

# Congress of the United States

Washington, DC 20515

September 21, 2012

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

Dear Mr. Bershteyn:

We write to inquire about the status of several Office of Information and Regulatory Affairs (OIRA) duties that apparently are remiss. At this juncture, Congress awaits receipt of several OIRA documents that are critical to the federal regulatory process.

First, the Spring 2012 Unified Agenda of Regulatory and Deregulatory Actions has not been published. Pursuant to Executive Order, OIRA is responsible for publishing a biannual Unified Regulatory Agenda.<sup>1</sup> Although OIRA released the Spring 2012 Unified Regulatory Agenda guidelines on March 12, 2012, and set an April 13, 2012, deadline for agencies to respond,<sup>2</sup> more than five months later OIRA still has not published the Spring 2012 Unified Regulatory Agenda. This is a concern to us because it prevents the public and Congress from evaluating agencies' anticipated regulatory activities.

It also concerns us that the Administration may not be adequately prepared for a potential presidential transition. On May 9, 2008, the previous Administration issued a memorandum directing, "[e]xcept in extraordinary circumstances, regulations to be finalized in this Administration should be proposed no later than June 1, 2008, and final regulations should be issued no later than November 1, 2008."<sup>3</sup> A similar directive by the Administration would help ensure that the potential change of administrations does not unduly affect the normal regulatory process. Proper planning also would reassure the public that the Administration will not unleash a flood of "midnight rules" between Election Day and Inauguration Day.

Finally, OIRA has not released its 2012 Report to Congress on the Benefits and Costs of Federal Regulations, as required by statute.<sup>4</sup> In prior years under this Administration, OIRA released a draft report in March or April and a final report in June or July.<sup>5</sup> This year, OIRA released a draft report in March,<sup>6</sup> but the final report remains outstanding.

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<sup>1</sup> See Exec. Order No. 12866, 58 Fed. Reg. 51735 (Sept. 30, 1993); Exec. Order No. 13563, 76 Fed. Reg. 3821 (Jan. 18, 2011).

<sup>2</sup> See <http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/agenda-data-call-and-guidelines-spring-2012.pdf> (last accessed Sept. 20, 2012).

<sup>3</sup> See <http://graphics8.nytimes.com/packages/pdf/washington/COS%20Memo%205.9.08.pdf> (last accessed Sept. 20, 2012).

<sup>4</sup> See Pub. L. No. 106-554, § 624.

<sup>5</sup> See [http://www.whitehouse.gov/omb/inforeg\\_regpol\\_reports\\_congress](http://www.whitehouse.gov/omb/inforeg_regpol_reports_congress) (last accessed Sept. 20, 2012).

<sup>6</sup> See *id.*

The aforementioned outstanding items are important to ensure accountability and to inform Congress and the public about agency activities. Thus, we request that you answer the following questions by October 5, 2012:

1. What is the status of the Spring 2012 Unified Agenda of Regulatory and Deregulatory Actions, and when is it expected to be published? Please provide an explanation for the delay of its publication.
2. Does the Administration plan to provide agencies with any direction or guidance as to potential midnight rulemaking?
3. What is the status of the 2012 Report to Congress on the Benefits and Costs of Federal Regulations, and when is it expected to be published? Please provide an explanation for the delay of its publication.

Thank you for your prompt attention to this letter. If you have any questions, please contact John Hilton with the Committee on the Judiciary at (202) 226-7680 or Kristin Nelson with 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 Hon. John Conyers, Jr., Ranking Minority Member, Committee on the Judiciary  
The Hon. Elijah Cummings, Ranking Minority Member, Committee on Oversight and Government Reform  
The Hon. Steve Cohen, Ranking Minority Member, Subcommittee on Courts, Commercial and Administrative Law  
The Hon. Dennis Kucinich, Ranking Minority Member, Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending