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COMMITTEE ON EDUCATION  
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U.S. HOUSE OF REPRESENTATIVES  
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May 24, 2013

The Honorable Sylvia Mathews Burwell  
Director  
Office of Management and Budget  
Eisenhower Executive Office Building  
Washington, D.C. 20500

Dear Director Burwell:

We write to express our concerns over the administration's lack of transparency in providing timely and statutorily required information regarding the regulatory activities of federal agencies. The *Regulatory Flexibility Act of 1980* requires federal agencies to publish in April and October a regulatory agenda in the *Federal Register* describing economically significant regulatory actions that are being developed.<sup>1</sup> Executive Order 12866 requires agencies to publish every six months a regulatory agenda, including all regulations the agencies intend to develop or review during the 12 months following publication.<sup>2</sup> To ensure the timely transmittal of this important information as required by law, we write to request information, documents, and communications relating to the Spring 2013 Unified Regulatory Agenda.

Since July 2012, this committee has sought timely information concerning the Obama administration's regulatory activities. Last year, we wrote to Cass Sunstein, then-Administrator for the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA), requesting information related to the Spring 2012 Unified Agenda.<sup>3</sup> Having received a

<sup>1</sup> Public Law 96-354 <http://www.archives.gov/federal-register/laws/regulatory-flexibility/602.html> (Accessed May 22, 2013)

<sup>2</sup> Memorandum from the Honorable Cass Sunstein, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, Memorandum for Regulatory Policy Officers at Executive Departments and Agencies and Managing and Executive Directors of Certain Agencies and Commissions, at 3. (Mar. 12, 2012) available at: <http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/agenda-data-call-and-guidelines-spring-2012.pdf> and the Fall 2012 equivalent <http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/agenda-data-call-and-guidelines-spring-2012.pdf>. (Accessed May 22, 2013)

<sup>3</sup> Letter from the Honorable John Kline, Virginia Foxx, David Roe, and Tim Walberg, Representatives, U.S. House of Representatives, to the Honorable Cass Sunstein, Administrator, Office of Information and Regulatory Affairs (July 12, 2012) (on file with author).

late and insufficient response, we reasserted our request for information.<sup>4</sup> However, at no point has OIRA provided documents and materials responsive to our requests. Instead, after months of delay and just days before the Christmas holiday, on December 21, 2012, OIRA released its 2012 Unified Agenda. According to the American Action Forum, this unified agenda included nearly 2,400 regulatory proposals, amounting to \$123.2 billion in potential costs and 13.6 million hours in possible paperwork burden.<sup>5</sup>

The administration's actions have created an uncertain regulatory environment with real consequences across the economy. Regulatory uncertainty can hamper economic growth by undermining the ability of employers, workers, and entrepreneurs to hire, spend, and invest. Additionally, states, school districts, and institutions of higher education are impacted by the burdens created from new rules and regulations. This is especially troubling in the midst of the country's ongoing jobs crisis.

According to the Bureau of Labor Statistics (BLS), the number of unemployed persons is a staggering 11.7 million.<sup>6</sup> Approximately 4.4 million individuals have been unemployed for 27 weeks or more, representing more than 37 percent of the unemployed population.<sup>7</sup> In addition, BLS reported that only 63.3 percent of Americans are participating in the workforce as of March 2013, the lowest participation rate since 1979.<sup>8</sup>

If the previous unified agenda is any indication, federal agencies are hard at work drafting new regulations. Among those are regulations implementing the *Patient Protection and Affordable Care Act* (PPACA). Concerns about PPACA and its effect on the economy have continued to grow as the law's 2014 implementation date draws closer. The U.S. Chamber of Commerce recently released its Small Business Survey for the First Quarter of 2013. This survey notes that the regulatory uncertainty spurred by the "requirements of [PPACA] are now the biggest concern for small businesses, having bumped economic uncertainty from the top spot which it has held for the last two years."<sup>9</sup>

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<sup>4</sup> Letter from the Honorable John Kline, Virginia Foxx, David Roe, and Tim Walberg, Representatives, U.S. House of Representatives, to the Honorable Jeffrey Zients, Acting Director, Office of Management and Budget (Sept. 14, 2012) (on file with author). Letter from the Honorable John Kline, Virginia Foxx, David Roe, and Tim Walberg, Representatives, U.S. House of Representatives, to Boris Bershteyn, Acting Administrator, Office of Information and Regulatory Affairs (Oct. 25, 2013) (on file with author).

<sup>5</sup> Sam Batikins, *Regulatory Calendar: Administration Releases 2013 Regulatory Plan*, American Action Forum (Jan. 4, 2013), available at <http://americanactionforum.org/topic/regulatory-calendar-administration-releases-2013-regulatory-plan> (Accessed May 15, 2013).

<sup>6</sup> U.S. Department of Labor, Bureau of Labor Statistics, *The Employment Situation- April 2013* (May 3, 2013) <http://www.bls.gov/news.release/empstat.nr0.htm> (Accessed May 22, 2013).

<sup>7</sup> *Id.*

<sup>8</sup> Zero Hedge, *April Payrolls +165,000, 7.5% Unemployment Rate Flat at 1979 Levels*, (May 3, 2013) <http://www.zerohedge.com/news/2013-05-03/april-payrolls-165000-75-unemployment-rate-participation-rate-flat-1979-levels>. (Accessed May 15, 2013).

<sup>9</sup> U.S. Chamber of Commerce, "Q1 Small Business Outlook Survey," Apr. 4, 2013, available at <http://www.uschambersmallbusinessnation.com/community/q1-2013-small-business-survey>.

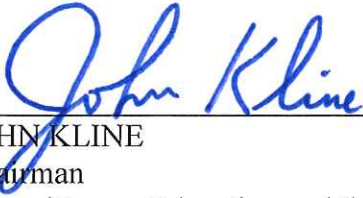


As of April 30, 2013, the administration has failed to meet its statutory deadline for issuing the semiannual regulatory agenda under the *Regulatory Flexibility Act* and is close to missing its Spring 2013 Unified Agenda deadline under Executive Order 12866. In order to ensure Congress and the American people have an opportunity to review the regulatory proposals under development by the administration, we request that you provide the following to the Committee on Education and the Workforce **no later than June 10, 2013**:

1. All documents and communications from OIRA to executive departments and agencies concerning their guidelines and procedures for publishing the Spring 2013 Unified Agenda;
2. The date on which the executive departments and agencies' have been directed by OIRA to provide its materials for publishing the Spring 2013 Unified Agenda;
3. An explanation of why OIRA did not publish the regulatory flexibility agenda by April 30, 2013;
4. The date OIRA anticipates public release of the Spring 2013 Unified Agenda;
5. The dates the Departments of Agriculture (USDA), Labor (DOL), Health and Human Services (HHS), and Education (ED) submitted their materials to OIRA for the Spring 2013 Unified Agenda;
6. A list of all proposed rules, including a brief description and expected date of issuance, within USDA, DOL, HHS, and ED's regulatory agendas, in accordance with the *Regulatory Flexibility Act*;
7. A list of any rules, including a brief description, that USDA, DOL, HHS, and ED have identified for periodic review under Section 610 of the *Regulatory Flexibility Act*, and;
8. All documents and communications concerning the materials USDA, DOL, HHS, and ED submitted to OIRA for inclusion in the Spring 2013 Unified Agenda.

If you are unable to provide the requested information by the date specified, please inform the committee in writing why you cannot meet the deadline, and the date by which you will provide the requested information. If you have additional questions or comments, please contact Joe Wheeler of the committee staff at (202) 225-7101.

Sincerely,



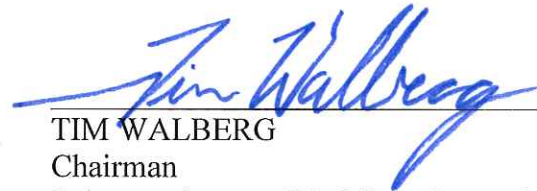
JOHN KLINE  
Chairman  
Committee on Education and the Workforce



VIRGINIA FOXX  
Chairwoman  
Subcommittee on Higher Education and  
Workforce Training



DAVID P. ROE  
Chairman  
Subcommittee on Health, Employment,  
Labor, and Pensions



TIM WALBERG  
Chairman  
Subcommittee on Workforce Protections



TODD ROKITA  
Chairman  
Subcommittee on Early Childhood,  
Elementary, and Secondary Education

Enclosure

CC: The Honorable George Miller, Senior Democratic Member, Committee on Education and the Workforce

The Honorable Tom Vilsack, Secretary, U.S. Department of Agriculture

The Honorable Kathleen Sebelius, Secretary, U.S. Department of Health and Human Services

The Honorable Arne Duncan, Secretary, U.S. Department of Education

The Honorable Seth D. Harris, Acting Secretary, U.S. Department of Labor