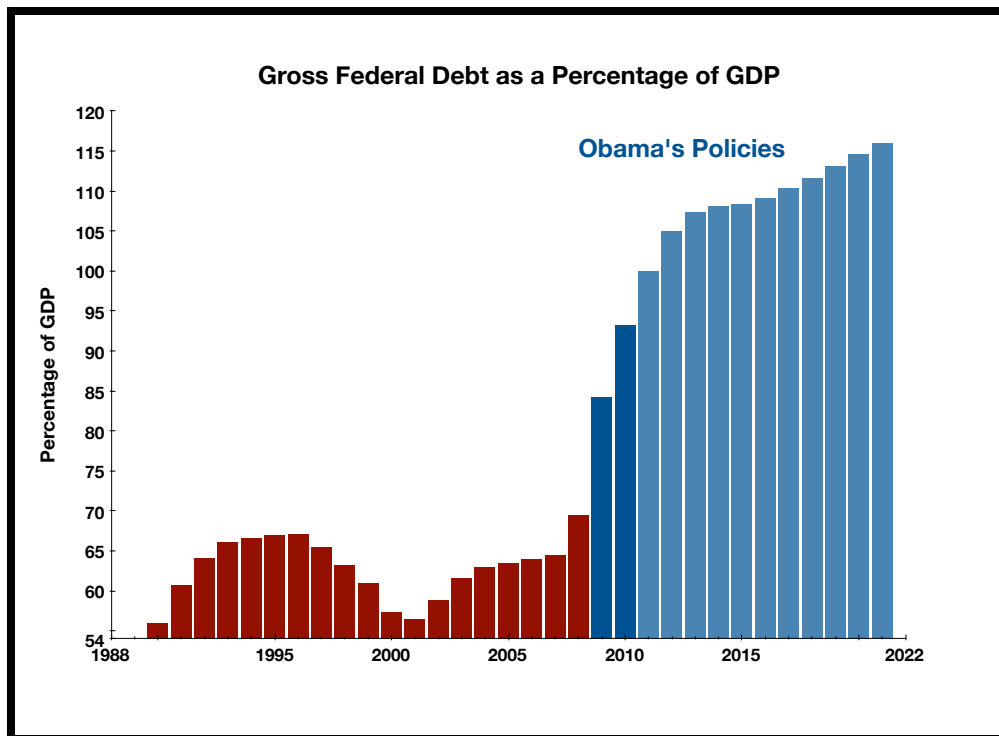


# AMERICAN ACTION FORUM

## 2011: A YEAR IN REVIEW



# Budget, Debt and Deficits: 2011 in Review

*Gordon Gray / January 2012*

## **How the Year Began: Deep in Debt with No Long-Term Strategy**

When the sun rose on January 1, 2011 the United States was \$14 trillion in debt, having just run a deficit of \$1.3 trillion for the fiscal year. As the books closed on the Democratic House and Senate of 2010, Congress addressed several major policy issues: deferring the expiration of the 2001 and 2003 tax cuts for two years, extending federal unemployment assistance for a year, and enacting a one year reduction in payroll taxes. Congress also agreed to a short continuing resolution that essentially froze discretionary spending at 2010 levels for several months into 2011 in anticipation of “disagreements” on spending between a new Republican-controlled House and the Democratic-controlled Senate.

## **Proposed Solutions: Senate Puts the Brakes on Spending Cuts, Entitlement Reform, and Fiscal Sanity**

The very first bill introduced in the House, H.R. 1, was a full year continuing resolution that significantly reduced discretionary spending. Naturally, it was defeated by Senate Democrats. The very second bill introduced in the House, H.R. 2, sought to repeal the Affordable Care Act, which would roll back two massive entitlement expansions and other unconstitutional measures. Naturally, it was defeated by Senate Democrats.

Not having bothered to pass a budget for FY2010, the House, under new management passed H. Con. Res 34, better known as the House Budget, which would eventually bring U.S. finances back to balance, and provide for meaningful tax and entitlement reform. Naturally, it was defeated by Senate Democrats. As of now, Senate Democrats have not passed a budget in about three years.

## **What Was Actually Accomplished: Increased Transparency, Accountability in the House**

With the 6<sup>th</sup> vote of the session, the House of Representatives passed new rules governing the

deliberations of the chamber. The new rules sought to show a break from the 111<sup>th</sup> Congress through improved transparency of congressional operations, strengthened accountability, and constraints on spending. The Senate also made some progress by adopting a new ban on earmarks.

Despite the burial of a host of good ideas in the Senate, some incremental improvements did manage to make it into law. In addition to passage of three free trade agreements, Congress did the unthinkable and repealed a piece of the Affordable Care Act, the burdensome 1099 reporting requirement that was tacked onto the healthcare bill to make sure the price tag appeared more favorably. The 1099 reporting requirement was generally regarded as an unmanageable burden on businesses, as well as the IRS. Congress also made clear that the discretionary spending binge was over, reflected in overall enacted spending, which was essentially frozen, and in the enactment of spending caps in the Budget Control Act.

## **Final Forum Analysis: Roadblocks, Not a Way Forward**

The divided government that began 2011 was characterized by two competing dynamics. First, the House of Representatives only had a few instances of leverage with the administration and the Democratic Senate. The second key dynamic was the commencement of the president’s reelection campaign. While the House of Representatives could pass any number of positive reforms, most efforts would almost certainly fall on deaf ears in the Senate. The exceptions to this rule were instances of “must pass” legislation, namely a debt-limit increase, passage of appropriations, and certain expiring provisions. The realized leverage ultimately went back and forth, but these were moments where the Senate and the president actually needed the House to cooperate. While the end result of these instances were mixed – President Obama’s complete absence from the Super Committee failure for example – they did signal a break from the 111<sup>th</sup> Congress where President Obama had a supplicant legislature willing to pass measures such as the stimulus,

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the healthcare reform law, and Dodd-Frank, entirely heedless of Republican objections.

The start of the president's reelection bid animated the debate in the closing months of 2011, as the president began a campaign of class warfare. This was entirely generated by a political imperative to shift blame for the economic torpor under his administration onto other parties – specifically onto U.S. employers, the wealthy and Republicans in Congress. The “American Jobs Act,” another stimulus, was the result, with a series of meaningless votes in the Senate as the end product. While these may have just been the opening salvos of the president's campaign, we should expect the same themes to continue in the coming year.

## What to Look for in 2012: More Near-Term Spending

The 2012 election cycle will necessarily drive the 2<sup>nd</sup> Session of the 112<sup>th</sup> Congress more so than the first, with essentially no opportunity for meaningful progress on our nation's economic challenges. We should expect the Senate to serve the aims of the president's and certain members' re-election bids. The president and Senate Democrats will certainly continue the push for more near-term spending and tax binges financed by higher taxes on employers. That the entities that the administration and Senate Democrats will seek to demonize for political gain are the very same ones (U.S. companies and successful small businesses) that do the hiring, should not escape critical observers. Beyond the political theater, the payroll tax fight remains a near-term legislative issue, but both parties appear to be willing to deal in good faith. The largest piece of outstanding business is the pending expiration of the 2001 and 2003 tax cuts, which were extended until the end of this year. While a great deal of oxygen will be consumed on the issue of tax reform, no meaningful progress should be expected until after the election. A short-term extension in the lame duck is probably a practical fix.

## 2011 Highlights

February 14, 2011: President Obama submits budget for 2012, gives each newborn in 2015 \$38,000 in debt.

April 15, 2011: House passes Rep. Paul Ryan's (R-WI) budget, which would balance the budget by 2040.

May 5, 2011: Vice President Joe Biden begins debt talks.

May 25, 2011: The Senate rejects Obama's budget, 97-0.

June 23, 2011: Eric Cantor (R-VA) walks away from debt ceiling talks with Biden, we can't tax our way to prosperity. The administration offered \$400 billion in taxes.

July 7, 2011: President Obama and Speaker Boehner (R-OH) begin debt-ceiling negotiations.

July 9, 2011: Obama undermines the “grand bargain,” changing the terms of the agreement.

July 19, 2011: The Gang of Six proposes a \$4 trillion deficit reduction plan, including \$2 trillion in revenue.

July 22, 2011: Again, Obama refuses to address the core problem, spending, and proposes \$1.2 trillion in revenues.

July 31, 2011: Debt ceiling agreement is reached, cutting \$1 trillion in spending immediately and establishing the super committee to reduce deficits by at least an additional \$1.2 trillion.

October 26, 2011: Democrats first super committee offer tries once more to tax our way to prosperity with \$1.3 trillion in revenues. Republicans' first super committee offer is \$2.2 trillion in spending cuts.

November 8, 2011: Republicans' second super committee offer is \$1.5 trillion in deficit reduction.

November 10, 2011: Democrats' refuse to acknowledge our spending problem and propose a second offer is \$2.3 trillion in deficit reduction, consisting of \$1.3 trillion in spending cuts and \$1 trillion in revenue.

November 11, 2011: Democrats put party before politics, leading to the super committee failure.

November 16, 2011: Obama runs up the debt to \$15,000,000,000,000.

November 21, 2011: The super committee fails.

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## Ten Fiscal Resources from the American Action Forum

1. [Hat In Hand](#)
2. [Willful Ignorance](#)
3. [John Adams, Barack Obama, and Tax Policy](#)
4. [Extending Our Credit Line](#)
5. [Sometimes the Left Hand Doesn't...](#)
6. [The American Jobs Act Isn't Actually Revenue Neutral](#)
7. [Not the Right Way to Run a Railroad](#)
8. [Political Points](#)
9. [Iraq Savings](#)
10. [Primer: Payroll Tax Holiday](#)

## **Education: 2011 in Review**

*Sally Gray Lovejoy | January 2012*

### **Starting Point: More Federal Involvement, More Money, Still No Improvement**

Education had a rather disappointing start to 2011 thanks to some executive overreach and reduction in school choice. At the Department of Education, the Obama administration and Congressional Democrats terminated the DC Opportunity Scholarship program which provided private school choice to thousands of students attending failing schools in the District of Columbia, took over student financial aid by eliminating private banks from the student loan program and issued more burdensome regulations that will raise costs and hinder educational choices.

A Government Accountability Office (GAO) report, "Opportunities to Reduce Potential Duplication in Government Programs, Save Tax Dollars and Enhance Revenue" had just been issued which found 82 federal teacher quality programs across 10 different agencies, 56 family literacy programs across 20 different agencies and 44 duplicative employment and training programs across numerous agencies. Federal education spending had increased by 425 percent since 1980 but student achievement had failed to improve. With the arrival of 87 new Republican House freshmen, the debate on the federal role in education once again became a hot topic.

### **Proposed Solutions: House GOP Pushes for Smarter Spending**

House Republicans successfully cut more than \$60 billion in federal discretionary spending with almost \$5 billion coming from the Department of Education while pushing for smarter use of education dollars. In the final 2011 Continuing Resolution, more than 40 duplicative and unnecessary education programs were eliminated, funding for the Pell grant program was reduced by \$35 billion over 10 years and the DC Opportunity Scholarship program was restored and funded so that students attending persistently failing schools in the District of Columbia now had another option, in addition to public charter schools,

to receive a quality education at a private school. The House Education and Workforce Committee considered three education reform bills that repealed 42 federal education programs, expanded access to high quality charter schools, and provided more flexibility to states and school districts to use federal education dollars to meet the needs of their students and the Senate Health, Education, Labor and Pensions (HELP) Committee reported a comprehensive elementary and secondary education bill.

### **What Was Actually Accomplished: Executive End-Run Around Congress, Costly Regulations**

Secretary Duncan and the Obama administration continued to circumvent Congress when they did not get what they wanted. Last summer, Secretary Duncan announced that he would "fix" the No Child Left Behind Act by issuing waivers to all 50 states if the Congress did not enact a new elementary and secondary education law by the beginning of the school year. When that did not happen, the Department of Education declared that they would grant "conditional" waivers to states that adopt new accountability measures proposed by the Department of Education. An abuse of executive branch authority, this has the potential to result in federal control of our K-12 education system.

In addition, the Obama administration issued its controversial "gainful employment" rule in an attempt to reduce college debt for students attending private for-profit schools. On the contrary, this rule will increase annual paperwork hours for postsecondary institutions to the tune of approximately \$5 million annually, result in an estimated \$338 million in lost annual revenue to for-profit education institutions, and according to the U.S Chamber of Commerce, result in 90,000-100,000 lost jobs. Such federal intrusion will not put us on the path to economic recovery.

### **Final Forum Analysis: Executive Excess**

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This past year has been a mixed bag for education reform policy in the United States. There have been some success in reducing federal education spending and providing more choices to parents and students who attend persistently failing public schools. For the first time since the enactment of the Elementary and Secondary Education Act of 1965, Congress was successful in eliminating numerous unnecessary federal education programs, providing more choices to parents by continuing the DC Opportunity Scholarship program and strengthening access to charter schools across the country.

However, the Obama administration has exercised unprecedented power to exert its will over how states and school districts educate America's children. By not enacting changes to the No Child Left Behind Act, Congress has allowed the Department of Education to increase federal control over K-12 education by dictating what states can do through "conditional" waivers. This will continue as long as Congress does not come to an agreement on how to provide more flexibility to states and local school districts while continuing to hold them accountable for increased student academic performance as well as how federal education dollars are spent. Finally, the Obama administration has implemented restrictive new regulations that will make it harder for low-income and minority students to receive a post secondary education and find sustainable employment.

## **What to Look for in 2012: Education as the Foundation of a Serious Jobs Plan**

During this presidential election year, the economy and job creation are the key issues, but all that starts with a well-educated population. Any job creation policy must have a strong educational component to be successful and that has been lacking from both political parties this past year.

However, there is bipartisan agreement on how to address education reform issues. Both the House and Senate have similar bills pending to reauthorize and expand access to public charter schools. This bipartisan legislation could easily be passed by the Congress and signed into law early this year by President Obama. There is also bipartisan agreement that the adequate yearly progress (AYP) accountability provisions in NCLB need to be fixed.

Both parties want to find ways to create more American jobs and those policies must start with reforms in education, but will the hard work be done in 2012 to make it happen?

## **2011 Highlights**

January 25, 2011: House Speaker John Boehner with Senator Lieberman introduce the [SOAR Act to reauthorize the D.C. Opportunity Scholarship Program \(OSP\) and provide more support to public schools and charter schools.](#)

February 2011: President Obama releases his [budget proposal](#) and seeks to maintain the maximum Pell Grant amount and add \$1.4 billion for competitive grants, encouraging districts to adopt the Common Core Standards.

March 2011: The president releases a Statement of Administration Policy against [school vouchers](#) arguing that vouchers remove funds from traditional public schools and does not support the SOAR Act.

June 13, 2011: Secretary Duncan issues controversial "[Gainful Employment](#)" rule, expanding the government's [overreach into higher education](#). The rule imposes more than \$800 million in costs and 284,000 annual paperwork burden hours.

August 24, 2011: [Race to the Top second round winners announced: Washington DC, Florida, Georgia, Hawaii, Maryland, Massachusetts, New York, North Carolina, Ohio, and Rhode Island.](#)

September 12, 2011: Obama releases [American Jobs Act](#) and proposes spending an additional \$60 billion on teachers and repairing school buildings while denying funding to [private school teachers](#) and religious buildings.

September 23, 2011: President Obama releases [Waivers plan](#) to relieve states of NCLB requirements, [circumventing Congress](#) to implement [his own policies](#), including adopting college and career ready standards and overhauling lowest performing schools.

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## Ten Education Resources from the American Action Forum

1. [The Arrogance of the Executive Branch](#)
2. [DC Opportunity Scholarships Make a Difference](#)
3. [Job Creation Policies Must Address Education](#)
4. [Education Should Be a Topic in Presidential Debates](#)
5. [Will Accountability Survive the Education Debate This Year?](#)
6. [Race to More Ineffective Ed Spending](#)
7. [Education and the President's Budget: Where's the Accountability](#)
8. [Gainful Employment Rule Hurts Colleges Students and Schools](#)
9. [No Political Opportunity Left Behind](#)
10. [Education and Jobs- New Ideas Wanted](#)

## Energy: 2011 in Review

*Catrina Rorke | January 2012*

### **Starting Point: Heavy on Promises, Light on Solutions**

President Obama opened 2011 with another State of the Union speech loaded with rhetorical commitments to clean energy. Where 2010 brought a promise of a comprehensive energy and climate bill, 2011 brought a promise for 80 percent clean energy by 2035 and a million electric vehicles on the road by 2015. From the campaign trail to stump speeches, the president has never wavered in his support for cleaner ways to light and heat our homes and fuel our cars. Unfortunately, he has also never delivered a comprehensive, executable energy strategy to promote development of domestic resources, installation of new electricity capacity, or deployment of new automotive fuels.

### **Proposed Solutions: Old Ideas From Obama, Myriad Proposals from Congress**

The president failed to pass comprehensive energy legislation in the form of cap and trade, and failed to offer any substantive energy proposals in 2010. In early 2011, the White House released his Blueprint for a Secure Energy Future. This meager document trotted out old ideas about government subsidies, regulations, and interventions that would save American energy. Far from pursuing a national strategy to revitalize jobs in energy development or production, increase our energy security, or overhaul energy-sector investments to maximize the impact of government expenditures, the White House repeatedly turned down opportunities to move the ball on fossil energy and wasted money on ventures like the failed Solyndra.

In as much as the president opened 2011 without solutions, midterm elections shepherded in a vibrant group of conservative freshmen legislators emphatic about reducing government waste and overhauling the way the government involves itself in energy markets. Conservatives in the House and Senate tried to make changes to increase energy development and employment. They voted countless times to roll back

regulations putting downward pressure on economic development and upward pressure on consumer prices. In an attempt to address two long-term policy problems, House conservatives developed a scheme to use royalties from domestic energy development to fund long-awaited infrastructure improvements. Timid Senate leadership rejected each of these proposals.

### **What Was Actually Accomplished: Environmental Interest Group Pandering**

The Obama Administration spent 2011 playing goalie and successfully blocking any attempt to spur the economy or increase the domestic energy supply in a concerted stance of political cowardice. First, they refused to abandon EPA's efforts to regulate greenhouse gas emissions from vehicles and the power sector, despite using a tool – the Clean Air Act – ill designed for governing such emissions. Second, they took on hydrofracking, an oil and gas development procedure that opened up non-traditional resources and promised job creation, cheap energy, and increased security. Finally, they put off a decision on the Keystone XL pipeline, which would create thousands of jobs and provide the United States with a better position in the international energy market. Likewise, Senate leadership deliberately kept conservative-sponsored bills off the floor. Between a White House determined to avoid energy leadership and a Senate majority fearful of conservative success, we closed 2011 with no meaningful changes in our national approach to energy policy.

In the absence of any positive proposals, the president has used to the regulatory authority of his agencies to bring the energy sector into submission, and recovery act slush funds to prop up companies surviving on government subsidies. While regulatory overreach is a great tool to appease liberal interest groups, the administration went one step further with their outrageous claim that these regulations create good, high-paying compliance jobs. Meanwhile, job creators are diverting resources from innovation to comply with onerous regulatory burdens, holding back American leadership in energy and manufacturing.

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## Final Forum Analysis: 2011 is Vacant

Energy's legacy in 2011 is sadly vacant. We're no closer to independence from foreign oil, no better insulated from resource price swings, and we continue to languish in economic turmoil. Without a national energy strategy and leadership from all elected officials – especially the president – 2012 is destined for the same fate.

## What to Look for in 2012: A Serious Debate

Any hope of achieving bipartisan action on domestic energy policy was lost on January 18<sup>th</sup>, 2012, when President Obama announced he would deny the construction permit for TransCanada's Keystone XL pipeline. More than an expression of the president's aversion to fossil fuel development and use, the Keystone refusal drove a firm wedge between the conservative agenda to drive investment in domestic energy initiatives and the White House agenda to hold up all conventional energy ventures. Especially in a politically-charged election year, this decision – on top of pending regulations for greenhouse gas emissions from stationary sources poised to come out this month – threatens to eviscerate any will to identify and advance compromise policies on American energy.

Still, 2012 may not be all bad news. Shell is due to drill exploratory wells in the Chukchi Sea starting this July, and TransCanada has given every indication that they will reapply for a permit to construct the Keystone pipeline. Congressional conservatives continue to seek options to get approval for Keystone outside of a new permitting process, with initiatives like Rep. Lee Terry's legislation to put the decision in the hands of the Federal Energy Regulatory Commission. With dwindling potential for government support as spending tightens, we can also expect to see added federal pressure to accept private sector "stimulus" by speeding up government approval processes for new energy projects.

Fundamentally, 2012 will bring a serious debate over what the proper role is for government in the energy sector. We can predict the president to galvanize support among the environmental movement by prioritizing long-shot renewable alternatives and using regulatory authority to limit growth in all fossil energy. Running counter to the president's "just say no" tendencies, conservatives will

continue their call for rapid permitting and fair treatment for all sources of homegrown energy.

## 2011 Highlights

March 17, 2011: Nuclear Regulatory Commission Chairman Jaczko [recommends](#) evacuating Americans within 50 miles of the Fukushima Daiichi nuclear power plant, contradicting the recommendations of the Japanese government and International Atomic Energy Agency.

March 30, 2011: The White House releases its [Blueprint for a Secure Energy Future](#), describing a federally-driven approach to energy challenges, including commercialization assistance, stringent CAFE standards, rebate programs, and additional regulation.

July 28, 2011: The EPA [proposes](#) regulating emissions from hydraulic fracturing operations, a policy that would cost an estimated [\\$740 million](#) and allow EPA regulation of the industry for the first time.

September 15, 2011: The EPA and the National Highway Traffic Safety Administration [announce](#) the first federal standard for greenhouse gas emissions and fuel efficiency from heavy-duty vehicles, anticipated to cost industry [\\$8.1 billion](#).

[November 10, 2011](#): The State Department announces it will consider a new route for TransCanada's Keystone XL pipeline, delaying a final decision on construction until early 2013.

November 28, 2011: [The Durban Climate Change Conference Opens](#). President Obama's envoys agree to negotiate legally binding emissions reductions and commit support to an international Green Climate Fund.

December 21, 2011: The EPA releases [final standards for mercury emissions and toxic pollution from power plants](#). This action comes with a \$9.8 billion price tag and over 700 thousand paperwork burden hours in added costs to industry, and the threat of closing 12 gigawatts of electricity production nation-wide.

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## Ten Energy Resources from the American Action Forum

1. [Tie Spending to Pro-Growth Policies](#)
2. [Congress Should Let Wasteful Tax Credits Expire](#)
3. [U.S. a Net Exporter of Petroleum Products?](#)
4. [Former Obama Economic Adviser Calls Out Keystone XL Opponents](#)
5. [The Super Committee and Energy](#)
6. [Technology Will Change Our Energy Future Unless Washington Stops It](#)
7. [Obama Punting on Energy Leadership](#)
8. [Regulations Threatening Future Growth](#)
9. [NY, Start Hydrofracking: Jobs Await, and We All Need Cleaner, Homegrown Energy](#)
10. [How to Prevent Future Oil Shocks](#)

# Healthcare: 2011 in Review

*Michael Ramlet | January 2012*

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## **Starting Point: False Promises**

Voters sent an undeniable message to President Obama in the November 2010 elections: the Affordable Care Act is wrong for America. Citizens from red states and blue states voted Members of Congress out of office in record numbers; a direct result of their vote for the healthcare law's federal power grab, which increased taxes by over \$700 billion and cut Medicare by \$500 billion.

President Obama started 2011 by acknowledging as much in his State of the Union Address, "I have heard rumors that a few of you still have concerns about our new healthcare law, so let me be the first to say that anything can be improved. If you have ideas about how to improve this law by making care better or more affordable, I am eager to work with you." Unfortunately, this message rang hollow throughout 2011.

## **Proposed Solutions: Kicking the Can Down the Road vs. Solving Problems Today**

Beginning with the White House's 2012 budget proposal to Congress, President Obama repeatedly walked away from opportunities to make healthcare better and more affordable for millions of seniors. Rather than heeding the advice of his own National Commission on Fiscal Responsibility and Reform (Bowles-Simpson), President Obama released a budget that the non-partisan Congressional Budget Office estimated would bankrupt Medicare by 2020.

Instead of thoughtfully engaging the House of Representatives on the merits of Chairman Ryan's bold "Path to Prosperity," President Obama's administration and Senate leadership turned to *Mediscare* tactics again and again during the debt ceiling negotiations and later during super committee deliberations; eventually earning Politifact's 2011 Lie of the Year Award.

## **What Was Actually Accomplished: Higher Rates, More Uninsured Americans**

In this year's State of the Union address, President Obama will undoubtedly tout that he has expanded health insurance coverage to more than 2.5 million individuals under the age of 26. However, 1 percent of the country benefitted in 2011 while the remaining 99 percent experienced an increase in family health insurance premiums of more than \$1,300.

Under President Obama's leadership, the percentage of Americans lacking health insurance coverage rose for the fourth straight year in 2011 to 17.1 percent; a direct result of failing to pass meaningful healthcare reform that bends the cost curve.

## **Final Forum Analysis: Missed Opportunities for Strong Presidential Leadership**

Unfortunately, when presented in late 2011 with a bipartisan Medicare reform proposal from Chairman Ryan and Senator Wyden, President Obama abdicated Presidential Leadership in record time, taking less than 4 hours to dismiss the plan outright.

Tonight's State of the Union could have included a meaningful bipartisan plan for Medicare that built upon the tenets of the Ryan-Wyden proposal and incorporated measures like those proposed by American Action Forum President Douglas Holtz-Eakin to the super committee. Instead, voters will have to sit through yet another "State of the Campaign" speech

## **What to Look for in 2012: A SCOTUS Decision, Real Debate and Contentious Reauthorizations**

In 2012, the U.S. Supreme Court will decide whether the Affordable Care Act stands at all. The court's decisions on the individual mandate, federal Medicaid expansion, and severability will indelibly shape the health policy landscape.

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Regardless of the court's decision, the 2012 election will present the American public with a real debate about the future direction of healthcare entitlement programs and the federal budget. We no longer have time for *Mediscare* tactics and Medicaid accusations.

Medicare is bankrupt. There's no denying it and real reform is needed. The status quo is dangerous to the fiscal health of the federal government, the U.S. economy, and especially seniors.

At the same time, Medicaid is a budgetary threat to states and a barrier to consistent, quality care for the neediest Americans.

In addition to reform proposals, Congress will be forced to grapple with FDA reauthorizations that will determine whether America continues to lead the world in medical innovation. FDA red tape and development costs have forced American innovators to increasingly start abroad first with new drugs and devices.

Whether we address these healthcare issues in 2012 will ultimately depend on presidential leadership. The country needs a president who doesn't tar and feather Congress, but instead tackles the tough issues regardless of political popularity. In 2012, President Obama will once again be presented with a bipartisan Medicare reform plan, a Medicaid action plan from the nation's governors, and an innovation plan from industry, one hopes he will not hide from them.

## 2011 Highlights

January 19, 2011: House of Representatives passes [legislation](#) to repeal the Affordable Care Act.

February 14, 2011: President Obama releases 2012 budget [proposal](#) that ignores his own fiscal commission.

March 18, 2011: [Congressional Budget Office](#) finds President Obama's Budget will bankrupt Medicare by 2020.

April 5, 2011: House Budget Committee releases [The Path to Prosperity](#) which reduces deficits by \$4.4 trillion.

June 6, 2011: McKinsey & Company [finds](#) 30 percent of all employers – and more than half of those well-informed about the law – will “definitely or probably” drop health coverage in 2014.

July 25, 2011: NFIB [finds](#) 11.7 percent of small businesses have already dropped health coverage, 25.9 percent are likely to drop, and 31.5% are somewhat likely to drop health coverage as a result of ACA.

August 12, 2011: 11<sup>th</sup> Circuit Court of Appeals [cites](#) American Action Forum analysis and rules against the Affordable Care Act's individual mandate.

September 27, 2011: Kaiser Family Foundation [survey](#) finds that health insurance premiums for families went up by over \$1,300 in 2011.

October 14, 2011: HHS Secretary Kathleen Sebelius [indicates](#) CLASS Act is unviable and not workable.

October 28, 2011: Kaiser Family Foundation's health tracking poll [finds](#) that overall favorability of the Affordable Care Act stands at an all-time low of 34 percent.

November 21, 2011: Congressional super committee [fails](#), resulting in a 2 percent cut across all Medicare providers totaling \$170 billion over 10 years.

December 15, 2011: Congressman Paul Ryan and Senator Ron Wyden [release a bipartisan Medicare plan](#) that is dismissed by President Obama within 4 hours of its release.

December 20, 2011: Politifact [announces](#) that it has declared the Obama administration's claim that the House Budget Resolution would “End Medicare” as the Lie of the Year 2011.

December 31, 2011: Affordable Care Act [regulations in 2011 created](#) more than 34.1 million new paperwork hours for states and the private sector at a cost of over \$11.3 billion.

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## Ten Healthcare Resources from the American Action Forum

1. [200 Economists and 2 Nobel Winners Support Repeal of Obamacare to Promote Job Growth, Reduce Deficit](#)
2. [Estimating Labor Market Incentives, Economic Growth and Budgetary Impacts of the PPACA for House Committee on Ways and Means](#)
3. [Medicaid Recommendations for the National Governors Association](#)
4. [Lessons Learned During the First Year of the Affordable Care Act for the Senate Finance Committee](#)
5. [Estimating the True Cost of the ACA for the House Committee on Energy and Commerce](#)
6. [Economic Analysis of the Individual Mandate for the United States 11<sup>th</sup> Circuit Court of Appeals](#)
7. [Estimating Cost Shifting Effect on Medicare Part D Rebates on America's Seniors for the Super Committee](#)
8. [Medicare Reform Recommendations for the Super Committee](#)
9. [Estimating the Employment Impact of Proposed Mandatory Part D Drug Rebates for the Super Committee](#)
10. [American Action Forum Director of Healthcare Policy Michael Ramlet at the Politico Healthcare Year in Review Conference](#)

# Regulation: 2011 in Review

*Sam Batkins / January 2012*

## **Starting Point: Executive Orders Make Nice Window Dressing**

Executive orders, congressional attempts to rescind rules, and a flood of novel rulemakings made 2011 the year of regulation. In 2010, the administration published 82,480 pages of regulations, passed two comprehensive legislative packages (the Affordable Care Act and Dodd-Frank), and planned to regulate greenhouse gases (GHG) for the first time in history. In 2011, the president attempted to preempt critics of his regulatory state when he signed an executive order calling for a retrospective analysis of “outdated, ineffective, insufficient, or excessively burdensome” regulations followed by a second executive order requesting that independent agencies conduct the same review.

## **What Was Actually Accomplished: Reg Reviews Pave the Way for More Regs**

The administration touted the savings from their regulatory reviews but failed to provide the full context. These deregulatory measures were dwarfed by the new regulations that the administration published this year. For proposed or final rules, the administration published \$231.4 billion in regulatory burdens and 133 million paperwork burden hours. Assuming a 2,000 hour work year, it would take 66,730 employees just to file federal paperwork.

In addition, more than 20.3 million of those hours had no associated cost estimate. Using the Bureau of Labor Statistics (BLS) mean hourly wage for federal “compliance officer” of \$29.88, the unassociated labor costs of federal regulations actually total \$608.41 million. Thus, the total published regulatory burden for 2011 is closer to \$232 billion.

## **Proposed Solutions: House Is Active, Senate Stalls, Forum Offers Another Approach**

The House of Representatives and the Senate voted on several measures that would either reform the regulatory process or rescind new regulations. On the House side, in addition to dozens of hearings highlighting reform and regulatory practice, representatives adopted eleven<sup>i</sup> reform bills. The Senate failed to pass any comprehensive reform legislation. However, the Congressional Review Act allowed senators to call up specific regulatory rescissions. The Senate voted on three measures<sup>ii</sup> that would have rescinded regulatory authority. All three failed to achieve a majority.

Forum experts Sam Batkins and Ike Brannon [proposed an “upstream” solution](#) last summer. The following is an excerpt explaining the proposal:

*Instead of attacking the regulatory state after it has promulgated rules required by legislation, an “upstream” approach that governs regulators before implementation could yield better results. In each bill imposing federal mandates, Congress would pass a regulatory overhaul that imposes five basic requirements on administrative agencies.*

The “upstream” approach will not completely undo costly regulations

<b>Most Expensive Regulations in 2011</b>	
<b>Cost</b>	<b>Hours</b>
CAFE Standards for Light-Duty Vehicles: \$141.4 billion	Employee Rights Notification: 12 million
Utility MACT Proposed Rule: \$10.9 billion	Medicaid Eligibility Changes Under ACA: 11.07 million
Greenhouse Gas Standards for Trucks: \$8.1 billion	Railroad Conductor Certification: 10.99 million
Conservation Standards for Lamp Ballasts: \$6.9 billion	Investment Advice Changes: 8.8 million
Federal School Lunch Standards: \$6.8 billion	CHIP Annual Transparency Reporting: 7.99 million

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but it does guarantee certainty for Congress. By allowing Congress to set the ground rules for administrative agencies during the legislative process, and before formal promulgation of regulations, Congress could promote transparency and add specifics to often vague legislative language. In addition, more specificity from Congress could curtail the steady stream of “minor” regulations.

### Final Forum Analysis: Under-the-Radar Regs Add Up, Executive Branch Reg Trend Grows

Plenty of ink has been spilled covering “economically significant” regulations, those with an annual effect of \$100 million or more on the economy. Pricy CAFE standards, the Air Toxics rule, and other controversial EPA measures will make headlines regardless of the political party issuing the rules.

Dodd-Frank rulemakings sometimes fall under the radar. In 2011, regulators published \$1.5 billion in Dodd-Frank implementation costs and 23.6 million paperwork burden hours. Since passage, Dodd-Frank has imposed 31.4 million paperwork burden hours. Assuming a 2,000 hour work year, the Act would require 15,708 workers to file the required federal paperwork.

Outside of Dodd-Frank and the Affordable Care Act, however, there exists a pernicious trend of regulations beyond congressional or court-ordered directives. Examples include EPA regulations on fracking, NLRB’s decision to speed up union elections and to require union notification posters, and the Department of Education’s “Gainful Employment” rule directed squarely at for-profit universities. The most egregious example might be EPA’s costly greenhouse gas regulation. Congress had no say in how these regulations were implemented; only a new administration and an aggressive legislative response will end the new rules.

### What to Look for in 2012: More Regs, More Problems

In conclusion, \$231.4 billion in published regulatory costs for 2011 might make this the year of regulation, but 2012 could hold even more power for administrative agencies. EPA will formally regulate GHG emissions for stationary sources, Dodd-Frank regulations will continue, and

Affordable Care Act regulations have three more years of heavy implementation costs. 2012 is poised to be just as, if not more, active than 2011.

Top Five Paperwork Burden Leaders, By Agency		
Agency	Hours	Full-Time Employee Equivalent
Federal Railroad Administration	14.8 million	7,411
Federal Reserve	14.04 million	7,023
NLRB	12 million	6,000
CPSC	10.92 million	5,464
CMS	9.98 million	4,992

Top Five Cost Burden Leaders, By Agency	
Agency	Costs
EPA	\$178.63 billion
Energy	\$9.57 billion
Food and Nutrition	\$7.15 billion
Health and Human Services	\$6.87 billion
Employee Benefits	\$5.1 billion

Top Five Deregulatory Actions	
Deregulation	Cost Reductions
Reform of Hospital and Critical Access	\$943 million
Oil Spill Prevention	\$143 million
Onboard Refueling Vapor Recovery	\$88 million
Medicare and Medicaid Provisions	\$68.7 million
Positive Train Control Systems	\$40.9 million

# AMERICAN ACTION FORUM

## Ten Regulatory Resources from the American Action Forum

1. [Absurdity of Regulatory Keynesianism](#)
2. [Obama, Ryan, and the Future of Regulatory Reform](#)
3. [Obama's Unionization Push](#)
4. [Congress Should Dismantle Net Neutrality](#)
5. [Primer on the Congressional Review Act](#)
6. [Reviewing the President's Regulatory Review](#)
7. [Bipartisan Regulatory Reform Could Save 55,000 Jobs](#)
8. [The Costs of Dodd-Frank? Even the Feds Don't Know](#)
9. [Comment on Proposed Fracking Rule](#)
10. [Comment on Proposed Union Notification Requirements](#)

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*Methodology: This year the Forum tracked approximately 7,000 proposed and final rules. For each entry in the Federal Register we determined if the regulation contained a private-sector cost, a burden on state or local governments, or paperwork reporting requirements. The Forum recorded those burdens in our database. For proposed rules that became final in 2011, the Forum noted the total costs of the final rule and omitted any earlier burdens from the proposed rule. Generally, Federal Register entries contained only annualized costs but for larger regulatory overhauls where compliance takes several years, the Forum recorded total programmatic costs, if the agency provided those estimates. Occasionally, the Forum catalogued notable rulemakings under Dodd-Frank, the Patient Protection and Affordable Care Act (PPACA), and other impactful federal programs. The Forum recorded these rules even though they did not contain cost estimates or paperwork requirements. The methodology for the Dodd-Frank and PPACA databases is the same but some rulemakings date back to 2010.*

## Endnotes

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1. <sup>i</sup> [H.R. 3094](#), Workforce Democracy and Fairness Act: establishes firm statutory procedures and greater clarity for how the National Labor Relations Board (NLRB) considers union “representation” cases;
  2. [H.R. 910](#), Energy Tax Prevention Act: prohibits EPA from regulating GHG and excludes GHG as “air pollutants” under the Clean Air Act.
  3. [H.R. 10](#), REINS Act: requires Congress to formally approve (rather than disapprove) new significant regulations, those costing \$100 million or more;
  4. [H.R. 3010](#), Regulatory Accountability Act: amends the Administrative Procedure Act to require agencies to conduct a clear cost-benefit analysis and select the least costly alternative;
  5. [H.R. 527](#), Regulatory Flexibility Improvements Act: amends the Regulatory Flexibility Act to expand the definition of “economic impact” and require agencies to “provide a quantifiable or numerical description of the effect of a proposed or final rule;”
  6. [H.R. 1633](#), Farm Dust Regulation Prevention Act: ensures EPA cannot include farm dust within the definition of traditional particulate matter;
  7. [H.R. 2681](#), Cement Sector Regulatory Relief Act: rescinds EPA’s Portland Cement standards and requires EPA to impose the least burdensome regulatory alternative for cement MACT regulations;
  8. [H.R. 2250](#), EPA Regulatory Relief Act: rescinds EPA’s recently-finalized Boiler MACT rules and allows 15 months for EPA to reissue the rules;
  9. [H.R. 2273](#), Coal Residuals Reuse and Management Act: allows states to establish a program for coal ash and permits EPA to establish coal ash programs if states fail to develop regulation;
  10. [H.R. 2401](#), TRAIN Act: establishes a Committee for “Cumulative Analysis of Regulations that Impact Energy and Manufacturing” and requires an analysis of EPA’s impact on U.S. competitiveness, electricity prices, and employment;
  11. [H.R. 2587](#), Protecting Jobs From Government Interference Act: amends the National Labor Relations Act to deny NLRB the power to “order an employer to restore or reinstate any work, product, production line, or equipment.”
1. <sup>ii</sup> [On April 6](#), the Senate rejected Senator Mitch McConnell’s amendment to prohibit EPA from regulating GHG;
  2. [On November 10](#), the Senate rejected a Congressional Review Act motion to rescind FCC’s net neutrality regulations;
  3. [On November 10](#), the Senate rejected a Congressional Review Act motion to rescind EPA’s Cross-State Air Pollution Rule.