

THE WHITE HOUSE

WASHINGTON

July 24, 1980

Honorable Edward M. Kennedy
Chairman
Senate Judiciary Committee
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

On behalf of the Administration, we wish to commend you and your colleagues for the work you have done in developing sound regulatory reform legislation. This legislation embodies a bipartisan effort to achieve an historic comprehensive overhaul of the Federal regulatory establishment. There are many important issues raised by the bills, and we expect to continue working with you to resolve all of them. The purpose of this particular letter is to set forth the Administration's position on a critical issue in your deliberations, that of Executive Branch oversight of the regulatory process. We hope that this letter will be helpful as you work to consolidate the two bills reported out by the Government Affairs and Judiciary Committees.

President Carter believes strongly in a vigorous exercise of Executive oversight of the regulatory process, and for that reason he has established government-wide standards and systems for cost effective regulatory decision making. Enacting those standards into law is one of the principal purposes of the Administration's regulatory reform legislative proposal, and passage of the Administration's proposal would strengthen our common effort to assure that Federal regulators exercise sound judgment in carrying out statutory mandates.

We believe, however, that the cause of regulatory reform would be set back--not advanced--if the Congress passed legislation which limits the ability of the President or of his delegate, the Office of Management and Budget, to manage the Executive Branch.

We are concerned that certain provisions of S. 2147 and S. 262 may have this effect. Specifically, the Administration strongly opposes any proposal to establish a new governmental unit to carry out oversight responsibilities, such as the Regulatory Policy Board proposed in the Judiciary Committee's bill, or to transfer oversight authority outside the Executive Office of the President to the Administrative Conference, as is proposed in the Government Affairs Committee version. In our view, neither of these bodies could effectively ensure compliance with the provisions of the proposed legislation or with sound regulatory practices in general.

Regardless of its composition, a multi-member body would tend to be an ineffective overseer, subject to complicated decision-making processes, with a staff accountable to no one and duplicating functions that are now--and would continue to be--performed by existing units such as the Council on Wage and Price Stability, OMB and the Council of Economic Advisers. In the case of the Administrative Conference, our concerns about the difficulties inherent in multi-member agencies are compounded by the fact that the Government Affairs bill makes the Conference an independent entity with oversight over Executive agencies. In our view, that arrangement raises Constitutional issues.

The natural and appropriate place to locate oversight authority is where President Carter has assigned it, to OMB, the essential right arm of all Presidents for managing the Executive Branch. With one Director, not many, ample authority under various statutes, adequate staff, and a unique institutional memory and understanding of the government, OMB can more effectively oversee implementation of sound regulatory practices.

With these considerations in mind, the Administration generally can accept the oversight provisions in sections 661 through 663 of the Governmental Affairs bill. We do not believe that legislation is needed to confirm the existing authority of OMB to oversee Executive Branch regulatory agencies. The Administration is confident that OMB has ample authority in this regard, including for example, the authority to determine whether a rule of an Executive Branch agency is a major rule under the Executive Order or the legislation. Oversight language such as that contained in section 662 of S. 262, which neither extends nor diminishes existing authority of the President and OMB, is therefore acceptable to the Administration--so long as the legislative history of such a provision makes clear that the provision in no way limits or qualifies the existing authority of the President or his delegate, OMB, to exercise plenary oversight authority over discretionary activities of Executive agencies. A savings clause such as that contained in section 663 is also essential in this regard.

We recognize that some sentiment exists to include in the bill language affirmatively purporting to confirm the regulatory oversight authority of the President and OMB. If such a proposal is adopted, we strongly recommend that it follow the general approach of the oversight provision in H.R. 3263 as reported by the House Judiciary Subcommittee on Administrative Law:

605. Office of Management and Budget

"The Director of the Office of Management and Budget shall monitor and review compliance by agencies with the requirements of this subchapter and shall establish

such procedures as may be necessary to ensure such compliance. The Director shall from time to time report to the President and the Congress on such agency compliance."

We do not believe it wise to specify particular types of oversight functions for OMB to perform. Such specificity can unduly restrict an effective role for the President and the Executive Office in shaping regulatory practices, since such provisions can be construed as limits as well as grants of authority, and a basis for creating cumbersome procedural restrictions.

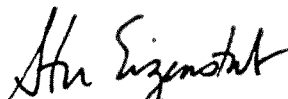
In addition to provisions that assure the ability of the President and OMB to continue exercising directive oversight authority, the Administration also supports providing statutory authority for the Regulatory Council to retain its current consultative, coordinative and informational functions. We believe, however, that transferring the function of the Regulatory Analysis Review Group now chaired by the Council of Economic Advisers to ACUS or the Regulatory Council would reduce the effectiveness of a valuable instrument to assure adequate consideration of the economic consequences of selected major rules.

We very much appreciate the care and serious attention you have given to this legislation. We look forward to continuing to work with you and your colleagues on legislation to accomplish strong and responsible reform of the regulatory process.

Sincerely,



James T. McIntyre, Jr.
Director
Office of Management and Budget



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