



March 30, 2009

Submitted via e-mail: [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov)

Mabel Echols  
Office of Management and Budget  
Office of Information and Regulatory Affairs  
Room 10102, NEOB  
725 17<sup>th</sup> Street, NW  
Washington, DC 20503

RE: Office of Management & Budget  
74 Federal Register 8819  
Request for Comments on Federal Regulatory Review

Dear Ms. Echols:

The Small Business & Entrepreneurship Council (SBE Council) is pleased to submit comments on recommendations for a new Executive Order on Federal Regulatory Review.

As an organization dedicated to protecting small business and promoting entrepreneurship, the issue of regulation remains a priority concern for our members. The difficult economic period only compounds the burdens and costs that small firms bear in complying with regulation. Indeed, as the U.S. Small Business Administration's Office of Advocacy has reported in research, small businesses bear especially high federal regulatory costs -- \$7,647 per employee -- which is 45 percent higher than larger enterprises.

The excessive and cumulative regulatory burden must be addressed to ensure that the U.S. remains competitive in the global economy. As the nation has become increasingly dependent on the job creating and innovative capacity of our small business and entrepreneurial sector, the issue of how and why government regulates is a critical one with respect to how quickly the U.S. economy fully recovers. Having a transparent, efficient, straight forward and low-cost regulatory system is central to the strength and sustainability of the recovery.

SBE Council is a nonprofit, nonpartisan small business advocacy and research organization with more than 70,000 members nationwide. Dedicated to helping entrepreneurs start, survive and grow, SBE Council addresses the range of issues that impact their viability and growth. The cost and complexity of the regulatory system continues to be a top-tier issue identified by our members as being a barrier to their survival, competitiveness and growth.

**OMB's Review Authority:** Review by the Office of Management and Budget (OMB) of regulations promulgated by executive agencies is essential to ensuring accountability, ease of compliance and identifying duplicative or inconsistent initiatives that may increase compliance complexity and cost for small firms. The role of the Office of Information and Regulatory Affairs (OIRA) in negotiating and resolving competing or overlapping turf issues between regulatory agencies has been vital in preventing redundancy and disorder. The role of benefit-cost analysis in the regulatory process has become increasingly important as our tender economic position (and limited resources in the private sector) require that government fully and carefully measure the outcomes of a proposed rule versus costs. As noted above, the burden of regulation falls more heavily and unfairly on small business.

In developing a new executive order for regulatory review and planning, SBE Council strongly recommends that the Administration maintain the principles of regulation embodied in Executive Order 12866. We also recommend that the new order include provisions in Executive Order 13272 – “Proper Consideration of Small Entities in Agency Rulemaking,” which strengthened the small business protections under the Regulatory Flexibility Act (RFA). This established a working relationship between OIRA and the Small Business Administration’s Office of Advocacy, creating additional responsibilities for federal agencies in complying with laws protecting small businesses, and establishing reporting requirements for compliance with the Executive Order.

However, we believe President Barack Obama has an opportunity to improve the regulatory process to make it more accountable, transparent and responsive to the small business community.

The RFA and the Small Business Regulatory Enforcement Fairness Act (SBREFA) enacted by President Bill Clinton have been effective initiatives for making the federal government more accountable to, and inclusive of, small firms during the regulatory process. OMB’s review of compliance with the RFA is a key element in helping to produce government-wide conformity with the Act.

OMB’s review, however, should also *be expanded* to include “independent” agencies such as the Internal Revenue Service, for example, whose regulations represent the highest single source of paperwork for the vast majority of small businesses. All economically significant regulations produced by agencies currently exempt from OMB review should have to undergo the same scrutiny, transparency and level of accountability as those currently analyzed by the process. It only makes sense that there is consistency within the regulatory process, particularly given the growing scope of government and the potential for explosive growth in the regulatory space.

**Review of Existing Rules:** While federal agencies are required to develop a plan for the periodic review of regulations (Section 610 or the RFA) that have or will have a significant economic impact on a substantial number of small entities, compliance has been inconsistent, not useful or nonexistent. Again, keeping our regulatory system efficient, lean and modern is an

important element in keeping the U.S. an attractive nation for investment, business development and growth. The new executive order on regulatory planning and review can greatly improve the effectiveness and intent of Section 610 by outlining a standard procedure for agencies to follow in reviewing regulations, as well as how they making revisions to lessen regulatory cost on small businesses.

**Review of Guidance Documents:** Guidance documents produced by federal agencies have the effect of a final rule without benefit of review by OMB. Given the growing use of guidance documents by agencies, it is essential that there be accountability with respect to their development. This loophole needs to be closed, and guidance documents should be produced *with a final rule*, not in the months or years following its issuance.

**Transparency and Openness:** The Administration has promised to be the most open and transparent in history, and the regulatory process is a good place to instill this goal. Any and all communications between OMB and executive officials regarding rulemakings should be included in the public record.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen Kerrigan". The signature is fluid and cursive, with a large initial "K" and "K".

Karen Kerrigan, President & CEO

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**Protecting Small Business, Promoting Entrepreneurship**