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March 3, 2009

Via fax, e-mail, and mail

The Honorable Peter R. Orszag
Director
Office of Management and Budget
725 17th St., NW
Washington, DC 20503

Dear Mr. Orszag:

Re: Request for Comments on Possible New Executive Order on Regulatory Review;
74 Fed. Reg. 8819 (Feb. 26, 2009)

As the first Deputy Administrator of OMB's Office of Information and Regulatory Affairs, I would like to provide the following recommendations for revisions that should be made to Executive Order 12866 on regulatory review. The attachment to this letter describes the recommendations and their rationale in detail. This cover letter gives my broader perspective on the subject of OIRA regulatory review and a brief summary of the attached recommendations.

Historically, OIRA's relationship with federal regulatory agencies has been defined mainly by its review of individual agency regulatory proposals. This should continue for the following reasons:

- The OMB/OIRA regulatory review process emerged as the result of deliberations during seven Presidential Administrations, both Democratic and Republican, over nearly forty years. E.O. 12866 was drafted by the Clinton Administration, with substantial outside input, as a revision of E.O. 12291. E.O. 12866 is not a product of the recently departed Bush Administration. There should be demonstrable evidence that something is broken before attempting to change the Order.
- OMB reviews how the public's tax dollars are spent through its oversight of the federal budget. Why should OMB not review how its regulatory dollars are spent? We believe the current economic malaise has increased the need for OMB regulatory review because as budgets tighten up, the need will increase for government review of the impacts its regulatory mandates have on the private sector.
- Making OIRA the focal point for regulatory review allows for greater transparency in the process because it makes it more difficult for undocumented communications to occur between White House officials and the agencies, or between outside parties and the

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White House, on regulatory review transactions. Care should be taken that any revisions to the E.O. 12866 do not allow White House intervention in agency regulatory activities to occur with little or no accountability.

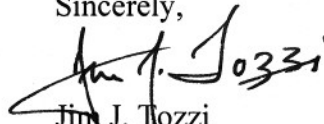
OMB review of discretionary regulations should be viewed as indispensable to the President's Constitutional duty to "take Care that the Laws be faithfully executed," since rulemaking is in many instances the primary way in which most statutes are implemented. You will note in the attachment that this Constitutional duty is a principal rationale for why we recommend that the regulations of the increasingly influential "independent" agencies should not be exempt from regulatory review. The attachment also discusses the many statutes requiring OMB assessment of the costs and other impacts of regulations, as well as alternatives to proposed regulations, and how those statutory mandates require also, through the Constitution, that the President, through OIRA, ensure that the laws are faithfully executed.

In summary, we make the following recommendations:

1. Include the significant regulations of "independent" agencies in the regulatory review process.
2. Retain OMB review of individual regulations in order to fulfill the President's Constitutional duty to take care that the laws be faithfully executed.
3. Retain OIRA responsibility for reconciling overlapping agency regulatory responsibilities and disputes concerning the impacts of regulations on other federal agencies.
4. Provide for more input from the Office of Advocacy of the Small Business Administration concerning the impact of proposed regulations on small entities and ways in which those impacts could be avoided or mitigated.
5. Strengthen the transparency provisions of the Executive order so that Executive Branch officials outside OIRA cannot comment on proposed regulations without accountability.

We appreciate the opportunity to offer our views on this very important public policy issue.

Sincerely,



Jim J. Tozzi

Member, CRE Advisory Board

Attachment