



# Congressional Oversight: An Overview

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## Summary

A fundamental objective of congressional oversight is to hold executive officials accountable for the implementation of delegated authority. This objective is especially important given the huge expansion of executive influence in the modern era. If the Founding Fathers returned to observe their handiwork, they would likely be surprised by such developments as the creation of a “presidential branch” of government (the Office of Management and Budget, the National Security Council, and the like) and the establishment of so many federal departments and agencies. From three departments in 1789 (State, Treasury, and War, renamed Defense in 1947), a dozen more have been added to the cabinet. The newest creation in 2002, is the Department of Homeland Security (DHS). Formed from the merger of 22 separate executive branch units, it employs roughly 180,000 people.

Clearly, given the role and scope of the federal establishment, the importance of Congress’s review function looms large in checking and monitoring the delegated authority that it grants to federal departments and agencies. The goals of this report, then, are essentially six-fold: (1) highlight several reasons for the expansion of the federal government; (2) discuss a few definitions of oversight; (3) spotlight three essential purposes of oversight; (4) comment upon a few oversight laws and rules; (5) review several important oversight techniques; and (6) identify several incentives and disincentives to the conduct of congressional oversight. The report concludes with summary observations.

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## Introduction

A fundamental objective of congressional oversight is to hold executive officials accountable for the implementation of delegated authority. This objective is especially important given the huge expansion of executive influence in the modern era. If the Founding Fathers returned to observe their handiwork, they would likely be surprised by such developments as the creation of a “presidential branch” of government (the Office of Management and Budget, the National Security Council, and the like) and the establishment of so many federal departments and agencies. From three departments in 1789 (State, Treasury, and War, renamed Defense in 1947), a dozen more have been added to the cabinet. The newest creation, in 2002, is the Department of Homeland Security (DHS). Formed from the merger of 22 separate executive branch units, it employs roughly 180,000 people.

Contemporary presidents have expressed some concern about the size and reach of the national government. In his 1981 inaugural address, for instance, President Ronald Reagan declared that “government is not the solution to our problem, government is the problem.” Fifteen years later, in his State of the Union address, President Bill Clinton exclaimed, “The era of big government is over.” Needless to say, the era of big government is back, if it ever went away.

Under presidents of both parties, the national government continues to grow. The administration of Republican President George W. Bush witnessed substantial governmental growth, partially triggered by new domestic security, law enforcement, and military requirements after the September 11, 2001, terrorist attacks. As journalist David S. Broder concluded, President Bush presided over one of the largest expansions of government in history. “He has created a mammoth Cabinet department [DHS], increased federal spending, imposed new federal rules on local and state governments, and injected federal requirements into every public school in America.”<sup>1</sup> President Bush also initiated the Troubled Asset Relief Program (TARP)—a major governmental intervention in the private sector—as part of the Emergency Economic Stabilization Act (P.L. 110-343). TARP was authorized to purchase up to \$700 billion in “troubled” real estate and other assets following a nationwide financial meltdown in numerous business enterprises.<sup>2</sup>

Democratic President Barack Obama took office in the midst of the most serious national economic crisis since the Great Depression. Regularly, the news media spotlighted such stories as the hikes in joblessness, home foreclosures, or plant closings. As a result, the government intervened dramatically in the marketplace. Trillions of dollars were committed to revive the ailing economy and prevent the recession from spiraling downward into another depression. “Not since Lyndon B. Johnson,” wrote a congressional journalist, has a president like Obama “moved to expand the role of government so much on so many fronts—and with such a sense of urgency.”<sup>3</sup>

In short, the probabilities of any major retrenchment or rollback in the role and scope of the federal government seem remote. Hence the importance of Congress exercising its implicit constitutional prerogative to check the delegated authority that it grants to federal departments

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<sup>1</sup> David S. Broder, “So, Now Bigger Is Better?” *The Washington Post*, January 12, 2003, p. B1.

<sup>2</sup> CRS Report R41001, *Redirecting Troubled Asset Relief Program (TARP) Funds to Other Uses*, by (name redacted), (name redacted), and (name redacted).

<sup>3</sup> Janet Hook, “Obama’s Budget Is the End Of An Era,” *Los Angeles Times*, February 27, 2009, online edition.

and agencies. The goals of this report, then, are essentially six-fold: (1) highlight several reasons for the expansion of the role and reach of government; (2) discuss a few definitions of oversight; (3) spotlight three essential purposes of oversight; (4) comment upon a few oversight laws and rules; (5) review several important oversight techniques; and (6) identify several incentives and disincentives to the conduct of congressional oversight. The report concludes with summary observations.

## The Role and Reach of Government

“The role of government in a free society must be a matter of continuous negotiation among members of the public,” wrote Princeton Professor Michael Walzer.<sup>4</sup> This fundamental idea is the essence of self-government by the people through their elected representatives. From the beginning, our Founding Fathers argued about the role of the national government. Their basic argument continues to this day. Two schools of thought emerged during this early period, one articulated by Thomas Jefferson and the other by Alexander Hamilton.

Jefferson was an advocate of limited government: “That government governs best that governs least.” Government closest to the people—state and local units—is to be preferred, according to Jefferson, to a robust and remote national government. As Jefferson said in his March 4, 1801, inaugural address:

Still one thing more, fellow-citizens—a wise and frugal Government, which shall restrain men from injuring one another, shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned. This is the sum of good government, and this is necessary to close the circle of our felicities.<sup>5</sup>

President Jefferson, however, was not reluctant to use the government to double the size of the country with the Louisiana Purchase.

Jefferson’s rival, Alexander Hamilton, favored a strong national government and an energetic chief executive as essential if the new nation was to survive and prosper. A proponent of the implied powers of government, Hamilton wrote in *Federalist No. 31*: “A government ought to contain in itself every power requisite to the full accomplishment of the objects committed to its care, and to the complete execution of the trust for which it is responsible, free from every other control but a regard to the public good and to the sense of the people.” Hamilton’s philosophy, in brief, was that the national government could be a positive instrument for addressing common problems that no individual or locality could resolve by itself, such as maintaining a strong defense against foreign adversaries or creating a national currency. As Abraham Lincoln put it, “Government is people coming together collectively to do that which they could not do as well, or at all, individually.”<sup>6</sup>

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<sup>4</sup> Michael Walzer, “The Popular Patron,” *The New Republic*, April 9, 1984, p. 35.

<sup>5</sup> James D. Richardson, *A Compilation of the Messages and Papers of the Presidents*, vol. I (New York: Bureau of National Literature, Inc., 1897), p. 311.

<sup>6</sup> Quoted in Vic Hallard, “In Defense of Legislatures,” *The Council of State Governments*, February 1996, p. 9.

Fast forward to the contemporary era and it appears evident that the Hamiltonian view has largely prevailed over the Jeffersonian perspective. To be sure, Jefferson's ideas of limited government and states' rights resonate powerfully with millions of Americans including lawmakers, analysts, scholars, and others. Yet their actions often belie their words. Today's yeoman farmers might say they dislike or even resent big government, but they strongly support farm subsidies. Many people, it seems, are ideologically conservative but operationally liberal. On the one hand, they may emotionally view government as a necessary evil, but personally they support federal programs that benefit them, and even welcome the government's expansion in various areas (security from terrorist attacks, protection of the environment, and so on).

The fundamental reality is that the national government has taken on increasingly numerous functions and responsibilities throughout American history. The 20<sup>th</sup> century—from the Progressive era to World War I, from the New Deal to the Great Society—witnessed a huge increase in the size and power of government. Its expansion was driven by a number of factors.

Domestic and international crises have expanded the reach of the government. Wars, for example, threaten the nation itself, and the government often accrues new and expanded prerogatives to protect the country.<sup>7</sup> The intelligence community, as an example, grew rapidly during the Cold War as the United States of America faced a major threat from a nuclear-armed superpower rival: the Soviet Union. The internationalization of numerous domestic issues—trade, the environment, immigration, drug trafficking, and more—often requires a federal response for their resolution.

Complexity is another factor that promotes governmental growth. New issues and problems constantly arise that call for governmental action, such as food safety or national preparedness in the event of an epidemic or pandemic (H1N1, the swine flu virus, for instance). Many national programs, moreover, are crosscutting—that is, more than one federal agency, jurisdiction, and, in some cases, international organizations are engaged in policy implementation—which adds to the complexity of determining how or what the government is doing. To be sure, a nation with over 300 million people creates a variety of federal issues (civil rights, financial turmoil, high unemployment, and so on). Even when issues have been traditionally under the purview of states and localities, such as education, it does not mean that they are exclusively state and local responsibilities. In brief, a host of military, economic, and social challenges, along with many other factors (industrialization, globalization, scientific and technological developments, public demand, and more), all contributed to the large expansion in the size and reach of the federal government.

Given today's large federal establishment, congressional oversight is more important than ever in ensuring that the federal government functions economically, efficiently, and effectively. The American public's traditional and usually healthy skepticism about concentrating power in government underscores the legislative review function's significant role in holding federal agencies and officials accountable for their actions and decisions. To determine the quantity and quality of legislative oversight is not an easy assignment, however.

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<sup>7</sup> See, for example, Robert Higgs, *Crisis and Leviathan: Critical Episodes in the Growth of American Government* (New York: Oxford University Press, 1987).

## Definitions of Oversight

Different definitions of oversight influence perspectives on the adequacy of the review function. Oversight has two basic *dictionary* meanings. First, it denotes some form of legislative “supervision” or “watchfulness” of delegated authority to executive branch entities and officials. It is this general definition that orients the focus of this report. The second meaning of oversight implies a “failure to notice”—something that is overlooked or inadvertently omitted. Ironically, the two definitions may sometimes overlap one another. As Speaker Thomas P. O’Neill, D-Mass. (1977-1987), once exclaimed: Members “like to create and legislate, but we have shied from both the word and deed of oversight.”<sup>8</sup> A Senator offered a related observation about the need for more overseeing rather than overlooking. Congress has “delegated so much authority to the executive branch of government, and we ought to devote more time to oversight than we do.”<sup>9</sup>

Scholars have advanced a number of definitions of oversight that go beyond the meanings provided in dictionaries. For example, one political scientist wrote: “‘Oversight,’ strictly speaking refers to review after the fact. It includes inquiries about policies that are or have been in effect, investigations of past administrative actions, and the calling of executive officers to account for their financial transactions.”<sup>10</sup> Another political scientist provided an expanded definition: “Legislative oversight is behavior by legislators and their staffs, individually or collectively, which results in an impact, intended or not, on bureaucratic behavior.”<sup>11</sup> A third scholar offered a narrower definition: “I define [oversight] as congressional review of the actions of federal departments, agencies, and commissions, and of the programs and policies they administer, including review that takes place during program and policy implementation as well as afterward.”<sup>12</sup>

The absence of consensus on a precise definition means that it is difficult quantitatively to know how much oversight Congress is performing, largely through its committees and subcommittees. Oversight is a ubiquitous activity on Capitol Hill that occurs in various ways, forums, and activities. It is subsumed in many hearings, meetings, or informal settings that may not be labeled as “oversight.” Indeed, the review function is a byproduct of many congressional activities—committee meetings on legislation, the confirmation process, casework, informal Member and staff meetings with executive officials, legislative communications with administrative leaders, and so on. Thus, questions about whether Congress does enough oversight are difficult to answer because of methodological limitations (time and resources, for instance) in measuring its frequency comprehensively and systematically. Moreover, how “oversight is defined affects what oversight one finds.”<sup>13</sup> Suffice it to say that undercounting surely characterizes the amount of oversight carried out by Congress primarily through the work of its committees, Members, staff aides, and legislative support units, such as the Government Accountability Office (GAO).

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<sup>8</sup> *Workshop on Congressional Oversight and Investigations*, H. Doc. No. 96-117 (Washington: GPO, 1979), p.3.

<sup>9</sup> Geoff Earle, “Dems Did Oversight Better, Says Grassley,” *The Hill*, May 13, 2004, p. 2.

<sup>10</sup> Joseph P. Harris, *Congressional Control of Administration* (Garden City, NY: Anchor Books, 1964), p. 9.

<sup>11</sup> Morris S. Ogul, *Congress Oversees the Bureaucracy: Studies in Legislative Supervision* (Pittsburgh, PA.: University of Pittsburgh Press, 1976), p. 11.

<sup>12</sup> Joel D. Aberbach, *Keeping a Watchful Eye: The Politics of Congressional Oversight* (Washington, DC: The Brookings Institution, 1990), p. 2.

<sup>13</sup> Ogul, *Congress Oversees the Bureaucracy*, p. 7.

Worth raising is a related matter: What constitutes effective or quality oversight? The traditional method of exercising congressional oversight is through committee hearings and investigations into executive branch operations. For more than 200 years, Congress has conducted investigations of varying types and with varying results. Along the way, there have been abuses and excesses—for example, the 1954 Army-McCarthy hearings about communists in government—and successes and accomplishments. For instance, the World War II Truman Committee’s (after Senator and later President Harry S Truman) investigation of the war mobilization effort, including waste and fraud in defense procurement, was viewed by many as a large success.

Although people may disagree on what constitutes “quality” oversight, there are a number of components that appear to foster effective oversight. They include (1) a committee chair who is committed to doing oversight on a sustained basis; (2) the involvement of committee members in an activity that might take weeks or months of time and resources; (3) bipartisanship: more is likely to be achieved when both parties work together rather than against each other; (4) an experienced professional staff with investigatory skills; (5) preparation and documentation in advance of public hearings; (6) coordination with other relevant committees of jurisdiction; and (7) follow-through to ensure that any recommendations of the committee are acted upon. Helpful, too, is a cooperative Administration. Absent cooperation, committees may need to use compulsory processes (subpoena and contempt) to obtain pertinent reports and documents and the testimony of key witnesses.<sup>14</sup>

## Major Purposes of Oversight

Oversight is an implicit constitutional obligation of the Congress. According to Historian Arthur Schlesinger, Jr., the framers believed it was not necessary to make specific reference to “oversight” in the Constitution. “[I]t was not considered necessary to make an explicit grant of such authority,” wrote Schlesinger. “The power to make laws implied the power to see whether they were faithfully executed.”<sup>15</sup> The Constitution also granted Congress an array of formal powers—the purse strings, lawmaking, impeachment, among others—to hold the president and the administration accountable for their actions or inactions. In short, oversight plays a key role in our system of checks and balances.

There is a large number of overlapping purposes associated with oversight. This array can be divided into three basic types: programmatic, political, and institutional. *Programmatic* purposes include such objectives as making sure agencies and programs are working in a cost-effective and efficient manner; ensuring executive compliance with legislative intent; evaluating program performance; improving the economy of governmental performance; investigating waste, fraud, and abuse in governmental programs; reviewing the agency rulemaking process; acquiring information useful in future policymaking; or determining whether agencies or programs are fulfilling their statutory mission.<sup>16</sup>

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<sup>14</sup> See (name redacted), “Congress’s Contempt Power: Three Mechanisms for Enforcing Subpoenas,” *Government Information Quarterly*, vol. 25, January 2008, pp. 592-624.

<sup>15</sup> Arthur M. Schlesinger, Jr. and Roger Burns, eds., *Congress Investigates: A Documented History, 1792-1974*, vol. 1 (New York: Chelsea House, 1975), p. xix.

<sup>16</sup> See CRS Report RL30240, *Congressional Oversight Manual*, by (name redacted) et al.



There are also *political* purposes associated with oversight, such as generating favorable publicity for lawmakers, winning the electoral support of constituents and outside groups, or rebutting criticisms of favorite programs or agencies. After all, oversight occurs in an ever-present political context in which Congress's relationship with administrative entities can range from cooperation to conflict. There are, moreover, inherent constitutional and political tensions between Congress and the President even during periods of unified government (one party in charge of the House, Senate, and White House). Partisan and inter-branch conflicts are not uncommon in the conduct of the legislative review function.

In addition, there are *institutional* oversight purposes that merit special mention, because they serve to protect congressional prerogatives and strengthen the American public's ability to evaluate and reevaluate executive activities and actions. Three institutional purposes include checking the power of the executive branch; investigating how a law is being administered; and informing Congress and the public.

## Checking the Executive Branch

One of the most dramatic developments of the modern era, as noted earlier, is the huge expansion of executive entities. Little surprise that some scholars refer to “the administrative state”—the plethora of federal departments, agencies, commissions, and boards.<sup>17</sup> The rise of the administrative state has produced a policymaking rival to the Congress. Administrators do more than simply “faithfully execute” the laws according to congressional intent (which may be vague). Federal agencies are filled with knowledgeable career and noncareer specialists who, among other things, write rules and regulations that have the force of law; enforce the rules via investigations and inquiries; formulate policy initiatives for Congress and the White House; interpret statutes in ways that may expand their discretionary authority or undermine legislative intent; and shape policy development by “selling” their ideas to lawmakers and committees via the hearings process, the issuance of agency reports, and in other ways. The large role of the executive branch, whose activities affect nearly every citizen's life, underscores the critical role of oversight in protecting the policymaking prerogatives of Congress and holding administrative entities accountable for their actions and decisions.

## Investigating the Administration of Laws

Congressional oversight ideally involves the continuous review by the House and Senate, especially through their committee structures, of how effectively and efficiently the executive branch is carrying out legislative mandates. The “continuous watchfulness” precept—an obligation statutorily assigned to the standing committees by the Legislative Reorganization Act of 1946—implied that Congress would henceforth participate actively in administrative decisionmaking, in line with the observation that “administration of a statute is, properly speaking, an extension of the legislative process.”<sup>18</sup>

Oversight, in brief, is crucial to the lawmaking process. Only by investigating how a law is being administered can Congress discover deficiencies in the original statute and make necessary

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<sup>17</sup> Lawrence C. Dodd and Richard L. Schott, *Congress and the Administrative State* (New York: John Wiley and Sons, 1979).

<sup>18</sup> David B. Truman, *The Governmental Process* (New York: Knopf, 1953), p. 439.

adjustments and refinements. As a Senator stated, “We must do more than write laws and decide policies. It is also our responsibility to perform the oversight necessary to insure that the administration enforces those laws as Congress intended.”<sup>19</sup>

## **Informing Congress and the Public**

A central function of representative government, wrote two Senators, is “to allow a free people to drag realities out into the sunlight and demand a full accounting from those who are permitted to hold and exercise power.”<sup>20</sup> Dragging “realities out” is how Congress shines the spotlight of public attention on many significant issues, allowing lawmakers and the American people to make informed judgments about executive activities and actions. Woodrow Wilson, in his 1885 classic titled *Congressional Government*, declared that Congress’s informing function “should be preferred even to its legislative [lawmaking] function.” He explained:

Unless Congress have and use every means of acquainting itself with the acts and dispositions of the administrative agents of government, the country must be helpless to learn how it is being served; and unless Congress both scrutinize these things and sift them by every form of discussion, the country must remain in embarrassing, crippling ignorance of the very affairs which it is most important it should understand and direct.<sup>21</sup>

## **Oversight Laws and Rules**

To encourage, promote, and prod the legislative branch to do more oversight, the House and Senate have enacted an array of laws and rules that help to complement its many techniques (see “Oversight Techniques” section below) for monitoring executive branch performance. Mention of a few laws and rules illustrates Congress’s continuing interest in strengthening its own procedures for oversight, as well as obtaining oversight-related information from the executive branch. Two statutes worth briefly noting for illustrative purposes are the Government Performance and Results Act of 1993 (GPRA, or the Results Act) and the Congressional Review Act of 1996 (CRA).

### **Selected Laws**

The Results Act aims to promote more cost-effective federal spending by requiring agencies to set strategic goals—for example, a statement of their basic missions and the resources required to achieve those objectives—and to prepare annual performance plans and annual performance reports, which are submitted to Congress and the President. GPRA strengthens legislative oversight by enhancing committees’ ability to hold agencies accountable for the implementation of their performance goals and actual outcomes; to evaluate the budget requests of various agencies, and to reduce or eliminate unnecessary overlap and duplication among federal agencies that implement similar policy areas.<sup>22</sup> For example, various lawmakers have urged an overhaul of

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<sup>19</sup> *Congressional Record*, vol. 129, June 21, 1983, p. 16523.

<sup>20</sup> Senators William S. Cohen and George J. Mitchell, *Men of Zeal, A Candid Inside Story of the Iran-Contra Hearings* (New York: Viking, 1988), p. 305.

<sup>21</sup> Woodrow Wilson, *Congressional Government* (Boston: Houghton Mifflin, 1885), p. 303.

<sup>22</sup> CRS Report RS20257, *Government Performance and Results Act: Brief History and Implementation Activities*, by (continued...)

the food inspection structure, because there are “at least 15 government agencies [that] have a hand in making sure food is safe under at least 30 different laws.” The administrative reality, exclaimed a House Appropriations subcommittee chair, is that there is “no one person, no individual today who is responsible for food safety.”<sup>23</sup> The chair’s observation was underscored by a House majority leader when he held up a pizza box: “If this were a cheese pizza, it would be inspected by the [Food and Drug Administration]. If it were a pepperoni pizza, it would be inspected by the [Department of Agriculture]. We definitely have a great deal of duplication here.”<sup>24</sup>

The Congressional Review Act enables Congress to review and disapprove agency rules and regulations. Under the CRA, agencies must submit their major rules to the House, Senate, and Government Accountability Office (GAO) before they can take effect.<sup>25</sup> The act provides for expedited procedures in the Senate (but not the House) if a lawmaker introduces a joint resolution of disapproval. “To be eligible for consideration under the terms of the Act, a disapproval resolution must be submitted in either house within 60 days after Congress receives the rule.”<sup>26</sup> This law, however, has been little used by Congress to block agency rules. Since the law went into effect, only one rule has been rejected (an ergonomics rule in March 2001) despite nearly 50,000 rules that have become effective.<sup>27</sup> Various interpretive ambiguities, such as whether the act allows disapproval of parts of a rule or only its entirety, account in part for its limited use. Analysts also acknowledge that the law contains a potential flaw: The President can veto the joint resolution of disapproval—“which is likely if the underlying rule is developed during his administration.”<sup>28</sup> Congress is unlikely to override the President’s veto given the two-thirds vote required of each chamber. Still, the law is available to either chamber to express its views about agency rulemaking. Congress, to be sure, can repeal rules by passing statutes, including appropriations measures that include provisions “designed to prevent or restrict the development, implementation, or enforcement” of certain rules or types of rules.<sup>29</sup>

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(...continued)

(name redacted), and CRS Report 97-1059, *Government Performance and Results Act: Performance-related Requirements Included in Laws and in Committee Report Language During the 104<sup>th</sup> Congress*, by (name redacted) and (name redacted)

<sup>23</sup> “U.S. Food Inspection Is An Alphabet Soup,” *The Examiner*, February 25, 2009, p. 14. In January 2010, President Obama appointed Michael R. Taylor, a food expert, to serve as deputy commissioner of the Food and Drug Administration with responsibility “to address the nation’s fractured food system.” Gardiner Harris, “New Official Named With Portfolio to Unite Agencies and Improve Food Safety,” *New York Times*, January 14, 2010, p. A20.

<sup>24</sup> Jennifer Kabbany, “Armed Targets Waste in Federal Agencies,” *The Washington Times*, February 12, 1999, p. A6.

<sup>25</sup> A Congressional Research Service report found that various federal agencies since 1999 had failed to provide notice to Congress or the Government Accountability Office of more than a 1,000 final rules, as required by the Congressional Review Act. See CRS Report R40997, *Congressional Review Act: Rules Not Submitted to GAO and Congress*, by (name redacted).

<sup>26</sup> See CRS Report RL31160, *Disapproval of Regulations by Congress: Procedure Under the Congressional Review Act*, by (name redacted).

<sup>27</sup> See CRS Report RL30116, *Congressional Review of Agency Rulemaking: An Update and Assessment of The Congressional Review Act after a Decade*, by (name redacted).

<sup>28</sup> CRS Report RL32240, *The Federal Rulemaking Process: An Overview*, by (name redacted).

<sup>29</sup> CRS Report RL34354, *Congressional Influence on Rulemaking and Regulation Through Appropriations Restrictions*, by (name redacted).

## Chamber Rules

The two chambers, especially the larger House, have a number of formal oversight rules. For example, the House has a rule requiring all standing committees to prepare at the start of each Congress an oversight plan that, among other things, ensures to the maximum extent feasible that “all significant laws, programs, or agencies within its jurisdiction are subject to review every 10 years” (House Rule X, clause 2). At the start of the 111<sup>th</sup> Congress (2009-2011), the House amended its rules “to require each standing committee to hold at least three hearings per year on waste, fraud, and abuse [in the programs and agencies] under each respective committee’s jurisdiction.” Committees, moreover, are obligated to hold a hearing if “an agency’s financial statements are not in order” and if a program under the panel’s jurisdiction is “deemed by GAO to be at high risk for waste, fraud, and abuse.”<sup>30</sup>

The Senate, too, has a number of rules that address oversight. Committee reports accompanying each bill or joint resolution must contain an evaluation of their regulatory impact, including “a determination of the amount of additional paperwork that will result from the regulations to be promulgated pursuant to the bill or joint resolution” (Senate Rule XXVI, clause 11). The Senate assigned comprehensive oversight authority to certain standing committees (see Rule XXV) for specific policy areas, such as oceans policy or energy and resources development. The Senate chair who authored the rule explained its purposes.

Standing committees are directed and permitted to undertake investigations and make recommendations in broad policy areas—for example, nutrition, aging, environmental protection, or consumer affairs—even though they lack legislative jurisdiction over some aspects of the subject. Such oversight authority involves subjects that generally cut across the jurisdictions of several committees. Presently, no single committee has a comprehensive overview of these policy areas. [This rule change] corrects that. It assigns certain committees the right to undertake comprehensive review of broad policy issues.<sup>31</sup>

The House has a similar rule which it calls “special oversight.” For instance, the Committee on Homeland Security is authorized to “review and study on a continuing basis all Governmental activities relating to homeland security” (House Rule X, clause 3) even though some of those activities fall within the legislative jurisdiction of other standing committees.

## Oversight Techniques

In carrying out its oversight responsibilities, Congress must be able to choose from a variety of techniques to hold agencies accountable, so that if one technique proves to be ineffective, committees and Members can employ others singly or in combination. Most of these techniques are utilized by the committees of Congress: standing, subcommittee, select, or special. In no particular order, they include such oversight methods as the 10 discussed briefly below.

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<sup>30</sup> *Congressional Record*, vol. 155, January 14, 2009, p. H268.

<sup>31</sup> *Congressional Record*, vol. 123, February 1, 1977, p. 2897.

## Hearings and Investigations

A traditional method of congressional oversight is hearings and investigations into executive branch operations.<sup>32</sup> Legislators need to know how effectively federal programs are working and how well agency officials are responding to legislative or committee directives. And they want to know the scope and intensity of public support for government programs to assess the need for statutory changes. Although the terms “hearings” and “investigations” overlap (“investigative hearings,” for example) and they may look alike in their formal setting and operation, a shorthand distinction is that hearings focus generally on the efficiency and effectiveness of federal agencies and programs. Investigations, too, may address programmatic efficiency and effectiveness, but their primary focus—triggered by widespread public interest and debate—is often on allegations of wrongdoing, lack of agency preparedness or competence, fraud and abuse, conflicts of interest, and the like. Famous examples include investigations so well-known that a few words are often enough to trigger the attentive public’s recollection, such as the 1972 Watergate break-in, the 1987 Iran-Contra affair, or the Hurricane Katrina debacle of 2005.

## The Authorizing Process

Congress can pass authorizing legislation that establishes, continues (a reauthorization), or abolishes (a de-authorization) a federal agency or program. It can enact “statutes authorizing the activities of the departments, prescribing their internal organization and regulating their procedures and work methods.”<sup>33</sup> Once an agency or program is created, the reauthorization process, which typically occurs on an annual or multiyear cycle, can be an important oversight tool. As a House member observed during debate on a bill to require the annual reauthorization of the Federal Communications Commission (FCC):

Our subcommittee hearings disclosed that the FCC needs direction, need guidance, needs legislation, and needs leadership from us in helping to establish program priorities. Regular oversight through the reauthorization process, as all of us know in Congress, is necessary, and nothing brings everybody’s attention to spending more forthrightly than when we go through the reauthorization process.<sup>34</sup>

Significant issues are often raised during the authorization or reauthorization process. Lawmakers may ask such questions as: Can the agency be made smaller? If this program or agency did not exist, would it be created today? Should functions that overlap several agencies be merged or consolidated? What fundamental changes need to be made in how the department operates?

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<sup>32</sup> There are numerous U.S. Supreme Court decisions that bolster and buttress Congress’s investigatory power. For example, in the 1957 case of *Watkins v. United States* (354 U.S. 178), the majority opinion stated that the “power of the Congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes.”

<sup>33</sup> Harris, *Congressional Control of Administration*, p. 284.

<sup>34</sup> (name redacted), “Annual Reauthorizations: Durable Roadblocks to Biennial Budgeting,” *Public Budgeting and Finance*, spring 1983, p. 38. The annual defense authorization process might be the most noteworthy example of the authorizing process as an oversight tool.

## The Appropriations Process

Congress probably exercises its most effective oversight of agencies and programs through the appropriations process. As James Madison wrote in *The Federalist Papers* No. 58: “The power of the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure.” By cutting off or reducing funds, Congress can effectively abolish agencies or curtail federal programs. For example, in its various committee reports to accompany FY2010 appropriations measures, the House Appropriations Committee includes “a three-part list of terminations, program reductions and White House initiatives that have been denied.”<sup>35</sup> By increasing funds, appropriators can build up neglected program areas. In either case, the appropriating panels in each chamber have formidable power to shape ongoing federal agencies and programs. A noted, congressional budget expert remarked that the appropriating process as an oversight method is comparable to a Janus (after the mythical Roman god)-like weapon: “The stick of spending reductions in case agencies cannot satisfactorily defend their budget requests and past performance, and the carrot of more money if agencies produce convincing success stories or the promise of future results.”<sup>36</sup>

## Inspectors General

Congress has created statutory offices of inspectors general (IGs) in nearly 70 major federal entities and departments. The IGs, for example, are located in all fifteen cabinet departments, the Central Intelligence Agency (CIA), and the independent regulatory commissions. Granted substantial independence by the Inspectors General Act of 1978, as amended in 1988 and again in 2008, these officials are authorized to conduct investigations and audits of their agencies to improve efficiency, end waste and fraud, discourage mismanagement, and strengthen the effectiveness and economy of agency operations. Appointed in various ways—in most cases either by the President subject to Senate confirmation or by agency heads—IGs report their findings and recommendations to (1) the Attorney General in cases of suspected violations of federal criminal law, (2) semiannually to the agency head, who must transmit the IG report to Congress within thirty days with no changes to the report but with his or her suggestions; and (3) in the case of “particularly serious or flagrant problems,” immediately to the agency head who must send the report to Congress within seven days unaltered but with his or her recommendations.<sup>37</sup> Inspectors general, said a Senator, are “the government’s first line of defense against fraud.”<sup>38</sup>

Congress also has created special inspectors general (SIGs) who have responsibility for auditing and investigating specific programs. For example, there is a SIG for Iraq Reconstruction (SIGIR) another SIG for Afghanistan Reconstruction (SIGAR), and still another SIG for the Troubled Asset Relief Program (SIGTARP).<sup>39</sup>

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<sup>35</sup> David Rogers, “Democrats Make Show of Budget Cuts,” *Politico*, June 23, 2009, p. 1.

<sup>36</sup> *Workshop on Congressional Oversight and Investigations*, H. Doc. No. 96-217 (Washington, DC: GPO, 1979), p. 19. The budget expert was Professor Allen Schick of the University of Maryland and The Brookings Institution. Appropriations bills must be signed by the President before they can become law.

<sup>37</sup> See CRS Report 98-379, *Statutory Offices of Inspector General: Past and Present*, by (name redacted).

<sup>38</sup> Sen. Charles Grassley, “The Federal Government Needs an IG in Chief,” *Politico*, July 22, 2009, p. 30.

<sup>39</sup> CRS Report R40099, *The Special Inspector General for the Troubled Asset Relief Program (SIGTARP)*, by Vanessa (continued...)

Whether regular or special, IGs strive to keep Congress fully and currently informed about agency activities, problems, and program performance through such practices as the issuance of periodic reports and testimony before House and Senate committees.

## **Government Accountability Office**

The Government Accountability Office (GAO), formerly titled the General Accounting Office until the name change in 2004, was established by the Budget and Accounting Office of 1921. With about 3,100 employees, GAO functions as Congress’s investigative arm, conducting financial and program audits and evaluations of executive activities, operations, and programs. For example, in one study, GAO reported “that 19 of 24 Federal agencies ... could not fully explain how they had spent taxpayer money appropriated by Congress.”<sup>40</sup> The head of GAO is the Comptroller General (CG), who is nominated by the President (following a recommendation process involving the bipartisan leaders of the House and Senate) and subject to the advice and consent of the Senate for a non-renewable 15-year term.

The GAO conducts field investigations of administrative activities and programs, prescribes accounting standards for the executive branch, prepares policy analyses, adjudicates bid protests, makes recommendations for legislative action, evaluates programs, and provides legal opinions on government actions and activities. The office submits hundreds of reports to Congress annually, describing ways to root out waste and mismanagement in executive branch programs and to promote program performance. One of its traditional reports to Congress is on government programs and activities that are “high risk,” that is, they require significant improvements in their operations and performance.<sup>41</sup>

## **Reporting Requirements**

Numerous laws require executive agencies to submit reports periodically, and as required by specific events or certain conditions, to Congress and its committees. As one scholar explained:

Reporting requirements are provisions in laws requiring the executive branch to submit specified information to Congress or committees of Congress. Their basic purpose is to provide data and analysis Congress needs to oversee the implementation of legislation and foreign policy by the executive branch.<sup>42</sup>

Generally the report requirement encourages self-evaluation by the executive branch and promotes agency accountability to Congress. Reporting requirements involve weighing Congress’s need for information and analysis to conduct evaluations of agencies and programs against the imposition of burdensome or unnecessary obligations on executive entities. (Recall, too, that IGs regularly report to Congress.)

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(...continued)

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<sup>40</sup> *Congressional Record*, 109<sup>th</sup> Congress, 2<sup>nd</sup> Session, June 27, 2006, p. H4675.

<sup>41</sup> See Government Accountability Office, *High Risk Series; An Update*, GAO-09-271, January 2009.

<sup>42</sup> Ellen C. Collier, “Foreign Policy by Reporting Requirement,” *Washington Quarterly*, Winter 1988, p. 75.

## Senate Confirmation Process

High-ranking public officials are chosen by the President “by and with the Advice and Consent of the Senate,” in accord with the Constitution. In general, the Senate gives the President considerable latitude in selecting cabinet heads, nominees to regulatory boards and commissions, and other significant executive branch positions. Nomination hearings establish a public record of the policy views of nominees, on which they could be called to account at a later time. Committees, for example, might ask agency nominees to discuss their plans for addressing the high-risk programs under their jurisdiction that GAO identified as being vulnerable to waste, fraud, and abuse. Committees may also extract pledges from nominees that they will testify at hearings when requested to do so, with the implicit acknowledgement that otherwise the appointee’s name might not be reported for consideration to the full Senate. They can also inquire into nominees’ previous government experience and other pertinent matters.

## Program Evaluation

Program evaluation is an approach to oversight that uses social science and management methodology, such as surveys, cost-benefit analyses, and efficiency studies, to assess the effectiveness of ongoing programs. This type of analysis is often conducted by the GAO, IGs, and the agencies themselves. President Obama has stressed the importance of measuring the effectiveness of government programs. “All programs—from Medicare to small-business loans—will be judged based on their progress in meeting certain quantifiable goals developed with input from agencies, Congress, management experts and the public,” he said.<sup>43</sup> Peter Orszag, the director of the Office of Management and Budget (OMB), added: “Rigorous, independent program evaluation can be a key resource in determining whether government programs are achieving their intended outcomes as well as possible and at the lowest possible cost.”<sup>44</sup>

## Casework

Each lawmaker’s office handles thousands of requests each year from constituents seeking help in dealing with executive agencies. The requests range from inquiries about lost Social Security checks or delayed pension payments to disaster relief assistance and complicated tax appeals to the Internal Revenue Service. “Constituents perceive casework in nonpolitical terms,” wrote two scholars. “They *expect* their representatives to provide [this service].”<sup>45</sup> Casework, an ombudsman-like function, has the positive effect of bringing quirks in the administrative machinery to Members’ attention. Solutions to an individual constituent’s problems can suggest legislative remedies on a broader scale.<sup>46</sup> On occasion, constituents’ casework requests may be used in oversight hearings by Members to highlight and lend support to a problem or shortcoming in the operations of a program or agency.

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<sup>43</sup> Elisse Castelli, “How Does Your Program Measure Up?” *Federal Times*, May 18, 2009, p. 1.

<sup>44</sup> Ralph Lindeman, “OMB Announces Initiative to Improve Evaluations of Programs in Budget Process,” *Daily Report for Executives*, October 8, 2009, p. A-1.

<sup>45</sup> John R. Johannes and John C. McAdams, “Entrepreneurs or Agent: Congressmen and the Distribution of Casework, 1977-1978,” *Western Political Quarterly*, September 1987, p. 549.

<sup>46</sup> CRS Report RL33209, *Casework in a Congressional Office: Background, Rules, Laws, and Resources*, by (name redacted).



## Impeachment and Removal

The ultimate check on the executive (and judicial) branch is impeachment and removal from office, and it is vested exclusively in Congress. Article II, section 4, of the Constitution states: “The President, Vice President, and all Civil Officers of the United States, shall be removed from office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and misdemeanors.” The House has the authority to impeach an official by majority vote. (Impeachment is the formal lodging of charges against an official.) House trial managers then prosecute the case before the Senate, where a two-thirds vote is required for conviction. The process of impeachment and removal is complex and cumbersome; as a result, it has been employed in over 200 years only in a limited number of instances involving executive branch officials, judges, and Presidents.<sup>47</sup>

## Incentives and Disincentives

Despite the importance of oversight, “pass it and forget it” lawmaking sometimes occurs on Capitol Hill. This reality is not to suggest that committees and subcommittees fail to hold regular oversight hearings and meetings, often aimed at rooting out government waste and abuse and, more broadly, monitoring the executive branch. Instead, there are various institutional and other developments that have limited the ability of committees and lawmakers to carry out their “continuous watchfulness” function in a continual manner. There are, in brief, various *disincentives* and *incentives* associated with the conduct of oversight. Three will be spotlighted in each category for illustrative purposes.

### Disincentives

First, there are time and energy limits. Workload-packed legislative schedules, constant campaign fund-raising, weekly travel back-and-forth to Members’ districts or states, periodic meetings with constituents visiting Washington, or print and media interviews are among the factors that combine to reduce constant attention to oversight. The term *lawmaker*, moreover, suggests where many Members prefer to spend much of their time. As former Speaker Newt Gingrich, R-GA (1995-1999) put it: “This is the city [Washington, DC] which spends almost all of its energy trying to make the right decisions and almost none of its energy focusing on how to improve implementing the right decisions. And without implementation, the best ideas in the world simply don’t occur.”<sup>48</sup>

Second, unified government could act as a disincentive to assertive and aggressive oversight of administrative departments and agencies, especially during an era of partisan polarization. As one senior House Republican said of President George W. Bush’s Administration: “Our party controls the levers of government. We’re not about to go out and look beneath a bunch of rocks to try and cause heartburn. Unless they really screw up, we’re not going to go after them.”<sup>49</sup> Added another

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<sup>47</sup> CRS Report 98-186, *Impeachment: An Overview of Constitutional Provisions, Procedure, and Practice*, by (name redacted) and (name redacted).

<sup>48</sup> Tichakorn Hill, “Gingrich: Government’s Problem Is ‘Gotcha’ Culture,” *Federal Times*, July 18, 2005, p. 12.

<sup>49</sup> David Nather, “Congress as Watchdog: Asleep on the Job?” *CQ Weekly*, May 22, 2004, p. 1190. See also Thomas E. Mann and Norman J. Ornstein, *The Broken Branch* (New York: Oxford University Press, 2006).

experienced GOP lawmaker: “We ended up functioning like a parliament, not a Congress. We confused wanting a joint agenda with not doing oversight.”<sup>50</sup>

Third, the policy or political payoff might be minimal at best or counterproductive at worst. Oversight can be unglamorous, tedious, technical, and long-term work that achieves few results. “To do it right,” said a Republican Senator, “you have to hear an endless stream of witnesses, review numerous records, and at the end of it you may find an agency was doing everything right. It is much more fun to create a new program.”<sup>51</sup> Moreover, lawmakers recognize that hard-hitting investigations might arouse the ire of numerous constituents and special interests, which could jeopardize their chance of winning reelection.

## Incentives

One of the principal incentives that encourages legislative oversight of the executive branch is divided government (one party in charge of one or both chambers of Congress, the other party in control of the White House). Political and substantive issues are important factors that prompt heightened interest in oversight. Politically, as former Representative Lee Hamilton, D-IN, noted, when Democrats controlled the House during the first two years of the Clinton administration, no subpoenas were issued to executive officials by the panel with broad oversight jurisdiction. However, when Republicans captured control of the House, that same committee handed out “well over a thousand subpoenas to Clinton administration officials.”<sup>52</sup>

Substantively, policy disagreements between the President and the congressional majority party also contribute to the amount and scope of oversight. As one scholar concluded:

[P]olicy divergence is most likely to occur under divided government, so the majority party in Congress will want to constrain the agencies under the president’s control. In addition, members of the majority party may believe they can benefit from using oversight to emphasize policy differences between their party and the president’s party, and if in the case of such hearings and investigations they embarrass a president and his agency, this is not an insignificant [political] side benefit.<sup>53</sup>

Electoral incentives are another factor that can motivate lawmakers to oversee the bureaucracy. The opportunity to assist constituents in their dealings with federal agencies or to receive favorable publicity back home for resolving flaws or inequities in executive programs is a potential electoral bonus for members of Congress. Committee and subcommittee chairs “seek a high pay off—in attention from the press and other agencies—when selecting federal programs to be their oversight targets.”<sup>54</sup> Electoral support from constituents, combined with press and media attention, are likely to prompt additional oversight activity by committees and lawmakers.

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<sup>50</sup> Ronald Brownstein, “Treating Oversight as an Afterthought Has Its Costs,” *Los Angeles Times*, November 19, 2006, online edition.

<sup>51</sup> *Congress Speaks: A Survey of the 100<sup>th</sup> Congress* (Washington, DC: Center for Responsive Politics, 1988), p. 163.

<sup>52</sup> Lee H. Hamilton, *Strengthening Congress* (Bloomington, IN: Indiana University Press, 2009), p. 25.

<sup>53</sup> Charles R. Shipan, “Congress and the Bureaucracy,” in Paul Quirk and Sarah Binder, eds., *The Legislative Branch* (New York: Oxford University Press, 2005), p. 437.

<sup>54</sup> Richard Cohen, “King of Oversight,” *Government Executive*, September 1988, p. 17.

A third incentive for more oversight is large public concern about various issues (surging federal deficits, for instance) or events (a terrorist incident, for example). Numerous analysts and studies emphasize that the nation faces short- and long-term fiscal challenges. Growing citizen concern about the urgency of this issue could provoke committees to devote considerable resources to scrutinizing federal programs for waste and inefficiency, even eliminating or scaling back agencies or programs that are duplicative or not working. The money saved might then be used more productively. To be sure, a specific event can also prompt oversight. The unsuccessful 2009 Christmas Day attempt to blow up an airplane reportedly triggered no fewer than eight House and Senate committee hearings and investigations “to explore the intelligence, homeland security and foreign policy ramifications of the failed attack” by a Nigerian-born terrorist.<sup>55</sup>

## Concluding Observations

There is no doubt that Congress has significant authority to oversee the executive branch. Control of the purse strings, enactment of laws, the conduct of investigations, or the Senate’s confirmation role are among the principal levers of power available to the legislative branch to hold executive officials accountable for the implementation of federal policies and programs. In carrying out its oversight responsibilities, Congress engages in different, often overlapping, types or models of review: for example, programmatic versus political, adversarial versus cooperative, formal (hearings) versus informal (staff meetings with agency officials), or “police patrol” versus “fire alarm.” Police patrol oversight is akin to “the cop on the beat”: pro-active, regular, and systematic review of administrative performance by House and Senate committees. Fire alarm oversight is reactive; it occurs when outside events or public interest triggers episodic reviews of the executive branch.<sup>56</sup>

Significantly, Congress may be obtaining some extra police patrol assistance through the combination of technology and civic-minded individuals or groups. A rather new oversight trend is the “public as watchdog,” or, stated differently, the “democratization” of the review function. There are many groups, such as the Project on Government Oversight (POGO) or The Heritage Foundation, bloggers, and websites devoted to monitoring federal expenditures and activities. For example, websites such as Recovery.gov (initiated and maintained by a task force of federal inspectors general) or StimulusWatch.org (an independent website developed by volunteers) enable interested individuals to monitor projects that receive money from more than \$800 billion economic stimulus package enacted during the first session of the 111<sup>th</sup> Congress.

President Obama has made transparency and open government one of his top priorities. One result is that federal agencies are posting more of their information and data online so citizens who visit the sites can assess how their dollars are being spent or how well agencies are managing their various projects. As the government’s chief information officer stated, the new-found transparency “will elicit a more informed public oversight to help guide federal policies and programs.”<sup>57</sup> A better informed public is likely to make their evaluations of federal programs and

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<sup>55</sup> Tim Starks and Caitlin Webber, “Bombing Attempt Generates Wave of Probes,” *CQ Today*, January 13, 2009, 1.

<sup>56</sup> See Matthew D. McCubbins and Thomas Schwartz, “Congressional Oversight Overlooked: Police Patrols versus Fire Alarms,” *American Journal of Political Science*, February 1984, pp. 165-179.

<sup>57</sup> Elise Castelli, “Transparency, Public Input to Guide IT Policies,” *Federal Times*, January 11, 2010, p. 13. See CRS Report RL34718, *The Federal Funding Accountability and Transparency Act: Implementation and Proposed Amendments*, by (name redacted).

expenditures known to congressional lawmakers. The blogosphere, in short, adds millions of extra eyes to oversight of government spending and activities.

Ultimately, Congress will decide how best to pursue its oversight responsibility. Much will depend on the context of the times, the willingness of Members and their staff to watch and assess the executive branch, and Congress's relationship with the incumbent Administration. This relationship may range from cooperation to confrontational, but it is principally Congress that can ensure that executive policies reflect the values of the American people, anticipate long-range trends, and meet the challenges of an every-changing nation and world.

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