



# Center for Regulatory Effectiveness

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May 31, 2012

The Honorable Darrell E. Issa, Chairman  
Committee on Oversight and Government Reform  
2157 Rayburn House Office Building  
Washington, DC 20515-6143

Dear Congressman Issa:

The Center for Regulatory Effectiveness (CRE) appreciates the opportunity to assist the House Committee on Oversight and Government Reform in identifying regulatory programs that have negatively impacted job growth. In addition to detailing the CRE's efforts to monitor costly regulations, we have identified a few areas of regulation that have hurt U.S. job growth and have described them below.

## I. Interactive Public Docket Monitoring Costly Regulations

As a nationally recognized clearinghouse for methods to improve the federal regulatory process, CRE is very well acquainted with the significant impact and costs the regulatory framework can have on the U.S. economy. Accordingly, CRE is pleased to learn that the Committee on Oversight and Government Reform is continuing to examine this essential issue, and is working closely with the private sector to create a regulatory landscape that encourages job growth.

CRE has established an interactive public docket<sup>1</sup> (IPD) on the [Retrospective Review of Regulations](#)<sup>2</sup> to provide the public with an avenue to submit comments and feedback on burdensome regulations that are debilitating small businesses and job growth. We welcome the Committee to consider and incorporate the analyses and comments from the public in its work on reducing the regulatory burden on small businesses.

<sup>1</sup> [http://en.wikipedia.org/wiki/Interactive\\_Public\\_Docket](http://en.wikipedia.org/wiki/Interactive_Public_Docket)

<sup>2</sup> <http://www.thecre.com/forum2/>

The IPD will provide an invaluable resource of public input and analysis for the Committee on Oversight and Government Reform, which it can continually draw from as costly regulations are promulgated. The IPD provides: (1) the public with the opportunity to present the impacts and costs of particular regulations; (2) agencies to respond to said comments and justify the cost of their regulations, and (3) offer the Committee relevant analysis on a continuous basis. The IPD will be a particularly useful tool, because there is a substantial number of parties, across government and private sector lines, which are affected by regulatory burdens. The IPD will function to keep all parties apprised of developments, while also providing a collective resource of information for the Committee in order to carry out its work on relieving job creators from regulatory burdens.

The CRE recommends that all business organizations submitting comments to the Committee also publish their comments on the Retrospective Review of Regulations IPD at <http://www.thecre.com/forum2/>.

## **II. CMS' Durable Medical Equipment Competitive Bidding Regulation: "The Antitheses of Science"**

Maintaining access to home medical equipment, and to the quality services essential for its provision and use, is a substantial concern for Medicare beneficiaries and their families.

The jobs generated by companies supplying the home medical services and equipment are being destroyed by an HHS/CMS regulation. This regulation is also undermining the supply of equipment and services to Medicare beneficiaries; as jobs are lost so are the life sustaining services and equipment medical professionals provide to America's seniors.

CMS' regulation implementing Competitive Bidding for Durable (Home) Medical Equipment (DME) is the agency's attempt to selectively implement portions of Section 302 of the Medicare Modernization Act of 2003 (MMA).

Industry is now reporting that over 300 companies, primarily small businesses, have been shut down by CMS' regulation. Information about the job losses may be found here <http://www.vgm.com/blog/index.php/2012/05/members-report-over-300-dmes-out-of-business-due-to-competitive-bidding/>.

A news article last year from an industry trade publication warned about the impending loss of jobs from CMS's regulation can be found here:

[http://www.thecre.com/news/20110220\\_news.htm](http://www.thecre.com/news/20110220_news.htm).

It is important to note that, contrary to CMS claims, the regulation will not save taxpayer money, instead it will lead to more expensive hospital stays and an increased need for nursing home facilities as patients lose the ability to stay in their homes as a result of the regulation. The reduced competition from the government putting so many businesses out of business will result in increased costs to the taxpayer.

Over 240 economists, including several Nobel laureates have harshly criticized the CMS regulation calling it the “antithesis of science.” Detailed information about the problems with CMS’ regulation can be found here:

<http://www.thecre.com/pdf/HoldrenLetter.CompetitiveBidding.pdf>.

### **III. BOEM’S OIL SHALE REGULATIONS AND BOEM’S FAILURE TO RELEASE PUBLIC COMMENTS**

Public access to public comments on a public proceeding is a basic prerequisite of open government.

For decades federal agencies have made public comments available to the public, first through docket rooms and then, as the internet developed, through online systems developed by each agency. Agency-specific solutions to provide public access to public comments were superseded by [Regulations.gov](#). President Obama has emphasized the importance of the public comment portal and has enhanced its operation.<sup>3</sup>

Despite the Administration’s emphasis on the use of [Regulations.gov](#) to promote public participation and collaboration in agency proceedings, the Bureau of Land Management (BLM) has repeatedly refused to release public comments on the 2012 Oil Shale and Tar Sands PEIS. Instead, BLM has chosen to bypass the open process in favor of its own comment processing system, a system which excludes the public from reading public comments. Moreover, BLM’s internal comment processing system has the capabilities to post the comments online, which the previous administration had done in the 2008 Oil Shale and Tar Sands PEIS.<sup>4</sup> Despite these capabilities, BLM has chosen secrecy over transparency in the PEIS process.

BLM’s lack of transparency is troubling, especially in light of the current Administration’s Open Government Initiative. Although agencies are free to receive public comments through an internal process within the agency, it is not clear why BLM avoided using [Regulations.gov](#) which would ensure public access to the comments, especially when the White House has supported public and agency use of [Regulations.gov](#) as part of their Open Government Initiative.

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<sup>3</sup> <http://www.whitehouse.gov/open/innovations/Regulations-gov-Exchange>.

<sup>4</sup> 2008 PEIS Comments available at  
[http://ostseis.anl.gov/involve/draftcomments/dsp\\_commentlist.cfm?PageNum=1&browse#rec](http://ostseis.anl.gov/involve/draftcomments/dsp_commentlist.cfm?PageNum=1&browse#rec)

Moreover, rather than using the government sponsored portal at Regulations.gov to receive public comments, BLM hired its own contractor to prepare and distribute copies of comments to agency officials. This sort of government waste and secrecy is another example of how the regulatory state has failed to serve business owners and the public. BLM's complete disregard for the Office of Management and Budget's, the Department of Interior's, and its own Open Government/Transparency Plans is an egregious example of an agency failing to involve the public in a rulemaking process.

CRE is indifferent to whether BLM uses Regulaltions.gov or another mechanism to disseminate the comments it receives but its difficult to comprehend in the year 2012 that a federal agency refuses to release the comments it receives from the public on an ongoing regulatory matter. In doing so, BLM does monopolize the proceeding by prohibiting the various stakeholders from reviewing the comments of other stakeholders.

#### IV. CONCLUSION

CRE is pleased to have the opportunity to identify existing and proposed regulations that negatively impact job growth for the Committee on Oversight and Government Reform. CRE welcomes the opportunity to assist the Committee in the future as it considers the impact of these and other regulations on U.S. jobs, and encourages the Committee to incorporate the analysis available on the CRE's IPD on the [Retrospective Review of Regulations](#).<sup>5</sup> Should you have any questions or require additional information, please contact me at (202) 265-2383.

Respectfully submitted,



Jim Tozzi  
Member, Board of Advisors

cc: The Honorable Jim Jordan

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Available at <http://www.thecre.com/forum2/>