

Congress of the United States
Washington, DC 20515

October 25, 2012

Mr. Boris Bershteyn
Acting Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Mr. Bershteyn:

We received a response from the Office of Information and Regulatory Affairs (OIRA) to our letter dated September 21, 2012, which inquired, among other things, about the status of the long overdue Spring 2012 Unified Agenda of Regulatory and Deregulatory Actions (Unified Agenda) and the 2012 Report to Congress on the Benefits and Costs of Federal Regulations (Benefits and Costs Report).¹ We are disappointed that OIRA failed to adequately respond to our questions. Further, the documents that provide basic regulatory transparency, and are required to be published by law, remain outstanding.

In our letter, we specifically asked about the status and expected publication date of the Spring 2012 Unified Agenda as well as the Benefits and Costs Report.² Unfortunately, we did not receive specific answers. Instead, OIRA gave vague excuses about the documents tardiness and a statement that raises questions about executive branch agencies' ability to comply with OIRA deadlines. Specifically, the OIRA response letter states, "[a]gencies are currently compiling the most updated information about their anticipated regulatory actions since the [Unified] Agenda was last published . . ."³ This is puzzling because as noted in our letter, OIRA set April 13, 2012, as a "firm deadline" for this information.⁴ Apparently, either agencies ignored OIRA's direction or the information is being withheld from Congress and the public.

In 2010, President Obama boasted, "I won't stop fighting to open up government," adding that this Administration has "put in place the . . . toughest transparency rules of any Administration in history."⁵ Moreover, this Administration has claimed it will alleviate regulatory uncertainty as well as unnecessary regulation.⁶ But this Administration has failed to live up to its own transparency standards by failing to release basic regulatory documents which provide transparency about agencies' plans to regulate and allow the public to assess the regulatory state.

¹ Letter from OIRA Associate Director for Legislative Affairs Kristen Sarri to Chairman Lamar Smith, et al. (Oct. 12, 2012).

² See Letter from Chairman Lamar Smith et al., to Office of Information and Regulatory Affairs Acting Administrator Boris Bershteyn (Sept. 21, 2012).

³ Note 1 *supra*.

⁴ See <http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/agenda-data-call-and-guidelines-spring-2012.pdf> (last accessed Oct. 16, 2012).

⁵ President Barack Obama, Elyria, Ohio, Jan. 22, 2010, available at <http://www.whitehouse.gov/the-press-office/remarks-president-during-town-hall-meeting-elyria-ohio> (last accessed Oct. 17, 2012).

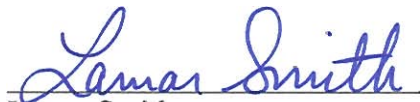
⁶ See Exec. Order No. 13563, 76 Fed. Reg. 3821 (Jan. 18, 2011); see also Office of the Press Secretary, The White House, Address by the President to a Joint Session of Congress (Sept. 2011).

This lack of transparency raises questions about the motives behind the Administration's apparent reluctance to inform Congress and the public about its regulatory plans. Due to the impending election, it does raise concerns that the Administration is holding back this information for fear it will be met with dissatisfaction by the public, or even worse, perceived as breaking the Administration's promise of regulatory reform.⁷

To lay these questions to rest, we request a staff briefing by November 2, 2012, to further explain the documents continued embargo. Further, the briefing should address whether OIRA has provided agencies with any direction or guidance regarding midnight rulemaking.

Thank you for your prompt attention to this matter. To schedule the briefing, please contact John Hilton with the staff of the Committee on the Judiciary at (202) 226-7680 or Kristin Nelson with the staff of the Committee on Oversight and Government Reform at (202) 225-5074.

Sincerely,



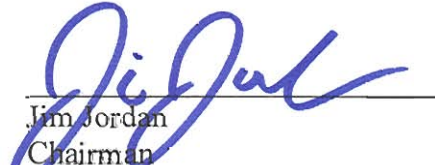
Lamar Smith
Chairman
Committee on the Judiciary



Darrell Issa
Chairman
Committee on Oversight
and Government Reform



Howard Coble
Chairman
Subcommittee on Courts,
Commercial and Administrative Law



Jim Jordan
Chairman
Subcommittee on Regulatory Affairs,
Stimulus Oversight and
Government Spending

cc: The Honorable John Conyers, Jr., Ranking Minority Member
Committee on the Judiciary

The Honorable Elijah Cummings, Ranking Minority Member
Committee on Oversight and Government Reform

The Honorable Steve Cohen, Ranking Minority Member
Subcommittee on Courts, Commercial and Administrative Law

The Honorable Dennis Kucinich, Ranking Minority Member
Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending

⁷ See President Barack Obama, *Toward a 21st-Century Regulatory System*, WALL ST. J. (Jan. 18, 2011).