

# Project On Government Oversight

## **POGO'S REFORM AGENDA: A GOOD GOVERNMENT GUIDE FOR THE 112<sup>TH</sup> CONGRESS**

For the past 30 years, the Project On Government Oversight (POGO) has championed good government reforms as a nonpartisan, independent watchdog. Implementing the following recommendations will help put the country on the right track to a more effective, accountable, open, and ethical government—one that is truly responsive to the needs of its citizens. Furthermore, while it is always a goal to have the best possible government at the lowest feasible cost, our troubled economy makes it even more imperative that Congress shrink the cost of government thoughtfully. The place to begin to save billions of taxpayer dollars is to reduce waste, fraud, and abuse. We welcome the opportunity for meaningful discussions about this roadmap for reform.

### **1. Open the Government**

- Put Reports to Congress Online
- Improve and Modernize the Freedom of Information Act
- Support the New Open Government Infrastructure

### **2. Protect Federal Whistleblowers, Who Protect Taxpayers**

- Enact the Bipartisan Whistleblower Protection Enhancement Act
- Expand Whistleblower Protections to All Federal Contractors
- Improve the Federal System for Whistleblowing
- Strengthen Military Whistleblower Protections

### **3. Stop the Drain of Defense Dollars**

- Emphasize Role of Testing and Evaluation
- Hold DoD Accountable
- Improve and Better Scrutinize the Business Case for Major Defense Acquisition Programs
- Curtail the Systematic Problem of Over-Reliance on Immature Technology
- Make Weapons Programs Auditable
- Congressional Ethics Needed When Second-Guessing Pentagon Cancellation of Major Weapons Programs

### **4. Fix the Failures That Led to the BP Gulf Oil Disaster**

- Oversee Interior Reorganization
- Investigate the Scientific Integrity of the BP Gulf Oil Disaster Response
- Enact the CLEAR Act Reforms

## **5. Protect Consumers and Investors**

- Ensure Implementation of Wall Street Reform
- Increase Transparency at Financial Regulators
- Hold Regulators Accountable
- Limit the Authority of Self-Regulatory Organizations such as the Financial Industry Regulatory Authority

## **6. Curb the Costs of the Shadow Government**

- Determine the Real Cost of the Shadow Government
- Cut Waste in Contracts
- Reform Interagency Contracts
- Save Money with Audits
- Improve Information on Federal Spending
- Create an Independent Contract Audit Agency
- End Noncompetitive Contracts
- End Certain Private Security Contracting
- Make Lobbying for Taxpayer Dollars More Transparent

## **7. Raise the Ethical Bar, Slow the Revolving Door**

- Slow the Revolving Door
- Make Revolving Door Information More Transparent
- Give the Office of Government Ethics Some Teeth

## **8. Make Advisors to Our Government More Accountable**

- Strengthen Integrity of Federal Advisory Committees

## **9. Watchdog the Watchdogs, and Give Them More Teeth**

- Give Inspectors General (IGs) Necessary Subpoena Power
- Make Investigations of IGs More Transparent
- Ensure IG Independence in FOIA Compliance
- Prevent Tip-Offs
- Encourage More Witness Cooperation with IGs
- Hold IGs Accountable

## **10. Prevent Foreign Agents from Operating in Secrecy**

- Fix Foreign Agent Registration Act

## **11. Improve Nuclear Security and Save Billions of Taxpayer Dollars**

- Recycle the Cold War
- Melt and Dilute
- Scrutinize \$12 Billion in Construction Projects
- Inventory Nuclear Materials

## **12. Make Healthcare Safer**

- Free the FDA Advisory Panels from the Profit Motive
- Increase Funding and Reduce the Corruption of Science
- Investigate the FDA
- Retain and Expand the Physician Payments Sunshine Act

## **1. Open the Government**

There is obviously a lot of agreement—across party lines—about the need for a more open government. The new rules for the 112<sup>th</sup> Congress that were advanced by the new majority in the House include many critical first steps towards opening the work of Congress to the American people. POGO was pleased to see the 72-hour rule for posting legislation online (one of our 2010 recommendations), as well as measures to increase transparency in committee proceedings. But we hope the progress won't end with the rules for the House.

A number of openness measures were left undone at the end of the last Congress, including improving the Freedom of Information Act (FOIA). FOIA has been a cornerstone for improving our democracy since it was enacted. However, it does not always work as intended, and agencies don't have enough funding to properly respond to FOIA requests. In addition, POGO is concerned about the proliferation of unnecessary statutory exemptions to FOIA slipped into all kinds of legislation.

POGO is also concerned that the backlash from the WikiLeaks disclosures might increase government secrecy and undermine the public's right to know. Certainly there are important policy questions to consider, but the government should not move to further restrict speech and legal disclosures of wrongdoing. The consequence of WikiLeaks cannot be silence and fear under the guise of protecting information.

### ***POGO Recommendations:***

- **Put Reports to Congress Online:** Congress should make all reports it requests from the administration or the Congressional Research Service publicly available on a central website. The Access to Congressionally Mandated Reports Act (H.R. 6026), introduced last year by Representative Steve Driehaus (D-OH), is a commonsense reform that could address this issue.
- **Improve and Modernize the Freedom of Information Act (FOIA):** Ultimately all public information should be affirmatively disclosed and immediately available to the public online in both open-source and original context in a searchable, sortable, and downloadable format. Hearings should be held to consider the concept, such as the approach proposed in the Public Online Information Act of last Congress. But Congress should immediately pass the Faster FOIA Act; a bipartisan bill introduced last Congress by Senators Patrick Leahy (D-VT) and John Cornyn (R-TX) to create a board to examine ways to improve FOIA. Congress should review the overuse of FOIA exemptions, and implement a procedure to allow for adequate examination of statutory exemptions in proposed legislation by the appropriate committees of jurisdiction. Also, more funding for FOIA should be mandated, perhaps as a set percentage of budgets or as a formula based on the volume and types of requests.
- **Support the New Open Government Infrastructure:** Progress is being made in transforming the culture and practices of agencies through the Open Government Directive. Congress should help support, not undermine, these efforts by ensuring agencies have adequate resources to fulfill their FOIA obligations and the Obama administration's mandate for more transparency, collaboration, and participation.

## 2. Protect Federal Whistleblowers, Who Protect Taxpayers

Our country must address the growing federal debt, and we cannot afford to tolerate waste, fraud, or abuse in the federal government. We must empower those on the front lines to use safe, legal channels to expose wrongdoing. Today, our federal workforce faces intimidation and retaliation with precious few protections for working to make our government more accountable to taxpayers. Unfortunately, under current law the Merit Systems Protection Board rules against 99 percent of whistleblowers who file suit to defend themselves against retaliation. Fear of committing career suicide leads federal workers to become silent observers when they witness fraud, waste, or abuse. Congress must enact whistleblower reforms that ensure federal whistleblowers who are punished for speaking the truth have the tools they need to fight that retaliation, and win. A bill that would have substantially changed the status quo, the Whistleblower Protection Enhancement Act (WPEA), passed both the Senate and the House. Yet, it was inexplicably held by an anonymous Senator in the last hours of the last Congress.

In addition, only some contractors have whistleblower protections under the law today, leaving our huge shadow government without critical accountability. We must provide best-practice whistleblower protections for all government contractors to reduce waste, fraud, and abuse.

Furthermore, the nearly 3 million Active, Reserve, and National Guard uniformed personnel face a higher hurdle in proving claims of whistleblower retaliation than civil service employees. It is a disgrace that those who serve our country in the military have substandard rights.

Another problem is that the Office of Special Counsel has been without a Special Counsel since Scott Bloch left in disgrace after having allegedly retaliated against whistleblowers within the agency that is charged with protecting federal whistleblowers. We must have a functional OSC to ensure federal employees can come forward with confidence that their legitimate claims of wrongdoing will be properly investigated and that they will be protected for doing so.

In addition, although agencies are required to inform employees of the rights and remedies available to them under the prohibited personnel practices and whistleblower provisions statutes, there is very little enforcement. The OSC has implemented a voluntary certification program for compliance, but participation has been dismal.

### ***POGO Recommendations:***

- **Enact the Bipartisan WPEA:** The Whistleblower Protection Enhancement Act will save billions of taxpayer dollars and countless lives by establishing real, desperately needed protections for those in our government who warn us of waste, fraud, political tampering with science, and other abuses.
- **Expand Whistleblower Protections to All Federal Contractors:** Congress should pass a bill similar to the one introduced in 2009 by Senator Claire McCaskill to cover all federal government contractors who blow the whistle on wrongdoing.
- **Improve the Federal System for Whistleblowing:** Congress must conduct rigorous oversight to ensure that agencies do not suppress or retaliate against whistleblowers, that there are strong systems for whistleblowing throughout the government, and that the OSC is fulfilling its mission. Congress also should make the OSC certification program mandatory.

- **Strengthen Military Whistleblower Protections:** The men and women who serve in the military should have much stronger protections. Congress should pass legislation to upgrade military whistleblower protections to create more independence in investigations and hearings and strengthen the due process rights for service members.

### 3. Stop the Drain of Defense Dollars

Defense spending is in serious need of reform, both in how and what we buy. For the most part, increasing discipline in weapons spending doesn't require new rules. Rather, better enforcement of the rules that currently exist is needed, especially as they relate to testing and evaluation and hard-nosed assessments of whether critical technologies are ready early in a weapons acquisition. Over-reliance on too many immature technologies critical to the success of a weapon is usually the key reason weapons are delivered billions of dollars over their original cost estimates and years late. At key decision-points known as "Milestones," where a major weapons program advances from technology validation (Milestone A) to full-scale development (Milestone B) to production (Milestone C), the Pentagon often does not exercise tough oversight or make hard decisions. With the likelihood that Defense Secretary Robert Gates will depart later this year, we may lose a high-level advocate for better accountability within the Pentagon's weapons portfolio. Despite some reforms over the last few years, the Defense Department still struggles with a variety of weapons programs that face complicated technical challenges and cost and schedule growth, such as the estimated \$384 billion Joint Strike Fighter (JSF) program (particularly the F-35B model) and the \$14.4 billion Marine Corps' Expeditionary Fighting Vehicle (EFV). Other issues arise, such as whether some of these large weapons programs even make sense given the likely set of threats the U.S. is to face in the short and medium term. Some weapons also may be less effective, yet cost far more, than some current weapons in the inventory.

There are deeply entrenched problems within the military-industrial bureaucracy; however, often the biggest obstacle to achieving reform is Congress when lawmakers become overly concerned with parochial interests rather than national security. While many of POGO's recommendations are geared towards generating greater discipline in the military-industrial complex, Congress needs to exercise greater discipline as well.

#### *POGO Recommendations:*

- **Emphasize Role of Testing and Evaluation:** As prescribed by the Weapon Systems Acquisition Reform Act of 2009, DoD should not allow weapon systems programs to ramp up production until critical technologies to fielding them have been proven through sufficient developmental testing and independent operational test and evaluation. Congress should confer with GAO, the Director of Operational Test and Evaluation, and cognizant developmental test organizations to determine which programs have too much concurrency between development, testing, and production. When too much concurrency is present, Congress should hold funding of programs until they are restructured with less concurrency. The Pentagon should successfully complete realistic prototype testing and evaluation wherever possible, and Congress and GAO should carefully scrutinize any waivers to prototyping. The Director of Developmental Test and Evaluation should be more robustly staffed, report directly to the Under Secretary of Defense for Acquisition, Technology and Logistics, and make a version of each annual report available to the public.

- **Hold DoD Accountable:** Often DoD fails to follow its own rules for buying Major Defense Acquisition Programs (MDAPs) responsibly. Congress should hold it accountable by regularly investigating and holding hearings on acquisitions. Congress, along with the GAO, should scrutinize any proposed waivers to any part of testing or any other required aspect of the acquisition process and should create a requirement that does not allow the Pentagon to proceed to the next Milestone or sign production contracts until Congress has given it explicit statutory approval to bypass any requirement. All waivers should be made public.
- **Improve and Better Scrutinize the Business Case for Major Defense Acquisition Programs:** Congress should independently evaluate the risks of acquiring overly complex, expensive systems such as the EFV, the Littoral Combat Ship sea frames, and some versions of the JSF, and determine whether those systems undermine more pressing national security priorities. Congress also should require the Pentagon to use the independent Director of Cost Assessment and Program Evaluation's cost estimates of programs (rather than the generally more optimistic military service cost estimates) when making decisions and putting together budgets.
- **Curtail the Systematic Problem of Over-Reliance on Immature Technology:** Congress should shift responsibility for Technological Readiness Assessments at Milestones B and C to DoD's testing community because of concerns that the Office of the Director of Defense Research and Engineering is not the most appropriate entity for this mission. Furthermore, programs should prove they have reached a higher level of technological maturity before progressing to the next phase of their acquisition than is currently suggested by the DoD's July 2009 Technology Readiness Assessment Deskbook.
- **Make Weapons Programs Auditable:** To ensure that taxpayer dollars are effectively used for their intended purpose, Congress should tie weapon systems acquisition to financial management. No new MDAP should pass Milestone B until it has financial systems in place that can capture the full cost of the program in an auditable manner.
- **Congressional Ethics Needed When Second-Guessing Pentagon Cancellation of Major Weapons Programs:** Once the Pentagon has recommended cancelling an MDAP, Congress can introduce legislation to fund the program anyway. An independent review is needed before Congress can force the Pentagon to buy what it doesn't want. The review could be conducted by an independent group of experts who do not have financial ties to contractors or the localities that might be impacted by a weapons cancellation—this process can be modeled on the Defense Base Realignment and Closure Commission (BRAC). This BRAC-type commission would issue public recommendations to Congress so that if Congress overrules the recommendations, it would have to provide the public with a written explanation of its reasoning. In addition, there also should be formal disclosure by lawmakers of the contractors and subcontractors in their districts and disclosure of congressional correspondence to the Pentagon by lawmakers made on behalf of these companies.

#### **4. Fix the Failures That Led to the BP Gulf Oil Disaster**

POGO has a keen interest in addressing the failures of oversight that led to the BP oil disaster, and in ensuring accountability in the response to this offshore oil spill, the largest in our nation's

history. This spill has caused enormous economic problems in the Gulf states, caused hardship for the people in the region, continues to threaten vital ecosystems, and will remain a concern for years to come whenever food is harvested in Gulf waters.

The Interior Department manages public lands and royalties owed to the government for use of our national resources, one of the government's largest sources of revenue after taxes. Numerous investigations and last year's BP oil disaster in the Gulf of Mexico have revealed that many government regulators are too close to the companies they oversee, leading to an extreme failure of oversight. While some of Interior has been reorganized and new ethics rules issued, it is unclear if this has been sufficient to ensure better regulation, improve the collection of royalties, and deal with pervasive conflicts of interest. Certainly the ethics reforms have not been broad enough in scope, some of them to the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) employees in the Gulf. Conflicts of interest and ethics lapses were not limited to the Gulf region, and in fact exist throughout Interior, including the Bureau of Land Management, which oversees onshore drilling. Unfortunately, the political will in Congress to reform Interior shut off with the cap of the well, but many problems remain for Congress to address in order to avert another disaster.

In addition, troubling questions have been raised about the scientific integrity in the response to the crisis by federal agencies and the White House. This does not square with the President's directive to strengthen scientific integrity. Federal government scientists play a vital role in providing policymakers data and scientific analysis to ensure they can make the best, most informed decisions about our environment, health, and national security. The public has a right to know if the opinions of federal scientists were altered, ignored, or oversimplified.

#### ***POGO Recommendations:***

- **Oversee Interior Reorganization:** Congress should closely oversee the reorganization and new ethics policies at Interior to ensure that they are being properly implemented, but the problems of lax oversight and the culture of coziness cannot be adequately addressed without legislative reform. Reforms should apply to all of Interior and not merely to the reorganized BOEMRE.
- **Investigate the Scientific Integrity of the BP Gulf Oil Disaster Response:** Congress should conduct rigorous oversight of the federal response to the oil disaster and hold the Obama administration accountable for any tampering with the science.
- **Enact the CLEAR Act Reforms:** Congress must codify effective reforms to close the revolving door for all of Interior, improve training for inspectors, end the Royalty-In-Kind program, provide oil and gas industry employees with best-practices whistleblower protections, and enact other good government reforms from the Consolidated Land, Energy, and Aquatic Resources Act of 2010 to ensure that taxpayers get their fair share and companies get fair access to public land.

### **5. Protect Consumers and Investors**

A systemic lack of transparency and accountability at our government's top financial regulatory agencies contributed directly to the recent financial crisis, leading to the bailout that placed

billions of taxpayer dollars at risk, and necessitating a regulatory overhaul, addressed by the Dodd-Frank Act. The Dodd-Frank Act was, on balance, an appropriate response, embodying many POGO-recommended reforms such as the creation of the Consumer Financial Protection Bureau, whistleblower protections, Government Accountability Office (GAO) audits of the Federal Reserve, and more independence for Inspectors General (IG) watchdogging the financial regulators. That is why it is so troubling that some in Congress are already calling for the repeal or de-funding of these critical reforms, many of which have yet to be implemented.

However, there are also many other threats to our financial security that have not yet been adequately tackled by Congress. There continue to be systematic cultural problems, conflicts of interest, and overt secrecy in our financial regulatory bodies. In addition, the Financial Industry Regulatory Authority (FINRA) and other self-regulatory organizations (SROs) are lobbying for expanded authority, even as they resist calls for greater transparency and accountability from their own members. POGO is generally concerned that these SROs have an unduly cozy relationship with the industries they're tasked with overseeing.

### ***POGO Recommendations:***

- **Ensure Implementation of Wall Street Reform:** POGO urges Congress to ensure the Dodd-Frank Act is fully and properly implemented, and that there is adequate funding for realizing the intent of lawmakers. Congress also must conduct more regular, routine oversight to improve the functioning of our financial regulatory agencies, reduce waste, fraud, and abuse, and save taxpayer dollars.
- **Increase Transparency at Financial Regulators:** Congress should hold hearings and conduct investigations to monitor transparency and FOIA reforms at the Securities and Exchange Commission (SEC), Commodity Futures Trading Commission (CFTC), Federal Reserve, Consumer Financial Protection Bureau (CFPB), and other financial regulatory agencies. Topics for oversight could include the agencies' overuse of FOIA exemptions (especially FOIA Exemptions 3, 4, and 8), and establishing strong FOIA practices at the new CFPB.

Also, Congress must provide for full GAO audits of the Fed, the collection and sharing of financial data in a standardized format, more authority for financial regulatory agency IGs to redact and post their own investigative reports, and increased transparency at opaque, semi-private entities such as the regional Fed banks and SROs such as FINRA.

- **Hold Regulators Accountable:** Congress should ensure that the agencies are addressing internal cultural problems that have prevented them from making the best use of existing resources. Topics for oversight could include the revolving door between agencies and industry, the widespread failure to reward and protect whistleblowers from both inside and outside the government, unimplemented IG recommendations, and the need for greater financial expertise within agencies.
- **Limit the Authority of SROs such as FINRA:** Congress should not give additional authority to private self-regulatory groups that are opaque and unaccountable to taxpayers. Instead, Congress should examine limiting SRO authority, requiring them to follow the same rules that apply to other regulators, and mandating more transparency and accountability.

## **6. Curb the Costs of the Shadow Government**

Everyone is concerned that the cost of government has spiraled out of control, and yet waste associated with the large shadow government is often ignored. Worse, the waste often grows as an unintended consequence of downsizing the federal workforce. Taxpayers can't afford this huge amount of waste and potential fraud. In addition, the inaccuracies and delays in information about contractor performance and responsibility exacerbate the failures in oversight and accountability.

In FY 2010, the federal government spent at least \$535 billion on contracts and awarded over \$554 billion in grants. There are few proper controls for this money due to poorly written contracts, insufficient attention from an overstretched acquisition workforce, and other deficiencies—leading to billions of taxpayer dollars being vulnerable to waste, fraud, and abuse. Furthermore, many of these contracts are with companies whose employees perform critical tasks many believe should be performed by government employees, often creating situations where contractors are overseeing other contractors. Holding contractors accountable is a particular problem in war zones, where accountability of criminal actions is difficult because of evidence-gathering challenges and continuing jurisdictional questions.

Overall, the world of contractors and grantees is still largely not known to the public, although those contractors and grantees are performing a variety of tasks on behalf of the public, paid for by taxpayer dollars. The combined workforce of federal government and government contractor employees needs to be brought into the open. The public—and the government—needs useful information made available in a timely manner and online so that there is far more accountability to taxpayers.

### ***POGO Recommendations:***

- **Determine the Real Cost of the Shadow Government:** Congress should make it a priority to assess the actual cost of government operations, including the shadow government, and the extent to which contracting out has undermined accountability, effective management, and policy-making in federal agencies. Oversight should include an examination of the real costs of using contractors instead of federal employees, including the loss on the investment in skilled workers who go through the revolving door to more lucrative jobs in the taxpayer-funded contractor industry. Congress also should review federal contracts and grants, especially in areas of national security and the health and sciences fields, where spending decisions sometimes stand opposed to what is in the best interest of the American public.
- **Cut Waste in Contracts:** Congress should pursue genuine contracting reforms that will improve accountability in contract spending and restore the old saying “bang for the buck.” For example, Congress should de-bundle contract requirements in order to invite more contractors to the table. Contracts that lump together multiple goods and services exclude smaller businesses that could successfully provide one good or service, but are incapable of managing massive multi-part contracts. Breaking apart multi-supply or multi-service contracts would also assist the government in reducing the multiple layers of subcontracting now prevalent in federal contracting that can drive up costs while adding little value.

- **Reform Interagency Contracts:** Interagency contracts should be examined to cut fat and eliminate perverse incentives for agencies like the General Services Administration (GSA) to overcharge other agencies. Congress should appropriate money to agencies to end their reliance on the industrial funding fees collected on orders from other agencies. This system creates a perverse incentive to keep costs or prices high. In other words, agencies might not be seeking the best prices because program revenue would be lost.
- **Save Money with Audits:** Congress should provide enforcement tools needed to prevent, detect, and remedy waste, fraud, and abuse in federal spending, including more frequent pre-award and post-award audits to prevent defective pricing. Specifically, the GSA Inspector General should have post-award authority to audit cost or pricing information submitted to GSA for the award of Multiple Award Schedule (MAS) contracts.
- **Improve Information on Federal Spending:** Better information and sharing of information will go a long way to improve accountability of contractors. Congress should pass a bill requiring all contracts, including delivery and task orders, be posted online, increasing the scope of cases included in the federal contractor responsibility and performance database, requiring contractors to provide more information on cost or pricing data, and ensuring that past performance of contractors and all administrative agreements are shared among agencies and made publicly available.
- **Create an Independent Contract Audit Agency:** The Defense Contract Audit Agency is in essence the de facto Federal Contract Audit Agency for the entire government, not just the Defense Department. However, DCAA auditors are not independent of the Defense Department's procurement branch. Furthermore, non-DoD agencies must pay for DCAA's audit services, creating a disincentive for them to utilize DCAA when evaluating contractor proposals. A truly independent FCAA would help keep contractors in check and save more taxpayer dollars than it would cost.
- **Restrict Noncompetitive Contracts:** Congress should pass legislation that places a one-year time limit on task orders in excess of \$100 million. Such unusually large task orders should be required to be re-competed each year. Currently, a contractor can become one of several on a so-called multiple award contract, which allows them to receive task orders for specific projects. Those task orders can be for multiple years that, in effect, become "sole source" contracts. For instance, the LOGCAP IV contract for supplying the troops with meals and logistical support has three contractors "competing" among one another (Dyncorp, Fluor, and KBR). While each task order is competed among those contractors, once selected, the winning offer or has the exclusive right to all the work under that task order. Annual savings are more likely to result if competition takes place on a recurring basis (e.g., annually). Under the present system, once a multi-year task order is awarded, all the government ever sees from the incumbent contractor is an annual price escalation.
- **End Certain Private Security Contracting:** Private security contractors are performing inherently governmental functions when working in a combat zone or area of significant military operations. Any operations that are critical to the success of the U.S. government's mission in those areas must be controlled and performed by military personnel.

- **Make Lobbying for Taxpayer Dollars More Transparent:** Congress must ensure more transparency in procurement lobbying. Both contractors and government officials should be required to report all lobbying related to seeking government funds, and this reporting should be made available to the public online in a timely manner in a searchable and sortable format.

## **7. Raise the Ethical Bar, Slow the Revolving Door**

For years, the government has punted on the issue of government ethics. The revolving door creates actual and apparent ethical concerns, and personal and organizational conflicts of interest raise red flags about the loyalty and financial interests of those working inside and outside the government. The well-oiled revolving door between government and industry has frequently undermined the integrity of the government's contracting, regulatory, and enforcement activities. There have long been troubling examples of an overly cozy relationship between the regulators and the regulated, most recently the close ties between the SEC and Wall Street, and between DOI and BP.

Some agencies, such as the Department of Defense, SEC, and CFTC require officials to file statements if they intend to go work for a contractor or appear before their former agency on behalf of an outside client shortly after leaving office. Unfortunately, not all agencies keep revolving door information, and those that do don't make it available online to the public. This makes it difficult to hold agencies and officials accountable for their close ties with industry. Ensuring public access to who has gone through the revolving door would shine a much-needed light on officials who abuse the revolving door for their own personal gain.

Although the Obama administration has taken unprecedented steps towards a more ethical government, system-wide problems persist. Part of the problem is the lack of oversight and enforcement of existing rules; other problems stem from a lack of adequate restrictions or appropriate penalties.

### ***POGO Recommendations:***

- **Slow the Revolving Door:** Congress should take action to slow the revolving door between the federal government and the industries they regulate. Congress should expand the current rules to apply to all federal employees and all positions with regulated industries, not just lobbyists. Also, the Obama revolving door bans should be made permanent in statute and should apply to all federal employees, not just political appointees. Congress should give a government body, such as OGE, more authority to conduct investigations and enforce the law. Penalties should be adjusted to maximize enforcement and deterrence.
- **Make Revolving Door Information More Transparent:** Congress should require agencies that keep revolving door databases to make them available to the public online. In addition, Congress should mandate that all departments and agencies keep revolving door and other conflict of interest information and disclose online to the public it in a timely manner.
- **Give the Office of Government Ethics Some Teeth:** Congress should give OGE the authority to compel department and agency heads to investigate potential violations of ethics law and report the findings to the President (as OSC does regarding whistleblower

disclosures). The OGE also ought to have the authority to officially refer cases to the Office of the Inspector General at the agency. Congress needs to conduct regular oversight of training and authority of ethics officers.

## **8. Make Advisors to Our Government More Accountable**

Federal advisory committees have been called “the fifth arm of government” for the influential role they play in advising agencies, Congress, and the President on everything from nuclear energy to FDA drug approvals. The Federal Advisory Committee Act (FACA) provides agencies with certain rules to follow in the establishment and management of advisory committees. The OGE and GSA have also attempted to give agencies guidance on how to run their advisory committees. However, thanks to the inherent shortcomings of FACA, as well as loopholes created by courts over the years, there is very little consistency among advisory committees when it comes to selecting and designating members, identifying and mitigating conflicts of interest, posting materials online, and more.

Last year, the House passed a bill (Federal Advisory Committee Act Amendments of 2010, H.R. 1320) to make federal advisory committees more transparent and accountable by banning political litmus tests for potential appointees, prohibiting the appointment of members with conflicts of interest, instructing the GSA to come up with stronger rules for implementing FACA, and requiring the public disclosure of committee materials such as meeting transcripts.

### ***POGO Recommendations:***

- **Strengthen Integrity of Federal Advisory Committees:** Congress should enact the reforms to FACA passed by the House last year (H.R. 1320). Congress should also consider passing additional requirements for posting conflict-of-interest waivers and recusal statements, giving the public more input in nominating committee members, tracking how agencies respond to committee recommendations, and overhauling the federal advisory committee database on fido.gov.

## **9. Watchdog the Watchdogs, and Give Them More Teeth**

Inspectors General require an extraordinary degree of independence and authority to effectively perform their duties. But they also need to be held accountable for misconduct and inadequate work performance.

Empowering IGs to subpoena deposition testimony from witnesses would enable IGs to ensure better cooperation from outside contractors, former agency employees, and regulated entities in the course of their investigations. Presently only the Department of Defense IG has the power to subpoena deposition testimony from witnesses. However, the power of subpoena should be balanced with the rights of potential witnesses, and checks must be in place to ensure its legitimate use. The scope of subpoena power should not include federal employees, as there are other, more appropriate procedures in place for this purpose. Inspectors General also must do more to make whistleblowers aware of their protections under the law in order to encourage more federal employees to come forward.

POGO is concerned that it is common practice at the SEC Office of the Inspector General, and possibly at other OIGs, to allow the agency general counsel to make the final determination concerning redactions of IG-created records. Inspectors General do not have to go through the

agency's FOIA office, general counsel, or management in order to redact IG-created records to be in compliance with FOIA or any other law. Doing so creates a clear conflict of interest because the agency general counsel is responsible for protecting the interests of the agency and therefore would be more inclined to unnecessarily redact records that might embarrass the agency.

***POGO Recommendations:***

- **Give IGs Necessary Subpoena Power:** Congress should empower Inspectors General to subpoena deposition testimony from witnesses who are not federal employees, with some checks to ensure legitimacy and rights for those served.
- **Make Investigations of IGs More Transparent:** Official communications and findings regarding investigations of IG alleged misconduct from the Integrity Committee of the Council of the Inspectors General on Integrity and Efficiency to the Office of Management and Budget should be made publicly available.
- **Ensure IG Independence in FOIA Compliance:** Congress should investigate the nature and scope of Inspectors General deferring to the agency's FOIA office, general counsel, or management for redactions of IG-created records, perhaps to be in compliance with FOIA or any other law. Congress should pass legislation making it clear that IGs must make final determinations for redactions of their reports, rather than allowing agency counsels or other agency personnel to make these determinations.
- **Prevent Tip-Offs:** Eliminate the Right to Financial Privacy Act provision requiring IGs to notify contractors prior to obtaining the companies' financial records. This requirement tips off contractors and can harm the government's ability to investigate federal contracts.
- **Encourage More Witness Cooperation with IGs:** Congress should consider providing for OIG whistleblower ombudsmen who would be responsible for educating and advising employees of their rights.
- **Hold IGs Accountable:** Congress should conduct strenuous oversight of OIG operations and hold them to the highest standards of accountability and effectiveness.

**10. Prevent Foreign Agents from Operating in Secrecy**

The Foreign Agent Registration Act (FARA) is supposed to provide disclosure that allows the U.S. government and the American people to evaluate the statements and activities of foreign agents. But for decades, the GAO has highlighted significant deficiencies in FARA that impede the Department of Justice from effectively enforcing the Act. Most problematic is the ability of persons to exempt themselves from registration. Justice also does not have the power to subpoena documents or to require information from persons who have exempted themselves from FARA.

***POGO Recommendations:***

- **Fix FARA:** Congress should amend the FARA to give the Department of Justice the power to subpoena documents and to prohibit persons who represent foreign corporations from exempting themselves from registration.

## **11. Improve Nuclear Security and Save Billions of Taxpayer Dollars**

Tens of billions of dollars can be saved in the nuclear weapons complex by canceling construction of unneeded facilities, whose price-tag has grown in some cases by ten times. In addition, as much as \$23 billion in revenue can be generated by downblending the over 300 MT of highly enriched uranium (HEU) that is unneeded for weapons—a prime target for terrorists—to low enriched uranium for use in commercial nuclear power plants. This would significantly reduce costs associated with the storage and security, and safeguard this large quantity of nuclear explosives. It's a win-win situation.

The Energy Department is also deciding what to do with research reactor spent fuel containing HEU at the Savannah River Site in South Carolina. In 2000, the DOE decided to deploy a melt and dilute technology for disposal of HEU at a cost of \$1.6 billion. DOE reversed this decision in favor of the using the 57-year-old H-Canyon reprocessing plant instead. GAO reported in 2008 that the cost of using the H-Canyon would be as much as \$4.6 billion.

Spending on nuclear weapons needs to be closely scrutinized. As part of the agreement to get Senate ratification of the New START Treaty, the Obama administration agreed to significantly increase funding for the life extension program of the nuclear weapons stockpile and the modernization of the DOE nuclear weapons complex. Specifically, annual nuclear weapons spending will rise between FY 2010 and 2015 by more than 18 percent from \$6.34 billion to \$7.83 billion. According to the National Nuclear Security Administration (NNSA), this will be a down payment. Over the next 20 years, the NNSA plans for the U.S. to spend about \$167 billion to maintain the U.S. nuclear weapons stockpile and refurbish the weapons research and production complex. Despite the fact that the U.S. nuclear arsenal has been cut in half, and new weapons design and manufacture ended 20 years ago, spending on nuclear warheads has continued to increase. By 2018, NNSA spending is planned to increase by 50 percent above Cold War levels. This does not even include an additional \$100 billion projected by the Defense Department for nuclear weapons delivery systems.

### ***POGO Recommendations:***

- **Recycle the Cold War:** Congress should require the DOE to establish a schedule to accelerate the dismantlement of excess HEU-bearing weapons components, and to increase the rate of blend-down into low enriched uranium. The DOE should also be required to store the blended-down material and to sell it in a manner that would not disrupt commercial nuclear fuel markets.
- **Melt and Dilute:** As much as \$3 billion can be saved if the DOE were to reinstate its decision to use the melt and dilute technology at the Savannah River Site. Congress should require the DOE to fulfill its Record of Decision in 2000 to deploy the melt and dilute option for the disposition of spent research reactor spent fuel at the Savannah River Site.
- **Scrutinize \$12 Billion in Construction Projects:** The current cost estimates for the Uranium Processing Facility at Y-12 and the Chemistry and Metallurgy Research Replacement facility at Los Alamos are approximately \$6 billion each. The requirements for both buildings are in serious question. Most DOE construction projects increase by three to four times over initial estimates, particularly when they are design-build, as these

are. Both of these construction projects are only about 50 percent designed; yet there are imminent plans to begin construction. Congress should hold oversight hearings on these projects and reconsider the scope and requirements for these projects.

- **Inventory Nuclear Materials:** Currently there is little transparency about the amounts of HEU and plutonium being stored across the weapons complex. Congress should require the executive branch to prepare an accounting of the nuclear weapons materials being stored along with their disposition path. Without this information, Congress is appropriating money in a vacuum.

## **12. Make Healthcare Safer**

POGO has a keen interest in ensuring both public confidence in government science and the public's health and safety. Unfortunately, there have been pervasive problems with scientific integrity and performance at the Food and Drug Administration (FDA). While the FDA has seemed to perform its mission to advance innovations, it has failed spectacularly in protecting the public health by effectively regulating food, drugs, and medical devices. Warnings from whistleblowers inside the agency of overly cozy relationships and dangerous approvals have not been adequately investigated. In addition, with foreign countries as a growing source of our food and drugs, and with more and more clinical trials conducted overseas, more regulation is needed. Yet, the resources available to this critical agency are insufficient: the FDA only receives around \$4 billion annually to regulate around 25 percent of the economy. That means for every \$500 of products sold in country, there is only about one federal dollar to approve products, regulate sales and marketing, litigate in court, investigate criminal matters, oversee foreign companies, and more. Worse, the user fees that fund drug and device approvals are negotiated and paid for by drug companies and device manufacturers—resulting in a perverse regulatory incentive. The FDA should not have competing interests between funding and safe drugs and devices.

Too often, problems with drugs and medical devices only become apparent once these products have been on the market for years and used in thousands of people with a range of health problems. Not only is more oversight needed to ensure both adequate pre-approval testing and processes free from industry influence, but there is also an urgent need for more surveillance of drugs and devices on the market.

### ***POGO Recommendations:***

- **Free the FDA Advisory Panels from the Profit Motive:** Congress should ensure the FDA severely restricts the use of experts on FDA advisory panels who have financial ties to the makers of drugs and devices they review. If there are any exceptions made to this rule, then the full explanation for the exception and all financial ties of the panel member should be made public and put online. Also, the FDA must cast a wider net and do more outreach to recruit advisors who do not have conflicts of interest.
- **Increase Funding and Reduce the Corruption of Science:** Next year, Congress will consider reauthorizing the Prescription Drug User Fee Act (PDUFA). Now is the time for Congress to re-examine the user fee funding scheme and explore ways to increase FDA funding and reduce the conflicts of interest created by negotiated fees.
- **Investigate the FDA:** Congress should take a close look at the FDA's safety record and conflicts of interest. Congress should ensure that initiatives to reform programs like the

510(k) device approval process are adequate, and further explore regulation of imports and the overseas activities in order to protect people here at home.

- **Retain and Expand the Physician Payments Sunshine Act:** Patients should know more about the relationships between physicians, hospitals, patient advocacy groups, and other health-care institutions and manufacturers of drugs, devices, biologicals, or medical supplies.