From: Maureen Kaplan  
Sent: Monday, March 09, 2009 9:22 AM  
To: FN-OMB-OIRA-Submission  
Subject: Regulatory Review

Dear Mr. Orzag,

Executive Order 12866, Section 3(f) identifies a "significant regulatory action" as one that may "have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, ...". In order to evaluate the potential effects of a regulatory action on competition or jobs, you need to evaluate economic impacts, particularly facility closures. I would be very interested for you to provide guidance on the appropriate basis for examining impacts on commercial entities. A discounted cash flow analysis can be calculated on the basis of cash flow, that is, without non-cash costs such as depreciation. On the other hand, it might be appropriate to reduce cash flow by payments to principal, a balance sheet transaction, because it will affect the ability of the entity to incorporate additional costs. A third approach performs the calculation on net income. That is, depreciation is used as a proxy for continuing capital investment necessary to maintain the business operation. The third approach has difficulties because depreciation—as defined by the tax code and appears on income statements—bears little resemblance to the theoretical concept of depreciation as a measure of wear and tear over the lifetime of the investment.

My preference is for the second approach—as an ideal because it is very difficult to tease out payments to principal from financial statements—with the first approach (cash basis) being the more practical alternative.

Please provide guidance on the preferred approach for regulatory analyses or, perhaps, a ranking of the various approaches based on the information available.

I look forward to reading your recommendations and will be checking the OMB website for them.

Sincerely,

Maureen F. Kaplan

Private citizen