

Introduction to the Fall 2019 Regulatory Plan

This Fall 2019 Regulatory Plan continues to reflect a fundamental shift of the Regulatory state. Starting with confidence in private markets and individual choices, this Administration is reassessing existing regulatory burdens. This year marks year three in the Administration's efforts under Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs" (January 30, 2017) to continue to lower the burden of regulation on the American people. This Administration also approaches the imposition of new regulatory requirements with care to ensure that regulations are consistent with law, understandable to the public and not hidden in indecipherable text or implementing guidance, correct a substantial market failure, and are net beneficial to the public. Furthermore, the Plan, along with the Unified Agenda of Regulatory and Deregulatory Actions ("Agenda"), identifies the Administration's priorities in a manner that continues to be transparent and accessible to the public.

Federal Regulatory and Deregulatory Policy

The 2019 Plan both sets a new direction in regulatory policy and preserves many longstanding regulatory best practices. Stressing that, where statutorily permitted, "it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations," in EO 13771 President Trump directed all Federal agencies to issue two deregulatory actions for each new regulation implemented and to reduce net new regulatory costs to zero. He also created regulatory reform officers and regulatory reform taskforces in each agency in EO 13777 "Enforcing the Regulatory Reform Agenda," (February 24, 2017). Within the Office of Management and Budget, the Office of Information and Regulatory Affairs (OIRA) implements Federal regulatory policy and has led efforts to implement these presidential directives, working with agencies to identify deregulatory actions and eliminate regulatory burdens.

Regulatory Transparency

This Administration continues to work to make sure that the public is adequately informed about upcoming regulatory activity. Through the past few agenda cycles, OIRA has emphasized to the agencies that the Agenda and Plan should only contain items the Agencies truly believe are going to be

pursued in the near future. For too long, the Agenda has contained old actions that agencies are not actively pursuing.

This Administration has also taken steps to make sure that agencies uphold the law governing the quality of the data and evidence they use to justify their policy and program choices. In a recent Memorandum, OMB reminded agencies that they must ensure that information that is likely to have a clear and substantial impact on important public policies or important private sector decisions is communicated transparently, clearly articulates the underlying assumptions and uncertainties, and prioritizes increased access to the data and models underlying such information.¹ In addition, OMB's guidance on implementing The Foundations for Evidence-Based Policymaking Act of 2018 emphasizes the importance of increasing transparency and trust about the data brought to bear in decision-making and the need to align evidence building with Administration priorities, including regulatory and deregulatory activities.²

In addition, this Administration has taken several significant steps to make sure that regulation is not created through other means, and that both the public and Congress have adequate notice of agency intentions. Recently, the President signed Executive Order 13891 titled "Promoting the Rule of Law through Improved Agency Guidance." This EO emphasizes that Americans deserve an open and fair regulatory process that imposes new obligations on the public only when consistent with applicable law and after an agency follows appropriate procedures. The EO makes it the policy of the executive branch to require that agencies treat guidance documents as non-binding both in law and in practice, take public input into account when appropriate in formulating guidance documents, and make guidance documents readily available to the public. On April 11, 2019, OMB also issued Memorandum M-19-14, "Guidance on Compliance with the Congressional Review Act." Memorandum M-19-14 updates existing OMB guidance to agencies with regard to both OIRA and agency responsibilities under the Congressional Review Act

¹ OMB M-19-15. Memorandum for the Heads of Executive Departments and Agencies: "*Improving Implementation of the Information Quality Act.*" April 24, 2019 <https://www.whitehouse.gov/wp-content/uploads/2019/04/M-19-15.pdf>.

² OMB M 19-23. Memorandum for the heads of Executive Departments and Agencies. *Phase 1 Implementation of the Foundations for Evidence-Based Policymaking Act of 2018: Leaning Agendas, Personnel, and Planning Guidance.* <https://www.whitehouse.gov/wp-content/uploads/2019/07/M-19-23.pdf>. *Federal Data Strategy* <https://strategy.data.gov/action-plan/>; <https://strategy.data.gov/practices/>

(CRA) by (1) clarifying that guidance documents fall within the definition of “rule” under the CRA and (2) making the process by which OIRA makes “major determinations” more consistent and thorough, including through the receipt of adequate agency analysis on whether a rule is major.

Conclusion

The agency plans herein discussed push against the inertia of steadily expanding regulatory burdens and represent this Administration’s commitment to reducing regulations that no longer benefit our society. The plans also send a clear message that the public can invest and plan for the future without the looming threat of being surprised by burdensome and unnecessary new regulations. OIRA looks forward to working with the agencies and all interested stakeholders to deliver meaningful regulatory reform to the American people.