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Report Card for the Obama Administration

CEI Grades the Performance of Cabinet and Agency Heads

Washington, D.C., January 20, 2010—One year ago today, Barack Obama took the oath of office as President of the United States. Since then, he and his appointees have had the opportunity to begin implementing their policy agenda, with notable results throughout the federal government's departments and agencies. The analysts of the Competitive Enterprise Institute have assessed the administration's first-year performance and assigned grades accordingly.

D- **White House (overall) —** Barack Obama, President

Grader: **Fred L. Smith, Jr.**, President

Americans rallied behind President Obama's message of hope and change, giving this administration a wonderful opportunity to reframe the debate about an array of issues in America—entitlements, environmental policy, health care, and the roles of the federal and state governments. Americans, not wedded to either the Democrats or the Republicans, were ready for a reappraisal, a rebalancing of the powers of the people and the politicians. He blew it. Despite being elected by moderates and independents, this administration adopted the most statist agenda and created the most bloated bureaucracy in America's history. By championing further politicization of an already overly politicized America, there have been rapid drops in Obama's credibility and popularity.

Americans are dropping out of his Long March toward Socialism. Obama could have adopted a "Nixon in China" policy, working with Republicans, Independents, and Democrats to rebalance private and political frontiers, encouraging greater private involvement in education, allowing private property a role in the environmental field, taking on the non-sustainable entitlement programs already threatening the survival of Europe, reducing the regulatory and tax burdens on entrepreneurial creativity, and moving away from the neo-conservative "nation building" crusade of his predecessor. Unfortunately, he has not. He could have been—and, if he reshapes his course quickly enough, might still become—a great president. But, in this first year of his presidency, he has disappointed. The performance of the White House to date merits only a D-.

D+ Department of Agriculture — Tom Vilsack, Secretary

Grader: **Frances B. Smith**, Adjunct Fellow

In a February 24, 2009, address to Congress, President Obama promised the American people that his administration would be taking a hard look at farm support. "In this budget," he said, "we will . . . end direct payments of large agribusinesses that don't need them." However, reality wasn't consistent with that rhetoric, as the U.S. Department of Agriculture estimates that direct government payments would total $12.5 billion in 2009, a 2-percent increase over 2008. Agricultural policy in the Obama administration has also continued and expanded massive agricultural subsidies, with new "green" subsidies for ethanol production. In addition, the American Recovery and Reinvestment Act of 2009 gave USDA nearly $28 billion in funding, which together with guaranteed loan programs represents nearly $52 billion in new program funding. The Obama administration has also refused to touch special interest programs that benefit wealthy farmers at the expense of consumers—for example, the USDA decided not to increase import quotas for sugar, which restrict the amount of sugar available for sugar users and consumers. And, despite World Trade Organization rulings against U.S. cotton subsidies, no U.S. action has been taken to change that program.

D Consumer Product Safety Commission — Inez Moore Tenenbaum, Chairman

Grader: **Angela Logomasini**, Director of Risk and Environmental Policy

The CPSC gets a D for its management of perhaps the most significant item on the Consumer Product Safety Commission agenda for 2009: the implementation of the Consumer Product Safety Improvement Act of 2008 (CPSIA). It regulates lead and certain chemicals in toys. Never mind the fact that the trace levels are too low to pose a health risk, this draconian law is putting small businesses out of commission and forcing charities to toss old books, toys, and other items. Small businesses and others have been fighting this unreasonable and impractical law since its inception. But CPSC has made things even more difficult than necessary by refusing to apply any flexibility built into the law.

Commissioner Ann Northup, one of the few voices of reason at CPSC, noted recently in the *Wall Street Journal*: "For the past several months, American businesses have been caught in the middle of a classic standoff between the federal commissioners in the majority, who argue that the statute ties their hands, and members of Congress, who claim they wrote flexibility into the law and blame the commission for any harsh consequences. Although the commission steadfastly refused to reach out to Congress to seek clarifications to the law, Congress has now reached out to us—asking the agency last week for a list of recommendations to amend the statute. Thankfully the commission responded, in part, by agreeing to extend the stay on testing and certification for lead content. This window gives Congress time to consider such common-sense changes…" The commission gets a few points for having at least extended one compliance deadline to allow time for reform, but it could have taken more opportunities to apply some reason to the application of the law.

F **Department of Energy —** Steven Chu, Secretary

Grader: **Iain Murray**, Vice President for Strategy

The mission of the Department of Energy has historically been one of ensuring that America has the power to meet its economic needs. Unfortunately, under Secretary Steven Chu, a Nobel-prize winning physicist, the Department has apparently decided that America's economy is too big and needs to be scaled back. It has taken a decision to frown upon traditional sources of energy, generated from fossil fuels, and discouraged their further development. Alternative sources of energy, which cannot possibly meet America's needs in the short-to-medium term, are instead encouraged with massive taxpayer-funded subsidies. Some noises have been made about nuclear energy, but it remains the red-headed stepchild of energy policy. The result will likely be a continuing degradation of America's energy infrastructure which will almost certainly result in its failure to meet economic needs should the nation begin to climb out of the current recession, with the likelihood of a stalled recovery. For its failure to appreciate exactly what it is supposed to be there for, the Obama administration's Department of Energy gets a resounding F.

F **Environmental Protection Agency –** Lisa P. Jackson, Administrator

Grader: **Myron Ebell**, Director of Energy and Global Warming Policy

EPA flunked on April 16, 2009, when EPA Administrator Lisa Jackson found that greenhouse gas emissions endanger public health and welfare, and therefore must be regulated under the Clean Air Act. This endangerment finding came after an advance notice of proposed rulemaking begun during the Bush administration in July 2008 that resulted in numerous substantive expert comments that show clearly that the finding is unwarranted scientifically, that the Clean Air Act is entirely unsuitable for regulating greenhouse gas emissions, and that using it to do so would create a regulatory nightmare and do enormous economic damage. Administrator Jackson admitted that the Clean Air Act was not designed to regulate greenhouse gas emissions, but went ahead and made the finding anyway.

In addition, EPA has moved aggressively to stop coal production in Appalachia by intervening in mine-permitting decisions by the U.S. Army Corps of Engineers. The EPA has even demanded that the Corps revoke permits for new mines that have already been granted. The grounds upon which the EPA is attempting to stop coal mining are utterly ridiculous.

D **Federal Communications Commission –** Julius Genachowski**,** Chairman

Grader: **Ryan Radia**, Associate Director of Technology Studies

Radio and television stations, Internet service providers, and even wireless phone companies are all regulated by the United States Federal Communications Commission (FCC). This agency is tasked with governing the nation's airwaves and making available communications services to the residents of the United States.

Technological evolution has spurred fundamental changes in the way we communicate over the last couple of decades. Consumers nowadays enjoy more information and entertainment sources than ever before, and the notion of scarcity in communications has yielded to a world of abundance. Consequently, the FCC's proper role has grown smaller and smaller.

Like most modern bureaucracies, however, the FCC has maneuvered in recent years to interject itself in market processes in order to preserve the agency's relevance in the face of a rapidly changing communications landscape. Most recently, the FCC has proposed imposing net neutrality rules that would limit how Internet providers can manage their networks in the name of protecting consumers. But these rules threaten to constrain tomorrow's innovative business arrangements—arrangements which today's shortsighted regulators simply cannot foresee.

The FCC also made headlines in the fall of 2009 when it launched an investigation into wireless industry practices. AT&T, the nation's second largest wireless carrier, and Apple, the maker of the iPhone, were at the center of the controversy. Naturally, the FCC claimed its actions were aimed at protecting consumers. In fact, the looming scepter of regulatory intervention in the wireless market—a market which is highly innovative and competitive, according to objective measures—causes firms to retreat, stifling innovation and making consumers worse off.

On the other hand, the FCC has publicly acknowledged the need for expanding the pool of spectrum available to the marketplace. Spectrum is the lifeblood of mobile communications, but government controls giant swaths of this resource. The FCC has streamlined the process of deploying wireless services, which has helped ensure that wireless carriers are able to meet escalating demand for mobile data service. But the Commission still has a long ways to go if it's to enable American enterprise to realize the full potential of the spectrum.

F **Federal Trade Commission –** Jon Leibowitz, Chairman

Grader: **Michelle Minton**, Policy Analyst

The purpose of the Federal Trade Commission is, ostensibly, to protect consumers and encourage competition in the marketplace. However, over the last year the FTC and the Obama administration have initiated or endorsed actions that display an increasingly interventionist intent and that would resoundingly impede competition and threaten the liberty of individual consumers. Congress initiated plans to repeal portions of the McCarran-Ferguson act, ending the long-standing antitrust exemption for health insurers. This proposal, endorsed by President Obama, would do nothing to reduce the costs of health insurance and would more than likely result in increased costs and market consolidation. The “collusion” practiced by health insurers actually allows them (especially small insurance companies) to share information and rate-setting standards for more accurate premium calculations. Setting accurate risk-based rates is fundamental to an insurer's ability to charge adequate rates that are neither too little or too much. States already have the power to regulate antitrust in the insurance industry so the result of repealing the antitrust exemption would most likely be insurance companies erring on the side of caution by reducing market cooperation, a reduction in premium rate accuracy and thus an increase in the costs of writing insurance.

Additionally, the FTC filed an antitrust suit against Intel, the leading manufacturer of microprocessors, alleging that the company violated federal laws by engaging in exclusionary business practices. In reality, Intel has been able to achieve its success due to constant innovation as a result of a vibrant and competitive market. The application of antitrust laws will only retard what is an otherwise dynamic market. There is no evidence that Intel's market success has harmed consumers in any way. Lastly, and most disturbingly, the FTC issued new rules which went into effect December 1, 2009, that would make the average blogger liable for civil penalties for false claims about products or failure to disclose material connections between the reviewer and the marketer of a product or service. This raises serious concerns about the scope of the FTC's powers and its ability and willingness to hamper individuals' freedom of speech. For this and the previously mentioned offenses the FTC receives an unequivocal F.

C- Food and Drug Administration – Dr. Margaret Hamburg, Commissioner

Grader: **Gregory Conko**, Senior Fellow

The Obama administration’s Food and Drug Administration had a sub-par performance in 2009. The agency’s Center for Drug Evaluation and Research approved just 24 new drugs and biotech medicines last year—roughly on par with its performance in the final year of the Bush administration, but well below recent highs of 53 in 1996 and 39 in 1997. In other areas, the FDA’s new leadership has taken a “get tough” attitude with manufacturers that will do nothing to improve safety, but could deprive consumers of useful products and information. For example, in April, the agency informed drug manufacturers that their use of “sponsored link” ads on search engines such as Google and Yahoo! were unlawful because the 70-character links did not present the same encyclopedic risk information required of conventional print advertisements—even though the links directed users to a page containing the full risk disclosure.

In May, the FDA issued a warning letter to General Mills that labels on boxes of Cheerios indicating that consumers could lower their cholesterol by eating the whole grain cereal turned the product from a food into a medical drug. And, in

July, Principle Deputy Commissioner Joshua Sharfstein recommended imposing strict limits on the use of certain antibiotics in livestock production. The appointment of so-called consumer advocates such as Sharfstein and Assistant Commissioner for Policy Peter Lurie suggest one reason why the new FDA leadership has been taking a needlessly antagonistic regulatory approach. Similarly, the appointment of Ralph Tyler, an attorney with no food and drug law experience, to serve as FDA chief counsel, bodes poorly for consumers and manufacturers alike.

F **Immigration and Customs Enforcement –** John T. Morton, Assistant Secretary

U.S. Citizenship and Immigration Services – Alejandro Mayorkas, Director

Grader: **Alex Nowrasteh**, Policy Analyst

Immigration and Customs Enforcement (ICE) and United States Citizenship and Immigration Services (USCIS) receive an F for enforcing America's self-destructive immigration policies. ICE and USCIS have the impossible task of separating immigrants from economic opportunity, and have failed spectacularly. The cost per apprehension of illegal immigrant on the border is up by 1,041 percent since 1992, and the number of illegal immigrants only seems to dip in response to recessions. When our immigration laws are confronted with the economic realities of mass immigration, ICE and USCIS end up with egg on their faces and taxpayers with a hole in their pockets.

F **Department of Interior –** Ken Salazar, Secretary

Grader: **R.J. Smith**, Senior Environmental Scholar

Unfortunately, Interior Secretary Ken Salazar and the host of environmentalists who have filled key slots appear determined to continue to expand the amount of federal land ownership through the acquisition (and regulation) of private lands—supporting the creation of ever more National Parks, National Monuments, National Wildlife Refuges, National Heritage Areas, National Trails, and Wild and Scenic Rivers. With the poor record of stewardship on so many of the federal lands, one would hope for some demonstrated ability to care for what they already have, in place of endless acquisition as a seeming end in itself.

And while DOI is reducing private land ownership, it is also locking up millions of additional acres of existing federal lands in Wilderness Areas, which can never be used and most of which have never even been inventoried for their potential contributions to national survival. Additionally the U.S. Fish and Wildlife Service is in the process of listing more and more species of plants and animals as threatened or endangered regardless of the facts as well as designating ever-larger critical habitats for listed species. DOI is supporting efforts of environmentalists to not only close areas of known fossil fuel deposits to exploration and development, but is also opposing the creation of alternative wind and solar energy farms because they might impact endangered species and their habitat—or harm "viewsheds" —thus making doubly sure that America has neither non-renewable nor renewable energy supplies for the future. Such policies harm the land, the resources, the wildlife and the American people. How could one do worse?

F **Department of Justice –** Eric Holder, Attorney General

Grader: **Hans Bader**, Senior Attorney

The Justice Department is deeply politicized, putting partisanship before its legal responsibilities and the Constitution. It has failed to enforce federal voting rights laws like UOCAVA that protect the right of military service members to vote, resulting in many of them receiving absentee ballots to late to vote in close congressional races, like the special election for New York's 20th congressional district. The obvious result of this is to put critics of the administration, who are disproportionately backed by military voters, at a disadvantage in every election. It dropped a voter-intimidation case after career justice department had already won the case and obtained a default judgment, shielding from punishment an Obama poll watcher and Philadelphia democratic official who used a nightstick and racial epithets to intimidate voters, and who belonged to the anti-Semitic, racist New Black Panther Party. It then thumbed its nose at the U.S. Commission on Civil Rights, by refusing to comply with a subpoena issued by the Commission in its investigation of the administration's actions. It overturned a legal opinion by David Baron, a liberal Justice Department attorney hired under the Obama administration, when he had the temerity to point out the inconvenient truth that giving D.C. a congressman, as Obama advocates, would violate the Constitution.

The Justice Department has expanded the use of Miranda Warnings in Afghanistan —even though they are not constitutionally required and impede investigators. Yet it argues in court briefs that detainees subjected to torture have no redress under the U.S. Constitution. It is eroding civil liberties by re-prosecuting in federal court teenagers acquitted of a hate crime in state court, even though testimony in the state case supported the jury's not-guilty verdict by pointing to a different culprit. It failed to take steps to cut off funds to ACORN, a political ally of the President, despite ACORN's being caught on video promoting mortgage fraud and other criminal activity, and the existence for years of federal statutes debarring contractors who engage in fraud.

D **Department of Labor –** Hilda L. Solis, Secretary

Grader: **Ivan Osorio**, Editorial Director

Secretary of Labor Hilda Solis gets a low grade for shifting the focus of the Department of Labor to run once again as if it were the Department of *Organized* Labor. Since taking office, she has worked with union bosses to promote organized labor's agenda, including undermining efforts to improve union financial disclosure. However, one mitigating factor is the fact that the department's searchable database for union LM-2 reports remains online (the database was made available online by Solis's predecessor, Elaine Chao).

C- **Office of Management and Budget –** Peter Orszag, Director

Grader: **Ryan Young**, Journalism Fellow

Spending and deficits are far higher than under President George W. Bush, himself a big spender. But Obama can't be given all the blame. The bailout and stimulus spending programs that caused much of the fresh red ink got their start under Bush. In a potentially positive regulatory development, the number of pages in the Federal Register decreased from 79,435 in 2008 to 69,676 in 2009. Of course, the contents of those pages matters more than how many of them there are. And on that front, the new administration is business as usual.

F **Public Company Accounting Oversight Board –** Daniel L. Goelzer, Acting Chairman

Grader: **John Berlau**, Director of the Center for Investors and Entrepreneurs

The Public Company Accounting Oversight Board, created by Sarbanes-Oxley to implement its rules, gets an F. It has done nothing to simplify the rules that Republicans and Democrats have called overly burdensome to small public companies. And this year when bonuses in the private sector were under so much scrutiny, the PCAOB raised the salary of its chairman to almost $700,000 a year.

However, it is important to note that Obama cannot be held accountable for any of the PCAOB's actions, since the PCAOB's unconstitutional structure prevents the President from exercising any control through either the appointment or removal process. Despite our disagreement with the Obama administration, in a pending Supreme Court case, CEI has argued for his and future administrations to have the necessary constitutional controls over this agency so that they can be held politically accountable for its actions, good or bad.

D **Securities and Exchange Commission –** Mary L. Schapiro, Chairman

Grader: **John Berlau**, Director of the Center for Investors and Entrepreneurs

The reason the SEC does not get an F is because its Chairman Mary Schapiro, appointed by President Obama last year at the beginning of his administration, has made going after major investor fraud a key priority. She has brought on law enforcement experts and shifted enforcement resources from trivial headline-grabbing investigations such as the alleged backdating of stock options, which caused little harm to shareholders' bottom lines, into seeking out Madoff-like Ponzi schemes. Contrary to press accounts, the SEC was not inactive during the

Bush administration, but focused on the wrong enforcement priorities. It threw the book at Martha Stewart for trivial charges, but ignored warnings about Bernie Madoff and other fraudsters (as the agency had also done with regard to Madoff, to be fair, under the Clinton administration).

However other actions of the Obama-Schapiro SEC have greatly undermined shareholder well-being. Schapiro brought back the widespread use of corporate penalties to punish shareholder fraud. But penalties on the corporation, rather than individual bad actors in the company, have the effect of punishing the very shareholders the fraud was committed against. The money to pay the penalties is taken from the corporate treasury, which ultimately belongs to the ordinary shareholders of the company. Thus, shareholders end up being penalized twice for the fraud: once when the corporate executives misuse a company's money and again when the corporate penalty further reduces the assets that belong to all shareholders.

Schapiro also gets this bad grade for, over the objection of the two Republican commissioners, overriding 150 years of state corporate law to mandate that companies list shareholder nominees on the same ballot with their own. These proposed “proxy access” rules would let special interests with agendas and shares of stocks, such as union pension funds and environmental groups, use the director nomination process as a wedge against management to promote political agenda items that are contrary to the interests of ordinary shareholders.

And Schapiro failed shareholders and entrepreneurs when she refused to extend an exemption from the Sarbanes-Oxley “internal control” auditing mandates to the very smallest public companies. At a time when President Obama and Republicans are worries about small business growth and the ability to create jobs, this will severely limit these companies ability to grow. And Sarbanes-Oxley, despite costing the economy more than $1 trillion according to University of Minnesota economist Ivy Zhang, did little for shareholders in preventing fraud in the subprime crisis. This action may be mitigated by bipartisan actions in Congress to create a permanent exemption for these smaller companies. This measure was inserted into the financial regulation bill that passed the House in December, with the Obama administration's limited support. But it still needs to clear the Senate. Schapiro should heed this bipartisan action and continue to extend this exemption so vital for entrepreneurs and shareholders from this law that was rushed through after Enron and signed by President Bush in 2002.

F **Department of Transportation** – Ray LaHood, Secretary

Grader: **Sam Kazman**, General Counsel

For proposing, in conjunction with EPA, to raise vehicle fuel economy standards to even greater levels, despite the overwhelming evidence that such standards kill people by causing cars to be made smaller and lighter. Downsizing may squeeze more mpgs out of a car, but it also reduces crashworthiness. When passenger car standards were at 27.5 mpg several years ago, the National Academy of Sciences estimated that they contributed to about 2,000 traffic deaths per year. As those standards are pushed up by DOT and EPA, that death toll will only climb, with nary a peep out of the agency whose alleged job is to promote traffic safety.

D **Department of Treasury –** Timothy F. Geithner, Secretary

Grader: **Wayne Crews**, Vice President for Policy

In a libertarian world of civil rather than political society, the Treasury Department would pay the modest bills of a constitutionally limited government. It's true that Congress holds the purse strings; but during an economic and financial crisis rooted in already-gargantuan government that – despite the news reports – has regulated money, credit and interest rates many decades, a sane Treasury's vision for leadership and recovery would rule out seducing Congress with yet more elaborate and larger purses (with elastic seams besides). This Treasury Department has compounded the "NASCAR" bailouts, helps inflate a silly "green energy" bubble, and stands at the podium cheerleading the idea of regulating the private-sector salaries among other priestly interventions in one formerly free endeavor after another. But creating ficticious economies through political means is nothing new; we're experiencing the fruits of this key governmental function now. I want to give Treasury an "F" for standing by as the 2009 deficit topped an incomprehensible $1.6 trillion last year amid this self-serving orgy, a political spending phenomenon unrelated to the requirements of economic recovery.

However, Treasury gets only a "D" because it inherited from President Bush what was already the largest government on Planet Earth ($3 trillion) a behemoth it had few complaints about financing. We can argue it 'till the whiskey's gone, but there's no question that under President Obama, Treasury has been instrumental in extending and "customizing" a Stimulus to Nowhere already making a beeline for the cliff's edge, and things could have been otherwise. Federal interventions are so extensive that civil, voluntary society as opposed to administered society may never quite recover in this particular geographical area of the world during any of our lifetimes.

Since it insists upon doing more than keeping the books, to get an "A," the U.S. Treasury Department must take a leadership role in removing obstacles to corporate and small business innovation like tax and capital gain liberalization, and help expand economic deregulation on a massive scale. Apart from paying the government's own light bill, Treasury's leadership is only valuable when it prioritizes wise and honest alternatives to spending yet more stimulus money that it doesn't have. It can take a lead role in expanding ideas like privatization, liberalizing America's network industries like electricity and telecommunications (it will surprise few that the latter is being newly regulated rather than deregulated), simplifying taxes, explaining why a VAT is disastrous, and much more. The U.S. federal government buys us far too much misery with the $4 trillion it now spends annually; I almost wish it were more Machiavellian rather than just crazy. Freedom and liberty cost less than this, America.