

United States Senate

WASHINGTON, DC 20510

February 15, 2017

Mr. Mark Sandy
Acting Director
Office of Management and Budget
725 17th Street, N.W.
Washington, D.C. 20503

Dear Acting Director Sandy:

We write to express concern and request clarification regarding the Executive Order (E.O.) 13771 issued by President Trump on January 30, 2017 titled “Reducing Regulation and Controlling Regulatory Costs”¹ and the guidance on the implementation of the order issued by the Office of Management and Budget (OMB) on February 2, 2017.² The E.O. seemingly is aimed at reducing and eliminating the “costs” of federal regulations across the board by establishing a “two for one” rule under which federal agencies are required to identify two existing regulations for elimination for every new regulation issued. The order also establishes a “regulatory budget” that would require agencies to take steps to ensure that the total incremental cost of all new regulations, including repealed regulations, have a net cost of zero.

We are concerned that the President, in issuing this order, is ignoring the benefits for public health, safety and otherwise, that regulations put forward by agencies can bring to society as a whole. Further, the order may cause undue burdens on government employees who are required to issue and review regulations as well as industry, consumers, and others who are subject to them. Simply put, the order ignores the benefits and cost savings of the protections offered through smart regulatory policy and may hamper the ability of the federal government to engage in a rulemaking process that will ensure the essential protections of regulations are upheld.

We understand that the federal regulatory process can be cumbersome at times, and many regulations do impose some additional costs and requirements on businesses and others who must comply with them. However, the notion that all regulations across the board are a detriment to the economy is false. In the aggregate, the benefits to society from major rulemaking far outweigh the costs. In December 2016, the Obama Administration issued a report³ that found that “the estimated annual *benefits* of major Federal regulations reviewed by OMB from October

¹ “Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs.” The White House. accessed February 7, 2017: <https://www.whitehouse.gov/the-press-office/2017/01/30/presidential-executive-order-reducing-regulation-and-controlling>

² “Memorandum: Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, Titled “Reducing Regulation and Controlling Regulatory Costs.” The White House Office of Management and Budget Office of Information and Regulatory Affairs. Accessed February 7, 2017: <https://www.whitehouse.gov/the-press-office/2017/02/02/interim-guidance-implementing-section-2-executive-order-january-30-2017>

³ “2016 Draft Report to congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act.” The Office of Management and Budget Office of Information and Regulatory Affairs. The White House. Accessed February 7, 2017: https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/legislative_reports/draft_2016_cost_benefit_report_12_14_2016_2.pdf

1, 2005, to September 30, 2015, totaled between \$269 and \$872 billion. The *costs*, meanwhile, totaled between \$74 and \$110 billion”.⁴ Simply put, we do not have to choose between the vital protections provided by regulations and having a robust, growing economy.

Regulations provide the public with essential protections and certainty that, among other things, help consumers feel confident that the products they buy and use every day are safe, and provide businesses with the predictability needed to create and sustain jobs. Agencies also issue rules to carry out legislation enacted by Congress. If agencies are hamstrung by a top-down restrictive policy that imposes requirements to identify offsets before promulgating rules, these agencies may not be able to efficiently and effectively carry out the will of Congress. Further, without certainty in the rulemaking process, industry, consumers, and federal employees stand to lose significant time, money, and essential protections borne out by a common-sense regulatory policy.

With these thoughts in mind, we ask that you review and respond to the following questions by March 1, 2017:

1. In implementing Executive Order 13771, how will the Administration account for the many benefits that regulations can and do provide to the public, industry, and other stakeholders?

Why weren't the benefits of rulemaking, including those relating to public health and safety discussed in the initial order and subsequent guidance?

Please specifically outline the steps you will take to ensure that benefits from regulations are taken into adequate consideration when an agency is calculating the total incremental cost of all new regulations.

Will the Administration commit to taking action to ensure this order does not undermine public health and safety?

2. The Administrative Procedures Act (APA) governs the process by which federal agencies develop and issue regulations. The law provides an extensive review process and opportunity for input from relevant stakeholders.

How will the Administration ensure agencies are following the requirements of the Administrative Procedure Act and relevant Executive Orders when identifying regulations for repeal? Will you ensure that all relevant sections of the APA are followed when repealing rules?

3. Given that agencies have limited resources, shrinking budgets, and are currently subject to a “hiring freeze,” how does the Administration plan to ensure that they have the resources necessary to implement this order?

⁴ Id at 2

Please clearly explain the additional workload that the Administration anticipates agencies will encounter as they are required to identify regulations for offset when issuing new rulemaking. Will the Administration commit to provide agencies the additional resources needed to accomplish this task?

4. Language in the order states that “nothing in this order shall be construed to impair or otherwise affect: the authority granted by law to an executive department or agency...” Please provide clarification for this provision. Does this order block or otherwise modify rulemaking that is legally required by statute? How will agencies balance the need to issue new rules under recently enacted legislation with the requirement in this order?
5. Congress has recently passed several important bipartisan pieces of legislation that will increase the efficiency and effectiveness of government while also safeguarding public health and the environment. Recent reports⁵ note concerns about how the E.O. would impact the implementation of these laws, including delays in implementation while agencies identify suitable offsets to repeal.

How will the Administration ensure that rulemaking will proceed in a timely process for implementing important bipartisan legislation such as the Toxic Substances Control Act, the Inspectors General Empowerment Act, and the 21st Century Cures Act, among others?

Sincerely,



TOM CARPER
U.S. Senator



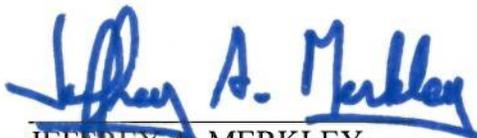
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⁵ Charles S. Clark, “Inspectors General Worry About Hiring Freeze, Regulatory Cap.” *Government Executive*, February 1, 2017. Accessed February 7, 2017. http://www.govexec.com/management/2017/02/inspectors-general-worry-about-hiring-freeze-regulatory-cap/135067/?oref=channeltopstory#disqus_thread



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