

## Notes

### Preface

1. *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks upon the United States*, pp. 13–14, <http://www.gpoaccess.gov/911/pdf/fullreport.pdf> (site accessed May 1, 2006).
2. <http://www.whitehouse.gov/news/releases/2002/03/20020312-11.html> (site accessed May 1, 2006).
3. Graham, 2001.
4. Fung, Graham, and Weil, 2002.
5. Fung et al., 2004; Weil et al., 2006.

### Chapter 1. Governance by Transparency

1. Hearing Before the Senate Commerce, Science and Transportation Committee, 106th Cong., 1041 (2000) (statement of Masatoshi Ono, Chief Executive Officer, Bridgestone/Firestone).
2. These accidents and their causes received sustained national media coverage in 2000 and 2001. Major articles in the *New York Times* include Keith Bradsher, “Tire Deaths Are Linked to Rollovers,” August 15, 2000, p. 1; Keith Bradsher and Matthew L. Wald, “More Indications Hazards of Tires Were Long Known,” September 7, 2000, p. 1; Keith Bradsher, “Congress Appears Ready to Tackle Rollover Problem,” September 21, 2000, p. C1. Other sources include Joann Muller and Nicole St. Pierre, “Ford vs. Firestone: A Corporate Whodunit,” *Business Week*, June 11, 2006, p. 46; “Automobiles. Firestone Tires. The Firestorm Continues,” *Consumer Reports*, November 2000, p. 9.
3. <http://www.nhtsa.dot.gov/cars/rules/rulings/UpgradeTire/Econ/TireUpgradeI.html> (site accessed May 6, 2006).
4. Hearing on the Reauthorization of the National Highway and Transportation Safety Act, 108th Cong., 9, 13 (2004) (statement of Rep. Schakowsky, ex-officio, Subcommittee on Commerce, Trade and Consumer Protection, Committee on Energy and Commerce).

5. Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, Pub. L. 106–414, November 1, 2000, 114 Stat. 1800 (codified at 49 U.S.C. §30170 (2000)).
6. Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109–59, August 10, 2005, 119 Stat. 1144 (codified in scattered sections of 18 U.S.C.A., 23 U.S.C.A., and 49 U.S.C.A.).
7. Final Policy Statement, 68 Fed. Reg. 59250–59304 (October 14, 2003) (to be codified at 49 C.F.R. pt. 575); see also National Health Traffic Safety Administration, 2005.
8. Federal Motor Vehicle Safety Standards: Tire Pressure Monitoring Systems; Controls and Displays, 66 Fed. Reg. 38982 (proposed July 26, 2001) (to be codified in 49 C.F.R. pt. 571).
9. Reporting of Information and Documents About Potential Defects, 66 Fed. Reg. 66190 (proposed December 21, 2001) (to be codified at subpart C 49 C.F.R. pt. 579).
10. Tire Safety Information, 66 Fed. Reg. 65536 (proposed December 19, 2001) (to be codified at 49 C.F.R. pts. 567, 571, 574, and 575).
11. New-model rollover ratings are listed by the National Highway Traffic Safety Administration at <http://www.safercar.com>.
12. Congress directed officials to issue a minimum performance standard for rollovers by 2009. Safe, Accountable, Flexible, Efficient Transportation Equity Act, Pub. L. 109–59.
13. Brandeis, 1932, p. 92.
14. Securities Act of 1933, May 27, 1933, ch. 38, Title I, 48 Stat. 74 (codified at 15 U.S.C. §77 (2000)); Securities and Exchange Act of 1934, June 6, 1934, ch. 404, 48 Stat. 881 (codified at 15 U.S.C. §78 (2000 and Supp. II 2002)).
15. Safe Drinking Water Act Amendments of 1996, Pub. L. 104–182, August 6, 1996, 110 Stat. 1613 (codified at 42 U.S.C. §300g–j and 33 U.S.C. §1263 (2000)). See also Graham, 2002a, p. 8.
16. For a summary of shortcomings of consumer contaminant reports see Natural Resources Defense Council, 2003, <http://www.nrdc.org/water/drinking/uscities/contents.asp> (site accessed February 3, 2006).
17. For an overview of the Washington, D.C., incident, see Congressional Research Service, 2005.
18. Statement of EPA administrator Stephen L. Johnson, June 8, 2005, concerning drinking water as top EPA priority.
19. U.S. Geological Survey, Drinking Water Initiative, <http://pubs.usgs.gov/fs/FS-047–97/FS-047–97.pdf> (site accessed February 3, 2006).
20. The National Environmental Education & Training Foundation 1999 Safe Drinking Water Report Card Summary, <http://www.neetf.org/pubs/watersummary.doc> (site accessed May 15, 2006).
21. Other trends may also support the growing impact of targeted transparency as mainstream policy, though their influence is harder to document. For example, as consumer choices are multiplying and brand loyalty is decreasing, it makes sense that increasingly well-educated consumers would demand better factual information on which to base more complex decisions.
22. See, for example, Evans and Wurster, 1997, p. 74.

23. <http://www.scorecard.org> (site accessed April 28, 2006); see also [http://www.epa.gov/enviro/html/ef\\_feedback.html](http://www.epa.gov/enviro/html/ef_feedback.html) (site accessed April 28, 2006).
24. See, for example, Federal Aviation Administration Data and Statistics, [http://www.faa.gov/data\\_statistics](http://www.faa.gov/data_statistics) and [http://www.faa.gov/data\\_statistics/accident\\_incident](http://www.faa.gov/data_statistics/accident_incident) (sites accessed April 28, 2006); Bureau of Transportation Statistics, [http://www.transtats.bts.gov/OT\\_Delay/OT\\_DelayCause1.asp](http://www.transtats.bts.gov/OT_Delay/OT_DelayCause1.asp) (site accessed April 28, 2006); National Transportation Safety Board, Aviation Database, <http://www.nts.gov/nts/query.asp> (site accessed April 28, 2006).
25. Some, but not all, transparency policies will benefit from future leaps in information technology, depending upon when and where users need information to make their decisions. For example, for many customers, the provision of crash-worthiness ratings directly on new-car stickers may provide all the information they need for their purchase decisions. These consumers would gain little from technological enrichment via the Internet.
26. Over the last three decades, the public's confidence in policymakers has plummeted. Polled in 1966, about 40% of respondents indicated that they had "a great deal" of confidence in leaders of the executive branch and Congress. Twelve years later, in 1978, only 14% expressed such confidence in the executive branch and 9% in Congress. Confidence rose to 20% for Congress and 17% for the executive branch in 1988 but fell once again to around 14% for both institutions by 1996. These results are taken from Nye, Zelikow, and King, 1997, p. 207.

## Chapter 2. An Unlikely Policy Innovation

1. We discuss in depth the obstacles to transparency in Chapters 4 and 5.
2. The procedure for conducting the search for final federal regulations was as follows. We searched the online Federal Register database for the period January 1, 1996, to December 31, 2005, using the nine keywords/phrases that are most associated with the use of information disclosure in regulations: labeling and warning, information disclosure, labeling and disclosure, mandatory disclosure, voluntary disclosure, hazard information, transparency, right-to-know, and report card. To avoid double counting and focus only on regulations that actually were promulgated, we narrowed our initial search to interim rules *or* final rules; search results related to notices, proposed rules, or any other return that did not explicitly result in an interim or final rule were not counted. Using this search procedure, a total of 3,502 cases were identified using the nine general search terms. We then reviewed the resulting set of rules, eliminating those that (1) did not represent final rules; (2) did not fit our specific definition of targeted transparency (e.g., disclosures that are intended only to provide the public with information on administrative processes, or disclosure laws that are solely forms of public warnings); (3) represented final rules that had only a minor disclosure component (e.g., a small disclosure requirement that was wedded to a more conventional standard-based regulation); or (4) represented final rules that provided information solely to the government as a means to sharpen enforcement efforts. Thus, our tally of 133 policies includes only those final rules whose central regulatory mechanism was information disclosure. The

following are our year-by-year tabulations of final targeted transparency rules from the survey:

Targeted	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Transparency	20	14	14	8	14	6	13	28	12	4
Final Regulations										

Information about specific final regulations that make up the survey is available on request from the authors.

3. J. Madison, letter to W. T. Barry, August 4, 1822, in Madison, 1910, p. 103.
4. Mill, 1861, Chapter 6, section 1.
5. Weber, 1946, pp. 233–234.
6. Moynihan, 1998, p. 59.
7. Altshuler, 1997, p. 39.
8. The Supreme Court Historical Society, History of the Court: The Jay Court, <http://www.supremecourthistory.org>.
9. Administrative Procedure Act, June 11, 1946, ch. 324, 60 Stat. 237 (codified at 5 U.S.C. 551 *et seq.* (2000)).
10. U.S. Department of Justice, 2000, p. 6.
11. The Freedom of Information Act, Pub. L. 89–487, July 4, 1966, 80 Stat. 250 (codified as amended at 5 U.S.C. §552(b) 2000)).
12. Freedom of Information Act, Pub. L. 89–487, at §552(a)(2) (2000). See also H.R. Rep. 104–795, at 11–13 (1996), *as reprinted in* 1996 U.S.C.C.A.N. 3454–3456.
13. Federal Election Campaign Act of 1971, Pub. L. 92–225, Title III, §301, February 7, 1972, 86 Stat. 11 (codified at 2 U.S.C. 431 *et seq.* (2000 & Supp. III 2003)); amended by Federal Election Campaign Act of 1974, Pub. L. 93–443, Title II, §§201(a), 208(c)(1), October 15, 1974, 88 Stat. 1272, 1286 (26 U.S.C. §§9031–9042 (2000 & Supp. III 2003)); amended by Federal Elections Campaign Act Amendments of 1976, Pub. L. 94–283, Title I, §§102, 115(d),(h), May 11, 1976, 90 Stat. 478, 495, 496 (2000 & Supp. III 2003); Federal Election Campaign Act Amendments of 1979, Pub. L. 96–187, Title I, §101, January 8, 1980, 93 Stat. 1339 (codified at 2 U.S.C. §431 *et seq.* (2000 & Supp. III 2003)); amended by Tax Reform Act of 1986, Pub. L. 99–514, §2, October 22, 1986, 100 Stat. 2095; Pub. L. 106–346, §101(a) [Title V, §502(b)], October 23, 2000, 114 Stat. 1356, 1356A–49; McCain-Feingold Campaign Finance Reform Act (Bipartisan Campaign Reform Act of 2002), Pub. L. 107–155, Title I, §§101(b), 103(b)(1), Title II, §211, Title III, §304(c), March 27, 2002, 116 Stat. 85, 87, 92, 100 (to be codified at 2 U.S.C. §441 *et seq.*).
14. Federal Advisory Committee Act, Pub. L. 92–463, October 6, 1972, 86 Stat. 770 (codified at 5 U.S.C. App. 2, §1 *et seq.* (2000)).
15. Government in the Sunshine Act, Pub. L. 94–409, September 13, 1976, 90 Stat. 1241 (codified at 5 U.S.C. §552b (2000)). This public law is also known as the Open Meetings Act.
16. Strauss et al., 9th ed., 1995, pp. 909–916. See also H.R. Rep. 104–795, at 13–14 (1996), *reprinted in* 1996 U.S.C.C.A.N. 3448, 3456–3457.
17. For an account of these events, see Graham, 2002b, p. 38.

18. Graham, 2002b, p. 38.
19. Information requests increased substantially in the late 1990s and early 2000s after the enactment of E-FOIA in 1996. The GAO reported that 25 agencies surveyed logged 119 percent more requests in FY 1999 than in 1998. General Accounting Office, 2001. In a later report the GAO found that agency requests increased by 71 percent from 2002 to 2004. Government Accountability Office, 2005.
20. Pure Food and Drug Act, June 30, 1906, ch. 3915, 34 Stat. 768; Insecticide Act, April 26, 1910, ch. 191, 36 Stat. 331. See also Comprehensive Smokeless Tobacco Health Education Act of 1996, Pub. L. 99–252 §3, February 27, 1996, 100 Stat. 30 (codified at 15 U.S.C. §4402 (2000)); Alcoholic Beverage Labeling Act of 1988, c. 816, Title I, as added Pub. L. 100–690, Title VIII, §8001(a)(3), November 8, 1988, 102 Stat. 4518 (codified at 27 U.S.C. §213 *et seq.* (2000)); Public Health Cigarette Smoking Act, Pub. L. 91–222, §2, April 1, 1970, 84 Stat. 88 (codified at 15 U.S.C. §1333 (2000)).
21. U.S. financial disclosure laws drew on much earlier English laws. In 1844 the Companies Act required British companies to disclose to the public their assets and liabilities. For an intriguing article on the history of financial disclosure, see Frankfurter, 1933. The 1933 Securities Act required that investors receive financial and other significant information concerning securities being offered for public sale and prohibited fraudulent practices in the sale of securities. Securities Act of 1933, May 27, 1933, ch. 38, Title I, 48 Stat. 74 (codified at 15 U.S.C. §77 (2000)). The 1934 Securities Exchange Act created the Securities and Exchange Commission (SEC) to regulate the securities industry. Securities and Exchange Act of 1934, June 6, 1934, ch. 404, 48 Stat. 881 (codified at 15 U.S.C. §78 (2000 & Supp. II. 2002)).
22. Safe Drinking Water and Toxic Enforcement Act, Cal. Health & Safety Code §225249.5 *et seq.* (West 1999) (added by Initiative Measure November 4, 1986, and effective January 1, 1987).
23. Occupational Safety and Health Administration's Hazard Communication Standard, 29 C.F.R. §1910.1200 (2005). For a discussion on the development of right-to-know in connection with health and safety risks, see Hadden, 1989, p. 20; Ashford and Caldart, 1985, pp. 383–401; Baram, 1984.
24. For a detailed account of the development of the disclosure system for toxic pollution, see Graham, 2002a, pp. 21–61.
25. See, for example, Grossman, 1989, pp. 461–483; Grossman and Hart, 1980, pp. 323–334; Milgrom, 1981, pp. 380–391.
26. See Tietenberg, 1998, and Tietenberg and Wheeler, 2001, for a discussion of this problem of the Coasian framework in regard to environmental policy.
27. The classic presentation of this view can be found in Hayek, 1945, pp. 519–530.
28. Stiglitz, 2000, provides a complete but readable overview of this literature.
29. The work of Mancur Olson famously shows that private parties, even with coordinated activities, have difficulty overcoming the problem of providing public goods like information. See Olson, 1971.
30. Akerloff, 1970, pp. 488–500.
31. Stiglitz, 2000, p. 1470.
32. See March and Simon, 1958, for the classic discussion of bounded rationality in organizations.

33. See generally Kahneman and Tversky, 2000.
34. Fischhoff, 2002.
35. Cass Sunstein and others call this cognitive outcome “probability neglect” (see Sunstein, 2005). See, for example, Rottenstreich and Hsee, 2001, pp. 185–188.
36. Hogarth and Kunreuther, 1995, pp. 15–36.
37. For example, see Thaler, 1991.
38. Sunstein, 2005, p. 123.

### Chapter 3. Designing Transparency Policies

1. This early history is drawn from Commons and Andrews, 1916 (quotation from p. 158).
2. Commons and Andrews, 1916, p. 256.
3. Occupational Safety and Health Administration’s Hazard Communication Standard, 29 C.F.R. §1910.1200 (2005).
4. See, for example, Viscusi, 1979, pp. 134–143, in regard to the voluntary incentives for providing information on workplace hazards.
5. See, for example, Zeckhauser and Marks, 1996, pp. 32–34.
6. Child Safety Protection Act, Pub. L. 103–267, June 16, 1994, 108 Stat. 722 (codified at 15 U.S.C. 1278 (2000) and 15 U.S.C. §§6001–06 (2000)).
7. Upon voting to issue implementation instructions for the act in February 1995, Ann Brown, chairman of the Consumer Product Safety Commission, noted: “The CSPA and the toy labeling regulation approved by the Commission assure uniform, consistent, prominent and conspicuous warning labels on certain toys and games, marbles, balloons, and balls intended for children at least 3 but under 6 years. These warning labels will provide parents and others who purchase marbles, balls, balloons, and toys and games containing small parts for children 3 years and older, with information, at the point of purchase, that informs them of the risk of choking or suffocation that these products present to children under the age of three years.” Press Release, Statement of Chairman Ann Brown, Toy Labeling and Choking, February 15, 1995, <http://mbd2.com/Articles/95083.htm> (site accessed April 29, 2006).
8. Gormley and Weimer, who have extensively studied organizational report cards, define them as “a regular effort by an organization to collect data on two or more *other* organizations, transform the data into information relevant to assessing performance, and transmit the information to some audience external to the organizations themselves.” Gormley and Weimer, 1999, p. 3 (emphasis in original).
9. The classic description of the link between public goods and location is Tiebout, 1956.
10. See Ehrenberg and Jakubson, 1990, for a discussion of the problems arising from voluntary disclosure of plant closing decisions.
11. See Graham, 2002a, pp. 31–35, for a discussion of these exemptions.
12. In September 2005, the federal EPA proposed three changes, each of which would dramatically cut information available to the public on toxic pollution. The agency proposed that it (1) reduce annual reporting to every other year; (2) allow companies to release ten times as much pollution before being required

to report the details of how much toxic pollution was produced and where it went; and (3) permit facilities to withhold information on low-level production of persistent bio-accumulative toxins (PBTs), including lead and mercury, which are dangerous even in very small quantities because they are toxic, persist in the environment, and build up in people's bodies. Toxics Release Inventory Burden Reduction, 70 Fed. Reg. 57822 (proposed October 4, 2005) (to be codified at 40 C.F.R. pt. 372). See also Mark Hammond, "EPA Update," *GATF World*, February 1, 2006, 18(1), 2006 WLNR 4533381 (noting that the exemptions could benefit the printing industry); Bruce Geiselman, "States Ask EPA to Reconsider TRI Changes," *Waste News*, January 31, 2006, 11(21), 14 (stating that the National Association of Manufacturers endorsed the Bush administration's proposals).

13. The legislation states that it is "predicated upon the principle of public disclosure, that timely and complete disclosure of receipts and expenditures would result in the exercise of prudence by candidates and their committees and that excessive expenditures would incur the displeasure of the electorate who would or could demonstrate indignation at the polls." Federal Election Campaign Act, Pub. L. 92–225, February 7, 1972, 86 Stat. 3 (codified at scattered sections in 2 U.S.C.); Federal Election Campaign Amendments of 1974, Pub. L. 93–443, October 15, 1974, 88 Stat. 1263 (codified at 26 U.S.C. §§9031–9042 (2000)); S. Rep. 92–96 (1971), as reprinted in 1972 U.S.C.C.A.N. 1773, 1776.
14. In particular, finding a group to deal with the public goods nature of information collection and interpretation raises a classic "collective action" problem where no parties capture all of the benefits of acting as agents and all parties therefore have lowered incentives to play those roles (Olson, 1971).
15. Some analysts (e.g., Coglianese and Nash, 2004) have argued that this represents one of the principal benefits of toxic release reporting and related interventions: if firms are forced to recognize for the first time the amount of pollutants they have been discharging, managers are more likely to find ways to reduce those releases than if the releases go unmeasured.
16. De Marchi and Hamilton, 2006, find considerable differences in reported levels of chemical release reductions for two major chemicals, lead and benzene, when comparing toxic release reports from the disclosure system and EPA direct monitoring data. They show that while disclosure reports indicated that average air emissions of benzene fell by 84% between 1988–1990 and 1998–2000, actual EPA monitoring data indicated reductions of only 56%. Similarly, disclosure reports indicated reductions of 45% in air emissions of lead versus 24% based on EPA monitoring data over the same period. The study found smaller discrepancies between disclosure-based and EPA monitoring data for three other chemicals. See De Marchi and Hamilton, 2006, Table 1 and pp. 63–65.
17. Schwartz, 2004, Chapter 3, has a useful overview of the cognitive literature regarding choosing and making decisions.
18. These findings are reported in DeGeorge, Patel, and Zeckhauser, 1999.
19. The Bipartisan Campaign Reform Act of 2002, Pub. L. 107–155, March 27, 2002, 116 Stat. 81 (codified at 2 U.S.C.A. §438, 441, and 36 U.S.C.A. §510 (West 2005)). The law providing for the penalty of five years in prison can be found at 2 U.S.C.A. §437j.

20. Worker Adjustment and Retraining Notification Act, Pub. L. 100–379, August 4, 1988, 102 Stat. 890 (codified at 29 U.S.C. §§2101–2109 (2000)). See also H. Conf. Rep. 100–576, at 1046 (1998), *as reprinted in* 1988 U.S.C.C.A.N. 1547, 2079.
21. Under the disclosure law in Washington State, for example, failing to register or maintain an accurate record of current location is a class C felony if the original crime for which the individual was convicted was a felony sex offense or, if other than a felony conviction, a gross misdemeanor. Wash. Rev. Code Ann. §9A.44.130(10)(a),(b).
22. Hamilton reports that the EPA increased the number of inspections in the years immediately following passage of the law in 1987, going from 153 in 1988 to 768 in 1989. Inspections remained relatively high under the elder Bush administration and only began to fall in the mid-1990s as the Clinton administration faced increasing congressional opposition to regulatory policies. On the general issue of enforcement under the toxic releases act, see Hamilton, 2005, pp. 191–198.
23. De Marchi and Hamilton’s 2006 estimate of the gap between reported and actual air emissions of toxic chemicals is an example of this problem.
24. See Masters, Atkin, and Florkowski, 1989, pp. 720–722; see also General Accounting Office, 1999, and General Accounting Office, 2000.
25. The number of full-time equivalent staff increased from 290 in FY 2001 to 384 in the Bush administration’s proposed FY 2006 budget. Similarly, overall funding rose from \$30.5 million in FY 2001 to \$48.8 million in its proposed FY 2006 budget. This increase contrasted with budget reductions in the many other programs administered by the department. See Office of Management and Budget, Executive Office of the President, Budget of the United States Government, Fiscal Year 2001 (2000), and Office of Management and Budget, Executive Office of the President, Budget of the United States Government, Fiscal Year 2006 (2005).
26. See generally Bardach and Kagan, 1982; Ayers and Braithwaite, 1992; Sparrow, 1994; Gunningham and Grabosky, 1998; Sparrow, 2000.
27. For example, Coglianesi, Nash, and Olmstead, 2003, and Stavins, 2004, see the data provided by many disclosure-based systems as important inputs for market- or incentive-based approaches, but not a separate class of regulatory tools. Gunningham and Grabosky, 1998, Chapter 2, describe information instruments as a counterpart to education-based regulatory instruments.
28. Tietenberg, 1998, examines a range of environmental transparency policies. Viscusi and Magat, 1987; Sunstein, 1993; and Zeckhauser and Marks, 1996, focus specifically on risk communication aspects of a variety of disclosure policies. Weiss and Gruber, 1984, and Gormley and Weimer, 1999, focus on a subset of policies that deal with organizational effectiveness.
29. See, for example, De León, 1999, pp. 87–88; Alman, 2001, pp. 379 and 382; Norton, 2001, pp. 1443 and 1468.
30. See Becker, 1968, for a discussion of how the probabilities of detection and penalty translate into an economic calculus regarding whether or not to comply with laws.
31. See CAIR SO<sub>2</sub> Trading Program General Provisions, 40 C.F.R. pt. 96, subpt. AAA (2005).



32. Ellerman et al., 2000.
33. Clean Air Act Amendment of 1970, Pub. L. 91–604, December 31, 1970, 84 Stat. 1676 (codified as amended in scattered sections of 42 U.S.C.); see also 42 U.S.C. §7479(C)(3) (2000) (defining the term “best available control technology”); see also Anderson, 2004, pp. 81 and 86 (noting that the Clean Air Act Amendment of 1977 required coal-fired power plants to have scrubbers installed on their smokestacks).
34. OSHA standards are codified within Title 29 of the C.F.R. and can be searched through the Occupational Safety and Health Administration’s Web site at [http://www.osha.gov/pls/oshaweb/owasrch.search\\_form?p\\_doc\\_type=STANDARDS&p\\_toc\\_level=0&p\\_keyvalue=](http://www.osha.gov/pls/oshaweb/owasrch.search_form?p_doc_type=STANDARDS&p_toc_level=0&p_keyvalue=) (site accessed May 20, 2006). See also Occupational Safety and Health Administration Web site (describing its mission), <http://www.osha.gov/oshinfo/mission.html> (site accessed May 20, 2006).

#### Chapter 4. What Makes Transparency Work?

1. Los Angeles County Ordinance 97-0071 §2, 1997, <http://municipalcodes.lexisnexis.com/codes/lacounty/> (site accessed April 29, 2006); County of Los Angeles Department of Health Services, Public Health Programs and Services, Environmental Health, Posting Requirements Advisory Bulletin: Retail Food Establishments, <http://search.ladhs.org/images/nrfood.htm> (site accessed April 29, 2006).
2. Jin and Leslie, 2003; Simon et al., 2005.
3. The full list of eighteen targeted transparency policies and an overview of each can be found in Chapter 1, Table 1.1. The Appendix provides a detailed description of the legislative history, purpose, provisions, and dynamics of each policy.
4. Because relatively few researchers have recognized the need to evaluate transparency policies rigorously, the available literature on which we draw is quite variable. Some researchers have undertaken direct analyses of specific user and/or discloser responses to new information. Others have focused on one step in the action cycle, such as discloser compliance with information requirements, user understanding of new information, or responses by investors, consumers, or others. The relative paucity of studies of some important transparency systems indicates the continuing prevalence of the assumption that such systems always produce net benefits.
5. Kahneman, Slovic, and Tversky, 1982; Samuelson and Zeckhauser, 1988; Kahneman and Tversky, 2000; Sunstein, 2005.
6. The action cycle helps place in context research on the impact of organizational report cards (Gormley and Weimer, 1999), as well as related research on regulation through information disclosure (for example, Sunstein, 1993; Kleindorfer and Orts, 1998; Mitchell, 1998; Tietenberg, 1998; Sage, 1999). Gormley and Weimer focus on the validity of report card metrics and the accessibility of that information to users. Their evaluative criteria pertain to the utility of report cards to users (based on characteristics such as relevance and comprehensibility) and disclosers (particularly regarding report card functionality). By

contrast, our approach focuses on users and disclosers (rather than information itself) and how disclosed information and resulting behavioral responses fit into their decision-making processes. We therefore place a greater emphasis on the context – for example, what does the user want, what are his/her choices and options, what are the costs of gaining the information? – than upon the construction of the report card per se. A related idea is described in Zeckhauser and Marks, 1996, who refer to the interaction of users and disclosers as the consumer and manufacturer effect: “Consumers increase their demand for products possessing the newly posted characteristic and sellers increase their production of such products” (p. 33).

7. Simon, 1997, is the seminal treatment of this issue. See also Payne, Bettman, and Johnson, 1993, for a full discussion of information seeking and its impact on decision making.
8. The ability of companies and organizations to shape preferences is the subject of a rich theoretical and empirical literature. See, for example, Carpenter and Nakamoto, 1989, and Mantel and Kardes, 1999.
9. Fagotto and Fung, 2003.
10. Weil, 2002.
11. The literature indicates that socioeconomic and educational factors affect user comprehension of disclosed information. For example, education and income affect users’ comprehension of nutritional labeling (Mathios, 2000; Derby and Levy, 2001), workplace hazards (Occupational Safety and Health Administration, 1991; Kolp et al., 1993), and patient safety (Mukamel et al., 2004).
12. Occupational Safety and Health Administration, 1997; see also Kolp et al., 1993; Phillips et al., 1999.
13. Robins et al., 1990.
14. See, for example, Hammit and Graham, 1999.
15. County of Los Angeles, Department of Health Services, Retail Food Inspection Guide, Document No. H-3046, 2000, <http://lapublichealth.org/eh/rfig/rfigfiles/documents2/rfigprnt.PDF> (site accessed April 29, 2006).
16. The stated purpose of the advisory system is to “inform and facilitate decisions appropriate to different levels of government and to private citizens at home and at work.” Homeland Security Presidential Directive 3 (HSPD-3), March 12, 2002, as amended by Homeland Security Presidential Directive 5 (HSPD-5), February 28, 2003. The system arguably provides more useful information to federal, state, and local government officials than to ordinary citizens because each threat level is intended to trigger threat-specific protective measures by governments.
17. See “Citizen Guidance on the Homeland Security Advisory System,” <http://www.dhs.gov/interweb/assetlibrary/CitizenGuidanceHSAS2.pdf> (site accessed July 26, 2005).
18. Bui and Mayer, 2003.
19. See, for example, Scorecard.org, rtknet.org, and envirofacts.gov.
20. Home Mortgage Disclosure Act of 1975, Pub. L. 94–299, Title III, December 31, 1975, 89 Stat. 1125 (codified at 12 U.S.C. §2801 *et seq.* (2000)), amended by Financial Institutions, Reform, Recovery and Enforcement Act of 1989,

- Pub. L. 101–73, August 9, 1989, 103 Stat. 183 (codified in scattered sections of 12 U.S.C.).
21. Munnell et al., 1996.
  22. The National Community Reinvestment Coalition, for example, represents local community reinvestment organizations that try to attract capital to underserved communities. See <http://www.ncrc.org> (site accessed February 16, 2006).
  23. In 1994, 51 percent of consumers were “very” or “extremely” concerned about reducing fat in diet, but the proportion fell to 31 percent by 2006. See Melanie Warner and Julie Bosman, “Another Fad Hits the Wall: Marketers Start to Emphasize Good Fats over Bad Fats,” *New York Times*, February 11, 2006, p. B1.
  24. Polinsky and Shavell, 2000.
  25. Graham, 2002a, pp. 40–45.
  26. Fisher, Raman, and McClelland, 2000. Even highly motivated retailers that have long used sophisticated analyses of point-of-sale information, such as Wal-Mart or Best Buy, have had difficulty until very recently in determining whether changes in sales arise from pricing, advertising, or specific product characteristics. New retail forecasting software and the falling costs of computing have made more subtle analysis of trends feasible.
  27. Gompers, 1995; DeGeorge, Patel, and Zeckhauser, 1999.
  28. For example, Stephen Marshall, a Maine resident, tracked down and killed two registered sex offenders (and then took his own life). One had been convicted of raping a child and the other of sex with a minor (when he was nineteen and his girlfriend was fifteen). Marshall had looked up details about the two victims as well as thirty-two other listed offenders on the state’s online registry prior to his attack. See Libby Lewis, “Murders Put Focus on Sex-Offender Registry Policies,” *All Things Considered* (National Public Radio), broadcast April 21, 2006; John Ellement and Suzanne Smalley, “Sex Crime Disclosure Questioned,” *Boston Globe*, April 18, 2006, p. A1.
  29. See Graham and Miller, 2005, and Hamilton, 2005, Chapter 6. For a related discussion regarding strategic disclosure behavior under Massachusetts’ Toxics Use Reduction Act, see Benneer, 2005.
  30. Committee on Appropriate Test Use, 1999; Meier, 2000.
  31. Dranove et al., 2003.
  32. Kahneman and Tversky, 1996; Kahneman, 2003.
  33. Graham, 2002a, pp. 40–45. Regarding the choice of metrics under toxic pollution reporting, see Hamilton, 2005, Chapter 2. More generally, see Hamilton and Viscusi, 1999, regarding the choice of metrics used to inform the public about environmental risks.
  34. Occupational Safety and Health Administration, 1991; Viscusi, 1991; Kolp et al., 1993; Mathios, 2000.
  35. The capacity to undertake such ongoing improvement will, in turn, be affected by the factors related to sustainability discussed in Chapter 5.
  36. For research questioning the need for mandatory information disclosure, see Stigler, 1964; Benston, 1973.
  37. Simon, 1989; Botosan, 1997.
  38. Bushman and Smith, 2001; Ferrell, 2003; Bushee and Leuz, 2004; Greenstone, Oyer, and Vissing-Jorgensen, 2004.

39. For a discussion on financial disclosure and the cost of capital, see Botosan, 1997. Lang and Lundholm, 1996, analyze how more informative disclosure policies decrease dispersion among analysts' forecasts.
40. Ball, 2001; Bushman and Smith, 2001; Healy and Palepu, 2001.
41. Leuz and Verrecchia, 2000; Hail and Leuz, 2005.
42. Gelos and Wei, 2002.
43. Fielding et al., 1999.
44. Jin and Leslie, 2003.
45. Jin and Leslie, 2006.
46. Jin and Leslie, 2003.
47. Simon et al., 2005.
48. Joint Center for Housing Studies, Harvard University, 2002.
49. Schafer and Ladd, 1981; Munnell et al., 1996.
50. Bostic et al., 2002.
51. Bostic and Surette, 2001; Joint Center for Housing Studies, Harvard University, 2002.
52. Economic Research Service, United States Department of Agriculture, CPI, Prices and Expenditures: Foodservice as a Share of Food Expenditures, Table 12: "Food Away from Home as a Share of Food Expenditures," <http://www.ers.usda.gov/Briefing/CPIFoodAndExpenditures/Data/table12.htm> (site accessed May 8, 2006).
53. Nayga, Lipinski, and Savur, 1998; Mathios, 2000; Derby and Levy, 2001.
54. Garretson and Burton, 2000; Derby and Levy, 2001.
55. Moorman, 1998.
56. Derby and Levy, 2001.
57. Kim, Nayga, and Capps, 2001; Variyam and Cawley, 2006.
58. Graham, 2002a; Graham and Miller, 2005.
59. Graham, 2002a.
60. De Marchi and Hamilton, 2006.
61. Graham and Miller, 2001; Bui, 2002.
62. Hamilton, 1995; Konar and Cohen, 1997.
63. Patten, 2002.
64. Bui and Mayer, 2003; Oberholzer-Gee and Mitsunari, 2003; Decker, Nielsen, and Sindt, 2005.
65. General Accounting Office, 1992a.
66. Kolp, Williams, and Burtan, 1995.
67. Occupational Safety and Health Administration, 1997.
68. Phillips et al., 1999.
69. Fagotto and Fung, 2003; Weil, 2005.
70. General Accounting Office, 1992a.
71. Arnett, 1992.
72. For reasons we describe, some studies suggest that New York's system is moderately effective.
73. Graham, 2002a.
74. Jha and Epstein, 2006.
75. Green and Wintfeld, 1995.
76. Schneider and Epstein, 1996.

77. Schneider and Epstein, 1998.
78. Hannan et al., 1994.
79. Cutler, Huckman, and Landrum, 2004.
80. Chassin, 2002.
81. Chassin, 2002; Jha and Epstein, 2006.
82. Werner, Asch, and Polsky, 2005.
83. Hannan et al., 2003.
84. Dranove et al., 2003.
85. Mukamel et al., 2002.
86. General Accounting Office, 2003b.
87. U.S. Department of Labor, 1986; Gerhart, 1987.
88. Addison and Blackburn, 1994 and 1997; Levin-Waldman, 1998.
89. Addison and Blackburn, 1997.

### Chapter 5. What Makes Transparency Sustainable?

1. Seligman, 1995, pp. 418–431 (quotation from *Newsweek* at 431).
2. Seligman, 1995, pp. 431–437.
3. Homer Kripke concluded: “Accounting was Congress’ most important charge to the [SEC] and represented the Commission’s greatest opportunity to be of use to the investor . . . and it is the one problem which the SEC chose to turn over to the technicians while it sat on its own hands for 40 years.” Kripke, 1985, p. 62. See also Previts and Merino, 1998, pp. 271–276.
4. Pacter, 1985, pp. 6–10. See also Seligman, 1995, pp. 452–466 and 554.
5. Pacter, 1985, pp. 10–18; Seligman, 1995, pp. 555–557.
6. Commission chairman Arthur Levitt emphasized the importance of constant vigilance to produce clear and accurate information. Without continual oversight, “the competitive juices of corporate America are such that they will stay close to the line, and some of them will go over the line.” Levitt is quoted in Floyd Norris, “Levitt to Leave SEC Early; Bush to Pick 4,” *New York Times*, December 21, 2000, p. C1.
7. SEC press release, “SEC to Rebuild Public Disclosure System to Make It Interactive,” September 25, 2006, <http://www.sec.gov/news/press/2006/2006-158.htm>.
8. Wilson, 1980, p. 370.
9. Institute of Medicine, 1990, pp. 90–91 and 144–150.
10. See, for example, <http://www.leapfrog.org>.
11. This account is drawn from a longer case study in Graham, 2002a.
12. For example, Ida Ballasiotes, the mother of a slain businesswoman, began a grassroots citizen campaign to reform Washington State’s laws on sex offenders. Along with the mother of another victim of crime by an ex-offender and organizations such as “Friends of Diane” and “Tennis Shoe Brigade,” she marched on the state capitol and dumped thousands of tennis shoes to represent the vulnerability of children, women, and elders. Dorsett, 1998 (citing Barry Siegel, “Locking Up Sexual Predators,” *Los Angeles Times*, May 10, 1990, p. A30).
13. For an account of the passage of the first legislation in Washington State, see Siegel, “Locking Up Sexual Predators,” p. A1.

14. Bureau of Justice Statistics, U.S. Department of Justice, Office of Justice Programs, National Conference on Sex Offender Registries: Proceedings of a BJS/SEARCH conference, April 1998, NCJ-168965, <http://www.ojp.usdoj.gov/bjs/pub/ascii/ncsor.txt> (site accessed May 10, 2006). See also Ellen Liberman, “Megan’s Law’s Unintended Result: Hysteria,” *Providence Journal-Bulletin*, October 17, 1999, p. 1A (discussing, *inter alia*, Washington’s “community notification meetings”).
15. Law 1994, ch. 129, §1 (codified at Wash. Rev. Code Ann. §4.24.550 (2005 & West Supp. 2006)).
16. Law 1997, ch. 364, §1 (codified at Wash. Rev. Code Ann. §4.24.550 (2005 & West Supp. 2006)).
17. Law 1997, ch. 113, §2.
18. 1999 1st special session, ch. 6, §6(a) (codified at Wash. Rev. Code Ann. 9A.144.130(6)(c)).
19. Law 2001, ch. 283, §2, and Law 2001, ch. 169, §2 (codified at Wash. Rev. Code Ann. 4.24.550(4) (2005 & West Supp. 2006)).
20. Under the revised law, if an ex-offender obtains employment in either a public or a private institution of higher education, the ex-offender must, either within ten days of accepting the employment or by the first day of work at the institution, whichever is earlier, notify the sheriff of the county of the ex-offender’s residence of his/her employment at the higher education institution. If the ex-offender’s position at the same institution is terminated, the ex-offender must within ten days notify the sheriff of his/her residence of such termination. Law 2003 ch. 215, §1.
21. The sheriff is then required to notify the principal of the school, who is then required to notify various personnel at the school depending on the student’s classification as a Level I, II, or III sex offender. Law 2005, ch. 380, §1. The 2005 law became effective September 1, 2006.
22. All fifty states currently have sex offender registration laws, and many of these laws require community notification. The most recent sex offender law was passed in Tennessee in 2004. Tennessee Sexual Offender and Violent Sex Offender Registration, Verification and Trading Act of 2004, T.C.A. §40-39–201 *et seq.*
23. Labor Management Reporting and Disclosure Act of 1959, Pub. L. 86–257, September 14, 1959, 73 Stat. 519 (codified at 29 U.S.C. §401 *et seq.* (2000)).
24. Concern about union finance reporting violating union officers’ Fifth Amendment rights under the U.S. Constitution is discussed in Robb, 1961. The need for more detailed disclosure as a curb against corrupt practices by union officers (such as kickbacks or other forms of illegal payments from unions to other parties) is discussed in Goldwater, 1961. A more pessimistic view from the time concerning the prospects for improving internal union democracy through government intervention can be found in Petro, 1959.
25. See Labor Organization Annual Financial Reports, 68 Fed. Reg. 58374 (October 9, 2003) (to be codified at 29 C.F.R. pts. 403, 408). A similar executive order had been issued by George H. W. Bush at the close of his presidency, but the order was rescinded in the early days of the Clinton administration. See Exec. Order No. 12,800, 57 Fed. Reg. 12985 (April 13, 1992), as corrected 57 Fed. Reg. 13413

- (April 16, 1992), revoked by Exec. Order. No. 12836, 58 Fed. Reg. 7045 (dated February 1, 1993, and published February 3, 1993).
26. For example, Ken Paff, the national organizer of the dissident Teamsters for a Democratic Union and a long-time advocate of union member rights, noted that although he looked forward to learning how much Teamsters president James Hoffa paid the union's law firm via information provided by the expanded disclosure regulations, he worried that the new requirements would pose significant burdens on small union locals: "The bulk of these forms are filed by local folks. . . . It's an enormous hassle for a small workers' organization. That's where the harassment is very serious." Jane M. Von Bergen, "Unions Adjust to Stricter Oversight," *Philadelphia Inquirer*, December 11, 2005.
  27. Bergen, "Unions Adjust to Stricter Oversight." Bergen notes that the Department of Labor opened the new Division of International Union Audits in 2004 to review the information provided with the new reporting requirements.
  28. See James Surowiecki, "Sarboxed In?" *New Yorker*, December 12, 2005, p. 46; see also "Final Rule: Management's Reports on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act. Periodic Reports Securities and Exchange Commission" (Release Nos. 33–8238; 34–47986; IC–26068; File Nos. S7–40–02; S7–06–03) (effective August 14, 2004) (to be codified at 17 C.F.R. pts. 210, 228, 229, 240, 249, 270, and 274); speech by SEC Commissioner, Roel C. Campos: Remarks Before ASIC Summer School (by recorded DVD, February 13, 2006).
  29. Executive Compensation and Related Party Disclosure (February 8, 2006) (Release Nos. 33–8655; 34–53185; IC–27218; File No. S7–03–06) (to be codified at 17 C.F.R. pts. 228, 229, 239, 240, 245, 249, and 274). See also Press Release, January 17, 2006, "SEC Votes to Propose Changes to Disclosure Requirements Concerning Executive Compensation and Related Matters," <http://www.sec.gov/news/press/2006–10.htm> (site accessed May 9, 2006).
  30. Krysten Crawford, "Spitzer Seeks \$100M from Grasso: N.Y. Attorney General Announces Sweeping Lawsuit Seeking Return of Some of \$187M Pay Package," *CNN/Money.com*, May 24, 2004, [http://money.cnn.com/2004/05/24/markets/spitzer\\_grasso/](http://money.cnn.com/2004/05/24/markets/spitzer_grasso/) (site accessed May 9, 2006).
  31. See Jim McTague, "Cloud Hovers over Fed's Record on Transparency," *Barron's*, November 21, 2005, 85(47), 12; see also Warren Buffett, "Dividend Voodoo," *Washington Post*, May 20, 2003, p. A19, <http://www.washingtonpost.com/ac2/wp-dyn/A13113-2003May19?language=printer> (site accessed May 9, 2006); Donald Luskin, "Warren's World: It's as Whacky as Krugman's," *National Review Online*, May 21, 2003, <http://www.nationalreview.com/nrof.luskin/truthsquad052103.asp> (site accessed May 9, 2006).
  32. Lucien Bebchuk, "How Much Does the Boss Make?" *Wall Street Journal*, January 18, 2006. See Bebchuk and Jackson, 2005, for studies of the consequences of inadequate disclosure of executive compensation on shareholder value. See also Gary Strauss and Barbara Hansen, "Companies Think They're Worth . . .," *USA Today*, April 10, 2006, p. 1B (stating that disclosure of executive compensation not likely to curb other executives' compensation); contrast with Editorial, "Executive Envy," *Wall Street Journal Europe*, January 23, 2006, p. 11.

33. David Pierson, “Where ‘A’ Is Not on the Menu: Chinese Eateries in an L.A. County Enclave Struggle with Hygiene Ratings,” *Los Angeles Times*, September 28, 2005, p. A1.
34. For a theoretical discussion of interest group politics, see Becker, 1983.
35. Wilson, 1980; Becker, 1983. Gunningham and Grabosky, 1998, pp. 94–122, have an extensive discussion of intermediaries under a variety of environmental policies.
36. See *Washington State Housing Finance Commission Legislative Report for 2005*, <http://www.wshfc.org/admin/2005LegislativeReport.pdf>; State of Rhode Island Housing Resources Commission, <http://www.hrc.ri.gov/geninfo/index.shtml>; New Jersey Housing Resource Center, <http://www.njhousing.gov/njhrc/>; Community Reinvestment Initiative, [http://mcul.cusiteonline.com/Community\\_Reinvestment\\_Initiative/About\\_CRI/cri\\_taskforce\\_and\\_charge.php](http://mcul.cusiteonline.com/Community_Reinvestment_Initiative/About_CRI/cri_taskforce_and_charge.php) (sites accessed May 16, 2006).
37. Fishbein, 1995, pp. 345–346.
38. Alicia H. Munnell et al., *Mortgage Lending in Boston: Interpreting HMDA Data* (Boston: Federal Reserve Bank of Boston, 1992), p. 1.
39. Fagotto and Fung, 2003.
40. The role of unions and other workplace agents in dealing with the public goods aspects of regulation is discussed in Weil, 2005.
41. Freeman and Medoff, 1983.
42. For a recent discussion of this problem, see Gene Koretz, “Stock Analysts Shun Bad News; Good Reports Appear More Quickly,” *Business Week*, May 11, 1998, p. 24 (stating that an adviser or analyst might be less likely to give bad news about a fund when it may possibly hurt its relationship with a client or potential client); see also Bodie and Clowes, 2003; Scherbina, 2005; and Shapiro, 2005.
43. <http://www.fec.gov/disclosure.shtml> (site accessed May 17, 2006).
44. Aron Pilhofer, “MBNA’s Sudden Generosity: Coincidence or Quid Pro Quo?” *Campaign Finance Information Center*, Winter 2002, <http://www.campaignfinance.org/tracker/winter02/MBNA.html> (discussing the difficulty of finding information on the FEC Web site); Mark S. Sullivan, “Click to See Your Neighbor’s Politics,” *PC World*, August 10, 2004, <http://www.pcworld.com/news/article/0,aid,117309,00.asp> (sites accessed May 19, 2006).
45. Kane and Staiger, 2002.
46. See, for example, The School Report Express, [http://www.homefair.com/sr\\_home.html](http://www.homefair.com/sr_home.html); Northwest Regional Education Laboratory, <http://www.nwrel.org/planning/reports/rptcards/>; Education First: NC School Report Cards, <http://www.ncreportcards.org/src/parents.jsp> (sites accessed May 18, 2006).

### Chapter 6. International Transparency

1. Transparency International (<http://www.transparency.org>) has constructed a respected system aimed at reducing public corruption. The Sustainable Forestry Initiative (<http://www.sf.org>) represents a relatively mature private-sector effort to improve environmental protection. The Global Reporting Initiative



(<http://www.globalreporting.org>) is a broader effort to develop voluntary corporate reporting standards for environmental protection, human rights, labor practices, and other goals.

2. For example, the 1979 Convention on Long-Range Transboundary Air Pollution required that parties report their SO<sub>2</sub> emissions as a step toward framing and enforcing agreements to reduce acid rain. The Barcelona Convention for Protection of the Mediterranean in 1976 required standardized monitoring of specific pollutants as a prelude to multinational pollution regulation in 1980. During the Cold War, members of NATO and the Warsaw Pact agreed to inform each other of major military exercises near the East-West border to reduce the likelihood that forces would be deployed. And parties to the Nuclear Non-proliferation Treaty agreed to inspections of the equipment and materials they used in their peaceful nuclear programs in order to provide assurance that none was used for weapons.
3. Sebenius, 1984; Mitchell, 1994. See, for example, WHO Framework Convention on Tobacco Control, [http://www.who.int/tobacco/framework/WHO\\_FCTC\\_english.pdf](http://www.who.int/tobacco/framework/WHO_FCTC_english.pdf) (site accessed May 21, 2006).
4. Reinicke, 1998, pp. 98–99.
5. Wolf, 2004, pp. 46–47 (emphasis in original).
6. Slaughter, 2004, pp. 24–25.
7. Wolfgang Reinicke has explored the influence of globalization on national and international public policy in Reinicke, 1998. For a discussion of impacts on national regulation, see, for example, pp. 65–68.
8. Sobel, 1994, p. 34; Reinicke, 1998, p. 15.
9. Levinson, 2006.
10. Bryant, 2003, p. 147.
11. IMF Balance of Payments Statistics, September 2003. Figures reported are total portfolio investment liabilities.
12. Reinicke, 1998, p. 19.
13. Martin Wolf describes globalization as “a hideous word of obscure meaning.” Wolf, 2004, p. 13.
14. IMF Balance of Payments Statistics, September 2003. The proportion of total financial liabilities going to twenty-one industrialized countries was 86.5% over the period 1978–1985; 91.7% over 1986–1993; and 90.3% over 1994–2001. The same figures for portfolio investment were 96.3%, 92.3%, and 92.8%. Emerging market countries received 11.5%, 7.7%, 8.7%, and 4.3%, 7.6%, and 6.3%, respectively. The twenty-one industrialized countries are Australia, Austria, Canada, Denmark, Finland, France, Germany, Great Britain, Greece, Iceland, Ireland, Italy, Japan, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and the United States. The seventeen emerging market countries in our data are Argentina, Brazil, Chile, China, Colombia, Indonesia, India, Israel, Korea, Mexico, Malaysia, Pakistan, Philippines, Thailand, Turkey, Taiwan, and Venezuela.
15. Market capitalization information from the New York Stock Exchange Web site, <http://www.NYSE.com> (site accessed May 12, 2004).
16. Jeske, 2001. In the United States, this marked a significant diversification from previous years: the percentage of domestic equities in U.S. portfolios was about

- 94 in 1992 and 98 in 1987. U.S. Federal Reserve, *Flow of Funds Accounts of the United States*, Table L.213, <http://www.federalreserve.gov/releases/Z1/Current>. For other industrialized countries, home bias has remained the same or even increased. Equity portfolios in the United Kingdom, Spain, and Italy were about as diversified in 1987 as they were in 2000; in Japan, Germany, and France they were significantly more diversified in 1987. Figures for 1987 are from Cooper and Kaplanis, 1994, pp. 45–60, Table 1.
17. See, for example, Reinicke, 1998, pp. 43–48, and Wolf, 2004, pp. 106–134, emphasizing differences between current trends and those of earlier periods.
  18. Flower and Ebbers, 2002, pp. 220–237; Zeff, 2003, p. 880.
  19. Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of 19 July 2002, on the Application of International Accounting Standards, 2002 O.J. (L 243) 1–4.
  20. Simmons, 2001, p. 590.
  21. U.S. Securities and Exchange Commission, 1997, p. 15.
  22. Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of 19 July 2002, on the Application of International Accounting Standards.
  23. These rules are available in print and can also be accessed online by IASB subscribers at <http://shop.iasb.org.uk/onlineservices/onlinehome.aspx?s=101298595&sc={8286D35B-D3AE-4E33-B679-D7D9ADB20CD5}&sd=239426964>. One can purchase a subscription by visiting the IASB shop at <http://www.iasb.org/resources/shop.asp>.
  24. Kung, 2002, pp. 458–459.
  25. Van Hulle, 2004, p. 355.
  26. McKinsey Global Investor Opinion Survey on Corporate Governance, July 2002, <http://www.mckinsey.com/governance>.
  27. The growth in the number of non-U.S. listings on the NYSE from 1993 to 2004 can be seen at <http://www.nyse.com/pdfs/nonussum040308.pdf>. The total number of listings from 1980 to 2002 is available at [http://www.nysedata.com/factbook/viewer\\_edition.asp?mode=table&key=76&category=4](http://www.nysedata.com/factbook/viewer_edition.asp?mode=table&key=76&category=4).
  28. The financing of the International Accounting Standards Committee Foundation (IASCF) is described in the IASCF Annual Report, 2005. The “big four” accounting firms each contribute \$1 million, out of an \$18 million annual budget. The activities of IFAC are described at <http://www.ifac.org>.
  29. Sources for this account of the Asian financial crisis include Stiglitz, 2002, and Blustein, 2003.
  30. *G-22 Countries, Summary of Reports on the International Financial Architecture – The Working Group on Transparency and Accountability*, October 5, 1998; Declaration of G7 Finance Ministers and Central Bank Governors, October 30, 1998; Arthur Levitt, Speech to the American Council on Germany, October 7, 1999.
  31. Cassell Bryan-Low, “Accounting’s Global Rule Book,” *Wall Street Journal*, November 28, 2003, p. C1.
  32. U.S. Securities and Exchange Commission, 1997, p. 18. In 2001, the EC set up a procedure to review international standards one at a time, since “it is not possible politically, nor legally, to delegate accounting standard setting unconditionally

- and irrevocably to a private organization over which the EU has no influence.” Commission of the European Communities, 2001.
33. “Holier Than Thou,” *Economist*, February 8, 2003, p. 69.
  34. Ruder, 2001, pp. 14–18, examines U.S. and EC approaches to enforcing accounting standards. See also International Accounting Standards Survey 2000 (David Cairns), <http://www.cairns.co.uk/surveys.asp>. Adrian Michaels, “US Watchdog Is Not Afraid to Take on Distant Targets,” *Financial Times*, January 23, 2004, p. 24, discusses the SEC’s efforts to intervene in cases involving foreign companies.
  35. Turner, 2001, pp. 3–4.
  36. Coffee, 2002, p. 1760, refers to some of this research, including Di Noia, 2001.
  37. Slaughter, 2004, pp. 9–10.
  38. Keohane, 2002, pp. 260–267.
  39. Keohane, 2002, p. 36.
  40. [http://www.iasb.org/about/iasb\\_board.asp](http://www.iasb.org/about/iasb_board.asp) (site accessed May 3, 2006).
  41. International Accounting Standards Committee Foundation Constitution, Articles 6–7, July 2002, [http://www.iasb.org/uploaded\\_files/documents/8.11\\_iascf-constitution.pdf](http://www.iasb.org/uploaded_files/documents/8.11_iascf-constitution.pdf). This structure mimicked that of the U.S. Financial Accounting Standards Board (FASB), the expert body that issues U.S. accounting standards and has been the object of fierce lobbying by large corporations, the Business Roundtable, and corporate trade associations. FASB reconsidered several standards during the 1990s as a result of such lobbying, including accounting for stock options and intangibles and fair-value accounting of marketable securities. It remained to be seen whether the similar structure of the IASB would provide insulation from politics or encourage freelance lobbying by special interests.
  42. [http://www.iasb.org/about/sac\\_members.asp](http://www.iasb.org/about/sac_members.asp) (site accessed May 3, 2006). The Standards Advisory Council also has three observers, one each from the European Commission, the Financial Services Agency of Japan, and the U.S. Securities and Exchange Commission.
  43. IASC Standards Assessment Report, 2000. Available at <http://www.iosco.org/pubdocs/pdf/IOSCOPD109.pdf>. A list of IOSCO members is available at <http://www.iosco.org/lists>.
  44. <http://www.ifac.org/Guidance> (site accessed May 5, 2006).
  45. Andrew Parker, “IASB Creates Advisory Group at EC’s Request,” *Financial Times*, February 3, 2004, p. 29.
  46. Leuz and Verrecchia, 2000, pp. 97–98, address the question of whether international accounting standards require more and better disclosure than German standards and conclude, with reference to academic opinion and the business press, that it does.
  47. Bradshaw, Bushee, and Miller, 2003.
  48. Two studies by Christian Leuz of the University of Pennsylvania (one of them with colleague Robert Verrecchia) of German firms switching to international and U.S. standards did not find a difference between the effectiveness of the two sets of standards in reducing information asymmetry. Leuz, 2000; Leuz and Verrecchia, 2000, p. 111.
  49. For a discussion of these proxies, see Leuz and Verrecchia, 2000, pp. 99–100.
  50. <http://www.who.int/governance/en/> (site accessed May 5, 2006).
  51. Fidler, 2004, p. 34.

52. Fidler, 2004, p. 35.
53. See World Health Assembly, *Revision and Updating of the International Health Regulations*, WHA48.7, May 12, 1995. See also Revision Process of the International Health Regulations (IHR), <http://www.who.int/csr/ihr/revision/en/index.html> (site accessed May 21, 2006) (describing the process over the last eleven years).
54. Fidler, 2004, p. 66. See also *Global Outbreak Alert and Response Network – GOARN: Partnership in Outbreak Response*, <http://www.who.int/csr/outbreaknetwork/goarnenglish.pdf>; *Report on a WHO Meeting in Geneva, Switzerland, 26–28 April 2000: Global Outbreak Alert and Response*, <http://www.who.int/csr/resources/publications/surveillance/whocdscsr2003.pdf> (sites accessed May 5, 2006).
55. Institute of Medicine, 2003, p. 8; Fidler, 2004, pp. 74–80.
56. Press Release, “WHO Issues a Global Alert About Cases of Atypical Pneumonia: Cases of Severe Respiratory Illness May Spread to Hospital Staff,” March 12, 2003, <http://www.who.int/mediacentre/news/releases/2003/pr22/en/index.html> (site accessed May 5, 2006).
57. ProMED-mail (<http://www.promedmail.org>) is an Internet-based warning system open to all sources of information, administered by the International Society of Infectious Diseases.
58. Institute of Medicine, 2003, p. 16 (noting the “lack of collaborative analysis” having allowed the virus to spread); Olsterholm, 2005, p. 28.
59. Fidler, 2004, p. 91.
60. Fidler, 2004, p. 102.
61. Fidler, 2004, pp. 103–104 and 135.
62. Institute of Medicine, 2003, p. 8.
63. Fidler, 2004, p. 116.
64. WHA58.4, <http://www2a.cdc.gov/phlp/docs/58assembly.pdf> (site accessed May 5, 2006). See also WHA58.3, <http://www.who.int/csr/ihr/WHA58.3-en.pdf> (resolution attached to the new IHR, also containing the new IHR) (site accessed May 6, 2006).
65. This discussion owes much to the work of Robert L. Paarlberg, who has written extensively about the politics of genetically modified food and its impact on developing countries. See Paarlberg, 2001. Other sources include Paarlberg, 2000, p. 24, and Paarlberg, 2003, p. 86. We are also grateful to Diahanna Post for her insights and helpful comments. See Post and Da Ros, 2003, and Post, 2005. A committee of the U.S. National Academy of Sciences examined these issues in depth. National Research Council, 2000.
66. <http://www.cfsan.fda.gov/dms/biolabgu.html>.
67. National Organic Program, 7 C.F.R. pt. 205 (2006).
68. Paarlberg, 2000, pp. 24 and 29.
69. [http://europa.eu.int/comm/food/food/biotechnology/index\\_en.htm](http://europa.eu.int/comm/food/food/biotechnology/index_en.htm).
70. European Commission, *Final Report of the Public Perceptions of Agricultural Biotechnologies in Europe (PABE) Project*, 2002.
71. See WT/DS291 European Communities, *Measures Affecting the Approval and Marketing of Biotech Products*, [http://www.wto.org/english/news\\_e/news06\\_e/291r\\_e.htm](http://www.wto.org/english/news_e/news06_e/291r_e.htm) (site accessed October 11, 2006).

72. Many analysts have expressed concern that agreements among national regulators create a “democratic deficit” that undermines popular sovereignty. See, for example, Reinicke, 1998, pp. 99–100, and Keohane, 2002, pp. 34–35.
73. See, for example, Kingsbury, Krisch, and Stewart, 2004, and <http://www.iilj.org>.

### Chapter 7. Toward Collaborative Transparency

1. Institute of Medicine, 2003, pp. 4–6; Fidler, 2004, pp. 74–80. The Institute of Medicine report also acknowledges the contribution to early reporting of the Global Public Health Intelligence Network, administered by the Public Health Agency of Canada.
2. Institute of Medicine, 2003, p. 107.
3. John Seely Brown, former president of the Palo Alto Research Center, suggests in *The Social Life of Information* that this transformation has already occurred. Brown, 2002.
4. Fox and Fallows, 2003, [http://www.pewinternet.org/PPF/r/95/report\\_display.asp](http://www.pewinternet.org/PPF/r/95/report_display.asp).
5. Rainie et al., 2005, [http://www.pewinternet.org/PPF/r/150/report\\_display.asp](http://www.pewinternet.org/PPF/r/150/report_display.asp).
6. Boase et al., 2006, pp. 36–41, [http://www.pewinternet.org/pdfs/PIP\\_Internet\\_ties.pdf](http://www.pewinternet.org/pdfs/PIP_Internet_ties.pdf).
7. Boase et al., 2006, p. 56.
8. The first large-scale public system for bringing users together in peer-to-peer information-pooling communication was the Usenet. Predating the public Web by a decade, the Usenet is a system of distributed information sharing that was invented by graduate students at the University of North Carolina and Duke University in the early 1980s. The system is composed of geographically dispersed “news servers” that carry queries, responses, articles, and ongoing discussions posted by users. There are currently some hundred thousand such discussion groups on the Usenet, more than a fifth of which are active even now.
9. The history of the Web itself provides insight into the central role of collaboration in its development. In November 1990, Tim Berners-Lee published “WorldWideWeb: A Proposal for a Hypertext Project” as a suggestion for how scientists at CERN, the European particle physics laboratory, might share information more easily with one another and with other scientists. Berners-Lee developed all of the basic pieces for a contained Web by Christmas of that year. His Web had two breakthrough features: it combined the earlier hypertext (point and click links on a page) with the communication hardware and protocols of the Internet and also made it much easier for individuals and organizations to create Web servers and Web pages. In 1993, CERN announced that the Web would be free for anyone to use. In that same year, Marc Andreessen at the National Center for Supercomputing Applications released – free of charge – the Mosaic World Wide Web Browser. Its straightforward user interface and easy combination of text and graphics quickly made the Web the most popular protocol used on the Internet. As a result, the Internet is synonymous with the Web for most users. All contemporary browsers – Microsoft’s Explorer, Mozilla’s FireFox, and Apple’s Safari – are relatively minor and incremental evolutions of Mosaic.

10. <http://en.wikipedia.org/wiki/Wikipedia>.
11. Information pooling itself is not new, of course. Markets and political processes have long pooled the judgments of many, whether the result is an agreed-upon price for a share of Microsoft stock, the viability of a new cola formula, or the winner of a presidential election. Long before the Internet was even imagined, Zagat and other guides produced restaurant and hotel ratings based on user contributions. But advances in information technology have taken such collaborative judgments to a new level of usefulness in everyday life, making it possible to draw on a much wider group of information providers, to customize results, and to keep information current.
12. Von Hippel, 2006.
13. Evans and Wurster, 2000, p. 9.
14. Evans and Wurster, 2000, pp. ix and 4.
15. Constance L. Hays, "What They Know About You," *New York Times*, November 14, 2004, p. C1.
16. Hagel and Brown, 2005, pp. 11–14.
17. <http://www.epa.gov/enviro/>. Also see Fountain, 2001, pp. 26–29.
18. The EDGAR system can be found at <http://www.sec.gov/edgar.shtml>; the Web site for the Office of Labor Management Services, the office in the U. S. Department of Labor that administers the union finances disclosure system, can be found at <http://www.dol.gov/esa/olms.org.htm>.
19. The expanding application of information technology to the work of local, state, and federal government has spawned a number of institutions that document and analyze different applications of "digital governance." See, for example, the National Center for Digital Government, based at the University of Massachusetts at Amherst's Center for Public Policy and Administration and funded by the National Science Foundation (<http://www.umass.edu/digitalcenter>); the Program on Networked Governance, based at Harvard's Kennedy School of Government (<http://www.ksg.harvard.edu/netgov/html/index.htm>); and the Center for Digital Government, which focuses on state and local government applications of information technology (<http://www.centerdigitalgov.com>).
20. For an in-depth discussion of the politics of toxic pollution disclosure and the development of Scorecard, see Graham, 2002a.
21. See O'Rourke and Macey, 2003.
22. <https://www.cahps.ahrq.gov>.
23. See, for example, <http://en.wikipedia.org/wiki/AIDS>; [http://en.wikipedia.org/wiki/Avian\\_flu](http://en.wikipedia.org/wiki/Avian_flu).
24. <http://www.qualitycheck.org>.
25. See, for example, <http://www.partners.org>; <http://www.bcbsma.com>.
26. 49 C.F.R. 579.4(c).
27. "Terror in America," *Patriot Ledger*, September 21, 2001, p. 11.
28. John Schwartz, "Myths Run Wild in Blog Tsunami Debate," *New York Times*, January 3, 2005, p. A9.
29. Sunstein, 2001, p. 49.
30. Nick Wingfield and Matthew Rose, "Amazon Puts a Price on Book Promotions – Retailer to Charge for Recommendations," *Wall Street Journal Asia*, February 8,

- 2001, p. N1; Nick Wingfield and Matthew Rose, “Amazon Plans to Charge Publishers Fee for Online Recommendations,” *Wall Street Journal (Eastern Edition)*, February 7, 2001, p. B1.
31. See, for example, John Seigenthaler, “A False Wikipedia ‘Biography,’” *USA Today*, November 30, 2005, p. A11.
  32. Giles, 2005.
  33. [www.usdoj.gov/criminal/fraud/Internet.htm](http://www.usdoj.gov/criminal/fraud/Internet.htm).
  34. Alan Murray, “The CEO as Global Corporate Ambassador,” *Wall Street Journal*, March 29, 2006, p. A2.
  35. [http://www.stopandshop.com/stores/shopping\\_buddy.htm](http://www.stopandshop.com/stores/shopping_buddy.htm).
  36. [http://www.albertsons.com/abs\\_investorinformation/companinfo/annualreport\\_2004/imperative3.html](http://www.albertsons.com/abs_investorinformation/companinfo/annualreport_2004/imperative3.html).
  37. <http://www.gnc.com/corp/index.jsp?page=inTheStore>.
  38. Nathanael Johnson, “The Augmented Bar Code,” *New York Times Magazine*, December 12, 2004, p. 54.

#### Chapter 8. Targeted Transparency in the Information Age

1. “Surgical Tools ‘Washed’ in Hydraulic Fluid,” *Associated Press*, June 13, 2005, p. A15; see also Hydraulic Fluid Facts, Duke University Health System, <http://hydraulicfluidfacts.dukehealth.org/overview> (site accessed May 6, 2006); Report on Instrument Sterilization, by Professor William A. Rutala, PhD, MPH, Director of the Statewide Program in Infection Control and Epidemiology at the UNC School of Medicine, [http://hydraulicfluidfacts.dukehealth.org/reports/index/Rutala\\_Report.pdf](http://hydraulicfluidfacts.dukehealth.org/reports/index/Rutala_Report.pdf) (site accessed May 6, 2006); RTI Analysis, by RTI International, [http://hydraulicfluidfacts.dukehealth.org/reports/index/RTI\\_Final\\_Report\\_6-24.pdf](http://hydraulicfluidfacts.dukehealth.org/reports/index/RTI_Final_Report_6-24.pdf) (site accessed May 6, 2006).
2. Institute of Medicine, 1999, pp. 22–42; see also Graham, 2002a, pp. 104–136.
3. 28 PA ADC §136.21 (West, Westlaw through May 2006); 10 NYCRR §709.14 (2005).
4. Graham, 2002a, pp. 106–107.
5. This problem also arises under state laws requiring disclosure of sex offenders’ places of residence. Potential overreaction to risks posed to neighbors from released offenders can lead to a range of troubling outcomes, from local vigilantism to, in the extreme, murder (see Chapter 4). Linden and Rockoff, 2006, show that housing prices in the immediate vicinity of a listed sex offender decrease in value (by an average of \$5,500) relative to comparable housing elsewhere. These results imply that homeowners perceive an increased risk from living near a released offender, although it is not clear whether this reaction represents a reasonable estimate of that risk.
6. In this example, the transparency policy provides the information necessary to strike the type of Coasian agreements between polluters and affected communities described in Chapter 2.
7. Milt Freudenheim, “To Find a Doctor, Mine the Data,” *New York Times*, September 22, 2005, p. C1 (noting that Blue Cross Blue Shield, Wellpoint, Humana, United Healthcare, and Cigna all provide quality measures for health care). See the Web sites of Wellpoint, <http://phx.corporate-ir.net/>

- phoenix.shtml?c=130104&p=irol-govhighlights; United HealthCare, <http://www.uhc.com/resources/>; Blue Cross Blue Shield, <http://bcbshealthissues.com/>; Humana, information available at <http://www.humana.com/members/home.asp> (scroll down and choose “Transparency Tools”); and Cigna, <http://www.cigna.com/index.html> (sites accessed May 12, 2006).
8. Applying ideas from behavioral economics to public policy issues is gaining increasing interest. For example, in 2004, the Federal Reserve Board hosted a conference on the impact of ideas from behavioral economics (including the effects of cognitive biases on decision making) on a variety of critical policy areas such as health care, product safety, and environmental policy. See Thaler and Sunstein, 2003, for a related discussion of building default rules into public policy to adjust to systematic cognitive errors.
  9. Institute of Medicine, 1999, pp. 67–73.
  10. See Restoring Trust in Government Act, H.R. 4696, 109th Cong. (2006); Lobbying Accountability and Transparency Act, H.R. 4975, 109th Cong. (2006).
  11. Financial Accounting Standards Board, <http://www.fasb.org/> (site accessed May 6, 2006).

#### Appendix. Eighteen Major Cases

1. The Securities Act is codified at 15 U.S.C. §§78a *et seq.* For a detailed account of these events, see Seligman, 1995, pp. 41–42.
2. Quoted in Seligman, 1995, p. 71.
3. We discuss this evolution in detail in Chapter 5.
4. Seligman, 1995, pp. 431–437.
5. FASB was governed and financed by the new Financial Accounting Foundation, a non-profit organization whose trustees were nominated by five leading accounting organizations (though still elected by the board of the Association of International Certified Public Accountants, AICPA). Task forces drawn from a spectrum of interested groups as well as a broad-based advisory council gave FASB broader accountability. Unlike the previous board, its seven members held full-time positions and did not have other business affiliations. Soon after the board began operation, the SEC issued a policy statement recognizing its opinions as authoritative. Pacter, 1985, pp. 6–10. See also Seligman, 1995, pp. 452–466 and 554.
6. Pacter, 1985, pp. 10–18; Seligman, 1995, pp. 555–557.
7. One response was the Securities Investor Protection Act of 1970. It produced new SEC disclosure rules that required broker-dealers to give notice when new capital was insufficient or records were not current. Seligman, 1995, pp. 451–465.
8. The scandal led to the 1977 Corrupt Practices Act, which required companies to maintain new accounting controls to assure that transactions were authorized by management. This additional transparency was designed to discourage illegal transfers. Seligman, 1995, pp. 539–549.
9. Seligman, 1995, pp. 549–550.
10. See <http://www.sec.gov/pdf/handbook.pdf>. Commission chairman Arthur Levitt emphasized the importance of constant vigilance to produce clear and



- accurate information. Floyd Norris, “Levitt to Leave SEC Early; Bush to Pick 4,” *New York Times*, December 21, 2000, p. C1. See also Plain English Disclosure, 63 Fed. Reg. 6370, 6370 (February 6, 1998) (to be codified at 17 C.F.R. pts. 228, 229, 230, 239, and 274 (Release Nos. 33–7497; 34–39593; IC-23011; International Series No. 1113; File No. S7–3–97)).
11. Smith and Emswiller, 2003, pp. 374–376.
  12. General Accounting Office, 2002, p. 15.
  13. Sarbanes-Oxley Act of 2002, Pub. L. 107–204, Title IV, §404, July 30, 2002, 116 Stat. 745 (codified at 15 U.S.C.A. §7201 *et seq.* (West 2005) and scattered sections of 18 U.S.C.). Section 404 is codified in 15 U.S.C.A. §7262 (West 2005). For a look at how the Sarbanes-Oxley Act has amended various sections of the Securities Exchange Act of 1933, see <http://www.sec.gov/divisions/corpfin/33act/index1933.shtml> (site accessed June 4, 2006).
  14. See, for example, Executive Compensation, 17 C.F.R. §§228.402, 229.402 (2005).
  15. General Accounting Office, 2003a, p. 13.
  16. General Accounting Office, 2003a, pp. 16–17.
  17. Financial Literacy and Education Improvement Act, 20 U.S.C. 9701–08.
  18. Fagotto and Fung, 2003, p. 63.
  19. For discussions of the development of right-to-know laws and regulations in connection with health and safety risks, see Baram, 1984; Ashford and Caldart, 1985; Hadden, 1989.
  20. Schroeder and Shapiro, 1984.
  21. Oleinick, Fodor, and Susselman, 1988, provide a timeline for the adoption of state right-to-know laws. By 1982 five states had worker right-to-know laws; the number increased by six new states in 1983 and eight in 1984; in 1985, twenty-seven states had worker right-to-know laws.
  22. Hunter and Mason, 1996.
  23. See Executive Summary of Hazard Communication in the 21st Century Workplace, <http://www.osha.gov/dsg/hazcom/finalmsdsreport.html> (site accessed June 10, 2006). The Hazard Communication final rule can be found at 48 Fed. Reg. 53280 (November 25, 1983) (codified at 29 C.F.R. §1910.1200 (2005)).
  24. Occupational Safety and Health Administration, 2004.
  25. Stillman and Wheeler, 1987.
  26. General Accounting Office, 1992a.
  27. Baram, 1996. According to the author, liability and market forces promote compliance with the hazard communication standard.
  28. Tom Anschutz, “When OSHA Comes Calling,” *Occupational Hazards*, March 2006, pp. 50–51.
  29. See Occupational Safety and Health Administration, 1997.
  30. Kolp et al., 1993.
  31. Phillips et al., 1999.
  32. Fagotto and Fung, 2003; Weil, 2005.
  33. Occupational Safety and Health Administration, 2004.
  34. The disclosure system was authorized by the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11023(a). This account

- draws on several detailed analyses of the Toxics Release Inventory, including Fung and O'Rourke, 2000; Case, 2001; Cohen, 2001; Graham and Miller, 2001; Karkkainen, 2001; Pedersen, 2001; Graham, 2002a; Hamilton, 2005.
35. Graham, 2002a, pp. 46–47.
  36. Exec. Order 12,856, 3 C.F.R. 616 (1993); Exec. Order 12,969, 60 Fed. Reg. 40989 (August 8, 1995), revoked by Exec. Order 13,148, 65 Fed. Reg. 24595 (April 21, 2000) (set out as a note in 42 U.S.C. §4321 (2000)).
  37. Toxics Release Inventory Burden Reduction, 70 Fed. Reg. 57822 (proposed October 4, 2005) (to be codified at 40 C.F.R. pt. 372).
  38. In the late 1990s, the federal EPA did make available Risk-Screening Environmental Indicators software that allowed users to analyze risk in general terms using disclosed toxic chemical data, <http://www.epa.gov/opptintr/rsei/index.html>.
  39. This account is drawn from a longer case study by Mary Graham: Graham, 2002a. For a summary of structural problems, see Graham, 2002a, pp. 47–49. For an empirical analysis of impact of disclosure, see Graham and Miller, 2005. On the issue of timeliness, see U.S. EPA, *2004 TRI Public Data Release*, April 12, 2006, <http://www.epa.gov/tri/tridata/tri04/index.htm>.
  40. Nutrition Labeling and Education Act of 1990, Pub. L. 101–535, November 8, 1990, 104 Stat. 2353 (codified at 21 U.S.C. §343 *et seq.* (2000)).
  41. This discussion is drawn from a longer case study in Graham, 2002a.
  42. These provisions are set forth at 21 U.S.C. 343(q)(1) (2000). See also Statement on Signing the Nutrition Labeling and Education Act of 1990, 26 Weekly Comp. Pres. Docs 1795 (November 8, 1990).
  43. See Graham, 2002a, pp. 81–101.
  44. Food Labeling: Trans Fatty Acids in Nutrition Labeling, Nutrient Content Claims, and Health Claims, 28 C.F.R. §101.9 (2005).
  45. Food Allergen Labeling and Consumer Protection Act of 2004, Pub. L. 108–282, Title II, August 2, 2004, 118 Stat. 905 (codified at 21 U.S.C.A. §374a (West 2005)).
  46. This account is drawn from a longer case study in Graham, 2002a.
  47. The Institute of Medicine defined errors as failures of planning or execution of a medical treatment. Errors were a subset of adverse events, defined as injuries attributable to medical management rather than to a patient's underlying condition. Errors were also referred to as preventable adverse events. Institute of Medicine, 1999, pp. 23–30.
  48. Institute of Medicine, 1999, pp. 1–3.
  49. Institute of Medicine, 1999, pp. 3–13.
  50. Institute of Medicine, 1999, pp. 3–13.
  51. 10 N.Y. Comp. R & Regs. §709.14 (2005).
  52. 28 PA. Code §136.21 (West, Westlaw through May 2006).
  53. Patient Safety and Quality Improvement Act of 2005, Pub. L. 109–41, July 29, 2005, 119 Stat. 424 (codified at 42 U.S.C.A. §299b21 *et seq.* (West, Westlaw through Pub. L. 109–169)).
  54. The National Academy for State Health Care Policy publishes periodic summaries of state patient safety laws and practice, <http://www.nashp.org/>.

55. See, for example, Richard Perez-Pena, “Law to Rein in Hospital Errors Is Widely Abused, Audit Finds,” *New York Times*, September 29, 2004.
56. <http://www.hospitalcompare.hhs.gov>; <http://www.qualitycheck.org> (sites accessed May 12, 2006).
57. The federal Megan’s Law was preceded in 1994 by the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, which required states to establish registries for sex offenders and child molesters. The Wetterling Act also mandated more stringent registration requirements for the most dangerous offenders, designated as “sexually violent predators.” States that fail to comply with the Wetterling Act risk losing 10 percent of federal anticrime funding. Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Pub. L. 103–322, Title XVII, Subtitle A, §170101, September 13, 1994, 108 Stat. 2038. See also Adkins, Huff, and Stageberg, 2000, p. 1.
58. See “Sex Offender Registration” (Westlaw 50 State Surveys: Surveys of Criminal Laws: Sex Offender Registration, 2006).
59. Logan, 2003.
60. In Alaska, the law had been ruled unconstitutional by the appellate courts because it punished *ex post facto* offenders who had been convicted before the state law was passed. *Smith v. Doe*, 538 U.S. 84 (2003). In the Connecticut case, one issue was whether disclosing offenders’ data without proving that they remained dangerous represented a violation of the guarantee of due process. *Connecticut Dept. of Public Safety v. Doe*, 538 U.S. 1 (2003).
61. 1990 Wash. Legis. Serv., ch. 3, §117 (codified at Wash. Rev. Code Ann. §4.24.550 (2005 & West. Supp. 2006)).
62. “The legislature . . . finds that if the public is provided adequate notice and information, the community can develop constructive plans to prepare themselves and their children for the offender’s release. A sufficient time period allows communities to meet law enforcement to discuss and prepare for the release, to establish block watches, to obtain information about the rights and responsibilities of the community and the offender, and to provide education and counseling to their children.” 1994 Wash. Legis. Serv., ch. 129, §1 (codified at Wash. Rev. Code Ann. §4.24.550 (2005 & West Supp. 2006)).
63. The Washington Association of Sheriffs and Police Chiefs collects and maintains a statewide registry based on the information provided by individual county sheriff’s offices.
64. Wash. Rev. Code Ann. §9A.44.130.
65. Wash. Rev. Code Ann. §9A.44.130(10)(a),(b).
66. The Web site can be found at <http://ml.waspc.org>.
67. See <http://ml.waspc.org/index.aspx>.
68. The organization provides a range of services including a helpline for communities on using registry information; advocacy at the local, state, and federal level; and education, counseling, and policy research. The site maintained by the organization, <http://www.parentsformeganslaw.com>, also provides links to all fifty state registries as well as an evaluation of the accessibility of information. It gave Washington state a grade of “C” for its registry on the basis of a nationwide review of information accessibility in 2005.

69. Safe Drinking Water Act of 1974, Pub. L. 93–523, July 1, 1974, c. 373, Title XIV, as added December 16, 1974, §2(a), 88 Stat. 1669 (codified at 42 U.S.C. §§300f *et seq.*).
70. 42 U.S.C. §300g-2(c)(1)–(3).
71. General Accounting Office, 1992b.
72. See, for example, MacKenzie *et al.*, 1994; Environmental Protection Agency, 1999.
73. 42 U.S.C. §300g-2(c)(4). Regulations are codified at 40 C.F.R. §141.151 *et seq.*
74. National Environmental Education and Training Foundation, 1999.
75. Payment *et al.*, 1991.
76. Natural Resources Defense Council, 2003, Chapter 1, p. 2.
77. Even small amounts of lead can cause neurological problems in children and high blood pressure in adults. The EPA findings are summarized in Congressional Research Service, 2005, p. 2.
78. Congressional Research Service, 2005, p. 5.
79. Natural Resources Defense Council, 2003, Chapter 3.
80. Government Accountability Office, 2004, p. 13.
81. National Research Council, 2002.
82. The series, by KCBS-TV newsmen Joel Grover, aired November 16, 17, and 18, 1997, on the Channel 2 News in Los Angeles.
83. Hospitalizations and fatality estimates from Mead *et al.*, 1999. CDC estimates, based on surveillance data from 1993 to 1997, reported in Centers for Disease Control and Prevention, Surveillance for Foodborne Disease Outbreaks—United States, 1993–1997, *Morbidity and Mortality Weekly Report*, vol. 49 (SS-1), 2000, pp. 22–26.
84. For a general description, see Simon *et al.*, 2005, pp. 32–36. Los Angeles County Ordinance 97–0071 §2 (part), 1997. [http://municipalcodes.lexisnexis.com/codes/lacounty/\\_DATA/TITLE08/Chapter\\_8\\_04\\_PUBLIC\\_HEALTH\\_LICENSE/8\\_04\\_225\\_Grading\\_and\\_letter\\_gr.html](http://municipalcodes.lexisnexis.com/codes/lacounty/_DATA/TITLE08/Chapter_8_04_PUBLIC_HEALTH_LICENSE/8_04_225_Grading_and_letter_gr.html) (site accessed June 3, 2006); see also County of Los Angeles Department of Health Services, Public Health Programs and Services, Environmental Health, *Posting Requirements Advisory Bulletin: Retail Food Establishments*, <http://search.ladhs.org/images/nrfood.htm> (site accessed April 29, 2006).
85. The cities that had not adopted grade cards in Los Angeles County as of 2005 were Avalon, Azusa, City of Industry, Hidden Hills, La Habra Heights, Montebello, Redondo Beach, San Marino, Sierra Madre, and Signal Hill. Restaurants in those cities were inspected and received grades from the county, but were not required to post them.
86. The DHS provides inspectors a detailed retail food inspection guide, broken into five sections. See County of Los Angeles, Department of Health Services, *Retail Food Inspection Guide*, H-3046 (May 2000). A subjective element (based on the inspectors' overall assessment of hygiene status) was eliminated from the survey in July 1997 to improve the objectivity of the guidelines.
87. The guidelines define an A as “[g]enerally superior in food handling practices and overall food facility maintenance”; a B as “[g]enerally good in food handling practices and overall food facility maintenance”; and a C as “[g]enerally acceptable in food handling practices and overall general food facility maintenance.”

- A score below 69 is associated with “[p]oor food handling practices and overall general food facility maintenance.” See County of Los Angeles, Department of Health Services, *Retail Food Inspection Guide*, “Understanding Your Grade,” <http://www.lapublichealth.org>.
88. A total of 989 restaurants out of 24,000 received closure orders in Los Angeles County in 2002. Most were temporary. See Martin Miller, “Five Years into L.A. County’s Grade-Posting Project, Most Restaurants Are Getting Top Marks,” *Los Angeles Times*, July 28, 2003.
  89. The ordinance specifically requires that the grade card be posted within five feet of the point of entry. If the numeric grade is below a C, the restaurant is required to post the numeric grade in its window.
  90. See Jin and Leslie, 2005, for a summary of these results. Jin and Leslie find that these changes arise from a combination of “sorting” (customers switching from restaurants with low grades to those with higher grades) and improvement in the hygiene practices of restaurants with lower ratings. See Jin and Leslie, 2003 and 2005.
  91. See Jin and Leslie, 2006.
  92. Along with anecdotal evidence, Jin and Leslie, 2005, p. 100, report that the distribution of grades around the critical scores of 89 (the line between an A and B) and 79 (between a B and C) show a dramatic upward spike around the higher number, implying that inspectors may choose to bump up scores. If such activity occurs only at break points, this may imply only a mild form of grade inflation.
  93. Miller, “Five Years into L.A. County’s Grade-Posting Project, Most Restaurants Are Getting Top Marks.”
  94. David Pierson, “Where ‘A’ is Not on the Menu: Chinese Eateries in an L.A. County Enclave Struggle with Hygiene Ratings,” *Los Angeles Times*, September 28, 2005.
  95. An effort to replicate the Los Angeles County system in San Francisco faced fierce opposition when it was proposed in 2004. After a six-month battle, the San Francisco Board of Supervisors adopted a compromise measure requiring restaurants to post health inspection reports (but not summary grades), as well as merit symbols for those receiving high marks. See Suzanne Herel, “Health Ratings Win Approval,” *San Francisco Chronicle*, May 12, 2004, p. B4. Efforts to adopt a similar system in San Bernardino County have also faced opposition from restaurant owners and restaurant associations. See Martin Hugo, “San Bernardino County Considers Grading Restaurants,” *Los Angeles Times*, April 20, 2004, p. B5; see also Martin Hugo, “S.B. County Restaurants May Soon Get Health Ratings,” *Los Angeles Times*, April 28, 2004, p. B3.
  96. Based on a survey by the National Conference of State Legislators in 2005. North Carolina’s system is called the “Know the Score” program and uses a grading system similar to the one employed in Los Angeles. See N.C. Gen. Stat. §130A-249 (2005). Tennessee’s system also uses grade cards. See Tenn. Code Ann. §68–14–317 (2001). See also Pytka, 2005.
  97. These accidents and their causes were extensively reported on by Keith Bradsher of the *New York Times* in 2000.
  98. Government Accountability Office, 2005b, p. 31.

99. Federal regulators first proposed a rollover standard in 1973. For a detailed history of rollover regulation, see National Academies, 2002, pp. 9–13.
100. These goals are spelled out in Consumer Information Regulations; Rollover Prevention, 65 Fed. Reg. 34998–35024 (June 1, 2000) (codified at 49 C.F.R. pt. 575). See also Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, Pub. L. 106–414, November 1, 2000, 114 Stat. 1800 (codified at 49 U.S.C. §30170) (2000)). In earlier rule makings, regulators established frontal crashworthiness ratings and side impact ratings for each new model.
101. For a detailed discussion of the development of the five-star rating, including reliance on focus groups, see National Academies, 2002, pp. 68–71. The government replaced numerical ratings with star ratings after a 1992 Senate and Conference Appropriations report asked that methods be improved for informing consumers of the comparative safety of new models. For ratings history, see Government Accountability Office, 2005b, pp. 10–12.
102. The final rule was published in 66 Fed. Reg. 3388–3437 (January 12, 2001).
103. 66 Fed. Reg. 66190 (proposed December 21, 2001) (codified at subpt. C 49 C.F.R. pt. 579).
104. 66 Fed. Reg. 65536 (proposed December 19, 2001) (to be codified at 49 C.F.R. pts. 567, 571, 574, and 575).
105. These requirements are set forth in 49 U.S.C. §30117(c).
106. Consumer Information; New Car Assessment Program; Rollover Resistance, 68 Fed. Reg. 59250 (October 14, 2003) (codified at 49 C.F.R. pt. 575). The dynamic rollover test complemented but did not replace the government’s initial static test. The National Academies of Sciences’ recommendations are set forth in National Academies, 2002.
107. Stars on Cars Act of 2005, S. 560, 109th Cong. (2005).
108. New-model rollover ratings are listed by the National Highway Traffic Safety Administration at <http://www.safercar.com>. In 2004, there were 4.3 million visits to the ratings Web site. Government Accountability Office, 2005b, p. 15.
109. Government Accountability Office, 2005b, p. 2.
110. Government Accountability Office, 2005b, p. 26.
111. Congress directed regulators to issue a minimum performance standard for rollovers by 2009. Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109–59, August 10, 2005, 119 Stat. 1144 (codified in scattered sections of 18 U.S.C.A., 23 U.S.C.A., and 49 U.S.C.A) (West, Westlaw through Pub. L. 109–169). See Federal Motor Vehicle Safety Standards; Roof Crush Resistance, 70 Fed. Reg. 49223 (proposed August 23, 2005) (to be codified at 49 C.F.R. pt. 571).
112. Government Accountability Office, 2005b, p. 36.
113. Government Accountability Office, 2005b, pp. 27–28.
114. Instructions for accessing backup crash test data are given at <http://www.safercar.gov/pages/ResourcesLinksDCR.htm>.
115. For a general critique of auto safety star ratings, see National Academies, 1996, pp. 65–73, and Government Accountability Office, 2005b, pp. 27–28.

116. Homeland Security Presidential Directive 3 (HSPD-3), March 12, 2002, <http://www.fas.org/irp/offdocs/nspd/hspd-3.htm>, as amended by Homeland Security Presidential Directive 5 (HSPD-5), February 28, 2003, <http://www.fas.org/irp/offdocs/nspd/hspd-5.html> and <http://www.dhs.gov/dhspublic/display?content=4331> (sites accessed May 22, 2006).
117. Remarks by Governor Ridge at Announcement of Homeland Security Advisory System, March 12, 2002, <http://www.whitehouse.gov/news/releases/2002/03/20020312-11.html> (site accessed May 22, 2006).
118. Homeland Security Act of 2002, Pub. L. 107–296, Title II, Subtitle A, §201(d)(7), 116 Stat. 2135, 2146 (codified at 6 U.S.C. §§101 *et seq.* (Supp. III 2003)).
119. Homeland Security Presidential Directive 3 (HSPD-3), March 12, 2002.
120. Pub. L. 107–296, Title II, Subtitle A, Section 201(d)(7).
121. Alerts are summarized at [http://www.dhs.gov/dhspublic/interapp/editorial/editorial\\_0844.xml](http://www.dhs.gov/dhspublic/interapp/editorial/editorial_0844.xml).
122. Congressional Research Service, 2003, pp. 1–4.
123. General Accounting Office, 2004, p. 13.
124. Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction, 2003.
125. Congressional Research Service, 2003, pp. 4–5.
126. General Accounting Office, 2004, pp. 4–5 and 12–14.
127. General Accounting Office, 2004, p. 18.
128. General Accounting Office, 2004, p. 18.
129. Senate Governmental Affairs Committee, 2003.
130. General Accounting Office, 2004, p. 13.
131. Attorney General Ashcroft, Director Ridge Discuss Threat Level, September 10, 2002 (White House transcript).
132. Philip Shenon, “Threats and Responses: Domestic Security,” *New York Times*, June 6, 2003, p. A15.
133. “Analysis: Congressional Hearings on Terror Alert System,” *Morning Edition* (National Public Radio), broadcast February 5, 2004.
134. Philip Shenon, “Report Finds Threat Alerts in Color Code Baffle Public,” *New York Times*, August 10, 2003, p. A18.
135. Council for Excellence in Government, from the Home Front to the Front Lines: America Speaks Out about Homeland Security (a Hart-Teeter poll, March 2004).
136. Fox News polls, July 2002 and February 2003.
137. Philip Zimbardo, “Phantom Menace,” *Psychology Today*, June 2003, pp. 34–36.
138. One legislative reaction was passage of the Taft-Hartley Act of 1947, which set out sweeping amendments to the National Labor Relations Act. Among other features, the law described a new set of unfair labor practices for unions, including prohibitions against secondary boycotts and other forms of concerted activities by unions, as well as new employer rights to counter union organizing activities. Gross, 1981.
139. Newspapers and radio covered the hearings closely and a number of rising political figures of the day—including John F. Kennedy and Robert F. Kennedy—made

- early reputations during the proceedings. See Robert Kennedy's 1960 account of the hearings, *The Enemy Within*.
140. Labor Management Reporting and Disclosure Act of 1959, Pub. L. 86–257, September 14, 1959, 73 Stat. 519 (codified at 29 U.S.C. §401 *et seq.* (2000)). Section 431(b) in Title 29 of the U.S. Code requires unions to file annual reports and sets forth information requirements. Section 438 of the same title provides for the secretary of labor to “have authority to issue, amend, and rescind rules and regulations prescribing the form and publication of reports required to be filed under this subchapter and such other reasonable rules and regulations (including rules prescribing reports concerning trusts in which a labor organization is interested) as he may find necessary to prevent the circumvention or evasion of such reporting requirements.” The legislation was passed by a vote of 95–2 in the Senate and 352–52 in the House.
  141. Concern about the LMRDA violating union officers' Fifth Amendment rights under the Constitution is discussed in Robb, 1961. A pessimistic view from the time concerning the prospects for improving internal union democracy through government intervention can be found in Petro, 1959.
  142. The OLMS had a staff of 286 in fiscal year 1999, including an auditing staff of 5 and a total of 158 investigators. The GAO estimated that OLMS processed 2,435 reporting- and disclosure-related cases in that year, which required it to devote a little under 5 percent of its total time to these activities. See General Accounting Office, 2000, Appendix I, pp. 18–21.
  143. If unions (or other parties required to file under LMRDA) willfully fail to file reports, knowingly make false statements or withhold information, or conceal or destroy materials, they face fines of up to a hundred thousand dollars and up to one year in prison. See Employment Standards Administration, Office of Labor-Management Standards, *Reports Required Under the LMRDA and the CSRA* (Washington, D.C.: U.S. Department of Labor, 2001).
  144. The LMRDA requires each level of the union with governance responsibility to provide separate disclosure under the act, providing information regarding financial activity (revenues and expenses) only at that level of the union. This makes it a complicated matter for a user trying to examine reports of a local for information regarding related expenditures or revenues at regional and national levels.
  145. See General Accounting Office, 2000, for a discussion of these costs.
  146. For example, many union locals receive representation and administrative support from staff paid for by the international office of their union. These expenditures (the salaries of these individuals as well as associated expenses) show up in the accounts of the international, rather than local, union. Unions also deal with the flow of dues revenues to the various levels of the union in different ways. For example, in many unions, dues are paid to the local union, which then remits a portion of them to intermediate and national levels of the organization on the basis of per capita fees set out in union constitutions. Although the disclosure forms under the law allow one to analyze these flows, it requires significant understanding of union structures and accounting practices.
  147. For critiques along these lines, see Masters, 1997.



148. For a classic discussion of the legal obstacles facing labor union representation under the National Labor Relations Act, see Weiler, 1983.
149. Unions representing U.S. Postal Service workers are covered by the LMRDA. Other federal workers became covered by comparable standards in the Civil Service Reform Act of 1978 and the Foreign Service Act of 1980. Civil Service Reform Act of 1978, Pub. L. 95-454, October 13, 1978, 92 Stat. 1111 (codified at 5 U.S.C. §§1101 *et seq.* (2000)); Foreign Service Act of 1980, Pub. L. 96-465, October 17, 1980, 94 Stat. 2071 (codified at 22 U.S.C. §§3901 *et seq.* (2000)).
150. Reporting requirements were reduced for small unions, in part because of requirements of the Paperwork Reduction Act. Rather than filling out the detailed Form LM-2, union entities with total annual receipts of less than two hundred thousand dollars were allowed to use the simplified Form LM-3 to report financial activities. Unions with annual receipts of less than ten thousand dollars of annual receipts were allowed to file the more abbreviated Form LM-4 (adopted in 1992 and put into effect in January 1994).
151. General Accounting Office, 2000. The report also cites other reasons why unions face minimal incentives for timely reporting (e.g., cases against union entities with receipts under five thousand dollars are not even initiated until they have been delinquent filers for three consecutive years). Further, in cases where unions provided deficient information, the agency used voluntary methods to handle 90% of the cases and took no action regarding the remaining cases.
152. Interviews with Hank Guzda, U.S. Department of Labor, Office of Labor/Management Services, April 1, 2002; David Geiss, Industrial Relations Specialist, U.S. Department of Labor, Office of Labor/Management Services, April 1, 2002.
153. See General Accounting Office, 1999.
154. See Office of Management and Budget, Exec. Office of the President, Budget of the United States Government, Fiscal Year 2001 (2000), and Office of Management and Budget, Exec. Office of the President, Budget of the United States Government, Fiscal Year 2006 (2005). The Department of Labor's budget for fiscal year 2006 can be found at [http://www.dol.gov/\\_sec/budget2006/overview.pdf](http://www.dol.gov/_sec/budget2006/overview.pdf) (site accessed June 4, 2006). Information regarding the Department of Labor's budget for fiscal year 2001 can be found at [http://www.dol.gov/\\_sec/budget/budget01.htm](http://www.dol.gov/_sec/budget/budget01.htm) (site accessed June 4, 2006). The budget of the U.S. government in its entirety can be accessed through <http://www.gpoaccess.gov/usbudget/fy06/index.html> for fiscal year 2006 and through <http://www.gpoaccess.gov/usbudget/fy01/index.html> for fiscal year 2001.
155. Similar changes to the LMRDA were introduced by President George H. W. Bush in 1992 but then rescinded by President Bill Clinton upon taking office in 1993. See Exec. Order No. 12,800, 57 Fed. Reg. 12985 (April 13, 1992), as corrected 57 Fed. Reg. 13413 (April 16, 1992), revoked by Exec. Order No. 12836, 58 Fed. Reg. 7045 (dated February 1, 1993, and published February 3, 1993).
156. See Labor Organization Annual Financial Reports, 68 Fed. Reg. 58374 (October 9, 2003) (codified at 29 C.F.R. pts. 403, 408). This five-thousand-dollar figure

- includes receipts and disbursements that total five thousand dollars or more, as well as payments to a single entity that total five thousand dollars or more in the reporting year, within certain specified categories as set out within the regulations.
157. See Labor Organization Annual Financial Reports, 68 Fed. Reg. 58374. The new reporting requirement became effective in 2004.
  158. The changes in reporting requirements were upheld in the U.S. Court of Appeals decision, *American Fed'n of Labor and Cong. of Indus. Org. v. Chao*, 409 F.3d 377 (D.C. Cir. 2005).
  159. *Buckley v. Valeo*, 424 U.S. 1 (1976), at 67.
  160. Publicity Act of 1910, June 25, 1910, ch. 392, 36 Stat. 822 (repealed by Pub. L. 92–220, §2, Dec. 23, 1971, 85 Stat. 795.)
  161. Anthony Corrado, “Money and Politics,” in Corrado et al., 2005.
  162. Pub. L. 92–225, February 7, 1972, 86 Stat. 3 (codified at scattered sections in 2 U.S.C.)
  163. Federal Election Campaign Amendments of 1974, Pub. L. 93–443, October 15, 1974, 88 Stat. 1263 (codified at 26 U.S.C. §§9031–9042 (2000)). The FEC was established in §310 of Pub. L. 93–443, codified at 2 U.S.C. 437(C), and the powers of the commission are set forth in §311 of Pub. L. 93–443, codified at 2 U.S.C. 437(D).
  164. Corrado, “Money and Politics,” pp. 22–35; see also Press Release of Federal Election Commission, Campaign Finance Law Quick Reference for Reporters: Major Provisions of the Bipartisan Campaign Reform Act of 2002, [http://www.fec.gov/press/bkgnd/bcra\\_overview.shtml](http://www.fec.gov/press/bkgnd/bcra_overview.shtml) (site accessed May 28, 2006).
  165. The Bipartisan Campaign Reform Act of 2002, March 27, 2002, Pub. L. 107–155, 116 Stat. 81 (codified at 2 U.S.C.A. §438, 441, and 36 U.S.C.A. §510 (West 2005)). The provision providing for the penalty of five years in prison can be found at 2 U.S.C.A. §437j.
  166. *McConnell v. Federal Election Commission*, 540 U.S. 93 (2003).
  167. Trevor Potter, “Campaign Finance Disclosure Laws,” in Corrado et al., 2005, pp. 148–149.
  168. Potter, “Campaign Finance Disclosure Laws,” pp. 123–160.
  169. Trevor Potter and Kirk L. Jowers, “Election Law and the Internet,” in Corrado et al., 2005, pp. 243–263.
  170. Adam Nagourney, “Internet Injects Sweeping Change into U.S. Politics,” *New York Times*, April 2, 2006, p. A1.
  171. Electronic Filing of Reports by Political Committees, 65 Fed. Reg. 38415 (June 21, 2000) (codified at 11 C.F.R. §§100.19, 104.18, 101.1, 102.2, 104.5, 109.2, 114.10, 9003.1, and 9033.1 (2006)). 11 C.F.R. §104.18 specifically deals with electronic filing requirements pursuant to 2 U.S.C. §432(d) and 2 U.S.C. §434(a).
  172. The full text of the FEC rules is available at [http://www.fec.gov/law/law\\_rulemakings.shtml#internet05](http://www.fec.gov/law/law_rulemakings.shtml#internet05) (site accessed June 4, 2006). See also 71 Fed. Reg. 18589 (April 12, 2006) (to be codified at 11 C.F.R. pts. 100, 110, 114).
  173. Adam Nagourney, “Agency Exempts Most of Internet from Campaign Spending Laws,” *New York Times*, March 28, 2006, p. A15.

174. S. Rep. 105–167 (1998); see [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=105\\_cong\\_reports&docid=f:sr167p1.105.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=105_cong_reports&docid=f:sr167p1.105.pdf) or [http://www.senate.gov/~gov\\_affairs/sireport.htm](http://www.senate.gov/~gov_affairs/sireport.htm) (sites accessed May 12, 2006).
175. Home Mortgage Disclosure Act of 1975, Pub. L. 94–299, Title III, December 31, 1975, 89 Stat. 1125 (codified at 12 U.S.C. §2801 *et seq.* (2000)), amended by Financial Institutions, Reform, Recovery and Enforcement Act of 1989, Pub. L. 101–73, August 9, 1989, 103 Stat. 183 (codified in scattered sections of 12 U.S.C.).
176. See <http://www.ffiec.gov/about.htm> (site accessed May 24, 2006).
177. See <http://www.ffiec.gov/hmda> (site accessed June 8, 2006).
178. Legislative History, Pub. L. 94–200.
179. Proxmire also played a leading role in the enforcement of fair lending legislation. In 1988 he held public hearings in which he urged regulatory agencies to be more aggressive in assuring lending to low-income areas. In the late 1980s regulators started to deny banks' merger applications on the grounds of poor lending to local communities.
180. See 121 Cong. Rec. 34,581 (1975) (passage in the House) and 121 Cong. Rec. 27,623 (1975) (passage in the Senate.)
181. 12 U.S.C. §2901.
182. Housing and Community Development Act, Pub. L. 96–399, October 8, 1980, 94 Stat. 1614 (codified as amended at scattered sections of 12 U.S.C., 15 U.S.C., and 42 U.S.C.)
183. Financial Institutions, Reform, Recovery and Enforcement Act of 1989, Pub. L. 101–73, August 9, 1989, 103 Stat. 183 (codified in scattered sections of 12 U.S.C.). Following a wave of deregulation in the early 1980s, many savings and loans diversified their investments into unfamiliar areas. By 1987, hundreds of savings and loans had failed, the Federal Savings and Loan Insurance Corporation was insolvent, and losses amounted to more than \$100 billion.
184. Community organizations argued that they represented neighborhoods that had not benefited from the bad loans that caused the savings and loan scandal and should not suffer the public costs of the bailout.
185. In 1989, Bill Dedman was awarded a Pulitzer Prize in investigative reporting for his series titled “The Color of Money,” published in the *Atlanta Journal-Constitution* on May 1–4, 1988. The articles are available online at [http://powerreporting.com/color/color\\_of\\_money.pdf](http://powerreporting.com/color/color_of_money.pdf) (site accessed May 24, 2006).
186. Munnell et al., 1996, p. 25.
187. From 1977 to 1991, banks committed \$8.8 billion in CRA agreements involving lending, investments, and other services to communities. From 1992 to 2000, banks committed more than \$1.09 trillion. National Community Reinvestment Coalition, 2001.
188. A 2000 Federal Reserve Board study found that the vast majority of banks operated profitably in CRA-related loans. The study analyzed the performance and profitability of CRA-related lending and reported that nearly two-thirds of responding institutions agreed that CRA-related lending had opened new business opportunities and served as a tool to promote a good image of banks in the community. Board of Governors of the Federal Reserve System, 2000,

- pp. 63–64. The study showed that CRA lending was overall profitable or marginally profitable and that performance of CRA lending activities in general did not differ from mortgage activities not related to CRA. Board of Governors of the Federal Reserve System, 2000, pp. 52, 58, 62–63, and 69.
189. These improvements were introduced through subsequent amendments of the Federal Reserve Board's Regulation C, which implements HMDA.
  190. See Apgar and Calder, 2005.
  191. See National Community Reinvestment Coalition, 2005, and Association of Community Organizations for Reform Now, 2005.
  192. Avery, Canner, and Cook, 2005, pp. 344–394.
  193. A number of books influential at the time proposed a spectrum of policy solutions. At one end of the policy spectrum, Bluestone and Harrison, 1983, and Magaziner and Reich, 1982, advocated comprehensive “industrial policies” to respond to the loss of U.S. manufacturing preeminence. On the other hand, books like McKenzie, 1982, argued that restructuring was a normal feature of an evolving economy and that government intervention through plant closing legislation could have deleterious effects on economic well-being.
  194. Worker Adjustment and Retraining Notification Act, Pub. L. 100–379, August 4, 1988, 102 Stat. 890 (codified at 29 USC §§2101–2109 (2000)). The Department of Labor published final regulations on the law in 20 C.F.R. pt. 639 (2006).
  195. Both Congress and state legislatures debated various forms of plant closing legislation from the late 1970s until the passage of WARN. When the legislation was finally passed, President Ronald Reagan chose not to either veto or sign it. For a legislative history, see U.S. House of Representatives, Committee on Education and Labor, Legislative History of S. 2527, *Worker Adjustment and Retraining Notification Act, Public Law 100–379*, 100th Cong., 2nd sess., serial no. 101-K (Washington, D.C.: GPO, 1990).
  196. See Ehrenberg and Jakubson, 1990, pp. 39–46, for a discussion of these critiques.
  197. The regulation provides a number of further refinements of these definitions relating to simultaneous employment reductions in multiple units of a company as well as to the length of the employment reductions.
  198. See 29 U.S.C. §2102(b)(2)(A) (“unforeseeable” business reasons); 29 U.S.C. §2102(b)(2)(B) (natural disasters); 29 U.S.C. §2102(b)(1); and 20 C.F.R. §639.9. Exemptions also apply in cases relating to transfers or reassignments of employees, sale of a business, or strikes and lockouts. See, for example, 29 U.S.C. §2103(1) (employees hired with understanding that such employment only for the duration of a project that has since been completed); and 29 U.S.C. §2103(2) (strikes or lockouts).
  199. The notice must include the name and address of the employment site where the closing or layoff will occur, a statement regarding whether the action is permanent or temporary, the expected date of each worker's termination, the job titles of those affected, and the number of jobs that will be lost in each job classification. See 20 C.F.R. §639.7.
  200. Ehrenberg and Jakubson, 1990, p. 44.
  201. For a discussion of the limited impact of advanced notification on the universe of employment losses, see General Accounting Office, 2003b.

202. The U.S. Bureau of Labor Statistics estimated that for the eighteen-week period between September 11, 2001, and mid-January 2002, there were 430 “extended mass layoffs” directly or indirectly related to the attacks, involving more than 125,000 workers. See Levine, 2004.
203. In February 2004, the Jobs for America Act (S. 2090) was introduced to amend WARN by including offshoring in its definition of major employment events, as well as requiring collection of statistics on job loss arising from offshoring. Levine, 2004, p. CRS-2.
204. Performance-based accountability was initiated at the state level and was launched in the mid-1980s by the National Governors Association, headed by Bill Clinton, then governor of Arkansas. Many of the early systems were intended to provide schools with more flexibility in setting educational policies in exchange for accountability for resulting performance.
205. A detailed description of *A Nation at Risk* is offered in Kearns and Harvey, 2000. pp. 22–28.
206. Gormley and Weimer, 1999, p. 43.
207. Gorman, 2002, p. 40.
208. See Improving America’s School’s Act of 1994, Pub. L. 103–382, October 20, 1994, 108 Stat. 3518 (codified as amended at 20 U.S.C. §§6301 *et seq.* (2000)). This law reauthorized the Elementary and Secondary Education Act, Pub. L. 89–10, April 11, 1965, 79 Stat. 27 (codified as amended at 20 U.S.C. §§6301 *et seq.* (Supp. III 2003)). The 2001 No Child Left Behind Act requires the education agencies receiving funds under §1116 of Pub. L. 107–110 to “publicize and disseminate the results of the local annual review . . . to parents, teachers, principals, schools, and the community so that the teachers, principals, other staff, and schools can continually refine, in an instructionally useful manner, the program of instruction to help all children served under this part meet the challenging State student academic achievement standards established under section 1111(b)(1).” No Child Left Behind Act, Pub. L. 107–110, §1116(a)(1)(C). This section can be found in the United States Code at 20 U.S.C. §6316(a)(1)(C).
209. Lynn Olson, “Report Cards for Schools” *Education Week*, Vol. 18, No. 17, January 11, 1999.
210. Accountability for Public Schools: Developing School Report Cards, Findings of Group Research for Education Week, December 1998. Belden Russonello & Stewart, R/S/M, A-Plus Communications.
211. Public Agenda, 2000.
212. No Child Left Behind Act of 2001, Pub. L. 107–110, January 8, 2002, 115 Stat. 1421 (codified as amended at 20 U.S.C. §§6052 *et seq.*, §§1041 *et seq.*, §3427 (Supp. III 2003)). School report card requirements are contained in Title I, Part A, §1111.
213. Erin Fox, “Report Cards Provide More, or Less, Data,” *Education Week*, Vol. 24, No. 15, December 8, 2004; Northwest Regional Educational Laboratory, 2002.
214. Fox, “Report Cards Provide More, or Less, Data.”
215. Fox, “Report Cards Provide More, or Less, Data.”
216. Hanushek and Raymond, 2004.

217. Sources for this account of adoption by policymakers in the European Union of international accounting standards include Flower and Ebbers, 2002, pp. 208–211 227; and Karel Van Hulle, 2004, pp. 349–375.
218. See, for example, Floyd Norris, “Europe Welcomes Accounting Plan; U.S. Remains a Bit Wary,” *New York Times*, April 23, 2005, p. B3.
219. Flower and Ebbers, 2002; Zeff, 2003, p. 880.
220. Zeff, 2003. p. 886.
221. [http://www.iasb.org/about/iasb\\_board.asp](http://www.iasb.org/about/iasb_board.asp); Flower and Ebbers, 2002, pp. 252–261. The Standards Advisory Council in 2004 consisted of nine Americans, fourteen Western Europeans, two Japanese, two Africans, eight Asians, two Eastern Europeans, three Latin Americans, and an Israeli, as well as six representatives of international organizations. In 2006, the Standards Advisory Council membership had changed. It consisted of four members from North America, fourteen Europeans, two Africans, eight from the Asia-Pacific region, three Latin Americans, and an Israeli, as well as seven representatives of international organizations. The IASB’s constitution, which was last revised in June 2005 and which became effective on July 1, 2005, provides that the Standard Advisory Council should be comprised of at least thirty members. See [http://www.iasb.org/uploaded\\_files/documents/8\\_11\\_iascf-constitution.pdf](http://www.iasb.org/uploaded_files/documents/8_11_iascf-constitution.pdf). Information on the structure of the IASB is available on its Web site, at <http://www.iasb.org/about/structure.asp> (sites accessed May 23, 2006).
222. Testimony of David Tweedie, chairman of the International Accounting Standards Board, U.S. Senate, Committee on Banking, Housing and Urban Affairs, February 14, 2002.
223. *International Accounting Standards Committee Foundation Annual Report, 2003*, pp. 3, 16, 18, and 23, [http://www.iasb.org/uploaded\\_files/documents/8\\_24\\_ar2003.pdf](http://www.iasb.org/uploaded_files/documents/8_24_ar2003.pdf). In 2005, the IASB employed an average of sixty-seven employees including board members. *International Accounting Standards Committee Foundation Annual Report, 2005*, p. 26, [http://www.iasb.org/uploaded\\_files/documents/10.845\\_IASCF2005-AnnualReports.pdf](http://www.iasb.org/uploaded_files/documents/10.845_IASCF2005-AnnualReports.pdf) (site accessed May 23, 2006).
224. The 2005 International Accounting Standards Committee Foundation Constitution, Articles 6–7. See [http://www.iasb.org/uploaded\\_files/documents/8\\_11\\_iascf-constitution.pdf](http://www.iasb.org/uploaded_files/documents/8_11_iascf-constitution.pdf) (site accessed June 7, 2006).
225. Alexander Kern, “Establishing a European Securities Regulator: Is the European Union an Optimal Area for a Single Securities Regulator?” Working Paper No. 7, Carnegie Endowment for Research in Finance, 2002. See also CESR Web site, <http://www.cesr-eu.org>.
226. The activities of IFAC are described at [www.ifac.org](http://www.ifac.org). See Benston et al., 2003, pp. 76–78.
227. Adrian Michaels and Andrew Parker, “Financial Regulators to Strengthen Collaboration,” *Financial Times*, May 26, 2004, p. 33.
228. See, for example, Almar Latour and Kevin J. Delaney, “Toothless Watchdogs,” *Wall Street Journal*, August 18, 2002, p. A1.
229. Barney Jopson, “IASB Faces Funding Headache,” *Financial Times*, March 31, 2006, p. 16.

230. Constitution of the World Health Organization, July 22, 1946, 61 Stat. 2349, 14 U.N.T.S. 185 (also available at <http://w3.whosea.org/aboutsearo/pdf/const.pdf> and <http://www.yale.edu/lawweb/avalon/decade/decad051.htm#1>). See also Revision to the International Health Regulations 2005, A58/4, art. 2, May 16, 2005, <http://www2a.cdc.gov/phlp/docs/58assembly.pdf> (sites accessed May 23, 2006).
231. Fidler, 2004, p. 35.
232. Institute of Medicine, 1992.
233. World Health Assembly, Revision to the International Health Regulations 2005, WHA 58\_3, May 23, 2005, [http://www.who.int/csr/ihr/WHA58\\_3-en.pdf](http://www.who.int/csr/ihr/WHA58_3-en.pdf) (site accessed May 23, 2006).
234. World Health Organization, 54th World Health Assembly, *Global Health Security – Epidemic Alert and Response*, A54/9, April 2, 2001.
235. Institute of Medicine, 2003, p. 16.
236. Institute of Medicine, 2003, p. 8; Fidler, 2004, pp. 74–80.
237. Fidler, 2004, p. 14 (noting that by June 2003, SARS had been “[s]topped dead in its tracks”).
238. Institute of Medicine, 2003, p. 8.
239. This account owes much to the work of Robert L. Paarlberg, who has written extensively about the politics of genetically modified food and its impact on developing countries. See Paarlberg, 2000, 2001, and 2003. We are also grateful to Diahanna Post for her insights and helpful comments. See Post and Da Ros, 2003, and Post, 2005. A committee of the U.S. National Academy of Sciences examined these issues in depth: National Research Council, 2000.
240. Commission Regulation (EC) No. 1829/2003 of Sept. 22, 2003, 2003 O.J. (L268) 1; Commission Regulation (EC) No. 1830/2003 of Sept. 22, 2003, 2003 O.J. (L268) 24.
241. Post, 2005, p. 137; see also Statement of Policy: Foods Derived from New Plant Varieties, 57 Fed. Reg. 22984 (May 29, 1992).
242. Commission Regulation (EC) No. 1830/2003 of Sept. 22, 2003, 2003 O.J. (L268) 24.
243. See Guidance for Industry, “Voluntary Labeling Indicating Whether Foods Have or Have Not Been Developed Using Bioengineering” (Draft Guidance distributed for comment purposes only), <http://www.cfsan.fda.gov/~dms/biolabgu.html> (site accessed May 28, 2006).
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