BLM charges an inspection fee to companies with oil and gas leases.	Conoco Phillips, INC		✓
Drilling Safety Rule 73 Fed Reg. 4911 (to be codified at 30 CFR 250): Rule became effective in 2010. Regulates drilling fluids and review usage of Blowout Preventers.	Conoco Phillips, INC		✓
Safety and Environmental Systems Rule 76 Fed. Reg. 56683 (to be codified at 30 CFR Part 250 Subpart S): Rule became effective in 2010. Requires all operators in the Outer Continental Shelf to develop safety and environmental management plans.	Conoco Phillips, INC		✓
Worst Case Discharge Calculations (to be codified at 49 CFR 194.105): Requires operators to estimate how much oil would leak from a pipeline based on a "worst case" situation.	Conoco Phillips, INC		✓
Bureau of Ocean Energy Management 2012 Oil Shale and Tar Sand Programmatic Environmental Impact Statement. Proposal to amend 10 land use plans in the western U.S. to determine which areas will be open and closed to commercial use for oil shale and tar sand resources. Additionally, the agency refused to release public comment on the PEIS.	Center for Regulatory Effectiveness		✓
Stream Protection Rule (SPR): Proposed Rule Fall 2012. Restricts surface and underground coal mining in and around streams.	National Mining Association		✓

DEPARTMENT OF LABOR/MISC. LABOR POLICIES			
REGULATION/STATUTES/POLICIES	**ORGANIZATION/BUSINESS**	**2011**	**2012**
Administration "High Road" Government Contracting Policy: The February 2010 Annual Report of the White House Task Force on the Middle Class announced it is exploring a government contacting policy that would take into account the records of the firms who receive government contracts and the quality of the jobs they create.	Associated Builders and Contractors, Inc.	✓	
	Associated General Contractors	✓	
	Small Business & Entrepreneurship Council	✓	
Administration Use of Project Labor Agreements for Federal Construction Projects (E.O. 13502) and 48 C.F.R. § 536.271 (2010): On February 13, 2009, President Obama issued an Executive Order to encourage the use of project labor agreements for large-scale federal construction projects. In April 2010, the Department of Defense, General Services Administration, and National Aeronautics and Space Administration issued a final rule implementing the Executive Order.	Associated Builders and Contractors, Inc.	✓	✓
	Associated General Contractors	✓	
	Construction Industry Round Table	✓	✓
	Small Business & Entrepreneurship Council	✓	
	U.S. Chamber of Commerce		✓
DOL's Lack of Clarity in Job Duties used for Wage Determinations under the Davis-Bacon Act: Currently, DOL provides wage determination lists for several different classifications of workers, but only limited information is provided about the job duties or union work rules that correspond to those classifications.	Associated Builders and Contractors, Inc.	✓	
DOL Persuader Agreements: Employer and Labor Relations Consultant Reporting Under the Labor-Management Reporting and Disclosure Act (LMRDA): On June 21, 2011, the U.S. Department of Labor's (DOL) Office of Labor-Management Standards proposed a rule to revise its reporting requirements for employer and consultant "persuader activity" under the Labor Management Reporting and Disclosure Act (LMRDA).	Associated Builders and Contractors Brick Industry Association Littler Mendelson Motor & Equipment Manufacturers Association National Association of Manufacturers National Federation of Independent Business Retail Industry Leaders Association U.S. Chamber of Commerce	✓	✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓
DOL Right to Know under the Fair Labor Standards Act (FLSA) (Potential): In the fall of 2010, the Wage and Hour Division (WHD) announced they are considering a proposed rule that would require covered employers to notify their employees of their rights under the FLSA and to provide information about hours worked and wage computation.	American Bakers Association	✓	
	Associated Builders and Contractors, Inc.	✓	
	National Federation of Independent Business	✓	
	Printing Industries of America		✓
DOL Wage Rates Under the Davis-Bacon Act: The Wage and Hour Division (WHD) sets "prevailing wages" based on wages paid to various laborers and mechanics employed on construction projects.	Associated Builders and Contractors, Inc.	✓	
Employee Benefits Security Administration (EBSA) Definition of the Term "Fiduciary" 75 Fed. Reg. 2142 (proposed Oct. 22, 2010): The EBSA issued a proposed rule to expand the definition of "fiduciary" under the	Financial Services Forum (note this concern may not reflect the entire membership of the Forum)	✓	✓

Employee Retirement Income Security Act (ERISA).	Business Roundtable U.S. Chamber of Commerce		✓
OHSA Backing Operations (Potential): In the fall of 2010, OSHA announced it is considering proposing a rule to regulate the backing operations of construction equipment.	Associated General Contractors	✓	
OSHA Building Inspectors Partnership (pilot program): In May 2010, OSHA announced it is launching a pilot program to partner with local building inspectors in select American cities to monitor working conditions.	Associated General Contractors	✓	
OSHA Combustible Dust, 74 Fed. Reg. 54334 (proposed Oct. 21, 2009) (to be codified at 29 C.F.R. pt. 1910): OSHA issued an advanced notice of proposed rulemaking to develop a proposed standard for combustible dust management. OHSA has determined combustible dust to include "all combustible particulate solids of any size, shape, or chemical composition that could present a fire or deflagration hazard when suspended in air or other oxidizing medium."	American Chemistry Council		✓
	American Forest and Paper Association	✓	✓
	American Iron and Steel Institute	✓	
	American Wire Producers Association	✓	✓
	APA - The Engineered Wood Association	✓	
	Kitchen Cabinet Manufacturers Association	✓	
	National Lumber & Building Material Dealers Association	✓	
	National Oilseed Processors Association	✓	
	Non-Ferrous Founders' Society	✓	✓
	Society of Plastics Industry	✓	
OSHA Consultation Agreements: Proposed Changes to Consultation Procedures, 75 Fed. Reg. 54064 (proposed Sept. 3, 2010) (to be codified at 29 C.F.R. pt. 1908): OSHA issued a proposed rule to clarify the Assistant Secretary's ability to identify sites to be inspected, regardless of their Safety and Health Achievement and Recognition Programs (SHARP) status. The proposal also permits OSHA compliance officers to proceed with enforcement visits due to referrals from sites undergoing consultation visits or sites that have attained SHARP status. Finally, the proposal limits the deletion period from OSHA's programmed inspection schedule for those employers that participate in the SHARP program.	American Coatings Association	✓	
	American Iron and Steel Institute	✓	
	Associated General Contractors	✓	
	International Bottled Water Association	✓	
	Metal Treating Institute	✓	
	Motor and Equipment Manufacturers Association	✓	
	National Association of Manufacturers	✓	
	National Federation of Independent Business	✓	
	Society of Plastics Industry	✓	
	Textile Rental Services Association	✓	
OSHA Cranes and Derricks in Construction, 29 C.F.R. § 1926 (2010): OSHA issued a final rule to update and specify industry work practices to help ensure employee safety during the use of cranes and derrick in construction projects. The rule took effect on November 8, 2010.	Association of Equipment Manufacturers	✓	
OSHA Injury & Illness Prevention Program ("I2P2") 75 Fed. Reg. 23637 (announced May 4, 2010) (to be codified at C.F.R. pt. 1910): OSHA announced it was conducting stakeholder meetings to develop a proposed rule to implement an Injury and Illness Prevention Program. The proposed rule is likely to address how to	American Coatings Association	✓	
	American Forest and Paper Association		✓
	American Iron and Steel Institute	✓	
	Associated Builders and Contractors, Inc.	✓	✓

plan, implement, evaluate, and improve processes and activities that protect employee safety and health. It is unclear if the rule will be proposed prior to the 2012 election.	Associated General Contractors	✓	
	Metal Treating Institute	✓	
	Motor and Equipment Manufacturers Association	✓	
	National Association of Manufacturers	✓	
	National Federation of Independent Business	✓	✓
	National Lumber & Building Material Dealers Association	✓	
	National Oilseed Processors Association	✓	
	Small Business & Entrepreneurship Council	✓	
	Society of Plastics Industry	✓	
	Textile Rental Services Association	✓	
OSHA Interpretation of Provisions for Feasible Administrative or Engineering Controls of Occupational Noise 75 Fed. Reg. 64216 (proposed Oct. 19, 2010) (to be codified at 29 C.F.R. pt. 1910, 1926): OSHA issued a proposed interpretation of the term "feasible administrative or engineering controls" to clarify that the term "feasible" means capable of being done. On January 19th, 2011, OSHA announced it was withdrawing its proposed interpretation.	American Coatings Association	✓	
	American Coke and Coal Chemicals Institute	✓	
	American Forest and Paper Association	✓	
	American Iron and Steel Institute	✓	
	APA - The Engineered Wood Association	✓	
	Associated Builders and Contractors, Inc.	✓	
	Associated General Contractors	✓	
	Association of Equipment Manufacturers	✓	
	Boeing	✓	
	Conoco-Phillips, Inc	✓	
	Forging Industry Association	✓	
	International Bottled Water Association	✓	
	Kitchen Cabinet Manufacturers Association	✓	
	Metal Treating Institute	✓	
	Motor and Equipment Manufacturers Association	✓	
	National Association of Manufacturers	✓	
	National Concrete Masonry Association	✓	
	National Council of Textile Organizations	✓	
	National Federation of Independent Business	✓	
	National Lumber & Building Material Dealers Association	✓	
	National Oilseed Processors Association	✓	
	National Tooling and Machining Association	✓	
	Non-Ferrous Founders' Society	✓	✓

	Precision Machined Products Association	✓	
	Precision Metalforming Association	✓	
	Roaring Springs Water	✓	
	Small Business & Entrepreneurship Council	✓	
	Society of Plastics Industry	✓	
	Textile Rental Services Association	✓	
	Window & Door Manufacturers Association	✓	
	U.S. Chamber of Commerce		✓
OSHA Lockout Procedure Guidance: In 2008, OSHA issued a compliance directive to make clear that efforts to label die or tool changes as "routine, repetitive and integral to the production operation" and therefore not subject to lockout would be rejected.	National Tooling and Machining Association	✓	
	Precision Machined Products Association	✓	
	Precision Metalforming Association	✓	
OSHA Occupational Exposure to Crystalline Silica (Potential): In the fall of 2010, OSHA announced it intends to pursue a new comprehensive standard for crystalline silica to require provisions for methods of compliance, exposure monitoring, worker training, and medical surveillance. On February 14, 2011, OSHA sent its proposed rule to OMB for review.	Associated Builders and Contractors		✓
	Associated General Contractors	✓	
	Business Roundtable		✓
	Interlocking Concrete Pavement Institute	✓	✓
	National Association of Manufacturers		✓
	National Concrete Masonry Association	✓	
	National Stone, Sand and Gravel Association		✓
	Non-Ferrous Founders' Society		✓
	Portland Cement Association		✓
OSHA Occupational Injury and Illness Recording and Reporting Requirements, 75 Fed. Reg. 4728 (proposed Jan. 29, 2010) (to be codified at 29 C.F.R. pt. 1904): OSHA issued a proposed rule to add a column to the OSHA 300 Log that would require employers to record work-related musculoskeletal disorders (MSD). On January 25, 2011, OSHA announced it was temporarily withdrawing its proposed rule to seek further input from small business. However, OSHA reopened the public comment period in May 2011.	American Coke and Coal Chemicals Institute	✓	
	American Iron and Steel Institute	✓	
	Associated Builders and Contractors, Inc.	✓	
	Associated General Contractors	✓	
	Automotive Aftermarket Industry Association	✓	
	Business Roundtable		✓
	Metal Treating Institute	✓	
	National Federation of Independent Business	✓	
	National Oilseed Processors Association	✓	
	National Stone, Sand and Gravel Association		✓
	Non-Ferrous Founders' Society	✓	✓
	Society of Chemical Manufacturers and Affiliates	✓	
	Society of Plastics Industry	✓	
	U.S. Chamber of Commerce		✓
OSHA Permissible Exposure Limit (PEL): In August	American Iron and Steel Institute	✓	

2010, OSHA announced it plans to conduct a comprehensive review of chemicals that should be subject to PELs.	Metal Treating Institute	✓	
OSHA Policy Change to Penalty Structure: OSHA is currently implementing multiple changes to its administrative penalty calculation system that will impact final penalties issued to employers for OSHA violations.	Associated General Contractors	✓	
OSHA Safety Signs: Current safety sign regulations are based on outdated standards.	National Electrical Manufacturers Association	✓	
OSHA Severe Violator Enforcement Program (SVEP): In June 2010, OSHA established enforcement policies and procedures for the SVEP to replace OSHA's Enhanced Enforcement Program (EEP).	Non-Ferrous Founders' Society	✓	
DOL Visa Regulations On Temporary, Lesser Skilled Workers And Retention (H-2B Visa): DOL has finalized a new rule establishing a changed wage methodology for temporary, nonagricultural workers without college degrees (H-2B visas) that eliminates the "prevailing wage" standard and instead imposes an obligation for employers to pay the greater of the government wage surveysor a collective bargaining agreement wage, regardless of whether the employer is covered by these acts or a collective bargaining agreement. DOL also finalized a companion new rule amending all aspects of the H-2B program and processing requirements. A disagreement over DOL's compliance with the Regulatory Flexibility Act and the DOL's authority to issue the regulation were the basis for the challenge filed by the U.S. Chamber in U.S. District Court for the Northern District of Florida which granted a preliminary injunction in April 2012 blocking the regulation from going into effect. DOL's H-2B regulations have also been blocked by Congress for FY2012.	Brick Industry Association		✓
	U.S. Chamber of Commerce		✓
MSHA Explosives Regulations do not reflect modern industry standards and current technology: MSHA's metal and non-metal explosives regulations were last revised in the early 1990s and reflect late 1980s technology. Because the regulations are so outdated, MSHA issues citations for things that are insignificant while significant safety and security issues are not citable.	Institute of Makers of Explosives		✓
MSHA Citations Issued Before Industry is Given Notice of Rule Changes: MSHA by law (The Federal Mine Safety & Health Act of 1977) is required to inspect all mines (surface operations) two times every year; underground mines are required to be inspected four times every year. Inspectors in the field may be newly assigned to a mining sector, or inspectors may just have been assigned to a new territory, and decide to interpret a standard differently than previous MSHA inspectors had used.	National Stone, Sand, & Gravel Association		✓
MSHA Increased Inspections for Accountability: MSHA recently decided to increase reliance on accountability teams to double-check inspector performance leading to a fifty percent increase in citations.	National Stone, Sand, & Gravel Association		✓
MSHA Use of Program Policy Letters In Lieu of APA Consistent Rulemaking	National Stone, Sand, & Gravel Association		✓

MSHA Pattern of Violation Rule	Portland Cement Association		✓
DOL's Wage and Hour Division Proposed Regulation Regarding Farm Employment of Minors: On April 27, 2012, withdrew a proposed regulation regarding farm employment of minors. The discontinued rule would have amended existing FLSA child labor regulations and incorporated them into enforcement policies aimed at imposing steep civil money penalties at farmers for child labor violations. There is concern from industry that the issue will come up again.	Agricultural Retailers Association		✓
DOL's Wage and Hour Division Application of the FLSA to Domestic Service: DOL has proposed that third-party employers pay minimum wage and overtime to home care workers. Expanding the coverage of the FLSA to these workers will significantly increase the cost of in-home companion care.	National Federation of Independent Business		✓
DOL and PBGC Changes to Defined Benefit Pension Plans: The *Pension Protection Act of 2006*, Publ.L. 109-280, made significant changes to the funding requirements for defined benefit pension plans, as well as changes that affected most other types of pensions. The law also placed certain restrictions on changes to pension plans that would increase their benefits without funding changes. DOL and the PBGC have been issuing regulations and guidance with regard to these requirements, including some that remain underway.	Business Roundtable		✓
OSHA Residential Construction Fall Protection Regulation: In December 2010, OSHA changed its residential construction fall protection regulation rescinding its Interim Fall Protection Guidelines, which set out a temporary policy that allowed employers engaged in certain residential construction activities to use alternative procedures instead of conventional fall protection, such as guardrail systems, safety net systems, or personal fall arrest systems, for any work that is conducted 6 feet or more above lower levels.	National Association of Home Builders		✓
OSHA National Emphasis Program (NEP) for Primary Metal Industries: In June 2011, OSHA issued a new directive establishing a NEP for the Primary Metals Industries, however, employers are already subject to existing NEPs for Hexavalent Chromium, Recordkeeping, Lead, Combustible Dust, and Crystalline Silica.	Non-Ferrous Founders' Society		✓
OSHA Employer Safety Incentive and Disincentive Policies and Practices: In March 2012, OSHA release guidance intended to protect employee whistleblowers who report workplace injury or illness.	National Tooling and Machining Association		✓
	Precision Machined Products Association		✓
	Precision Metalforming Association		✓

OSHA Hazard Communication Rule: In March 2012, OSHA finalized a rule aligning the U.S. Hazard Communication Standard with the U.N. Globally Harmonized System of Classification and the Labeling of Chemicals (GHS). OSHA created a new term, "hazard not otherwise classified," that is not in the current GHS. Also, OSHA has classified "combustible dust," as a hazardous chemical even though it does not yet have a formal definition through rulemaking or GHS and there is a separate rulemaking regulating combustible dust.	National Association of Manufacturers National Oilseed Producers Association Non-Ferrous Founders' Society U.S. Chamber of Commerce		✓ ✓ ✓ ✓ ✓
OFCCP Compensation, Data Collection, and Analysis Regulations and Guidance: Through three separate but related initiatives, the OFCCP has proposed doing away with transparency in how the agency will assess whether systemic compensation discrimination has occurred. It is also embarking on an effort to collect massive amounts of individually identifiable pay and benefits data. These initiatives consist of 1) a planned rescission of compensation discrimination guidelines that the OFCCP finalized in 2006; 2) proposed changes to OFCCP's "scheduling letter and itemized listing" form used at the initial stage of a compliance review; and 3) plans, as evidenced through an advanced notice of proposed rulemaking, to implement a tremendously burdensome compensation data collection tool.	American Meat Institute		✓
	U.S. Chamber of Commerce		✓
The Office of Federal Contract Compliance Programs (OFCCP) is proposing to revise the regulations implementing the non-discrimination and affirmative action regulations of section 503 of the Rehabilitation Act of 1973, as amended. The proposed regulations detail specific actions a contractor must take to satisfy its obligations. They would also increase the contractor's data collection obligations, and establish a utilization goal for individuals with disabilities to assist in measuring the effectiveness of the contractor's affirmative action efforts. Revision of the non-discrimination provisions to implement changes necessitated by the passage of the ADA Amendments Act (ADAAA) of 2008 is also proposed.	Associated Builders & Contractors		✓
	Associated General Contractors of America		✓
	Business Roundtable		✓
	Construction Industry Round Table		✓
	National Association of Manufacturers		✓
	U.S. Chamber of Commerce		✓

DEPARTMENT OF TRANSPORTATION			
REGULATION/STATUTES/POLICIES	**ORGANIZATION/BUSINESS**	**2011**	**2012**
Hours of Service 75 Fed. Reg. 82170 (proposed Dec. 29, 2010) (to be codified at 49 C.F.R. pt. 385, 386, 390, 395): The Hours-of-Service regulations put limits in place for when and how long commercial motor vehicle (CMV) drivers may drive. A final rule was issued in December 2011 that is currently under court challenge.	Agricultural Retailers Association		✓
	American Bakers Association	✓	✓
	American Road and Transportation Builders Association		✓
	Grocery Manufacturers Association	✓	
	Metal Treating Institute	✓	

	National Association of Manufacturers	✓	✓
DOT Proposed Rule on Transportation of Lithium Batteries 75 Fed. Reg. 1302 (proposed Jan. 11, 2010) (to be codified at 49 C.F.R. pt. 172, 173, 175): Unless excepted by specific provisions, Lithium batteries must be approved for commercial transportation by PHMSA's Associate Administrator for Hazardous Materials Safety.	Airlines for America	✓	
	CTIA-The Wireless Association	✓	
	National Association of Manufacturers	✓	✓
	Metal Treating Institute	✓	
	National Electric Manufacturers Association	✓	
Cargo Capacity Labeling Rule or Part 571.110: Tire selection and rims and motor home/recreation vehicle trailer load carrying capacity information for motor vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less 49 C.R.F. §571.110 (2003): This standard specifies requirements for tire selection to prevent tire overloading and for motor home/recreation vehicle trailer load carrying capacity information.	American Express		✓
	National Automobile Dealers Association	✓	
	Business Roundtable		✓
FAA: Flightcrew Member Duty and Rest Requirements, 75 Fed. Reg. 63424 (proposed Oct. 15, 2010) (to be codified at 14 C.F.R. pt. 117, 121): Imposes duty-time limitations and rest requirements for Part 121 carriers. The proposal would limit the daily flight-duty period to 13 hours, which could slide to nine hours at night (depending on takeoff time and number of segments scheduled). Current rules allow for a 16-hour duty period between rest periods. The proposed rule defines "flight duty" as the period of time when a pilot reports for duty with the intention of flying an aircraft, operating a simulator or operating a flight-training device. A pilot's entire duty period can include both "flight duty" and other tasks that do not involve flight time, such as record keeping and ground training.	Airlines for America	✓	✓
Hazardous Materials Transportation Special Permit Program, 76 Fed. Reg. 454 (proposed Jan. 5, 2011) (to be codified at 49 C.F.R. pt. 105, 106, 171): The Pipeline and Hazardous Materials Safety Administration is revising its procedures for applying for a special permit to require an applicant to provide sufficient information about its operations to enable the agency to evaluate the applicant's fitness and the safety impact of operations that would be authorized in the special permit. In addition, PHMSA is providing an on-line application option.	Agricultural Retailers Association	✓	✓
	Institute of Makers of Explosives		✓
	Motor and Equipment Manufacturers Association	✓	
Hours of Service; Limited Exemption for the Distribution of Anhydrous Ammonia in Agricultural Operations, 75 Fed. Reg. 40765 (proposed July 14, 2010) (to be codified at 49 C.F.R. pt. 395): This proposal grants a 2-year, limited exemption from the Federal hours-of-service regulations for the transportation of anhydrous ammonia from any distribution point to a local farm retailer or to the ultimate consumer, and from a local farm retailer to the ultimate consumer, as long as the transportation takes place within a 100 air-mile radius of the retail or wholesale distribution point. This exemption would extend the agricultural operations exemption established by section 345 of	Agricultural Retailers Association	✓	

the National Highway System Designation Act of 1995, as amended, by the sections 4115 and 4130 of the Safe, Accountable, Flexible, Efficient Transportation Equity: A Legacy for Users (SAFETEA-LU) to certain drivers and motor carriers engaged in the distribution of anhydrous ammonia during the planting and harvesting seasons, as defined by the States in which the carriers and drivers operate.			
Duplicative Commercial Drivers License Background Checks & Credentialing: Carriers transporting hazardous materials must pay for multiple credentials and background checks because the Department of Transportation has not preempted state and local regulations to create uniform identification and paperwork requirements.	Agricultural Retailers Association		✓
FAA Pilot Certification Requirements for Air Carrier Operations. (to be codified at 14 C.F.R. 61): Requires new pilots to carry a pilot certificate with a photo in order to be able to fly.	Aircraft Owners and Pilots Association		✓
Advance Information on Private Aircraft Arriving and Departing U.S. 73 Fed. Reg. 68295 (to be codified at 8 C.F.R. 122): Requires all private aircrafts departing from and arriving in the U.S. to provide manifest information about every individual to U.S. Customs and Border Protection. Also requires pilots to submit a notice of arrival and notice of departure.	Aircraft Owners and Pilots Association		✓
Re-registration and Renewal of Aircraft Registration: The FAA allowed the Aircraft Registry to degrade overtime and is now placing tbe burden on pilots to comply.	Aircraft Owners and Pilots Association		✓
Tarmac Delay Rules 74 Fed. Reg. 249 (to be codified at 14 CFR 259): Requires air carriers to develop contingency plans for lengthy tarmac delays and to inform passengers of those plans by posting the details on their website. Airlines must offer passengers the opportunity to exit the plane if three hours have passed since leaving the gate and the plane has yet to take off or otherwise be subjected to a fine.	Airlines for America		✓
Full Fare Price Advertising Requirements. 76 Fed. Reg. 78145 (to be codified at 14 C.F.R. 399): The price air carriers advertise for tickets must be the full cost, including taxes.	Airlines for America		✓
Pilot Certification and Qualification Requirements for Air Carrier Operations. Proposed Rule. 77 Fed. Reg. 12374 (to be codified at 14 C.FR. 61, 121,135, 141, and 142): Would make co-pilots obtain an AirlineTransport Pilot Certificate, which requires 1500 hours of pilot time. Currently, co-pilots are only required to hold a commercial pilot certificate, which needs 250 hours of flight time.	Airlines for America		✓
Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers. Proposed Rule. 76 Fed Reg. 98. (to be codified at 14 CFR 65, 119, 121) : Adds flight simulation training to traditional flight safety training.	Airlines for America		✓
FAA Fuel Inerting Rule. 73 Fed. Reg. 42444. (to be codified at 14 C.F.R. 25, 26, 121, 125, and 129): Would require new production aircrafts to be retrofitted to add inerting systems despite evidence that suggests these systems are not necessary to enhance safety.	Airlines for America		✓

Reporting of Ancillary Airline Passenger Proposed Rule. 76 Fed. Reg. 41726 (to be codified at 14 C.F.R. 234 and 241): The Department of Transportation would like to request more information on airline imposed fees, such as the cost of checking in bags and meals.	Airlines for America		✓
NHTSA Standardization of Keyless Ignition Systems and Revisions of Standards for Accelerator Control Systems. Proposed Rule. 77 Fed. Reg 15351 (to be codified at 49 CFR 571)	Alliance of Automobile Manufacturers		✓
FMCSA Amends 49 CFR 383.5 to Change Definition of Tank Vehicle: Broadens definition to include certain commercial vehicle designed to transport gaseous or liquid. Drivers of these "tanks" are subjected to increased testing.	American Coatings Association		✓
	American Trucking Association		✓
Regulatory Action Leading to Higher Freight Rates	American Hardware Manufacturers Association		✓
Disadvantaged Business Enterprise Program. 76 Fed. Reg. 5083 (to be codified at 49 CFR 26 and 49 CFR 23): The program provides funds to state highway, transit and airport agencies.	American Road and Transportation Builders Association		✓
	Construction Industry Roundtable		✓
"Buy America" provision of the Surface Transportation Assistance Act of 1982. Section 165. 23 CFR 635.410 and 49 CFR 661): Requires federal agencies to purchase American made products that can be reasonably procured for mass transit projects.	American Road and Transportation Builders Association		✓
	Bumble Bee Foods, LLC	✓	
	Construction Industry Roundtable		✓
Rule for Filing Driver Medical Certificates (to be codified as 49 CFR 391): Requires commercial truck drivers to submit a copy of their biennial medical certification to the state agency that issued their Commercial Drivers License.	American Trucking Association		✓
PHMSA Cargo Tank Wetlines Regulation. Proposed Rule (to be codified at 49 CFR 173): Would prohibit cargo tank truck drivers from transporting flammable liquid in unprotected external product piping known as "wetlines."	American Trucking Association		✓
FMCSA Drivers' Motor Vehicle Record: Requires each trucking company to review every driver's motor vehicle record annually to ensure that they are safe and qualified to continue driving despite the fact that many trucking companies review their drivers' record anyway every time they receive a driving violation.	American Trucking Association		✓
FMCSA's 2010 Compliance, Safety, Accountability Program: Grades trucking companies based on inspection and crash data.	American Trucking Association		✓
	Owner-Operator Independent Drivers Association		✓
	Business Coalition for Fair Competition		✓

FMCSA Motor Carrier Safety Fitness Determination: Expectation of proposed rule in 2012 for judging safety for motor carriers.	American Express		✓
	Business Roundtable		✓
Minimum Training Requirements for Entry Level Commercial Motor Vehicle Operations. Proposed Rule. 72 Fed. Reg. 73226. (to be codified at 49 CFR 380, 383, and 384): Would require behind the wheel and classroom training for individuals with commercial driver's licenses who want to operate commercial motor vehicles.	American Express		✓
	Business Roundtable		✓
FMCSA Hazardous Materials Safety Permit Program 72 Fed. Reg. 62795 (to be codified at 49 CFR 385): This 2007 final rule requires carriers have a "satisfactory" safety rating, be registered with the PHMSA, and provide evidence of an adequate security plan in order to receive a permit.	Institute for Makers of Explosives		✓
FMCSA Electronic On-Board Recorder Mandate 75 Fed. Reg. (to be codified at 49 CFR 350, 385, 395 and 396): Requires truck drivers with "hours of service" violations to install electronic recorder in their vehicles to keep track of when and how long they are driving.	Owner-Operator Independent Drivers Association		✓
	The Heritage Foundation		✓
NHTSA Electronic Stability Control Systems for Commercial Vehicles. Proposed Rule. 77 Fed. Reg. 100 (to be codified at 49 CFR 571): Would require commercial vehicles in excess of 26,000 pounds to install these systems.	Owner-Operator Independent Drivers Association		✓
NHTSA Heavy Vehicle Speed Limiters: Expectation of a proposed rule that would require installation of speed limiters on heavy commercial vehicles.	Owner-Operator Independent Drivers Association		✓

DEPARTMENT OF THE TREASURY / MISC. JOINT FINANCIAL RULEMAKINGS			
REGULATION/STATUTES/POLICIES	**ORGANIZATION/BUSINESS**	**2011**	**2012**
Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies, (April 3, 2012) (codified at 12 C.F.R. pt 1310): The Financial Stability Oversight Council (FSOC), within Treasury, released this final rule, which details the criteria that will be used to determine whether certain nonbank financial companies should be designated as "Systemically Important Financial Institutions" (SIFIs) and therefore subject to enhanced prudential standards and supervision by FRB.	American Financial Services Association		✓
	U.S. Chamber of Commerce		✓
Proprietary Data and OFR: § 151 of Dodd-Frank created the Office of Financial Research (OFR), which is housed in Treasury but is outside of the Congressional appropriations process and has wide ranging capabilities and rulemaking authority to compel businesses to provide proprietary data.	U.S. Chamber of Commerce		✓
The Volcker Rule: § 619 of Dodd-Frank amends the Bank Holding Company Act of 1956 to establish the Volcker Rule,	Financial Services Roundtable	✓	✓

which prohibit banks and other banking entities from engaging in proprietary trading and from sponsoring or investing in private equity or hedge funds. The Volcker Rule also prohibits banks and other banking entities from extending credit to, or engaging in other covered transactions with, private equity or hedge funds that they advise, manage, sponsor, or organize.	American Express		✓
	American Financial Services Association		✓
	Business Roundtable		✓
	U.S. Chamber of Commerce		✓
Credit Risk Retention, 76 Fed. Reg. 24090 (proposed April 29, 2011) (to be codified at 24 C.F.R. pt 267): This rule implements the requirement that "securitizers" of asset-backed securities (ABSs) retain not less than five percent of the credit risk of the assets collateralizing their ABSs. (This rule includes an exemption for ABSs that are collateralized exclusively by residential mortgages that qualify as "qualified residential mortgages.")	American Financial Services Association		✓
	Credit Union National Association		✓
	Independent Community Bankers Association		✓
	National Association of Home Builders		✓
Incentive-Based Compensation Arrangements, 76 Fed. Reg. 21170 (April 14, 2011) (to be codified at 12 C.F.R. pt. 42): This final rule was released with respect to incentive based compensation practices at covered financial institutions as required by § 956 of Dodd-Frank.	U.S. Chamber of Commerce		✓

ENVIRONMENTAL PROTECTION AGENCY			
REGULATION/STATUTES/POLICIES	**ORGANIZATION/BUSINESS**	**2011**	**2012**
Atrazine (Herbicide) Re-Evaluation (Potential): The EPA began a re-evaluation of Atrazine in 2009 although not due for re-evaluation until 2013. Atrazine is an agricultural herbicide primarily used on corn, sorghum, and sugarcane, and is applied most heavily in the Midwest.	American Farm Bureau Federation	✓	
Boiler & Process Heater Maximum Achievable Control Technology (MACT) (Boiler MACT), 75 Fed. Reg. 32682 (proposed April 29, 2010) (to be codified at 40 C.F.R. pts. 60, 63, and 24): This rule addresses emissions from boilers, process heaters, and solid waste incinerators. On December 7, 2010, EPA sought an extension of time from the District Court for the District of Columbia to re-propose and finalize these standards.	Air-Conditioning, Heating and Refrigeration Institute	✓	
	The Aluminum Association	✓	
	American Chemistry Council	✓	
	American Coatings Association	✓	
	American Coke and Chemicals Institute	✓	
	American Express		✓
	American Forest and Paper Association	✓	✓
	American Fuel & Petrochemical Manufacturers		✓
	American Home Furnishings	✓	

	Alliance		
	American Iron and Steel Institute	✓	✓
	Anthracite Region Independent Power Producers Association		✓
	APA—The Engineered Wood Association	✓	
	Business Roundtable	✓	✓
	CF Industries Holdings, Inc.		✓
	Chamber of Commerce	✓	✓
	ConocoPhillips, Inc.	✓	✓
	Council of Industrial Boilers	✓	
	Industrial Energy Consumers of America	✓	
	Kitchen Cabinet Manufacturers Association	✓	
	Metal Treating Institute	✓	
	Motor and Equipment Manufacturers Association	✓	✓
	National Asphalt Pavement Association	✓	
	National Association of Manufacturers	✓	✓
	National Black Chamber of Commerce	✓	
	National Council of Textile Organizations		✓
	National Federation of Independent Business	✓	✓
	National Mining Association	✓	
	National Oilseed Processors Association	✓	✓
	Non-Ferrous Founders Society		✓
	Printing Industries of America		✓
	Small Business & Entrepreneurship Council	✓	
	Society of Chemical Manufacturers and Affiliates	✓	
	Textile Rental Services Association	✓	
Brick and Ceramic Kilns Maximum Achievable Control Technology (MACT) (Potential)	The Aluminum Association	✓	
	Brick Industry Association	✓	
California Clean Air Act Pre-emption Waiver, 76 Fed. Reg. 5368: California agreed not to enforce its motor vehicle Greenhouse Gas (GHG) rule in exchange for EPA granting a waiver and issuing CAA regulations for new motor vehicles.	Chamber of Commerce	✓	
	National Automobile Dealers Association	✓	
Central Appalachian Coal (CAPP): Review of Appalachian Surface Coal Mining Activities under Clean Water Act Section 404, National Environmental Policy Act (NEPA), and the Environmental Justice Executive Order (E.O. 12898): On April 1, 2010, the EPA issued three documents that seek to impose specific conductivity limits on discharges from valley fills that would ensure in-stream conductivity levels do not exceed 300-500 uS/cm.	American Coke and Chemicals Institute	✓	
	Industrial Energy Consumers of America	✓	
	National Mining Association	✓	✓
	National Sand, Stone, and Gravel Association	✓	
Chesapeake Bay Total Maximum Daily Load (TMDL): On	Agricultural Retailers Association	✓	✓

December 29, 2010, EPA established the TMDL, a comprehensive "pollution diet" with rigorous accountability measures to initiate sweeping actions to restore clean water in the Chesapeake Bay and the region's streams, creeks and rivers.	American Farm Bureau Federation	✓	
	American Forest and Paper Association	✓	
	Associated General Contractors	✓	✓
	The Fertilizer Institute	✓	✓
	Industrial Energy Consumers of America	✓	
	National Alliance of Forest Owners	✓	
	Responsible Industry for a Sound Environment	✓	✓
Chemical Manufacturing Area Source Standards Final Rule 40 C.F.R. § 63 (2009): Finalized on October 29, 2009, this rule establishes national emission standards for air pollutants from "area" chemical manufacturing sources.	Society of Chemical Manufacturers and Affiliates	✓	✓
Clean Water Act Section 404(c) "Veto Authority" 33 U.S.C. 1344(c): authorizes EPA to prohibit, restrict, or deny the discharge of dredged or fill material at defined sites. In an attempt to stop mountaintop coal mining, EPA used its veto authority under the Clean Water Act to revoke previously issued, federally-approved U.S. Army Corps of Engineers' operating permits for mining operations. It is now attempting to veto permits prospectively.	National Stone, Sand & Gravel Association	✓	✓
	The Pebble Partnership	✓	✓
	U.S. Chamber of Commerce	✓	
Cleaning Products Claims Policy under the Federal Insecticide, Fungicide, and Rodenticide (FIRFA) 7 U.S.C. 136 et seq. (1996): Change in EPA guidance regarding cleaning of mold and mildew stains.	American Coatings Association	✓	
	Biotechnology Industry	✓	
Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 108(b)—Financial Responsibility Requirements, 75 Fed. Reg. 816 (proposed Jan. 6, 2010) (to be codified 40 C.F.R. pt. 320): EPA has discretionary authority to impose financial responsibility requirements on industrial sectors "consistent with the degree of risk associated with the production, transportation, treatment, storage, or disposal of hazardous waste."	American Petroleum Institute		✓
	Industrial Energy Consumers of America	✓	
	National Mining Association	✓	✓
	National Tooling & Machining Association	✓	✓
	Precision Machined Products Association	✓	✓
	Precision Metalforming Association	✓	✓
Concentrated Animal Feeding Operations (CAFOs): EPA is working on regulations that are expected to require small- and medium-sized CAFOs to obtain NPDES permits as well as mandating use of more aggressive nutrient management plans. Another rule, proposed in October 2011, would have increased reporting requirements for CAFOs owners. The EPA withdrew this rule on July 13, 2012.	American Farm Bureau Federation	✓	
	National Pork Producers Council		✓
Cooling Water Intake Structures (CWIS) of the Clean Water Act Section 316(b) (Potential): EPA is developing regulations under the Clean Water Act Section 316(b) that requires the location, design, construction and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact.	American Express		✓
	American Iron and Steel Institute	✓	✓
	American Petroleum Institute	✓	✓
	Business Roundtable	✓	✓
	Chamber of Commerce	✓	
	ConocoPhillips, Inc.	✓	
	Council of Industrial Boiler Owners	✓	

	Edison Electric Institute	✓	✓
	Electric Reliability Coordinating Council	✓	
	Industrial Energy Consumers of America	✓	
	National Association of Manufacturers		✓
	National Mining Association	✓	
Draft Guidance for Pesticide Registrants on Pesticide Drift Labeling (Pesticide Spray Drift), 74 Fed. Reg. 57166 (proposed on Nov. 4, 2009): EPA proposed guidance for new pesticide labeling to reduce off-target spray and dust drift.	Agricultural Retailers Association	✓	✓
	CropLife America		✓
	National Alliance of Forest Owners	✓	
	Responsible Industry for a Sound Environment		✓
Dioxin in Soil Recommended Interim Preliminary Remediation Goals: the EPA developed draft interim preliminary remediation goals to assess the human health risks from exposures to dioxin in soil. EPA has withdrawn its interim PRG for dioxin from OMB review.	American Chemistry Council	✓	
	American Express		✓
	Business Roundtable		✓
Coal Combustion Residuals (CCRs) Proposed Rule, 75 Fed. Reg. 35127 (proposed June 21, 2010) (to be codified at 40 C.F.R. pt. 257, 261, 264 et al.): EPA proposed on June 21, 2010, to regulate for the first time coal ash (coal combustion residuals) to address the risks from the disposal of waste generated by electric utilities and independent power producers. EPA is considering re-classifying coal ash as either as hazardous under subtitle C of the Resource Conservation and Recovery Act (RCRA), or alternatively, as a nonhazardous solid waste under subtitle D of RCRA. The comment period closed on November 14, 2011. EPA is expected to issue a finalize rule by the end of 2012.	American Express		✓
	American Forest and Paper Association	✓	✓
	American Iron & Steel Institute		✓
	American Road & Transportation Builders Association		✓
	Anthracite Region Independent Power Producers Association		✓
	Associated Builders & Contractors, Inc.		✓
	Associated General Contractors	✓	✓
	Business Roundtable		✓
	Carpet & Rug Institute		✓
	Chamber of Commerce	✓	✓
	Council of Industrial Boiler Owners	✓	
	Edison Electric Institute	✓	✓
	Electric Reliability Coordinating Council	✓	
	Industrial Energy Consumers of America	✓	
	Interlocking Concrete Pavement Institute		✓
	Murray Energy Corporation	✓	
	National Association of Home Builders	✓	✓
	National Concrete Masonry Association	✓	
	National Mining Association	✓	✓
	National Sand, Stone, and Gravel Association	✓	✓
	Portland Cement Association	✓	
E15 Ethanol Fuel Rule (EPA420-F-11-003): In October 2010 and January 2011, the EPA granted a "partial" waiver for E15 fuel (blend of 15% ethanol and 85% gasoline) to be used in cars	Alliance of Automobile Manufacturers		✓
	American Express		✓

and light trucks manufactured in model year (MY) 2001 and later. In July 2011, EPA issued a final "mitigation" rule on the labeling of E15 at retail outlets to prevent consumer misfueling. As of June 15, 2012, EPA authorized companies to being an introduction of E15 into the marketplace.	American Fuel & Petrochemical Manufacturers		✓
	American Land Title Association	✓	
	American Petroleum Institute	✓	✓
	Association of International Automobile Manufacturers	✓	
	Business Roundtable		✓
	ConocoPhillips, Inc.	✓	
	Global Automakers		✓
	Grocery Manufacturers Association	✓	
	Mazda North American Operations	✓	✓
	National Automobile Dealers Association	✓	
	National Marine Manufacturers Association	✓	
	National Petrochemical and Refiners Association	✓	
	Small Business & Entrepreneurship Council	✓	
	Toyota Motor North America, Inc.	✓	✓
Effluent Limit Guideline Rule for Construction Site Runoff, 40 C.F.R. § 450 (2009): EPA issued a final rule on December 1, 2009, regulating stormwater discharges from construction and development industry. In January 2011, the EPA proposed Stormwater Regulations to Address Discharge from Developed Sites, final action expected in November 2012. Sec. 402(p) of the Clean Air Act requires the EPA to regulate certain discharge from stormwater in order to protect water quality.	American Hardware Manufacturers Association		✓
	American Petroleum Institute		✓
	American Road & Transportation Builders Association		✓
	Associated Builders & Contractors, Inc.	✓	✓
	Associated General Contractors	✓	✓
	Council of Industrial Boiler Owners	✓	
	Edison Electric Institute		✓
	Independent Petroleum Association of America	✓	✓
	National Association of Home Builders	✓	✓
	National Sand, Stone, and Gravel Association	✓	✓
Effluent Limitation Guidelines and New Source Performance Standards for the New Airport Deicing Category, 74 Fed. Reg. 44676 (proposed Aug. 28, 2009) (to be codified at 40 C.F.R. pt. 449): EPA is establishing new technology-based guidelines and standards for the discharges from airport deicing efforts.	Airlines for America	✓	
Emergency Planning and Community Right-to-Know Act (Region 4 interpretation of the Fertilizer Retailer Exemption)	Agricultural Retailers Association	✓	✓
	The Fertilizer Institute		✓
Endocrine Disruptor Screening Program for Chemicals (EDSP): EPA announced the initial list of chemicals to be screened for their potential effects on the endocrine system on April 15, 2009, and the first test orders were issued on October 29, 2009. EPA then developed a second list of chemicals for screening and published three related Federal Register Notices on November 17, 2010.	Consumer Specialty Products Association	✓	
	The Methanol Institute	✓	

Formaldehyde Emission from Pressed Wood Products, 73 Fed. Reg. 73620 (advanced notice of proposed rulemaking, Dec. 3, 2008) (to be codified to 40 C.F.R. Chapter I): pursuant to the Formaldehyde Standards for Composite Wood Products Act, EPA must promulgate regulations to implement this law by January 1, 2013.	Composite Panel Association	✓	
	Kitchen Cabinet Manufacturers Association	✓	
Greenhouse Gas (GHG) Tailoring Rule, 40 CFR § 52, 70 (2009): In 2010, EPA finalized a rule to tailor how certain provisions in the Clean Air Act (CAA) Prevention of Significant Deterioration (PSD) and Title V permitting programs apply to stationary sources that emit greenhouse gas emissions.	Agricultural Retailers Association	✓	✓
	American Chemistry Council		✓
	American Coke and Chemicals Institute	✓	
	American Farm Bureau Federation	✓	
	American Forest & Paper Association	✓	
	American Fuel & Petrochemical Manufacturers		✓
	American Iron and Steel Institute	✓	✓
	American Petroleum Institute	✓	✓
	Anthracite Region Independent Power Producers Association		✓
	APA—The Engineered Wood Association	✓	
	Associated General Contractors		✓
	CF Industries Holdings, Inc.		✓
	Chamber of Commerce	✓	
	ConocoPhillips, Inc.	✓	✓
	Industrial Energy Consumers of America	✓	
	Metal Treating Institute	✓	
	Murray Energy Corporation	✓	
	National Alliance of Forest Owners	✓	
	National Association of Home Builders	✓	✓
	National Association of Manufacturers		✓
	National Black Chamber of Commerce	✓	
	National Electrical Manufacturers Association	✓	
	National Federation of Independent Business		✓
	National Oilseed Processors Association	✓	
	National Petrochemical and Refiners Association	✓	
	Portland Cement Association	✓	
	Printing Industries of America		✓
	The Fertilizer Institute	✓	✓
Greenhouse Gas (GHG) Emissions Regulations under the Clean Air Act including: **Fuel Economy Greenhouse Gas Rules for MY 2012-2016**: on April 1, 2010, the EPA and the Department of Transportation's National Highway Traffic Safety Administration (NHTSA)	Alliance of Automobile Manufacturers (MY 2017-2025)	✓	✓
	American Bakers Association (General)	✓	✓
	American Chemistry Council (NSPS)		✓

issued a final rule to establish greenhouse gas (GHG) and corporate average fuel economy (CAFE) standards for light-duty vehicles. **Fuel Economy Greenhouse Gas Rules (Proposed) for MY 2017-2025**: on January 24, 2011, the EPA along with the Department of Transportation and the state of California announced a single timeframe for proposing fuel economy and greenhouse gas standards for MY 2017-2025 cars and light-trucks. **Greenhouse Gas (GHG) and Fuel Efficiency Standards for Heavy-Duty Vehicles**: in response to a Presidential Memorandum of May 21, 2010, the EPA with the National Highway Traffic Safety Administration (NHTSA) announced they will initiate a rulemaking to reduce GHG emissions for commercial medium- and heavy-duty trucks. **Available and Emerging Technologies for Reducing Greenhouse Gas Emissions from the Iron and Steel Industry**	American Express (NSPS, BACT)		✓
	American Fuel & Petrochemical Manufacturers (BACT, NSPS)		✓
	American Iron and Steel Institute (BACT)	✓	✓
	American Petroleum Institute (NSPS, BACT)	✓	✓
	Associated Builders & Contractors, Inc. (General)	✓	
	Association of American Railroads (General)	✓	
	Brick Industry Association (NSPS)	✓	
	Business Roundtable (NSPS, BACT)	✓	✓
	CF Industries Holdings, Inc.		✓
	Chamber of Commerce (General)	✓	✓
	Charlotte Pipe and Foundry Company (General)	✓	
	Council of Industrial Boiler Owners (General)	✓	
	Electric Reliability Coordinating Council (General)	✓	
	Ford (MY 2017-2025)	✓	
	Forging Industry Association (General)	✓	
	Global Automakers (MY 2017-2025)		✓
	Independent Petroleum Association of America (General)	✓	
	Industrial Energy Consumers of America (NSPS)	✓	
	Mazada North American Operations		✓
	Motor and Equipment Manufacturers Association (Car rules)	✓	
	Murray Energy Corporation (General)	✓	
	National Automobile Dealers Association (MY 2012-2016)	✓	✓
	National Black Chamber of Commerce (General)	✓	
	National Council of Textile Organizations	✓	
	National Petrochemical and Refiners Association (BACT, general)	✓	
	National Stone, Sand, and Gravel Association (Small engines)	✓	
	Owner Operator Independent Drivers Association (Heavy-Duty Vehicles)	✓	✓
	Small Business & Entrepreneurship Council (General)	✓	
	The Fertilizer Institute (NSPS)		✓

	Toyota Motor North America, Inc.	✓	✓
Hydrogen Sulfide as a Hazardous Air Pollutant (Potential). EPA has been asked to list hydrogen sulfide as another pollutant to regulate in the Maximum Achievable Control Technology (MACT) program.	American Coke and Chemicals Institute	✓	
	American Forest & Paper Association		✓
	Independent Petroleum Association of America	✓	
	Industrial Energy Consumers of America	✓	
Integrated Risk Information System (IRIS) Review of Inorganic Arsenic (Draft Review): the EPA published the toxicological review of inorganic arsenic on February 19, 2010, which addresses only cancer human health effects that may result from chronic exposure.	National Mining Association	✓	
Integrated Risk Information System (IRIS) Review of Formaldehyde—Inhalation Assessment (Draft Review): On June 2, 2010, EPA released the draft assessment, which addresses both non-cancer and cancer human health effects that may result from chronic inhalation exposure.	American Chemistry Council		✓
	APA—The Engineered Wood Association	✓	
	Kitchen Cabinet Manufacturers Association	✓	
Integrated Risk Information System (IRIS) Review of Methanol (Draft Review): EPA released an external review draft in January 2010 for public review and comment, which addresses both non-cancer and cancer human health effects that may result from chronic exposure.	The Methanol Institute	✓	
Interstate Transport, "Cross-State Air Pollution Rule" (CSAPR) 75 Fed. Reg. 45210 (proposed Aug. 2, 2010) (to be codified at 40 C.F.R. pt. 51, 52, 72, 78, and 97): this rule would require significant reductions in sulfur dioxide and nitrogen dioxide emissions that cross state lines. On July 6, 2011, the EPA finalized the rule, referred to as the Cross-State Air Pollution Rule (CSAPR). The rule was stayed by the Court of Appeals in December 2011, but pending Court action, this rule could go into effect as early as January 1, 2013.	American Iron & Steel Institute		✓
	Anthracite Region Independent Power Producers Association		✓
	Chamber of Commerce	✓	✓
	Council of Industrial Boiler Owners	✓	
	Electric Reliability Coordinating Council	✓	
	Industrial Energy Consumers of America	✓	
	Murray Energy Corporation	✓	
	National Mining Association	✓	✓
Lead Clearance and Clearance Testing Requirements for the Renovation, Repair, and Painting Program (Proposed) 75 Fed. Reg. 38959 (proposed July 7, 2010) (to be codified at 40 C.F.R. pt. 745): EPA requires contractors to perform "dust-wipe testing" after most construction activities to show that lead levels comply with EPA standards. EPA has withdrawn this requirement.	Associated General Contractors	✓	
Lead: Renovation, Repair, and Painting Program, 40 C.F.R. § 745 (2008): beginning April 22, 2010, contractors performing renovation, repair and painting projects that disturb lead-based paint in homes, child care facilities, and schools built before 1978 must be certified and must follow specific work practices to prevent lead contamination. An opt-out provision for homes not occupied by children under six or pregnant women was removed in 2010.	Air Conditioning Contractors of America	✓	
	American Architectural Manufacturers Association	✓	
	American Express		✓
	Associated Builders & Contractors, Inc.	✓	✓
	Associated General Contractors	✓	✓
	Business Roundtable		✓
	Chamber of Commerce	✓	

	Consumer Electronics Association		✓
	Electronic Security Association	✓	
	Hearth, Patio, & Barbecue Association	✓	
	Insulation Contractors Association of America	✓	
	Manufactured Housing Institute	✓	
	National Apartment Association	✓	
	National Association of Home Builders	✓	✓
	NAIOP, the Commercial Real Estate Development Association	✓	
	National Federation of Independent Business	✓	✓
	National Lumber & Building Materials Dealers	✓	✓
	National Multi Housing Council	✓	
	National Glass Association	✓	
	Plumbing-Heating-Cooling Contractors—National Association	✓	
	The Real Estate Roundtable	✓	
	Vinyl Siding Institute	✓	
	Window & Door Manufacturers Association	✓	✓
Mandatory Reporting of Greenhouse Gases (GHG) Rule, 40 C.F.R. § 98 (2010): this rule requires reporting of greenhouse gas (GHG) data and other relevant information from large sources and suppliers in the United States.	American Forest and Paper Association	✓	
	American Petroleum Institute		✓
	Association of Equipment Manufacturers	✓	
	Conoco-Phillips, Inc.	✓	✓
	Industrial Energy Consumers of America	✓	
	Portland Cement Association	✓	
Nanopesticide Policy (Proposed): EPA proposed a nanopesticide policy in April 2010, which requires the presence of a nanomaterial in a registered pesticide to be reported under the "unreasonable adverse effect" provision of FIFRA.	Silver Nanotechnology Working Group	✓	✓
National Ambient Air Quality Standards (NAAQS) for Lead 40 C.F.R. § 58 (2008): in October 2008, EPA substantially reduced the NAAQS for lead. EPA made final revisions to the ambient monitoring requirements for measuring lead in the air on December 14, 2010.	American Express		✓
	Business Roundtable		✓
	Non-Ferrous Founders' Society	✓	
National Ambient Air Quality Standards (NAAQS) for Nitrogen Oxide 40 CFR §§ 50, 58 (2010): On January 22, 2010, the EPA strengthened the NAAQS for nitrogen dioxide.	American Coke and Chemicals Institute	✓	
	American Farm Bureau Federation	✓	
	American Iron and Steel Institute	✓	✓
	American Petroleum Institute		✓
	American Road & Transportation Builders Association		✓
	Associated General Contractors	✓	✓
	Conoco-Phillips, Inc.		✓
	Council of Industrial Boiler Owners	✓	

	Electric Reliability Coordinating Council	✓	
	Industrial Energy Consumers of America	✓	
	Portland Cement Association	✓	
National Ambient Air Quality Standards (NAAQS) for Ozone, 75 Fed. Reg. 2938 (proposed Jan. 19, 2010) (to be codified at 40 C.F.R. pt. 50, 58): EPA is lowering the NAAQS for the ozone to somewhere in the 60-70 parts per billion range. On December 8, 2010, the EPA Administrator requested more input from agency's science advisors. The rule has since been withdrawn.	American Coatings Association	✓	
	American Coke and Chemicals Institute	✓	
	American Express		✓
	American Forest and Paper Association	✓	
	American Fuel & Petrochemical Manufacturers		✓
	American Iron and Steel Institute	✓	
	American Petroleum Institute	✓	✓
	American Road & Transportation Builders Association		✓
	APA—The Engineered Wood Association	✓	
	Associated General Contractors	✓	✓
	Brick Industry Association	✓	
	Business Roundtable	✓	
	Chamber of Commerce	✓	✓
	Charlotte Pipe and Foundry Company	✓	
	Conoco-Phillips, Inc.	✓	✓
	Consumer Specialty Products Association	✓	
	Council of Industrial Boiler Owners	✓	
	Electric Reliability Coordinating Council	✓	
	Industrial Energy Consumers of America	✓	
	Metal Treating Institute	✓	
	Murray Energy Corporation	✓	
	National Association of Home Builders	✓	
	National Association of Manufacturers	✓	✓
	National Black Chamber of Commerce	✓	
	National Federation of Independent Business	✓	
	National Oilseed Processors Association	✓	✓
	National Petrochemical and Refiners Association	✓	
	Portland Cement Association	✓	
	Small Business & Entrepreneurship Council	✓	
National Ambient Air Quality Standards (NAAQS) for Particulate Matter: EPA proposed NAAQS for particulate	Agricultural Retailers Association	✓	✓

matter (PM) in early 2011, with final regulations due in mid-August 2012. On May 31, 2012, EPA sent the proposed PM air standards to OMB for review.	American Coke and Chemicals Institute	✓	
	American Express		✓
	American Farm Bureau Federation	✓	
	American Forest and Paper Association	✓	✓
	American Iron and Steel Institute	✓	✓
	American Petroleum Institute		✓
	Associated General Contractors		✓
	Business Roundtable		✓
	Chamber of Commerce	✓	
	Charlotte Pipe and Foundry Company	✓	
	Council of Industrial Boiler Owners	✓	
	Electric Reliability Coordinating Council	✓	
	Industrial Energy Consumers of America	✓	
	National Asphalt Pavement Association	✓	
	National Oilseed Processors Association		✓
	National Sand, Stone, and Gravel Association	✓	
	Non-Ferrous Founders Society		✓
	Portland Cement Association	✓	
National Ambient Air Quality Standards (NAAQS) for Sulfur Dioxide 40 C.F.R. §§50, 53, 58 (2010): EPA strengthened the NAAQS for sulfur dioxide on June 2, 2010.	The Aluminum Association	✓	✓
	American Coke and Chemicals Institute	✓	
	American Express		✓
	American Iron and Steel Institute	✓	✓
	American Petroleum Institute		✓
	Business Roundtable		✓
	Council of Industrial Boiler Owners	✓	
	Industrial Energy Consumers of America	✓	
	Portland Cement Association	✓	
National Emission Standards for Hazardous Air Pollutants (NESHAPs) from the Portland Cement Manufacturing Industry ("Cement MACT") 40 CF.R. §§ 60, 63 (2010): regulates emission limits for mercury, THC, and particulate matter from new and existing kilns located at major sources.	Associated Builders & Contractors, Inc.		✓
	Chamber of Commerce		✓
	Cemex	✓	
	Portland Cement Association	✓	✓

New Source Performance Standards (NSPS) for Portland Cement Plants 40 C.F.R. §§ 60, 63 (2010): regulates emission limits for particulate matter, nitrogen oxides, and sulfur dioxide for facilities that commence construction, modification, or reconstruction after June 16, 2008.	Cemex	✓	
	Portland Cement Association	✓	
Non-Hazardous Secondary Materials (Identification of) that are Solid Waste, 76 Fed. Reg. 15,456 (final rule issued Mar. 21, 2011). This rule revises the 2008 definition of "solid waste" under the hazardous waste provisions of the Resource Conservation and Recovery Act (RCRA). The rule seeks to clarify which non-hazardous secondary materials should be disposed or recycled.	American Forest & Paper Association		✓
	American Home Furnishings Alliance	✓	
	Automotive Aftermarket Industry Association	✓	
	Chamber of Commerce	✓	✓
	Industrial Energy Consumers of America	✓	
	IPC, The Association Connecting Electronics Industries	✓	
	Non-Ferrous Founders' Society	✓	
Numeric Nutrient Water Quality Criteria for Florida Waters, 40 C.F.R. §131 (2010): the final rule published on December 6, 2010, issues numeric water quality criteria for nitrogen/phosphorus pollution to protect aquatic life in lakes, flowing waters, and springs within Florida	Agricultural Retailers Association	✓	✓
	American Express		✓
	American Forest and Paper Association	✓	✓
	American Petroleum Institute		✓
	Business Roundtable		✓
	CF Industries Holdings, Inc.	✓	✓
	The Fertilizer Institute	✓	✓
	Industrial Energy Consumers of America	✓	
	Western Growers Association		✓
Polychlorinated Biphenyl (PCBs) Analytical Method: EPA has proposed an analytical test method that measures in a very low range of parts per quadrillion.	American Forest and Paper Association	✓	
Pesticide Permits—Proposed Clean Water Act National Pollutant Discharge Elimination System (NPDES) Pesticide General Permit (PGP) Program, 75 Fed. 13468 (proposed June 4, 2010): Proposed permit system that will be put in place by April 9, 2011. On October 31, 2011, EPA issued a final NPDES PGP for point source discharges from the application of pesticides to waters of the U.S.	Agricultural Retailers Association	✓	✓
	American Express		✓
	American Farm Bureau Federation	✓	
	American Petroleum Institute		✓
	Business Roundtable		✓
	CropLife America		✓
	Responsible Industry for a Sound Environment	✓	✓
	Western Growers Association		✓
Prior Converted Croplands: EPA (with Army Corps of Engineers) recapturing prior converted croplands (PCC) (wetlands drained before 1985 that no longer exhibit the characteristics of wetlands) by altering guidance to claim a "change of use" places PCC under the Clean Water Act.	American Farm Bureau Federation	✓	
Residual Risk Reviews of the Pulp and Paper Industry: Pursuant to a settlement agreement, EPA must propose a residual risk determination for pulp and paper mills.	American Forest and Paper Association	✓	✓
Safe Drinking Water Act: Hydraulic Fracturing Regulation (Potential)	Conoco-Phillips, Inc.	✓	
	Independent Petroleum Association of America	✓	

Spill Prevention, Control, and Countermeasure (SPCC) Regulation, 40 C.F.R. § 112 (2008): This rule's purpose is to help facilities prevent a discharge of oil into navigable waters or adjoining shorelines.	American Farm Bureau	✓	
	Associated General Contractors	✓	✓
	American Petroleum Institute		✓
Texas Air Permits: Approval and Promulgation of Implementation Plans; Texas; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Flexible Permits, 40 C.F.R. § 52 (2010): EPA is proposing disapproval of submittals from the State of Texas, through the Texas Commission on Environmental Quality (TCEQ) to revise the Texas SIP to include a new type of NSR permitting program, Flexible Permits (the Texas Flexible Permits State Program or the Program).	Chamber of Commerce	✓	
	National Petrochemical and Refiners Association	✓	
Toxic Release Inventory (TRI) Articles Exemption Clarification Proposed Rule, 74 Fed. Reg. 42625 (proposed Aug. 24, 2009) (to be codified at 40 C.F.R. pt. 372): EPA is proposing to remove a paragraph of guidance dealing with releases due to natural weathering of products, and is proposing an interpretation of how the articles exemption applies to the Wood Treating Industry, specifically to treated wood that has completed the treatment process.	American Wire Producers Association	✓	✓
	Independent Petroleum Association of America	✓	
	National Tooling & Machining Association	✓	✓
	Precision Machined Products Association	✓	✓
	Precision Metalforming Association	✓	✓
Toxic Substances Control Act (TSCA) Chemical Action Plans 15 U.S.C. §2601 et seq. (1976): In September 2009, EPA announced a comprehensive strategy for chemical management including "action plans" for 12 chemical families. Thus far, EPA has issued chemical action plans for ten groups of chemicals.	American Express		✓
	Business Roundtable		✓
	Grocery Manufacturers Association	✓	
	Society of Plastics Industry	✓	
Toxic Substances Control Act (TSCA) Chemical Data Reporting (CDR) Rule. 76 Fed. Reg. 50816 (finalized Aug. 16, 2011). Proposed in August 2010, this rule amends the TSCA section 8(a) Inventory Update Reporting (IUR) rule and changed its name to the CDR rule. This rule requires manufacturers and importers to submit information to EPA on the chemicals they supply for industrial use.	American Coatings Association	✓	
	American Forest & Paper Association		✓
	American Fuel & Petrochemical Manufacturers		✓
	American Iron & Steel Institute		✓
	American Petroleum Institute		✓
	Global Automakers		✓
	Industrial Energy Consumers of America	✓	
	IPC, The Association Connecting Electronics Industries	✓	✓
	National Oilseed Processors Association		✓
	Non-Ferrous Founders Society		✓
	Society of Chemical Manufacturers & Affiliates		✓
	Society of Plastics Industry	✓	
	Toyota Motor North America, Inc.		✓
Toxic Substances Control Act (TSCA) Nanoscale Materials/Products Regulation: To ensure that nanoscale materials are manufactured and used in a manner that protects against unreasonable risks to human health and the environment, EPA is pursuing a comprehensive regulatory approach under	NanoBusiness Alliance	✓	

TSCA.			
Toxic Substances Control Act (TSCA) Proposed Test Rule For Coal Tar and Coal Tar-Derived Chemicals	American Coke and Chemicals Institute	✓	
	Society of Plastics Industry	✓	
Use of Settlement Agreements: EPA has entered into settlement agreements with environmental organizations, impacting industry outsides the Administrative Procedure Act (APA) rulemaking process.	American Farm Bureau U.S. Chamber of Commerce	✓	✓
Utility Boilers Maximum Achievable Control Technology (MACT) ("Utility MACT" or "Mercury Air Toxic Rule") EPA finalized the rule in December 2011. Pursuant to a 2009 consent decree, the EPA had to issue new National Emission Standard for Hazardous Air Pollutants (NESHAP) regulation on HAP emissions from coal- and oil-fired electric generating units.	American Express		✓
	American Iron & Steel Institute		✓
	Anthracite Region Independent Power Producers Association		✓
	Association of American Railroads		✓
	Business Roundtable	✓	✓
	Carpet & Rug Institute		✓
	CF Industries Holdings, Inc.		✓
	Chamber of Commerce		✓
	Edison Electric Institute		✓
	Electric Reliability Coordinating Council	✓	
	Industrial Energy Consumers of America	✓	
	National Association of Manufacturers		✓
	National Black Chamber of Commerce		✓
	National Mining Association	✓	✓
	The Fertilizer Institute		✓
Draft Guidance on Identifying Waters Protected by the Clean Water Act (CWA). On April 27, 2011, EPA and the Army Corps of Engineers released "Draft Guidance on Identifying Waters of the U.S. Protected by the Clean Water Act" for a 60-day public comment period. On February 21, 2012, the proposed guidance was sent in final form to OMB.	Agricultural Retailers Association		✓
	American Farm Bureau Federation	✓	
	American Forest & Paper Association		✓
	American Gas Association		✓
	American Petroleum Institute		✓
	American Road & Transportation Builders Association		✓
	Associated Builders & Contractors, Inc.		✓
	Associated General Contractors		✓
	Chamber of Commerce	✓	✓
	Edison Electric Institute		✓
	Independent Petroleum Association of America		✓
	National Association of Home Builders		✓
	National Association of Manufacturers		✓
	National Federation of Independent Business		✓
	National Mining Association		✓
	National Oilseed Processors		✓

	Association		
	National Pork Producers Council		✓
	National Stone, Sand & Gravel Association		✓
Hydraulic Fracturing Study. EPA has finalized a suite of four new regulations for the oil and natural gas industry, including the first federal air standard for wells that are hydraulically fractured. In addition, EPA has announced that it intends to propose a rulemaking on disposal of fracturing water and fluids from shale gas extraction operations in 2014.	American Express		✓
	American Gas Association		✓
	American Iron & Steel Institute		✓
	American Petroleum Institute		✓
	Business Roundtable		✓
	Conoco-Phillips, Inc.		✓
	Independent Petroleum Association of America		✓
	National Association of Manufacturers		✓
Tier 3 gasoline standards. EPA is scheduled to issue proposed Tier 3 emissions standards for passenger cars and light trucks by the summer of 2012.	American Fuel & Petrochemical Manufacturers		✓
	American Petroleum Institute		✓
	Global Automakers		✓
	Toyota Motor North America, Inc.		✓
Numeric Nutrient Criteria and Nutrient Total Maximum Daily Loads (TMDLs) on the Mississippi River Basin	Agricultural Retailers Association		✓
	National Pork Producers Council		✓
Revising Underground Storage Tank (UST) Regulations; 76 Fed. Reg. 71,707 (proposed Nov. 18, 2011).	American Express		✓
	American Petroleum Institute		✓
	Airlines for America		✓
	Business Roundtable		✓
National Emissions Standards for Hazardous Air Pollutants (NESHAPS): Group IV Polymers and Resins, Pesticide Active Ingredient Production, and Polyether Polyols Production. 77 Fed. Reg. 1,268. (proposed in Jan. 9, 2012.)	American Chemistry Council		✓
	International Liquid Terminals Association		✓
National Emissions Standards for Hazardous Air Pollutants (NESHAPS): Petroleum Refineries and National Uniform Emission Standards for Heat Exchange Systems. 77 Fed. Reg. 960 (proposed Jan. 6, 2012).	American Chemistry Council		✓
	American Forest & Paper Association		✓
	American Fuel & Petrochemical Manufacturers		✓
	American Petroleum Institute		✓
	Conoco-Phillips, Inc.		✓
	International Liquid Terminals Association		✓
National Emission Standards for Storage Vessel and Transfer Operations, Equipment Leaks, and Closed Vent Systems and Controls Devices. 77 Fed. Reg. 17,897 (proposed Mar. 26, 2012).	American Chemistry Council		✓
	American Petroleum Institute		✓
	Society of Chemical Manufacturers & Affiliates		✓
National Emission Standards for Hazardous Air Pollutants (NESHAPs) for Chemical Manufacturing Area Sources. 74 Fed Reg. 56,008. Codified at 40 CFR 63 (final rule issued Oct. 29, 2009). This would require certain synthetic sources to obtain Title V permits.	American Chemistry Council		✓
	Anthracite Region Independent Power Producers Association		✓

Confidential Business Information (CBI): PMN Amendments Claiming Chemical & Microorganism Identity as Confidential in Data from Health and Safety Studies Submitted uuder Toxic Substances Control Act (TSCA) Prior to the Commencement of Manufacture. In April 2012, EPA announced a new proposed rulemaking to amend its new chemical and microorganism pre-manufacturer regulations under TSCA Sec. 14(b).	American Cleaning Institute		✓
	American Express		✓
	Business Roundtable		✓
	Society of Chemical Manufacturers & Affiliates		✓
General Duty Clause (GDC) of the Clean Air Act (CAA) Amendments of 1990, Sec. 112I(1).	American Coatings Association		✓
Control Techniques Guidelines (CTG) for Miscellaneous Metal and Plastic Parts Coatings. Publication No. EPA-453/R-08-003 (September 2008). Creates new limits for Volatile Organic Compounds (VOCs) used in marine coatings for pleasure craft.	American Coatings Association		✓
New Source Performance Standards for Kraft Pulp Mills, 43 Fed. Reg. 7.568. (Feb. 23, 1978). In September 2011 EPA was sued by environmental groups demanding EPA revisit the Kraft Pulp NSPS.	American Forest & Paper Association		✓
Integrated Risk Information System (IRIS) Assessment Revisions. IRIS process consists of the development of a draft Toxicological Review for a chemical. In 2011, EPA announced revisions to the IRIS process.	American Express		✓
	American Forest & Paper Association		✓
	American Petroleum Institute		✓
	Business Roundtable		✓
Integrated Risk Information System (IRIS): Draft Toxicological Review of 1, 4-Dioxane: In Support of Summary Information on the IRIS, 76 Fed. Reg. 57,739. (Notice of Public Comment Period Extension Sept. 16, 2011).	American Frozen Food Institute		✓
Regulation of Fuels and Fuel Additives: 2012 Renewable Fuel Standards (RFS), "The Cellulosic Mandates," 77 Fed. Reg. 1,320 (final rule Jan. 9, 2012). EPA issued a final rule announcing the price for cellulosic biofuel waiver credits at $6.8 million a gallon.	American Fuel & Petrochemical Manufacturers		✓
	American Petroleum Institute		✓
Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard (RFS) Program, Renewable Identification Number (RIN) Requirement, 75 Fed. Reg.	American Fuel & Petrochemical Manufacturers		✓

14,669 (final rule on Mar. 26, 2010).	American Petroleum Institute		✓
National Emission Standards for Hazardous Air Pollutants for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry. 71 Fed. Reg. 76,603 (final rule on Dec. 21, 2006).	American Fuel & Petrochemical Manufacturers		✓
	American Petroleum Institute		✓
Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards (NSPS). EPA announced its new proposed rulemaking in December 2011 and is expected to issue a final rule in December 2012.	American Fuel & Petrochemical Manufacturers		✓
	American Petroleum Institute		✓
	Conoco-Phillips, Inc.		✓
Petroleum Refinery Residual Risk Standards. 74 Fed. Reg. 55,505 (final rule Oct. 28, 2009)	American Fuel & Petrochemical Manufacturers		✓
	American Petroleum Institute		✓
National Volatile Organic Compound (VOC) Emission Standards, 77 Fed. Reg. 14,270 (direct final rule on June 7, 2012).	American Hardware Manufacturers Association		✓
Water recycling of grey water. Only 30 of the 50 states have regulations pertaining to water recycling of grey water.	Carpet & Rug Institute		✓
Green Seal and Design for the Environmental (DfE) Standards to certify "green" cleaning products.	Carpet & Rug Institute		✓
New Source Performance Standards (NSPS) for Nitric Acid Plants. On May 15, 2012, EPA released a final version of NSPS for nitric acid plants (NAPs) that reduced emitted nitrogen oxides applicable to each plant commencing construction, modification, or reconstruction after October 14, 2011.	CF Industries Holdings, Inc.		✓
	The Fertilizer Institute		✓
Oil and Natural Gas Sector: New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPs) Reviews. 76 Fed. Reg. 52,738 (proposed on Aug. 23, 2011).	American Petroleum Institute		✓
	Conoco-Phillips, Inc.		✓
	Independent Petroleum Association of America		✓
Permitting Guidance for Oil and Gas Hydraulic Fracturing Activities Using Diesel Fuels – Draft (published May 10, 2012).	American Petroleum Institute		✓
	Conoco-Phillips, Inc.		✓
Regional Haze: Revisions to Provisions Governing Alternatives to Source-Specific Best Available Retrofit Technology (BART) Determinations, Limited SIP Disapprovals, and Federal Implementation Plans, 76 Fed. Reg. 82,219 (proposed rule on Dec. 30, 2011).	Chamber of Commerce		✓
	Edison Electric Institute		✓
California State Motor Vehicle Pollution Control Standards; Within the Scope Determination and Waiver of Preemption Decision for Amendments to California's Zero-Emission Vehicle (ZEV) Standards, 76 Fed. Reg. 61,095 (notice of decision to grant waiver on Oct. 3, 2011).	Global Automakers		✓
	Toyota Motor North America, Inc.		✓

Clean Water Act (CWA) Section 402 Permits: National Pollutant Discharge Elimination System (NPDES). Guidance used to usurp role that states play in setting water quality standards under Sec. 303 of the CWA with respect to conductivity.	National Mining Association		✓
	National Stone, Sand & Gravel Association		✓
New Source Performance Standards (NSPS) for Grain Elevators, 40 CFR Part 60, Subpart DD. Section 11 (NSPS) of the Clean Air Act (CAA). In 2011, EPA placed the NSPS on its list to examine under E.O. 13563 for possible revision or repeal.	National Oilseed Processors Association		✓
National Emission Standards for Hazardous Air Pollutants (NESHAPs) for Reciprocating Internal Combustion Engines (RICE); New Source Performance Standards for Stationary Internal Combustion Engines, 77 Fed. Reg. 33,812 (proposed rule June 7, 2012). This rule amends the NESHAPs for stationary reciprocating internal combustion engines under Section 112 of the Clean Air Act (CAA).	American Petroleum Institute		✓
	National Stone, Sand & Gravel Association		✓
Integrated Risk Information System (IRIS) for Nickel. EPA is working on a proposed schedule and an initial draft of the proposed rule.	National Tooling & Machining Association		✓
	Precision Machined Products Association		✓
	Precision Metalforming Association		✓
Commercial & Industrial Solid Waste Incineration (CISWI) Units Rule on Industrial, Commercial, and Institutional Boilers and Process Heaters. 76 Fed. Reg. 28,662. (final rule issued May 18, 2011).	American Iron & Steel Institute		✓
	Anthracite Region Independent Power Producers Association		✓
	ConocoPhillips, Inc.		✓
	Non-Ferrous Founders Society		✓
National Emissions Standards for Hazardous Air Pollutants (NESHAPs): Secondary Aluminum Production, 77 Fed. Reg. 8,576 (proposed rule Feb. 14, 2012).	The Aluminum Association		✓
	Non-Ferrous Founders Society		✓
National Pollutant Discharge Elimination System (NPDES) Program eReporting Rule. EPA sent a draft proposed rule to OMB for review in January 2012. The proposal would require electronic reporting of discharge monitoring reports by Jan. 2014 and for general permits by 2015.	Non-Ferrous Founders Society		✓
Sanitary Sewer Overflows Standards. In March 2011, EPA promulgated new regulations under Sec. 129 of the Clean Air Act (CAA) for air emissions from incinerators burning domestic sewage sludge at publicly owned treatment works (POTWs).	National Association of Clean Water Agencies		✓
National Emissions Standards for Hazardous Air Pollutants (NESHAPs): Primary Aluminum Reduction Plants, 76 Fed. Reg. 76,260 (proposed rule Dec. 6, 2011).	The Aluminum Association		✓
Standards of Performance for Greenhouse Gas (GHG) Emissions for New Stationary Sources: Electric Utility Generating Units. 77 Fed. Reg. 22,392 (Proposed on April 13, 2012). The comment period ended on June 25, 2012.	American Chemistry Council		✓
	American Fuel & Petrochemical Manufacturers		✓
	American Iron & Steel Institute		✓
	American Petroleum Institute		✓
	CF Industries Holdings, Inc.		✓

	Chamber of Commerce		✓
	Edison Electric Institute		✓
	National Association of Manufacturers		✓
	National Council of Textile Organizations		✓
	National Mining Association		✓
	National Oilseed Processors Association		✓
	Printing Industries of America		✓
Toxic Substances Control Act (TSCA) Section 12(b) Export Notification Requirements. 40 CFR Part 707 Subpart D. Requires companies to notify EPA when they export or intend to export to a foreign country chemical substances or mixtures that are subject to certain rules or orders under TSCA.	American Petroleum Institute		✓
Air Quality: Widespread Use for Onboard Refueling Vapor Recovery and Stage II Waiver, 77 Fed. Reg. 28,772 (final rule on May 16, 2012).	American Petroleum Institute		✓
Ultra Low Sulfur Diesel Labeling Rule. 40 CFR 80.572(a).	American Petroleum Institute		✓
National Pollutant Discharge Elimination System (NPDES): Use of Sufficiently Sensitive Test Methods for Permit Applications and Reporting, 75 Fed. Reg. 35,712 (proposed rule June 23, 2010).	American Petroleum Institute		✓
ENERGY STAR® program. EPA has duplicated testing requirements on top of the Department of Energy's final rule on certification, compliance and enforcement for the ENERGY STAR program. EPA now requires third-party certification for all ENERGY-STAR qualified products.	American Express		✓
	American Lighting Association		✓
	Business Roundtable		✓
	Consumer Electronics Association		✓
Definition of Solid Waste, 76 Fed. Reg. 44,094 (proposed July 22, 2011). The EPA is proposing to revise certain exclusions from the definition of solid waste for hazardous secondary materials intended for reclamation that would otherwise be regulated under the Resource Conservation and Recovery Act.	American Coatings Association		✓
	American Express		✓
	American Iron & Steel Institute		✓
	American Petroleum Institute		✓
	Anthracite Region Independent Power Producers Association		✓
	Business Roundtable		✓

	IPC, The Association Connecting Electronics Industries		✓
	National Federation of Independent Business		✓
	Non-Ferrous Founders' Society		✓
	Society of Chemical Manufacturers & Affiliates		✓
Classifying oil and gas wastes as hazardous wastes under the Resource Conservation and Recovery Act (RCRA).	Conoco-Phillips, Inc.		✓
Wetland Permitting Process	American Road & Transportation Builders Association		✓
Clean Air Act Transportation Conformity Process	American Road & Transportation Builders Association		✓
Outer Continental Shelf (OCS) Permitting and Air Pollution Compliance	Conoco-Phillips, Inc.		✓

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION			
REGULATION/STATUTES/POLICIES	**ORGANIZATION/BUSINESS**	**2011**	**2012**
Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq: On April 25, 2012, the EEOC released guidance on criminal background checks preformed by employers. The guidance differs substantially from a 1987 policy statement released by the EEOC, causing confusion among employers.	American Express		✓
	American Meat Institute		✓
	Business Coalition for Fair Competition		✓
	Business Roundtable		✓

FEDERAL COMMUNICATIONS COMMISSION			
REGULATION/STATUTES/POLICIES	**ORGANIZATION/BUSINESS**	**2011**	**2012**
Empowering Consumers to Avoid Bill Shock Consumer Information and Disclosure (FCC 10-180): The Federal Communications Commission proposes rules that would require mobile service providers to provide usage alerts and information that will assist consumers in avoiding unexpected charges on their bills.	CTIA--The Wireless Association	✓	
FFC Form 355: Television broadcasters must prepare each calendar quarter a new disclosure form and to place the form in their public inspection files.	National Association of Broadcasters	✓	
National Broadband Plan: As directed by Congress, the FCC developed a plan to concerning access to broadband capability.	Edison Electric Institute	✓	
Outdated Regulations: Need to modify current regulations to reflect technological advancements.	American Express		✓

	Business Roundtable		✓
Regulation of the Internet	American Express		✓
	Business Roundtable		✓
Potential Anti-Piracy Legislation: Fear that Congress will pursue anti-piracy legislation that will negatively impact open communication.	Consumer Electronics Association		✓
Cellular Licensing Proceeding: Licensees in the 850 mhz cellular band must file license modifications with the FCC each time they make a network adjustment. A Notice of Proposed Rulemaking was released in 2012 to review and modify this process.	CTIA-The Wireless Association		✓
Telephone Consumer Protection Act: The FCC has not yet addressed whether a consumer's request to opt out of a program, like text messaging, is a violation of the Telephone Consumer Protection Act.	CTIA-The Wireless Association		✓
Form 477: Requires broadband providers to provide semi-annual reports on where and how many customers they serve.	CTIA-The Wireless Association		✓
Form 499: Requires companies to file quarterly reports about revenue data. A Notice of Proposed Rulemaking was released in 2012 to examine the frequency of these reports.	CTIA-The Wireless Association		✓
User-Funded Cost Recovery: Extensive reporting requirements.	National Telecommunication Cooperative Association		✓
Must Carry Rules: (to be codified at 47 CFR 76.64): Requires cable companies to carry local broadcast stations.	The Heritage Foundation		✓
Using Quantile Regression Analysis for Universal Service Support. 77 Fed. Reg. 100 (to be codified at 47 CFR 36): A statistical method the FCC uses to decide the validity of a company's network infrastructure investments in relation to a peer group.	U.S. Telecom		✓
Legacy Telephone Regulations	U.S. Telecom		✓

FEDERAL RAILROAD ADMINISTRATION			
REGULATION/STATUTES/POLICIES	**ORGANIZATION/BUSINESS**	**2011**	**2012**
Railroad Safety Enhancement Act of 2008, Pub. L. No. 110-432: Rail Safety Improvement Act of 2008 - (Sec. 3) Authorizes appropriations for FY2009-FY2013 for: (1) railroad safety; (2) the purchase of Gage Restraint Measurement System vehicles and track geometry vehicles or other comparable technology to assess track safety; and (3) construction of the Facility for Underground Rail Station and Tunnel at the Transportation Technology Center, Inc., in Pueblo, Colorado.	Association of American Railroads	✓	

FEDERAL RESERVE BOARD			
REGULATION/STATUTES/POLICIES	**ORGANIZATION/BUSINESS**	**2011**	**2012**
Debit Card Interchange Fees and Routing (rule July 20, 2011, to be codified at 12 C.F.R. pt. 235): FRB established standards for debit card interchange fees, regulations governing network fees, and prohibitions against network exclusivity arrangements and routing restrictions, as required by §1075 of Dodd-Frank.	Credit Union National Association	✓	
	Financial Services Roundtable	✓	✓
	Small Business & Entrepreneurship Council	✓	
Enhanced Prudential Standards and Early Remediation Requirements for Covered Companies, 77 Fed. Reg. 594 (proposed January 5, 2012) (to be codified at 12 C.F.R. pt. 252): FRB proposed these rules drawing up rules to address capital requirements and surcharges for banks, as required by Dodd-Frank.	American Express		✓
	Business Roundtable		✓
	Financial Services Roundtable	✓	✓
	U.S. Chamber of Commerce		✓
Escrow Requirement Changes (76 Fed. Reg. 11598, (March 2, 2011) (to be codified at 12 C.F.R. pt. 226): FRB proposed this rule, which exempts creditors from the escrow requirements for higher-priced mortgage loans (HPMLs). (§1461 of Dodd-Frank amends TILA, or Regulation Z, to impose a mandatory escrow account requirement for first lien HPMLs).	Independent Community Bankers of America		✓

Privacy of Consumer Financial Information (Regulation P) (codified at 12 C.F.R. pt. 216): FRB released this rule, which governs how financial institutions use nonpublic personal information about consumers (i.e. financial services providers must send a privacy notice to a customer annually, even if privacy practices at the financial institution have not changed).	American Financial Services Association		✓
	Credit Union National Association		✓
	Independent Community Bankers Association		✓
Gramm-Leach-Bliley Act (GLB) Annual Privacy Notice Requirement: GLB and its implementing regulations require certain financial institutions to provide an initial privacy notice to their customers about the company's information sharing practices with third parties. Privacy notices must be provided on an annual basis thereafter for the duration of the customer relationship.	Debt Buyers Association International		✓
Fair Credit Reporting Risk-Based Pricing Rule, 16 C.F.R. §§640, 698 (2010): FRB and FTC issued a rule that generally requires a creditor to provide a risk-based pricing notice to a consumer when the creditor uses a consumer report to grant or extend credit to the consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that creditor.	National Automobile Dealers Association	✓	
Electronic Fund Transfer Act, Regulation E § 206.16, Disclosures at Automated Teller Machines (ATMs): Under Regulation E, ATM operators that impose fees on consumers for withdrawing funds/ inquiring about balances must disclose the amount of any fee or operator charges. The operator must disclose the fee on the ATM screen or in a paper notice before the consumer pays the fee. In addition, the operator mush post a sign on the ATM itself that fees "will" or "may be imposed."	Credit Union National Association		✓
	Independent Community Bankers Association		✓

FEDERAL TRADE COMMISSION			
REGULATION/STATUTES/POLICIES	**ORGANIZATION/BUSINESS**	**2011**	**2012**
FTC Report: Protecting Consumer Privacy in an Era of Rapid Change (December 2010): Language suggesting there will be new regulations on the geospatial industry.	Business Coalition for Fair Competition		✓

GENERAL SERVICES ADMINISTRATION			
REGULATION/STATUTES/POLICIES	**ORGANIZATION/BUSINESS**	**2011**	**2012**
Leadership in Environmental Energy and Design Program. The Energy Independence and Security Act of 2007 Pub.L. 110-140: Green building rating standards for federal agency use.	American Chemistry Council		✓
	American Coatings Association		✓
	Construction Industry Round Table		✓
	National Asphalt Pavement Association		✓
	National Association of Home Builders		✓
The Federal Supply Schedule Program/GSA Schedule Contracting (to be codified at 48 CFR 8.403(c): Provides for the acquisition of private firms for architectural and engineering services through contracts.	Business Coalition for Fair Competition		✓

INTERNAL REVENUE SERVICE			
REGULATION/STATUTES/POLICIES	**ORGANIZATION/BUSINESS**	**2011**	**2012**
1099 Reporting Mandate: Patient Protection and Affordable Care Act (PPACA). The reporting requirement was repealed in 2011.	American Bakers Association	✓	
	American Express	✓	
	Associated Builders and Contractors	✓	
	Business Roundtable	✓	
	Manufacturing Jewelers & Suppliers of America	✓	
	National Community Pharmacists Association	✓	
	Small Business & Entrepreneurship Council	✓	
3% Withholding Mandate: Tax Increase Prevention and Reconciliation Act of 2005. This mandate was repealed in 2011.	Aerospace Industries Association	✓	
	Associated Builders and Contractors	✓	
	Computing Technology Industry Association	✓	
	Government Withholding Relief Coalition	✓	
	National Asphalt Pavement Association	✓	
	Small Business & Entrepreneurship Council	✓	
Interpretation of Section 199 of the Internal Revenue Code	Institute of Scrap Recycling Industries	✓	
Deduction and Capitalization of Expenditures Related to	Textile Rental Services	✓	

Tangible Property	Association		
IRS Definition of Affordability. Proposed Rule. 76 Fed. Reg. 159 (to be codified at 26 CFR 1): An employee's self-only premium for an employee-sponsored plan should not be considered "affordable" if it exceeds 9.5% of their W-2 wages from that employer.	American Express		✓
	Business Roundtable		✓
Coverage of Employee Dependents. IRS Notice 2011-36: IRS suggested agencies might require employers to offer coverage to dependents of employees.	American Express		✓
	Business Roundtable		✓
Patient Protection on Affordable Care Act. Section 9002: Requires employers to report the cost of coverage under an employer-sponsored health plan on W-2 forms.	American Express		✓
	Business Roundtable		✓
Definition of Part-time and Full-time Employees. Section 4980H (added to Internal Revenue Code by the Patient Protection and Affordable Care Act): The IRS considers an individual who works at least 130 hours per month or 30 hours per week as a full-time employee.	American Express		✓
	Business Roundtable		✓
Employer Reporting Requirements. Notice 2012-32: Requires employers to submit paperwork to the IRS for each individual who receives minimum essential coverage and provide a report to the employee.	American Express		✓
	Business Roundtable		✓
	Retail Industry Leaders Association		✓
Federal tax code	American Hardware Manufacturers		✓
	Construction Industry Roundtable		✓
Business taxes	American Hardware Manufacturers		✓
	Consumer Electronics Association		
Rules for tax exempt institutions: The assets of a tax-exempt institution cannot be used to benefit a private individual.	American Hospital Association		✓
Look-back Method. IRC § 460(b)(2): A process by which taxpayers provide documentation to prove that tax payments made in previous years were appropriate.	Construction Industry Roundtable		✓
Need for repatriated tax holiday	Consumer Electronics Association		✓
Interest Paid to Non-Resident Aliens. 76 Fed. Reg. 5 (to be codified at 26 CFR 1 and 31): Requires the reporting of interest paid to non-resident aliens.	U.S. Chamber of Commerce		✓
Treasury, IRS, Guidance on Reporting Interest Paid to Nonresident Aliens, 77 Fed. Reg. 23391, (April 19, 2012) (to be codified at 26 C.F.R. pts. 1, 31): The Internal Revenue Service (IRS), within the U.S. Department of the Treasury (Treasury), released this final rule, which requires banks to report to the IRS the amount of interest they pay to non-resident aliens with U.S. bank accounts.	U.S. Chamber of Commerce		✓
Treasury, IRS, Guidance Regarding Deduction and Capitalization of Expenditures Related to Tangible Property, 76 Fed. Reg. 81060 (Dec. 27, 2011) (to be codified at 26 C.F.R.	Retail Industry Leaders Association		✓

pt 1): The Internal Revenue Service (IRS), within the U.S. Department of the Treasury (Treasury), released regulations related to business expenditures to repair or alter tangible property (i.e. buildings). These regulations went into effect on January 1, 2012.			

NATIONAL LABOR RELATIONS BOARD			
REGULATION/STATUTES/POLICIES	**ORGANIZATION/BUSINESS**	**2011**	**2012**
NLRB Governing Notification of Employee Rights under the National Labor Relations Act (NLRA), 75 Fed. Reg. 80420 (proposed Dec. 22, 2010) (to be codified to 29 C.F.R. pt. 104): On August 30, 2011, the National Labor Relations Board issued a final rule that requires employers subject to the National Labor Relations Act (NLRA) to post a notice of select employee rights under the NLRA. The rule is on hold pending court challenges.	Agricultural Retailers Association		✓
	Associated Builders and Contractors, Inc.	✓	✓
	Brick Industry Association		✓
	Forging Industry Association	✓	
	Motor and Equipment Manufacturers Association	✓	✓
	National Association of Manufacturers		✓
	National Council of Textile Organizations	✓	✓
	National Restaurant Association	✓	
	Non-Ferrous Founders' Society	✓	
	Textile Rental Services Association	✓	
	U.S. Chamber of Commerce		✓
	Western Growers Association		✓
NLRB's "Quickie Election" Rule: On December 22, 2011, the NLRB issued a final rule that alters the procedures for union organizing elections. In May 2012, the U.S. District Court for the District of Columbia invalidated the rule on the basis that the NLRB lacked the quorum required when it issued the rule. The fate of this rule is uncertain as the NLRB could reissue it with a quorum.	Agricultural Retailers Association		✓
	American Bakers Association		✓
	American Frozen Food Institute		✓
	American Trucking Association		✓
	Associated Builders & Contractors		✓
	Brick Industry Association		✓
	Interlocking Concrete Pavement Institute		✓
	Motor and Equipment Manufacturers Association		✓
	National Association of Manufacturers		✓
	National Council of Textile Organizations		✓
	National Federation of Independent Business		✓
	Non-Ferrous Founders' Society		✓
	Printing Industries of America		✓
	Retail Industry Leaders Association		✓
	The Heritage Foundation		✓
	U.S. Chamber of Commerce		✓
NLRB Decision in *Specialty Healthcare* changing the	Retail Industry Leaders		✓

criteria for determining the appropriateness of a bargaining unit.	Association		
NLRB's extension of an employee's right to post criticism of his employer on social networking sites. If a company interferes with the posting of such criticism "it is interfering with, restraining and coercing employees in the exercise of the rights guaranteed in section 7" (of the NLRA).	Western Growers Association		✓
NLRB's reversal of preserving an employer's private property rights. NLRB has indicated that it will grant union organizers the right to enter an employer's premises to conduct union organizing activity.	Western Growers Association		✓

NATIONAL MARINE FISHERIES SERVICE			
REGULATION/STATUTES/POLICIES	**ORGANIZATION/BUSINESS**	**2011**	**2012**
National Marine Fisheries Service Draft Environmental Impact Statement for Arctic oil & gas (December 2011): The agency outlines what it views as appropriate oil and gas activities in the U.S. Beaufort and Chukchi seas.	American Land Title Association		✓

OFFICE OF GOVERNMENT ETHICS			
REGULATION/STATUTES/POLICIES	**ORGANIZATION/BUSINESS**	**2011**	**2012**
Executive Branch Employees Ethical Standards. Proposed Rule. 76 Fed. Reg. 177 (to be codified at 5 CFR Part 2635): Office of Government Ethics proposed a rule that would bar executive branch employees from attending free events, such as receptions, hosted by trade associations.	American Forest and Paper Association		✓

SECURITIES AND EXCHANGE COMMISSION			
REGULATION/STATUTES/POLICIES	**ORGANIZATION/BUSINESS**	**2011**	**2012**
Disclosure of Payments by Resource Extraction Issuers, 75 Fed. Reg. 80978 (proposed Dec. 23, 2010) (to be codified at 17 C.F.R. pt. 229, 249): SEC issued a proposed rule requiring resource extraction issuers to report annually information relating to any payment made by the issuer, or by a subsidiary or another entity controlled by the issuer, to a foreign government or the federal government for the purpose of the commercial development of oil, natural gas, or minerals.	American Express		✓
	American Petroleum Institute (API)		✓
	Business Roundtable	✓	✓
	ConocoPhillips	✓	✓
Mine Safety Disclosure, 75 Fed. Reg. 80374 (proposed Dec. 15, 2010) (to be codified at 17 C.F.R. pt. 229, 239, 249): SEC	Business Roundtable	✓	

issued a proposed rule to outline the way mining companies must disclose certain information about mine safety and health standards to investors.			
Conflict Minerals, 75 Fed. Reg. 80948 (proposed Dec. 23, 2010) (to be codified at 17 C.F.R. pt. 229, 249): SEC issued a proposed rule that would require any issuer for which conflict minerals are necessary to the functionality or production of a product manufactured, or contracted to be manufactured, by that issuer to disclose in the body of its annual report whether its conflict minerals originated in the Democratic Republic of the Congo or an adjoining country.	American Petroleum Institute	✓	
	American Express		✓
	Boeing	✓	
	Business Roundtable	✓	✓
	National Tooling and Machining Association		✓
	Precision Machined Products Association		✓
	Precision Metalforming Association		✓
	IPC – Association Connecting Electronics Industries	✓	✓
	Consumer Electronics Association		✓
	Manufacturing Jewelers and Suppliers of America	✓	✓
	CTIA- Wireless Association		✓
	National Association of Manufactures		✓
	National Electrical Manufacturers Association	✓	
	Motor & Equipment Manufacturers Association		✓
	U.S. Chamber of Commerce		✓
Whistleblower Incentives and Protection, 76 Fed. Reg. (final rule Aug. 25, 2011) (to be codified at 17 C.F.R. pt. 165: SEC issued a final rule to implement whistleblower provisions in Dodd Frank whereby whistleblowers will receive 10-30% of any fine over $1 million that is a result of original information provided to SEC that leads to the successful enforcement of a covered action.	American Express	✓	
	Boeing	✓	
	Business Roundtable	✓	
	U.S. Chamber of Commerce		✓

Shareholder Approval of Executive Compensation and Golden Parachute Compensation 76 Fed. Reg. 6010 (to be codified at 17 C.F.R. pts. 229, 240, 249) (Feb. 2, 2011): SEC issued a final rule relating to shareholder approval of executive compensation and "golden parachute" compensation arrangements as required under Dodd-Frank.	American Express	✓	
	Business Roundtable	✓	
CEO Pay Ratio Disclosure: Dodd-Frank requires certain companies to file reports with SEC to disclose the following compensation metrics: the annual total compensation of the chief executive officer; the median annual total compensation for all employees (but CEO); and a ratio of these two metrics.	American Express	✓	
	Business Roundtable	✓	
Mandatory Clawbacks: Dodd-Frank requires companies listed on a U.S. stock exchange to implement and disclose a policy requiring a company to clawback incentive-based compensation paid to current or former executive officers if the company is required to restate its financials due to material non-compliance with financial reporting requirements.	American Express	✓	
	Business Roundtable	✓	
Facilitating Shareholder Director Nominations ("Proxy Access") (to be codified at 17 C.F.R. pts. 200, 232, 240, 249): In August 2010, SEC issued a final rule that requires companies to include board of director nominees by certain shareholders in their proxy materials. However, the rule was struck down by the U.S. Court of Appeals for the District of Columbia on July 22, 2011.	American Express	✓	
	Business Roundtable	✓	
President's Working Group Report on Money Market Fund Reform, Release No. IC-29497; File No. 4-619: SEC is seeking comment on the options discussed in the President's Working Group on Financial Markets' study of possible money market fund reforms. One of the proposals considers moving away from the current stable net asset values (NAVs) to a floating NAV.	Boeing	✓	
Sarbanes-Oxley Act (SOX), Pub. L. No. 107-204, § 404(b), 116 Stat. 745 (2002): SOX Section 404(b) requires public companies to conduct a review of internal controls over financial reporting and include an external auditor attestation report of those controls in their annual filings.	Biotechnology Industry Organization	✓	
Chairman/CEO Disclosures: § 972 of Dodd-Frank directs SEC to adopt rules requiring companies to disclose leadership structure of a company and why the company has determined that this leadership structure is appropriate.	U.S. Chamber of Commerce		✓
Money Market Mutual Fund Reform: SEC made significant changes to money market funds regulation under the Investment Company Act of 1940 two years ago. The proposed rule is expected to be issued this year.	U.S. Chamber of Commerce		✓
Mandatory Audit Firm Rotation: The Public Company Accounting Oversight Board (PCAOB) is considering a concept release to issue a proposal mandating public companies to rotate their audit firms periodically. This release would have to go through SEC rulemaking process.	U.S. Chamber of Commerce		✓

Municipal Advisor Registration Requirement: §975 of Dodd-Frank amended the Securities Exchange Act of 1934, making it "unlawful" for a municipal advisor to provide advice to or undertake a solicitation of a municipal entity unless the municipal advisor is registered with SEC and the Municipal Securities Rulemaking Board.	Independent Community Bankers of America		✓
Guidance of Loss Contingencies: The Financial Accounting Standards Board (FASB) dropped a proposal to expand the disclosure requirement for businesses to estimate their liability when sued. SEC is requiring these expanded disclosures, dropped by FASB, without approval or notice and comment.	U.S. Chamber of Commerce		✓
Guidance on Cybersecurity and Network Neutrality: SEC released guidance regarding public company disclosure obligations relating to cybersecurity risks and net neutrality. It is unclear what statutory authority the SEC had to take policy preferences outlined in both guidance documents.	CTIA Wireless Association		✓

MISCELLANEOUS			
REGULATION/STATUTES/POLICIES	**ORGANIZATION/BUSINESS**	**2011**	**2012**
European Union Emissions Trading: U.S. airlines are forced to purchase emission allowances in accordance with European Union rules.	Airlines for America		✓
Interagency Working Group Proposal to Restrict Advertising to Children: Nutrition principles released by the Interagency Working Group differ substantially from the USDA's Dietary Guidelines for Americans.	American Bakers Association		✓
Federal Contractor Reporting on Composition of the Workforce	American Hardware Manufacturing Association		✓
Agency Guidance: Use of guidance to circumvent traditional formal rulemaking process.	American Hospital Association		✓
	National Stone, Sand and Gravel Association		✓
Anti-Trust Laws: Need for Department of Justice's Anti-Trust Division and the Federal Trade Commission to clarify how clinical integration programs can properly abide by anti-trust law.	American Hospital Association		✓
Expectation of New Regulations	Associated Builders and Contractors		✓
Cost-Benefit Analyses: Need for agencies to engage in exhaustive cost-benefit analysis when weighing whether to take regulatory action.	American Hardware Manufacturers Association		✓
	Commodity Markets Council		✓
	Ford Motor Council		✓
	HR Policy Association		✓
	Mercatus Center		

Federal Acquisition Regulation 48 CFR 1.101: Requires the federal government to choose engineering and architecture firms based on competency and experience instead of price.	Business Coalition for Fair Competition		✓
	Construction Industry Roundtable		✓
	International Bottled Water Association		✓
OMB Notice of Proposed Policy Letter in response to President's March 4, 2009, *Memorandum on Government Contracting:* Increases insourcing, the process by which jobs traditionally performed by private sector employees are instead given to public employees.	Business Coalition for Fair Competition		✓
Federal Greenhouse Gas Accounting and Reporting Guidance (October 6, 2010) in response to Executive Order (E.O.) 13514: Explains how federal agencies should measure the impact of climate change and greenhouse gas emissions.	Conoco Phillips, INC		✓
Council on Environmental Quality March 6, 2012 Guidance on National Environmental Policy Act: Seeks public input on previously approved rules.	Conoco Phillips, INC		✓
"Disclosure of Political Spending by Government Contractors" 2011 Draft Executive Order: If enacted, this Executive Order would have politicized federal procurement decisions by establishing new reporting requirements for private companies competing for public contracts. Specifically, private companies would have needed to provide information about political contributions.	Construction Industry Roundtable		✓
	The Associated General Contractors of America		✓
Procurement: Each federal agency currently develops their own set of procurement policies.	Construction Industry Roundtable		✓
Qualifications for Quality Control Personnel: Unclear whether practical experience can be considered in lieu of an engineering degree.	Construction Industry Roundtable		✓
Tariffs on Imported Products	Consumer Electronics Associations		✓
Endangered Species Act: Fish and Wildlife Service and National Oceanic Atmospheric Administration enforcement of strict pesticide regulations limits agricultural output.	CropLife America		✓
Energy Policy Act of 2005: Gave Federal Energy Regulatory Commission and other agencies power to facilitate transmission construction.	Edison Electric Institute		✓
Administration's Proposed National Ocean Policy: Would alter permitting criteria for many industries	Independent Petroleum Association of America		✓
Out of Date International Trade Agreements	Consumer Electronics Association		✓
Department of Treasury's reporting requirements for prepaid access and gift cards	Retail Industry Leaders Association		✓

Sodium Consumption: The CDC, FDA, HHS and USDA have encouraged consumers to reduce their sodium intake.	Salt Institute		✓
DATA ACT Agency Conference Attendance Provisions. Section 712: Trade associations can no longer invite agency officials to a conference with industry representative more than once per year.	The Associated General Contractors of America		✓
The Credit Card Accountability, Responsibility and Disclosure Act (CARD Act) of 2009, Pub. L. No. 111-124: CARD Act amended TILA to impose new federal limits on how credit-card issuers can adjust interest rates and impose penalty fees on customers, among other things.	American Financial Services Association		✓
Federal Credit Union Act (FCUA), Pub. L. No. 90-188: FCUA requires credit unions to have 7% net worth to be considered well-capitalized and 6% net worth to be adequately capitalized. FCUA also requires a statutory cap on credit union lending, (the lesser of 1.75 times the minimum net worth of a well-capitalized credit union or 1.75% of the credit union's actual net worth).	Credit Union National Association	✓	✓
Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act) of 2008, Pub. L. No. 110-289: Regulators, specifically at the state level, have broadened the scope of regulated activity to include those who perform administrative and clerical tasks as mortgage loan originators, even if they do not offer or negotiate loan terms for compensation or gain.	Manufactured Housing Institute	✓	
Joint Agency Red Flags Rule, 12 C.F.R. § 41 (2007): In 2007, pursuant to the Fair and Accurate Credit Transactions Act of 2003 (FACTA), the OCC, FRB, FDIC, OTS, NCUA and FTC jointly issued rules that require financial institutions and creditors to develop and implement identify theft programs. The programs must include identification, detection and response to patterns, practices, or specific activities that could indicate identity theft.	American Land Title Association National Automobile Dealers Association	✓ ✓	
Electronic Disclosure Requirements of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (2000) Pub. L. No. 106-229: The E-Sign Act was meant to facilitate the use of electronic records and signatures in interstate and foreign commerce by ensuring the validity and legal effect of contracts entered into electronically.	American Financial Services Association		✓
Transaction Account Guarantee (TAG) Program: FDIC's TAG program full insurance coverage for certain transaction accounts, including transaction accounts for consumers and businesses, above $250,000. Dodd-Frank provided an extension of the program through Dec. 31, 2012.	Independent Community Bankers of America		✓
Property Appraisal Requirements: §1471 of Dodd-Frank requires appraisal methods for certain types of mortgages based on a method designed to value site-built homes. The appraisal requirement relies on a model designed for the site-built housing market that has little applicability to manufactured housing.	Manufacturing Housing Institute		✓
Availability of AD&C Loans: The home building industry continues to experience a significant adverse shift in terms and availability on land acquisition, land development and home construction (AD&C) loans, and builders with outstanding	National Association of Homebuilders		✓

loans are facing mounting challenges.			
Duplication and Overlap of the U.S. insurance regulation: Insurance in the United States is made up of 56 insurance jurisdictions, each with its own regulations, procedures, and legal definitions of insurance.	Financial Services Roundtable		✓
Use of Proxy Advisory Services by ERISA Managers: Many investment managers of Employee Retirement Income Security Act (ERISA) accounts outsource their voting decisions to proxy advisory firms. However, there is some concern that outsourcing of proxy voting does not encourage decisions that are in the best economic interest of ERISA pension funds.	U.S. Chamber of Commerce		✓

About the Committee

The Committee on Oversight and Government Reform is the main investigative committee in the U.S. House of Representatives. It has authority to investigate the subjects within the Committee's legislative jurisdiction as well as "any matter" within the jurisdiction of the other standing House Committees. The Committee's mandate is to investigate and expose waste, fraud and abuse.

Contacting the Committee

For press inquiries:

Frederick R. Hill, Director of Communications
(202) 225-0037

For general inquires or to report waste, fraud or abuse:

Phone: (202) 225-5074
Fax: (202) 225-3974
http://republicans.oversight.house.gov

Committee on Oversight and Government Reform
Chairman, Darrell Issa (CA-49)

2157 Rayburn House Office Building
Washington, DC 20515

Statement of Congressman Gerald E. Connolly
Committee on Oversight and Government Reform
"Continuing Oversight of Regulatory Impediments to Job Creation:
Job Creators Still Buried By Red Tape"
July 19, 2012

Today's hearing continues a sad trend for this Committee, which has been transformed into a political tool of the Republican leadership in the House. Even if one can look past the inflammatory, false hearing title; a single glance at the witness list and it is abundantly clear that this Committee has abandoned any pretense of conducting serious oversight and pursuing thoughtful reform.

To be fair, the Republican majority has at least decided to be transparent in regard to whose interests they are fighting for. Seated at the witness table before us, we have individuals representing major industries, with impressive titles. I can't help but also note that the Committee literally does not have a single seat at the table for the millions of Americans who benefit everyday from the common sense, reasonable safeguards that keep our food safe, our water clean, and our air free of toxic pollution.

Beyond the one-sided panel of witnesses, and the gratuitous use of misleading buzz words, the true absurdity of this hearing – the 28th this Committee has held in support of dismantling fundamental public protections – is that it's anchored on a false premise. It truly requires blinders to hold a hearing purporting to 'examine regulatory impediments to job creation,' while millions of Americans are still struggling to recover from a severe recession caused principally by *deregulation* of the financial sector, and lack of regulatory oversight of mortgage banking.

Ironically, when the economy collapsed at the end of the Bush Administration, it was the truly productive sectors of our economy, many of which are represented at this hearing—manufacturing, technological innovators, homebuilders—who suffered the most. The Republican narrative that regulations have eliminated jobs and inhibited the recovery is simply a myth. The facts, and indeed personal experience, demonstrate overzealous deregulation led to explosive increases of wealth for the investment banking class – followed by a catastrophic collapse of our Nation's middle class.

Remarking on the disastrous consequences of ripping up the rules of the road, Alan Greenspan, in his infamous mea culpa before our Committee in 2008, stated "Those of us who have looked to the self-interest of lending institutions to protect shareholders' equity, myself included, are in a state of shocked disbelief." There are few Americans more devoted to free markets than Mr. Greenspan, yet in the face of the consequences of lax government regulations, he had the courage to face the facts and admit his errors.

I only hope my Republican colleagues can summon this same intellectual courage, so we can work together to ensure no child is poisoned by peanut butter, the cars we drive are safe, and millions of American lives are not placed in jeopardy to peddle a false and flawed political narrative.

Virginia Forest Products Industry Support for the Lacey Act

July 16, 2012

Dear Majority Leader Cantor and Members of the Virginia Delegation:

As forest products companies in the great Commonwealth of Virginia we stand united in our support of the Lacey Act and all that it has accomplished in addressing the issue of illegal logging worldwide since passage of the 2008 amendments. We now call on you, our elected officials, to do the same. We strongly oppose H.R. 3210, The Retailers and Entertainers Lacey Implementation and Enforcement Fairness Act and the amendments being offered by Subcommittee Chairman Fleming intended to weaken the Lacey Act and would like to see them removed from consideration.

The U.S. forest products industry produces about $175 billion in products annually and employs nearly 900,000 men and women in good paying jobs. The industry meets a payroll of approximately $50 billion annually and is among the top 10 manufacturing sector employers in 47 states. An industry study prior to passage of the 2008 Lacey Act amendments estimated that illegal logging cost the U.S. forest products industry some $1 billion annually in lost export opportunities and depressed U.S. wood prices. In Virginia alone the wood products industry employs 14,150 individuals and has an annual payroll income of over $611 million.

Because of the seriousness of this issue, the forest products industry has worked within a unique coalition that also includes environmental groups, labor organizations, retailers and others to identify and address improvements needed to encourage full and timely implementation of the Lacey Act. The coalition has continued bipartisan consensus talks in the U.S. Senate. Pending House legislation departs from that productive approach, threatening to impose detrimental changes to the law.

The Virginia forest products industry, dominated by small, family owned businesses, has a proud tradition of providing sustainable and legal resources to our customers both domestically and around the world. Illegal logging and the threat posed to Virginian and American jobs and forest resources by illegally sourced products throughout the world is being addressed by the Lacey Act, allowing our industry to compete fairly in the international market. The recent attacks on the Lacey Act are attacks on Virginia jobs in an industry already facing serious economic pressures. Our Virginia companies ask that there be no action on H.R. 3210 and/or the Fleming Amendments and that they be taken off the floor of the U.S. House of Representatives. We stand ready to work with you and your colleagues on finding alternative approaches.

Sincerely,
Please see attached sheet for Signatures

American Hardwood Export Council – Reston, VA
Barnes Manufacturing Co. – Kenbridge, VA
Blackberry Mulch – Hillsville, VA
Blue Ridge Lumber Co. – Fishersville, VA
Columbia Forest Products – Chatham, VA
Derr Flooring – Herndon, VA
Fitzgerald Logging and Lumber – Buena Vista, VA
Griffith Lumber Co. – Woolwine, VA
Hardwood Plywood & Veneer Association – Reston, VA
Neff Lumber Co. – Broadway, VA
Northland Forest Products – Troy, VA
Northland Forest Products – Manassas, VA
The Penrod Company – Virginia Beach, VA
Roanoke Forest Products – Roanoke, VA
Robert S. Coleman Lumber Co. – Culpeper, VA
Shenandoah Forests – Staunton, VA
Stuart Hardwood Flooring – Stuart, VA
Ten Oaks Flooring – Stuart, VA
Turman Hardwood Flooring – Galax, VA
Turman Hardwood Pellets – Galax, VA
Turman Lumber – Hillsville, VA
VFP, LLC – Mint Springs, VA
Virginia Forestry Association – Richmond, VA
W.R. Deacon & Sons Timber – Lexington, VA

TRANSWESTERN®
SUSTAINABILITY SERVICES

234 W. Florida St.
Suite 310
Milwaukee, WI 53204
Phone: 414.937.5030
Fax: 414.224.7780

July 18, 2012

The Honorable Darrell Issa
Oversight and Government Reform Committee
2154 Rayburn House Office
Washington DC 20515

The Honorable Elijah Cummings
Oversight and Government Reform Committee
2235 Rayburn House Office
Washington DC 20515

Dear Chairman Issa and Ranking Member Cummings,

On behalf of Transwestern, one of the largest privately-held commercial real estate firms in the United States, I would like to provide my views of the references to the LEED green building rating system at the Committee's hearing "Continuing Oversight of Regulatory Impediments to Job Creation: Job Creators Still Buried by Red Tape."

As the National Director of Sustainability for Transwestern, I would like to express my support for the utilization of USGBCs LEED rating system as a successful, voluntary, market-driven building rating system that is constructed in a consensus-based process among stakeholders and technical experts and has proven outcomes.

Having created 16 full time positions dedicated to LEED in the past 3 years, Transwestern has developed and overseen the certification of nearly 100 LEED certified buildings totaling nearly 20 million square feet. The smaller projects we completed include simple energy efficiency upgrades, plumbing, irrigation and landscaping upgrades. As for the larger upgrades, we have installed vegetated roofs, storm-water collection and reuse systems, major HVAC upgrades, and full exterior facade replacements.

While each of our projects is different in size, scope and price, each project creates good paying jobs utilizing a skilled workforce. In this economy and political climate, especially considering the state of the construction industry, it does not appear to be good business to attempt to eliminate or discredit a system that has been so successful and continues to support the rehabilitation and restoration of existing buildings as well as the construction of new buildings. With some projects spanning several years, we can directly connect the emergence of LEED as the starting point for the development of these projects and jobs.

LEED is not about politics, it is indeed blind to them. It does not kill jobs; it creates them and has catalyzed the growth of the building industry. It is simply about improving our buildings and by doing so creating innovation, jobs, and ultimately better buildings.

I would be grateful to show you or other members of the committee the work we do around the country and how Transwestern is supporting communities and creating jobs across the country. Please don't hesitate to contact me if I can be of assistance to this end 414.937.5023.

Sincerely,

Allan Skodowski
Managing Senior Vice President
Director of Sustainability
allan.skodowski@transwestern.net

July 17, 2012

The Honorable Darrell Issa
Chairman
Committee on Oversight and Government Reform
United States House of Representatives
Washington, D.C. 20515

The Honorable Elijah Cummings
Ranking Member
Committee on Oversight and Government Reform
United States House of Representatives
Washington, DC 20515

Dear Chairman Issa and Ranking Member Cummings:

On behalf of Associated Builders and Contractors (ABC), a national association with 74 chapters representing 22,000 merit shop construction and construction-related firms, I am writing in regard to the full committee hearing, "Continuing Oversight of Regulatory Impediments to Job Creation: Job Creators Still Buried by Red Tape."

The Obama administration has issued numerous regulations that impact the construction industry. ABC members understand the value of standards and regulations when they are based on solid evidence, with appropriate consideration paid to implementation costs and input from the business community. However, some of our industry's regulations impose crippling costs with questionable benefits. In some cases, these regulations are based on conjecture and speculation, lacking foundation in sound scientific analysis. For the construction industry, unjustified and unnecessary regulations translate to higher costs, which eventually are passed along to the consumer. Ultimately, these costs impact a business's ability to hire and expand.

Federal agencies must be held accountable for full compliance with existing rulemaking statutes and requirements when promulgating regulations in order to ensure regulations are necessary, current and cost- effective for businesses to implement.

ABC supports H.R. 3862, the "Sunshine for Regulatory Decrees and Settlements Act of 2012." H.R. 3862 would promote enhanced openness and transparency in the regulatory process by requiring early disclosure of proposed consent decrees and regulatory settlements. In addition, H.R. 3862 would require agencies to solicit public comment prior to entering into consent decrees with courts, which would provide affected parties proper notice of proposed regulatory settlements, and would make it possible for affected industries to participate in the actual settlement negotiations.

In addition, ABC has expressed support for H.R. 4607, the Midnight Rule Relief Act of 2012 which would prohibit a lame-duck administration from issuing midnight regulations with economic impacts of $100 million or more in the transition period between Election Day and Inauguration Day.

ABC appreciates your attention to this important matter and looks forward to working with you on reforming duplicative and burdensome regulations placed on small businesses.

Sincerely,

Kristen Swearingen
Senior Director, Legislative Affairs

○