

United States Senate

WASHINGTON, DC 20510

August 30, 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 tradition of transparency is a legal obligation grounded in a longstanding executive order and a federal statute that calls for a spring and fall regulatory agenda.¹ I am writing to inquire why your Administration's Spring 2012 Regulatory Agenda is missing.

As its title suggests, the Spring Regulatory Agenda is published in the spring — by late April or early May.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 more than four months have passed, and those plans have inexplicably not been made public.

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 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.

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.

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

⁵ 5 U.S.C. § 602.

The lack of a Spring 2012 Regulatory Agenda can hardly be explained by a lack of regulatory activity. Last year's spring agenda, for example, listed a total of 4,257 regulatory actions at different stages of development. The agenda identified more than 200 of those actions as "economically significant" — rules that have an annual economic impact greater than \$100 million. Based on data from RegInfo.gov, your Administration imposed more economically significant rules from 2009 through 2012 than during the first three years of any other presidency since such records were kept. The more than 160 economically significant rules issued from February 2009 through February 2012 marked a 40% increase over the same three-year period in the last Administration and 20% increase over the Clinton Administration.

The American people are entitled to know the full scope of your Administration's regulatory agenda for the year ahead. In the interest of openness and transparency, I respectfully urge you to publish the long-overdue Spring 2012 Regulatory Agenda, as past presidents have done and the law requires.

Sincerely,



Rob Portman