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National Academy of Public Administration

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The National Academy of Public Administration

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Preface

It is generally recognized that Congress is taking an increasingly active part in the day-to-day operations of federal agencies, and its actions materially affect the effectiveness of agency performance. This congressional involvement is nowhere more visible than through its oversight role -- the subject of this report.

Congressional oversight of the Executive Branch should have as a primary objective the efficient use of public resources and the effective achievement of public purposes. This study examines how congressional oversight can be improved in this regard and at the same time satisfy Congress' interest in closely monitoring implementation of the laws it enacts. The oversight of selected regulatory agencies provides an excellent focus for this examination.

This report addresses three questions: What constitutes effective oversight? How does Congress go about its oversight activities? What can Congress, the president, and administrative officials do to ensure that oversight is less adversarial, does not stymie administration, and accommodates the needs of both branches?

The fundamental conclusion of the report is that the key to effective oversight is balance. Congress and the Executive Branch work best when the relationship is neither excessively antagonistic nor overly cozy. Congress needs to balance ad hoc oversight with independent, systematic, and long-term analysis of laws and programs. Executive agencies need to recognize the legitimacy of Congress' oversight role and work constructively to satisfy it. The recommendations in this report are aimed at fostering more effective executive-legislative relations.

I would like to thank the William & Flora Hewlett Foundation for providing the resources which permitted the Academy to explore this important issue. With the arrival of a new adminstration and Congress, executive-legislative relations will take on renewed emphasis. It is our hope that the report will be of value at both ends of Pennsylvania Avenue in making the oversight process work better.

Ray Kline
President

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REPORT SUMMARY

Congressional oversight of government programs is an essential part of the separation of powers concept embodied in the Constitution and it consumes large amounts of congressional and agency time and resources. While there is inherent tension in the process, friction is even greater during periods in which different parties control the White House and one or both houses of Congress.

More than a decade has passed since Congress last conducted a comprehensive examination of how it conducts oversight. Major changes have occurred in the meantime. For example, in 1983, the Supreme Court ruled unconstitutional the legislative veto, an important tool for monitoring regulatory activity. Since then, Congress has sought other means to monitor agencies and to ensure that administrative decision-making is consistent with legislative intent.

Purpose of the Academy Study

This report by a panel of the National Academy of Public Administration discusses congressional oversight, especially as applied to federal regulatory programs.

It examines the way Congress performs this role by focusing on three questions:

-- What constitutes effective oversight?
-- How does Congress go about its oversight activities?
-- What can Congress, the president, and administrative officials do to improve the way oversight takes place and to reduce the level of conflict while accommodating the needs of both branches?

Consistent with the Academy's public management charter, the panel judged oversight as "effective" if it contributed to better laws, improved program performance, or enhanced compliance with existing laws. The report relies on examples of the oversight of regulatory agencies, but many of the conclusions and recommendations are relevant to the oversight of other kinds of agencies as well.

Oversight Problems and Limitations

While congressional oversight has led to major legislative initiatives, for example, airline deregulation and environmental statutes, it is also criticized as ad hoc and more geared to garnering media attention than providing guidance to public managers. Oversight initiatives have limited impact on the executive branch, since there is usually little follow-up on initial efforts. High congressional staff turnover exacerbates the difficulties of acheiving a lasting impact.

Oversight has been particularly controversial for the newer "social" regulatory agencies that deal with environmental, health, safety and consumer regulation. These agencies have broad statutes whose provisions delegate much

discretion to agencies to make basic policy choices. These statutes have not yet matured into generally accepted standards for private conduct and agency jurisdiction and powers. Thus, the political environment in which these agencies function is often contentious, and complaints of over-regulation by the regulated industries collide with demands by public interest groups for more regulation.

The report discusses examples of the two kinds of regulatory agencies and their oversight experiences. The Environmental Protection Agency provides the principal focus. The newness of environmental statutes, the uncertainty about their consequences, the lack of consensus over priorities, and the great costs imposed on the regulated industries all come together to make congressional-agency relations in this case very difficult. Two other agencies--the Federal Trade Commission and the Securities and Exchange Commission--provide contrasting examples of oversight relationships which have existed over longer periods.

The panel concluded that oversight, like any other activity, will fall short of expectations. Nevertheless, Congress, the president, OMB, and regulatory agencies can take a number of steps that hold promise for improvement.

Panel Recommendations

Central to all of the Academy panel's recommendations is the recognition that oversight is more effective if there is bipartisan agreement on what oversight is to be performed and the results to be achieved, and if agencies accept Congress as a partner in the policy-making process.

The panel thus recommends the following:

1) **Congress and the executive should seek to develop a balance in their oversight relationships that avoids excessive antagonism, at the one extreme, or capture at the other. Oversight relationships must be sufficiently adversarial to ensure that programs are scrutinized and evaluated, but must be sufficiently accommodating to permit efficient and effective government.** (See p. 43.)

2) **Congress should determine whether there should be a regulatory review process in OMB and, if so, prescribe by statute the scope, limits, and procedures to be followed. OMB should ensure that members of Congress are able to monitor its review of agencies so that misunderstandings and conflicts are minimized.** (See p. 44.)

3) **Congress should ensure that regulatory statutes strike a balance between detailed provisions and the need for administrative discretion. Statutes should make the basic policy choices concerning the risks, benefits, and costs of regulatory alternatives.** (See p. 44.)

4) **Congress should set performance goals for regulatory programs that provide a better match between those goals and the resources likely to be available for implementation. Similarly, the executive branch should suggest to Congress ways of better matching goals and resources.** (See p. 44.)

5) **Congress should increase oversight which evaluates the appropriateness of regulatory statutes and the effectiveness of administrative procedures to implement them. While, on occasion, ad hoc oversight may be the only feasible approach, Congress needs to concentrate on a systematic, long-term analysis of laws and programs. Ad hoc oversight should be integrated with this work.** (See p. 45.)

6) **Each Congress should approve by resolution an oversight agenda of comprehensive, rotating examinations of regulatory legislation and its implementation. Agencies should be required to submit their analyses of the appropriateness of relevant statutes, their capacity to carry out their mandates, and any recommendations for amendments.** (See p. 45.)

7) **Congress should resist the use of the appropriations process to make substantive changes in agencies' authority or structure and, instead, make such changes through authorizing legislation. If, nonetheless, appropriations riders are used, the appropriations and authorization committees should endeavor to agree on any desirable amendments to the underlying statute before the next year's appropriations are enacted.** (See p. 46.)

8) **Congress should revise its process for funding its committees' oversight operations so that a significant proportion of resources is allocated in response to committee proposals for systematic evaluation of specific statutes, agencies, and programs.** (See p. 46.)

9) **In each committee, the chair and subcommittee chairs, ranking minority members, and their top staffs should meet at the beginning of each session of Congress to establish a formal oversight agenda, including a schedule of programs to be reviewed, and the assignment of subcommittee and staff responsibilities.** (See p. 47.)

10) **Chairs and ranking minority members of committees and subcommittees that share jurisdiction over agencies should consult with each other and with the leadership of each house at the beginning of each session to coordinate respective agendas accordingly.** (See p. 47.)

11) **At the beginning of each Congress, committee and subcommittee chairs and ranking minority members from both chambers should meet with the agency heads under their jurisdiction to exchange views about those areas of agency activity that should be the focus of specific oversight efforts or additional congressional direction. The committee leadership should consult also with groups affected by or otherwise interested in the relevant agencies.** (See p. 47.)

12) **Congress should encourage coordination of and follow-up to oversight activities by requiring that: committees or subcommittees prepare a report for each oversight project; agencies be required to inform the committee of actions taken or planned on recommendations; and those reports and agency responses be circulated to all relevant House and Senate committees.** (See p. 47.)

13) **Committees should encourage staff members to develop a thorough understanding of the agencies for which they are responsible, establish more executive-legislative staff exchange programs, and recruit individuals with executive branch experience for staff positions.** (See p. 48.)

14) **Committee and subcommittee chairs and ranking minority members should meet more regularly with GAO officials to help establish the committee's oversight agenda and coordinate the activities of the committee staff and the GAO.** (See p. 48.)

15) **Congress should ensure that agencies engage in more thorough, systematic, and comprehensive evaluations of the programs they administer by: earmarking funds for program evaluation; providing in authorizing statutes criteria by which to measure program effectiveness; and setting deadlines for submitting evaluation reports to committees.** (See p. 49.)

16) **The next president should take steps to foster good communication and cooperation by OMB and the regulatory agency officials with Congress in monitoring the implementation of regulatory statutes, including emphasis on the need for compliance with the spirit and letter of the laws.** (See p. 50.)

17) **Agencies themselves should ensure good cooperation and communication with the Congress and full compliance with enabling statutes. They should make suggestions for: areas of agency activity and statutes that would benefit from oversight proceedings; needed statutory improvements; and priorities for regulatory actions. Agencies should also seek budgets sufficient to achieve the tasks Congress has delegated to them.** (See p. 50.)

18) **Agencies should keep congressional committees fully informed of all major regulatory initiatives, including regulations, major enforcement actions, and any significant departures from past administrative or regulatory practices.** (See p. 50.)

CHAPTER ONE

INTRODUCTION

Oversight is central to Congress' constitutional responsibilities, and it should be effective in assuring that the executive branch implements laws as enacted by Congress. Requiring agencies to defend and explain their actions to congressional overseers can provide incentives for good administrative practices. Vigorous and effective oversight can serve as an independent check on the implementation of public policies and help mitigate the effects of the "iron triangles" of congressional-agency-interest group influences and accommodations that are inimical to open and pluralistic government.

Because it reaches nearly every government function and agency, oversight consumes large amounts of congressional time and resources. One recent study provides an overview of the level of oversight activity in Congress: in 1961, 8.2 percent (146 days) of the hearings and meetings of congressional committees between January 1 and July 4 (excluding those of Appropriations, Rules, Administration, and joint committees and reauthorization hearings of all committees) were described as "review of administrative actions." The percentage had increased only slightly to 9.1 percent (187 days) by 1971, but jumped to 18.0 percent (459 days) in 1975 and 25.2 percent (587 days) in 1983 (Aberbach, forthcoming). These figures represent only part of the total oversight effort of Congress; reauthorization hearings, informal meetings, letters and telephone calls between congressional staff and agency personnel, and other congressional activities constitute oversight as well.

In an era in which one or both houses of Congress may be controlled by a party other than the president's, oversight becomes more adversarial, as members of one party use it to score points against officials representing the other party. Even in times when the same party controls the executive and legislative branches, the separation of powers results in considerable tension between them as they compete for influence in and control over agency activities.

The Supreme Court's 1983 ruling against the legislative veto (INS v. Chadha, 462 U.S. 919) limited Congress' use of one of its preferred oversight tools, and led Congress to combine grants of discretionary authority with other means of holding executive officials accountable for their actions. Other recent Supreme Court decisions in separation of powers cases have called into question additional compromises which Congress and the executive have developed for sharing power.

The Court struck down in 1986 the Gramm-Rudman-Hollings Deficit Reduction Act's trigger mechanism, arguing that the Constitution "does not contemplate an active role for Congress in the supervision of officers charged with the execution of the laws it enacts" and that "once Congress makes its choice in enacting legislation, its participation ends" (Bowsher v. Synar, 106 S. Ct. 3181). The Court rejected congressional participation in appointing officials to the Federal Election Commission in 1976 (Buckley v. Valeo, 424 U.S. 1), and there are pending cases challenging the constitutionality of independent regulatory commissions and guidelines for criminal sentences formulated by the U.S. Sentencing Commission.

Not all challenges to congressional oversight take place in the courtroom. Since the beginning of the Reagan administration, some members of Congress have charged that certain agency heads have sought to depart from existing interpretations of statutory authority and impose new public policy directions (U.S. House of Representatives, Committee on Energy and Commerce, 1985; U.S. Senate, Committee on Governmental Affairs, 1986). Presidential appointees such as Anne Burford and James Watt were seen as particularly visible examples of interpreting executive authority in ways that conflicted with congressional expectations.

Differing congressional/executive perspectives were also reflected in hearings such as those on the Environmental Protection Agency's implementation of the Superfund program in the early 1980s, covert arms transactions with Iran and secret military assistance to the Nicaraguan opposition.

THE ROLE OF REGULATORY AGENCIES

Regulation is a major element of the federal government's policy agenda. During the 1960s and 1970s, Congress and the executive produced a burst of regulatory legislation even greater than that of the early years of the New Deal. While during the 1930s Congress created 42 major regulatory agencies, in the 1960s, 53 were formed. Between 1970 and 1980, 130 major regulatory laws were enacted, offset in part by some deregulatory statutes, notably in transportation. The number of pages in the Federal Register, an imprecise but nevertheless useful indicator of regulatory activity, grew from 20,032 in 1970 to 87,012 in 1980.

These new regulatory initiatives shared several important characteristics: they were usually based on broad, expansive objectives; unlike many earlier regulatory programs, they extended well beyond specific industries; and they were based on broad delegations of power to regulatory agencies that required important policy choices to be made through administrative rule making. Administrative agencies were given jurisdiction over virtually all industrial and commercial activity through statutes such as: the Clean Air Act and its amendments; the Magnuson-Moss Amendments to the Federal Trade Act; and the Occupational Safety and Health Act. While the level of activity has moderated somewhat in the 1980s--few new regulatory statutes have been enacted, some deregulatory laws have been passed, the budgets of some regulatory agencies have been cut, and the number of pages in the Federal Register fell to 47,418 in 1986--regulation continues to be a primary function of government. Environmental, health, and safety regulation enjoys strong and widespread public support.

Federal regulations that affect commercial and industrial practices and processes have major impacts on the regulated firms and on the economy as a whole. Studies over the last decade have directed attention to the aggregate costs of regulation. Murray Weidenbaum's 1978 report to the Joint Economic Subcommittee on Growth and Stabilization concluded that regulations imposed $100 billion annually in compliance costs (although that figure has been widely disputed), inhibited innovation, and impeded economic growth and capital accumulation. Litan and Nordhaus (1983) calculated the costs of compliance with EPA regulations between 1975 and 1980 at $15.5 to $33.2 billion and those issued by OSHA at $15.2 to $40.3 billion. The Business Roundtable's study in 1977

identified $2.6 billion in direct spending by 20 industries as the consequence of regulations issued by six federal agencies. However, the benefits of regulations are also significant, albeit often more difficult to quantify than the costs. A 1980 study at MIT, which focused on regulations issued by six federal agencies, estimated that air pollution regulations saved from $5 billion to $58 billion annually, that reductions in water pollution produced an annual benefit of $9 billion, and that occupational safety and health regulations prevented 350 worker deaths each year (Congressional Quarterly, 1985, 29-30).

Many regulatory statutes are written in broad and vague language, while others are specific. In both cases, the jurisdiction, authority and tasks delegated to regulatory agencies often greatly exceed the resources provided. Agency officials must make basic choices when setting priorities, balancing competing goals of economic growth and regulatory protection, and regulating complex and poorly understood phenomena.

OVERSIGHT OF REGULATORY AGENCIES

Regulatory agencies provide a useful focus to examine congressional oversight. Many regulatory programs are new, these areas of law and policy are evolving, and many activities are embroiled in controversy.

Some of this controversy centers in part around the Office of Management and Budget's (OMB's) control over agency budget submissions, and its pursuit of reduced domestic spending. Also, a recent study by a panel of the National Academy of Public Administration, entitled Presidential Management of Rulemaking in Regulatory Agencies (1987), examined the development of OMB's regulatory review program and recommended that Congress provide by law the basic elements of such a process. The OMB now, without specific statutory guidance, approves agencies' agendas of significant regulatory actions and all proposed and final regulations, except those of the independent regulatory commissions. In tandem with the appointment of regulatory agency officials who have resisted regulatory initiatives, this has reduced the number of regulations issued, weakened some existing regulations, and strengthened the president's power to direct regulatory agency activities.

Under procedures negotiated between key members of Congress and OMB in the summer of 1986, OMB agreed to make available to Congress and others copies of draft regulations and draft regulatory programs submitted by agencies for OMB's review. This includes: written materials from people outside the federal government concerning regulations under review at OMB as well as a list of all meetings and communications with them; written materials exchanged between OMB and regulatory agencies; and a monthly list of all draft and final regulations for which OMB has completed review and the length of time each review took. However, critics argue that this agreement has not been implemented.

Regulatory agencies pose some of the most difficult challenges to administration and hence to congressional oversight because they require administrators, often in an atmosphere of uncertainty, to balance the goals of efficiency and effectiveness with those of due process and protection of the rights of those affected by regulations. The loss of the legislative veto, which permitted

members of Congress to review and reject regulations proposed by some agencies, has renewed congressional interest in other ways of responding to regulations that are important to members and their constituents.

Structural decisions made by Congress, such as whether programs are placed within executive departments and other single-headed agencies or assigned to independent commissions, affect the kinds of political control to which regulatory activities will be subjected. In the past, Congress has given the president oversight and control powers, including the authority to reorganize executive agencies (subject to legislative veto) and control agency budgetary requests and paperwork burdens through OMB. Recent presidents have also taken the initiative to issue executive orders that strengthened and expanded OMB's role and imposed cost-benefit and other economic-based requirements on decision making in executive branch agencies other than the independent regulatory commissions.

Congress has sought to respond to the president's increased power to monitor and intervene in regulatory agencies by creating for itself and its support agencies an elaborate set of procedures and mechanisms for overseeing the administrative process. The loss of the legislative veto, the complexity and dominance of the budget process in Congress' workload, the willingness of executive branch officials to challenge legislative expectations and priorities, and the great amount of legislation that is in place and needs to be periodically reviewed have all made the search for means of more effective oversight an increasingly important challenge confronting Congress.

REPORT SCOPE AND ORGANIZATION

While many of the elements of oversight are applicable to all agencies and programs, a comprehensive, across-the-board examination of congressional oversight was beyond the resources available for this study. The panel therefore chose to concentrate on examples drawn primarily from oversight of regulatory agencies. The Academy had performed an earlier study on presidential management of rule making (NAPA, 1987), which provided background. The variety of regulatory agencies--some of them multi-member agencies and commissions and some headed by single administrators, some independent and some located in cabinet departments--raises many of the most important issues concerning political accountability and control that are at the heart of oversight. Thus many of the report's conclusions and recommendations will be relevant to oversight of other kinds of agencies.

This report examines the way Congress goes about some of its oversight activities by focusing on three questions: What constitutes effective oversight? How does Congress go about its oversight activities? What can Congress, the president, and administrative officials do to improve the way oversight takes place and to reduce the level of conflict while accommodating the needs of both branches? Consistent with the Academy's public management charter, the panel judged oversight as "effective" if it contributed to better laws, improved program performance, or enhanced compliance with existing laws. The report seeks to address the concerns of Congress, the White House, and regulatory agencies.

Chapter two discusses how oversight of regulatory agencies takes place and reviews recent congressional efforts to improve oversight. Chapter three discusses several examples of congressional/regulatory agency relationships. Chapter four offers a number of recommendations for consideration by the Congress, the president, the OMB, and the regulatory agencies themselves.

CHAPTER TWO

CONGRESSIONAL OVERSIGHT OF REGULATORY AGENCIES

There is little agreement about how congressional oversight should be defined. Congress defined oversight in the Legislative Reorganization Act of 1946 (60 Stat. 832) as "continuous watchfulness of the execution by the administrative agencies . . . of any laws." Rule X(b)(1), adopted by the House of Representatives in 1974, charges each committee with the responsibility to:

> . . . review and study, on a continuing basis, the application, administration, execution, and effectiveness of [the] laws . . . within the jurisdiction of that committee and the organization and operation of the Federal agencies having responsibilities in or for the administration and execution thereof, in order to determine whether such laws and the programs thereunder are being implemented and carried out in accordance with the intent of the Congress and whether such programs should be continued, curtailed, or eliminated.

While Congress has formally defined oversight rather narrowly as the monitoring of the execution of the laws, some members of Congress view their oversight activities much more broadly, believing they should reach virtually every area of economic, political and social activity.

THE PURPOSES OF OVERSIGHT

Oversight permeates the activities of Congress. It is central to developing the budget, enacting legislation, confirming presidential appointees and serving constituents. It can even be an element of the impeachment process. In general, most oversight activity serves one or more of seven broad purposes. First, oversight seeks to assure that the intent of Congress is followed. In theory, oversight objectively examines the statutes under which agencies are acting and compares the actions taken by the agency with those statutory provisions. Although overseers may appeal to the original intent of the legislation, oversight may also be triggered by a concern with how well the agency is responding to current needs and problems. As one observer put it:

> What really produces the legislator's complaint . . . is not that the agency is flouting the intent of the original law, but that it is frustrating the desires of the present Congress. . . . The sheer volume of oversight activity has increased so much in recent years, because the number of laws that confer broadly discretionary authority upon the agencies have increased in recent years. [Congress has] told agencies to prevent unreasonable risk of injury in the workplace, to prevent excessive pollution, to assure safe cars, all sorts of things that involve judgment, all sorts of things as to which there are no right or wrong answers. And when you write laws giving that kind of discretion to the agencies, inviting them to make political judgments, of course Congress wants to be in on the act, in guiding the agencies toward those political judgments.[1]

Second, oversight can assure that programs are implemented efficiently and that administrative waste, fraud, and abuse are exposed. Estimates of waste and inefficiency by the General Accounting Office, President Reagan's Private Sector Survey on Cost Control (also known as the "Grace Commission" after its chairman, J. Peter Grace) and a variety of other studies have stimulated congressional oversight of federal agencies.

A third purpose of oversight is to collect information to be used in reauthorizing or amending the statutes under which agencies operate. This may take place as part of the annual reauthorization or may be aimed at particular problems and controversies. One member of Congress emphasized the importance of oversight in the legislative process:

> You cannot legislate well without good preparation, and good preparation is just simply good legislative oversight. . . . You cannot legislate well without getting a proper basis in fact. The programs and their conduct, the way the law works, the amount of money, the kind of projects undertaken under broad statutory authority all have to be scrutinized to ascertain what is going to be done.

Fourth, oversight may also be designed to evaluate the effectiveness of an agency's pursuit of a particular policy and to consider ways to increase the agency's ability to accomplish its tasks. Program evaluation has increasingly characterized the kind of oversight done by the General Accounting Office, and is also done by committee and subcommittee staffs.

Fifth, oversight may be used to protect congressional prerogatives and powers against executive branch usurpation. Congressional staff members interviewed as part of this study argued that oversight is an essential means for members of Congress to ensure that agencies consult with them before embarking on major regulatory initiatives or changing established policies.

Sixth, oversight activities may be used by members of Congress to advocate programs of interest to them. Committee members and staff are generally drawn to assignments that complement their policy interests. Tension arises when members of Congress and agency officials differ significantly over how statutes should be implemented. Political appointees who are chosen because of their commitment to a president's promise to reduce regulatory burdens, for example, are bound to clash with congressional champions of vigorous regulatory intervention.

A final purpose of oversight is to permit members of Congress to respond to perceived criticisms, crises, and complaints about agencies. Members focus political attention and public scrutiny on administrative actions to reverse

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1. Quotations in this and subsequent chapters, unless otherwise attributed are from interviews undertaken during this study (with people named in the appendix) and other unpublished material. Most of the interviews were conducted with the understanding that the interviewees' comments would not be directly attributed.

directions that may be seen as unpopular, misguided, or illegal. They may serve the public interest, as they see it, and their individual political interests as well.

OVERSIGHT PROCESSES AND TOOLS

To fulfill its oversight responsibilities, Congress has a powerful array of tools to collect information from agencies and investigate agency activity. Congress can gather data through hearings, from the over 2,000 executive branch reports annually required by law (U.S. Congress, 1986), through informal meetings with agency staffs, written inquiries, GAO reports, media investigations, constituent complaints and casework funneled through members' personal staffs. These tools are used in the congressional processes discussed in the following sections--authorization, appropriations, auditing, general oversight and investigation, confirmations and impeachment.

The Authorization Process

The authorization process provides the traditional means for members of Congress to review and redirect the implementation of the laws they pass. The level of scrutiny given agencies and programs in reauthorization proceedings varies. Some regulatory agencies must undergo annual reauthorizations while others enjoy multi-year or permanent authorization.

The Environmental Protection Agency (except for its research and development programs which require annual reauthorization), the Occupational Safety and Health Administration, and the National Labor Relations Board operate under a permanent authorization. The Federal Communications Commission, the Securities and Exchange Commission, the Federal Trade Commission, the Consumer Product Safety Commission, and the Federal Communications Commission (FCC) are reauthorized for two to four years (U.S. Senate, 1977). The Nuclear Regulatory Commission and the International Trade Commission are reauthorized annually. Some agencies, such as the FCC, enjoyed permanent authorizations until the early 1980s, when Congress moved to a periodic authorization to increase its ability to monitor commission activities and to check the independence of agency heads unsympathetic to the intent of Congress (LeLoup, 1986; Starobin, 1988). In reaction to the shorter authorization periods, some members of Congress have lately been pushing for longer reauthorization periods to help reduce the congressional workload (Haas, 1988).

The Appropriations Process

To a certain extent, the appropriations process provides a parallel track for oversight with authorizing legislation. Both can provide guidance on actions agencies must or must not take (Schick, 1986, 89-90). Authorizing legislation often has not been enacted in recent years, and Congress has increasingly used the appropriations process to respond to issues discovered through oversight. This response takes the form of riders attached to appropriations bills, many of which address policy issues.

Appropriations subcommittees have small staffs and are responsible for a variety of concerns, limiting their ability to address many substantive areas.

Riders are rarely the product of thorough hearings and committee deliberations. In addition, riders that affect one aspect of an agency's jurisdiction, authority, and activity, may not be coordinated and integrated with statutes affecting other aspects that are written by authorizing committees. In general, the authorizing committees have little input to the riders. In fact, as more appropriations legislation fails to gain passage by the start of the fiscal year, appropriations bills and the riders attached to them are lumped into continuing resolutions that are rarely vetoed.

Reduced funding levels in appropriations legislation can be among the most visible consequence of congressional oversight. Yet, in one sense, appropriations bills have less of an oversight implication than in the past. Because the budget has put downward pressure on agency budgets, appropriations subcommittees can no longer effectively threaten additional cuts if an agency does not meet their expectations. In many instances, funding levels are already below those desired by some members of Congress, so the threat of further cuts is self-defeating.

Within the regulatory arena, the appropriations process is an even less effective oversight tool than it can be for administrative agencies. This is because the regulatory agency operating budget represents only a small portion of the cost of regulation--most cost is borne by the industries and state and local governments regulated. Thus, the extent to which regulatory statutes solve the problems they are meant to address is less a function of an agency's budget than other factors that may not be scrutinized in the appropriations review.

Auditing and Evaluation

The final step in the budget process, auditing and evaluation, is an important component of oversight. The General Accounting Office (GAO) reviews selected agencies and programs to ensure that agency activities and expenditures are consistent with congressional mandates. These reviews usually take up to a year and provide Congress with detailed information on the administration of the programs and agencies it has authorized. GAO often tailors its work to the reauthorization schedule for major legislation.

The GAO is a major arm of Congress in overseeing the executive branch. Its auditing and investigative responsibilities were originally defined in the Budget and Accounting Act of 1921. The GAO reviews agencies and programs on the initiative of the Comptroller General, at the request of any committee of Congress with jurisdiction over a program or activity, or by request of a member of either House of Congress. In fiscal year 1987, the GAO issued 672 reports to members of Congress and committees and 95 reports to agencies. Over 80 percent of its audits, evaluations, and investigations were requested by Congress.

Of the 916 recommendations GAO made to Congress in fiscal year 1987, 496 suggested changes to improve program effectiveness; 79 dealt with financial management; 78 were aimed at reducing costs or increasing revenues; 72 addressed congressional oversight and legislative concerns; and 191 covered other matters.

GAO officials testified 161 times before congressional committees and issued some 590 legal opinions and decisions. In addition to this formal

interaction, GAO staff also present informal briefings to members and staff. There is also a great deal of discussion between GAO staff, committee staff and, less often, members of Congress as to oversight agendas and specific projects. GAO can lend its staff to committees and subcommittees. In fiscal year 1987, more than 100 GAO employees were assigned to work directly with committees and subcommittees.

While some 80 percent of the GAO's work is in response to direct congressional requests, the GAO has some opportunity to independently evaluate government programs. Its general management reviews, for example, are designed to study the organization and operation of entire departments and agencies and produce recommendations for improving management (U.S. General Accounting Office, 1987).

The GAO does a great deal of program evaluation. Under the 1974 Congressional Budget and Impoundment Control Act, GAO is also required to report to Congress on the extent of federal agency program evaluation activities. The GAO found, between 1980 and 1984, a 26 percent decline in the number of units in agencies and departments that engaged in program evaluation efforts. Spending for these evaluations decreased by 37 percent in constant dollars. The studies done were more likely to be "low-cost, short-turn-around, internal studies and nontechnical reports rather than larger, externally conducted, and more technical studies." Evaluations, the GAO reported, "have become less readily available to the Congress and the public," an indication that evaluation is becoming more limited to an internal function in the executive branch. According to OMB's comments on the GAO's draft report, program evaluation is "intended primarily to inform agency decision makers, not the public and Congress" (U.S. General Accounting Office, 1987).

General Oversight and Investigations

Legislative committees also engage in oversight actions that are not directly part of a reauthorization process, but give the committees general information about agencies' activities and provide an opportunity to redirect agency activity. Committees call hearings, ask for briefings by agency officials, write letters and make phone calls, and commission special studies by the GAO and outside contractors. Much of this review takes place after the agency has taken action that arouses some controversy. Because congressional committees lack the staff to monitor agency activity comprehensively, they rely largely on criticisms and concerns raised by affected parties and others to identify areas for oversight investigation (McCubbins and Schwartz, 1984).

In the House, most committees have established oversight subcommittees to oversee the agencies and programs within the committees' jurisdiction. In theory, these subcommittees are tied less closely to the agencies and programs and are less likely to be advocates of the activity they oversee than are their legislative subcommittee counterparts. In the Senate, only a few committees have established investigations subcommittees. The House Government Operations and Senate Governmental Affairs committees have a government-wide responsibility to oversee executive branch activities as well as to examine broad issues of executive management, intergovernmental relations, and government organization. These committees have powerful legal tools to extract information,

as do other committees, including taking depositions and issuing subpoenas. Their power to gain information is somewhat limited in areas of national security and other areas where presidents claim executive privilege, but court decisions have placed significant constraints on such presidential prerogatives and claims.

Some review takes place as part of administrative decision making. Under some statutes, agencies must submit proposed actions, such as the reprogramming of appropriated funds, to congressional committees for review. So-called "report-and-wait" provisions require that proposed rules be submitted to committees and not go into effect until a specified date, usually 30 or 60 days, after the congressional notification; the regulation goes into effect unless legislation is enacted rejecting the initiative. Or the provision may require that Congress pass a joint resolution, to be signed by the president, before the proposed rule goes into effect. These are as close as Congress may come to providing a legislative veto since the Supreme Court's Chadha ruling.

Confirmation and Impeachment

The confirmation process has been used by Senate committees to collect information concerning agency activities. Confirmation hearings also provide an opportunity for members to instruct, warn, cajole, and otherwise direct agency activity. Members often extract commitments and promises concerning agency practices and activities from those seeking confirmation, but it may be difficult for committees to ensure compliance with those informal agreements after the nominee is confirmed. Although impeachment and the ensuing Senate trial rarely occur, the threat of impeachment occasionally can serve as a powerful source of congressional influence over unlawful executive actions.

INCENTIVES FOR OVERSIGHT

Incentives for episodic, ad hoc oversight, are generally far stronger than those that encourage comprehensive, systematic evaluation of statutes and programs. A number of members of Congress have used oversight to familiarize and identify themselves with particular issues in ways that have produced political benefits and positive results. One member of Congress observed that "oversight pays off as no other device yet fashioned. . . . [Oversight] can be good politics. It can produce some very favorable news and enhance the reputation of the member. . . . It produced a lot of what I would call very, very spendable political capital." Oversight hearings and investigations have also resulted in significant administrative reforms.

Oversight closely tied to casework can also be used for electoral advantage. Investigations can be reported in members' newsletters to illustrate their roles as guardians of the public treasury and ombudsmen for the interests of constituents. Constituent support can be cultivated by responding to complaints about specific governmental decisions. Oversight also provides an opportunity for supporters of agencies and programs to defend them, to refocus attention on their accomplishments and their importance, and to protect them from pressure by the White House and the OMB.

RESULTS OF OVERSIGHT

Congress uses its oversight powers to respond to problems it identifies. Statutes directly reversing agency actions are sometimes enacted; committee reports which accompany legislation give guidance to agencies; letters written by subcommittee chairs are not easily disregarded by agencies. Congress can also use threats of embarrassing hearings or disclosure to the media to ensure that agencies are sensitive to members' concerns and interests. Congress can lobby the White House to help pressure uncooperative agencies. It can mandate expedited judicial review of agency decisions, and provide for class action suits and awarding of attorney fees to facilitate the use of the judicial process by members of Congress and others to scrutinize agency activity.

Congress has, through oversight, been able to join with others in pressuring the president to replace regulatory agency officials who differed with congressional concerns and priorities and, in some cases, sought to depart from both the spirit and the letter of the laws. Replacement of virtually all of the political appointees at the Environmental Protection Agency in 1982 and 1983 is one of the clearest manifestations of the results of oversight. Oversight has led to an increase in the amount of information available concerning OMB's regulatory review process. Agency officials regularly acknowledge that their actions are constrained by the possibility of being hauled up by Congress.

Major legislative initiatives have resulted from oversight. Airline deregulation and environmental legislation, for example, as well as other important statutes, were advanced substantially by oversight investigations, studies, and hearings. Oversight is an essential ingredient in the process of reauthorizing legislation. As one observer has put it, however:

> . . . the kind of oversight that is careful program analysis, that can lead to clearer instructions to agencies concerning the choices they are to make, and that can lead to better laws, is much harder to do, and requires coalition-building--it is really an essential part of the legislative process, and not everybody is good at the legislative process.

CRITICISMS OF CONGRESSIONAL OVERSIGHT

Presidents and other executive branch officials have long criticized what they consider to be excessive congressional involvement in the "details of administration" of regulatory and other agencies. One hundred years ago Woodrow Wilson argued that Congress "has entered more and more into the details of administration until it has virtually taken into its own all the substantial powers of government" (Wilson, 1887). Wilson's complaints have been echoed by most of his successors: detailed legislative language that leaves little room for administrative discretion; appropriations riders that prohibit certain actions; statute-imposed deadlines for administrative actions that inhibit executive flexibility and priority setting; and requirements for detailed, time-consuming reports that must be filed annually with congressional committees.

Executive branch officials also complain of a recent explosion in the amount of time top agency officials spend on Capitol Hill and the number of requests for information they receive from Congress. Some agency heads maintain that the time they spend responding leaves little time to run their agencies. They charge that members of Congress approach their oversight responsibility in an ad hoc fashion, reacting to scandals and seeking press attention, rather than providing clear guidance to public managers.

Members of Congress have also been among the most outspoken critics of oversight. In areas where congressional subcommittees, interest groups, and agencies have developed close, mutually advantageous relationships, oversight has been criticized for being insufficiently rigorous. Members of Congress usually operate from a perspective of advocacy for the programs they oversee and often have little interest in investigating and criticizing agencies in a way that might jeopardize funding and other support for them. These subsystems of government are unable themselves to provide careful, critical analyses of the appropriateness of policies and the effectiveness of their implementation (Dodd and Schott, 1979).

Oversight has also been criticized for failing to take a systematic approach to executive branch programs; for being dominated by short-run, media-dramatized problems; and for seeking immediate political publicity and attention. Oversight often fails to have a real impact on the executive branch, since there is usually little follow-up on initial efforts, and agencies know that they will likely not be required to respond to congressional criticisms. The oversight of authorizing committees is described as being ad hoc and spotty, and rarely comprehensive. The review of agencies in the appropriations process is regularized, but is not sufficiently thorough to provide effective review (U.S. Senate, 1977).

Oversight by the House Government Operations and Senate Governmental Affairs committees is not usually integrated with that done elsewhere, and the lessons learned by these committees are often lost. These two committees cannot respond to their findings by initiating alternative statutes for issues under the jurisdiction of other committees.

Congress, it is argued, lacks the information it needs from the executive branch to evaluate adequately the implementation of the laws it passes. Agencies resist providing information to Congress because it takes time and resources to compile the information which might be embarrassing or which might be used against them. And even when information is forthcoming, Congress may not have the institutional capability to process it into practical, usable form.

High staff turnover and lack of staff experience on Capitol Hill in many of the complex and technical areas exacerbate the difficulties of oversight. The Congressional Management Foundation's study indicated that two out of three legislative assistants have held their positions for less than two years and that the average tenure in major congressional positions ranges from 1.7 years for receptionists to 5.5 years for administrative assistants (Pianin, 1987).

RESPONSES TO CRITICISMS OF CONGRESSIONAL OVERSIGHT

Congress has tried, in various ways and in different time periods, to respond to these criticisms and shortcomings. Oversight of regulatory agencies has not been singled out; attention here focuses on oversight in general.

In the 1930s and 1940s, the target of reformers in Congress was the fragmented, uncoordinated nature of committee government and the lack of effective oversight. Members were criticized for failing to investigate the programs under their jurisdictions because they were co-opted by the close relationships they had developed with agencies and interest groups. Congress, critics charged, had failed to provide adequate resources for oversight. The fragmented structure of oversight meant agencies could protect their autonomy by finding one sympathetic committee to protect them against attacks by another. The power of the executive branch, it was argued, had been strengthened at the expense of congressional power, and institutional prerogatives had been sacrificed for the pursuit of the individual influence and power of members (Galloway, 1946).

The Legislative Reorganization Act of 1946 (60 Stat. 832) was enacted as a remedy to these and other shortcomings. In response to the recommendations of a Joint Committee on Congressional Organization, the act reduced the number of committees and the number of committees members could sit on, and created a more nearly parallel structure of committee jurisdiction in the House and Senate. Committees were charged with "continuous watchfulness" over the administrative agencies for which they were responsible. Oversight authority was to be shared among: the appropriations committees, which reviewed budget requests and provided for financial control of agencies; the expenditures (later government operations and governmental affairs) committees, which examined agency structures and procedures; and the authorization committees, which monitor the program operations and make statutory revisions.

These reforms, critics charged, did not effect a major change in congressional operations. Representative Estes Kefauver described them as largely "patchwork, improvisation, and tinkering" (Burns, 1949, 134). They did not strengthen the power of congressional leadership at the expense of committee autonomy, but assured that real power remained in the hands of committee chairs. As the power of committee chairs grew in the 1950s and 1960s, and as it rested largely in the hands of conservative Southern Democrats who rose to chairmanships by virtue of seniority, pressure for decentralizing congressional power increased. Democratization of the Congress followed, particularly in the House, resulting in decentralizing power to a growing number of subcommittees, where hearings and other congressional work were concentrated (Dodd and Schott, 1979).

The Legislative Reorganization Act of 1970 (84 Stat. 1156) required that each House committee issue a biennial report on its oversight activities, and described oversight as legislative "review" rather than "continuous watchfulness." Congressional dissatisfaction with its limited ability to control the actions of administrative agencies was fueled by conflict and distrust between Congress and the Nixon administration concerning the Vietnam war and its extension into Laos and Cambodia, the impoundments, executive branch

reorganization, executive privilege, and Watergate. Congress took a number of steps to increase its influence on the executive branch, including budget and war powers legislation.

Dissatisfaction with the committee structure in 1973 led to the creation of special committees to examine the organization and operation of Congress. In the House, the Select Committee on Committees, popularly known as the Bolling Committee, proposed a major restructuring of committee jurisdictions that was largely rejected by the Democratic caucus (Davidson and Oleszek, 1977). The Senate was more responsive to change, eventually eliminating three committees and some 35 subcommittees (Sundquist, 1981, 430).

The Bolling Committee emphasized the House's "general and widespread" dissatisfaction with oversight. It proposed three ways to strengthen oversight: 1) establish oversight subcommittees for all standing committees (except Appropriations); 2) define the "program review priorities of the House" by developing an oversight report for each Congress, to be prepared by the Government Operations Committee; and 3) improve the coordination of oversight activities among the committees. Oversight subcommittees were proposed as a way to "complement and supplement the review that has traditionally been the responsibility of every standing committee." They were also to engage in "foresight," the "systematic, long-range, and integrated study of our principal future national problems," and to assess and compare the "costs, benefits, and effects of the various options, including present programs" for responding to these problems (U.S. House of Representatives, 1974, 62-64).

The Committee also deliberated a number of options for an oversight report. One set of proposals would have required that the Government Operations Committee, based on testimony from the chair and minority leader of each standing committee, outline and set priorities for an oversight agenda for the House. In consultation with the House leadership, the Government Operations committee was then to submit to the House an oversight agenda with deadlines for completing and reporting oversight studies.

The Bolling Committee also considered requiring House committees to submit a list of their legislative and oversight priorities to the Speaker, and that the House pass a resolution at the beginning of each Congress noting the dates by which the reviews were to be completed. No funds would be provided for any standing committee until its oversight report and agenda were approved by the House. The Committee opted, however, merely to require that the Government Operations Committee submit to the House a report that: reviewed the oversight plans of each committee; recommended ways to coordinate related activities among the different committees; and suggested agencies and programs that should be given priority for oversight, so that oversight would be more systematic and ensure that scarce resources were effectively expended.

The Committee proposed that coordination among committees be enhanced by: requiring that authorizing and appropriations committees "include in their committee reports on legislation the oversight findings and recommendations of the Committee on Government Operations and their own oversight subcommittees;" permitting the Government Operations Committee to offer amendments on the floor affecting agencies and programs it had investigated; and

empowering the Committee to investigate any matter even if another committee were conducting a similar inquiry. Six committees, including Armed Services, Education and Labor, and Foreign Affairs, were to be given "special oversight" authority to cross committee jurisdictions in investigating agencies and programs.

The House adopted many of the oversight-related recommendations of the Bolling Committee. Until 1987, when the practice was discontinued, the Government Operations Committee compiled the oversight agendas of the standing committees, but the agendas were not used by the House leadership to establish oversight priorities or settle jurisdictional disputes between competing committees.

In 1977, the Senate Government Operations (later renamed Governmental Affairs) Committee issued a major report on federal regulatory agencies that gave particular attention to oversight. The study found that oversight was a "low priority for most Members of Congress," that there was "little active coordination between committees for oversight," and that most committees lacked staff with expertise in regulatory issues. The appropriations process was viewed as the most "potent form of oversight in those areas where attention is directed," but it generally worked "haphazardly as an oversight mechanism." Similar criticisms were aimed at the appropriations process as being ad hoc and in response to "a newspaper article, a complaint from a constituent or special interest group, or information from a disgruntled agency employee" rather than stemming from a systematic, regular review (U.S. Senate, 1977).

The 1977 Senate Committee report went on to propose a number of recommendations for improving oversight. First, all regulatory agencies should be "subject to a periodic authorization process" to ensure thorough scrutiny before being reauthorized. Second, Congress should increase the amount of information available to it by requiring agencies to respond to committee requests for information "within a specified period," and by "including sufficient funds for agencies to meet such requests." Third, all committees should submit with their budget requests to the Rules and Administration Committee a report on their oversight plans. The Congressional Research Service would compile this information and identify areas of "potential conflict and cooperation," and the General Accounting Office would submit an annual report of its oversight plans.

Fourth, each regulatory agency should be required to "evaluate its regulatory programs and present its evaluations to congressional authorizing committees annually," to include "a discussion of the agency's goals for the next few years" and "a plan for evaluating agency performance of those goals." Fifth, appropriations committee staffs should be increased to permit them to "probe more deeply into the priorities and efficiency of operations of the regulatory agencies;" and increased resources should be provided for other committees where they could be justified for improved oversight. Other recommendations emphasized increased use of congressional support agencies, follow-up hearings and inquiries to see if agencies implemented committee recommendations, and writing statutes "as narrowly as possible."

OVERSIGHT AND THE LEGISLATIVE VETO

Until 1983, one oversight tool Congress relied on was the legislative veto. Between 1932 and 1982 Congress included 318 legislative veto provisions, in their various forms, in 210 statutes. Legislative vetoes applying to regulatory agencies generally required that agencies submit proposed regulations to Congress before they took effect. Some vetoes required both houses to pass a concurrent resolution to disapprove a regulation, while others required action by only one chamber. By 1982, over 1,100 legislative veto resolutions had been introduced. Of the 230 resolutions that passed, 111 were in response to decisions of immigration judges concerning the deportation of aliens; 65 related to budget impoundment disputes; 24 were used to reject presidential reorganization plans; and 30 were for other purposes, including vetoing of agency regulations (Congressional Research Service, 1983).

The legislative veto was viewed by many members of Congress as a practical and attractive means of managing congressional/executive relations. It permitted Congress to allow executive judgment, discretion, and initiative while safeguarding congressional prerogatives. It was considered a useful mechanism for facilitating compromise over the division of authority and responsibility between the legislative and executive branches in areas of shared constitutional responsibility, and for helping resolve particularly intractable policy conflicts (Cooper, 1983).

Critics of veto provisions in regulatory statutes charged that: the provisions encouraged Congress to delegate more discretionary power to the executive branch but with less legislative guidance; the vetoes served to blur lines of accountability and responsibility; and they permitted business and industry groups to use their political clout in Congress to reverse agency actions (that they had earlier failed to block in rule-making proceedings) without the procedural safeguards applied to agency processes by the Administrative Procedures Act (Bruff and Gellhorn, 1979). Despite the shortcomings of the legislative veto, however, it provided Congress with an important means of managing its relations with the executive branch and gave Congress considerable flexibility in writing statutes and overseeing their implementation.

In 1983, the Supreme Court, in INS v. Chadha, voided the legislative veto as a violation of the constitutional requirement that both houses act together with the president in taking legislative-like actions. Some members immediately began calling for a constitutional amendment to permit the legislative veto (DeConcini and Faucher, 1984). Despite the Court's ruling, Congress continued to enact committee vetoes, where agencies were required to gain the approval of specific committees before taking certain action. Between June 23, 1983, and the end of the 99th Congress in 1985, 24 statutes were enacted which included a total of 102 vetoes, including those that were "incorporated by reference" into continuing resolutions (Fisher, 1987). While there is no formal mechanism for enforcing committee vetoes, agencies are unlikely to ignore the expressed wishes of committees with legislative authority over them.

CHAPTER THREE

EXAMPLES OF CONGRESSIONAL OVERSIGHT

While oversight generally involves the elements outlined in Chapter Two, the political context--divided government, recent conflict over the interpretation of laws, and other causes of inter-branch tension--determines the way oversight takes place. The agencies discussed in this chapter are not a representative sample, but do illustrate some of the challenges of developing effective oversight relationships. The information is based on a series of meetings with former and current agency officials, members of Congress and committee staffs, scholars, and representatives of public interest groups and trade associations.

Most regulatory agencies fall into one of two broad categories: the newer regulatory agencies, responsible for protecting the environment and human health and safety, whose jurisdictions cross industry lines; and the older agencies, generally organized along sectors of the economy. The first example examined here is the Environmental Protection Agency, an agency that has been the subject of a great amount of congressional oversight. Most of the difficult issues associated with oversight are reflected in EPA-congressional relationships and this example is thus given considerably more space than those that follow.

The Federal Trade Commission is the second agency examined. It provides a useful case of an agency that is relatively mature, having been created in 1913, but that has been engulfed in controversy as a result of the disagreement surrounding statutory authority recently given to it. A third example is the Securities and Exchange Commission, an agency that enjoys relatively good congressional oversight relations primarily because of a mature statutory base and related factors. Oversight of several other regulatory agencies is also briefly reviewed to examine the extent to which oversight of these three agencies is unique and to explore further the challenges oversight poses for Congress and for agencies.

ENVIRONMENTAL PROTECTION AGENCY

Environmental hazards are politically significant; they occur in every congressional district and are a major topic of constituent communication with members of Congress. Environmental regulation is central to the interaction of business and government and has major consequences for industrial competitiveness. Congressional oversight has been quite visible and has recently had major impacts on the agency, from causing the replacement of almost all the original Reagan administration appointees to pressuring the agency to reverse important decisions. The EPA provides a particularly useful case study of how oversight takes place and its impacts on agency operations. It also illustrates the difficulties of overseeing the newer "social" regulatory agencies, where consensus has not yet developed between the legislative and executive branches over the meaning of statutes and how to implement them.

Responsibilities for environmental regulation in the executive branch are widespread and encompass: several parts of the Executive Office of the President, including the Council on Environmental Quality and the Office of Management and Budget; Interior (public lands, energy, minerals, national parks);

Agriculture (forestry, soil, conservation); Commerce (oceanic and atmospheric monitoring and research); State (international environmental agreements and concerns); Justice (environmental litigation); Defense (civil works, dredge and fill permits, pollution from DOD facilities); Energy (energy development and allocation); Transportation (airplane noise, oil pollution, transportation of hazardous substances); Housing and Urban Development (urban parks, planning); Health and Human Services (health); Labor (occupational health); and the Nuclear Regulatory Commission.

Environmental statutes are very expansive in promising to address and remedy numerous environmental and health hazards. They are also very specific and include precise mandates for the implementing agencies, particularly the EPA. Many statutes read more like regulations than statutes. They impose deadlines for agency actions, and many include "hammers"--statutory provisions that go into effect after certain deadlines unless the agency issues a regulation for specified problems.

Unlike most other areas of regulatory activity, Congress has come to rely on statutory deadlines to force the EPA to take specific actions. According to a study of the Environmental and Energy Study Institute (1985), from 1970 to 1980 Congress included 328 deadline provisions in the 15 environmental laws it enacted (not including deadlines for administrative reviews by the agency and court-ordered deadlines). Of the 328 deadlines, 86 percent applied to the EPA, 22 percent to the states, and 7 percent to regulated industries. Some 35 percent of the deadlines were for issuing rules and regulations, 33 percent mandated reports and studies, 13 percent related to compliance provisions and guidelines, and 19 percent were for other agency tasks. Only 14 percent of the tasks were accomplished by the statutory deadline; 15 percent of the standards for rules and regulations were met. Despite limited success with statutory deadlines, in its 1984 amendments to the Resource Conservation and Recovery Act, Congress included more than 60 additional deadlines, some of which also included action-forcing hammers.

A great number of congressional committees have at least some jurisdiction over environmental regulation, reflecting the division of responsibility in the executive branch. Legislative responsibility in the Senate is focused primarily in the Environment and Public Works and the Agriculture Committees. In the House, the Energy and Commerce, Public Works, and Science and Technology Committees share legislative jurisdiction. The Appropriations and House Government Operations/Senate Governmental Affairs committees have major oversight and budget interests in the EPA and related agencies. The agency is confronted by a diverse and fragmented set of overseers: 34 Senate and 56 House committees and subcommittees exercise jurisdiction over the agency (EPA, 1987).

The number of appearances by EPA officials before congressional committees and other congressional bodies during 1984-86, shown in Table 1, depicts this diversity (EPA, 1987). Table 2 shows the subjects of EPA appearances before congressional committees ranged from a concern with specific issues to broad reviews (EPA, 1987).

Table 3 lists the number of letters EPA received from members of Congress and their staffs--personal and committee. This further reflects the extent of

congressional oversight (EPA, 1987). These figures do not reflect the additional, direct influence of congressional committee and subcommittee staff on agency decision making through informal meetings and briefings on major rule makings and enforcement activities, and the indirect influence congressional staff members have as agency officials try to anticipate likely congressional responses to agency proposals.

Table 1
EPA Appearances Before Congressional Committees
1984-86

House Committees	1984	1985	1986
Agriculture	1	1	2
Appropriations	1	1	1
Armed Services	1		
District of Columbia	1	1	
Energy and Commerce	10	15	12
Foreign Affairs			1
Government Operations	4	1	7
Interior and Insular Affairs	2	2	3
Judiciary	1	1	
Merchant Marine and Fisheries	3	5	1
Post Office and Civil Service	1		1
Public Works and Transportation	9	4	
Science and Technology	4	10	6
Small Business	1	2	4
Ways and Means	1	2	
Budget Task Force			1
Northeast Midwest Congressional Coalition	1		1
Senate Committees			
Agriculture, Nutrition & Forestry	1		
Appropriations	2	1	1
Commerce, Science and Transportation			1
Energy and Natural Resources	2		3
Energy and Public Works	10	24	11
Finance	1		1
Governmental Affairs		2	1
Judiciary	1	3	
Small Business	1	—	—
TOTAL	56	79	63

Note: Numbers represent "congressional hearings at which EPA was requested to present a formal statement."

Table 2

Subjects of EPA Appearances Before Congressional Committees
1984-86

Subject of Hearings	1984	1985	1986
Reauthorization of existing legislation/discussion of new legislation	9	17	10
Superfund	6	14	2
Discussion of specific environmental hazards such as asbestos, acid rain	33	37	38
Budget requests/appropriations	3	5	4
General agency administration/ administration of particular programs	7	5	6
Confirmation hearings	0	6	3

Note: Totals do not match those of previous table since some hearings included more than one subject.

Table 3

Member and Staff Correspondence
1984-mid 1987

Year	Number of Letters Requesting Information
1984	4,476
1985	4,305
1986	3,939
1987 (Jan. 1-June 15)	2,300

Table 4
EPA Rules Reviewed by OMB, and Proportion Changed
1981-86

Year	Number of Rules Reviewed	Percent Changed after OMB Review
1981	734	na
1982	340	na
1983	268	na
1984	302	74.5
1985	302	66.2
1986	197	66.5

Note: These figures do not include a number of EPA regulations such as pesticide tolerances (except those where an existing tolerance is made more strict) and other actions concerning pesticide regulation, and rules where the EPA gives unconditional approval to state actions such as state implementation plans under the Clean Air Act and state water standards. The figures include proposed and final rules (Office of Management and Budget, 1987, Appendix).

The role and influence of congressional staff members in the regulatory process is to some extent matched by that same kind of direct and indirect influence by OMB officials and other staff in the Executive Office of the President and the White House. The Reagan administration's Task Force on Regulatory Relief, which operated from January 1981 to August 1983, and was reestablished in 1986, has given particular attention to EPA regulations. Under Executive Order 12498, the EPA and other regulatory agencies, except for the independent regulatory commissions, submit to the OMB a regulatory program that outlines the "significant regulatory actions" they plan to undertake during the following year. The program is negotiated by agency and OMB officials, who use it to set agency priorities, allocate resources, eliminate regulatory initiatives that would be inconsistent with the administration's regulatory principles of cost-benefit analysis and lowest net regulatory costs, and urge agencies to avoid regulatory interventions whenever possible (Office of Management and Budget, 1985, 1986, 1987).

Under Executive Order 12291, OMB must approve regulatory analyses accompanying all major regulations issued by the EPA and other agencies. The agencies must demonstrate that regulations satisfy the administration's regulatory principles, unless the agency is prohibited from making such determinations by its enabling statutes. These OMB reviews have generated enormous controversy, since OMB overseers may push the agency in directions different from those suggested by congressional committee staffs, committee reports, and, in some cases, statutory language. The number of EPA rules reviewed and the proportion changed after OMB review are listed in Table 4.

Although many of the changes required by OMB are quite minor, these changes reflect the continuing tension between EPA and OMB over the administration's regulatory principles and the impact these principles have on EPA regulations. The conflicts between Congress, the president, and the EPA, in part, reflect divergent views concerning the role of government in regulating environmental hazards. For many of the congressional sponsors of environmental legislation, reducing hazards and risks is the primary goal and costs are secondary, while the executive branch has been more concerned with balancing economic and environmental policies. This was true in the Carter administration. During many of the past seven years, however, the tension between Congress and the executive branch has been greatly increased by the appointment to the EPA of people who were critical of congressional handiwork. The conflict goes beyond a concern with tempering environmental regulation to placing economic growth ahead of pollution reduction. OMB's regulatory review has been used to reinforce the commitment of the political appointees to the administration's agenda. Congress has, in turn, focused much of its concern on OMB's role in the regulatory process (U.S. Senate, 1986).

These differences are exacerbated in Congress, where the EPA faces a fragmented array of overseers and legislators, with different priorities and agendas that must, along with OMB attempts to shape decision making, be reconciled by the agency. The rule-making process has become very cumbersome, and major regulations take several years to promulgate. The EPA has begun to experiment with alternative processes, such as regulatory negotiation, where the agency convenes a series of meetings with interested parties to develop the provisions of a regulation. But the experience thus far does not indicate that this

kind of procedural mechanism is likely to alter the political dynamics of rule making, although it appears to be much more promising in resolving specific disputes over the enforcement of environmental laws (Bingham, 1986). Some tension between the two branches is inevitable, and there are some advantages to the different perspectives that the separation of powers brings to the policy making process. But the future of environmental regulation depends on the development of at least a minimum level of communication and trust between Congress and the executive, and a joint effort to help the EPA establish its agenda and set its priorities.

CRITICISMS OF CONGRESSIONAL OVERSIGHT OF EPA

First, many of those interviewed saw oversight as excessively burdensome. Former assistant administrator Milton Russell has argued that "without the umbrella kind of oversight--someone dealing with the organic EPA --there is so much oversight that it absorbs a large amount of time, a very large amount of resources. If oversight were a little more focused, more coherent, maybe it would have less of an impact on agency resources." Russell emphasized that oversight is fragmented and duplicative, that the "vast diversity of specific interests--for air, water, and others--and within air (acid rain, toxics) can beat you up in subcommittee hearings. . . . There is a lack of concern with basic questions like what is the agency supposed to be doing? How well is it doing?"

Others emphasize that oversight is obsessed with embarrassing agency officials and exposing problems that make "good press" rather than dedicated to exploring more basic problems and concerns with the implementation of environmental statutes. Former EPA assistant administrator William Drayton notes that the real value of oversight--the accountability that can come from forcing administrative officials to explain and defend their decisions--is largely unrealized.

A member of a public interest group argued that few members of Congress are sufficiently knowledgeable about the challenges confronting the EPA:

> Congress needs to make clear what it wants to do. It needs to have people who are knowledgeable, who know how to manage risks and the reduction of them. . . . How many of them have gone to a utility, seen how it works, looked at the technologies? Congress needs to be out there, to be informed, to try and work with the executive branch to figure out how laws work, how technologies work.

According to this official, Congress' lack of understanding of how environmental laws work results in the agency, in terms of effectively carrying out the laws, being paralyzed. He said:

> Oversight should help Congress help the agency accomplish the purposes of the law. Instead, it is backing the agency further and further into inaction. Oversight should try to make the laws work, to make sure new laws work better than the old ones. Instead, oversight becomes a game: how long has it been since EPA missed a deadline? Who gets to attack the agency? It has to be brokered because everyone wants a turn.

From the perspective of another observer, Congress has failed to create, in oversight, a system that facilitates agency management, that would "permit a whole bunch of things to occur that don't occur at EPA. Deadlines are written into concrete before anyone has a fix on the problem, let alone before anyone has a solution." Oversight does not require agencies to report to Congress:

> . . . what their budgets will and will not buy, what they will and will not do, what permits they will issue, what deadlines they will meet, how the current budget compares with what they did last year. There is no management accountability. Agencies should say what they will do and Congress should hold them to it. Oversight fails to provide an opportunity to hold administrators accountable for their actions.

A second set of criticisms of oversight, and of actions in the broader context of congressional-EPA relations, is that Congress fails to provide flexibility and a sufficient degree of administrative discretion to permit the agency to accomplish its statutory tasks efficiently and effectively. EPA Administrator Lee Thomas said:

> The ideal situation is a statute with some flexibility and then tight oversight. I would like to see some flexibility so we can use some judgment. Committees should give pretty tight oversight of how you carry out the laws--but that is the reverse of the direction Congress is going--more tightening of statutes with no scientific understanding of what they are doing.

Milton Russell argues that "oversight and litigation drive 90 percent of the agency's priorities, and there is very little opportunity to do anything else. . . . The agency's work is driven by outside pressure--litigation, hammers, some 600 statutory deadlines, and public pressure."

Third, oversight often fails to address many issues that the agency struggles with and that would benefit from a discussion with Congress. For Lee Thomas, oversight often becomes:

> . . . what I term a kind of a witch hunt oversight, which is kind of a "I gotcha oversight. . . ." That is motivated, sometimes to a large extent, by an overzealous staff, sometimes by a member who is particularly interested in publicity, and sometimes by members and staff who feel that the way to get their direction on something is through intimidation. I don't think that's very constructive. As a matter of fact, I think that it has a chilling effect on decision making in the agency, and in an agency like ours, you need to be able to make decisions: you need to be able to make reasonable decisions with the understanding that you're accountable for them, you may well hear about them, but that it's not going to end up as some kind of posturing, personal attack.

For Thomas, however, Congress does not have a monopoly on poor oversight: "I don't think, for instance, that in the executive branch, OMB does any better job as far as management oversight and budget processes in its review of

agencies than the Hill does. As a matter of fact, I'd say the Hill probably does better."

The implementation of environmental laws requires the agency to make a variety of important choices: the tasks delegated to the agency far outstrip the resources provided, agency decisions must be based on scientific findings and data that are incomplete and tentative at best, and agency officials must determine the distribution of the enormous costs of compliance with environmental laws and regulations. For Thomas, that translates into the need for:

> . . . far more interaction, but in a thoughtful way, with members as well as staff. . . . The members are so involved with so many things that they don't have the time to really understand the issues. And with rare exception, you get the impression that many of the members just don't understand, that they're largely led by staff, and unfortunately many of the staff don't understand.

David Hawkins, an assistant administrator of the EPA in the Carter administration, argued that oversight goes beyond monitoring agencies, to providing opportunities for regulated industries to weaken regulatory activity:

> Trade associations follow the development of a rule . . . and locate a company or industry that is in the district of an influential member of Congress and then get a meeting set up and then go in there and [force the agency] to explain what the decision was. It was a point of contact to which the agency had to respond and started to be a factor that was taken into account in the policy-makers' thought processes. [The problem is] the absence of a similar process for the pro-environmental control side. . . . It is more difficult to find an influential group of citizens to go into a member's office and ask for a meeting with the administrators of EPA to defend a process that we are trying to develop very early on.

For Hawkins, there has been too much oversight of this kind--"focusing on the hassles that the agency has created for the regulated industry"--while other areas have been ignored, such as the extent to which the EPA "has actually required state implementation plans to fully conform to statutory mandates and to the EPA regulations implementing the statutory mandates."

Deputy Administrator James Barnes has concluded that there is too much oversight.

> In the environmental field, a whole lot of agency activity is involved in oversight of sorts. We have a very strong regional system and the headquarters people spend a fair bit of time overseeing what is going on in the regions. The regions, in turn, are overseeing the states, which are the people who, in many cases, are carrying out the environmental programs. And I guess if some of us start to shake our heads a little bit about the amount of oversight, it is knowing how much of it goes on just within the agency--and then people checking us from outside--it wouldn't surprise me to find there are four people doing oversight, for every one doing the job to begin with. You start

to question how much value added you get on the margin from having a lot more oversight.

CONGRESSIONAL RESPONSES TO CRITICISMS OF OVERSIGHT

From the perspective of congressional staff members, there is never enough oversight. One purpose of oversight is to protect the independence of the EPA from other elements of the executive branch. "Oversight," one House committee staff member argues, "is often done to support the EPA against the executive establishment--against intrusion by OMB, to ensure the ability of the EPA to enforce the law against other agencies, especially large agencies like the Department of Defense and Department of Energy."

Oversight is necessary, from the committee staff member's perspective, because of the power of OMB and the Reagan administration's "deep hostility toward effective environmental regulation." Some agencies "live in terror of OMB . . . the Hill is grabbing one arm, and OMB is grabbing the other arm. If OMB let go, it would really be better for the country, in my view, but if the Hill let go, it would really be bad." For another staff member, the problem with OMB's role is that it:

> . . . does not have to come up here and testify before us. OMB does not answer to us in any way. The EPA is answerable, the EPA does have to come up here to explain. So that there is a real disconnection between the OMB exercising that kind of authority and any sort of a real congressional oversight.

Other congressional staff members emphasize that the "main thrust !of oversightl is that the agency should be able, in an unimpeded way, to make its own legal and technical decisions and implement them and decide whether or not to issue the rule. . . . A lot of our environmental oversight tends to be process oriented." They argue that the power of Congress in oversight is quite limited and reject the idea that Congress gets too involved in the details of agency management.

The tension and aggressiveness of congressional oversight, they argue, is a result of the Reagan administration's "tendency to ignore the will of Congress." The frustration expressed by many congressional staff members is that oversight is very limited in directing agencies, and in getting them to follow the will of members of Congress rather than the president's. Given that there are fewer congressional staff than staff in executive agencies, oversight "is really most suited to kind of ad hoc fine tuning. When you have an administration that really just doesn't want to follow the law, oversight is just not going to correct that across the board." Oversight can bring about some changes--the EPA has reversed itself in some rule making and enforcement decisions, and oversight led to the resignation of virtually all of the top EPA officials in 1983--but Congress is still unable to monitor all the agency's activities.

Congressional staff members argue that there is little overlap and duplication in oversight, that the different committees "complement" each other rather than compete: "We pick and choose, and try not to do the same agencies.

That doesn't necessarily mean we work it out in advance or anything like that. Most chairmen, once they see the other guy is doing something, aren't going to get into the same issue. We don't have the resources to do that."

Oversight is also driven by congressional lack of confidence in regulatory agencies. As one House staff member put it,

> Lots of people lost faith with agencies in the 1980s. That led to an increased amount of vigilance. There were lots of concerns--were the agency's concerns the same as those of Congress? Why are all the programs not being carried out? Congress believes that the agency should be doing all the tasks given it. There are more mandates than the agency has resources, and the Hill believes that the administration ought to put the resources that are needed there.

Other congressional staff members defend themselves against the criticism that oversight is too responsive to and dependent on the media by arguing that oversight must take advantage of the publicity and media attention surrounding an event. One subcommittee was "looking at municipal waste before !the garbage barge storyl hit. It was a useful way to highlight and get the public to grasp a much larger problem. It was hard to get the message to the public --and then the barge came along and we took advantage of it." Media attention is viewed by many staff members as critical in getting the attention of the members of Congress, agency officials, and the public and essential in bringing about changes in the agencies. "Oversight," one staff member concluded, "is not just for the agencies, but also for the public--it is a way for Congress to communicate with the public."

Is oversight of the EPA representative of oversight and agency-congressional relations for the newer, social regulatory agencies in general? As indicated above, the EPA is in a unique situation, given the pervasiveness of environmental hazards and the large number of committees with jurisdiction over the agency. Congressional staff members emphasize the tremendous urgency about environmental problems that is reflected in the comments received in members' offices. Perhaps most important, the newness of environmental statutes, the uncertainty about their consequences, the lack of consensus over priorities, and the great costs that they impose on regulated industries all come together to make congressional-agency relations very difficult. In the absence of experience and consensus, surprises are likely, and members of Congress are particularly critical of major regulatory initiatives that catch them off guard.

FEDERAL TRADE COMMISSION

The regulatory actions of the Federal Trade Commission (FTC) do not usually elicit the kind of emotional responses, publicity, and fears that are characteristic of environmental regulation. Nevertheless, there has been considerable interest in Congress in overseeing the FTC. In the 1960s, the Senate Commerce Consumer Subcommittee, encouraged by Ralph Nader, the American Bar Association, and others, sought to invigorate the Commission through new legislation and aggressive oversight. The Subcommittee, according to a former staff member and later Commission chairman (1977-81), Michael Pertschuk, believed the Commission:

> . . . had the wrong constituency--the FTC bar, the advertising industry--instead of the public and consumers. The goal of the Subcommittee was to acculturate the Commission to look in a different direction. The confirmation process became increasingly elaborate, and included an extensive set of questions to find out where nominees stood, but, more importantly, to give them direction. We asked them to meet with consumer groups--a questionable practice looking back on it--not to elicit answers as much as to get them to think that their constituents were consumer groups.

By the mid-to-late 1970s, the FTC became a much more aggressive regulator. Its rule-making powers were significantly strengthened by the Magnuson-Moss amendments in 1974, and it undertook a number of controversial rule makings in the mid-1970s that were suggested by congressional committees. Commissioners appointed by Presidents Nixon and Ford turned the agency into a much more aggressive regulator than it had been in the 1960s. The appointment by President Carter of Michael Pertschuk as chairman pushed the commission even further as it became a province of liberal, consumer-oriented activists, encouraged by its congressional overseers who also encouraged more regulatory activity.

As the Commission became more activist, Congress became more conservative. Many of the strongest advocates of consumer protection had left Congress as had some of their staff, and more conservative members were being elected. Concerns with inflation, decreased productivity, and the costs of regulation dampened enthusiasm for aggressive government intervention in the economy. Lobbying by business groups became more coordinated and effective and, combined with their power to help finance congressional campaigns, led to pressure on Congress to restrict the FTC's regulatory reach. Congress complied, and began reeling in an agency that had gotten too far ahead of its support in Congress (Heymann, 1987, 29-39).

Congress used appropriations legislation to exempt particular industries and professions from FTC regulation and to place restrictions on issuing regulations for children's advertising and insurance. The Commission functioned under continuing resolutions for three years, because Congress was divided over whether to include a legislative veto provision in the reauthorization legislation. In 1980, after the Commission became the first federal agency to shut down because of a lapse in funding, Congress reauthorized the FTC with a two-house legislative veto and several restrictions on pending rule makings. Congress vetoed the FTC's used car rule, but the veto was overturned by the Supreme Court in 1983. The FTC has not been reauthorized since 1982, in part because reauthorization efforts became enmeshed with controversies over the regulation of advertising in 1985, and James C. Miller III's departure as chairman.

In the mid-1980s the focus of congressional oversight shifted again, especially in the House, where some members of Congress believed that the Commission was not doing enough to protect consumers. Efforts by Miller to cut commission staff and budgets and close regional offices were resisted by Congress in oversight hearings and legislation. The appointment of Daniel Oliver as

chairman in 1985 exacerbated congressional-Commission tension because Oliver openly criticized and rejected the Commission's earlier activist efforts.

During the 99th Congress (1985-86) the FTC participated in 18 congressional hearings; from January through August 1987, the Commission had already participated in 17 hearings. Congressional hearings on topics such as insider trading and "hostile" mergers, particularly in the House, gave members the opportunity to criticize the FTC for not doing more to regulate business practices, and gave the FTC chairman the opportunity to defend his strongly held views on the inappropriateness of government regulation in these areas.

Michael Pertschuk has argued that Congress must give the FTC direction before it takes on major rule makings. Congress sets the limits for rule makings, but those limits should be set before the Commission invests time and resources in efforts that will eventually be rejected by Congress. The one controversial FTC regulation that survived--the funeral rule--was ordered by Congress in a 1980 conference report that provided guidelines for the regulation.

Commissioner Mary Azcuenaga observed that Congress is much more likely to get involved in FTC rule making than in that of other agencies because of the nature of FTC regulations. They are less technical than EPA regulations, for example, and are similar to the kinds of issues that Congress itself addresses in legislation.

Congressional staff members emphasize the importance of public opinion and pressure in assuring agency responsiveness to congressional concerns. One House staff member argued that "the key to effective oversight is to get public opinion on your side -- otherwise it is hard to move an agency. Even if you can show that what they have done is bad policy or against the law, if the public is not interested, you can't change the agency." Another staffer said:

> Oversight is an attempt to sway public opinion. That is why it is not done very well. You choose extreme cases, you choose outrageous situations, and beat the agency over the head. That's the only way it works. That is how to be effective. That may be lamentable, but it is the only way to force changes without legislation. . . .

From the perspective of an FTC official, publicity was also important:

> It is difficult to get much public interest in the FTC. Mike Pertschuk overestimated public support for FTC regulation, while Jim Miller underestimated !itl. . . . Members of Congress look for something that will get some interest--the rifle shot approach to getting publicity in oversight. Oversight primarily takes place through appropriations and authorization hearings !andl through proposing legislation that never gets passed.

Businesses that have been the subject of FTC initiatives are located in virtually every congressional district, and Commission regulations can result in widespread congressional interest in and opposition to regulatory agency decisions.

One frequently mentioned problem with oversight is its narrowness. From the perspective of one congressional staff member, oversight "often only gets one side--industry's side. Congress only hears from those on whom the regulation is imposed, and they don't hear from consumers or others." From Commissioner Azcuenaga's perspective, oversight can be used to "further a parochial issue of a member;" and such oversight fails to recognize that there are "always tradeoffs, that you are taking resources from someone or something else."

SECURITIES AND EXCHANGE COMMISSION

The Securities and Exchange Commission (SEC) has generally enjoyed positive and peaceful relations with Congress. There is little of the acrimony and adversarial tension that is found with other regulatory agencies. This is not because the issues the Commission deals with are not controversial or of interest to Congress; rather it is largely because the Commission keeps relevant congressional committee chairs informed and because a half-century of experience with SEC regulations contributes to a relatively stable political relationship. There is a general agreement in the legislative and executive branches concerning the nature of the agency's regulatory powers and responsibilities.

The recent controversies surrounding the SEC include hostile corporate takeovers, "insider trading" in the securities markets, fraud in accounting firms, telecommunications and futures trading, and protection of investors through disclosure requirements. The Commission, as with other agencies dominated by Reagan administration appointees, has generally preferred market-determined results to regulatory interventions, and has angered some members of Congress by failing to restrict corporate takeovers. While the SEC has recently increased its efforts to reduce insider trading, it has favored self-regulation of the accounting profession and disclosure of information rather than direct regulatory intervention.

Most of these actions by the SEC have been criticized by some members of Congress, but the Commission has generally been able to maintain its support in Congress and escape the kind of adversarial oversight characteristic of other agencies. Many SEC issues are also considered to be rather technical, and Congress has been willing to defer to what it sees as an expert and professional administrative body, even though issues like corporate take-overs and insider trading have evoked strong congressional interest in commission activities.

The number of hearings in which SEC personnel have participated has varied, from a high of 34 in 1977-78 to 15 in 1981-82 (not including confirmation hearings). Some of these hearings were strictly legislative, but even those could be considered oversight since they reviewed the adequacy of the existing statutory framework and the need for amendments.

A significant amount of SEC oversight also takes place through inquiries from members of Congress, particularly letters from the House Energy and Commerce Subcommittee on Oversight and Investigations. While the Commission does not know the number of requests, there is considerable communication between Congress and the SEC concerning the level of regulation the Commission is engaged in versus the level of activity members of Congress want. There is also

regular interaction between Commission and congressional committee staff concerning specific regulatory issues. Congressional committees are sent copies of the SEC's daily news digest which discusses regulations under consideration.

There has been some tension between Congress and the SEC concerning enforcement activities. One congressional staff member indicated that oversight inquiries sometimes run up against an agency response that "it is an enforcement matter, and the agency can't comment. It is an unusual situation. So much has to remain confidential to protect the case." Thus, the staffer explained, "Members are hesitant to threaten the case. There is a healthy respect for that." Another congressional staff member was less optimistic:

> Members of Congress feel strongly that Congress should not interfere with enforcement cases. But the right of Congress to look at the agency is on a real-time basis. The House rule says continuous oversight. If we waited until all the insider trading cases were over before we looked at it. . . . You can't wait. The demands of legislation require that legislation is based on current problems.

Another committee staffer observed, "It is easy for the SEC to say they don't want to provide information because it will compromise a case." The key is the trust between the two branches: "Does the SEC trust the committees to keep information confidential? Congress can't operate with blinders on. They have to trust us with information."

To maintain good congressional relations while still having policy disagreements with Congress, commissioners traditionally meet informally with the relevant congressional committee chairs. Commission meetings, in which regulatory initiatives are discussed, are open to the public; and the Commission's tradition of open discussion gives Congress ample opportunity to monitor what is happening. The director of congressional liaison takes particular care in assuring that congressional staff members are made aware of Commission actions that are likely to be of interest to Congress. While other agencies take similar steps, the SEC appears to have been particularly effective in communicating with Congress.

The character of congressional-SEC relations is explained by one congressional staff member who argued that:

> Unlike other agencies, the SEC is less captive. The FCC is always a captive of the broadcasters; the ICC is captured by truckers and the railroads. In the corporate world, the financial institutions check each other. . . . The SEC has to respond to Wall Street, corporate officers, stockholders. There are no blocs that can control the agency. The SEC benefits from that--it has a broader mandate, a broader constituency.

Since banks, insurance companies, and brokerage firms offer similar financial services, in many cases, the competition among them checks the power of individual institutions. Related to this is the value of effective regulation for these institutions in reducing unfair practices (such as insider trading) and assuring investors of the security of their investments. Regulation offers important benefits for the regulated industry rather than, in the industry's eyes, merely imposing burdens.

Steven Paradise, Washington representative of the New York Stock Exchange and a former Senate staff member, argued that "industry is so dependent on regulation that it doesn't fight regulation. When the SEC criticizes us we don't fight it. What they do is in our best interest." As a result, the regulated industry is more likely to lobby Congress in support of effective regulation than in opposition to it.

A third element in congressional-SEC relations is the SEC's independence from the Office of Management and Budget. In 1981, Reagan appointed John Shad as chairman of the Commission. Shad initially expressed support for OMB's regulatory review process and considered submitting SEC regulations to OMB for approval. Representative John Dingell then intervened and convinced Shad not to submit regulations to OMB (Securities Regulation and Law Reporter, 1981, p. 609). Subsequent oversight actions by Congress have sought to ensure SEC's independence from OMB. Former Commissioner Charles Marinaccio argued that one purpose of oversight has been "to make sure the SEC is really independent, that it is not under OMB's power to approve regulations. . . . OMB tried to include independent agencies in its review of regulations but congressional oversight kept [the SEC] independent." As a result, OMB involvement in the regulatory process that has triggered confrontational oversight by the Congress for other agencies has not been a factor in congressional-SEC relations.

OMB's efforts to cut the Commission's budget, however, have been the source of some tension between it and congressional advocates of more regulatory activity by the SEC. In 1983, the four commissioners, acting independently of the chairman, submitted to the House recommendations for the agency's budget, and a House committee ordered the chairman to work with the other commissioners in submitting a budget (Securities Regulation and Law Reporter, 1983, p. 602). Despite these differences over the level of funding for the agency, there has been a general agreement between the SEC and Congress concerning the implementation of securities laws. According to Marinaccio, "the SEC has the confidence of Congress . . . Congress has a healthy respect for the SEC. It carries out the mandate Congress wants it to." SEC officials, unlike those in some other regulatory agencies, "believe in their mandate." Conversely, the commissioners, according to Commissioner Edward Fleischman, "have had respect for Congress."

A fourth factor in these relations appears to be the flow of personnel to and from Congress and the SEC. Not only do those interpersonal ties soften the adversarial nature of oversight, but the exchange of personnel assures that Congress has a good understanding of SEC operations. Congressional staff also generally agreed that the quality of personnel at SEC was higher than at other agencies. For one congressional staff member, "It was a horrible experience to work at the FTC. We didn't do anything. But it was fun to work at the SEC -- we did things. The caliber of people who came in to practice before the FTC was lower than for the SEC." "We have a shared purpose here at the SEC," according to Michael Mann, a Commission lawyer. "It sounds hokey, but you're doing good, doing the right thing by people, keeping business honest" (New York Times, 7/26/87, sec. IV, p. 1).

OVERSIGHT OF OTHER REGULATORY AGENCIES

The experience of other agencies with oversight varies considerably from that of the agencies discussed above, although there are common features. Much of the controversy surrounding oversight of regulatory agencies is a result of the challenges Congress faces in overseeing the agencies that regulate health and safety problems.

The Food and Drug Administration

Oversight of the Food and Drug Administration (FDA) in some ways parallels that of the Securities and Exchange Commission. Until recently, the FDA enjoyed considerable autonomy and independence as a regulatory agency within the Department of Health and Human Services (HHS). Under the Reagan administration, the FDA came under increased control of the Secretary of HHS, and all agency decisions are reviewed by the Secretary's office.

Much of the oversight of the FDA from the House Energy and Commerce Committee, for example, comes from a concern of the committee of "how can we help you accomplish your job," although the committee does not hesitate to attack the agency when it falls short. A congressional staff member noted:

> a general presumption in Congress that the FDA does a pretty good job. They do screw up--the Human Resources and Intergovernmental Relations Subcommittee has found some problems--but the people at FDA are good, there is a high level of commitment and scientific expertise that is much better than at other places like the Consumer Product Safety Commission.

Congressional concern is most likely raised when members believe that FDA decision making has been compromised by OMB or administration interference.

The political environment in which the FDA operates serves to insulate it from some congressional attacks. Business groups usually support the agency, because industries have much to gain from an effective FDA. FDA regulations and enforcement actions benefit industries by enforcing quality, efficacy, and safety standards, and promoting consumer confidence in food and drug products. However, much of the congressional criticism aimed at the agency has been generated by groups such as the Public Citizen Health Research Group and the Center for Science in the Public Interest, which charge that the agency has been insufficiently aggressive in regulating industry and has failed to take actions that would have saved lives or prevented illnesses and injuries.

The Occupational Safety and Health Administration

Oversight of the Occupational Safety and Health Administration (OSHA) is much like the EPA experience. OSHA's enabling statute has not as yet matured into a clear statement of what Congress expects the agency to do. Congress' very broad mandate to the agency to assure "so far as possible every working man and woman in the nation safe and healthful working conditions" (84 Stat. 1590, 1970), has the potential for imposing great costs on industry. Business groups and their

allies in Congress have been highly critical of OSHA regulatory activity. From the creation of OSHA in 1970 until 1981, oversight of the agency was dominated by complaints of businesses about its regulations and inspections. OSHA was widely criticized as the most unpopular regulatory agency. The agency's power to impose criminal penalties is of particular concern to industry.

OSHA and EPA were prime targets of the Reagan administration's regulatory review program. As a result, recent congressional oversight has focused to a great extent on OMB's influence in OSHA rule making. Much of the recent congressional criticism of OSHA has resulted from charges by labor and other groups that the agency is failing to protect worker health and safety.

But congressional staff members have expressed frustration at their inability to push the agency to be more aggressive in regulating workplace hazards. As one put it, "When we talk to OSHA they say, 'We don't care what you say, go ahead and criticize us. Go ahead and cut our budget--you are always trying to get us to do more.' We kind of threaten to write the regulations but we don't have the expertise."

Oversight has had an impact on OSHA in some areas. The ability of organized labor and other groups to graphically demonstrate occupational hazards by bringing victims of accidents and illnesses before congressional committees has generated publicity that has prodded the agency to take action. In other cases, such as the farm workers' sanitation rule, Congress has been frustrated by agency inaction. Much of the Senate's interest has been directed toward inspections and staffing, topics of interest to constituents. OSHA operates under a permanent authorization, and the act has not been amended since 1970. As a consequence, Congress has not been able to use reauthorizations to pressure the agency or to instruct and direct it through statutory changes. OSHA-congressional committee tension has been greatest with the oversight and investigations subcommittees of the House Government Operations and House Energy and Commerce Committees rather than with the authorizing committees.

Congressional staff members also indicate that OSHA changed under former Secretary of Labor Bill Brock and OSHA head John Pendergast, in contrast to its functioning under Labor Secretary Ray Donovan and OSHA head Thorne Auchter in the early 1980s. As one staff member put it, "OSHA is different under Pendergast. He is of the Brock school--diplomatic, knowledgeable of political reality--as opposed to earlier people who were less conscious that Congress was an equal branch." OSHA's office of legislative relations, according to an OSHA official, makes some effort to "keep committees informed of major rule makings and enforcement actions. The Department of Labor sends a daily package of material to 150 Hill staffers--news releases, documents--then they decide what they are interested in." But oversight "is adversarial. Hearings vary in quality and thrust. There may be positive examples of oversight, but nothing comes to mind." After further discussion, however, the OSHA official cited a few examples where oversight was "productive." In one case, he noted,

> OSHA had been petitioned to do an emergency temporary standard for AIDS by health care and public employee unions. OSHA was trying to decide how to deal with AIDS, and an upcoming hearing gave OSHA a deadline. By the time of the hearing OSHA had an

announcement for a plan to deal with AIDS that was acceptable to the chairman.

(A House committee staff member also cited this as an example of good OSHA-congressional relations.)

In another case, hearings on the Iowa Beef Company were held where the exchange was considered healthy. The Committee wanted us to inspect the entire company's operations," the OSHA official said. "We explained how resource-intensive that was, and they agreed. We set up a more limited inspection. Oversight can be productive."

The Consumer Product Safety Commission

The Consumer Product Safety Commission (CPSC) has been widely criticized in Congress. Consumer groups have been able to keep the Commission as an independent body in the face of attempts to either abolish it or put it in the Commerce or Health and Human Services Departments.

As business groups have successfully lobbied Congress to restrain the Commission, Congress has weakened the agency by reducing its budget and staff and limiting its powers. In 1981, the agency's staff was cut by 27 percent, and its budget was cut by 30 percent from the Carter administration's recommendation. In 1981, Congress amended the Commission's enabling statute to require that it take all possible steps to encourage industry to develop voluntary standards before imposing its own mandatory ones. Congress also provided for a one-house legislative veto of Commission rules (later invalidated by the Chadha decision), and has, by statute, ordered the agency to change some regulations and issue others with certain provisions. As a result, the CPSC is no longer the target of industry ire. It has not issued a product safety rule since 1984, and its primary efforts are directed to helping industry develop voluntary standards.

But the Commission has come under criticism from liberals and even some conservatives for doing too little. Consumer groups have called on Congress to pressure the agency to take a more aggressive stance in protecting children from dangerous toys and regulating other hazardous items. There was an ongoing battle between the Chairman and the two commissioners over the way the Chairman was managing the agency and Congress withheld funding for salaries of two of the five commission members, pending resolution of commission conflicts.

Oversight of the CPSC, like that of the other environmental safety, and health regulatory agencies is primarily a function of Congress' perception of what the agency is supposed to be doing and the criticisms of agency activity raised by groups that lobby Congress.

* * * *

There are few conclusions to draw from these specific regulatory agency examples, but there are some common threads. In general, if Congress is bombarded by complaints that an agency is too aggressive, oversight activity is aimed at reigning in the agency. Conversely, when the agency is charged with being ineffective, oversight seeks to push the agency to take a more aggressive stance. Given the nature of its powers over regulatory agencies, Congress is generally more able to restrain an agency from taking new regulatory action than to direct it to take on new regulatory tasks.

CHAPTER FOUR

CONCLUSIONS AND RECOMMENDATIONS FOR IMPROVING CONGRESSIONAL OVERSIGHT OF REGULATORY AGENCIES

The more the executive branch recognizes and accepts the legitimate role of Congress in overseeing its activities, the more likely that oversight relations will be productive. At the same time, members of Congress should find the time required to develop expertise in the programs under their jurisdiction and the patience to pursue investigations and studies that sometimes take months and even years. Most important, members of Congress and executive branch officials need to see oversight not as a peripheral activity, as second-guessing agencies, but as the foundation of good legislation and, thus, effective public policy.

As Congress evaluates the structure of regulatory statutes and agencies it has created, oversight initiatives can be at the heart of the process. In a complex, rapidly changing world, oversight provides continuing opportunities to reexamine the regulatory framework Congress has put in place.

Oversight, like every other activity, will never meet everyone's expectations. Nevertheless, Congress, the president, OMB, and regulatory agencies can take a number of steps that hold some promise for improving oversight.

BALANCED OVERSIGHT

The separation of powers is the essential constitutional underpinning for oversight, but interpretations of that separation differ. From one perspective, the separation of powers is inherently adversarial, particularly when different political parties control the two branches. From another view, the separated institutions are designed more to bring different perspectives to bear on common concerns than to block proposed actions. While there is a general division of legislative and executive labor, this view recognizes that both branches make and implement complex public policy together.

The more that congressional-executive relations approximate this second model, the more likely that oversight can take place in a constructive atmosphere and can focus on broader issues designed to improve statutes and their implementation. Such an atmosphere fosters trust, prompting Congress to delegate more discretion and flexibility to agencies and to the president.

It is in the interest of both branches, as well as of the nation, to improve relations and reduce the tension that leads to policy impasses. If, however, one branch is content with deadlocks, for whatever reason, then the other branch has little recourse but to encourage compromises. Conversely, the more Congress knows about what goes on in the executive's oversight activities, the more likely it will be willing to work with the president to pursue common goals.

Ideally, oversight will proceed in an atmosphere of restraint. Executive and legislative branch officials will be committed to the rule of law; agency heads will ensure a faithful execution of the laws; and members of Congress and their staffs will be less likely to become so involved in the details of administration that agency managers cannot function effectively.

While it is tempting to use the administrative process to gain what was not achieved in the legislative process, government cannot function without full acceptance of the rule of law and an unqualified commitment of executive branch officials to execute faithfully the laws enacted by Congress. On the other hand, Congress has an obligation to enact laws with achievable goals and to refrain from provisions which unnecessarily constrict administrators in implementing those goals. If Congress, the president, and the agencies constantly seek to strike a balance in lawmaking, administration, and oversight, then effective oversight is possible; if that accommodation is lacking, then no set of structures and procedures will be able to effectively channel that interaction into productive activity.

The primary value that regulatory agency oversight can foster is accountability of unelected officials to elected representatives for the administration of laws. Accountability must compete with other values, for example, the time and resources Congress expends in oversight activities are not available for other elements of the legislative process, including writing regulatory statutes. Agency time and resources expended in responding to oversight requests and demands are not available to improve management, sponsor research, conduct enforcement, or pursue the myriad of other tasks that are part of the mission of regulatory agencies.

While tension and conflict have become more common, the benefits of oversight are still threatened, in the case of some agencies, by congressional-executive relationships that are too close and mutually accommodating. Oversight that lacks willingness to scrutinize agencies critically is also a problem that both branches must avoid. The most visible and controversial expressions of oversight have been the adversarial ones, yet the excessively close ties between some agencies and congressional committees are in just as much need of adjustment.

Oversight may improve decision making through a second (or third) look at agency action, but it may also cause unnecessary delays. Much oversight is directed towards individual regulations and agency decisions, and oversight may provide an opportunity to individuals and groups affected (or expected to be affected) to have an action reversed or softened. While such demands may deserve consideration, they may also weaken the consistency and fairness of a statute's application, resulting in policies which are less efficient and effective, and which impair the ability of the policy-making process to address important concerns.

The key is how to balance oversight efforts so that congressional purposes and information needs can be pursued, and administrative excesses remedied without permitting interests that should comply with appropriate policy requirements to escape compliance. No formula or structure guarantees that such a balance will be struck; an open process and a continuing examination of that balancing are all that may be possible.

RECOMMENDATIONS

Having reached these conclusions based on the materials provided and the discussions at its meetings, the Academy Panel on Congressional Oversight of Regulatory Agencies makes the following recommendations.

(1) **We recommend that Congress and the executive seek to develop a balance in their oversight relationships which avoids excessive antagonism, at the one extreme, or capture, at the other. Oversight relationships must be sufficiently adversarial to ensure that programs are scrutinized and evaluated, but must be sufficiently accommodating to permit efficient and effective government.**

This recommendation is quite general, but we are convinced that effective oversight cannot be reduced to a mechanical formula or recipe; it relies on the goodwill and shared commitment of both branches. We do not believe that political differences must be eliminated for oversight to work: in fact, a vigorous debate over the direction of public policy is both essential and desirable. It must be balanced, however, with a recognition of the need for a minimum level of cooperation and common ground so that government can function.

Oversight has been particularly controversial for the newer "social" regulatory agencies that deal with environmental, health, safety, and consumer regulation. These agencies have broad statutes whose provisions delegate much discretion to agencies to make basic policy choices. These statutes have not yet matured into clear, generally accepted standards for private conduct and agency jurisdiction and powers. As a result, the political environment in which these agencies function is often more contentious than that of the older regulatory agencies; the complaints of the regulated industries about over-regulation and the demands of public interest groups for more regulation collide in Congress and in the agencies.

The environment in which oversight of regulatory agencies takes place could be improved if OMB further addresses congressional concerns about its role in reviewing agency regulations. OMB could avoid some congressional criticisms by taking further steps to ensure compliance with relevant statutory guidance and agreements previously reached. OMB officials could also reduce conflict with Congress if they placed more of their comments on the formal rule-making record rather than relying on telephone and other off-the-record communications, and if they met more often with members of Congress and their staff to explain how the review process is working and what major changes in agency submissions OMB is seeking.

Congress has already spent considerable time grappling with the role of OMB in reviewing regulations. In 1982, the Senate passed S. 1080, which would have provided by statute the basic elements of a regulatory review process, but the House did not bring its own version to a vote. In 1986, Congress reauthorized for three years certain activities of OMB's Office of Information and Regulatory Affairs and placed some restrictions on its operations. Given the importance of OMB's review activities and its role in stimulating demands for more oversight of regulatory agencies, Congress could do much to alleviate the conflicts by directly addressing the regulatory review process through authorizing legislation.

(2) **We recommend that Congress determine whether there should be a regulatory review process in OMB and, if so, prescribe by statute the scope, limits, and procedures to be followed. OMB should insure that members of Congress are able to monitor its review of agencies so that misunderstandings and conflicts are minimized.**

Congress can take two important additional steps to provide more guidance to regulatory agencies, particularly the new, social regulatory agencies, that would, when combined with careful oversight, contribute to a more effective policy process.

(3) **We recommend that Congress ensure that regulatory statutes strike a balance between detailed provisions and the need for administrative discretion. Statutes should make the basic policy choices concerning the risks, benefits, and costs of regulatory alternatives.**

Oversight is most likely to contribute to regulatory agencies' statutory purposes if it is tied to objectives that are clearly defined by law. Authorization and appropriations legislation and processes should be coordinated to assure as much as possible, that they are consistent and donot duplicate one another. Congress should avoid writing overly prescriptive language into statutes and, instead, should rely on effective oversight to ensure that executive branch actions are consistent with the intent of Congress. Much of the contentiousness that characterizes oversight can be traced to the gap between statutory mandates and the resources available to agencies. The two branches then disagree over the priorities to be pursued by the agency in using its scarce resources.

(4) **We recommend that Congress set performance goals for regulatory programs that provide a better match between those goals and the resources likely to be available for implementation. Similarly, the executive branch should suggest to Congress ways of better matching goals and resources.**

Funds are rarely available to regulatory agencies to pursue every problem that could possibly fall within their jurisdiction. Not only must regulatory agencies compete with one another and with other agencies for funds, but Congress may further limit appropriations because of uncertainty concerning the costs and benefits of regulatory tasks, particularly when these tasks are first assigned. Nevertheless, it is in Congress' interest to make the political judgments inherent in setting the priorities that determine the basic direction of an agency.

Approaches to Oversight

Oversight can be approached in either of two ways. The first is narrowly focused, ad hoc and episodic. It can highlight problems and, while it may embarrass agency officials, may also be the only way to get their attention and get information out to Congress and the public. Administrators are naturally critical of this kind of oversight. So too are many members of Congress, who do not believe television cameras should have to be present to get the attention of agency officials, or counter OMB's influence.

Ad hoc oversight, while valuable, falls short of addressing the most important problems with administrative rule making. It limits administration

discretion, but may not help agencies set priorities, balance conflicting goals and purposes, or determine how to allocate scarce resources. Agency agendas come to be defined by court orders and specific statutory directives and deadlines rather than through explicit congressional-executive attempts to make judgments about what problems can and should be given priority.

More systematic congressional inquiries, the second kind of oversight, seek to evaluate general program performance. In its purest form, this oversight is comprehensive, examining specific instances of how laws are being implemented and the statutory framework in which agencies operate.

When Congress employs oversight to set priorities, allocate resources, and make basic policy choices--rather than to influence specific agency decisions--it increases the likelihood that its legislative purposes will be achieved. Agencies need broad guidance, particularly since agency authority and jurisdiction often greatly exceed available resources, not detailed statutory provisions. Insofar as possible, the political and policy debate ought to take place at the beginning of the policy-making process, not left to arise when policies that are made by administrators are finally applied and arouse resistance.

(5) **We recommend that Congress increase oversight which evaluates the appropriateness of regulatory statutes and the effectiveness of administrative procedures to implement them. While, on occasion, ad hoc oversight may be the only feasible approach, Congress needs to concentrate on a systematic, long-term analysis of laws and programs. Ad hoc oversight should be integrated with this work.**

The aims of comprehensive oversight should be to provide more explicit guidelines to agencies for identifying and balancing costs and benefits in regulatory decisions, to resolve conflicts and overlaps in administrative responsibilities and jurisdictions, and to give more direction to agencies in the development of priorities and allocation of resources.

This, too, is a broad prescription. As with the first recommendation, it emphasizes the importance of balance in oversight that cannot be achieved by any specific set of steps or a structure, but has to grow out of a general acceptance of the purposes of oversight. Several years ago the Senate showed some interest in "sunset" provisions that would terminate laws and programs unless Congress expressly renewed them after a periodic review. We believe that any such rigid requirement would be undesirable. Many agencies and programs are now renewed annually, consequently receiving only a superficial review.

(6) **We recommend that each Congress approve by resolution an oversight agenda of comprehensive, rotating examinations of regulatory legislation and its implementation. Agencies should be required to submit their analyses of the appropriateness of relevant statutes, their capacity to carry out their mandates, and any recommendations for amendments.**

Congress and the executive can do much more to reorient oversight towards a consideration of the adequacy and appropriateness of the statutory framework under which agencies operate. Agencies can also use this opportunity to indicate to Congress what priorities they have developed and how they plan to allocate their scarce resources in pursuing their statutory mandates.

(7) **We recommend that Congress resist the use of the appropriations process to make substantive changes in agencies' authority or structure and, instead, make such changes through authorizing legislation. If, nonetheless, appropriations riders are used, the appropriations and authorization committees should endeavor to agree on any desirable amendments to the underlying statute before the next year's appropriations are enacted.**

Given the greater difficulties in getting authorizing legislation passed in Congress, the reliance on appropriations bills is understandable. But appropriations riders have significant disadvantages, among them lack of coordination with authorizing committee-enacted statutes.

Resources for Oversight

House and Senate leaders and committee chairs can do much to provide incentives for more systematic, comprehensive oversight. They can better integrate work by more clearly defining the relationship between the governmental affairs/government operations, appropriations, legislative and budget committees. They can influence or direct the allocation of resources and other benefits that encourage (or discourage) oversight.

Leaders must choose carefully the areas for administrative activity oversight, to assure that limited resources are wisely used. Committees must find ways to retain experienced staff and give them the resources and time to examine the implementation of large and complex policies. They must effectively integrate the findings of their own investigations with those by other committees and congressional support agencies; follow oversight hearings with inquiries and studies; and assure that reauthorization and other legislation is informed by oversight findings and conclusions.

(8) **We recommend that Congress revise its process for funding its committees' oversight operations so that a significant proportion of resources is allocated in response to committee proposals for systematic evaluation of specific statutes, agencies, and programs.**

Funding some oversight activity on a project-by-project basis would be a significant departure from current practice. Committees would still receive a general appropriation to conduct their business, but the Senate Rules and Administration and House Administration committees would set aside funds for special oversight projects proposed by the other committees. Ideally, committees would establish their oversight agenda (as suggested earlier) the December after each election and the Senate and House administrative committees could accept requests for these funds in January. The House already meets in December to get organized, while the Senate traditionally does not. House and Senate leadership should meet with the administrative committees to establish guidelines for awarding these funds and to ensure strong leadership support for the idea.

Coordinating Oversight in Congress

Congressional leaders, committees, and support agencies can do much to increase the likelihood that oversight efforts utilize scarce resources efficiently

and effectively. Overlaps among authorizing, appropriations, governmental affairs/government operations, and budget committees should be creatively exploited so they can serve as a check on insufficiently vigorous oversight. But their plans and activities should be coordinated to ensure that all agencies and programs are reviewed regularly and that each committee benefits from the work of the others. In a few cases, the overlaps can pose difficulties for agencies that must respond to a myriad of overseers.

(9) **We recommend that in each committee, the chair and subcommittee chairs, ranking minority members, and their top staffs should meet at the beginning of each session of Congress to establish a formal oversight agenda, including a schedule of programs to be reviewed, and the assignment of subcommittee and staff responsibilities.**

(10) **We recommend that chairs and ranking minority members of committees and subcommittees that share jurisdiction over agencies consult with each other and with the leadership of each house at the beginning of each session to coordinate respective agendas accordingly.**

The oversight agenda of committees will ultimately be affected by events that are difficult, sometimes impossible, to foresee. Improved planning can, however, increase the likelihood that some of the most important issues are dealt with, and that systematic oversight of statutes and their implementation is pursued. Such oversight agendas are, of course, subject to change as specific problems develop to which committees must respond. However, a more systematic approach to oversight should still allow committees to have the flexibility to respond to these problems while at the same time keeping track of broader concerns. To develop their oversight plans, committees might take a number of additional steps. Two steps, recommended below, would be particularly useful.

(11) **We recommend that at the beginning of each Congress, committee and subcommittee chairs and ranking minority members from both chambers meet with the agency heads under their jurisdiction to exchange views about those areas of agency activity that should be the focus of specific oversight efforts or additional congressional direction. The committee leadership should consult also with groups affected by or otherwise interested in the relevant agencies.**

(12) **We recommend that Congress encourage coordination of and follow-up to oversight activities by requiring that: committees or subcommittees prepare a report for each oversight project; agencies be required to inform the committee of actions taken or planned on recommendations; and those reports and agency responses be circulated to all relevant House and Senate committees.**

Central to these recommendations is the recognition that oversight is most likely to be effective if majority and minority members agree on what is to be done and present a united position, particularly when party control is divided. Oversight and investigation subcommittees need to work closely with their legislative counterparts to have the most impact. House rules require that oversight findings and recommendations be included in the committee reports accompanying all authorization and appropriations bills. This kind of close cooperation is particularly important in the House, since most Senate committees do not have separate oversight subcommittees.

Oversight activities will much more likely lead to improved legislation and administration if agencies know that Congress will follow up on past work and require that changes be made, when appropriate, in agency practices. By law, agencies are required to report, after a set time period, to appropriate congressional committees, their actions taken in response to GAO recommendations. A similar requirement could be enacted for committee oversight recommendations.

Oversight Staff

Qualified staff are essential to effective oversight. The Congressional Management Foundation's recent study of congressional staff warned that high turnover and salaries that lag behind comparable executive branch and private sector jobs threaten the effectiveness of Congress.

Training programs for staff members such as those provided by the Congressional Research Service, are essential for effective oversight. Also useful are staff visits to, or temporary assignments at the executive branch agencies on whose programs they work. All of these efforts are especially important for appropriations subcommittees, where staffs are small, given the range of agencies covered.

(13) **We recommend that committees encourage staff members to develop a thorough understanding of the agencies for which they are responsible, establish more executive-legislative staff exchange programs, and recruit individuals with executive branch experience for staff positions.**

There is some danger that such initiatives will end up insulating programs from careful review and fostering cozy relationships; but that is a risk worth taking. We believe that such an exchange will, in the long run, be beneficial to agencies by helping them to understand better congressional interests and concerns, and to Congress, by helping members and staff understand better the challenges administrators face.

Oversight Activities of the General Accounting Office

The GAO assists Congress in oversight, and plays a particularly useful role in conducting audits and evaluations of areas not addressed by congressional committees. There are several steps that Congress could take to enhance the contribution GAO makes to congressional oversight. For example, GAO now meets periodically with numerous committee staffs on specific projects and to discuss each others' agendas, but such meetings could be more frequent and with more committees. This is not meant to discourage ad hoc oversight, but to provide incentives and resources for more systematic oversight to complement the more problem-specific efforts.

(14) **We recommend that committee and subcommittee chairs and ranking minority members meet more regularly with GAO officials to help establish the committee's oversight agenda and coordinate the activities of the committee staff and the GAO.**

Congress also should assure that GAO has sufficient resources to carry out its own oversight agenda as well as to respond to congressional requests. This requires that Congress provide an adequate budget for the GAO, and that scarce GAO resources be carefully used by Congress. For example, the chairman of the House Post Office and Civil Service Committee now approves subcommittee requests to GAO. This practice could be extended to other committees.

Program Evaluation and Oversight

The amount of systematic review and evaluation of programs that Congress and its support agencies can do is limited. With the recent decline in agency-conducted evaluations, Congress must also encourage executive branch efforts to evaluate the management and effectiveness of federal programs. In an era when competition for funding is fierce, Congress needs to have information generated through program evaluations.

(15) **We recommend that Congress ensure that agencies engage in more thorough, systematic, and comprehensive evaluations of the programs they administer by: earmarking funds for program evaluation; providing in authorizing statutes criteria by which to measure program effectiveness; and setting deadlines for submitting evaluation reports to committees.**

Setting aside funds for program evaluation may appear to some to be a luxury, and pressure to reduce discretionary spending is likely to be aimed at program evaluation funds, but we are convinced that the benefits of program evaluation far exceed their costs. Precisely because budget constraints are so severe, Congress should provide for more program evaluation to assist it in making the difficult decisions about which programs should be expanded and contracted.

The Role of the Executive Branch

Many of the recommendations outlined above require the involvement and support of the president and regulatory agencies. Oversight efforts by Congress cannot effectively evaluate existing statutes and their implementation without the commitment of executive branch officials to improved executive-legislative branch communication and cooperation. Congress also needs to be realistic in its expectations for implementing the laws. While the primary focus of the recommendations above is on Congress, presidents, their staffs, and the agencies can do much to contribute to effective oversight if they recognize Congress as a partner in the policy-making process.

The wider the chasm between the executive and legislative branches, the less oversight will be able to bridge the gap. Certain Reagan administration officials have challenged traditional interpretations of laws and agency implementation of those laws. Appointees to regulatory agencies have expressed disagreement with and even hostility towards the statutes they are expected to carry out. The president has established goals that sometimes have resulted in actions by his subordinates which critics charge have conflicted with existing laws. The OMB has persuaded Congress to accept cuts in funding and personnel levels (even as Congress has delegated new powers and responsibilities to agencies) and has encouraged agencies to avoid taking new regulatory initiatives even though their enabling statutes require aggressive agency actions.

In response to concerns of executive branch opposition to congressional priorities and objectives that predate the Reagan era, Congress has made some laws much more detailed and specific, and then used oversight hearings and investigations to find cases where the provisions of these laws have not been satisfied. Oversight as a means of altering presidential policies obviously has its limits. While there may not be much to be done to further mend congressional-executive relations in the Reagan administration, the next administration will have an opportunity to learn from the experience of this and previous administrations and to avoid some of the difficulties and misunderstandings that have hampered the two branches from working together.

(16) **We recommend that the next president take steps to foster good communication and cooperation by OMB and regulatory agency officials with Congress in monitoring the implementation of regulatory statutes, including emphasis on the need for compliance with the spirit and letter of the laws.**

(17) **We recommend that agencies themselves ensure good cooperation and communication with the Congress and full compliance with enabling statutes. They should make suggestions for: areas of agency activity and statutes that would benefit from oversight proceedings; needed statutory improvements; and priorities for regulatory actions. Agencies should also seek budgets sufficient to achieve the tasks Congress has delegated to them.**

In practical terms, agencies can do much to diffuse tension by ensuring that Congress is not surprised by agencies' actions and by engaging members in discussions of policy choices rather than simply announcing decisions. Routine reporting processes associated with the president's budget and legislative requests to Congress should be supplemented as needed throughout the year.

Agencies that develop means of keeping congressional agencies abreast of regulatory initiatives are less likely to be attacked in oversight hearings and investigations. Some communication already takes place through OMB's annual publication, Regulatory Program, but it should be supplemented with a regular reporting of agencies' general priorities and major initiatives in rule making, enforcement, and other areas of activity. Congress should be provided timely notice of agency plans.

(18) **We recommend that agencies keep congressional committees fully informed of all major regulatory initiatives, including regulations, major enforcement actions, and any significant departures from past administrative or regulatory practices.**

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APPENDIX A

BIOGRAPHIES OF CONGRESSIONAL OVERSIGHT PANEL

Richard Bolling was a Member of Congress from 1949 to 1983 representing the 5th Congressional District of Missouri. He was the Chairman of the House Committee on Rules which considers all major legislation before it goes before the full House of Representatives for debate and vote. He was a leader in the fight for Congressional reform, and chaired the House Select Committee on Committees in 1973-4. He is currently engaged in writing a book analyzing past and present American governments and proposing essential modernizations of American institutions.

Roger Davidson is Professor of Government and Politics, University of Maryland. Prior to that, he was a Senior Specialist in American National Government and Public Administration, Congressional Research Service, Library of Congress. Previously, he taught at Dartmouth College and the University of California at Santa Barbara. He also served as a staff member of the House Select Committee on Committees, was a special research consultant to the Temporary Select Committee to Study the Senate Committee System, and is the author of numerous publications on legislative issues.

Patricia Florestano is Vice President for Governmental Relations, University of Maryland. Prior to that, she was Director of the Institute for Governmental Service, and Assistant Professor of the Institute for Urban Studies at the University of Maryland. She served as Staff Assistant to the President of the Maryland Senate, and as Research Associate for the Maryland Governor's Commission on Functions of Government, and as researcher for the Maryland Legislative Commission on Intergovernmental Cooperation.

Scott Fosler has been Vice President, Committee for Economic Development (CED), since 1979 and has been Director of Government Studies since 1974. He is also a Senior Fellow at the Institute for Policy Studies of the Johns Hopkins University. He was Assistant to the Executive Director, National Commission on Productivity from 1973-74. From 1969 to 1973, he was Senior Staff Member at the Institute of Public Administration. He was a member of the Montgomery County (Maryland) Council from 1978 through 1986.

Herbert Jasper is Senior Associate, McManis Associates, Inc. Before that, he was Executive Vice President, Ad Hoc Committee for Competitive Telecommunications. His experience in the executive and legislative branches includes service in the Congressional Research Service, the General Accounting Office, the Office of Legislative Reference and the Government Organization Branch, Bureau of the Budget. Mr. Jasper also served as consultant on budget reform to two Senate Committees and as Executive Secretary of the President's Task Force on Government Reorganization.

Allen Schick has been Professor, School of Public Affairs, University of Maryland, since 1981. From 1972 to 1981, he was Senior Specialist at the Congressional Research Service, where he specialized in Congressional budget issues and provided principlal staff support on legislation such as the Congressional Budget and Impoundment Control Act of 1974. From 1968 to 1972, he was Research Associate and Senior Fellow at the Brookings Institution. He taught government at Tufts University from 1961 to 1968. In 1967, Dr. Schick was staff associate for the President's Task Force on Government Organization.

James Sundquist was a Senior Fellow with the Brookings Institution from 1965 until 1985. He is now Senior Fellow Emeritus. He directed the Brookings Governmental Studies Program from 1976-78. He has been a deputy undersecretary of Agriculture and has experience as an administrative assistant in the United States Senate, as well as in the Bureau of the Budget. Mr. Sundquist has written extensively on post-World War II politics and policy making.

Susan Tolchin is lead professor at George Washington University in the field of executive, legislative, and regulatory management and specializes in federal regulation. She teaches legislative management, public policy formulation, and federal government administration. Dr. Tolchin is a nationally recognized expert in the field of American government and politics. Her books, which have been widely cited in newspapers, journals and Supreme Court decisions, include Buying in America - How Foreign Money is Changing the Face of our Nation; Dismantling America - The Rush to Deregulate; Clout - Womanpower and Politics; and To the Victor - Political patronage from the Clubhouse to the White House.

Richard A. Wegman is a partner with the law firm of Wegman & Hoff. He was director of President Carter's Commission for a National Agenda for the Eighties. He served as Chief Counsel and Staff Director of the Senate Committee on Governmental Affairs, where he directed the preparation of six volumes on various aspects of federal regulation. He also served as Chief Counsel to that Committee's Reorganization Subcommittee. Mr. Wegman earlier served in the Justice Department's Antitrust Division.

APPENDIX B

PERSONS INTERVIEWED FOR THE STUDY

Members of Congress:

Sen. David Durenberger
Sen. Carl Levin
Rep. Frank Horton
Rep. Ted Weiss

Current or former Senate staff members:

Katherine Cudlipp
Alan Edelman
Linda Gustitus
Chuck Harwood
Katherine Kimball
Paul Light
Harold Lippman
Curtis Moore
Nan Stockholm
Leonard Weiss

Current or former House staff members:

Michael Barrett
Steven Daniels
Tom Daniels
Gerald Dotson
Jan Edelstein
David Finnegan
Richard Frandsen
Christopher Goebel
James Gottlieb
William Donald Gray
Royce Griffin
Debra Ann Jacobson
William Jones
Gregory Lawler
Patrick McLain
William Roberts
Jack Shenendorf
Russell Smith
Rena Steinzor

Current or former EPA officials:

James Barnes
Ronald Brant
Don Clay
Craig DeRemer
William Drayton
Daniel Fiorino
David Hawkins
Steven Jellnick
Henry Longest
Joan Platten
William Prendergast
Milton Russell
Steven Schatzow
Larry Snowhite
Lee Thomas
Marcia Williams

Current or former FTC officials:

Mary Azcuenaga
Winston Moore
Michael Pertschuk

Current SEC officials:

Edward Fleischman
Charles Marinaccio

Current or former GAO officials:

Charles Bowsher
Thomas Hagenstad
Harry Havens
Roger Sperry
Elmer Staats

CRS officials:

Thomas Novotny
Walter Oleszek
Stephen Stathis

Representatives of interest groups, scholars, and others:

Edmund Frost
Ernest Gellhorn
Robert Katzmann
William Megonnel
Alan Morrison
Eric Olson
Robert Percival
Julie Van Egmond

SELECTED ACADEMY PUBLICATIONS

The Constitution and the Administration of Government: Summary of Proceedings of the 1987 Academy Spring Meeting (1988)

Prospects for the Item Veto at the Federal Level: Lessons from the States (1988)

Welfare Reform Dialogue: Implementation and Operational Feasibility Issues (1988)

Strengthening the U.S.-Soviet Communications Process to Reduce the Risks of Misunderstandings and Conflicts (1987)

Third-Party Government and the Public Manager: The Changing Forms of Government Action (1987)

Presidential Management of Rulemaking in Regulatory Agencies (1987)

The Quiet Crisis of the Civil Service: The Federal Personnel System at the Crossroads (1987)

Professional Career Entry into the Federal Service (1987)

Equal Opportunity and Management Practices in NASA Headquarters: An Assessment and Recommendations for Action (1987)

The Next Generation in the Management of Public Works: Getting Some of It Together (1987)

Improving Facilities Management for the U.S. Courts (1987)

Leadership in Jeopardy—The Fraying of the Presidential Appointment System (1985)

The Presidential Appointee's Handbook (1985)

Giants in Management (1985)

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