

United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

KEITH B. ASHDOWN, STAFF DIRECTOR
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May 14, 2015

The Honorable Thomas Perez
Secretary
United States Department of Labor
200 Constitution Ave. NW
Washington, DC 20210

Dear Mr. Secretary:

I write to ask your cooperation in assisting the Subcommittee's understanding of the Department of Labor's record regarding retrospective review of agency regulations. As the Government Accountability Office stated in 2014, without careful oversight, regulations may prove to be less effective than expected in achieving intended goals, become outdated, or create unnecessary burdens. In addition, regulations may change the behaviors of regulated entities and the public in ways that cannot be predicted by prospective analysis before implementation.¹

In Executive Orders 13563 and 13610,² the President directed agencies to develop and submit to the Office of Information and Regulatory Affairs (OIRA) a preliminary plan for periodic review of existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed. In addition, guidance directed public participation in retrospective reviews, setting priorities in implementing retrospective review plans, and reporting on the status of these efforts.

The Subcommittee has reviewed your agency's preliminary and final retrospective review plans as well as the most current status updates on your public website. To inform the Subcommittee about agency progress in reviewing current regulations, please provide responses to the following by June 15, 2015:

(1) Please provide the following data with supporting detail:

- a. the number of retrospective reviews undertaken since January 2011, and
- b. the number of retrospective reviews completed since January 2011, including:
 - i. the number of these reviews that resulted in amending the Code of Federal Regulations, and

¹GOV'T ACCOUNTABILITY OFFICE, REEXAMINING REGULATIONS: AGENCIES OFTEN MADE REGULATORY CHANGES, BUT COULD STRENGTHEN LINKAGES TO PERFORMANCE GOALS, GAO-14-269 (Apr. 11, 2014).

² Exec. Order No. 13563, 76 Fed. Reg. 3821 (2011); Exec. Order No. 13610, 77 Fed. Reg. 28469 (2012).

- ii. the number of these that resulted in other actions, including revising agency guidance or evaluation criteria to affect how reviewed regulations are implemented.
- (2) In response to the President's Executive Orders, how did your agency initially prioritize among potential retrospective reviews? How, if at all, has your thinking on these priorities changed since these efforts began?
- (3) According to the agency website, your final plan for retrospective analysis lists several factors that agencies may consider when selecting regulations to review. Please list the factors that led to your selections and the weight given to each factor and the process for selecting the number of regulations to review.
- a. How many regulations are chosen for review each year?
 - b. What percentage of your current regulations do you plan to target for review each year?
 - c. Please describe any set timeframes your agency used for retrospective review prior to the current administration's retrospective review efforts and the extent to which these were the result of statutory requirements for individual regulations.
- (4) According to the agency website, your final plan for retrospective analysis of existing rules describes the actions taken to encourage public comment. Please characterize the level of public participation you received beyond the initial comments received in response to your first Federal Register notice:
- a. on your website in response to queries about retrospective review, and
 - b. in response to Federal Register notices related to retrospective review.
- (5) What additional actions do you think your agency could take to facilitate greater public participation on your retrospective review efforts? What processes has your agency put in place to ensure that actions are responsive to public comments received?
- (6) What efforts have agencies taken to ensure that retrospective review efforts align with agency priority goals under the GPRA Modernization Act of 2010 (GPRAMA)?³
- (7) OMB directed agencies to design and write new regulations in ways that facilitate evaluation of their consequences and thus promote retrospective analyses.⁴ What actions has your agency taken as new regulations are designed in response to this directive?

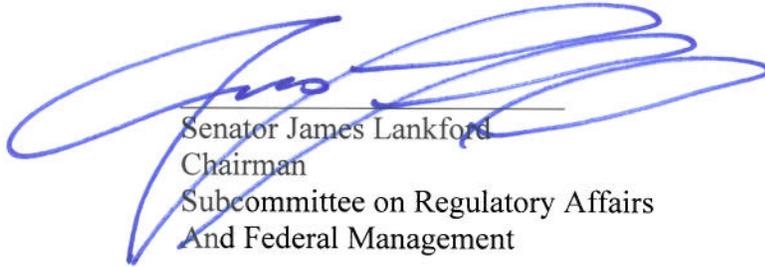
³ Pub. L. No. 111-352, 124 Stat. 3866 (Jan. 4, 2011). The acronym "GPRA" in the act's title refers to the Government Performance and Results Act of 1993. Pub. L. No. 103-62, 107 Stat. 285 (Aug. 3, 1993).

⁴ Memorandum from Cass Sunstein, Admin'r, OIRA, to the Heads of Executive Departments and Agencies (Apr. 25, 2011)(M-11-19). The memorandum directed agencies, to the extent consistent with law, to give careful consideration to how best to promote empirical testing of the effects of rules both in advance and retrospectively.

The Honorable Thomas Perez
May 14, 2015
Page 3

In addition to the information requested above, I request that you make your staff available to brief the Subcommittee staff regarding your agency's retrospective review efforts no later than July 6, 2015. If you have any questions about this request, please contact Alexandra Edwards at (202) 224-6684 or James Mann at (202) 224-3823. Thank you for your attention to this matter.

Sincerely,



Senator James Lankford
Chairman
Subcommittee on Regulatory Affairs
And Federal Management

cc: The Honorable Heidi Heitkamp
Ranking Democratic Member