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Cracking Down on Corporate Crime
A dozen reforms from Citizen Works

1. Track corporate crime by publishing an annual Corporate Crime in America report and establishing a national corporate crime database.

WHY IT MATTERS: The first step to dealing with any problem is to better understand its magnitude. Currently, there is no good set of data available on the extent of corporate crime in this country (though one conservative estimate places corporate crime's cost to society at approximately 80 times that of street crime). Were the government to collect and track the cost and extent of corporate crime, law enforcement officials would be better able to analyze trends and patterns and request more resources. Additionally, the public would gain a better understanding of the massive costs of corporate crime and likely support expanded law enforcement (see #2). A searchable corporate crime database would be useful to enforcement officials, particularly prosecutors attempting to show a pattern of abuse and government contracting agencies (such as the General Services Administration) that want to make sure that taxpayer money does not reward criminal corporations (see #3). A database would also be a valuable resource for socially-minded investors, consumers, and workers.

WHAT TO DO: The FBI should produce an annual report on corporate crime as an analogue to its annual comprehensive "Crime in the United States" report, which focuses almost exclusively on street crime. The data should also be available on the worldwide web in a searchable form, so that anybody can access this valuable information.

2. Increase the corporate crime budgets for the Department of Justice and the Securities and Exchange Commission, as well as other government regulatory agencies.

WHY IT MATTERS: Enforcement counts. Without proper resources to diligently prosecute corporate crimes, government enforcement agencies cannot offer a credible deterrent to would-be corporate criminals. Because both the SEC and the DoJ's corporate crime division have been underfunded for years, both agencies have been unable to adequately police the corporate crime beat (in 2001, for example, the SEC reviewed only 2,280 of 14,600 annual (10-K) financial reports submitted). Even where these agencies do bring enforcement actions, they are invariably forced into accepting weak settlements because they don't have the staff resources to see cases through to trial.

WHAT TO DO: We recommend across the board budget increases for the DoJ's Crime Task Force (which we believe should be its own permanent division of the DoJ), the SEC, and other regulatory agencies with can-of-worms corporate enforcement responsibilities.

3. Ban corporate criminals from government contracts.

WHY IT MATTERS: The federal government spends a remarkable $265 billion a year on goods and services, making it the largest consumer in the world. But between 1990 and 2001, the top ten federal contractors had 280 instances of misconduct and alleged misconduct and paid more than $1.97 billion in fines, penalties, restitution, settlements and clean-up costs. Put simply, taxpayer dollars should not be going to support criminal corporations. Such a ban, for example, could have been applied to Halliburton, which is currently under investigation by the SEC for accounting fraud and has paid $6 million to settle investor lawsuits. Halliburton subsidiary Halliburton Energy Services also paid a fine to settle

Department of Commerce allegations that the company had broken anti-boycott provisions of the U.S. Export Administration Act for an Iran-related transaction.

WHAT TO DO: Government contracting agencies should carefully scrutinize the criminal records of all potential contractors. Anti-scofflaw regulations approved at the very end of President Bill Clinton's second term and repealed at the very beginning of George W. Bush's presidency should be re-instated and toughened.

4. Crack down on corporate tax avoidance.

WHY IT MATTERS: At a time of growing budget deficits and major funding shortfalls for a wide range of social programs, corporations are exploiting tax shelters and loopholes to achieve an estimated $300 billion dollars a year in tax escapes, essentially leaving the American public to pick up the tab. Though the statutory corporate income tax rate is 35%, a 1998 study by the Institute on Taxation and Economic Policy found that the top 250 companies paid a 20.1% rate, down from 22.9% in 1996 and 26.5% in 1988. According to the Congressional Budget Office, corporate income taxes in 2002 contributed less than one-tenth of overall revenues (down from 15% in the 1970s and 25% in the 1950s and 1960s). As Business Week has reported, in the 1990s, "tax avoidance became a competitive sport, with even blue-chip companies aggressively benchmarking their effective tax rates against those of rivals." Though the dozens of companies that have moved their headquarters to offshore tax havens in recent years offer the most egregious examples, many more companies are using offshore subsidiaries (as well as countless other tricks) to cheat the government.

WHAT TO DO: A good starting point is to close the loophole that allows U.S. corporations to move their headquarters to offshore tax havens and escape hundreds of millions of dollars a year on taxes. At the very least, these corporations should not be eligible for government contracts. Additionally, public corporations should be required to make their tax returns public, so investors (and others) can better observe and investigate the growing gap between what corporations tell their shareholders and what they tell the IRS. Congress should give the budget-squeezed IRS both more power and more resources to go after corporate tax cheats.

5. Restore the legal rights of defrauded investors.

WHY IT MATTERS: Many securities experts believe that the corporate-driven self-styled securities "reform" laws passed in the 1990s (specifically the Private Securities Litigation Reform Act of 1995 and the Securities Litigation Uniform Standards Act of 1998) were a crucial contributing factor in the recent scandals. By imposing a series of close-to-impossible hurdles for investors seeking to hold corporate executives and accountants liable for securities fraud, the law emboldened executives and accountants to commit the massive frauds that we have witnessed over the last few years.

WHAT TO DO: Repeal the Private Securities Litigation Reform Act of 1995 and the Securities Litigation Uniform Standards Act of 1998 and affirm the rights of defrauded investors to seek full restitution through the courts.

6. Democratize corporate governance and put an end to cozy insider boardrooms.

WHY IT MATTERS: One of the consistent storylines in almost all the recent scandals is the repeated failure of the board of directors to serve the interests of the shareholders. Instead of standing up to outrageous schemes and ridiculous compensation packages proposed by management, directors invariably rubber-stamped plans put in front of them. The simple explanation for this is that at most corporations, management is responsible for selecting the board of directors. Very rarely do shareholders have any choice in who is on the board of directors — usually they are given only one slate of directors to choose from. In roughly 80 percent of U.S. corporations, the CEO is also the chairman of the board. Corporations would begin to behave more responsibly if the shareholders, the true owners of the corporations, were given a proper oversight role and the ability to vote on major business decisions, including executive compensation and large mergers and acquisitions.

WHAT TO DO: Support and expand on an SEC rule awaiting final approval that would allow minority shareholders greater access to proxy statements for the purpose of nominating directors (Although the rule — which received preliminary approval on October 8 — is a good first step, the hurdles it presents for opening up board elections are too high). Require cumulative voting for corporate elections. Require corporations to seek shareholder approval for all executive compensation packages and mergers and acquisitions.

7. Take the first step to reining in excessive executive pay and require that stock options be expensed.

WHY IT MATTERS: In a speech on September 11, 2002, then New York Federal Reserve chair William J. McDonough, called "the recent increases [in executive compensation]…terribly bad social policy and perhaps even bad morals." CEOs at large companies receive, on average, 282 times what the average employee earns. This lack of shared destiny results in an adversarial relationship between managers and employees and is not only unfair, but also bad for the corporate economy in the long run. One of the main causes of this runaway pay was the explosion of stock options in the 1990s. Stock options are the only form of compensation that does not get counted as an expense. Because of this loophole (and because of perverse tax incentives that reward stock option grants), executives were showered with stock options in the 1990s and companies didn't have to count this compensation against their earnings. This resulted in misleading financial reports. Additionally, the possession of huge quantities of options led many greedy executives to do everything they could (including in some cases cooking the books) to drive the stock price up so they could cash in while the stock was artificially high.

WHAT TO DO: Support efforts by the Financial Accounting Standards Board to require that corporations count stock options as an expense and oppose S. 979 / H.R. 1372, which would derail a recent decision by the Financial Accounting Standards Board (FASB) to require stock options to be expensed. To put a conclusive end to excessive executive compensation, Congress should limit tax deductions for executive compensation at 25 times the salary of the company's lowest-paid worker. Additionally, giving shareholders more control over the companies they own (see #6) would reduce outrageous CEO pay.

8. Expand disclosure and require corporations to annually report not just their financial statements, but also extensive information about their environmental and social records.

WHY IT MATTERS: Markets always function more efficiently when all parties have complete information. Unfortunately, large corporations are not very good at disclosing clear and accurate information about their activities. Even their finances, which they are required to make public, are often shrouded in mystery. Were companies to be held to a higher standard of clear disclosure for not only their finances, but also their records on the environment, human rights, worker safety, and other issues, investors and the public at large would have much better information to make proper decisions about corporations. Additionally, if corporations were forced to disclose their records on such subjects as the environment or worker safety, they would likely focus more on these issues. For example, The Toxic Release Inventory, created by community right-to-know laws passed in 1986 in the wake of the Union Carbide accident in Bhopal, greatly increased corporate disclosure of toxic waste generation and emissions and resulted in a significant decrease in toxic emissions.

WHAT TO DO: In addition to their finances, public corporations should also be required annually to disclose their environmental, worker safety, human rights, political lobbying and tax records. Some of this could be accomplished by extending the Securities and Exchange Commission's existing annual corporate reporting requirements.

9. Regulate the "ticking time bombs" known as derivatives.

WHY IT MATTERS: According to one estimate, the value of the global derivatives market is about $100 trillion – 10 times the total of America's gross domestic product and nearly 70 times the total value of the U.S. corporate equities markets. Yet, as a result of the Commodity Futures Modernization Act, a sizeable chunk of this market is unregulated. Investing guru Warren Buffett has called derivatives "ticking time bombs, both for the parties that deal in them and the economic system… Large amounts of risk, particularly credit risk, have become concentrated in the hands of relatively few derivatives dealers." Derivatives also allow companies to vastly overstate earnings since their value is very hart to pinpoint. Enron, for example, claimed it made $7.23 billion from its derivatives business in 2000. By the time it failed, its derivatives liabilities exceeded $18 billion. The nominal value of those derivatives positions approached $700 billion.

WHAT TO DO: Derivatives should be fully regulated. To this end, Rep. Peter DeFazio (D-Ore.) has introduced H.R. 1109, which would accomplish this by combining the Securities Exchange Commission (SEC) and the Commodities Futures Trading Commission (CFTC) and regulating over-the-counter (OTC) derivatives. Rules should be enacted regarding collateral-margin, reporting and dealer licensing in order to maintain regulatory parity and ensure that markets are transparent and problems can be detected before they become a crisis.

10. End the conflicts-of-interest on Wall Street.

WHY IT MATTERS: In the 1990s boom, investment analysts at leading firms recommended stocks they privately derided as "crap" and "junk" to unsuspecting small investors. This revelation has weakened confidence in the market. Leading banks, like Citigroup and JP Morgan Chase, also facilitated some of Enron's most deceptive financial transactions, providing massive loans that Enron disguised as revenue, misleading investors. These banks, which should have known better, not only didn't alert investors that Enron's finances were fraudulent, but in many cases actually recommended that investors buy stock in Enron. All this was the logical consequence of the dismantling of the Glass-Steagall Act, the New Deal era law that kept commercial brokerage and investment banking separate. With commercial brokerage and investment banking under the same roof, it was only logical that big firms would sacrifice the interests of small investors for lucrative banking deals, giving small investors blatantly bad advice to please big-spending investment banking clients.

WHAT TO DO: Restore strict separation between investment banking and commercial brokerage. Reinstate the Glass-Steagall Act to avoid conflicts of interest on Wall Street.

11. Fix the pension system

WHY IT MATTERS: For better or worse, the private pension system is an important leg of retirement security in this country. But whereas corporations once promised a guaranteed pension to reward years of service, worker pensions these days (where they exist at all) tend to be more do-it-yourself arrangements where workers bear all the risk but only reap the same rewards if they get lucky. Unfortunately few workers receive any proper education in the complicated world of investing with their 401(k) plan, which has replaced the "defined benefit" plan. Instead, they are pressured to buy massive quantities of the company's stock, advice that flies in the face of the very first rule of investing: diversify. This is what happened at Enron, where workers had on average 62 percent of their savings invested in Enron stock. When the company collapsed, the basket carrying most of their eggs broke. Though traditional "defined benefit" pension plans do still exist, their numbers have fallen from 112,000 in 1985 to 30,660 in 2002. Yet even with this decline, there is still not enough money in these pension plans to provide for future worker retirements. In 2003, the Pension Benefit Guaranty Company estimated that corporate pensions were underfunded by a whopping $300 billion. This situation is a potential disaster for the retirement security of millions of Americans.

WHAT TO DO: Corporations must be held more responsible for the retirement security of their employees. At a minimum, we need to give workers a voice on the pension board, enact protections against workers stuffing their 401(k) plans with company stock, and give workers a right to vote for what investment choices they have. Additionally, an Office of Participant Advocacy should be created in the Department of Labor to monitor pension plans.

12. Foster a national discussion on corporate power.

WHY IT MATTERS: Corporations are the dominant institutions in our society. Yet, despite their powerful role in providing many public goods, corporations are not really accountable to anybody. Even shareholders, who are the owners, exert very little control, and profits are based on perverse incentives and crooked accounting. The result is that a handful of executives who are primarily interested in making large profits play a dominant role in our society.

WHAT TO DO: Establish a Congressional Commission on Corporate Power to explore various legal and economic proposals to hold corporations accountable. The Commission should seek ways to improve upon the current state corporate chartering system and propose ways to correct the inequitable legal status of corporations. This Commission should be led by a congressionally-appointed experts on corporate and constitutional law, and should hold citizen hearings in at least ten cities.