

United States Senate

WASHINGTON, DC 20510

December 12, 2012

President Barack Obama
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President:

For nearly three decades, presidents of both parties have published their plans for new regulations twice a year. This practice is legal obligation grounded in a longstanding executive order and a federal statute that calls for a spring and fall regulatory agenda.¹ On August 30, 2012, I wrote to inquire why your Administration's Spring 2012 Regulatory Agenda had not been made public. I received no reply. Now, with the spring plans still missing, the Fall 2012 Regulatory Agenda is also overdue. In light of this apparent trend, I am writing to inquire whether your Administration has chosen to abandon this tradition of transparency altogether.

As their titles suggest, the Fall Regulatory Agenda and Spring Regulatory Agenda are published in the spring and fall — the former by April or May, the latter by October or November.² Your Administration set April 13, 2012, as the “firm deadline” for agencies to submit their regulatory plans to the Office of Management and Budget.³ But eight months have passed, and neither the spring nor fall agendas have been made public.

As I noted in my last letter on this issue, the publication of planned regulatory actions that will affect American employers, workers, and consumers is a basic transparency measure. The semiannual agenda helps the public and regulated parties better understand new rules under development, including their potential compliance costs and effect on small businesses. As your Administration has recognized, the agenda is “a key component of the regulatory planning mechanism” established by Presidents Reagan and Clinton and reaffirmed by you in a January

¹ See Executive Order 12,866 (1993); Memorandum from Cass Sunstein, OIRA Administrator, to Executive Departments and Agencies, Spring 2012 Unified Agenda, Attachment, p. 3 (Mar. 12, 2012) (“All executive departments and establishments subject to Executive Order 12866 ‘Regulatory Planning and Review’ are required by section 4(b) to publish a regulatory agenda every 6 months.”); see also Executive Order 12,291 (1981) (“Each agency shall publish, in October and April of each year, an agenda of proposed regulations that the agency has issued or expects to issue, and currently effective rules that are under agency review pursuant to this Order.”).

² From 2007 through 2010, for example, each Spring Agenda was published in the Federal Register between April 26 and May 11. Last year's July 7 publication date was unusually late. The Fall 2011 agenda, published in January 2012, was also unusually late.

³ Sunstein, *supra* n. 1, at 10.

2011 executive order.⁴ Portions of the agenda are also required by the Regulatory Flexibility Act⁵ and the agenda fulfills the purposes of the Unfunded Mandates Reform Act.

In the interest of openness and transparency, I respectfully urge you to publish the long-overdue Spring 2012 Regulatory Agenda and the now missing Fall 2012 Regulatory Agenda, as past presidents have done and the law requires.

Sincerely,



Rob Portman

⁴ *Id.* at 1; *see also* Executive Order 13,563 (2011).

⁵ 5 U.S.C. § 602.