



**American Bar Association  
Section of Administrative Law and Regulatory Practice  
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November 30, 2012

Boris Bershteyn  
Acting Administrator,  
Office of Information and Regulatory Affairs  
Office of Management and Budget  
725 17th Street, N.W.  
Washington, D.C. 20503

Re: Spring and Fall 2012 Unified Regulatory Agendas

Dear Mr. Bershteyn:

I am writing with regard to the Spring and Fall 2012 Unified Regulatory Agendas on behalf of the Section of Administrative Law and Regulatory Practice (the "Section") of the American Bar Association (the "ABA"). The Section represents almost 6,000 lawyers who share a deep interest in the regulatory process. Both politically and geographically diverse, its membership includes private practitioners, government attorneys, judges, and law professors. The views expressed herein are presented on behalf of the Section of Administrative Law and Regulatory Practice. They have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.<sup>1</sup>

The Unified Regulatory Agenda is of significant interest to the Section and to members of the public at large who are interested in regulation. As you know, "[e]ach agency" was required to publish its regulatory agenda in April and October of each year by Executive Order 12291, a requirement that has been partially codified by the Regulatory Flexibility Act, 5 U.S.C. § 602(a). Executive Order 12866 elaborated on these requirements by establishing the current concept of the Unified Regulatory Agenda. While the General Services Administration (GSA)'s Regulatory Information Service Center physically compiles the Unified Regulatory Agenda, it does so "with" OIRA, which is responsible for overseeing the Federal Government's regulatory, paperwork, and information resource management activities.<sup>2</sup>

<sup>1</sup> Our Executive Branch Liaison Jeff Weiss took no part in the development of this letter and abstains from it. The ABA's Section of Public Utility, Communications and Transportation Law also joins in this letter.

<sup>2</sup> [http://www.reginfo.gov/public/jsp/eAgenda/StaticContent/UA\\_About.jsp](http://www.reginfo.gov/public/jsp/eAgenda/StaticContent/UA_About.jsp).

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The Unified Regulatory Agenda is an integral part of the Federal regulatory process. Its semiannual publication enables regulated entities, consumers, workers, and other interested persons to understand and prepare for new rules that are planned or under development. As the Section noted in its 2000 Report to the President-Elect, the Agenda “provides important information to agency heads, centralized reviewers, and the public at large, thereby serving the values of open government.”<sup>3</sup> The timeliness of its publication is especially important given that the information it contains is not updated consistently in any other fashion.

In recent years, the Spring Unified Regulatory Agenda has been published between late April and May 11— until 2011, when it was published on July 7. Former Administrator Sunstein issued a memorandum on March 12, 2012 requiring agencies to submit their planned rulemaking agendas to OIRA by April 13, 2012. Unfortunately, almost nine months later, the Spring Unified Regulatory Agenda remains unpublished, and the Fall 2012 Agenda is now also overdue.

We fully recognize that OIRA has been tasked with increasing responsibilities even as its staff levels have dropped. Nonetheless, we are concerned about the apparent trend represented by 2011 and 2012. Indeed, for the first time, a semiannual Unified Regulatory Agenda was not published by the due date for the subsequent Agenda – an unfortunate precedent. We thus ask, respectfully, that OIRA and GSA publish 2012 Unified Regulatory Agendas as promptly as possible, ideally in a single document. Doing so would be consistent with past precedent, valuable to the Section’s members, and strongly in the public interest.

We thank you in advance for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Conrad, Jr.", written in a cursive style.

James W. Conrad, Jr.  
Section Chair

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<sup>3</sup> ABA Section of Administrative Law & Regulatory Practice, *A Report for the President-Elect of the United States*, 52 Admin. L. Rev. 1099, 1104-05 (2000).