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CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

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SUPPLEMENTAL MEMORANDUM

January 26, 2010

To: Democratic Members of the Subcommittee on Oversight and Investigations

Fr: Henry A. Waxman, Ranking Member, and Diana DeGette, Subcommittee Ranking Member

Re: Supplemental Information on Regulations and Jobs

At today's hearing, one issue that may be discussed is the relationship between regulations and jobs and economic growth. The Republican Policy Conference has accused the Obama Administration of "unilaterally and arbitrarily writ[ing] job-killing regulations," claiming that the Administration "seems intent on fulfilling a radical environmental agenda, while destroying jobs."[1] Chairman Fred Upton has asserted that "burdensome regulations are stifling investment and chasing jobs overseas."[2]

Efforts to demonize the regulatory process are not new. Beginning in 1995, the last time Republicans took control of the House, their agenda included efforts to undermine important regulations to protect American families and the environment. At the time, Republicans claimed that a doctor was fined by the Department of Health and Human Services for changing a light bulb without proper certification and training; that the Consumer Product Safety Commission required buckets to have holes in them to prevent drowning; and that the Occupational Safety

[1] Republican Policy Conference, *Obama Administration's EPA Assault on American Jobs* (Aug. 12, 2010) (online at www.gop.gov/policy-news/10/08/12/obama-administrations-epa-assault-on).

[2] House Committee on Energy and Commerce, Press Release, *In Wake of Executive Order, Energy and Commerce Subcommittee on Oversight and Investigations to Examine Administration's Regulatory Reforms WEDNESDAY* (Jan. 21, 2011) (online at www.energycommerce.house.gov/news/PRArticle.aspx?NewsID=8158).

and Health Administration "killed the tooth fairy" by requiring that baby teeth be treated as hazardous waste.[3] All of these claims – and many others – were subsequently shown to be false.

This year, Republicans are claiming that regulations destroy jobs. In fact, the opposite is often the case: the absence of responsible regulation can lead to job loss and significant economic costs. This supplemental memorandum describes three examples where the absence of regulations harmed or is harming our economy: (1) the financial collapse in 2008; (2) the Deepwater Horizon oil spill; and (3) the failure to establish comprehensive energy and climate regulations. The magnitude of the adverse economic impacts caused by the absence of regulation in these examples dwarfs any positive economic impacts that have been demonstrated from rolling back regulations.

Because much of the focus of the recent Republican rhetoric is aimed at the Environmental Protection Agency and, in particular, new regulations proposed under the Clean Air Act, this memorandum also includes a discussion of the economic benefits realized through clean air regulations.

I. The 2008 Wall Street Collapse

In the fall of 2008, the financial markets in the United States collapsed. This collapse cost U.S. taxpayers and investors billions of dollars and had a devastating effect on jobs and the economy.

The recession caused by the financial collapse resulted in a loss of over eight million jobs.[4] It caused the unemployment rate to increase from 4.4% in 2007 to 10.1% in 2009.[5] Hundreds of billions of taxpayer dollars were provided to AIG and Wall Street banks to save them from collapse.

The Committee on Oversight and Government Reform held a series of hearings in 2008 on the global financial crisis. These hearings and other investigations showed that the financial collapse – and the millions of jobs lost as a result – was due to the failure of regulators to protect the public and financial markets.

On October 23, 2008, Chairman Henry Waxman chaired a hearing entitled "The Financial Crisis and the Role of Federal Regulators."[6] Former Federal Reserve Chairman Alan

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[3] House Government Reform Committee, *Factsheet: False Republican Claims in the Small Business Paperwork Reduction Debate* (1995).

[4] Bureau of Labor Statistics, *Employment, Hours, and Earnings from the Current Employment Statistics survey (National)* (Jan. 2008 – Feb. 2010).

[5] Bureau of Labor Statistics, *Labor Force Statistics from the Current Population Survey* (online at data.bls.gov/pdq/SurveyOutputServlet?data_tool=latest_numbers&series_id=LNS14000000).

[6] House Committee on Oversight and Government Reform, *The Financial Crisis and the Role of Federal Regulators,* 110th Cong. (Oct. 23, 2008) (110-209).

Greenspan, Chairman of the Securities and Exchange Commission Christopher Cox, and former Secretary of the Treasury John Snow provided testimony.[7] This hearing identified numerous areas where regulators could have intervened at early stages to prevent the financial practices that caused the economic meltdown. The Federal Reserve had the authority to stop the lending practices that fueled the subprime mortgage market, but Chairman Greenspan refused to regulate the industry. In 1994, Congress passed the Home Ownership Equity Protection Act. This law gave the Federal Reserve the authority to prohibit acts or practices "associated with abusive lending practices, or . . . otherwise not in the interest of the borrower."[8] Chairman Alan Greenspan never used this authority to regulate subprime loans.

The SEC relaxed its "net capital rule" in 2004 allowing investment banks to increase their leverage ratios to 33 to 1.[9] The Treasury Department opposed legislative efforts to require transparency and oversight in the market for derivatives.[10] The Offices of Thrift Supervision and the Comptroller of the Currency prevented states from protecting homebuyers from predatory lending.[11]

Allowing the market to regulate itself enabled the financial collapse. Former Chairman Greenspan admitted: "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."[12]

Christopher Cox, Chairman of the Securities and Exchange Commission, echoed the need for more and better regulation of the financial industry, noting areas where new regulatory authority was needed:

> There are significant regulatory holes, significant regulatory gaps . . . . We have seen them, for example, with respect to the fact there is no statutory regulation whatsoever anywhere in the system for investment bank holding companies. We've seen it with respect to credit default swaps, a $58 trillion market with no regulator. There has been allusion made to the fact that in the mortgage brokerage market there is not adequate regulation. And certainly with respect to the multi-trillion dollar market in municipal securities, there is—the SEC and no one has any authority just to require disclosure to investors of what they're

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[7] *Id.*

[8] 15 U.S.C. § 1639.

[9] *Agency's '04 Rule Let Banks Pile Up New Debt*, New York Times (Oct. 3, 2008).

[10] Letter to Senator Michael Crapo and Senator Zell Miller from John Snow, Secretary, Department of Treasury, William Donaldson, Chairman, U.S. Securities and Exchange Commission, Alan Greenspan, Chairman, Board of Governors of the Federal Reserve System, and James Newsome, Chairman, Commodity Futures Trading Commission (June 11, 2003).

[11] *See* 12 C.F.R. § 560.2 and 12 C.F.R. § 34.3.

[12] House Committee on Oversight and Government Reform, *The Financial Crisis and the Role of Federal Regulators,* 110th Cong. (Oct. 23, 2008) (110-209) at 45.

getting.[13]

Former Treasury Secretary John Snow was questioned about the anti-regulation sentiment that pervaded the Treasury Department during the Bush Administration. Mr. Snow indicated that his views on deregulation had changed following the financial meltdown. Mr. Snow stated: "We know we have to regulate financial markets. It's the matter of getting, I think as the chairman said, smart regulation, targeted, effective regulation."[14]

The TARP Congressional Oversight Panel summarized the regulatory failures that resulted in the 2008 financial crisis:

> After fifty years without a financial crisis – the longest such stretch in the nation's history – financial firms and policy makers began to see regulation as a barrier to efficient functioning of the capital markets rather than a necessary precondition for success. . . . The present regulatory system has failed to effectively manage risk, require sufficient transparency, and ensure fair dealings. . . . Had regulators given adequate attention to even one of the three key areas of risk management, transparency and fairness, we might have averted the worst aspects of the current crisis.[15]

II. The Deepwater Horizon Blowout and Oil Spill

On April 20, 2010, an explosion occurred on the Deepwater Horizon oil drilling rig at BP's Macondo well in the Gulf of Mexico. The rig was destroyed. Eleven people died and fifteen more were injured. More than four million barrels of oil gushed into the Gulf before the Macondo well was capped on July 15, 2010.

The economic and environmental impacts of this massive oil spill were catastrophic for the Gulf Coast states of Alabama, Florida, Louisiana, Mississippi, and Texas. The economy of the Gulf Coast depends heavily on the fishing and tourism industries, both of which were ravaged by the spill. Fisheries and oyster grounds in state and federal waters were closed. At the peak of the closures, 37% of the Gulf federal fishing zone was off-limits to all fishing.[16] The Gulf seafood industry suffered significant damage as a result of the public concern that Gulf seafood was not safe to eat.[17] Hotel, restaurant, and other tourism revenues also dropped.[18] In May 2010, the Federal Reserve Bank of Atlanta estimated that over 132,000 Gulf Coast jobs

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[13] *Id.* at 65.

[14] *Id.* at 92-3.

[15] Congressional Oversight Panel, *Special Report on Regulatory Reform* (Jan. 2009).

[16] National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, *Deepwater: The Gulf Oil Disaster and the Future of Offshore Drilling* 140 (Jan. 2011).

[17] *Id.* at 185, 188.

[18] *Id.* at 185.

were at risk as a result of the oil spill, mostly in the accommodation and food services industry.[19] Over 125,000 Gulf Coast residents claimed economic losses, including lost jobs and property damage.[20] In June 2010, it was estimated that property value losses along the Gulf Coast could total $4.3 billion.[21] Moreover, a rich ecosystem was damaged by the unprecedented spill as wildlife died or was oiled, and marshes were polluted.[22] The long-term ecological consequences of the spill are currently unknown.

This economic and environmental devastation did not result from excessive government regulation. On the contrary, the lack of effective federal regulation and oversight was a primary cause of the oil spill.

In 2010, the Energy and Commerce Committee's Subcommittee on Oversight and Investigations held four hearings on the explosion and oil spill.[23] The Subcommittee found that significant regulatory gaps increased the risk of a disaster. For example, there was no federal requirement that a blowout preventer, the rig's failsafe device, have redundant techniques to seal the well pipe in case of a well blowout. There also was no requirement that oil companies test the emergency systems of their blowout preventers. If the blowout preventer at the Macondo well had functioned properly, the Gulf oil spill could have been avoided. But the commonsense regulations necessary to ensure that the blowout preventer would function when it was needed did not exist. BP used a risky well design and failed to perform critical tests of well safety – and was able to do because there were not adequate regulations in place to ensure safe drilling.

The Subcommittee's findings regarding weak regulation and oversight were echoed by the investigation and report of the bipartisan National Commission on the BP Deepwater Horizon Oil Spill. The Commission pointed to "the inherent risks of decades of inadequate

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[19] Federal Reserve Bank of Atlanta, Macroblog: Estimating the Oil Spill's Impact in the Gulf (May 10, 2010) (online at macroblog.typepad.com/macroblog/2010/05/estimating-the-oil-spills-impact-in-the-gulf.html).

[20] National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, *Deepwater: The Gulf Oil Disaster and the Future of Offshore Drilling* 185 (Jan. 2011).

[21] *Oil Spill May Cost $4.3 Billion in Property Values,* Bloomberg (June 11, 2010).

[22] National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, *Deepwater: The Gulf Oil Disaster and the Future of Offshore Drilling* 174 (Jan. 2011).

[23] House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, *Inquiry into the Gulf Coast Oil Spill* (May 12, 2010); House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, *Local Impact of the Deepwater Horizon Oil Spill* (June 7, 2010); House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, *The Role of BP in the Deepwater Horizon Explosion and Oil Spill* (June 17, 2010); and House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, *The Role of the Interior Department in the Deepwater Horizon Disaster* (July 20, 2010).

regulation" as a contributing factor in the Gulf oil spill.[24] It found that the increased risks associated with drilling in deeper waters "were not matched by greater, more sophisticated regulatory oversight" and that federal "regulations were inadequate to address the risks of deepwater drilling."[25] According to the Commission, "[m]any critical aspects of drilling operations were left to industry to decide without agency review."[26]

According to the Commission, "there was no requirement, let alone protocol, for a negative-pressure test [of the cement integrity], the misreading of which was a major contributor to the Macondo blowout. Nor were there detailed requirements related to the testing of the cement essential for well stability."[27] The Commission also found that "[t]he limited scope of the regulations is partly to blame" for the absence of a full assessment of the risks of BP's procedure for temporarily abandoning an exploratory well like the Macondo well before returning later to begin commercial production.[28] Furthermore, the federal agency that was supposed to regulate offshore drilling saw its resources diminish at the same time deepwater drilling operations began booming in the mid-1990s. The Commission explained: "Precisely when the need for regulatory oversight intensified, the government's capacity for oversight diminished."[29]

III. The Absence of Energy and Climate Regulations

A prominent Republican example of "job-killing" regulation is regulation to reduce carbon emissions and promote clean energy. In fact, however, the reverse is true. It is the absence of comprehensive energy and climate regulations – and the economic uncertainty that this creates – that is deterring billions of dollars in private sector investments.

At the first hearing held last Congress by the Energy and Commerce Committee, nine CEOs and senior executives from some of the nation's leading manufacturing and energy companies testified about the job-promoting effects that would result if Congress passed comprehensive energy legislation. Jim Rogers, Chairman, President and Chief Executive Officer of Duke Energy testified:

> And let me quickly say, for our company, we plan to invest $25 billion in infrastructure over the next 5 years. It is critical we know the rules of the road of climate change as soon as possible to make sure that we are making the right investments. Regulatory uncertainty is postponing investments and renewables in other green technologies. It's postponing the creation of jobs from apprentices to engineers to Ph.Ds. Our one fear –

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[24] National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, *Deepwater: The Gulf Oil Disaster and the Future of Offshore Drilling* 56 (Jan. 2011).

[25] *Id.* at 56, 126.

[26] *Id.* at 126.

[27] *Id.* at 126.

[28] *Id.* at 127.

[29] *Id.* at 75.

and I will leave this with you – is that many in Congress will look for reasons to postpone action on climate legislation this year.[30]

Jeffrey Immelt, Chairman and Chief Executive Officer of General Electric, was recently asked by President Obama to join the President's Economic Recovery Advisory Board. At the Energy and Commerce hearing last Congress, he testified:

> Certainty in the investment world is critical to success. And what we lack today is certainty in terms of what is going to happen and when it is going to happen. . . . [T]oday, we have almost the worst of all worlds. We have 17 States that are developing their own programs. We have RPS in some areas, not in others. The fact is that the last 40-plus coal plants haven't been permitted. You know, so we have an energy policy, it is just that nobody knows what it is. And it shows up in terms of those consequences. So, look, I am not – I say this with great respect to my colleagues – I didn't come to this as an environmentalist. I come to it as an industrialist. I am a capitalist, pure, plain and simple. And I just think the system we have today is untenable over the long term, insofar as, you know, the science is so compelling on global warming.[31]

David Crane, President and Chief Executive Officer of NRG Energy, told the Committee:

> If climate change legislation is passed . . . the first thing it will do is it will unleash additional investment by us in various technologies designed to prepare for the cap-and-trade system that is coming. So, you know, this may be counterintuitive, but I think quite the contrary, in the near term it will actually unleash investment and create jobs. And we and many of the companies that sit here, we have very substantial capital. I think my company and Jeff's are the two smallest at this panel. We sit with $1.5 billion in investment capital ready to invest, but we need to know in what direction.[32]

Steve Kline, vice president of corporate environmental and federal affairs for PG&E Corporation stated:

> We also see an incredible lost opportunity if we don't act now . . . there are these amazing, developing new technology centers across the United States, and we see those jobs going overseas and that technology superiority going overseas. And so, in terms of our service territory, where Silicon Valley is putting a lot of time and energy into these technologies, we are going to lose that if we don't act now.[33]

According to these corporate leaders, an energy policy that provides certain support for clean energy and regulatory obligations for global warming pollution would be a major

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[30] House Committee on Energy and Commerce, *The U.S. Climate Action Partnership,* 111th Cong. (Jan. 15, 2009).

[31] *Id.*

[32] *Id.*

[33] *Id.*

economic boost for the nation. It is the continued absence of clear rules and the uncertainty that is creates that is deterring energy sector investment.

IV. The Clean Air Act and Economic Growth

The Clean Air Act is widely recognized as one of the most successful environmental laws in American history. It was enacted in 1970, with strong bipartisan support, to protect public health from the ravages of air pollution. The Act was significantly strengthened in 1977 and 1990, again with strong bipartisan support. Over the past 40 years, the Clean Air Act has produced tremendous public health benefits, while supporting America's economic growth.

Since its adoption, the Clean Air Act has reduced key air pollutants by 60%, while at the same time the economy grew by over 200%.[34] From 1990 to 2008 alone, the Clean Air Act reduced key air pollutants by over 40%, as the economy grew by almost 65%.[35]

These pollution reductions save lives and improve public health, particularly among children and senior citizens. A peer-reviewed EPA analysis estimates that in 2010 alone, the Clean Air Act prevented over 160,000 premature deaths, 130,000 cases of heart disease, and 1.7 million asthma attacks, as well as 86,000 hospital admissions and millions of respiratory illnesses.[36] In 2010, the Clean Air Act also avoided over 3 million lost school days and 13 million lost work days, allowing our children to be better educated and making our workers more productive.[37]

The benefits of Clean Air Act programs outweigh the costs of clean-up, often by substantial margins, which means that our economy as a whole is strengthened by implementing these requirements. For example, the benefits of the acid rain program are estimated to outweigh the costs by 40:1.[38] The programs to clean up vehicles and fuels will produce an estimated $16 in benefits for every $1 in costs when fully implemented in 2030.[39] By 2020, the economic benefit of reducing air pollution is estimated at almost $2 trillion dollars.[40]

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[34] U.S. Environmental Protection Agency, *Air Quality Trends* (online at www.epa.gov/airtrends/images/comparison70.jpg) (updated Jan. 6, 2011).

[35] U.S. Environmental Protection Agency, *Our Nation's Air, Status and Trends through 2008* 7 (Feb. 2010) (online at www.epa.gov/airtrends/2010/report/airpollution.pdf).

[36] U.S. EPA, Office of Air and Radiation, *TheBenefits and Costs of the Clean Air Act: 1990 to 2020, Revised Draft Report,* 5-22 (Aug. 2010) (online at: http://www.epa.gov/oar/sect812/aug10/fullreport.pdf).

[37] *Id.*

[38] Lauraine G. Chestnut, David M. Mills, A Fresh Look at the Benefits and Costs of the US Acid Rain Program, 77 *Journal of Environmental Management* 252, 265 (2005).

[39] U.S. Environmental Protection Agency, *The Clean Air Act - Highlights of the 1990 Amendments*, (Sept. 14, 2010) (online at epa.gov/oar/caa/CAA_1990_amendments.pdf).

[40] U.S. Environmental Protection Agency, Office of Air and Radiation, *The Benefits and Costs of the Clean Air Act: 1990 to 2020, Revised Draft Report* 5-22 (Aug. 2010) (online at: www.epa.gov/oar/sect812/aug10/fullreport.pdf).

The Clean Air Act has also stimulated important sectors of the economy. The U.S. environmental technologies industry has grown dramatically with the implementation of the Clean Air Act and other environmental laws. In 2008, the industry generated approximately \$300 billion in revenues and \$44 billion in exports, and supported nearly 1.7 million jobs.[41] These include high-technology jobs in engineering and computer-aided design, as well as manufacturing and transportation. Installation of pollution controls produces construction jobs that cannot be outsourced. For example, Clean Air Act regulations mandating improved technology resulted in a 35% increase in U.S. boilermaker's sales between 1999 and 2001.[42] Implementation of just one Clean Air Act rule, the Clean Air Interstate Rule, has produced an estimated 200,000 jobs, according to the Institute for Clean Air Companies.[43]

The lesson of Clean Air Act regulations is that cleaner air, a healthier population, and technology improvements that result in a stronger economy go hand-in-hand.

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[41] U.S. Department of Commerce International Trade Administration, *Environmental Technologies Industries: FY2010 Industry Assessment* (online at http://web.ita.doc.gov/ete/eteinfo.nsf/068f3801d047f26e85256883006ffa54/4878b7e2fc08ac6d85256883006c452c/$FILE/Full%20Environmental%20Industries%20Assessment%202010.pdf).

[42] U.S. Environmental Protection Agency, *The Clean Air Act - Highlights of the 1990 Amendments*, (Sept. 14, 2010) (online at epa.gov/oar/caa/CAA_1990_amendments.pdf).

[43] Institute of Clean Air Companies, *Reply to Senator Thomas Carper* (Nov. 3, 2010) (online at www.icac.com/files/public/ICAC_Carper_Response_110310.pdf).