ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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SUPPLEMENTAL MEMORANDUM

February 10, 2011

To: **Democratic Members of the Committee on Oversight and Government Reform**

Fr: **Democratic Committee Staff**

Re: **Analysis of Industry Responses to Committee Letters on Regulations**

At today's hearing, Chairman Issa plans to highlight the results of his review of federal regulations. In December and January, the Chairman sent letters to approximately 170 industry groups and other entities seeking input on "existing and proposed regulations that have negatively impacted job growth" and asking for recommendations. This memo provides additional information on these responses and the Committee's approach to date.

I. Democratic Approach to Job Creation and Regulatory Review

Ranking Member Cummings has stated that he fully supports efforts to review federal regulations as part of a broader approach to create jobs while protecting the health, safety, and welfare of the American people. He has stated:

> The American people sent us here not only to create jobs, but also to protect their health, welfare, and safety. There must be a reasonable balance between job creation, which we all support, and regulatory measures that provide core protections to the American people. Only by working in a bipartisan way will we achieve this balance.[1]

President Obama took a productive first step toward this goal on January 18, 2011, when he issued an executive order requiring agencies to examine the costs and benefits of regulations to the overall economy, small businesses, and American workers and families. The order requires this process to be transparent and open, soliciting input from business interests, consumer protection groups, and the public.[2]

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[1] *Gripes Over EPA in Responses to Issa,* Politico (Feb. 7, 2011) (online at http://dyn.politico.com/printstory.cfm?uuid=94DAA525-0E33-4D8E-A4EF-C456DD53A760).

[2] Executive Order 13563 (Jan. 18, 2011). *See also* President Barack Obama, *Toward a 21st-Century Regulatory System*, Wall Street Journal (Jan. 18, 2011) (online at http://online.wsj.com/article/SB10001424052748703396604576088272112103698.html).

In addition, Ranking Member Cummings has focused on broader initiatives to promote economic growth. Today, he is sending a letter to Chairman Issa requesting that the Committee hold a hearing on a proposal made by President Obama in his State of the Union address to create jobs by investing in our nation's infrastructure.[3] On January 26, the presidents of the U.S. Chamber of Commerce and AFL-CIO, Thomas Donohue and Richard Trumka, issued an extremely rare joint statement applauding President Obama's proposal. They stated:

> Whether it is building roads, bridges, high-speed broadband, energy systems and schools, these projects not only create jobs and demand for businesses, they are an investment in building the modern infrastructure our country needs to compete in a global economy.[4]

Ranking Member Cummings' letter to the Chairman states that "these are exactly the kinds of bipartisan, constructive initiatives our Committee and Congress should support" and requests that the Chairman invite Mr. Donohoe, Mr. Trumka, and Transportation Secretary Ray LaHood to testify about these proposals at a hearing before the Committee.

II. Deficiencies in the Committee's Approach to Date

The Chairman has stated that he would like the Committee's work to "complement the government-wide examination of regulations that the President has ordered."[5] If the Committee is going to be effective, however, it will need to address a series of deficiencies in the approach taken to date.

A. *The Committee sought information only about the costs of regulations and not about their benefits.*

The Chairman sent approximately 170 letters in December and January to industry groups and other organizations requesting examples of "existing and proposed regulations that have negatively impacted job growth."[6] The letters did not seek any information about the benefits of regulations to the overall economy or the health, safety, and welfare of American workers and families.

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[3] Letter from Rep. Elijah E. Cummings, Ranking Member, to Rep. Darrell E. Issa, Chairman, House Committee on Oversight and Government Reform (Feb. 10, 2011).

[4] *Donohue and Trumka Issue Joint Statement on SOTU,* U.S. Chamber of Commerce (Jan. 26, 2011) (online at www.uschamber.com/press/releases/2011/january/donohue-and-trumka-issue-joint-statement-sotu).

[5] Rep. Darrell E. Issa, *How Do Government Regulations Affect Your Business? We're Listening,* San Diego Source (Feb.3, 2011) (online at http://issa.house.gov/index.php?option=com_content&task=view&id=619&Itemid=92).

[6] *See, e.g.,* Letter from Rep. Darrell E. Issa, Chairman, House Committee on Oversight and Government Reform, to Bev Marshall, Senior Vice President for Public Affairs, Duke Energy Corporation (Dec. 13, 2010).

According to a report issued by the Office of Management and Budget last year, the overall benefits of regulations far outweigh their costs. Between 1999 and 2009, the estimated costs of regulations were between $43 billion and $55 billion, while the estimated economic benefits were between $128 billion and $616 billion.[7] These estimates relate only to benefits that can be monetized and do not include other benefits, such as preventing discrimination, that cannot be translated into dollar amounts.

In contrast, the country fell into the recent recession primarily because the financial industry was inadequately regulated for decades. There was deficient regulation of derivatives, credit rating agencies, and mortgage companies, and the economy lost more than eight million jobs as a result.[8] When former Federal Reserve Chairman Alan Greenspan testified before the Committee in 2008, he stated that his theory of allowing corporations to regulate themselves was a mistake. He stated:

> I made a mistake in presuming that the self-interest of organizations, specifically banks and others, were such is that they were best capable of protecting their own shareholders and their equity in the firms.[9]

In contrast, a report issued this week by Ceres and Political Economy Research Institute estimates that capital investments in pollution controls and new power generation may result in as many as 1.46 million jobs.[10] In addition, the Department of Commerce reports that the United States is the largest producer and consumer of environmental technology goods and services with $300 billion in revenues supporting close to 1.7 million jobs.[11]

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[7] Office of Management and Budget, *2010 Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities* (2010) (online at www.whitehouse.gov/sites/default/files/omb/legislative/reports/2010_Benefit_Cost_Report.pdf).

[8] *Top Forecaster Brown Sees U.S. Adding 2 Million Jobs in 2011,* Bloomberg Businessweek (Feb. 09, 2011) (online at http://www.businessweek.com/news/2011-02-09/top-forecaster-brown-sees-u-s-adding-2-million-jobs-in-2011.html).

[9] House Committee on Oversight and Government Reform, *The Financial Crisis and the Role of Federal Regulators,* 110th Cong. (Oct. 23, 2008) (online at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_house_hearings&docid=f:55764.pdf)

[10] *New Jobs—Cleaner Air Employment Effects Under Planned Changes to the EPA's Air Pollution Rules,* Ceres and Political Economy Research Institute (Feb. 8, 2011) (online at http://thehill.com/images/stories/blogs/energy/ceres.pdf).

[11] U.S. Department of Commerce, International Trade Administration, *Environmental Technologies Industries: FY 2010 Industry Assessment* (online at http://web.ita.doc.gov/ete/eteinfo.nsf/068f3801d047f26e85256883006ffa54/4878b7e2fc08ac6d85256883006c452c/$FILE/Full%20Environmental%20Industries%20Assessment%202010.pdf).

B. *The Chairman has been criticized for overstating the costs of regulation.*

In his 170 letters to industry groups and others, the Chairman made several broad claims about the cumulative costs of regulations. For example, he wrote:

> In total, the administration estimated the cost, often referred to as the hidden tax, of the 43 new regulations to be approximately $28 billion, the highest single year increase in estimated burden on record, resulting in thousands of lost jobs. This new burden is on top of the $1.75 trillion estimated burden of existing regulations.

After reviewing the Chairman's letters, the *Washington Post* Fact Checker found that his claims were "problematic" because they focused exclusively on costs while ignoring benefits, and because his overall cost estimates were based on two "suspect" studies. The Fact Checker concluded: "Two Pinocchios for Issa."[12]

Specifically, the $1.75 trillion estimate of the aggregate costs of regulations was drawn from a report issued in 2010 commonly referred to as the "Crain and Crain report."[13] According to an analysis issued this week by the Center for Progressive Reform, the Crain and Crain report is fundamentally flawed. The analysis stated:

> The $1.75 trillion figure is a gaudy number that was sure to catch the ear of the media and the general public. Upon examination, however, it turns out that the $1.75 trillion estimate is the result of transparently unreliable methodology and is presented in a fashion calculated to mislead.[14]

Other analysts have also criticized the Crain and Crain report as "deeply problematic."[15]

The $28 billion estimate was derived from a report issued by the Heritage Foundation last October.[16] According to the *Washington Post* Fact Checker, this report double-counted certain costs and ignored benefits nearly ten times greater than the costs. The Fact Checker concluded:

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[12] *Is Obama Bad for Business?* Washington Post (Jan. 14, 2011) (online at http://voices.washingtonpost.com/fact-checker/2011/01/is_obama_bad_for_business.html).

[13] Nicole V. Crain and Mark W. Crain, *The Impact of Regulatory Costs on Small Firms* (Sept. 2010) (online at www.sba.gov/sites/default/files/rs371tot.pdf).

[14] Sidney A. Shapiro and Ruth Ruttenberg, *Setting the Record Straight: The Crain and Crain Report on Regulatory Costs* (Feb. 2011) (online at www.progressivereform.org/articles/SBA_Regulatory_Costs_Analysis_1103.pdf).

[15] *See* Winston Harrington, *Grading Estimates of the Benefits and Costs of Federal Regulation: A Review of Reviews* (Sept. 2006) (analyzing previous version of Crain report) (online at www.rff.org/documents/RFF-DP-06-39.pdf).

[16] James L. Gattuso, Diane Katz, and Stephen A. Keen, *Red Tape Rising: Obama's Torrent of New Regulation* (Oct. 26, 2010) (online at www.heritage.org/research/reports/2010/10/red-tape-rising-obamas-torrent-of-new-regulation).

Heritage estimates that fuel economy and emissions standards, jointly issued by the EPA and the National Highway Traffic Safety Administration, will cost $10.8 billion, but administration officials say that is the result of some double-counting; the OMB cost estimate of the same rules is just $3.7 billion. EPA, meanwhile, estimates that the benefits of these rules will amount to almost five times the cost, for a total of $240 billion for 2012-2016 model year vehicles.[17]

C. *The Committee sought input primarily from industry groups seeking to repeal regulations.*

The Committee sent letters primarily to industry and other groups that want to repeal regulations. For example, last year Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act.[18] This legislation made important improvements to restore accountability and transparency to the financial system and give consumers the confidence needed to create a strong economy. As stated in a *New York Times* editorial:

> Americans have paid for the financial crisis with their jobs, incomes, savings, investments and home equity, and with their faith in markets and in the government to protect them from harm. The new bill is a step toward redressing those losses and restoring that faith. Congress should pass it, and then do what must be done to ensure that it performs as advertised.[19]

The Chairman sent numerous letters to industry organizations that oppose provisions in the Wall Street Reform bill, including the Business Roundtable, ConocoPhillips, the Independent Petroleum Association of America, and Boeing. No letter was sent, however, to the Council of Institutional Investors, which supported these financial protections. The Council represents public, union, and corporate employee benefit funds. It has stated:

> The Council strongly supports Congress' comprehensive efforts to address the costly gaps in oversight revealed by the financial crisis. Accordingly, we firmly believe that strengthening corporate governance is an essential component of regulatory reform. The financial crisis represents a massive failure of board oversight. Clearly some corporate directors disregarded the interests of their shareholders by failing to adequately understand and monitor risk, and by awarding compensation packages producing outsized rewards for reckless behavior.[20]

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[17] *Is Obama Bad for Business?* Washington Post (Jan. 14, 2011) (online at http://voices.washingtonpost.com/fact-checker/2011/01/is_obama_bad_for_business.html).

[18] P.L. 111-203.

[19] *Financial Regulation*, New York Times (June 26, 2010) (online at http://www.nytimes.com/2010/06/27/opinion/27sun1.html).

[20] *Groups Express Support for the Dodd-Frank Wall Street Reform and Consumer Protection Act,* House Committee on Financial Services (June 29, 2010) (online at http://democrats.financialservices.house.gov/singlepages.aspx?NewsID=1320)

Similarly, on December 15, 2010, the Environmental Protection Agency (EPA) issued a finding that "elevated concentrations of greenhouse gases in the atmosphere may reasonably be anticipated to endanger the public health and to endanger the public welfare of current and future generations."[21] This finding was based on a decision by the U.S. Supreme Court on April 2, 2007, that greenhouse gases are pollutants under the Clean Air Act, and that EPA is required to determine whether they cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare.[22]

The Chairman sent multiple letters to industry organizations that object to EPA regulations aimed at controlling greenhouse gases, including the National Association of Manufacturers, the Business Roundtable, the Independent Petroleum Association of America, and ConocoPhillips. But no letters were sent, for example, to American Businesses for Clean Energy, which represents more than 60,000 small and large U.S. companies. This organization has stated:

> Despite its success, some in Congress are seeking to undermine EPA's authority to enforce the Clean Air Act, when they should instead focus on passing legislation that will create jobs and boost business opportunities for employers across the nation. Contrary to misleading claims from opponents of clean energy and environmental safeguards, reducing pollution is good for businesses, and the Clean Air Act has proven to be a wise investment for long-term economic growth.[23]

D. *The Committee's approach appears designed to obtain support for predetermined objectives.*

Rather than waiting for responses from the 170 industry and other organizations, the Chairman appears to have already determined which regulations should be repealed.

For example, on January 5, 2011, Chairman Issa joined four other Republicans in introducing H.R. 87, a bill that would repeal the entire Wall Street Reform bill.[24] Chairman Issa's position appears to be designed to achieve a goal of House Speaker John Boehner, who stated on July 15, 2010, that the bill "ought to be repealed."[25]

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[21] 74 Fed. Reg. 66496.

[22] *Massachusetts v. EPA,* 549 U.S. 497 (2007).

[23] Letter from American Businesses for Clean Energy *et al.* to President Obama and Members of the United States Senate and House of Representatives (Dec. 2010) (online at www.americanbusinessforcleanenergy.org/ckfinder/userfiles/files/CAA_Support_Letter.pdf).

[24] H.R. 87, A Bill to Repeal the Dodd-Frank Wall Street Reform and Consumer Protection Act (introduced Jan. 5, 2011) (online at http://thomas.loc.gov/cgi-bin/query/z?c112:H.R.87.IH:).

[25] *Boehner: Wall Street Reform Should be Repealed,* TPM (July 15, 2010) (online at http://tpmdc.talkingpointsmemo.com/2010/07/boehner-wall-street-reform-ought-to-be-repealed.php).

Similarly, Chairman Issa has already called on EPA to withdraw its finding relating to greenhouse gases, claiming on December 2, 2010, that the "suggestion that there is a scientific consensus on climate change is itself a myth."[26] He wrote an op-ed on March 4, 2010, alleging that, "under the Obama Administration, the EPA is a wrecking ball that is destroying jobs, putting more businesses under water and increasing government control over our everyday lives."[27] Rather than basing his conclusion on the responses to his recent letters, this position appears to be a coordinated campaign with the Republican leadership.[28]

False claims that regulations to protect consumers will kill jobs are not new. Henry Ford II said that requiring automakers to install seatbelts would mean, "We'll have to close down."[29] To the contrary, U.S. automakers thrived, and the National Highway Traffic Safety Administration estimates that seatbelts saved over 72,000 lives between 2005 and 2009.[30]

Similarly, in 1978, when the Consumer Product Safety Commission banned lead paint, home-builders and industry associations predicted that it would put manufacturers out of business.[31] Instead, a 2009 study on controlling lead hazards found that while the costs range from $1 billion to $11 billion, the savings range from $181 billion to $269 billion.[32]

E. ***The Committee needs to separate genuine reform proposals from self-serving advocacy that has little to do with creating jobs.***

Now that the responses to the Chairman's letters have been submitted, it is critical that the Committee examine them closely to determine whether they represent serious obstacles to

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[26] Press Release, *House and Senate Leaders Call for Withdrawal of EPA Endangerment Finding, Other Rules Based on Dubious Science Exposed by E-mails* (Dec. 2, 2009) (online at http://oversight.house.gov/index.php?option=com_content&task=view&id=411&Itemid=29).

[27] Rep. Darrell E. Issa, *EPA: Regulatory Mess, Economic Massacre*, RedState (Mar. 4, 2010) (online at http://www.redstate.com/darrell_issa/2010/03/04/epa-regulatory-mess-economic-massacre/).

[28] *See* Press Release, *House and Senate Leaders Call for Withdrawal of EPA Endangerment Finding, Other Rules Based on Dubious Science Exposed by E-mails* (Dec. 2, 2009) (online at http://oversight.house.gov/index.php?option=com_content& task=view&id=411&Itemid=29).

[29] The Pew Environment Group, *Industry Opposition to Government Regulation* (Oct. 2010) (online at www.usclimatenetwork.org/policy/resource-database/industry-fact-sheet-re-epa).

[30] U.S. Department of Transportation, National Highway Traffic Safety Administration, *Traffic Safety Facts* (Sept. 2010) (online at http://www-nrd.nhtsa.dot.gov/Pubs/811383.pdf).

[31] The Pew Environment Group, *Industry Opposition to Government Regulation* (Oct. 2010) (online at www.usclimatenetwork.org/policy/resource-database/industry-fact-sheet-re-epa).

[32] *Id.*

job creation that serve no public interest, or instead are self-serving requests from industry representatives that have little to do with job creation.

Many of the corporations that submitted responses to the Committee have had skyrocketing profits over the past several years. For example, from 2009 to 2010:

- ConocoPhillips' profits increased from $4.4 billion to $11.4 billion;[33]
- Boeing's profits increased from $1.3 billion to $3.3 billion;[34]
- American Express' profits increased from $2.1 billion to $4 billion;[35] and
- Chevron's profits increased from $10.5 billion to an astonishing $19 billion.[36]

Despite these soaring profits, many responses the Committee received included proposals that have little to do with creating jobs. For example, the first problematic regulation identified by ConocoPhillips in its response to the Committee is the requirement in the Wall Street Reform bill for oil companies and other "resource extraction issuers" to disclose to the Securities and Exchange Commission (SEC) their payments to foreign governments for access to oil, gas, and minerals.[37] Senator Richard Lugar was one of the primary proponents of this provision, stating on the Senate floor:

> The essential issue at stake is a citizen's right to hold its government to account. ... We cannot force foreign governments to treat their citizens as we would hope, but this amendment would make it much more difficult to hide the truth.[38]

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[33] ConocoPhillips, *ConocoPhillips Reports Fourth-Quarter Earnings of $2.0 Billion or $1.39 per Share* (Jan. 26, 2011) (online at www.conocophillips.com/EN/newsroom/news_releases/2011news/Pages/01-26-2011.aspx).

[34] Boeing, *Boeing Reports Fourth-Quarter 2010 Results and 2011 Guidance* (Jan. 26, 2011) (online at http://boeing.mediaroom.com/index.php?s=43&item=1596).

[35] American Express, *American Express Reports Fourth Quarter EPS of $0.88, up 47% From a Year Ago; Cardmember Spending at Record Levels and Credit Quality Continues to Improve* (Jan. 24, 2011) (online at http://about.americanexpress.com/news/pr/2011/4q10.aspx).

[36] Chevron, *Chevron Reports Fourth Quarter Net Income of $5.3 Billion, Up From $3.1 billion in Fourth Quarter 2009* (Jan. 28, 2011) (online at www.chevron.com/articledocuments/latest/news_204049/646f437d-e4ce-470f-8665-7e496a508d3b/earnings_28January2011.pdf.cvxn).

[37] Letter from Red Cavaney, Senior Vice President, ConocoPhillips to Rep. Darrell E. Issa, Chairman, House Committee on Oversight and Government Reform (Jan. 5, 2011) (online at www.scribd.com/doc/48422614/Pages-1205-1512-Submissions-to-Darrell-Issa-regarding-Federal-Regulation-February-7-2011).

[38] Senator Richard Lugar, Congressional Record, at S3816 (May 17, 2010).

ConocoPhillips provided no explanation for why this information should be kept secret or how it negatively impacts job growth.

Similarly, Boeing wrote to the Committee to oppose the program established by the Wall Street Reform bill to encourage whistleblowers to report securities violations to the SEC. Harry Markopolos, a Certified Fraud Examiner who blew the whistle on the Bernard Madoff scandal, testified in support of creating a strong whistleblower program. He stated: "Whistleblower tips were 13 times more effective than external audits, hence my recommendation to the SEC to encourage the submission of whistleblower tips."[39] Although Boeing claimed this program "threatens to overwhelm the Commission with an avalanche of tips and complaints," it provided no data on how it would eliminate jobs.[40]

In another response to the Committee, the Business Roundtable, an association of CEOs of corporations with nearly $6 trillion in annual revenues, wrote to object to a provision in the Wall Street Reform bill that requires companies to disclose the total annual compensation of CEOs and the ratio of pay between CEOs and the median compensation of company employees.[41] The only explanation the Business Roundtable provided was that this requirement could "potentially cause companies to take actions that result in less employment, such as outsourcing to produce better ratios."[42]

The Business Roundtable also objected to a provision in the Wall Street Reform bill that allows for the return of bonuses when corporate earnings are inflated, stating that this provision "will interfere with the ability of boards of directors to hire, retain and motivate the most qualified senior management teams to produce growth and jobs."[43]

Finally, the National Association of Manufacturers wrote to the Committee to object to a provision in the Consumer Product Safety Improvement Act of 2008 that establishes a publicly available, searchable product safety information database for parents and others to conduct

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[39] Senate Committee on Banking, Housing, and Urban Affairs, Testimony of Harry Markopolos, *Oversight of the Securities and Exchange Commission's Failure to Identify the Bernard L. Madoff Ponzi Scheme and How to Improve SEC Performance*, 111th Cong. (Sept. 10, 2009).

[40] Letter from Tim Keating, Senior Vice President, Government Operations, Boeing, to Rep. Darrell E. Issa, Chairman, House Committee on Oversight and Government Reform (Jan. 11, 2011) (online at www.scribd.com/doc/48350679/Boeing-Letter-to-Chairman-Issa-January-11-2011).

[41] Letter from Larry Burton, Executive Director, Business Roundtable, to Rep. Darrell E. Issa, Chairman, House Committee on Oversight and Government Reform (Jan. 7, 2011) (online at http://businessroundtable.org/news-center/response-to-chairman-issas-request-for-policy-positions-on-existing-and-pro).

[42] *Id.*

[43] *Id.*

research into complaints about specific products. As one mother who lost her child because of a defective crib stated:

> If I read on a database about the children who died in the crib I purchased, I could have reasoned that the design was unsafe. ... My son would be alive today if I would have known that drop side cribs kill.[44]

The National Association of Manufacturers asserted that the "database will be filled with bogus reports inspired by political or financial motives rather than safety."[45] The organization's response did not refer to protections established for manufacturers, including advance notice of complaints and an opportunity to challenge their validity. The association's response also did not explain how this database would eliminate jobs.

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[44] Public Comment submitted by Michele Witte, Publicly Available Consumer Product Safety Information Database (July 13, 2010) (CPSC-2010-0041).

[45] Letter from Jay Timmons, Executive Vice President, National Association of Manufacturers to Rep. Darrell E. Issa, Chairman, House Committee on Oversight and Government Reform (Jan. 7, 2011) (online at www.scribd.com/doc/47490494/National-Association-of-Manufacturers-Letter-to-Chairman-Issa-January-7-2011-Via-TPM).