§ 601. Definitions

For purposes of this chapter—

(1) the term "agency" means an agency as defined in section 551(1) of this title;

(2) the term "rule" means any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of this title, or any other law, including any rule of general applicability governing Federal grants to State and local governments for which the agency provides an opportunity for notice and public comment, except that the term "rule" does not include a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting, or practices relating to such rates, wages, structures, prices, appliances, services, or allowances;

(3) the term "small business" has the same meaning as the term "small business concern" under section 3 of the Small Business Act, unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;

(4) the term "small organization" means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes such definition(s) in the Federal Register;

(5) the term "small governmental jurisdiction" means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes such definition(s) in the Federal Register;

(6) the term "small entity" shall have the same meaning as the terms "small business", "small organization" and "small governmental jurisdiction" defined in paragraphs (3), (4) and (5) of this section; and

(7) the term "collection of information"—

(A) means the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either—

(i) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, 10 or more persons, other than agencies, instrumentalities, or employees of the United States; or

(ii) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes; and

(B) shall not include a collection of information described under section 3518(c)(1) of title 44, United States Code.

(8) RECORDKEEPING REQUIREMENT.—The term "recordkeeping requirement" means a requirement imposed by an agency on persons to maintain specified records.

Editorial Notes

References in Text

Section 3 of the Small Business Act, referred to in par. (3), is classified to section 632 of Title 15, Commerce and Trade.

Amendments

1996—Pars. (7), (8). Pub. L. 104-121 added pars. (7) and (8).

Statutory Notes and Related Subsidiaries

Effective Date of 1996 Amendment

Pub. L. 104-121, title II, § 245, Mar. 29, 1996, 110 Stat. 868, provided that: "This subtitle [subtitle D (§§ 241-245) of title II of Pub. L. 104-121, amending this section and sections 603 to 605, 609, 611, and 612 of this title and enacting provisions set out as a note under section 609 of this title] shall become effective on the expiration of 90 days after the date of enactment of this subtitle [Mar. 29, 1996], except that such amendments shall not apply to interpretative rules for which a notice of proposed rulemaking was published prior to the date of enactment."

Effective Date

Pub. L. 96-354, § 4, Sept. 19, 1980, 94 Stat. 1165, amended this section, and published such definition(s) in the Federal Register;
requirements of sections 603 and 604 of title 5, United States Code (as added by section 3 of this Act) shall apply only to rules for which a notice of proposed rulemaking is issued on or after January 1, 1981.'"

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–121, §1, Mar. 29, 1996, 110 Stat. 847, provided that: "This Act [enacting sections 801 to 808 of this title, section 657 of Title 15, Commerce and Trade, and sections 1320–15 and 1336e of Title 42, The Public Health and Welfare, amending this section and sections 504, 603 to 605, 609, 611, and 612 of this title, sections 665e and 901 of Title 2, The Congress, section 648 of Title 15, section 2412 of Title 28, Judiciary and Judicial Procedure, section 3101 of Title 31, Money and Finance, and sections 401, 402, 403, 405, 422, 423, 425, 902, 903, 1382, 1382c, 1383, and 1383c of Title 42, enacting provisions set out as notes under this section and sections 504, 609, and 801 of this title and sections 401, 402, 403, 405, 902, 1382, 1382b–15, and 1382d of Title 42, amending provisions set out as a note under section 831 of Title 15, and repealing provisions set out as a note under section 625 of Title 42] may be cited as the 'Contract with America Advancement Act of 1996.'"

SHORT TITLE

Pub. L. 96–354, §1, Sept. 19, 1980, 94 Stat. 1164, provided that: "This Act [enacting sections 801 to 808 of this title, section 657 of Title 15, Commerce and Trade, and section 657(b)].—Before implementing policies and regulations that may affect family well-being, each agency shall assess such actions with respect to whether—

"(1) the action strengthens or erodes the stability or safety of the family and, particularly, the marital commitment;

"(2) the action strengthens or erodes the authority and rights of parents in the education, nurture, and supervision of their children;

"(3) the action helps the family perform its functions, or substitutes governmental activity for the function;

"(4) the action increases or decreases disposable income or poverty of families and children;

"(5) the proposed benefits of the action justify the financial impact on the family;

"(6) the action may be carried out by State or local government or by the family; and

"(7) the action establishes an implicit or explicit policy concerning the relationship between the behavior and personal responsibility of youth, and the norms of society.

(d) GOVERNMENTWIDE FAMILY POLICY COORDINATION AND REVIEW.—

"(1) CERTIFICATION AND RATIONALE.—With respect to each proposed policy or regulation that may affect family well-being, the head of each agency shall—

"(A) submit a written certification to the Director of the Office of Management and Budget and to Congress that such policy or regulation has been assessed in accordance with this section; and

"(B) provide an adequate rationale for implementation of each policy or regulation that may negatively affect family well-being.

(2) OFFICE OF MANAGEMENT AND BUDGET.—The Director of the Office of Management and Budget shall—

"(A) ensure that policies and regulations proposed by agencies are implemented consistent with this section; and

"(B) compile, index, and submit annually to the Congress the written certifications received pursuant to paragraph (1)(A).

(3) OFFICE OF POLICY DEVELOPMENT.—The Office of Policy Development shall—

"(A) assess proposed policies and regulations in accordance with this section;

"(B) provide evaluations of policies and regulations that may affect family well-being to the Director of the Office of Management and Budget; and

"(C) advise the President on policy and regulatory actions that may be taken to strengthen the institutions of marriage and family in the United States.
"(e) ASSESSMENTS UPON REQUEST BY MEMBERS OF CONGRESS.—Upon request by a Member of Congress relating to a proposed policy or regulation, an agency shall conduct an assessment in accordance with subsection (c), and shall provide a certification and rationale in accordance with subsection (d).

(1) JUDICIAL REVIEW.—This section is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.''

SMALL BUSINESS REGULATORY FAIRNESS


SEC. 201. SHORT TITLE.

"This title (enacting sections 801 to 808 of this title and section 657 of Title 15, Commerce and Trade, amending this section, sections 504, 603 to 605, 609, 611, and 612 of this title, section 648 of Title 15, and section 2412 of Title 28, Judiciary and Judicial Procedure, enacting provisions set out as notes under this section, and amending this section, sections 504, 603 to 605, 609, 611, and section 657 of Title 15, Commerce and Trade, Stat. 857–862, as amended by Pub. L. 110–28, title VIII, "SEC. 203. PURPOSES.

§ 601

"(2) the term 'agency' has the same meaning as in section 551 of title 5, United States Code; and

(3) the term 'small entity compliance guide' means a document designated and entitled as such by an agency.

SEC. 212. COMPLIANCE GUIDES.

(a) COMPLIANCE GUIDE.—

(1) IN GENERAL.—For each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis under section 605(b) [probably should be "section 604"] of title 5, United States Code, the agency shall publish 1 or more guides to assist small entities in complying with the rule and shall entitle such publications 'small entity compliance guides'.

(2) PUBLICATION OF GUIDES.—The publication of each guide under this subsection shall include—

(A) the posting of the guide in an easily identified location on the website of the agency; and

(B) the term 'agency' has the same meaning as in section 601 of title 5, United States Code; and

(3) PUBLICATION DATE.—An agency shall publish each guide (including the posting and distribution of the guide as described in subparagraph (2))—

(A) on the same date as the date of publication of the final rule (or as soon as possible after that date); and

(B) not later than the date on which the requirements of that rule become effective.

(4) COMPLIANCE ACTIONS.—

(A) IN GENERAL.—Each guide shall explain the actions a small entity is required to take to comply with a rule.

(B) EXPLANATION.—The explanation under subparagraph (A)—

(i) shall include a description of actions needed to meet the requirements of a rule, to enable a small entity to know when such requirements are met; and

(ii) if determined appropriate by the agency, may include a description of possible procedures, such as conducting tests, that may assist a small entity in meeting such requirements, except that, compliance with any procedures described pursuant to this section does not establish compliance with the rule, or establish a presumption or inference of such compliance.

(C) PROCEDURES.—Procedures described under subparagraph (B)(i)—

(i) shall be suggestions to assist small entities; and

(ii) shall not be additional requirements, or diminish requirements, relating to the rule.

(5) AGENCY PREPARATION OF GUIDES.—The agency shall, in its sole discretion, taking into account the subject matter of the rule and the language of relevant statutes, ensure that the guide is written using sufficiently plain language likely to be understood by affected small entities. Agencies may prepare separate guides covering groups or classes of similarly affected small entities and may cooperate with associations of small entities to develop and distribute such guides. An agency may prepare guides and apply this section with respect to a rule or a group of related rules.

(6) REPORTING.—Not later than 1 year after the date of enactment of the Fair Minimum Wage Act of 2007 [May 25, 2007], and annually thereafter, the head of each agency shall submit a report to the Committee on Small Business and Entrepreneurship of the Senate, the Committee on Small Business of the House of Representatives, and any other committee of relevant jurisdiction describing the status of the agency's compliance with paragraphs (1) through (5).

(b) COMPREHENSIVE SOURCE OF INFORMATION.—Agen-

cies shall cooperate to make available through the House Committee, congressional teams, and through comprehensive sources of information, the small entity compliance guides and all other available..."
information on statutory and regulatory requirements affecting small entities.

"(c) LIMITATION ON JUDICIAL REVIEW.—An agency’s small entity compliance guide shall not be subject to judicial review, except that in any civil or administrative action against a small entity for a violation occurring after the effective date of this section, the content of the small entity compliance guide may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages.

"SEC. 213. INFORMAL SMALL ENTITY GUIDANCE.

"(a) GENERAL.—Whenever appropriate in the interest of administering statutes and regulations within the jurisdiction of an agency which regulates small entities, it shall be the practice of the agency to answer inquiries by small entities concerning information on, and advice about, compliance with such statutes and regulations, interpreting and applying the law to specific sets of facts supplied by the small entity. In any civil or administrative action against a small entity, guidance given by an agency applying the law to facts provided by the small entity may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages sought against such small entity.

"(b) PROGRAM.—Each agency regulating the activities of small entities shall establish a program for responding to such inquiries no later than 1 year after enactment of this section [Mar. 29, 1996], utilizing existing functions and personnel of the agency to the extent practicable.

"(c) REPORTING.—Each agency regulating the activities of small business shall report to the Committee on Small Business [now Committee on Small Business and Entrepreneurship] and Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] of the Senate and the Committee on Small Business and Committee on the Judiciary of the House of Representatives no later than 2 years after the date of the enactment of this section on the scope of the agency’s program, the number of small entities using the program, and the achievements of the program to assist small entity compliance with agency regulations.

"SEC. 214. SERVICES OF SMALL BUSINESS DEVELOPMENT CENTERS.

"(a) [Amended section 648 of Title 15, Commerce and Trade.]

"(b) Nothing in this Act [see Short Title of 1996 Amendment note, above] in any way affects or limits the ability of other technical assistance or extension programs to perform or continue to perform services related to compliance assistance.

"SEC. 215. COOPERATION ON GUIDANCE.

"Agencies may, to the extent resources are available and where appropriate, in cooperation with the States, develop guides that fully integrate requirements of both Federal and State regulations where regulations within an agency’s area of interest at the Federal and State levels impact small entities. Where regulations vary among the States, separate guides may be created for separate States in cooperation with State agencies.

"SEC. 216. EFFECTIVE DATE.

"This subtitle and the amendments made by this subtitle shall take effect on the expiration of 90 days after the date of enactment of this subtitle [Mar. 29, 1996]."

"SEC. 217. B—REGULATORY ENFORCEMENT REFORMS

"SEC. 221. DEFINITIONS

"For purposes of this subtitle—

"(1) the term ‘rule’ and ‘small entity’ have the same meanings as in section 601 of title 5, United States Code;

"(2) the term ‘agency’ has the same meaning as in section 551 of title 5, United States Code; and

"(3) the term ‘small entity compliance guide’ means a document designated as such by an agency.

"SEC. 222. SMALL BUSINESS AND AGRICULTURE ENFORCEMENT OMBUDSMAN.

"[Enacted section 657 of Title 15, Commerce and Trade.]

"SEC. 232. RIGHTS OF SMALL ENTITIES IN ENFORCEMENT ACTIONS.

"(a) IN GENERAL.—Each agency regulating the activities of small entities shall establish a policy or program within 1 year of enactment of this section [Mar. 29, 1996] to provide for the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity. Under appropriate circumstances, an agency may consider shall the agency in determining penalty assessments on small entities.

"(b) CONDITIONS AND EXCLUSIONS.—Subject to the requirements or limitations of other statutes, policies or programs established under this section shall contain conditions or exclusions which may include, but shall not be limited to—

"(1) requiring the small entity to correct the violation within a reasonable correction period;

"(2) limiting the applicability to violations discovered through participation by the small entity in a compliance assistance or audit program operated or supported by the agency or a State;

"(3) excluding small entities that have been subject to multiple enforcement actions by the agency;

"(4) excluding violations involving willful or criminal conduct;

"(5) excluding violations that pose serious health, safety or environmental threats; and

"(6) requiring a good faith effort to comply with the law.

"(c) REPORTING.—Agencies shall report to the Committee on Small Business [now Committee on Small Business and Entrepreneurship] and Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] of the Senate and the Committee on Small Business and Committee on Judiciary of the House of Representatives no later than 2 years after the date of enactment of this section [Mar. 29, 1996] on the scope of their program or policy, the number of enforcement actions against small entities that qualified or failed to qualify for the program or policy, and the total amount of penalty reductions and waivers.

"SEC. 224. EFFECTIVE DATE.

"This subtitle and the amendments made by this subtitle shall take effect on the expiration of 90 days after the date of enactment of this subtitle [Mar. 29, 1996]."

"EFFECTS OF DEREGULATION ON RURAL AMERICA

Pub. L. 101–574, title III, §309, Nov. 16, 1990, 104 Stat. 2831, provided that:

"(a) STUDY.—The Office of Technology Assessment shall conduct a study of the effects of deregulation on the economic vitality of rural areas. Such study shall include, but not be limited to, a thorough analysis of the impact of deregulation on—

"(1) the number of loans made by financial institutions to small businesses located in rural areas, a change in the level of security interests required for such loans, and the cost of such loans to rural small businesses for creation and expansion;

"(2) airline service in cities and towns with populations of 100,000 or less, including airline fare, the number of flights available, number of seats available, scheduling of flights, continuity of service, number of markets being served by large and small airlines, availability of nonstop service, availability of direct service, number of economic cancellations, number of flight delays, the types of airplanes used, and time delays;

"(3) the availability and costs of bus, rail and trucking transportation for businesses located in rural areas;

"(4) the availability and costs of state-of-the-art telecommunications services to small businesses lo-
cated in rural areas, including voice telephone service, private (not multiparty) telephone service, reliable facsimile document and data transmission, competitive long distance carriers, cellular (mobile) telephone service, multifrequency tone signaling services such as touchtone services, custom-calling services (including three-way calling, call forwarding, and call waiting), voice mail services, and 911 emergency services with automatic number identification; and

"(5) the availability and costs to rural schools, hospitals, and other public facilities, of sending and receiving audio and visual signals in cases where such ability will enhance the quality of services provided to rural residents and businesses; and

"(6) the availability and costs of services enumerated in paragraphs (1) through (5) in urban areas compared to rural areas.

"(b) Report.—Not later than 12 months after the date of enactment of this title [Nov. 15, 1990], the Office of Technology Assessment shall transmit to Congress a report on the results of the study conducted under subsection (a) together with its recommendations on how to address the problems facing small businesses in rural areas.

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE

Pub. L. 96–554, § 2, Sept. 19, 1980, 94 Stat. 1164, provided that:

"(a) The Congress finds and declares that

"(1) when adopting regulations to protect the health, safety and economic welfare of the Nation, Federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public;

"(2) laws and regulations designed for application to large scale entities have been applied uniformly to small businesses, small organizations, and small governmental jurisdictions even though the problems that gave rise to government action may not have been caused by those smaller entities;

"(3) uniform Federal regulatory and reporting requirements have in numerous instances imposed unnecessary and disproportionately burdensome demands including legal, accounting and consulting costs upon small businesses, small organizations, and small governmental jurisdictions with limited resources;

"(4) the failure to recognize differences in the scale and resources of regulated entities has in numerous instances adversely affected competition in the marketplace, discouraged innovation and restricted improvements in productivity;

"(5) unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes;

"(6) the practice of treating all regulated businesses, organizations, and governmental jurisdictions as equivalent may lead to inefficient use of regulatory agency resources, enforcement problems, and, in some cases, to actions inconsistent with the legislative intent of health, safety, environmental and economic welfare legislation;

"(7) alternative regulatory approaches which do not conflict with the stated objectives of applicable statutes may be available which minimize the significant economic impact of rules on small businesses, small organizations, and small governmental jurisdictions;

"(8) the process by which Federal regulations are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, small organizations, and small governmental jurisdictions to examine the impact of proposed and existing rules on such entities, and to review the continued need for existing rules.

"(b) It is the purpose of this Act [enacting this chapter] to establish as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.

Executive Documents

EXECUTIVE ORDER NO. 12291

Ex. Ord. No. 12291, Feb. 17, 1981, 46 F.R. 13193, which established requirements for agencies to follow in promulgating regulations, reviewing existing regulations, and developing legislative proposals concerning regulation, was revoked by Ex. Ord. No. 12866, § 11, Sept. 30, 1993, 58 F.R. 51735, set out below.

EXECUTIVE ORDER NO. 12498

Ex. Ord. No. 12498, Jan. 4, 1985, 50 F.R. 1036, which established a regulatory planning process by which to develop and publish a regulatory program for each year, was revoked by Ex. Ord. No. 12866, § 11, Sept. 30, 1993, 58 F.R. 51735, set out below.

EXECUTIVE ORDER NO. 12606

Ex. Ord. No. 12606, Sept. 2, 1987, 52 F.R. 34188, which provided criteria for executive departments and agencies to follow in enacting policies and regulations to ensure consideration of effect of those policies and regulations on small businesses, small organizations, and small governmental jurisdictions, was revoked by Ex. Ord. No. 13045, § 7, Apr. 21, 1997, 62 F.R. 19888, set out as a note under section 3231 of Title 42, The Public Health and Welfare.

EXECUTIVE ORDER NO. 12612

Ex. Ord. No. 12612, Oct. 26, 1987, 52 F.R. 41685, which set out fundamental federalism principles and policy-making criteria for executive departments and agencies to follow in formulating and implementing policies and limited the instances when executive departments and agencies could construe a Federal statute to preempt State law, was revoked by Ex. Ord. No. 13132, § 10(b), Aug. 4, 1999, 64 F.R. 42159, set out below.

Ex. Ord. No. 12630, GOVERNMENTAL ACTIONS AND INTERFERENCE WITH CONSTITUTIONALLY PROTECTED PROPERTY RIGHTS

Ex. Ord. No. 12630, Mar. 15, 1988, 53 F.R. 8859, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to ensure that governmental actions are undertaken on a well-reasoned basis with due regard for fiscal accountability, for the financial impact of the obligations imposed on the Federal government by the Just Compensation Clause of the Fifth Amendment, and for the Constitution, it is hereby ordered as follows:

SECTION 1. Purpose. (a) The Fifth Amendment of the United States Constitution provides that private property shall not be taken for public use without just compensation. Government historically has used the formal exercise of the power of eminent domain, which provides orderly processes for paying just compensation, to acquire private property for public use. Recent Supreme Court decisions, however, in reaffirming the fundamental protection of private property rights provided by the Fifth Amendment and in assessing the nature of governmental actions that have an impact on constitutionally protected property rights, have also reaffirmed that governmental actions that do not formally invoke the condemnation power, including regulations, may result in a taking for which just compensation is required.

(b) Responsible fiscal management and fundamental principles of government require that government decision-makers evaluate carefully the effect of their administrative, regulatory, and legislative actions on
constititionally protected property rights. Executive departments and agencies should review their actions carefully to prevent unnecessary takings and should accommodate decision-making for those takings that are necessitated by statutory mandate.

(c) The purpose of this Order is to assist Federal departments and agencies in undertaking such reviews and proposing, planning, and implementing actions with due regard for the constitutional protections provided by the Fifth Amendment and to reduce the risk of undue or inadvertent burdens on the public fisc resulting from lawful governmental action. In furtherance of the purpose of this Order, the Attorney General shall, consistent with the principles stated herein and in consultation with the Executive departments and agencies, promulgate Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings to which each Executive department or agency shall refer in making the evaluations required by this Order or in otherwise taking any action that is the subject of this Order. The Guidelines shall be promulgated no later than May 1, 1988, and shall be disseminated to all units of each Executive department and agency no later than July 1, 1988. The Attorney General shall, as necessary, update these guidelines to reflect fundamental changes in takings law occurring as a result of Supreme Court decisions.

Sec. 2. Definitions. For the purpose of this Order: (a) ‘‘Policies that have takings implications’’ refers to Federal regulations, proposed Federal regulations, proposed Federal legislation, comments on proposed Federal legislation, or other Federal policy statements that, if implemented or enacted, could effect a taking, such as rules and regulations that propose or implement licensing, permitting, or other condition requirements or limitations on private property use, or that require dedications or exactions from owners of private property. ‘‘Policies that have takings implications’’ does not include:

1. Actions abolishing regulations, discontinuing governmental programs, or modifying regulations in a manner that lessens interference with the use of private property;
2. Actions taken with respect to properties held in trust by the United States or in preparation for or during treaty negotiations with foreign nations;
3. Law enforcement actions involving seizure, for violations of law, of property for forfeiture or as evidence in criminal proceedings;
4. Studies or similar efforts or planning activities;
5. Communications between Federal agencies or departments and State or local land-use planning agencies regarding planned or proposed State or local actions regulating private property, or regulations imposed on private property that substantially affect its value or use, may constitute a taking of property. Actions to substantially affect the use or value of, or of all separate and distinct interests in the same private property and even if the action constituting a taking is temporary in nature.
6. Private property refers to all property protected by the Fifth Amendment and to reduce the risk of undue or inadvertent burdens on the public fisc.
7. Any military or foreign affairs functions (including procurement functions thereunder) but not including the U.S. Army Corps of Engineers civil works program.

(b) Actions undertaken by governmental officials that result in a physical invasion or occupancy of private property, and regulations imposed on private property that substantially affect its value or use, may constitute a taking of property. Further, governmental action may amount to a taking even though the action results in less than a complete deprivation of all use or value, or of all separate and distinct interests in the same private property and even if the action constituting a taking is temporary in nature.

(c) Governmental officials whose actions are taken specifically for purposes of protecting public health and safety are ordinarily given broader latitude by courts before their actions are considered to be takings. However, the mere assertion of a public health and safety purpose is insufficient to avoid a taking. Actions to which this Order applies asserted to be for the protection of public health and safety, therefore, should be undertaken only in response to real and substantial threats to public health and safety, be designed to advance significantly the health and safety purpose, and be no greater than is necessary to achieve the health and safety purpose.

(d) While normal governmental processes do not ordinarily effect takings, undue delays in decision-making during which private property use is interfered with carry a risk of being held to be takings. Additionally, a delay in processing may increase significantly the size of compensation due if a taking is later found to have occurred.

(e) The Just Compensation Clause is self-actuating, requiring that compensation be paid whenever governmental action results in a taking of private property regardless of whether the underlying authority for the action contemplated a taking or authorized the payment of compensation. Accordingly, governmental actions that may have a significant impact on the use or value of private property should be scrutinized to avoid undue or unplanned burdens on the public fisc.

Sec. 3. General Principles. In formulating or implementing policies that have takings implications, each Executive department and agency shall be guided by the following general principles:

(a) Governmental officials should be sensitive to, anticipate, and account for, the obligations imposed by the Just Compensation Clause of the Fifth Amendment in planning and carrying out governmental actions so that they do not result in the imposition of unanticipated or undue additional burdens on the public fisc.
(b) Actions undertaken by governmental officials result in a physical invasion or occupancy of private property, and regulations imposed on private property that substantially affect its value or use, may constitute a taking of property. Further, governmental action may amount to a taking even though the action results in less than a complete deprivation of all use or value, or of all separate and distinct interests in the same private property and even if the action constituting a taking is temporary in nature.

(c) Private property refers to all property protected by the Just Compensation Clause of the Fifth Amendment.

(d) ‘‘Actions’’ refers to proposed Federal regulations, proposed Federal legislation, comments on proposed Federal legislation, or other Federal policy statements that, if implemented or enacted, could effect a taking, such as rules and regulations that propose or implement permitting, licensing, or other condition requirements or limitations on private property use, or that require dedications or exactions from owners of private property. ‘‘Policies that have takings implications’’ does not include:

1. Actions abolishing regulations, discontinuing governmental programs, or modifying regulations in a manner that lessens interference with the use of private property;
2. Actions taken with respect to properties held in trust by the United States or in preparation for or during treaty negotiations with foreign nations;
3. Law enforcement actions involving seizure, for violations of law, of property for forfeiture or as evidence in criminal proceedings;
4. Studies or similar efforts or planning activities;
5. Communications between Federal agencies or departments and State or local land-use planning agencies regarding planned or proposed State or local actions regulating private property, or regulations imposed on private property that substantially affect its value or use, may constitute a taking of property. Further, governmental action may amount to a taking even though the action results in less than a complete deprivation of all use or value, or of all separate and distinct interests in the same private property and even if the action constituting a taking is temporary in nature.
6. Private property refers to all property protected by the Fifth Amendment and to reduce the risk of undue or inadvertent burdens on the public fisc.
7. Any military or foreign affairs functions (including procurement functions thereunder) but not including the U.S. Army Corps of Engineers civil works program.

(b) Actions undertaken by governmental officials result in a physical invasion or occupancy of private property, and regulations imposed on private property that substantially affect its value or use, may constitute a taking of property. Further, governmental action may amount to a taking even though the action results in less than a complete deprivation of all use or value, or of all separate and distinct interests in the same private property and even if the action constituting a taking is temporary in nature.

(c) Private property refers to all property protected by the Just Compensation Clause of the Fifth Amendment.

(d) ‘‘Actions’’ refers to proposed Federal regulations, proposed Federal legislation, comments on proposed Federal legislation, or other Federal policy statements that, if implemented or enacted, could effect a taking, such as rules and regulations that propose or implement permitting, licensing, or other condition requirements or limitations on private property use, or that require dedications or exactions from owners of private property. ‘‘Policies that have takings implications’’ does not include:

1. Actions abolishing regulations, discontinuing governmental programs, or modifying regulations in a manner that lessens interference with the use of private property;
2. Actions taken with respect to properties held in trust by the United States or in preparation for or during treaty negotiations with foreign nations;
(b) When a proposed action would place a restriction on a use of private property, the restriction imposed on the use shall not be disproportionate to the extent to which the use contributes to the overall problem that the restriction is imposed to redress.

(c) When a proposed action involves a permitting process or any other decision-making process that will interfere with, or otherwise prohibit, the use of private property pending the completion of the process, the duration of the process shall be kept to the minimum necessary.

(d) Before undertaking any proposed action regulating private property use for the protection of public health or safety, the Executive department or agency involved shall, in internal deliberative documents and any submissions to the Director of the Office of Management and Budget that are required:

1. Identify clearly, with as much specificity as possible, the public health or safety risk created by the private property use that is the subject of the proposed action;

2. Establish that such proposed action substantially advances the purpose of protecting public health and safety against the specifically identified risk;

3. Establish to the extent possible that the restrictions imposed on the private property are not disproportionate to the extent to which the use contributes to the overall risk; and

4. Estimate, to the extent possible, the potential cost to the government in the event that a court later determines that the action constituted a taking.

In instances in which there is an immediate threat to health and safety that constitutes an emergency requiring immediate response, this analysis may be done upon completion of the emergency action.

Sect. 5. Executive Department and Agency Implementation. (a) The head of each Executive department and agency shall designate an official to be responsible for ensuring compliance with this Order with respect to the actions of the department or agency.

(b) Executive departments and agencies shall, to the extent practicable under law, identify the takings implications of proposed regulatory actions and address the merits of those actions in light of the identified takings implications, if any, in all required submissions made to the Office of Management and Budget. Significant takings implications should also be identified and discussed in notices of proposed rule-making and messages transmitting legislative proposals to the Congress stating the departments' and agencies' conclusions on the takings issues.

(c) Executive departments and agencies shall identify each existing Federal rule and regulation against which a takings claim has been made or against which a takings claim is pending including the amount of each claim or award. A "takings" award has been made or a "takings" claim pending if the award was made, or the pending claim brought, pursuant to the Just Compensation Clause of the Fifth Amendment. An itemized compilation of all such awards made in Fiscal Years 1985, 1986, and 1987 and all such pending claims shall be submitted to the Director, Office of Management and Budget, on or before May 16, 1988.

(d) Each Executive department and agency shall submit annually to the Director, Office of Management and Budget, and to the Attorney General an itemized compilation of all awards of just compensation entered against the United States for takings, including awards of interest as well as monies paid pursuant to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601.

(e)(1) The Director, Office of Management and Budget, and the Attorney General shall each, to the extent permitted by law, take action to ensure that the policies of the Executive departments and agencies are consistent with the principles, criteria, and requirements stated in Sections 1 through 5 of this Order, and the Office of Management and Budget shall take action to ensure that all takings awards levied against agencies are properly accounted for in agency budget submissions.

(2) In addition to the guidelines required by Section 1 of this Order, the Attorney General shall, in consultation with each Executive department and agency to which this Order applies, promulgate such supplemental guidelines as may be appropriate to the specific obligations of that department or agency.

Sect. 6. Judicial Review. This Order is intended only to improve the internal management of the Executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

Ronald Reagan.


By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and section 111 of title 31, United States Code, and to cut 50 percent of the executive branch's internal regulations in order to streamline and improve customer service to the American people, it is hereby ordered as follows:

Sect. 1. Regulatory Reductions. Each executive department and agency shall undertake to eliminate not less than 50 percent of its civilian internal management regulations that are not required by law within 3 years of the effective date of this Order. An agency's internal management regulation, for the purposes of this order, means an agency directive or regulation that pertains to its organization, management, or personnel matters. Reductions in agency internal management regulations shall be concentrated in areas that will result in the greatest improvement in productivity, streamlining of operations, and improvement in customer service.

Sect. 2. Coverage. This order applies to all executive branch departments and agencies.

Sect. 3. Implementation. The Director of the Office of Management and Budget shall issue instructions regarding the implementation of this order, including exemptions necessary for the delivery of essential services and compliance with applicable law.

Sect. 4. Independent Agencies. All independent regulatory commissions and agencies are requested to comply with the provisions of this order.

William J. Clinton.


The American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves their health, safety, environment, and well-being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for economic growth; regulatory approaches that respect the role of State, local, and tribal governments; and regulations that are effective, consistent, sensible, and understandable. We do not have such a regulatory system today.

With this Executive order, the Federal Government begins a program to reform and make more efficient the regulatory process. The objectives of this Executive order are to enhance planning and coordination with respect to both new and existing regulations; to reaffirm the primacy of Federal agencies in the regulatory decision-making process; to restore the integrity and legitimacy of regulatory review and oversight; and to make the process more accessible and open to the pub-
lic. In pursuing these objectives, the regulatory process shall be conducted so as to meet applicable statutory requirements and with due regard to the discretion that has been entrusted to the Federal agencies.

Accordingly, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:


(a) The Regulatory Philosophy. Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people. In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

(b) Principles of Regulation. To ensure that the agencies' regulatory programs are consistent with the philosophy set forth above, agencies should adhere to the following principles, to the extent permitted by law and where applicable:

(1) Each agency shall identify the problem that it intends to address (including, where applicable, the failures of private markets or public institutions that warrant new agency action) as well as assess the significance of that problem.

(2) Each agency shall examine whether existing regulations (or other law) have created, or contributed to, the problem that a new regulation is intended to correct and whether those regulations (or other law) should be modified to achieve the intended goal of regulation more effectively.

(3) Each agency shall identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

(4) In setting regulatory priorities, each agency shall consider, to the extent feasible and reasonable, the degree and nature of the risks posed by various substances or activities within its jurisdiction.

(5) When an agency determines that a regulation is the most cost-effective manner of achieving the regulatory objective, it shall design its regulations in the most cost-effective manner to achieve the regulatory objective. In doing so, each agency shall consider incentives for innovation, consistency, predictability, the costs of enforcement and compliance (to the government, regulated entities, and the public), flexibility, distributive impacts, and equity.

(6) Each agency shall assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.

(7) Each agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and consequences of, the intended regulation.

(8) Each agency shall identify and assess alternative forms of regulation and shall, to the extent feasible, specify performance standards rather than specifying the behavior or manner of compliance that regulated entities must adopt.

(9) Wherever feasible, agencies shall seek views of appropriate State, local, and tribal officials before imposing regulatory requirements that might significantly or uniquely affect those governmental entities. Each agency shall assess the effects of Federal regulations on State, local, and tribal governments, including specifically the availability of resources to carry out those mandates, and seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving regulatory objectives. In addition, as appropriate, agencies shall seek to harmonize Federal regulatory actions with related State, local, and tribal regulatory and other governmental functions.

(10) Each agency shall avoid regulations that are inconsistent, incompatible, or duplicative with the other regulations or those of other Federal agencies.

(11) Each agency shall tailor its regulations to impose the least burden on society, including individuals, businesses of differing sizes, and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.

(12) Each agency shall draft its regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty.

Sinc. 2. Organization. An efficient regulatory planning and review process is vital to ensuring that the Federal Government's regulatory system best serves the American people.

(a) The Agencies. Because Federal agencies are the repositories of significant substantive expertise and experience, they are responsible for developing regulations and assuring that the regulations are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order.

(b) The Office of Management and Budget. Coordinated review of agency rulemaking is necessary to ensure that regulations are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order, and that decisions made by one agency do not conflict with the policies or actions taken or planned by another agency. The Office of Management and Budget (OMB) shall carry out that review function. Within OMB, the Office of Information and Regulatory Affairs (OIRA) is the repository of expertise concerning regulatory issues, including methodologies and procedures that affect more than one agency, this Executive order, and the President's regulatory policies. To the extent permitted by law, OMB shall provide guidance to agencies, assist the President, the Vice President, and other regulatory policy advisors to the President in regulatory planning and shall be the entity that reviews individual regulations, as provided by this Executive order.

(c) The Vice President. The Vice President is the principal advisor to the President on, and shall coordinate the development and presentation of recommendations concerning, regulatory policy, planning, and review, as set forth in this Executive order. In fulfilling their responsibilities under this Executive order, the President and the Vice President shall be assisted by regulatory policy advisors within the Executive Office of the President and by such agency officials and personnel as the President and the Vice President may, from time to time, consult.

Sinc. 3. Definitions. For purposes of this Executive order:

(a) "Advisor" refers to such regulatory policy advisors to the President as the President and Vice President may from time to time consult, including, among others: (1) the Director of OMB; (2) the Chair (or another member) of the Council of Economic Advisers; (3) the Assistant to the President for Economic Policy; (4) the Assistant to the President for Domestic Policy; (5) the Assistant to the President for National Security Affairs; (6) the Assistant to the President for Science and Technology; and (7) the Assistant to the President for
Intergovernmental Affairs; (8) the Assistant to the President and Staff Secretary; (9) the Assistant to the President and Chief of Staff to the Vice President; (10) the Deputy Assistant to the President and Counsel to the President; (11) the Deputy Assistant to the President and Director of the White House Office on Environmental Policy; and (12) the Administrator of OIRA, who also shall coordinate communications relating to this Executive order among the agencies, OMB, the other Advisors, and the Office of the Vice President.

(b) “Agency,” unless otherwise indicated, means any authority of the United States that is an “agency” under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10).

c) “Director” means the Director of OMB.

d) “Regulation” or “rule” means an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency. It does not, however, include:

1. Regulations or rules issued in accordance with the formal rulemaking provisions of 5 U.S.C. 556, 557;
2. Regulations or rules that pertain to a military or foreign affairs function, other than procurement regulations and regulations involving the import or export of non-defense articles and services;
3. Regulations or rules that are limited to agency organization, management, or personnel matters; or
4. Any other category of regulations exempted by the Administrator of OIRA.

e) “Regulatory action” means any substantive action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking.

(f) “Significant regulatory action” means any regulatory action that is likely to result in a rule that may:
1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of non-Federal parties under existing laws or under any agency program or requiring significant impact
4. Raise novel legal or policy issues arising out of statutory or judicial decision-making, the President’s priorities, or the principles set forth in this Executive order.

Significant Planning Mechanism. In order to have an effective regulatory program, to provide for coordination of regulations, to maximize consultation and the resolution of potential conflicts at an early stage, to involve the public and its State, local, and tribal officials in regulatory planning, and to ensure that new or revised regulations promote the President’s priorities and the principles set forth in this Executive order, these procedures shall be followed, to the extent permitted by law:

(a) Agencies’ Policy Meeting. Early in each year’s planning cycle, the Vice President shall convene a meeting of the Advisors and the heads of agencies to seek a common understanding of priorities and to coordinate regulatory efforts to be accomplished in the upcoming year.

(b) Unified Regulatory Agenda. For purposes of this subsection, the term “agency” or “agencies” shall also include those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10). Each agency shall prepare an agenda of all regulations under development or review, at a time specified by the Administrator of OIRA. The description of each regulatory action shall contain, at a minimum, a regulatory identifier number, a brief summary of the action, the legal authority for the action, any legal deadline for the action, and the name and telephone number of a knowledgeable agency official. Agencies may incorporate the information required under 5 U.S.C. 602 and (former) 41 U.S.C. 602 into these agendas.

c) The Regulatory Plan. For purposes of this subsection, the term ‘agency’ or ‘agencies’ shall also include those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10). (1) As part of the Unified Regulatory Agenda, beginning in 1994, each agency shall prepare a Regulatory Plan (Plan) of the most important significant regulatory actions that the agency reasonably expects to issue in proposed or final form in that fiscal year or thereafter. The Plan shall be approved personally by the agency head and shall contain at a minimum:

(A) A statement of the agency’s regulatory objectives and priorities and how they relate to the President’s priorities;

(B) A summary of each planned significant regulatory action including, to the extent possible, alternatives to be considered and preliminary estimates of the anticipated costs and benefits;

(C) A summary of the legal basis for each such action, including whether any aspect of the action is required by statute or court order;

(D) A statement of the need for each such action and, if applicable, how the action will reduce risks to public health, safety, or the environment, as well as how the magnitude of the risk addressed by the action relates to other risks within the jurisdiction of the agency;

(E) The agency’s schedule for action, including a statement of any applicable statutory or judicial deadlines; and

(F) The name, address, and telephone number of a person the public may contact for additional information about the planned regulatory action.

(2) Each agency shall forward its Plan to OIRA by June 1st of each year.

(3) Within 10 calendar days after OIRA has received an agency’s Plan, OIRA shall circulate it to other affected agencies, the Advisors, and the Vice President.

(4) An agency head who believes that a planned regulatory action of another agency may conflict with its own policy or action taken or planned shall promptly notify, in writing, the Administrator of OIRA, who shall forward that communication to the issuing agency, the Advisors, and the Vice President.

(5) If the Administrator of OIRA believes that a planned regulatory action of an agency may be inconsistent with the President’s priorities or the principles set forth in this Executive order, or may be inconsistent with any policy or action taken or planned by another agency, the Administrator of OIRA shall promptly notify, in writing, the affected agencies, the Advisors, and the Vice President.

(6) The Vice President, with the Advisors’ assistance, may consult with the heads of agencies with respect to their Plans and, in appropriate instances, request further consideration or inter-agency coordination.

(7) The Plans developed by the issuing agency shall be published annually in the October publication of the Unified Regulatory Agenda. This publication shall be made available to the Congress, State, local, and tribal governments; and the public. Any views on any aspect of any agency Plan, including whether any planned regulatory action might conflict with any other planned or existing regulation, impose any unintended consequences on the public, or confer any unclaimed benefits on the public, should be directed to the issuing agency, with a copy to OIRA.

(d) Regulatory Working Group. Within 30 days of the date of this Executive order, the Administrator of OIRA shall convene a Regulatory Working Group (“Working Group”), which shall consist of representatives of the Heads of the agencies. The Working Group shall be chaired by the Administrator of OIRA and determined to have significant domestic regulatory responsibility, the Advisors, and the Vice Presi-
dent. The Administrator of OIRA shall chair the Working Group and shall periodically advise the Vice President on the activities of the Working Group. The Working Group shall serve as a forum to assist agencies in identifying and analyzing important regulatory issues (including, among others (1) the development of innovative regulatory techniques, (2) the methods, efficacy, and appropriateness of comparative risk assessment in regulatory decision-making, and (3) the development of short forms and other streamlined regulatory approaches for small businesses and other entities). The Working Group shall meet at least quarterly and may meet as a whole or in subgroups of agencies with an interest in particular issues or subject areas. To inform its discussions, the working Group may commission analytical studies and reports by OIRA, the Administrative Conference of the United States, or any other agency.

(e) Conferences. The Administrator of OIRA shall meet quarterly with representatives of State, local, and tribal governments to identify both existing and proposed regulations that may uniquely or significantly affect those governmental entities. The Administrator of OIRA shall also convene, from time to time, conferences with representatives of businesses, nongovernmental organizations, and the public to discuss regulatory issues of common concern.

§ 5. Existing Regulations. In order to reduce the regulatory burden on the American people, their families, their communities, their State, local, and tribal governments, and their industries, to determine whether regulations promulgated by the executive branch of the Federal Government have become unjustified or unnecessary as a result of changed circumstances; to confirm that regulations are both compatible with each other and not duplicative or inappropriately burdensome in the aggregate; to ensure that all regulations are consistent with the President’s priorities and the principles set forth in this Executive order, within applicable law; and to otherwise improve the effectiveness of existing regulations: (a) Within 90 days of the date of this Executive order, each agency shall submit to OIRA a program, consistent with its resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified or eliminated so as to make the agency’s regulatory program more effective in achieving the regulatory objectives, less burdensome, or in greater alignment with the President’s priorities and the principles set forth in this Executive order. Any significant regulations selected for review shall be included in the agency’s annual Plan. The agency shall also identify any legislative mandates that require the agency to promulgate or continue to impose regulations that the agency believes are unnecessary or outdated by reason of changed circumstances. (b) The Administrator of OIRA shall work with the Regulatory Working Group and other interested entities to pursue the objectives of this section. State, local, and tribal governments are specifically encouraged to assist in the identification of regulations that impose significant or unique burdens on those governmental entities and that appear to have outlived their justification or be otherwise inconsistent with the public interest. (c) The Vice President, in consultation with the Advisors, may identify for review by the appropriate agency or agencies other existing regulations of an agency or groups of regulations of more than one agency that affect a particular group, industry, or sector of the economy, or may identify legislative mandates that may be appropriate for reconsideration by the Congress.

§ 6. Centralized Review of Regulations. The guidelines set forth below shall apply to all regulatory actions, for both new and existing regulations, by agencies other than those agencies specifically exempted by the Administrator of OIRA:

(a) Agency Responsibilities. (1) Each agency shall (consistent with its own rules, regulations, or procedures) provide the public with meaningful participation in the regulatory process. In particular, before issuing a notice of proposed rulemaking, each agency should, where appropriate, seek the involvement of those who are intended to benefit from and those expected to be burdened by any regulation (including, specifically, State, local, and tribal officials). In addition, each agency shall, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

(b) Within 60 days of the date of this Executive order, each agency head shall designate a Regulatory Policy Officer who shall report to the agency head. The Regulatory Policy Officer shall be involved at each stage of the regulatory process to foster the development of effective, innovative, and least burdensome regulations and to further the principles set forth in this Executive order.

(2) In addition to adhering to its own rules and procedures and to the requirements of the Administrative Procedure Act [see Short Title note preceding section 551 of this title], the Regulatory Flexibility Act [5 U.S.C. 601 et seq.], the Paperwork Reduction Act [44 U.S.C. 3501 et seq.], and other applicable law, each agency shall develop its regulatory actions in a timely and uniform manner and adhere to the following procedures with respect to a regulatory action:

(i) The text of the draft regulatory action, together with a reasonably detailed description of the need for the regulatory action and an explanation of how the regulatory action will meet that need; and

(ii) An assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate and, to the extent permitted by law, promotes the President’s priorities and avoids undue interference with State, local, and tribal governments in the exercise of their governmental functions.

(C) For those matters identified as, or determined by the Administrator of OIRA to be, a significant regulatory action, the issuing agency shall provide to OIRA:

(i) An assessment, including the underlying analysis, of benefits anticipated from the regulatory action (such as, but not limited to, the promotion of the efficient functioning of the economy and private markets, the enhancement of health and safety, the protection of the natural environment, and the elimination or reduction of discrimination or bias) together with, to the extent feasible, a quantification of those benefits;
§ 601

that each agency's regulatory actions are consistent with the following guidelines:

OIRA shall, to the extent permitted by law, adhere to subsections (a)(3)(B) and (C) of this section. For those regulatory actions that are governed by a statutory or court-imposed deadline, the agency shall, to the extent practicable, schedule rulemaking proceedings so as to permit sufficient time for OIRA to conduct its review, as set forth below in subsection (b)(2) through (4) of this section.

(E) After the regulatory action has been published in the Federal Register or otherwise issued to the public, the agency shall:

(i) Make available to the public the information set forth in subsections (a)(3)(B) and (C);

(ii) Identify for the public, in a complete, clear, and simple manner, the substantive changes between the draft submitted to OIRA for review and the action subsequently announced; and

(iii) Identify for the public those changes in the regulatory action that were made at the suggestion or recommendation of OIRA.

(F) All information provided to the public by the agency shall be in plain, understandable language.

(b) OIRA Responsibilities. The Administrator of OIRA shall provide meaningful guidance and oversight so that each agency's regulatory actions are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order and do not conflict with the policies or actions of another agency. OIRA shall, to the extent permitted by law, adhere to the following guidelines:

(i) OIRA may review only actions identified by the agency or by OIRA as significant regulatory actions under subsection (a)(3)(A) of this section.

(ii) OIRA shall waive review or notify the agency in writing if (and if so, when and by whom) Vice President and Presidential consideration was requested.

(iii) A notation of all written communications forwarded to an issuing agency under subsection (b)(4)(B)(ii) of this section; and

(iv) OIRA shall publicly disclose relevant information about such communication(s), as set forth below in subsection (b)(4)(C) of this section.

(C) OIRA shall maintain a public, available log that shall contain, at a minimum, the following information pertinent to regulatory actions under review:

(i) The status of all regulatory actions, including if (and if so, when and by whom) Vice President and Presidential consideration was requested.

(ii) The dates and names of individuals involved in all substantive oral communications, including meetings and telephone conversations, between OIRA personnel and any person not employed by the executive branch of the Federal Government, and the subject matter discussed during such communications.

(D) After the regulatory action has been published in the Federal Register or otherwise issued to the public, or after the agency has announced its decision not to publish or issue the regulatory action, OIRA shall make available to the public all documents exchanged between OIRA and the agency during the review by OIRA under this section.

(E) All information provided to the public by OIRA shall be in plain, understandable language.
Resolution of such conflicts shall be informed by recommendations developed by the Vice President, after consultation with the Advisors (and other executive branch officials or personnel whose responsibilities include the subject matter at issue). The development of these recommendations shall be concluded within 60 days after review has been requested.

During the Vice Presidential and Presidential review period, communications with any person not employed by the Federal Government relating to the substance of the regulatory action under review and directed to the Advisors or their staffs or to the staff of the Vice President shall be in writing and shall be forwarded by the recipient to the affected agency(ies) for inclusion in the public docket(s). When the communication is not in writing, such Advisors or staff members shall inform the outside party that the matter is under review and that any comments should be submitted in writing.

At the end of this review process, the President, or the Vice President acting at the request of the President, shall notify the affected agency and the Administrator of OIRA of the President’s decision with respect to the matter.

Section 8. Publication. Except to the extent required by law, an agency shall not publish in the Federal Register or otherwise issue to the public any regulatory action that is subject to review under section 6 of this Executive order until (1) the Administrator of OIRA notifies the agency that OIRA has waived its review of the action or has completed its review without any requests for further consideration, or (2) the applicable time period in section 6(b)(2) expires without OIRA having notified the agency that it is returning the regulatory action for further consideration under section 6(b)(3), whichever occurs first. If the terms of the preceding sentence have not been satisfied and an agency wants to publish or otherwise issue a regulatory action, the head of that agency may request Presidential consideration through the Vice President, as provided under section 7 of this order. Upon receipt of this request, the Vice President shall notify OIRA and the Advisors. The guidelines and time period set forth in section 7 shall apply to the publication of regulatory actions for which Presidential consideration has been sought.

Section 9. Agency Authority. Nothing in this order shall be construed as displacing the agencies’ authority or responsibilities, as authorized by law.

Section 10. Judicial Review. Nothing in this Executive order shall affect any otherwise available judicial review of agency action. This Executive order is intended only to improve the internal management of the Federal Government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Section 11. Revocations. Executive Orders Nos. 12291 and 12498; all amendments to those Executive orders; all guidelines issued under those orders; and any exemptions from those orders heretofore granted for any category of rule are revoked.

[Section 1 of Ex. Ord. No. 13497, which revoked Ex. Ords. 13258 and 13422, was executed by undoing the amendments by those Ex. Ords. to Ex. Ord. 12866, set out above.]

EXECUTIVE ORDER NO. 12975

Ex. Ord. No. 12875, Oct. 26, 1993, 58 F.R. 58095, which provided for the reduction of unfunded mandates on State, local, or tribal governments and increased flexibility for State and local waivers of statutory or regulatory requirements, was revoked by Ex. Ord. No. 13132, §10(b), Aug. 4, 1999, 64 F.R. 43259, set out below.

EXECUTIVE ORDER NO. 13083

Ex. Ord. No. 13083, May 14, 1998, 63 F.R. 27651, which listed fundamental federalism principles and federalism policymaking criteria to guide agencies in formulating and implementing policies and required agencies to have a process to permit State and local governments to provide input into the development of regulatory policies that have federalism implications and to streamline the State and local government waiver process, was revoked by Ex. Ord. No. 13132, §10(b), Aug. 4, 1999, 64 F.R. 43259, set out below.

EXECUTIVE ORDER NO. 13095


EX. ORD. NO. 13107, IMPLEMENTATION OF HUMAN RIGHTS TREATIES

Ex. Ord. No. 13107, Dec. 10, 1998, 63 F.R. 68991, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and bearing in mind the obligations of the United States pursuant to the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), and other relevant treaties, accords, and protocols with the protection and promotion of human rights to which the United States is now or may become a party in the future, it is hereby ordered as follows:

Section 1. Implementation of Human Rights Obligations.

(a) It shall be the practice and policy of the Government of the United States, being committed to the promotion and protection of human rights and fundamental freedoms, fully to respect and implement its obligations under the international human rights treaties to which it is a party, including the ICCPR, the CAT, and the CERD.

(b) It shall also be the practice and policy of the Government of the United States to promote respect for international human rights, both in our relationships with all other countries and by working with and strengthening the various international mechanisms for the promotion of human rights, including, inter alia, those of the United Nations, the International Labor Organization, and the Organization of American States.

Section 2. Responsibility of Executive Departments and Agencies. (a) All executive departments and agencies (as defined in 5 U.S.C. 101–105, including boards and commissions, and hereinafter referred to collectively as "agency" or "agencies") shall maintain a current awareness of United States international human rights obligations that are relevant to their functions and shall perform such functions so as to respect and implement those obligations fully. The head of each agency shall designate a single contact officer who will be responsible for overall coordination of the implementation of this order. Under this order, all such agencies shall retain their established institutional roles in the implementation, interpretation, and enforcement of Federal law and policy.

(b) The heads of agencies shall have lead responsibility, in coordination with other appropriate agencies, for questions concerning implementation of human rights obligations that fall within their respective operating and program responsibilities and authorities or, to the extent that matters do not fall within the operating and program responsibilities and authorities of any agency, that most closely relate to their general areas of concern.

Section 3. Human Rights Inquiries and Complaints. Each agency shall take lead responsibility, in coordination with other appropriate agencies, for responding to inquiries, requests for information, and complaints about violations of human rights obligations that fall within its areas of responsibility or, if the matter does not fall within its areas of responsibility, referring it to the appropriate agency for response.

Section 4. Interagency Working Group on Human Rights Treaties. (a) There is hereby established an Interagency...
Working Group on Human Rights Treaties for the purpose of providing guidance, oversight, and coordination with respect to questions concerning the adherence to and implementation of human rights obligations and related matters.

(b) The designee of the Assistant to the President for National Security Affairs shall chair the Interagency Working Group, which shall consist of appropriate policy and legal representatives at the Assistant Secretary level from the Department of State, the Department of Justice, the Department of Labor, the Department of Defense, the Joint Chiefs of Staff, and other agencies as the chair deems appropriate. The principal members may designate alternates to attend meetings in their stead.

(c) The principal functions of the Interagency Working Group shall include:

(i) coordinating the interagency review of any significant issues concerning the implementation of this order and analysis and recommendations in connection with the ratification of human rights treaties, as such questions may from time to time arise;

(ii) coordinating the preparation of reports that are to be submitted by the United States in fulfillment of treaty obligations;

(iii) coordinating the responses of the United States Government to complaints against it concerning alleged human rights violations submitted to the United Nations, the Organization of American States, and other international organizations;

(iv) developing effective mechanisms to ensure that legislation proposed by the Administration is reviewed for conformity with international human rights obligations and that these obligations are taken into account in reviewing legislation under consideration by the Congress as well;

(v) developing recommended proposals and mechanisms for improving the monitoring of the actions by the various States, Commonwealths, and territories of the United States and, where appropriate, of Native Americans and Federally recognized Indian tribes, including the review of State, Commonwealth, and territorial laws for their conformity with relevant treaties, the provision of relevant information for reports and other monitoring purposes, and the promotion of effective remedial mechanisms;

(vi) developing plans for public outreach and education concerning the provisions of the ICCPR, CAT, CERD, and other relevant treaties, and human rights-related provisions of domestic law;

(vii) coordinating and directing an annual review of United States reservations, declarations, and understandings to human rights treaties, and matters as to which there have been nonfrivolous complaints or allegations of inconsistency with or breach of international human rights obligations, in order to determine whether there should be consideration of any modification of reservations, declarations, or understandings to human rights treaties, or United States practices or laws. The results and recommendations of this review shall be reviewed by the head of each participating agency;

(viii) making such other recommendations as it shall deem appropriate to the President, through the Assistant to the President for National Security Affairs, concerning United States adherence to or implementation of human rights treaties and related matters; and

(ix) coordinating such other significant tasks in connection with human rights treaties or international human rights institutions, including the Inter-American Commission on Human Rights and the Special Rapporteurs and complaints procedures established by the United Nations Human Rights Commission.

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to guarantee the division of governmental responsibilities between the national government and the States that was intended by the Framers of the Constitution, to ensure that the principles of federalism established by the Framers guide the executive departments and agencies in the formulation and implementation of policies, and to further the policies of the Unfunded Mandates Reform Act [of 1995, Pub. L. 104-4, see Tables for classification], it is hereby ordered as follows:

SECTION 1. Definitions. For purposes of this order:

(a) "Policies that have federalism implications" refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

(b) "State" or "States" refer to the States of the United States of America, individually or collectively, and, where relevant, to State governments, including units of local government and other political subdivisions established by the States.

(c) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3521(a), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3522(5).

(d) "State and local officials" means elected officials of State and local governments or their representative national organizations.

SECTION 2. Fundamental Federalism Principles. In formulating and implementing policies that have federalism implications, agencies shall be guided by the following fundamental federalism principles:

(a) Federalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government closest to the people.

(b) The people of the States created the national government and delegated to it enumerated governmental powers. All other sovereign powers, save those expressly prohibited the States by the Constitution, are reserved to the States or to the people.

(c) The constitutional relationship among sovereign governments, State and national, is inherent in the very structure of the Constitution and is formalized in and protected by the Tenth Amendment to the Constitution.

(d) The people of the States are free, subject only to restrictions in the Constitution itself or in constitutionally authorized Acts of Congress, to define the moral, political, and legal character of their lives.

(e) The Framers recognized that the States possess unique authorities, qualities, and abilities to meet the needs of the people and should function as laboratories of democracy.
Section 3. Federalism Policymaking Criteria. In addition to adhering to the fundamental federalism principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have federalism implications:

(a) There shall be strict adherence to constitutional principles. Agencies shall closely examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and shall carefully assess the necessity for such action. To the extent practicable, State and local officials shall be consulted before any such action is implemented. Executive Order 12372 of July 14, 1982 (“Intergovernmental Review of Federal Programs”) [31 U.S.C. 6506 note] remains in effect for the programs and activities to which it is applicable.

(b) National action limiting the policymaking discretion of the States shall be taken only where there is a problem of national significance. Where there are significant uncertainties as to whether national action is authorized or appropriate, agencies shall consult with appropriate State and local officials to determine whether Federal objectives can be attained by other means.

(c) Any regulatory preemption of State law shall be restricted to the minimum level necessary to achieve the objectives of the statute pursuant to which the regulations are promulgated.

(d) When an agency foresees the possibility of a conflict between State law and Federally protected interests within its area of regulatory responsibility, the agency shall consult, to the extent practicable, with appropriate State and local officials in an effort to avoid such a conflict.

(e) When an agency proposes to act through adjudication or rulemaking to preempt State law, the agency shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings.

Section 5. Special Requirements for Legislative Proposals. Agencies shall not submit to the Congress legislation that would:

(a) directly regulate the States in ways that would either interfere with functions essential to the States' separate and independent existence or be inconsistent with the fundamental federalism principles in section 2;

(b) attach to Federal grants conditions that are not reasonably related to the purpose of the grant; or

(c) preempt State law, unless preemption is consistent with the fundamental federalism principles set forth in section 2, and unless a clearly legitimate national purpose, consistent with the federalism policymaking criteria set forth in section 3, cannot otherwise be met.

Section 6. Consultation. Each agency shall have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. Within 90 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency's implementation of this order and that designated official shall submit to the Office of Management and Budget a description of the agency's consultation process.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has federalism implications, that imposes substantial direct compliance costs on State and local governments, and that is not required by statute, unless:

(1) funds necessary to pay the direct costs incurred by the State and local governments in complying with the regulation are provided by the Federal Government;

(2) the agency, prior to the formal promulgation of the regulation:

(A) consulted with State and local officials early in the process of developing the proposed regulation;

(B) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of the Office of Management and Budget a federalism summary impact statement, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary
§ 601

TITLe 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

Page 110

of the nature of their concerns and the agency’s po-
sition supporting the need to issue the regulation,
and a statement of the extent to which the con-
cerns of State and local officials have been met; and,
(C) makes available to the Director of the Office
of Management and Budget any written commu-
nications submitted to the agency by State and
local officials.

(c) To the extent practicable and permitted by law,
no agency shall promulgate any regulation that has
federalism implications and that preempts State law,
unless the agency, prior to the formal promulgation
of the regulation,
(1) consulted with State and local officials early in
the process of developing the proposed regulation;
(2) in a separately identified portion of the pre-
amble to the regulation as it is to be issued in the
Federal Register, provides to the Director of the Of-
vice of Management and Budget a federalism sum-
mary impact statement, which consists of a descrip-
tion of the extent of the agency’s prior consultation
with State and local officials, a summary of the na-
ture of their concerns and the agency’s position sup-
porting the need to issue the regulation, and a state-
ment of the extent to which the concerns of State
and local officials have been met; and,
(3) makes available to the Director of the Office
of Management and Budget any written communica-
tions submitted to the agency by State and local of-
ficials.

Scc. 7. Increasing Flexibility for State and Local Waiv-
ers.

(a) Agencies shall review the processes under which
State and local governments apply for waivers of statu-
tory and regulatory requirements and take appropriate
steps to streamline those processes.

(b) Each agency shall, to the extent practicable and
permitted by law, consider any application by a State
for a waiver of statutory or regulatory requirements in
connection with any program administered by that
agency with a general view toward increasing opportu-
nities for utilizing flexible policy approaches at the
State or local level in cases in which the proposed
waiver is consistent with applicable Federal policy ob-
jectives and is otherwise appropriate.

(c) Each agency shall, to the extent practicable and
permitted by law, render a decision upon a complete
application for a waiver within 120 days of receipt
of such application by the agency. If the application for
a waiver is not granted, the agency shall provide the ap-
plicant with timely written notice of the decision and
the reasons therefor.

d) This section applies only to statutory or regu-
latory requirements that are discretionary and subject
to waiver by the agency.

Scc. 8. Accountability.

(a) In transmitting any draft final regulation that
has federalism implications to the Office of Manage-
ment and Budget pursuant to Executive Order 12866 of
September 30, 1993 [set out above], each agency shall in-
clude a certification from the official designated to en-
sure compliance with this order stating that the re-
quirements of this order have been met in a meaningful
and timely manner.

(b) In transmitting proposed legislation that has fed-
eralism implications to the Office of Management
and Budget, each agency shall include a certification from
the official designated to ensure compliance with this
order, and all relevant requirements of this order have
been met.

(c) Within 180 days after the effective date of this
order, the Director of the Office of Management and
Budget and the Assistant to the President for Intergov-
ernmental Affairs shall confer with State and local of-
ficials to ensure that this order is being properly and
effectively implemented.

Independent Agencies. Independent regulatory agencies are encouraged to comply with the provisions of
this order.
limited to reform of regulations, procurement, and other internal policies and practices, and outreach activities; (d) propose the development of innovative pilot and demonstration programs to increase the participation of faith-based and other community organizations in Federal as well as State and local initiatives; and (e) develop and coordinate department outreach efforts to disseminate information more effectively to faith-based and other community organizations with respect to programming changes, contracting opportunities, and other department initiatives, including but not limited to Web and Internet resources.

SNC. 4. Additional Responsibilities of the Department of Health and Human Services and the Department of Labor Centers. In addition to those responsibilities described in section 3 of this order, the Department of Health and Human Services and the Department of Labor Centers shall, to the extent permitted by law: (a) conduct a comprehensive review of policies and practices affecting existing funding streams governed by so-called “Charitable Choice” legislation to assess the department’s compliance with the requirements of Charitable Choice; and (b) promote and ensure compliance with existing Charitable Choice legislation by the department, as well as its partners in State and local government, and their contractors.

Snc. 5. Reporting Requirements. (a) Report. Not later than 180 days after the date of this order and annually thereafter, each of the five executive department centers described in section 1 of this order shall prepare and submit a report to the White House Faith and Opportunity Initiative.

(b) Contents. The report shall include a description of the department’s efforts in carrying out its responsibilities under this order, including but not limited to:

(1) a comprehensive analysis of the barriers to the full participation of faith-based and other community organizations in the delivery of social services identified pursuant to section 3(a) of this order and the proposed strategies to eliminate those barriers; and

(2) a summary of the technical assistance and other information that will be available to faith-based and other community organizations regarding the program activities of the department and the preparation of applications or proposals for grants, cooperative agreements, contracts, and procurement.

(c) Performance Indicators. The first report, filed 180 days after the date of this order, shall include annual performance goals and measurable objectives for department action. Each report filed thereafter shall measure the department’s performance against the objectives set forth in the initial report.

SNC. 6. Responsibilities of All Executive Departments and Agencies. All executive departments and agencies (agencies) shall: (a) designate an agency employee to serve as the liaison and point of contact with the White House Faith and Opportunity Initiative; and (b) cooperate with the White House Faith and Opportunity Initiative and provide such information, support, and assistance to the White House Faith and Opportunity Initiative as it may request, to the extent permitted by law.

SNC. 7. Administration and Judicial Review. (a) The agencies’ actions directed by this Executive Order shall be carried out subject to the availability of appropriations and to the extent permitted by law.

(b) This order does not create any right or benefit, substantive or procedural, enforceable at law or equity against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

[Ex. Ord. No. 13831, § 2(a), which directed substitution of “Centers for Faith and Opportunity Initiatives” for “Centers for Faith-Based and Community Initiatives” wherever appearing in Ex. Ord. No. 12186, set out above, was executed by also substituting “Center for Faith and Opportunity Initiatives” for “Center for Faith-Based and Community Initiatives” in section 1(a).]

EX. ORD. NO. 13272, PROPER CONSIDERATION OF SMALL ENTITIES IN AGENCY RULEMAKING

Ex. Ord. No. 13272, Aug. 13, 2002, 67 F.R. 53461, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. General Requirements. Each agency shall establish procedures and policies to promote compliance with the Regulatory Flexibility Act, as amended (5 U.S.C. 601 et seq.) (the “Act”). Agencies shall thoroughly review draft rules to assess and take appropriate account of the potential impact on small businesses, small governmental jurisdictions, and small organizations, as provided by the Act. The Chief Counsel for Advocacy of the Small Business Administration (Advocacy) shall remain available to advise agencies in performing that review consistent with the provisions of the Act.

SNC. 2. Responsibilities of Advocacy. Consistent with the requirements of the Act, other applicable law, and Executive Order 12866 of September 30, 1993, as amended (set out above), Advocacy:

(a) shall notify agency heads from time to time of the requirements of the Act; and (b) cooperating with the Office of Information and Regulatory Affairs of the Office of Management and Budget (OIRA).

SNC. 3. Responsibilities of Federal Agencies. Consistent with the requirements of the Act and applicable law, agencies shall:

(a) Within 180 days of the date of this order, issue written procedures and policies, consistent with the Act, to ensure that the potential impacts of agencies’ draft rules on small businesses, small governmental jurisdictions, and small organizations are properly considered during the rulemaking process. Agency heads shall submit, no later than 90 days from the date of this order, their written procedures and policies to Advocacy for comment. Prior to issuing final procedures and policies, agencies shall consider any such comments received within 60 days from the date of the submission of the agencies’ procedures and policies to Advocacy.

(b) This order does not create any right or benefit, substantive or procedural, enforceable at law or equity against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

(c) Give every appropriate consideration to any comments provided by Advocacy regarding a draft rule. Consistent with applicable law and appropriate protection of executive deliberations and legal privileges, an agency shall include, in any explanation or discussion accompanying publication in the Federal Register of a final rule, the agency’s response to any written comments submitted by Advocacy on the proposed rule that preceded the final rule; provided, however, that such inclusion is not required if the head of the agency certifies that the public interest is not served thereby. Agencies and Advocacy may, to the extent permitted by law, engage in an exchange of data and research, as appropriate, to foster the purposes of the Act.

SNC. 4. Definitions. Terms defined in section 601 of title 5, United States Code, including the term “agency,” shall have the same meaning in this order.

SNC. 5. Preservation of Authority. Nothing in this order shall be construed to impair or affect the authority of

S 6. Reporting. For the purpose of promoting compliance with this order, Advocacy shall submit a report not less than annually to the Director of the Office of Management and Budget on the extent of compliance with this order by agencies.

S 7. Confidentiality. Consistent with existing law, Advocacy may publicly disclose information that it receives from the agencies in the course of carrying out this order only to the extent that such information already has been lawfully and publicly disclosed by OIRA or the relevant rulemaking agency.

S 8. Judicial Review. This order is intended only to improve the internal management of the Federal Government. This order is not intended to, and does not, create any right or benefit, substantive or procedural, in or under federal law enforceable at law or equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

GEORGE W. BUSH.

EX. ORD. NO. 13279. EQUAL PROTECTION OF THE LAWS FOR FAITH-BASED AND OTHER NEIGHBORHOOD ORGANIZATIONS


(a) ‘Federal financial assistance’ means assistance that non-Federal entities receive or administer in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, food commodities, direct appropriations, or other assistance, but does not include tax credit, deduction, or exemption.

(b) ‘Social service program’ means a program that is administered by the Federal Government, or by a State or local government using Federal financial assistance, and that provides services directed at reducing poverty, improving opportunities for low-income children, revitalizing low-income communities, empowering low-income families and low-income individuals to become self-sufficient, or otherwise helping people in need. Such programs include, but are not limited to, the following:

(i) child care services, protective services for children and adults, services for children and adults in foster care, adoption services, services related to the management and maintenance of the home, day care services for adults, and services to meet the special needs of children, older individuals, and individuals with disabilities (including physical, mental, or emotional disabilities);
(ii) transportation services;
(iii) job training and related services, and employment services;
(iv) information, referral, and counseling services;
(v) the preparation and delivery of meals and services related to soup kitchens or food banks;
(vi) health support services;
(vii) literacy and mentoring programs;
(viii) services for the prevention and treatment of juvenile delinquency and substance abuse, services for the prevention of crime and the provision of assistance to the victims of crime, and the families of criminal offenders, and services related to intervention in, and prevention of, domestic violence; and
(ix) services related to the provision of assistance for housing under Federal law.

(c) ‘Policies that have implications for faith-based and other neighborhood organizations’ refers to all policies, programs, and regulations, including official guidance and internal agency procedures, that have significant effects on faith-based organizations participating in or seeking to participate in social service programs supported with Federal financial assistance.

(d) ‘Agency’ means a department or agency in the executive branch.

(e) ‘Specified agency heads’ means:

(i) the Attorney General;
(ii) the Secretary of Agriculture;
(iii) the Secretary of Commerce;
(iv) the Secretary of Labor;
(v) the Secretary of Health and Human Services;
(vi) the Secretary of Housing and Urban Development;
(vii) the Secretary of Education;
(viii) the Secretary of Veterans Affairs;
(ix) the Secretary of Homeland Security;
(x) the Administrator of the Environmental Protection Agency;
(xi) the Administrator of the Small Business Administration;
(xii) the Administrator of the United States Agency for International Development; and
(xiii) the Chief Executive Officer of the Corporation for National and Community Service.

S 2. Fundamental Principles. In formulating and implementing policies that have implications for faith-based and other neighborhood organizations, agencies that administer social service programs or that support (including through prime awards or sub-awards) social service programs with Federal financial assistance shall, to the extent permitted by law, be guided by the following fundamental principles:

(a) Federal financial assistance for social service programs should be distributed in the most effective and efficient manner possible.

(b) The Nation’s social service capacity will benefit if all eligible organizations, including faith-based and other neighborhood organizations, are able to compete on an equal footing for Federal financial assistance used to support social service programs.

(c) No organization should be discriminated against on the basis of religion or religious belief in the administration or distribution of Federal financial assistance under social service programs.

(d) All organizations that receive Federal financial assistance under social service programs should be prohibited from discriminating against beneficiaries or prospective beneficiaries of the social service programs on the basis of religion or religious belief. Accordingly, organizations, in providing services supported in whole or in part with Federal financial assistance, and in their outreach activities related to such services, should not be allowed to discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

(e) The Federal Government must implement Federal programs in accordance with the Establishment Clause and the Free Exercise Clause of the First Amendment to the United States Constitution, as well as other applicable law, and must monitor and enforce standards regarding the relationship between religion and government in ways that avoid excessive entanglement between religious bodies and governmental entities.

(f) Organizations that engage in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or
proselytization) must perform such activities and offer such services outside of programs that are supported with direct Federal financial assistance (including sub-awards or sub-awards), separately in time or location from any such programs or services supported with direct Federal financial assistance, and participation in any such explicitly religious activities must be voluntary for the beneficiaries of the social service program supported with such Federal financial assistance.

(g) Faith-based organizations should be eligible to compete for Federal financial assistance used to support social service programs and to participate fully in the social service programs supported with Federal financial assistance without impairing their independence, autonomy, expression outside the programs in question, or religious character. Accordingly, a faith-based organization that applies for, or participates in, a social service program supported with Federal financial assistance may retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct Federal financial assistance that it receives (including through a prime award or subaward) to support or engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization), or in any other manner prohibited by law. Among other things, faith-based organizations that receive Federal financial assistance may use their facilities to provide social services supported with Federal financial assistance, without removing or altering religious art, icons, scriptures, or other symbols from these facilities. In addition, a faith-based organization that applies for, or participates in, a social service program supported with Federal financial assistance may retain religious terms in its name, select its board members on a religious basis, and include religious references in its organization’s mission statements and other chartering or governing documents.

(h) To promote transparency and accountability, agencies that provide Federal financial assistance for social service programs shall post online, in an easily accessible manner, regulations, guidance documents, and policies that reflect or elaborate upon the fundamental principles described in this section. Agencies shall also post online a list of entities that receive Federal financial assistance may use their facilities to provide social services supported with Federal financial assistance, without removing or altering religious art, icons, scriptures, or other symbols from these facilities. In addition, a faith-based organization that applies for, or participates in, a social service program supported with Federal financial assistance may retain religious terms in its name, select its board members on a religious basis, and include religious references in its organization’s mission statements and other chartering or governing documents.

(i) To promote transparency and accountability, agencies that provide Federal financial assistance for social service programs shall post online, in an easily accessible manner, regulations, guidance documents, and policies that reflect or elaborate upon the fundamental principles described in this section. Agencies shall also post online a list of entities that receive Federal financial assistance may use their facilities to provide social services supported with Federal financial assistance, without removing or altering religious art, icons, scriptures, or other symbols from these facilities. In addition, a faith-based organization that applies for, or participates in, a social service program supported with Federal financial assistance may retain religious terms in its name, select its board members on a religious basis, and include religious references in its organization’s mission statements and other chartering or governing documents.

Sic. 3. Ensuring Uniform Implementation Across the Federal Government. In order to ensure agencies’ policies that have implications for faith-based and other neighborhood organizations and in related guidance, and to ensure that those policies and guidance are consistent with the fundamental principles set forth in section 2 of this order, there is established an Interagency Working Group on Faith-Based and Other Neighborhood Partnerships (Working Group). The Working Group shall meet periodically to review and evaluate existing agency regulations, guidance documents, and policies that have implications for faith-based and other neighborhood organizations. Where appropriate, specified agency heads shall, to the extent permitted by law, amend all such existing policies of their respective agencies to ensure that they are consistent with the fundamental principles set forth in section 2 of this order.

(b) Uniform Agency Implementation. Within 120 days of the date of this order, the Working Group shall submit a report to the President and the Office of Management and Budget (OMB) on its recommendations. The Director of the OMB shall serve as the Co-Chairs of the Working Group, and the Working Group shall convene regular meetings of the Working Group, determine its agenda, and direct its work. In addition to the Co-Chairs, the Working Group shall consist of a senior official with knowledge of policies that have implications for faith-based and other neighborhood organizations from the following agencies and offices:

(i) the Department of State;
(ii) the Department of Justice;
(iii) the Department of the Interior;
(iv) the Department of Agriculture;
(v) the Department of Commerce;
(vi) the Department of Labor;
(vii) the Department of Health and Human Services;
(viii) the Department of Housing and Urban Development;
(ix) the Department of Education;
(x) the Department of Veterans Affairs;
(xi) the Department of Homeland Security;
(xii) the Environmental Protection Agency;
(xiii) the Small Business Administration;
(xiv) the United States Agency for International Development;
(xv) the Corporation for National and Community Service; and
(xvi) other agencies and offices as the President, from time to time, may designate.

(e) Administration of the Initiative. The Department of Health and Human Services shall provide funding and administrative support for the Working Group to the extent permitted by law and within existing appropriations.

Sic. 4. Amendment of Executive Order 11246. Pursuant to section 121(a) of title 40, United States Code, and section 301 of title 3, United States Code, and in order to further the strong Federal interest in ensuring that the cost and progress of Federal procurement contracts are not adversely affected by an artificial restriction of the labor pool caused by the unwarranted exclusion of faith-based organizations from such contracts, section 204 of Executive Order 11246 of September 24, 1965, as amended, [42 U.S.C. 2000e note] is hereby further amended to read as follows:

(i) prohibited uses of direct Federal financial assistance and separation requirements; (ii) protections for religious identity; (iii) the distinction between ‘‘direct’’ and ‘‘Indirect’’ Federal financial assistance; (iv) protections for beneficiaries of social service programs; (v) transparency requirements, consistent with and in furtherance of existing open government initiatives; (vi) obligations of nongovernmental and governmental intermediaries; (vii) instructions for peer reviewers and those who recruit peer reviewers; and (viii) training on these matters for government employees and for Federal, State, and local governmental and nongovernmental organizations that receive Federal financial assistance under social service programs. In developing this report and in reviewing agency regulations and guidance for consistency with section 2 of this order, the Working Group shall consult the March 2010 report and recommendations prepared by the President’s Advisory Council on Faith-Based and Neighborhood Partnerships on the topic of reforming the White House Faith and Opportunity Initiative.
“SEC. 204. (a) The Secretary of Labor may, when the Secretary deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this Order in any specific contract, subcontract, or purchase order.

(b) The Secretary of Labor may, by rule or regulation, exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and no reimbursement of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier.

(c) Section 202 of this Order shall not apply to a Government contractor or subcontractor that is a religious corporation, association, educational institution, or society, with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities. Such contractors and subcontractors are not exempted or excused from complying with the other requirements contained in this Order.

(d) The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor that are in all respects separate and distinct from activities of the contractor related to the performance of the contract: provided, that such an exemption will not interfere with or impede the performance of the contract.

(e) Nothing in this order shall be construed to require the Federal programs, otherwise discourage or disadvantage the participation of faith-based and other community organizations in the delivery of social services by the agency, including but not limited to regulations, rules, orders, procurement, and other internal policies and practices, and outreach activities that either facially discriminate against or otherwise discourage or disadvantage the participation of faith-based and other community organizations in Federal programs.

(f) The agencies shall coordinate with the White House Faith and Opportunity Initiative concerning the implementation of this order.

(g) Nothing in this order shall be construed to require an agency to take any action that would impair the conduct of foreign affairs or the national security.

6. Responsibilities of Executive Departments and Agencies. All executive departments and agencies (agencies) shall:

(a) designate an agency employee to serve as the liaison and point of contact with the White House Faith and Opportunity Initiative; and

(b) cooperate with the White House Faith and Opportunity Initiative and provide such information, support, and assistance to the White House Faith and Opportunity Initiative as it may request, to the extent permitted by law.

7. Judicial Review. This Order is intended only to improve the internal management of the executive branch, and it is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, or entities, its officers, employees or agents, or any person.

Ex. Ord. No. 13280, Responsibilities of the Department of Agriculture and the Agency for International Development With Respect to Faith-Based and Community Initiatives


By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to help the Federal Government coordinate a national effort to expand opportunities for faith-based and other community organizations and strengthen their capacity to better meet social needs in America’s communities, it is hereby ordered as follows:

Section 1. Establishment of Centers for Faith and Opportunity Initiatives at the Department of Agriculture and the Agency for International Development. (a) The Secretary of Agriculture and the Administrator of the Agency for International Development shall each establish within their respective agencies a Center for Faith and Opportunity Initiatives.

(b) Each of these Centers shall be supervised by a Director, appointed by the agency head in consultation with the White House Faith and Opportunity Initiative (White House Faith and Opportunity Initiative).

(c) Each agency shall provide its Center with appropriate staff, administrative support, and other resources to meet its responsibilities under this order.

(d) Each Center shall begin operations no later than 45 days from the date of this order.

Section 2. Purpose of Executive Branch Centers for Faith and Opportunity Initiatives. The purpose of the agency Centers will be to coordinate agency efforts to eliminate regulatory, contracting, and other programmatic obstacles to the participation of faith-based and other community organizations in the provision of social services.

Section 3. Responsibilities of the Centers for Faith and Opportunity Initiatives. Each Center shall, to the extent permitted by law:

(a) conduct, in coordination with the White House Faith and Opportunity Initiative, an agency-wide audit to identify all existing barriers to the participation of faith-based and other community organizations in the delivery of social services by the agency, including but not limited to regulations, rules, orders, procurement, and other internal policies and practices, and outreach activities that either facially discriminate against or otherwise discourage or disadvantage the participation of faith-based and other community organizations in Federal programs;

(b) coordinate a comprehensive agency effort to incorporate faith-based and other community organizations in agency programs and initiatives to the greatest extent possible;

(c) propose initiatives to remove barriers identified pursuant to section 3(a) of this order, including but not limited to reform of regulations, procurement, and other internal policies and practices, and outreach activities;

(d) propose the development of innovative pilot and demonstration programs to increase the participation of faith-based and other community organizations in Federal as well as State and local initiatives; and

(e) develop and coordinate agency outreach efforts to disseminate information more effectively to faith-based and other community organizations with respect to programming changes, contracting opportunities, and other agency initiatives, including but not limited to Web and Internet resources.

Section 4. Reporting Requirements.

(a) Report. Not later than 180 days from the date of this order and annually thereafter, each of the two Centers described in section 1 of this order shall prepare and submit a report to the White House Faith and Opportunity Initiative.

(b) Contents. The report shall include a description of the agency’s efforts in carrying out its responsibilities under this order, including but not limited to:

(i) a comprehensive analysis of the barriers to the full participation of faith-based and other community organizations in the delivery of social services identified pursuant to section 3(a) of this order and the proposed strategies to eliminate those barriers;

(ii) a summary of the technical assistance and other information that will be available to faith-based and other community organizations regarding the program activities of the agency and the preparation of applications or proposals for grants, cooperative agreements, contracts, and procurement.

(c) Performance Indicators. The first report, filed 180 days after the date of this order, shall include annual performance indicators and measurable objectives for agency action. Each report filed thereafter shall meas-
ure the agency's performance against the objectives set forth in the initial report.

Sect. 3. Responsibilities of the Secretary of Agriculture and the Administrator of the Agency for International Development. The Secretary and the Administrator shall:
(a) designate an employee within their respective agencies to serve as the liaison and point of contact with the White House Faith and Opportunity Initiative; and
(b) cooperate with the White House Faith and Opportunity Initiative and provide such information, support, and assistance to the White House Faith and Opportunity Initiative as it may request, to the extent permitted by law.

Sect. 6. Administration and Judicial Review. (a) The agency actions directed by this executive order shall be carried out subject to the availability of appropriations and to the extent permitted by law.
(b) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or by a party against the United States, its agencies, or entities, its officers, employees or agents, or any other person.

[Ex. Ord. No. 13831, § 2(a), which directed substitution of “Centers for Faith and Opportunity Initiatives” for “Centers for Faith-Based and Community Initiatives within appearing in Ex. Ord. No. 13280, set out above, was executed by also substituting “Center for Faith and Opportunity Initiatives” for “Center for Faith-Based and Community Initiatives” in section 1(a).]

Ex. Ord. No. 13342. RESPONSIBILITIES OF THE DEPARTMENT OF COMMERCE AND VETERANS AFFAIRS AND THE SMALL BUSINESS ADMINISTRATION WITH RESPECT TO FAITH-BASED AND COMMUNITY INITIATIVES

Ex. Ord. No. 13342, June 1, 2004, 69 F.R. 31509, as amended by Ex. Ord. No. 13831, § 2(a), May 3, 2018, 83 F.R. 26715, provided:
By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to help the Federal Government coordinate a national effort to expand opportunities for faith-based and other community organizations and to strengthen their capacity to better meet America's social and community needs, it is hereby ordered as follows:

SECTION 1. Establishment of Centers for Faith and Opportunity Initiatives at the Departments of Commerce and Veterans Affairs and the Small Business Administration. (a) The Secretaries of Commerce and Veterans Affairs and the Administrator of the Small Business Administration shall each establish within their respective agencies a Center for Faith and Opportunity Initiatives (Center).
(b) Each of these Centers shall be supervised by a Director, appointed by the agency head in consultation with the White House Faith and Opportunity Initiative (White House Faith and Opportunity Initiative).
(c) Each agency shall provide its Center with appropriate staff, administrative support, and other resources to meet its responsibilities under this order.
(d) Each Center shall begin operations no later than 45 days from the date of this order.

Sect. 2. Purpose of Executive Branch Centers for Faith and Opportunity Initiatives. The purpose of the agency Centers will be to coordinate agency efforts to eliminate regulatory, contracting, and other programmatic obstacles to the participation of faith-based and other community organizations in the delivery of social and community services.

Sect. 3. Responsibilities of the Centers for Faith and Opportunity Initiatives. Each Center shall, to the extent permitted by law:
(a) conduct, in coordination with the White House Faith and Opportunity Initiative, an agency-wide audit to identify all existing barriers to the participation of faith-based and other community organizations in the delivery of social and community services by the agency, including but not limited to regulations, rules, orders, procurement, and other internal policies and practices, and outreach activities that either facially discriminate against or otherwise discourage or disadvantage the participation of faith-based and other community organizations in the agency's programs; and
(b) coordinate a comprehensive agency effort to incorporate faith-based and other community organizations in agency programs and initiatives to the greatest extent possible;
(c) propose initiatives to remove barriers identified pursuant to section 3(a) of this order, including but not limited to reform of regulations, procurement, and other internal policies and practices, and outreach activities;
(d) propose the development of innovative pilot and demonstration programs to increase the participation of faith-based and other community organizations with respect to programming changes, contracting opportunities, and other agency initiatives, including but not limited to Web and Internet resources.

Sect. 4. Reporting Requirements. (a) Report. Not later than 180 days from the date of this order and annually thereafter, each of the three Centers described in section 1 of this order shall prepare and submit a report to the President through the White House Faith and Opportunity Initiative.
(b) Contents. The report shall include a description of the agency's efforts in carrying out its responsibilities under this order, including but not limited to:
(i) a comprehensive analysis of the barriers to the full participation of faith-based and other community organizations in the delivery of social and community services identified pursuant to section 3(a) of this order and the proposed strategies to eliminate those barriers; and
(ii) a summary of the technical assistance and other information that will be available to faith-based and other community organizations regarding the program activities of the agency and the preparation of applications or proposals for grants, cooperative agreements, contracts, and procurement.
(c) Performance Indicators. The first report, filed pursuant to section 4(a) of this order, shall include annual performance indicators and measurable objectives for agency action. Each report filed thereafter shall measure the agency’s performance against the objectives set forth in the initial report.

Sect. 5. Responsibilities of the Secretaries of Commerce and Veterans Affairs and the Administrator of the Small Business Administration. The Secretaries and the Administrator shall:
(a) designate an employee within their respective agencies to serve as the liaison and point of contact with the White House Faith and Opportunity Initiative; and
(b) cooperate with the White House Faith and Opportunity Initiative and provide such information, support, and assistance to the White House Faith and Opportunity Initiative as it may request, to the extent permitted by law.

Sect. 6. Administration and Judicial Review. (a) The agency actions directed by this executive order shall be carried out subject to the availability of appropriations and to the extent permitted by law.
(b) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers, employees or agents, or any other person.

[Ex. Ord. No. 13342, § 2(a), which directed substitution of “Centers for Faith and Opportunity Initiatives” for “Centers for Faith-Based and Community Initiatives” wherever appearing in Ex. Ord. No. 13342, set out above, was executed by also substituting “Centers for Faith and Opportunity Initiatives” for “Center for Faith-Based and Community Initiatives” in section 1(a).]
(b) The Center shall be supervised by a Director appointed by [the] Secretary. The Secretary shall consult with the Director of the White House Faith and Opportunity Initiative (WHOFBCI Director) prior to making such appointment.

(c) The Department shall provide the Center with appropriate staff, administrative support, and other resources to meet its responsibilities under this order.

(d) The Center shall begin operations no later than 45 days from the date of this order.

SEC. 2. Purpose of Center. The purpose of the Center shall be to coordinate agency efforts to eliminate regulatory, contracting, and other programmatic obstacles to the participation of faith-based and other community organizations in the provision of social and community services.

SEC. 3. Responsibilities of the Center for Faith-Based and Community Initiatives. In carrying out the purpose set forth in section 2 of this order, the Center shall:

(a) conduct, in coordination with the WHOFBCI Director, a department-wide audit to identify all existing barriers to the participation of faith-based and other community organizations in the delivery of social and community services by the Department, including but not limited to regulations, rules, orders, procurement, and other internal policies and practices, and outreach activities that unlawfully discriminate against, or otherwise discourage or disadvantage the participation of faith-based and other community organizations in Federal programs;

(b) coordinate a comprehensive departmental effort to incorporate faith-based and other community organizations in Department programs and initiatives to the greatest extent possible;

(c) propose initiatives to remove barriers identified pursuant to section 3(a) of this order, including but not limited to reform of regulations, procurement, and other internal policies and practices, and outreach activities;

(d) propose the development of innovative pilot and demonstration programs to increase the participation of faith-based and other community organizations in Federal as well as State and local initiatives; and

(e) develop and coordinate Departmental outreach efforts to disseminate information more effectively to faith-based and other community organizations with respect to programming changes, contracting opportunities, and other agency initiatives, including but not limited to Web and Internet resources.

SEC. 4. Reporting Requirements.

(a) Report. Not later than 180 days from the date of this order and annually thereafter, the Center shall prepare and submit a report to the WHOFBCI Director.

(b) Contents. The report shall include a description of the Department's efforts in carrying out its responsibilities under this order, including:

(i) a comprehensive analysis of the barriers to the full participation of faith-based and other community organizations in the delivery of social and community services identified pursuant to section 3(a) of this order and the proposed strategies to eliminate those barriers; and

(ii) a summary of the technical assistance and other information that will be available to faith-based and other community organizations regarding the program activities of the agency and the preparation of applications or proposals for grants, cooperative agreements, contracts, and procurement.

(c) Performance Indicators. The first report shall include annual performance indicators and measurable objectives for Departmental action. Each report filed thereafter shall measure the Department's performance against the objectives set forth in the initial report.

SEC. 5. Responsibilities of the Secretary. The Secretary shall:

(a) designate an employee within the department to serve as the liaison and point of contact with the WHOFBCI Director; and

(b) cooperate with the WHOFBCI Director and provide such information, support, and assistance to the WHOFBCI Director as requested to implement this order.
roadway, park, forest, governmental office building, or military reservation;
(2) projects designated for public, common carrier, public transportation, or public utility use, including those for which a fee is assessed, that serve the general public and are subject to regulation by a governmental entity;
(3) conveying the property to a nongovernmental entity, such as a telecommunications or transportation common carrier, that makes the property available for use by the general public as of right;
(4) preventing or mitigating a harmful use of land that constitutes a threat to public health, safety, or the environment;
(5) acquiring abandoned property;
(6) quieting title to real property;
(7) acquiring ownership or use by a public utility;
(8) facilitating the disposal or exchange of Federal property; or
(9) meeting military, law enforcement, public safety, public transportation, or public health emergencies.

Sect. 4. General Provisions. (a) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.
(b) Nothing in this order shall be construed to impair or otherwise affect:
(i) authority granted by law to a department or agency or the head thereof;
(ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.
(c) This order shall be implemented in a manner consistent with Executive Order 12630 of March 15, 1988.
(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity against the United States, its departments, agencies, entities, officers, employees, or agents, or any other person.

GEORGE W. BUSH.

EX. ORD. No. 13497. REVOCATION OF CERTAIN EXECUTIVE ORDERS CONCERNING REGULATORY PLANNING AND REVIEW
Ex. Ord. No. 13497, Jan. 30, 2009, 74 F.R. 1163, provided:
By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered that:
SEC. 2. The Director of the Office of Management and Budget and the heads of executive departments and agencies shall promptly rescind any orders, rules, regulations, guidelines, or policies implementing or enforcing Executive Order 12866 or Executive Order 13422, to the extent consistent with law.
SEC. 3. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

EX. ORD. No. 13568. IMPROVING REGULATION AND REGULATORY REVIEW
Ex. Ord. No. 13568, Jan. 18, 2011, 76 F.R. 3281, provided:
By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to improve regulation and regulatory review, it is hereby ordered as follows:
SECTION 1. General Principles of Regulation. (a) Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. It must be based on the best available science. It must also allow for public participation and an open exchange of ideas. It must promote predictability and reduce uncertainty. It must identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends. It must take into account benefits and costs, both quantitative and qualitative. It must ensure that regulations are accountable, consistent, transparent, plain language, and easy to understand. It must measure, and seek to improve, the actual results of regulatory requirements.
(b) This order is supplemental to and reaffirms the principles, structures, and definitions governing contemporary regulatory review that were established in Executive Order 12866 of September 30, 1993. As stated in that Executive Order and to the extent permitted by law, each agency must, among other things: (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available cost-effective alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.
(c) In applying these principles, each agency is directed to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. Where appropriate and permitted by law, each agency may consider (and discuss qualitatively) values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

SEC. 2. Public Participation. (a) Regulations shall be adopted through a process that involves public participation. To that end, regulations shall be based, to the extent feasible and consistent with law, on the open exchange of information and perspectives among State, local, and tribal officials, experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole.
(b) To promote that open exchange, each agency, consistent with Executive Order 12866 and other applicable legal requirements, shall endeavor to provide the public with an opportunity to participate in the regulatory process. To the extent feasible and permissible by law, each agency shall afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally be at least 60 days. To the extent feasible and permissible by law, each agency shall also provide, for both proposed and final rules, timely online access to the rulemaking docket on regulations.gov, including relevant scientific and technical findings, in an open format that can be easily searched and downloaded. For proposed rules, such access shall include, to the extent feasible and permitted by law, an opportunity for public comment on all pertinent parts of the rulemaking docket, including relevant scientific and technical findings.
(c) Before issuing a notice of proposed rulemaking, each agency, where feasible and appropriate, shall seek the views of those who are likely to be affected, including those who are likely to benefit from and those who are potentially subject to such rulemaking.

SEC. 3. Integration and Innovation. Some sectors and industries face a significant number of regulatory requirements, some of which may be redundant, inconsistent, or overlapping. Greater coordination across agencies could reduce these requirements, thereby reducing costs and simplifying and harmonizing rules. In developing regulatory actions and identifying appropriate
approaches, each agency shall attempt to promote such coordination, simplification, and harmonization. Each agency shall also seek to identify, as appropriate, means to achieve regulatory goals that are designed to promote innovation.

SIC. 4. Flexible Approaches. Where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, each agency shall identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. These approaches include warnings, appropriate default rules, and disclosure requirements as well as provision of information to the public in a form that is clear and intelligible.

SIC. 5. Science. Consistent with the President’s Memorandum for the Heads of Executive Departments and Agencies, “Scientific Integrity” (March 9, 2009), and its implementing guidance, each agency shall ensure the objectivity of any scientific and technological information and processes used to support the agency’s regulatory actions.

SIC. 6. Retrospective Analyses of Existing Rules. (a) To facilitate the periodic review of existing significant regulations, agencies shall consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. Such retrospective analyses, including supporting data, should be released online whenever possible.

(b) Within 120 days of the date of this order, each agency shall develop and submit to the Office of Information and Regulatory Affairs a preliminary plan, consistent with law and its resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency’s regulatory program more effective or less burdensome in achieving the regulatory objectives.

SIC. 7. General Provisions. (a) For purposes of this order, “agency” shall have the meaning set forth in section 3(b) of Executive Order 12866.

(b) Nothing in this order shall be construed to impair or otherwise affect:
(i) authority granted by law to a department or agency, or the head thereof; or
(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

Ex. Ord. No. 13604, Mar. 22, 2012, 77 F.R. 18887, provided:
By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to significantly reduce the aggregate time required to make decisions in the permitting and review of infrastructure projects by the Federal Government, while improving environmental and community outcomes, it is hereby ordered as follows:

Section 1. Policy. (a) To maintain our Nation’s competitive edge, and ensure an economy built to last, the United States must have fast, reliable, resilient, and environmentally sound means of moving people, goods, energy, and information. In a global economy, we will compete for the world’s investments based on significant part on the quality of our infrastructure. Investing in the Nation’s infrastructure provides immediate and long-term economic benefits for local communities and the Nation as a whole.

The quality of our Nation’s infrastructure depends in critical part on Federal permitting and review proc-
ess, including planning, approval, and consultation processes. These processes inform decision-makers and affected communities about the potential benefits and impacts of proposed infrastructure projects, and ensure that projects are designed, built, and maintained in a manner that is consistent with protecting our public health, welfare, safety, national security, and environment. Reviews and approvals by State, local, tribal, or other jurisdictions. Given these factors, it is critical that executive departments and agencies (agencies) take all steps within their authority, consistent with available resources, to execute Federal permitting and review processes with maximum efficiency and effectiveness, ensuring the health, safety, and security of communities and the environment while supporting vital economic growth.

To achieve that objective, our Federal permitting and review processes must provide a transparent, consistent, and predictable path for both project sponsors and affected communities. They must ensure that agencies set and adhere to timelines and schedules for completion of reviews, set clear permitting performance goals, and track progress against those goals. They must encourage early collaboration among agencies, project sponsors, and affected stakeholders in order to incorporate and address their interests and minimize delays. They must provide for transparency and accountability by utilizing cost-effective information technology to collect and disseminate information about individual projects and agency performance, so that the priorities and concerns of all our citizens are considered. They must rely upon early and active consultation with State, local, and tribal governments to avoid conflicts or duplication of effort, resolve concerns, and allow for concurrent rather than sequential reviews. They must recognize the critical role project sponsors play in assuring the timely and cost-effective reviews and approvals by State, local, tribal, or other agencies to share priorities, work collaboratively and concurrently to advance reviews and permitting decisions, and facilitate the resolution of disputes at all levels of agency organization. Each of these elements must be incorporated into routine agency practice to provide demonstrable improvements in the performance of Federal infrastructure permitting and review processes, including lower costs, more timely decisions, and a healthier, cleaner environment. Also, these elements must be integrated into project planning processes so that projects are designed appropriately to avoid, to the extent practicable, adverse impacts on public health, security, historic properties and other cultural resources, and the environment, and to minimize or mitigate impacts that may occur. Permitting and review process improvements that have proven effective must be expanded and institutionalized.

(b) In advancing this policy, this order expands upon efforts undertaken pursuant to Executive Order 13500 of July 12, 2011 (Interagency Working Group on Coordination of Domestic Energy Development and Permitting in Alaska), Executive Order 13563 of January 18, 2011 (Speeding Infrastructure Development Through More Efficient and Effective Permitting and Environmental Review), and my memorandum of August 31, 2011. There is expected to be a Steering Committee on Federal Infrastructure Permitting and Review Process Improvement (Steering Committee), to be chaired by the Chief Performance Officer (CPO), in consultation with the Chair of the Council on Environmental Quality (CEQ), and the interagency working group as necessary, including the President’s Management Council and Performance Improvement Councils, and, with regard to implementation of the Federal Plan and Agency Plans, publish the report on the Dashboard.

§ 601

(b) Responsibilities of the Steering Committee. The Steering Committee shall:

(i) develop a Federal Permitting and Review Performance Plan (Federal Plan), as described in section 3(a) of this order;

(ii) implement the Federal Plan and coordinate resolution of disputes among Member Agencies relating to implementation of the Federal Plan and Agency Plans for Measurable Performance Improvement.

(iii) coordinate and consult with other agencies, offices, and interagency working groups as necessary, including the President’s Management Council and Performance Improvement Councils, and, with regard to use and expansion of the Dashboard, the Chief Information Officer (CIO) and Chief Technology Officer to implement this order.

(c) Duties of the CPO. The CPO shall:

(i) in consultation with the Chair of CEQ and Member Agencies, issue guidance on the implementation of this order;

(ii) in consultation with Member Agencies, develop and track performance metrics for evaluating implementation of the Federal Plan and Agency Plans; and

(iii) by January 31, 2012, and annually thereafter, after input from interested agencies, evaluate and report to the President on the implementation of the Federal Plan and Agency Plans, and publish the report on the Dashboard.

(f) No Involvement in Particular Permits or Projects. Neither the Steering Committee, nor the CPO, may direct or coordinate agency decisions with respect to any particular permit or project.

§ 3. Plans for Measurable Performance Improvement.

(a) By May 31, 2012, the Steering Committee shall, following coordination with Member Agencies and other interested agencies, develop and publish on the Dashboard a Federal Plan to significantly reduce the aggregate time required to make Federal permitting and review decisions on infrastructure projects while improving outcomes for communities and the environment. The Federal Plan shall include, but not be limited to, the following actions to implement the policies outlined in section 1 of this order, and shall reflect the agreement of any Member Agency with respect to requirements in the Federal Plan affecting such agency:

(i) institutionalizing best practices for: enhancing Federal, State, local, and tribal government coordination on permitting and review processes (such as conducting reviews concurrently rather than sequentially to the extent practicable); avoiding duplicative re-
views; and engaging with stakeholders early in the permitting process;
(ii) developing mechanisms to better communicate permitting processes and resolve disputes among agencies at the national and regional levels;
(iii) institutionalizing use of the Dashboard, working with the CIO to enhance the Dashboard, and utilizing other cost-effective information technology systems to share environmental and project-related information with the public, project sponsors, and permit reviewers; and
(iv) identifying timeframes and Member Agency responsibilities for the implementation of each proposed action.

(b) Each Member Agency shall:
(i) by June 30, 2012, submit to the CPO an Agency Plan identifying those permitting and review processes the Member Agency views as most critical to significantly reducing the aggregate time required to make permitting and review decisions on infrastructure projects while improving outcomes for communities and the environment, and describing specific and measurable actions the agency will take to improve these processes, including:
(1) performance metrics, including timelines or schedules for review;
(2) technological improvements, such as institutionalized use of the Dashboard and other information technology systems;
(3) other practices, such as pre-application procedures, early collaboration with other agencies, project sponsors, and affected stakeholders, and coordination with State, local, and tribal governments; and
(4) steps the Member Agency will take to implement the Federal Plan.
(ii) by July 31, 2012, following coordination with other Member Agencies and interested agencies, publish its Agency Plan on the Dashboard; and
(iii) by December 31, 2012, and every 6 months thereafter, report progress to the CPO on implementing its Agency Plan, as well as specific opportunities for additional improvements to its permitting and review procedures.

SEC. 4. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:
(i) the authority granted by law to an executive department, agency, or the head thereof; or
(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.
(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

This order shall be implemented consistent with Executive Order 13175 of November 6, 2000 (Consultation and Coordination with Indian Tribal Governments) and my memorandum of November 5, 2009 (Tribal Consultation).

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

Ex. Ord. No. 13609, Promoting International Regulatory Cooperation
Ex. Ord. No. 13609, May 1, 2012, 77 FR 26413, provided:
By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to promote international regulatory cooperation, it is hereby ordered as follows:

SEC. 1. Policy. Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review), states that our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. In an increasingly global economy, international regulatory cooperation, consistent with domestic law and prerogatives and U.S. trade policy, can be an important means of promoting the goals of Executive Order 13563.

The regulatory approaches taken by foreign governments may differ from those taken by U.S. regulatory agencies to address similar issues. In some cases, the differences between the regulatory approaches of U.S. agencies and those of their foreign counterparts might not be necessary and might impair the ability of American businesses to export and compete internationally.

In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

SEC. 2. Coordination of International Regulatory Cooperation. (a) The Regulatory Working Group (Working Group) established by Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), which was reaffirmed by Executive Order 13563, shall, as appropriate:
(i) serve as a forum to discuss, coordinate, and develop a common understanding among agencies of U.S. Government positions and priorities with respect to:
(A) international regulatory cooperation activities that are reasonably anticipated to lead to significant regulatory actions;
(B) efforts across the Federal Government to support significant, cross-cutting international regulatory cooperation activities, such as the work of regulatory cooperation councils;
(C) the promotion of good regulatory practices internationally, as well as the promotion of U.S. regulatory approaches, as appropriate; and
(ii) examine, among other things:
(A) appropriate strategies for engaging in the development of regulatory approaches through international regulatory cooperation, particularly in emerging technology areas, when consistent with section 1 of this order;
(B) best practices for international regulatory cooperation with respect to regulatory development, and, where appropriate, information exchange and other regulatory tools; and
(C) factors that agencies should take into account when determining whether and how to consider other regulatory approaches under section 3(d) of this order.
(b) As Chair of the Working Group, the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) shall convene the Working Group as necessary to discuss international regulatory cooperation issues as described above, and the Working Group shall include a representative from the Office of the United States Trade Representative and, as appropriate, representatives from other agencies and offices.

(c) The activities of the Working Group, consistent with law, shall not duplicate the efforts of existing interagency bodies and coordination mechanisms. The Working Group shall consult with existing interagency bodies when appropriate.

(d) To inform its discussions, and pursuant to section 4 of Executive Order 12866, the Working Group may commission analytical reports and studies by OIRA, the Administrative Conference of the United States, or any other relevant agency, and the Administrator of OIRA may solicit input, from time to time, from representatives of business, nongovernmental organizations, and the public.

(e) The Working Group shall develop and issue guidelines on the applicability and implementation of sections 2 through 4 of this order.

(f) For purposes of this order, the Working Group shall operate by consensus.

SEC. 3. Responsibilities of Federal Agencies. To the extent permitted by law, and consistent with the prin-
ciples and requirements of Executive Order 13563 and Executive Order 12866, each agency shall:

(a) if required to submit a Regulatory Plan pursuant to Executive Order 12866, include in that plan a summary of its international regulatory cooperation activities that are reasonably anticipated to lead to significant regulations, with an explanation of how these activities advance the purposes of Executive Order 13563 and this order;

(b) ensure that significant regulations that the agency identifies as having significant international impacts are designated as such in the Unified Agenda of Federal Regulatory and Deregulatory Actions, on RegInfo.gov, and on Regulations.gov;

(c) in selecting which regulations to include in its retrospective review plan, as required by Executive Order 13563, consider:

(i) reforms to existing significant regulations that address unnecessary differences in regulatory requirements between the United States and its major trading partners, consistent with section 1 of this order, when stakeholders provide adequate information to the agency establishing that the differences are unnecessary; and

(ii) such reforms in other circumstances as the agency determines appropriate; and

(d) for significant regulations that the agency identifies as having significant international impacts, consider, to the extent feasible, appropriate, and consistent with law, any regulatory approaches by a foreign government that the United States has agreed to consider under a regulatory cooperation council work plan.

Sic. 5. Definitions. For purposes of this order:

(a) ‘‘Agency’’ means any authority of the United States that is an ‘‘agency’’ under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(b) ‘‘International impact’’ is a direct effect that a proposed or final regulation is expected to have on international trade, investment, or that otherwise may be of significant interest to the trading partners of the United States.

(c) ‘‘International regulatory cooperation’’ refers to a bilateral, regional, or multilateral process, other than processes that are covered by section 6(a)(1), (ii), and (v) of this order, in which national governments engage in various forms of collaboration and communication with respect to regulations, in particular a process that is reasonably anticipated to lead to the development of significant regulations.

(d) ‘‘Regulation’’ shall have the same meaning as ‘‘regulation’’ or ‘‘rule’’ in section 3(d) of Executive Order 12866.

(e) ‘‘Significant regulation’’ is a proposed or final regulation that constitutes a significant regulatory action.

(f) ‘‘Significant regulatory action’’ shall have the same meaning as in section 3(f) of Executive Order 12866.

Sic. 5. Independent Agencies. Independent regulatory agencies are encouraged to comply with the provisions of this order.

Sic. 6. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to a department or agency, or the head thereof;

(ii) the coordination and development of international trade policy and negotiations pursuant to section 411 of the Trade Agreements Act of 1979 (19 U.S.C. 2451 (2541)) and section 141 of the Trade Act of 1974 (19 U.S.C. 2211);


(iv) the authorization process for the negotiation and conclusion of international agreements pursuant to 1 U.S.C. 122(b)(2) and its implementing regulations at 22 C.F.R. 181.4 and implementing procedures (11 FAM 720);

(v) activities in connection with subchapter II of chapter 53 of title 31 of the United States Code, title 26 of the United States Code, or Public Law 111–333 and the other laws relating to financial regulation; or (vi) [sic] the functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

EX. ORD. No. 13610. IDENTIFYING AND REDUCING REGULATORY BURDENS

Ex. Ord. No. 13610, May 10, 2012, 77 F.R. 28469, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to modernize our regulatory system and to reduce unjustified regulatory burdens and costs, it is hereby ordered as follows:

SECTION 1. Policy. Regulations play an indispensable role in protecting public health, welfare, safety, and our environment, but they can also impose significant burdens and costs. During challenging economic times, we should be especially careful not to impose unjustified regulatory requirements. For this reason, it is particularly important for agencies to conduct retrospective analyses of existing rules to examine whether their retaining justifies and whether they should be modified or streamlined in light of changed circumstances, including the rise of new technologies.

Executive Order 12863 of January 18, 2011 (Improving Regulation and Regulatory Review, states that our regulatory system ‘‘must measure, and seek to improve, the actual results of regulatory requirements.’’ To promote this goal, that Executive Order requires agencies not merely to conduct a single exercise, but to engage in ‘‘periodic review of existing significant regulations.’’ Pursuant to section 6(b) of that Executive Order, agencies are required to develop retrospective review plans to review existing significant regulations in order to ‘‘determine whether any such regulations should be modified, streamlined, expanded, or repealed.’’ The purpose of this requirement is to ‘‘make the agency’s regulatory program more effective or less burdensome in achieving the regulatory objectives.’’

In response to Executive Order 12863, agencies have developed and made available for public comment prospective review plans that identify over five hundred initiatives. A small fraction of those initiatives, already finalized or formally proposed to the public, are anticipated to eliminate billions of dollars in regulatory costs and tens of millions of hours in annual paperwork burdens. Significantly larger savings are anticipated as the plans are implemented and as action is taken on additional initiatives.

As a matter of longstanding practice and to satisfy statutory obligations, many agencies engaged in periodic review of existing regulations prior to the issuance of Executive Order 12863. But further steps should be taken, consistent with law, agency resources, and regulatory priorities, to promote public participation in retrospective review, to modernize our regulatory system, and to institutionalize regular assessment of significant regulations.

Sic. 2. Public Participation in Retrospective Review. Members of the public, including those directly and indirectly affected by regulations, as well as State, local, and tribal governments, have important information about the actual effects of existing regulations. For this reason, and consistent with Executive Order 12863, agencies shall invite, on a regular basis (to be determined by the agency head in consultation with the Office of Information and Regulatory Affairs (OIRA)),
public suggestions about regulations in need of retrospective review and about appropriate modifications to such regulations. To promote an open exchange of information, agencies are encouraged to conduct ongoing retrospective analyses of regulations, including supporting data, be released to the public online wherever practicable.

SEC. 3. Setting Priorities. In implementing and improving retrospective review efforts, agencies shall give special consideration to initiatives that would reduce unjustified regulatory burdens or simplify or harmonize regulatory requirements imposed on small businesses. Consistent with Executive Order 13563 and Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), agencies shall give consideration to the cumulative effects of their own regulations, including cumulative burdens, and shall to the extent practicable and consistent with law give priority to reforms that would make significant progress in reducing those burdens while protecting public health, welfare, safety, and our environment.

SEC. 4. Accountability. Agencies shall regularly report on the status of their retrospective review efforts to OIRA. Agency reports should describe progress, anticipated accomplishments, and proposed timelines for relevant actions, with an emphasis on the priorities described in section 3 of this order. Agencies shall submit draft reports to OIRA on September 10, 2012, and on the second Monday of January and July for each year thereafter, unless directed otherwise through subsequent guidance from OIRA. Agencies shall make final reports available to the public within a reasonable period (not to exceed three weeks from the date of submission of draft reports to OIRA).

SEC. 5. General Provisions. (a) For purposes of this order, “agency” means any authority of the United States that is an “agency” under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to a department or agency, or the head thereof, or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA

EX. ORD. NO. 13707. USING BEHAVIORAL SCIENCE INSIGHTS TO BETTER SERVE THE AMERICAN PEOPLE

Ex. Ord. No. 13707, Sept. 15, 2015, 80 F.R. 56365, provided:

A growing body of evidence demonstrates that behavioral science insights—research findings from fields such as behavioral economics and psychology about how people make decisions and act on them—can be used to design government policies to better serve the American people.

Where Federal policies have been designed to reflect behavioral science insights, they have substantially improved outcomes for the individuals, families, communities, and businesses those policies serve. For example, automatic enrollment in retirement savings plans have made it easier to save for the future, and have helped Americans accumulate billions of dollars in additional retirement savings. Similarly, streamlining the application process for Federal financial aid has made college more financially accessible for millions of students.

To more fully realize the benefits of behavioral insights and deliver better results at a lower cost for the American people, the Federal Government should deliberately design its policies and programs to reflect an understanding of how people engage with, participate in, use, and respond to those policies and programs. By improving the effectiveness and efficiency of Government, behavioral science insights can support a range of national priorities, including helping workers to find better jobs; enabling Americans to lead longer, healthier lives; improving access to educational opportunities and support for success in school; and accelerating the transition to a low-carbon economy.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States, I hereby direct:

SECTION 1. Behavioral Science Insights Policy Directive. (a) Executive departments and agencies (agencies) are encouraged to:

(i) identify policies, programs, and operations where applying behavioral science insights may yield substantial improvements in public welfare, program outcomes, and program cost-effectiveness;

(ii) develop strategies for applying behavioral science insights to programs and, where possible, rigorously test and evaluate the impact of these insights;

(iii) recruit behavioral science experts to join the Federal Government as necessary to achieve the goals of this directive; and

(iv) strengthen agency relationships with the research community to better use empirical findings from the behavioral sciences.

(b) In implementing the policy directives in section (a), agencies shall:

(i) identify opportunities to help qualifying individuals, families, communities, and businesses access public programs and benefits by, as appropriate, streamlining processes that may otherwise limit or delay participation—for example, removing administrative hurdles, shortening wait times, and simplifying forms;

(ii) improve how information is presented to consumers, borrowers, program beneficiaries, and other individuals, whether as directly conveyed by the agency, or in setting standards for the presentation of information, by considering how the content, format, timing, and medium by which information is conveyed affects comprehension and action by individuals, as appropriate;

(iii) identify programs that offer choices and carefully consider how the presentation and standardization of those choices, including the order, number, and arrangement of options, can most effectively promote public welfare, as appropriate, giving particular consideration to the selection and setting of default options; and

(iv) review elements of their policies and programs that are designed to encourage or make it easier for Americans to take specific actions, such as saving for retirement or completing education programs. In doing so, agencies shall consider how the timing, frequency, presentation, and labeling of benefits, taxes, subsidies, and other incentives can more effectively and efficiently promote those actions, as appropriate. Particular attention should be paid to opportunities to use nonfinancial incentives.

(c) For policies with a regulatory component, agencies are encouraged to consider how the collection, analysis, presentation, and labeling of regulatory text, benefits, taxes, subsidies, and other incentives can more effectively and efficiently promote those actions, as appropriate. Particular attention should be paid to opportunities to use nonfinancial incentives.

SEC. 2. Implementation of the Behavioral Science Insights Policy Directive. (a) The Social and Behavioral...
Sciences Team (SBST), under the National Science and Technology Council (NSTC) and chaired by the Assistant to the President for Science and Technology, shall provide agencies with advice and policy guidance to help them execute the policy objectives outlined in section 1 of this order, as appropriate.

(b) The NSTC shall release a yearly report summarizing agency implementation of section 1 of this order each year until 2019. Member agencies of the SBST are expected to contribute to this report.

(c) To help execute the policy set forth in section 1 of this order, the Chair of the SBST shall, within 45 days of the date of this order and thereafter as necessary, issue guidance to assist agencies in implementing this order.

Sec. 3. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to a department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) Independent agencies are strongly encouraged to comply with the requirements of this order.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Barack Obama.

Ex. Ord. No. 13725, Steps To Increase Competition and Better Inform Consumers and Workers To Support Continued Growth of the American Economy

Ex. Ord. No. 13725, Apr. 15, 2016, 81 F.R. 23417, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to protect American consumers and workers and encourage competition in the U.S. economy, it is hereby ordered as follows:

SECTION 1. Policy. Maintaining, encouraging, and supporting a fair, efficient, and competitive marketplace is a cornerstone of the American economy. Consumers and workers need both competitive markets and information to make informed choices.

Certain business practices such as unlawful collusion, illegal bid rigging, price fixing, and wage setting, as well as anticompetitive exclusionary conduct and mergers stall and erode the foundation of America’s economic vitality. The immediate results of such conduct—higher prices and poorer service for customers—less innovation, fewer new businesses being launched, and reduced opportunities for workers—can impact Americans in every walk of life.

Competitive markets also help advance national priorities, such as the delivery of affordable health care, energy independence, and improved access to fast and affordable broadband. Competitive markets also promote economic growth, which creates opportunity for American workers and encourages entrepreneurs to start innovative companies that create jobs.

The Department of Justice (DOJ) and the Federal Trade Commission (FTC) have a proven record of detecting and stopping anticompetitive conduct and challenging mergers and acquisitions that threaten to consolidate markets and reduce competition.

Promoting competitive markets and ensuring that the information needed to make informed choices must be shared across the Federal Government. Executive departments and agencies can contribute to these goals through things, such as pro-competitive rule-making and regulations, and by eliminating regulations that create barriers to or limit competition. Such Government-wide action is essential to ensuring that consumers, workers, startups, small businesses, and farms reap the full benefits of competitive markets.

Sec. 2. Agency Responsibilities. (a) Executive departments and agencies with authorities that could be used to enhance competition (agencies) shall, where consistent with other laws, use those authorities to promote competition, arm consumers and workers with the information they need to make informed choices, and eliminate regulations that restrict competition without corresponding benefits to the American public.

(b) Agencies shall identify specific actions that they can take in their areas of responsibility to build upon efforts to detect abuses such as price fixing, anticompetitive behavior in labor and other input markets, exclusionary conduct, and blocking access to critical resources that are needed for competitive entry.

(c) Agencies shall also identify specific actions that they can bring in their areas of responsibility to address undue burdens on competition. As permitted by law, agencies shall consult with other interested parties to identify ways that the agency can promote competition and deliver meaningful gains to consumers and workers.

(d) Not later than 30 days from the date of this order, agencies shall submit to the Director of the National Economic Council an initial list of (1) actions each agency can potentially take to promote more competitive markets; (2) any specific practices, such as blocking access to critical resources, that potentially restrict meaningful consumer or worker choice or unduly stifle new market entrants, along with any actions the agency can potentially take to address those practices; and (3) any relevant authorities and tools potentially available to enhance competition or make information more widely available for consumers and workers.

(e) Not later than 60 days from the date of this order, agencies shall report to the President, through the Director of the National Economic Council, recommendations on agency-specific actions that eliminate barriers to competition, promote greater competition, and improve consumer access to information needed to make informed purchasing decisions. Such recommendations shall include a list of priority actions, including pro-competitive rule-making, as well as timelines for completing those actions.

(f) Subsequently, agencies shall report semi-annually to the President, through the Director of the National Economic Council, on additional actions that they plan to undertake to promote greater competition.

(g) Sections 2(d), 2(e), and 2(f) of this order do not require reporting of information related to law enforcement policy and activities.

Sec. 3. General Provisions. (a) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(b) Independent agencies are strongly encouraged to comply with the requirements of this order.

(c) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to a department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Barack Obama.
By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. Policy. Place is a strong determinant of opportunity and well-being. Research shows that the neighborhood in which a child grows up impacts his or her odds of going to college, enjoying good health, and obtaining a lifetime of economic opportunities. Even after 73 consecutive months of total job growth since 2009, communities of persistent poverty remain and for far too many, the odds are stacked against opportunity and achieving the American dream. In addition, between now and 2050, growing our economy, expected population growth, climate change, and demographic shifts will require major new investments in physical, social, and technological infrastructure.

Specific challenges in communities—including crime, access to care, opportunities to pursue quality education, lack of housing options, unemployment, and deteriorating infrastructure—can be met by leveraging Federal assistance and resources. While the Federal Government provides rural, suburban, urban, and tribal communities with significant investments in aid annually, coordinating these investments, as appropriate, across agencies based on locally led visions can more effectively reach communities of greatest need to maximize impact. In recent years, the Federal Government has deepened its engagement with communities, recognizing the critical role of these partnerships in enabling Americans to live healthier and more prosperous lives. Since 2015, the Community Solutions Task Force, comprising executive departments, offices, and agencies (agencies) across the Federal Government, has served as the primary interagency coordinator of agency work to engage with communities to deliver improved outcomes. This order builds on recent work to facilitate inter-agency and community-level collaboration to meet the unique needs of communities in a way that reflects these communities’ local assets, economies, geography, size, history, strengths, talent networks, and visions for the future.

SFC. 2. Principles. Our effort to modernize the Federal Government’s work with communities is rooted in the following principles:

(a) A community-driven, locally led vision and long-term plan for clear outcomes should guide individual projects.

(b) The Federal Government should coordinate its efforts across the Federal, regional, tribal, and community level, and with cross-sector partners, to offer a more seamless process for communities to access needed support and ensure equitable investments. The Federal Government should identify, develop, and share local solutions, rely on data to determine what does and does not work, and harness technology and modern collaboration and engagement methods to help share these solutions and help communities meet their local goals.


(a) Establishment. There is hereby established a Council for Community Solutions (Council), led by two Co-Chairs. One Co-Chair will be an Assistant to the President or the Director of the Office of Management and Budget, as designated by the President. The second Co-Chair will be rotated every 4 years and designated by the President from among the heads of the Departments of Justice, Agriculture, Commerce, Labor, Health and Human Services, Housing and Urban Development, Transportation, and Education, and the Environmental Protection Agency (Agency Co-Chair).

(b) Membership. The Council shall consist of the following members:

(i) the Secretary of State;
(ii) the Secretary of the Treasury;
(iii) the Secretary of Defense;
(iv) the Attorney General;
(v) the Secretary of the Interior;
(vi) the Secretary of Agriculture;
(vii) the Secretary of Commerce;
(viii) the Secretary of Labor;
(ix) the Secretary of Health and Human Services;
(x) the Secretary of Housing and Urban Development;
(xi) the Secretary of Transportation;
(xii) the Secretary of Energy;
(xiii) the Secretary of Education;
(xiv) the Secretary of Veterans Affairs;
(xv) the Secretary of Homeland Security;
(xvi) the Administrator of the Environmental Protection Agency;
(xvii) the Administrator of General Services;
(xviii) the Administrator of the Small Business Administration;
(xix) the Chief Executive Officer of the Corporation for National and Community Service;
(xx) the Chairperson of the National Endowment for the Arts;
(xxi) the Director of the Institute for Museum and Library Services;
(xxii) the Federal Co-Chair of the Delta Regional Authority;
(xxiii) the Federal Co-Chair of the Appalachian Regional Commission;
(xxiv) the Director of the Office of Personnel Management;
(xxv) the Director of the Office of Management and Budget;
(xxvi) the Chair of the Council of Economic Advisers;
(xxvii) the Assistant to the President for Intergovernmental Affairs and Public Engagement;
(xxviii) the Assistant to the President and Cabinet Secretary;
(xxix) the Assistant to the President for Economic Policy and Director of the National Economic Council;
(XXX) the Chair of the Council on Environmental Quality;
(XXXI) the Director of the Office of Science and Technology Policy;
(XXXII) the Assistant to the President and Chief Technology Officer;
(XXXIII) the Administrator of the United States Digital Service; and
(XXXIV) other officials, as the Co-Chairs may designate or invite to participate.

(c) Administration.

(i) The President will designate one of the Co-Chairs to appoint or designate, as appropriate, an Executive Director, who shall coordinate the Council’s activities. The department, agency, or component within the Executive Office of the President in which the Executive Director is appointed or designated, as appropriate, (funding entity) shall provide funding and administrative support for the Council to the extent permitted by law and within existing appropriations as may be necessary for the performance of its functions.

(ii) To the extent permitted by law, including the Economy Act, and within existing appropriations, participating agencies may detail staff to the funding entity to support the Council’s coordination and implementation efforts.

(iii) The Co-Chairs shall convene regular meetings of the Council, determine its agenda, and direct its work. At the direction of the Co-Chairs, the Council may establish subgroups consisting exclusively of Council members or their designees, as appropriate.

(iv) A member of the Council may designate a senior-level official who is part of the member’s department, agency, or office to perform the Council functions of the member.


(a) The Council shall foster collaboration across agencies, policy councils, and offices to coordinate actions, identify working solutions to share broadly, and develop and implement policy recommendations that put the community-driven, locally led vision at the center of policymaking. The Council shall:

(i) The President will designate one of the Co-Chairs to appoint or designate, as appropriate, an Executive Director, who shall coordinate the Council’s activities. The department, agency, or component within the Executive Office of the President in which the Executive Director is appointed or designated, as appropriate, (funding entity) shall provide funding and administrative support for the Council to the extent permitted by law and within existing appropriations as may be necessary for the performance of its functions.

(ii) To the extent permitted by law, including the Economy Act, and within existing appropriations, participating agencies may detail staff to the funding entity to support the Council’s coordination and implementation efforts.

(iii) The Co-Chairs shall convene regular meetings of the Council, determine its agenda, and direct its work. At the direction of the Co-Chairs, the Council may establish subgroups consisting exclusively of Council members or their designees, as appropriate.

(iv) A member of the Council may designate a senior-level official who is part of the member’s department, agency, or office to perform the Council functions of the member.


(a) The Council shall foster collaboration across agencies, policy councils, and offices to coordinate actions, identify working solutions to share broadly, and develop and implement policy recommendations that put the community-driven, locally led vision at the center of policymaking. The Council shall:
(i) Work across agencies to coordinate investments in initiatives and practices that align the work of the Federal Government to have the greatest impact on the lives of individuals and communities.

(ii) Use evidence-based practices in policymaking, including identifying existing solutions, scaling up practices that are working, and designing solutions with regular input of the individuals and communities to be served.

(iii) Invest in recruiting, training, and retaining talent to further the effective delivery of services to individuals and communities and empower them with best-practice community engagement options, open government transparency methods, equitable policy approaches, technical assistance and capacity building tools, and data-driven practice.

(b) Consistent with the principles set forth in this order and in accordance with applicable law, including the Federal Advisory Committee Act, the Council shall conduct outreach to representatives of nonprofit organizations, civil rights organizations, businesses, labor and professional organizations, start-up and entrepreneurial communities, State, local, and tribal government agencies, school districts, youth, elected officials, seniors, faith and other community-based organizations, philanthropies, technologists, other institutions of local importance, and affected persons with relevant expertise in the expansion and improvement of efforts to build local capacity, ensure equity, and address economic, social, environmental, and other issues in communities or regions.

This Council builds on existing efforts involving Federal working groups, task forces, memoranda of agreement, and initiatives, including the Community Solutions Task Force, the Federal Working Groups dedicated to supporting the needs and priorities of local leadership in Detroit, Baltimore, and Pine Ridge; the Interagency Working Group on Environmental Justice; the Partnership for Sustainable Communities; Local Foods, Local Places; Performance Partnership Pilots for Disconnected Youth; Empowerment Zones; StrikeForce; Partnerships for Opportunity and Workforce and Economic Revitalization; the Neighborhood Revitalization Initiative; Climate Action Champions; Better Communities Alliance; Investing in Manufacturing Communities Partnership; Promise Zones; and the 2010 Memorandum of Agreement on Interagency Technical Assistance. The Council shall also coordinate with existing Chief Officer Councils across the government with oversight responsibility for human capital, performance improvement, and financial assistance.

Sec. 6. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof, or the status of that department or agency within the Federal Government; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Barack Obama.

Ex. Ord. No. 13771. Reducing Regulation and Controlling Regulatory Costs

Ex. Ord. No. 13771, Jan. 30, 2017, 82 F.R. 9339, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Budget and Accounting Act of 1921, as amended (31 U.S.C. 1101 et seq.), section 1305 of title 31, United States Code, and section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. Purpose. It is the policy of the executive branch to be prudent and financially responsible in the expenditure of funds, from both public and private sources. In addition to the management of the direct expenditure of taxpayer dollars through the budgeting process, it is essential to assess and manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations. Toward that end, it is important that for every new or continued regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.

Sec. 2. Regulatory Cap for Fiscal Year 2017. (a) Unless prohibited by law, whenever an executive department or agency (agency) publicly proposes for notice and comment or otherwise promulgates a new regulation, it shall identify at least two existing regulations to be repealed.

(b) For fiscal year 2017, which is in progress, the heads of all agencies are directed to identify at least two existing regulations to be repealed, based upon the following criteria:

(i) the functions of the Director of the Office of Management and Budget (Director);

(ii) the authority granted by law to an executive department or agency within the Federal Government to have the greatest impact on the lives of individuals and communities.

Sec. 3. Annual Regulatory Cost Submissions to the Office of Management and Budget. (a) Beginning with the fiscal year 2018, and for each fiscal year thereafter, the head of each agency shall identify, for each regulation that increases incremental cost, the offsetting regulations described in section 2(c) of this order, and provide the agency’s best approximation of the total costs or savings associated with each new regulation or repealed regulation.

(b) Each regulation approved by the Director during the Presidential budget process shall be included in the Unified Regulatory Agenda as required under Executive Order 12866, as amended, or any successor order.

(c) Unless otherwise required by law, no regulation shall be issued by an agency if it was not included on the most recent version or update of the published Unified Regulatory Agenda as required under Executive Order 12866, as amended, or any successor order, unless the issuance of such regulation was approved in advance by the Director.

(d) During the Presidential budget process, the Director shall identify to agencies a total amount of incre-
mental costs that will be allowed for each agency in issuing new regulations and repealing regulations for the next fiscal year. No regulations exceeding the agency’s total incremental cost allowance will be permitted in that fiscal year, unless required by law or approved in writing by the Director. The total incremental cost allowance may allow an increase or require a reduction in total regulatory cost.

(e) The Director shall provide the heads of agencies with guidance on the implementation of the requirements in this section.

Sect. 5. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP.

Ex. Ord. No. 13777. ENFORCING THE REGULATORY REFORM AGENDA

Ex. Ord. No. 13777, Feb. 24, 2017, 82 F.R. 12285, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to lower regulatory burdens on the American people by implementing and enforcing regulatory reform, it is hereby ordered as follows:

SECTION 1. Policy. It is the policy of the United States to alleviate unnecessary regulatory burdens placed on the American people by implementing and enforcing regulatory reform, it is hereby ordered as follows:

Sect. 2. Regulatory Reform Officers. (a) Within 60 days of the date of this order, the head of each agency except the heads of agencies receiving waivers under section 5 of this order, shall designate an agency official as its Regulatory Reform Officer (RRO). Each RRO shall oversee the implementation of regulatory reform initiatives and policies to ensure that agencies effectively carry out regulatory reforms, consistent with applicable law. These initiatives and policies include:

(i) Executive Order 13771 of January 30, 2017 (Reducing Regulation and Controlling Regulatory Costs), regarding offsetting the number and cost of new regulations;

(ii) Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), as amended, regarding regulatory planning and review;

(iii) section 6 of Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review), regarding retrospective review; and

(iv) the termination, consistent with applicable law, of programs and activities that depend on or implement Executive Orders, guidance documents, policy memoranda, rule interpretations, and similar documents, or relevant portions thereof, that have been rescinded.

(b) Each agency RRO shall periodically report to the agency head and regularly consult with agency leadership.

Sect. 3. Regulatory Reform Task Forces. (a) Each agency shall establish a Regulatory Reform Task Force composed of:

(i) the agency RRO;

(ii) the agency Regulatory Policy Officer designated under section 6(a)(2) of Executive Order 12866;

(iii) a representative from the agency’s central policy office or equivalent central office; and

(iv) for agencies listed in section 901(b)(1) of title 31, United States Code, at least five additional senior agency officials as determined by the agency head.

(b) Unless otherwise designated by the agency head, the agency RRO shall chair the agency’s Regulatory Reform Task Force.

(c) Each entity staffed by officials of multiple agencies, such as the Chief Acquisition Officers Council, shall form a joint Regulatory Reform Task Force comprised of at least one official described in subsection (a) of this section from each constituent agency’s Regulatory Reform Task Force. Joint Regulatory Reform Task Forces shall implement this order in coordination with the Regulatory Reform Task Forces of their members’ respective agencies.

(d) Each Regulatory Reform Task Force shall evaluate existing regulations (as defined in section 4 of Executive Order 13771) and make recommendations to the agency head regarding their repeal, replacement, modification, consistent with applicable law. At a minimum, each Regulatory Reform Task Force shall attempt to identify regulations that:

(i) eliminate jobs, or inhibit job creation;

(ii) are outdated, unnecessary, or ineffective;

(iii) impose costs that exceed benefits;

(iv) create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;

(v) are inconsistent with the requirements of section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note), or the guidance issued pursuant to that provision, in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or

(vi) derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

(e) In performing the evaluation described in subsection (d) of this section, each Regulatory Reform Task Force shall seek input and other assistance, as permitted by law, from entities significantly affected by Federal regulations, including State, local, and tribal governments, small businesses, consumers, non-governmental organizations, and trade associations.

(f) When implementing the regulatory offsets required by Executive Order 13771, each agency head should prioritize, to the extent permitted by law, those regulations that the agency’s Regulatory Reform Task Force has identified as being outdated, unnecessary, or ineffective pursuant to subsection (d)(ii) of this section.

(g) Within 90 days of the date of this order, and on a schedule determined by the agency head thereafter, each Regulatory Reform Task Force shall provide a report to the agency head detailing the agency’s progress toward the following goals:

(i) improving implementation of regulatory reform initiatives and policies pursuant to section 2 of this order; and

(ii) identifying regulations for repeal, replacement, or modification.

Sect. 4. Accountability. Consistent with the policy set forth in section 1 of this order, each agency should measure its progress in performing the tasks outlined in section 3 of this order.

(a) Agencies listed in section 901(b)(1) of title 31, United States Code, shall incorporate in their annual performance plans (required under the Government Performance and Results Act, as amended (see 31 U.S.C. 1115(b))), performance indicators that measure progress toward the two goals listed in section 3(g) of this order. Within 60 days of the date of this order, the Director of
the Office of Management and Budget (Director) shall issue guidance regarding the implementation of this subsection. Such guidance may also address how agencies not otherwise covered under this subsection should be held accountable for compliance with this order.

(b) The head of each agency shall consider the progress toward the two goals listed in section 3(g) of this order in assessing the performance of the Regulatory Reform Task Force and, to the extent permitted by law, those individuals responsible for developing and issuing agency regulations.

Sect. 5. Waiver. Upon the request of an agency head, the Director may waive compliance with this order if the Director determines that the agency generally issues very few or no regulations (as defined in section 4 of Executive Order 13771). The Director may revoke a waiver at any time. The Director shall publish, at least once every 3 months, a list of agencies with current waivers.

6. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:
(i) the authority granted by law to an executive department or agency, or the head thereof; or
(ii) the authority granted by this order to the Director relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Donald J. Trump.

EX. ORD. NO. 13828. REDUCING POVERTY IN AMERICA BY PROMOTING OPPORTUNITY AND ECONOMIC MOBILITY

Ex. Ord. No. 13828, Apr. 10, 2018, 83 F.R. 15941, provided:
By the authority vested in me as President by the Constitution and the laws of the United States of America, and to promote economic mobility, strong social networks, and accountability to American taxpayers, it is hereby ordered as follows:

Sect. 1. Purpose. The United States and its Constitution were founded on the principles of freedom and equal opportunity for all. To ensure that all Americans would be able to realize the benefits of those principles, especially during hard times, the Government established programs to help families with basic unmet needs. Unfortunately, many of the programs designed to help families have instead delayed economic independence, perpetuated poverty, and weakened family bonds. While bipartisan welfare reform enacted in 1996 was a step toward eliminating the economic stagnation and social harm that can result from long-term Government dependence, the welfare system still fails many recipients, especially children, in poverty and is in need of further reform and modernization in order to increase self-sufficiency, well-being, and economic mobility.

Sect. 2. Policy. (a) In 2017, the Federal Government spent more than $700 billion on low-income assistance. Since its inception, the welfare system has grown into a large bureaucracy that might be susceptible to measuring success by how many people are enrolled in a program rather than by how many have moved from poverty into financial independence. This is not the type of system that was envisioned when welfare programs were instituted in this country. The Federal Government’s role is to clear paths to self-sufficiency, reserving public assistance programs for those who are truly in need. The Federal Government should do everything within its authority to empower individuals by providing opportunities for work, including by investing in Federal programs that are effective at moving people into the workforce and out of poverty. Federal policies and programs to ensure that they are consistent with principles that are central to the American spirit—work, free enterprise, and safeguarding human and economic resources. For those policies or programs that are not succeeding in those respects, it is our duty to either improve or eliminate.

(b) It shall be the policy of the Federal Government to reform the welfare system of the United States so that it empowers people in a manner that is consistent with the following principles, which shall be known as the Principles of Economic Mobility:
(i) Improve employment outcomes and economic independence (including by strengthening existing work requirements for work-capable people and introducing new work requirements when legally permissible);
(ii) Promote strong social networks as a way of sustainably escaping poverty (including through work and marriage);
(iii) Address the challenges of populations that may particularly struggle to find and maintain employment (including single parents, formerly incarcerated individuals, the homeless, substance abusers, individuals with disabilities, and disconnected youth);
(iv) Balance flexibility and accountability both to ensure that State, local, and tribal governments, and other institutions, may tailor their public assistance programs to the unique needs of their communities and to ensure that welfare services and administering agencies can be held accountable for achieving outcomes (including by designing and tracking measures that assess whether programs help people escape poverty);
(v) Reduce the size of bureaucracy and streamline services to promote the effective use of resources;
(vi) Reserve benefits for people with low incomes and limited assets;
(vii) Reduce wasteful spending by consolidating or eliminating Federal programs that are duplicative or ineffective;
(viii) Create a system by which the Federal Government remains updated on State, local, and tribal successes and failures, and facilitates access to that information so that other States and localities can benefit from it; and
(ix) Empower the private sector, as well as local communities, to develop and apply locally based solutions to poverty.

(c) As part of our pledge to increase opportunities for those in need, the Federal Government must first ensure work requirements that are required by law. It must also strengthen requirements that promote obtaining and maintaining employment in order to move people to independence. To support this focus on employment, the Federal Government should:
(i) review current federally funded workforce development programs. If more than one executive department or agency (agency) administers programs that are similar in scope or population served, they should be consolidated, to the extent permitted by law, into the agency that is best equipped to fulfill the expectations of the programs, while ineffective programs should be eliminated; and
(ii) invest in effective workforce development programs and encourage, to the greatest extent possible, entities that have demonstrated success in equipping participants with skills necessary to obtain employment that enables them to financially support themselves and their families in today’s economy.

(d) It is imperative to empower State, local, and tribal governments and private-sector entities to effectively administer and manage public assistance programs. Federal policies should allow local entities to develop and implement programs and strategies that are best for their respective communities. Specifically, policies should allow the private sector, including community and faith-based organizations, to create solutions that alleviate the need for welfare assistance, promote personal responsibility, and reduce reliance on government intervention and resources.

(i) To promote the scope and functioning of government, the Federal Government must afford State, local, and tribal governments the freedom to de-
sign and implement programs that better allocate limited resources to meet different community needs.

(ii) States and localities can use such flexibility to design and evaluate innovative programs that serve diverse populations and families. States and localities can also model their own initiatives on the successful programs of others. To achieve the right balance, Federal officials must continue to discuss opportunities to improve public assistance programs with State and local leaders, including our Nation’s governors.

The Federal Government owes it to Americans to use taxpayer dollars for their intended purposes. Relevant agencies should establish clear metrics that measure outcomes so that agencies administering public assistance programs, such as Housing and Urban Development, Transportation, and Education, may be held accountable. These metrics should include assessments of whether programs help individuals and families find employment, increase earnings, escape poverty, and avoid long-term dependency. Wherever possible, agencies should harmonize their metrics to facilitate easier cross-programmatic comparisons and to encourage further integration of service delivery at the local level. Agencies should also adopt policies that ensure only eligible persons receive benefits and enforce all relevant laws providing that aliens who are not otherwise qualified and eligible may not receive benefits.

(i) All entities that receive funds should be required to guarantee the integrity of the programs they administer. Technology and innovation should drive initiatives that increase program integrity and reduce fraud, waste, and abuse in the current system.

(ii) The Federal Government must support State, local, and tribal partnerships by investing in tools to combat payment errors and verify eligibility for program participants. It must also work alongside public and private partners to assist recipients of welfare assistance to maximize access to services and benefits that support paths to self-sufficiency.


(a) The Secretaries of the Treasury, Agriculture, Commerce, Labor, Health and Human Services, Housing and Urban Development, Transportation, and Education (Secretaries) shall:

(i) review all regulations and guidance documents of their respective agencies relating to waivers, exemptions, or exceptions for public assistance program eligibility requirements to determine whether such documents are, to the extent permitted by law, consistent with the principles outlined in this order;

(ii) review any public assistance programs of their respective agencies that do not currently require work for receipt of benefits or services, and determine whether enforcement of a work requirement would be consistent with Federal law and the principles outlined in this order;

(iii) review any public assistance programs of their respective agencies that do currently require work for receipt of benefits or services, and determine whether the enforcement of such work requirements is consistent with Federal law and the principles outlined in this order;

(iv) within 90 days of the date of this order [Apr. 10, 2018], and based on the reviews required by this section, submit to the Director of the Office of Management and Budget and the Assistant to the President for Domestic Policy a list of recommended regulatory and policy changes and other actions to accomplish the principles outlined in this order; and

(v) not later than 90 days after submission of the recommendations required by section 3(a)(iv) of this order, and in consultation with the Director of the Office of Management and Budget and the Assistant to the President for Domestic Policy, take steps to implement the recommended administrative actions.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP.

EX. ORD. NO. 13891, PROMOTING THE RULE OF LAW THROUGH IMPROVED AGENCY GUIDANCE DOCUMENTS

EX. Ord. No. 13891, Oct. 9, 2019, 84 F.R. 55235, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to ensure that Americans are subject to only those binding rules imposed through duly enacted statutes or through regulations lawfully promulgated by them, and that Americans have fair notice of their obligations, it is hereby ordered as follows:

SECTION 1. Policy. Departments and agencies (agencies) in the executive branch adopt regulations that impose legally binding requirements on the public even though, in our constitutional democracy, only Congress is vested with the legislative power. The Administrative Procedure Act (APA) [see subchapter II (§551 et seq.) of chapter 5, and chapter 7 (§701 et seq.), of this title] generally requires agencies, in exercising that sovereign responsibility, to engage in notice-and-comment rulemaking to provide public notice of proposed regulations under section 553 of title 5, United States Code, allow interested parties an opportunity to comment, consider and respond to significant comments, and publish final regulations in the Federal Register.

Agencies may clarify existing obligations through non-binding guidance documents, which the APA exempts from notice-and-comment requirements. Yet agencies have sometimes used this authority inappropriately in attempts to regulate the public without following the rulemaking procedures of the APA. Even when accompanied by a disclaimer that it is non-binding, a guidance document issued by an agency may carry the implicit threat of enforcement action if the regulated public does not comply. Moreover, the public
frequently has insufficient notice of guidance documents, which are not always published in the Federal Register or distributed to all regulated parties.

Agencies deserve an open and fair regulatory process that imposes new obligations on the public only when consistent with applicable law and after an agency follows appropriate procedures. Therefore, it is the policy of the executive branch, to the extent consistent with applicable law, to require that agencies treat guidance documents as non-binding both in law and in practice, except as incorporated into a contract, take public input into account when appropriate in formulating guidance documents, and make guidance documents readily available to the public. Agencies may impose legally binding requirements on the public only through regulations and on parties on a case-by-case basis through adjudications, and only after appropriate process, except as authorized by law or as incorporated into a contract.

In implementing memorandum under section 6 of this order, each agency shall review its guidance documents and, consistent with applicable law, rescind those guidance documents that it determines by the Administrator of OMB’s Office of Information and Regulatory Affairs (OIRA) under Executive Order 12866, as amended.

(c) “Significant guidance document” means a guidance document that notice and public comment are impracticable, unnecessary, or contrary to the public interest; and (ii) procedures for the public to petition for withdrawal or modification of a particular guidance document, including a designation of the officials to which petitions should be directed; and (iii) for a significant guidance document, as determined by the Administrator of OMB’s Office of Information and Regulatory Affairs (Administrator), unless the agency and the Administrator agree that exigency, safety, health, or other compelling cause warrants an exemption from some or all requirements, provisions requiring:

A. A period of public notice and comment of at least 30 days before issuance of a final guidance document, and a public response from the agency to major concerns raised in comments, except when the agency for good cause finds (and incorporates such finding and a brief statement of reasons therefor into the guidance document) that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest; and

B. Approval on a non-delegable basis by the agency head or by an agency component head appointed by the President, before issuance; and

C. Review by the Office of Information and Regulatory Affairs (OIRA) under Executive Order 12866, before issuance; and

D. Compliance with the applicable requirements for regulations or rules, including significant regulatory actions, set forth in Executive Order 12866, as amended, indexed database that contains or links to all guidance documents in effect from such agency or component. The website shall note that guidance documents lack the force and effect of law, except as authorized by law or as incorporated into a contract. Within 120 days of the date on which OMB issues an implementing memorandum under section 6 of this order, each agency shall review its guidance documents and, consistent with applicable law, rescind those guidance documents that it determines by the Administrator of OMB’s Office of Information and Regulatory Affairs (OIRA) under Executive Order 12866, as amended, indexed database that contains or links to all guidance documents in effect from such agency or component. The website shall note that guidance documents lack the force and effect of law, except as authorized by law or as incorporated into a contract.

Within 240 days of the date on which OMB issues an implementing memorandum, an agency may reinstate a guidance document rescinded under this subsection without complying with any procedures adopted or imposed pursuant to section 4 of this order, to the extent consistent with applicable law, and shall include the guidance document in the relevant database.

The Director shall provide such reports to the President. This subsection shall apply only to guidance documents existing as of the date of this order (Oct. 9, 2019).

§ 601

Sic. 3. Ensuring Transparent Use of Guidance Documents. (a) Within 120 days of the date on which the Office of Management and Budget (OMB) issues an implementing memorandum under section 6 of this order, each agency or agency component, as appropriate, shall establish or maintain on an accessible, indexed database that contains or links to all guidance documents in effect from such agency or component. The website shall note that guidance documents lack the force and effect of law, except as authorized by law or as incorporated into a contract.
shall be construed to impair or otherwise affect:

ments and Budget (OMB) implemented a budget-neutral-

ishing exceptions from this order for categories of

guidance documents, and categorical presumptions re-
garding whether guidance documents are significant, as
appropriate, and may require submission of significant
guidance documents to OIRA for review before the fi-
nalization of agency regulations under subsection (a) of
this section. In light of the Memorandum of Agreement
of April 11, 2018, this section and section 5 of this order
shall not apply to the review relationship (including
significance determinations) between OIRA and any
component of the Department of the Treasury, or to
compliance by the latter with Executive Orders 12866,
13563, 13609, 13771, and 13777. Section 4(a)(iii) and section
5 of this order shall not apply to pre-enforcement rul-

SIC. 5. Executive Orders 12866, 13563, and 13609. The
requirements and procedures of Executive Orders 12866,
13563, and 13609 shall apply to guidance documents, con-
sistent with section 4 of this order.

SIC. 6. Implementation. The Director shall issue
memoranda and, as appropriate, regulations pursuant to
sections 3544(d)(i) and 3516 of title 44, United States
Code, and other appropriate guidance, to provide guid-
ance regarding or otherwise implement this order.

SIC. 7. General Provisions. (a) Nothing in this order
shall be construed to impair or otherwise affect:
(i) the functions of the Director of the Office of Man-
agement and Budget relating to budgetary, administra-
tive, or legislative proposals;
(ii) the authority granted by law to an executive de-
partment or agency, or the head thereof; or
(iii) to any action related to a criminal investiga-
tion or prosecution, including undercover operations, or any
violence or related investigation by the
Department of Justice, including any action related to a
criminal investigative demand under 18 U.S.C. 1968;
(iii) to any investigation of misconduct by an agency
employee or any disciplinary, corrective, or employ-
ment action taken against an agency employee;
(iv) any document or information that is exempt
from disclosure under section 552(b) of title 5, United
States Code (commonly known as the Freedom of Infor-
mation Act); or
(v) in any other circumstance or proceeding to which
application of this order, or any part of this order,
would, in the judgment of the head of the agency,
dermine the national security.

DONALD J. TRUMP.

EX. ORD. No. 13893, INCREASING GOVERNMENT ACCOUNT-
ABILITY FOR ADMINISTRATIVE ACTIONS BY REINI-

RATING ADMINISTRATIVE PAYGO

Ex. Ord. No. 13893, Oct. 10, 2019, 84 F.R. 55487, pro-
vided:

By the authority vested in me as President by the
Constitution and the laws of the United States of
America, it is hereby ordered as follows:

SECTION 1. Purpose. In May 2005, the Office of Manage-
ment and Budget (OMB) implemented a budget-neutral-

ity requirement on executive branch administrative ac-
tions affecting mandatory spending. This mechanism,
commonly referred to as “Administrative pay-as-you-

go” (Administrative PAYGO), requires each executive
department and agency (agency) to include one or more
proposals for reducing mandatory spending whenever an
agency proposes to undertake a discretionary ad-
ministrative action that would increase mandatory
spending.

In practice, however, agencies have applied this re-
quirement with varying degrees of stringency, some-
times resulting in higher mandatory spending. Accord-
ingly, institutionalizing and reinvigorating Adminis-
trative PAYGO through this order is a prudent ap-
proach to keeping mandatory spending under control.

SIC. 2. Policy. It is the policy of the executive branch
to control Federal spending and restore the Nation’s
fiscal security. This policy includes ensuring that agen-
cies consider the costs of their administrative actions,
take steps to offset those costs, and curtail costly ad-
ministrative actions.

SIC. 3. Definitions. For the purposes of this order:
(a) the term “discretionary administrative action”
means any administrative action that is not required
by statute and that would impact mandatory spending,
including, but not limited to, the issuance of any a-
gen rule, demonstration, program notice, or guidance; and
(b) the term “increase” in the context of mandatory
spending means an increase relative to the projection in
the most recent President’s Budget, as described in
31 U.S.C. 1105, or Mid-Session Review, as described in
31 U.S.C. 1106, of what is required, under current law, to
fund the mandatory-spending program.

SIC. 4. Scope. This order applies to discretionary ad-
ministrative actions undertaken by agencies. If an
agency determines that a proposed administrative ac-
tion that would increase mandatory spending is re-
quired by statute and therefore is not a discretionary
administrative action, the agency’s general counsel
shall provide a written opinion to the Director of OMB
(Director) explaining that legal conclusion, and the
agency shall consult with OMB prior to taking further
action.

SIC. 5. Agency Proposal Requirements. (a) Before an
agency may undertake any discretionary administra-
tive action, the head of the agency shall submit the
proposed discretionary administrative action to the Di-
rector for review. Such submission shall include an es-
timate of the budgetary effects of such action.
(b) If an agency’s proposed discretionary administra-
tive action would increase mandatory spending, the
agency head’s submission under subsection (a) of this
section shall include a proposal to undertake one or more
administrative action(s) that would comparably reduce
mandatory spending. Submissions to increase manda-
tory spending that do not include a proposal to offset
such increased spending shall be returned to the agency
for reconsideration.

The Director shall have the discretion to determine
whether a proposed offset in mandatory spending is
comparable to the relevant increase in mandatory
spending, taking into account the magnitude of the off-
set and the increase and any other factors the Director
deems appropriate.

SIC. 6. Issuance of Administrative PAYGO Guidance and
Revocation of OMB PAYGO Memorandum. Within 90 days
of the date of this order [Oct. 10, 2019], the Director
shall issue instructions regarding the implementation
of this order, including how agency administrative ac-
tion proposals that increase mandatory spending and
non-tax receipts will be evaluated. In addition, within
90 days of the date of this order, the Director shall re-
voke OMB Memorandum M-05–13.

SIC. 7. Waiver. The Director may waive the require-
ments of section 5 of this order when the Director con-
cludes that such a waiver is necessary for the delivery of
essential services, for effective program delivery, or
because a waiver is otherwise warranted by the public
interest.
SECTION 1. Policy. It is the policy of the United States to combat the economic consequences of COVID–19 with the same vigor and resourcefulness with which the fight against COVID–19 itself has been waged. The President shall address this economic emergency by rescinding, modifying, waiving, or providing exemptions from regulations and other requirements that may inhibit economic recovery, consistent with applicable law, with protection of the public health and safety, with national and homeland security, and with budgetary priorities and operational feasibility. They should also give businesses, especially small businesses, the confidence they need to re-open by providing guidance on what the law requires; by recognizing the efforts of businesses to comply with often-complex regulations in complicated and swiftly changing circumstances; and by committing to fairness in administrative enforcement and adjudication.

Sect. 2. Definitions. (a) “Emergency authorities” means any statutory, regulatory authorities or exceptions that authorize action in an emergency, in exigent circumstances, for good cause, or in similar situations.

(b) “Agency” has the meaning given in section 3502 of title 44, United States Code.

(c) “Administrative enforcement” includes investigations, assertions of statutory or regulatory violations, and adjudications by adjudicators as defined herein.

(d) “Adjudicator” means an agency official who makes a determination that has legal consequence, as defined in section 2(d) of Executive Order 13892 of October 9, 2019 (Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication) (8 U.S.C. 551 note), for a person, except that it does not mean the head of an agency, a member of a multi-member board that heads an agency, or a Presidential appointee.

(e) “Pre-enforcement ruling” has the meaning given it in section 2(f) of Executive Order 13892.

(f) “Regulatory standard” includes any requirement imposed on the public by a Federal regulation, as defined in section 2(g) of Executive Order 13892, or any recommendation, best practice, standard, or other, similar provision of a Federal guidance document as defined in section 2(c) of Executive Order 13892.

(g) “Unfair surprise” has the meaning given in section 2(e) of Executive Order 13892.

Sect. 3. Federal Response. The heads of all agencies are directed to use, to the fullest extent possible and consistent with applicable law, any emergency authorities that I have previously invoked in response to the COVID–19 outbreak or that are otherwise available to them to support the economic response to the COVID–19 outbreak. The heads of all agencies are encouraged to promote economic recovery through non-regulatory actions.

Sect. 4. Revocation and waiver of regulatory standards. The heads of all agencies shall identify the regulatory standards that may inhibit economic recovery and shall consider taking appropriate action, consistent with applicable law, including by issuing proposed rules as necessary, to temporarily or permanently rescind, modify, waive, or exempt persons or entities from those requirements, and to consider exercising appropriate temporary enforcement discretion or appropriate temporary extensions of time as provided for in enforceable agreements with respect to those requirements, for the purpose of promoting job creation and economic growth, insofar as doing so is consistent with the law and with the policy considerations identified in section 1 of this order.

Sect. 5. Compliance assistance for regulated entities. (a) The heads of all agencies, excluding the Department of Justice, shall accelerate procedures by which a regulated person or entity may receive a pre-enforcement ruling under Executive Order 13892 with respect to whether proposed conduct in response to the COVID–19 outbreak, including any response to legislative or executive economic stimulus actions, is consistent with statutes and regulations administered by the agency,
insofar as doing so is consistent with the law and with the policy considerations identified in section 1 of this order. Pre-enforcement rulings under this subsection may be issued without regard to the requirements of section 6(a) of Executive Order 13892.

(b) The heads of all agencies shall consider whether to formulate, and make public, policies of enforcement discretion that, as permitted by law and as appropriate in the context of particular statutory and regulatory programs and the policy considerations identified in section 1 of this order, decline enforcement against persons and entities that have attempted in reasonable good faith to comply with applicable statutory and regulatory standards, including those persons and entities acting in conformity with a pre-enforcement ruling.

(c) As a result of the ongoing COVID–19 pandemic, the Department of Health and Human Services, including through the Centers for Disease Control and Prevention, and other agencies have issued, or plan to issue in the future, guidance on action suggested to stem the transmission and spread of that disease. In formulating any policies of enforcement discretion under subsection (b) of this section, an agency head should consider a situation in which a person or entity reasonably deems applicable to its circumstances, to be a rationale for declining enforcement under subsection (b) of this section. Non-adherence to guidance shall not by itself form the basis for an enforcement action by a Federal agency.

§ 6. Fairness in Administrative Enforcement and Adjudication. The heads of all agencies shall consider the principles of fairness in administrative enforcement and adjudication listed below, and revise their procedures and practices in light of them, consistent with applicable law and as they deem appropriate in the context of particular statutory and regulatory programs and the policy considerations identified in section 1 of this order.

(a) The Government should bear the burden of proving an alleged violation of law; the subject of enforcement should not bear the burden of proving compliance.

(b) Administrative enforcement should be prompt and fair.

(c) Administrative adjudicators should be independent of enforcement staff.

(d) Consistent with any executive branch confidentiality interests, the Government should provide favorable relevant evidence in possession of the agency to the subject of an administrative enforcement action.

(e) All rules of evidence and procedure should be public, clear, and effective.

(f) Sanctions should be proportionate, transparent, and imposed in adherence to consistent standards and only as authorized by law.

(g) Administrative enforcement should be free of improper government coercion.

(h) Liability should be imposed only for violations of statutes or duly issued regulations, after notice and an opportunity to respond.

(i) Administrative enforcement should be free of unfair surprise.

(j) Agencies must be accountable for their administrative enforcement decisions.

§ 7. Review of Regulatory Response. The heads of all agencies shall review any regulatory standards they have temporarily rescinded, suspended, modified, or waived during the public health emergency, any such actions they take pursuant to section 4 of this order, and other regulatory flexibilities they have implemented in response to COVID–19, whether before or after issuance of this order, and determine which, if any, would promote economic recovery if made permanent, insofar as doing so is consistent with the policy considerations identified in section 1 of this order, and report the results of such review to the Director of the Office of Management and Budget, the Assistant to the President for Domestic Policy, and the Assistant to the President for Economic Policy.
The need for continued progress in this streamlining effort is all the more acute now, due to the ongoing economic crisis. Unnecessary regulatory delays will deny citizens opportunities for jobs and economic security, keeping millions of Americans out of work and hindering our economic recovery from the national emergency. In tandem with this regulatory reform, I will continue to use existing legal authorities to respond to the full dimensions of the national emergency and its economic consequences. These authorities include statutes and regulations that allow for expedited government decision making in exigent circumstances.

SEC. 2. Policy. Agencies, including executive departments, should take all appropriate steps to use their lawful emergency authorities and other authorities to respond to the national emergency and to facilitate the Nation’s economic recovery. As set forth in this order, agencies should take all reasonable measures to speed infrastructure investments and to speed other actions in addition to such investments that will strengthen the economy and return Americans to work, while providing appropriate protection for public health and safety, natural resources, and the environment, as required by law. For purposes of this order, the term “agencies” has the meaning given that term in section 3502(5) of title 5, United States Code, except for the agencies described in section 3502(5) of title 44.

SEC. 3. Expediting the Delivery of Transportation Infrastructure Projects. (a) To facilitate the Nation’s economic recovery, the Secretary of Transportation shall use all relevant emergency and other authorities to expedite work on, and completion of, all authorized and appropriated highway and other infrastructure projects that are within the authority of the Secretary to perform or to advance.

(b) No later than 30 days of the date of this order [June 4, 2020], the Secretary of Transportation shall provide a summary report, listing all projects that have been expedited pursuant to subsection (a) of this section (“expedited transportation projects”), to the Director of the Office of Management and Budget (OMB), the Assistant to the President for Economic Policy, and the Chairman of CEQ. Such report may be combined, as appropriate, with any other reports required by this order.

(c) Within 30 days following the submission of the initial summary report described in subsection (b) of this section, the Secretary of Transportation shall provide a status report to the OMB Director, the Assistant to the President for Economic Policy, and the Chairman of CEQ that shall list any additions or other changes to the list described in subsection (b) of this section. Such status reports shall thereafter be provided to these officials at least every 30 days for the duration of the national emergency and may be combined, as appropriate, with any other reports required by this order.

SEC. 4. Expediting the Delivery of Civil Works Projects Within the Purview of the Army Corps of Engineers. (a) To facilitate the Nation’s economic recovery, the Secretary of the Army, acting through the Assistant Secretary of the Army for Civil Works, shall use all relevant emergency and other authorities to expedite work on, and completion of, all authorized and appropriated civil works projects that are within the authority of the Secretary of the Army to perform or to advance.

(b) No later than 30 days of the date of this order, the Secretary of the Army, acting through the Assistant Secretary of the Army for Civil Works, shall provide a summary report, listing all projects that have been expedited (“expedited Army Corps of Engineers projects”), to the OMB Director, the Assistant to the President for Economic Policy, and the Chairman of CEQ. Such report may be combined, as appropriate, with any other reports required by this order.

(c) Within 30 days following the submission of the initial summary report described in subsection (b) of this section, the Secretary of the Army, acting through the Assistant Secretary of the Army for Civil Works, shall provide a status report to the OMB Director, the Assistant to the President for Economic Policy, and the Chairman of CEQ that shall list any additions or other changes to the list described in subsection (b) of this section. Such status reports shall thereafter be provided to these officials at least every 30 days for the duration of the national emergency and may be combined, as appropriate, with any other reports required by this order.

SEC. 5. Expediting the Delivery of Infrastructure and Other Projects on Federal Lands. (a) As used in this section, the term “Federal lands” means any land or interests in land owned by the United States, including leasehold interests held by the United States, except Indian trust land.

(b) To facilitate the Nation’s economic recovery, the Secretary of Defense, the Secretary of the Interior, and the Secretary of Agriculture shall use all relevant emergency and other authorities to expedite work on, and completion of, all authorized and appropriated infrastructure, energy, environmental, and natural resources projects on Federal lands that are within the authority of each of the Secretaries to perform or to advance.

(c) No later than 30 days of the date of this order, the Secretary of Defense, the Secretary of the Interior, and the Secretary of Agriculture shall each provide a summary report, listing all such projects that have been expedited (“expedited Federal lands projects”), to the OMB Director, the Assistant to the President for Economic Policy, and the Chairman of CEQ. Such report may be combined, as appropriate, with any other reports required by this order.

(d) Within 30 days following the submission of the initial summary report described in subsection (c) of this section, the Secretary of Defense, the Secretary of the Interior, and the Secretary of Agriculture shall each provide a status report to the OMB Director, the Assistant to the President for Economic Policy, and the Chairman of CEQ that shall list the status of all expedited Federal lands projects and shall list any additions or other changes to the list described in subsection (c) of this section. Such status reports shall thereafter be provided to these officials at least every 30 days for the duration of the national emergency and may be combined, as appropriate, with any other reports required by this order.

SEC. 6. National Environmental Policy Act (NEPA) Emergency Regulations and Emergency Procedures. The Council on Environmental Quality has provided appropriate flexibility to agencies for complying with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et seq., in emergency situations. Such flexibility is expressly authorized in CEQ’s regulations, contained in title 40, Code of Federal Regulations, that implement the procedural provisions of NEPA (“NEPA regulations”), which were first issued in 1976. These regulations provide that when emergency circumstances make it necessary to take actions with significant environmental impacts without observing the regulations, agencies may consult with CEQ to make alternative arrangements to take such actions. Using this authority, CEQ has appropriately approved alternative arrangements in a wide variety of pressing emergency situations. These emergencies have included not only natural disasters and threats to the national defense, but also threats to human and animal health, energy security, agriculture and farmers, and employment and economic prosperity.

(a) No later than 30 days of the date of this order, the heads of all agencies:

(i) shall identify planned or potential actions to facilitate the Nation’s economic recovery that:

(A) may be subject to emergency treatment as alternative arrangements pursuant to CEQ’s NEPA regulations and agencies’ own NEPA procedures;

(B) may be subject to statutory exemptions from NEPA;

(ii) shall identify planned or potential actions to facilitate the Nation’s economic recovery that:

(A) may be subject to emergency treatment as alternative arrangements pursuant to CEQ’s NEPA regulations and agencies’ own NEPA procedures;

(B) may be subject to statutory exemptions from NEPA;
§ 601

(C) may be subject to the categorical exclusions that agencies have included in their NEPA procedures pursuant to the NEPA regulations;

(D) may be covered by already completed NEPA analyses that obviate the need for new analyses; or

(E) may otherwise use concise and focused NEPA environmental analyses; and

(ii) shall provide a summary report, listing such actions, to the OMB Director, the Assistant to the President for Economic Policy, and the Chairman of CEQ. Such report may be combined, as appropriate, with any other reports required by this order.

(b) To facilitate the Nation's economic recovery, the heads of all agencies are directed to use, to the fullest extent possible and consistent with applicable law, emergency procedures, statutory exemptions, categorical exclusions, analyses that have already been completed, and concise and focused analyses, consistent with NEPA, CEQ's NEPA regulations, and agencies' NEPA procedures.

(c) Within 30 days following the submission of the initial summary report described in subsection (a)(i) of this section, each agency shall provide a status report to the OMB Director, the Assistant to the President for Economic Policy, and the Chairman of CEQ. Each such report shall list actions taken within the categories described in subsection (a)(i) of this section, shall list the status of any previously reported planned or potential actions, and shall list any new planned or potential actions within these categories. Such status reports shall thereafter be provided to these officials at least every 30 days for the duration of the national emergency and may be combined, as appropriate, with any other reports required by this order.

(d) The Chairman of CEQ shall be available to consult promptly with agencies and to take other prompt and appropriate action concerning the application of CEQ's NEPA emergency regulations.

Sic. 9. Other Authorities Providing for Emergency or Expedited Treatment of Infrastructure Improvements and Other Activities. (a) No later than 30 days of the date of this order, the heads of all agencies, including the Secretary of the Army, the OMB Director; the Assistant to the President for Economic Policy, and the Chairman of CEQ. Each such report may be combined, as appropriate, with any other reports required by this order.

(b) The heads of all agencies are directed to use, to the fullest extent possible and consistent with applicable law, the emergency Army Corps permitting provisions, to facilitate the Nation's economic recovery.

(c) Within 30 days following the submission of the initial summary report described in subsection (a)(i) of this section, each agency shall provide a status report to the Secretary of the Army, acting through the Assistant Secretary of the Army for Civil Works; the OMB Director; the Assistant to the President for Economic Policy; and the Chairman of CEQ. Such report may be combined, as appropriate, with any other reports required by this order.

(d) The Secretary of the Army, acting through the Assistant Secretary of the Army for Civil Works, shall be available to consult promptly with agencies and to take other prompt and appropriate action concerning the application of the emergency Army Corps permitting provisions. The Administrator of the EPA shall provide prompt cooperation to the Secretary of the Army and to agencies in connection with the discharge of the responsibilities described in this section.

Sic. 5. Emergency Regulations and Nationwide Permits Under the Clean Water Act (CWA) and Other Statutes Administered by the Army Corps of Engineers. (a) No later than 30 days of the date of this order, the heads of all agencies, including the Secretary of the Army, acting through the Assistant Secretary of the Army for Civil Works:

(i) shall identify planned or potential actions to facilitate the Nation's economic recovery that may be subject to emergency treatment pursuant to the regulations and nationwide permits promulgated by the Army Corps of Engineers, or jointly by the Corps and any other Federal agency, including the Environmental Protection Agency (EPA), pursuant to section 404 of the Clean Water Act, 33 U.S.C. 1344, section 10 of the Rivers and Harbors Act of March 3, 1899 [probably means Rivers and Harbors Appropriation Act of 1899], 33 U.S.C. 403, and section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972, 33 U.S.C. 1413 (collectively, the "emergency Army Corps permitting provisions"); and

(ii) shall provide a summary report, listing such actions, to the Secretary of the Army, acting through the Assistant Secretary of the Army for Civil Works; the OMB Director; the Assistant to the President for Economic Policy; and the Chairman of CEQ. Such report may be combined, as appropriate, with any other reports required by this order.

(b) The heads of all agencies are directed to use, to the fullest extent possible and consistent with applicable law, the emergency Army Corps permitting provisions, to facilitate the Nation's economic recovery.

(c) Within 30 days following the submission of the initial summary report described in subsection (a)(i) of this section, each agency shall provide a status report to the Secretary of the Army, acting through the Assistant Secretary of the Army for Civil Works; the OMB Director; the Assistant to the President for Economic Policy; and the Chairman of CEQ. Each such report shall list actions taken within subsection (a)(i) of this section, shall list the status of any previously reported planned or potential actions, and shall list any new planned or potential actions that fall within subsection (a)(i). Such status reports shall thereafter be provided to these officials at least every 30 days for the duration of the national emergency and may be combined, as appropriate, with any other reports required by this order.

(d) The Secretary of the Army, acting through the Assistant Secretary of the Army for Civil Works, shall be available to consult promptly with agencies and to take other prompt and appropriate action concerning the application of the emergency Army Corps permitting provisions. The Administrator of the EPA shall provide prompt cooperation to the Secretary of the Army and to agencies in connection with the discharge of the responsibilities described in this section.
frequently designed to protect politically connected in-
ncumbent interests. To this end, my Admin-
istration announced the establishment of the Gov-
ers’ Initiative on Regulatory Innovation, which
works with State, local, and tribal leaders to advance
occupational licensing reforms, better align State and
Federal regulations, and eliminate unnecessary regula-
tions that drive up consumer costs.

Occupational regulations can prevent American workers and job
seekers, even for occupations with limited future earnings potential.
According to recent research, li-
censing requirements have cost our country an esti-
mated 2.85 million jobs and over $230 billion annually in
increased consumer costs.

Therefore, it is the policy of the United States Gov-
ernment to support occupational regulation reform
throughout the Nation, building on occupational li-
censing reforms enacted most recently in Arizona,
Florida, Iowa, Missouri, and South Dakota, guided by
six principles:

Principle 1. All recognized occupational licensure
boards should be subject to active supervision of [sic] a
designated governmental agency or office.

Principle 2. All occupational licensure boards recog-
nized by a State, territorial, or tribal government that
oversee personal qualifications related to the practice of
an occupation should adopt and maintain the cri-
terias and methods of occupational regulation that are
least restrictive to competition sufficient to protect
consumers from significant and demonstrable harm to
their health and safety. The policies and procedures of
such boards should be designed to protect consumer and
worker safety and to encourage competition.

Principle 3. State, territorial, and tribal governments
should review existing occupational regulations, in-
cluding associated scope-of-practice provisions, to en-
sure that their requirements are the least restrictive to
competition sufficient to protect consumers from sig-
nificant and demonstrable harm. State, territorial, and
tribal governments should also regularly review and
analyze all occupational regulations, including associat-
ed personal qualifications required to obtain an occu-
pational license, to ensure the adoption of the least re-
strictive requirements necessary to protect consumers
from significant and demonstrable harm.

Principle 4. Individuals with criminal records should
be encouraged to submit to the appropriate licensure
board a preliminary application for an occupational li-
cense for a determination as to whether the criminal
record would preclude their attainment of the appro-
riate occupational license.

Principle 5. A State, territorial, or tribal government
should issue an occupational license to a person in the
discipline applied for and at the same level of practice
if the individual satisfies four requirements:

(a) the individual holds an occupational license for
that discipline from another jurisdiction in the United
States and is in good standing;

(b) the individual verifies having met, as applicable,
the minimum examination, education, work, or clini-
cal-supervision requirements imposed by the State, territory, or tribe;
(c) the individual:
(i) has not had the license previously revoked or suspended;
(ii) has not been disciplined related to the license by another regulating entity; and
(iii) is not subject to any pending complaint, allegation, or investigation related to the license; and
(iv) the individual pays all applicable fees required to obtain the new license.

Principle 6. Accommodations should be made for any applicant for an occupational license who is the spouse of an active duty member of the uniformed services who is relocating with the member due to the member’s official permanent change of station orders.

SIC. 2. Review of and Report on Authorities, Regulations, Guidance, and Policies. The head of each executive department and agency (agency) shall, within 90 days of the date of this order [Dec. 14, 2020] and every 2 years thereafter:
(a) review the agency’s authorities, regulations, guidance, and policies to identify changes necessary to ensure alignment with the principles set forth in section 1 of this order; and
(b) submit a report to the Director of the Office of Management and Budget (Director of OMB), the Assistant to the President for Domestic Policy, and the Administrator of the Small Business Administration (Director of IGA) identifying any necessary changes identified pursuant to subsection (a) of this section.

SIC. 3. Identification and Report of Opportunities to Encourage Occupational Regulation Reform. (a) Within 90 days of the date of this order, and every 2 years thereafter, the head of each agency shall submit a report to the Director of OMB, the Assistant to the President for Domestic Policy, and the Director of IGA identifying a list of recommended actions available to any and all agencies to recognize and reward State, territorial, and tribal governments that have in place policies and procedures regarding occupational regulation that are consistent with the principles set forth in section 1 of this order; and
(b) Within 120 days of the date of this order, and every 2 years thereafter, the Assistant to the President for Domestic Policy, in consultation with the Secretary of Commerce, the Secretary of Labor, the Director of OMB, the Administrator of the Small Business Administration, the Director of IGA, and the heads of other agencies and offices as appropriate, shall submit a report to the President identifying:
(i) recommended changes to Federal law, regulations, guidance, and other policies to ensure alignment with the principles set forth in section 1 of this order;
(ii) recommendations to be taken by agencies to recognize and reward State, territorial, and tribal governments that have in place policies and procedures regarding occupational regulation that are consistent with the principles set forth in section 1 of this order; and
(iii) a list of criteria that may be used to evaluate whether a State, territorial, or tribal government has in place policies and procedures that are consistent with the principles set forth in section 1 of this order.

SIC. 4. Implementation of Recommendations to Recognize and Reward State, Territorial, and Tribal Regulatory Reform. (a) Within 180 days of the date of this order, and every 2 years thereafter, the Administrator of the Small Business Administration, in consultation with the Secretary of Commerce, the Secretary of Labor, the Secretary of Health and Human Services, and the heads of other agencies as appropriate, shall seek and report on information from State, territorial, and tribal governments regarding whether they have in place policies and procedures consistent with the principles set forth in section 1 of this order and shall make the report publicly available, including on agencies’ websites. The information sought shall be consistent with the criteria identified as required by section 3(b)(iii) of this order.

(b) Consistent with applicable law, and to the extent that the President approves any of the actions recommended pursuant to section 3(b)(ii) of this order, agencies shall implement such actions for the purpose of recognizing and rewarding a State, territorial, or tribal government that has in place policies and procedures regarding occupational regulation that are consistent with the principles set forth in section 1 of this order.

SIC. 5. Definitions. For the purposes of this order:
(a) “Active supervision” means:
(i) reviewing proposed occupational licensure board rules, policies, or other regulatory actions that may restrict market competition prior to issuance;
(ii) ensuring that any entity seeking to impose occupational licensing criteria adopts the criteria that are least restrictive to competition sufficient to protect consumers from significant and demonstrable harm to their health or safety; and
(iii) analyzing, where information is readily available, the effects of proposed rules, policies, and other regulatory actions on employment opportunities, consumer costs, market competition, and administrative costs.
(b) “Agency” has the meaning given that term in section 3502(1) of title 44, United States Code, except that the term does not include the agencies described in section 3502(5) of title 44, United States Code, other than the Bureau of Consumer Financial Protection.
(c) “Occupational license” means a license, registration, or certification without which an individual lacks the legal permission of a State, local, territorial, or tribal government to perform certain defined services for compensation.
(d) “Occupational regulation” includes:
(i) licensing or government certification, by which a government body requires personal qualifications in order to be permitted to practice an occupation; and
(ii) registration, bonding, or inspections, by which a government body does not require personal qualifications in order to be permitted to practice an occupation.

SIC. 6. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:
(i) the authority granted by law to an executive department or agency, or the head thereof; or
(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.
(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.
(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Donald J. Trump.

REGULATORY REFORM—WAIVER OF PENALTIES AND REDUCTION OF REPORTS

Memorandum of President of the United States, Apr. 21, 1993, 60 F.R. 20621, provided:
Memorandum for
The Secretary of State
The Secretary of the Treasury
The Secretary of Defense
The Attorney General
The Secretary of the Interior
The Secretary of Agriculture
The Secretary of Commerce
The Secretary of Labor
The Secretary of Health and Human Services
The Secretary of Housing and Urban Development
The Secretary of Transportation
The Secretary of Energy
The Secretary of Education
The Secretary of Veterans Affairs
The Administrator, Environmental Protection Agency
Authority to Waive Penalties. (a) To the extent permitted by law, each agency shall use its discretion to modify the penalties for small businesses in the following situations. Agencies shall exercise their enforcement discretion to waive the imposition of all or a portion of a penalty when the violation is corrected within a time period appropriate to the violation in question. For those violations that may take longer to correct than the period set by the agency, the agency shall use its enforcement discretion to waive up to 100 percent of the financial penalties if the amounts waived are used to bring the entity into compliance. The provisions in paragraph 1(a) of this memorandum shall apply only where there has been a good faith effort to comply with applicable regulations and the violation does not involve criminal wrongdoing or significant threat to health, safety, or the environment.

(b) Each agency shall, by June 15, 1995, submit a plan to the Director of the Office of Management and Budget ("Director") describing the actions it will take to implement the policies described in paragraph 1(a) of this memorandum. The plan shall provide that the agency will implement the policies described in paragraph 1(a) of this memorandum on or before July 14, 1995. Plans should include information on how notification will be given to frontline workers and small businesses.

2. Cutting Frequency of Reports. (a) Each agency shall reduce by one-half the frequency of the regularly scheduled reports that the public is required, by rule or policy, to provide to the Government (from quarterly to semiannually, from semiannually to annually, etc.), unless the department or agency head determines that such action is not legally permissible; would not adequately protect health, safety, or the environment; would be inconsistent with achieving regulatory flexibility or reducing regulatory burdens; or would impede the effective administration of the agency's program. The duty to make such determinations shall be nondelegable.

(b) Each agency shall, by June 15, 1995, submit a plan to the Director describing the actions it will take to implement the policies in paragraph 2(a), including a copy of any determination that certain reports are excluded.

B. Application and Scope: 1. The Director may issue guidance to help you comply with these directives and to explain more fully the elements of the effective administration of the agency's program. The duty to make such determinations shall be nondelegable.

2. This memorandum does not apply to matters related to law enforcement, national security, or foreign affairs, the importation or exportation of prohibited or restricted items, Government taxes, duties, fees, revenues, or receipts; nor does it apply to agencies (or components thereof) whose principal purpose is the collection, analysis, and dissemination of statistical information.

3. This memorandum is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees.

4. The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

William J. Clinton.

References to the Director of the Federal Emergency Management Agency to be considered to refer and apply to the Administrator of the Federal Emergency Management Agency, see section 612(c) of Pub. L. 109-295, set out as a note under section 313 of Title 6, Domestic Security.

Plain Language in Government Writing

Memorandum of President of the United States, June 1, 1996, 63 F.R. 31885, provided:

Memorandum for the Heads of Executive Departments and Agencies

The Vice President and I have made reinventing the Federal Government a top priority of my Administration. We are determined to make the Government more responsive, accessible, and understandable in its communications with the public.

The Federal Government's writing must be in plain language. By using plain language, we send a clear message about what the Government is doing, what it requires, and what services it offers. Plain language saves the Government and the private sector time, effort, and money.

Plain language requirements vary from one document to another, depending on the intended audience. Plain language documents have logical organization, easy-to-read design features, and use:

- common, everyday words, except for necessary technical terms;
- "you" and other pronouns;
- the active voice; and
- short sentences.

To ensure the use of plain language, I direct you to do the following:

- By October 1, 1998, use plain language in all new documents, other than regulations, that explain how to obtain a benefit or service or how to comply with a requirement you administer or enforce. For example, these documents may include letters, forms, notices, and instructions. By January 1, 2002, all such documents created prior to October 1, 1998, must also be in plain language.
- By January 1, 1999, use plain language in all proposed and final rulemaking documents published in the Federal Register, unless you proposed the rule before that date. You should consider rewriting existing regulations in plain language when you have the opportunity and resources to do so.

The National Partnership for Reinventing Government will issue guidance to help you comply with these directives and to explain more fully the elements of plain language. You should also use customer feedback and common sense to guide your plain language efforts. I ask the independent agencies to comply with these directives.

This memorandum does not confer any right or benefit enforceable by law against the United States or its representatives. The Director of the Office of Management and Budget will publish this memorandum in the Federal Register.

William J. Clinton.

Memorandum of President of the United States, May 20, 2009, 74 F.R. 24698, provided:

Memorandum for the Heads of Executive Departments and Agencies
From our Nation’s founding, the American constitutional order has been a Federal system, ensuring a strong role for both the national Government and the States. The Federal Government’s role in promoting the general welfare and guarding individual liberties is critical, but State law and national law often operate concurrently to provide independent safeguards for the public. Throughout our history, State and local governments have frequently protected health, safety, and the environment more aggressively than has the national Government.

An understanding of the important role of State governments in our Federal system is reflected in long-standing Executive Order 13132 of August 4, 1999 (Federalism), executive departments and agencies have sometimes announced that their regulations preempt State law, including State common law, without explicit preemption by the Congress or an otherwise sufficient basis under applicable legal principles.

The purpose of this memorandum is to state the general policy of my Administration that preemption of State law by executive departments and agencies should be undertaken only with full consideration of the legitimate prerogatives of the States and with a sufficient legal basis for preemption. Executive departments and agencies should be mindful that in our Federal system, the citizens of the several States have distinctive circumstances and values, and that in many instances it is appropriate for them to apply to themselves rules and principles that reflect these circumstances and values. As Justice Brandeis explained more than 70 years ago, “[i]t is one of the happy incidents of the Federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”

To ensure that executive departments and agencies include statements of preemption in regulations only when such statements have a sufficient legal basis:

1. Heads of departments and agencies should not include in regulatory preambles statements that the department or agency intends to preempt State law through the regulation except where preemption provisions are also included in the codified regulation.

2. Heads of departments and agencies should not include in regulatory preambles statements that the department or agency determines that a regulatory statement or provisions are justified under applicable legal principles governing preemption, including the policies outlined in Executive Order 13132.

3. Heads of departments and agencies should review regulations issued within the past 10 years that contain statements in regulatory preambles that the department or agency intends to preempt State law, in order to determine whether such statements or provisions are justified under applicable legal principles governing preemption. Where the head of a department or agency determines that a regulatory statement of preemption or codified regulatory provision cannot be so justified, the head of that department or agency should initiate appropriate action, which may include amendment of the relevant regulation.

Executive departments and agencies shall carry out the provisions of this memorandum to the extent permitted by law and consistent with their statutory authorities. Heads of departments and agencies should consult as necessary with the Attorney General and the Office of Management and Budget’s Office of Information and Regulatory Affairs to determine how the requirements of this memorandum apply to particular situations.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

Regulatory Compliance

Memorandum of President of the United States, Jan. 18, 2011, 76 F.R. 3625, provided:

Memorandum for the Heads of Executive Departments and Agencies

My Administration is committed to enhancing effectiveness and efficiency in Government. Pursuant to the Memorandum on Transparency and Open Government, issued on January 21, 2009, executive departments and agencies (agencies) have been working steadily to promote accountability, encourage collaboration, and provide information to Americans about their Government’s activities.

To that end, much progress has been made toward strengthening our democracy and improving how Government operates. In the regulatory area, several agencies, such as the Department of Labor and the Environmental Protection Agency, have begun to post online (at oageswd.dol.gov and www.epa-echo.gov), and to make readily accessible to the public, information concerning their regulatory compliance and enforcement activities, such as information with respect to administrative inspections, examinations, reviews, warnings, citations, and revocations (but excluding law enforcement information or otherwise sensitive information about ongoing enforcement actions).

Greater disclosure of regulatory compliance information fosters fair and consistent enforcement of important regulatory obligations. Such disclosure is a critical step in encouraging the public to hold the Government and regulated entities accountable. Sound regulatory enforcement promotes the welfare of Americans in many ways, by increasing public safety, improving working conditions, and protecting the air we breathe and the water we drink. Consistent regulatory enforcement also levels the playing field among regulated entities, ensuring that those that fail to comply with the law do not have an unfair advantage over their law-abiding competitors. Greater agency disclosure of compliance and enforcement data will provide Americans with information they need to make informed decisions. Such disclosure can lead the Government to hold itself more accountable, encouraging agencies to identify and address enforcement gaps.

Accordingly, I direct the following:

First, agencies with broad regulatory compliance and administrative enforcement responsibilities, within 120 days of this memorandum, to the extent feasible and permitted by law, shall develop plans to make public information concerning their regulatory compliance and enforcement activities accessible, downloadable, and searchable online. In so doing agencies shall prioritize making accessible information that is most useful to the general public and should consider the use of new technologies to allow the public to have access to real-time data. The independent agencies are encouraged to comply with this directive.

Second, the Federal Chief Information Officer and the Chief Technology Officer shall work with appropriate counterparts in each agency to make such data available online in searchable form, including on centralized platforms such as data.gov, in a manner that facilitates easy access, encourages cross-agency comparisons, and engages the public in new and creative ways of using the information.

Third, the Federal Chief Information Officer and the Chief Technology Officer, in coordination with the Director of the Office of Management and Budget (OMB) and their counterparts in each agency, shall work to explore how best to generate and share enforcement and compliance information across the Government, consistent with law. Such sharing can assist with agencies’ risk-based approaches to enforcement: A lack of compliance in one area by a regulated entity may in-
Small businesses play an essential role in the American economy; they help to fuel productivity, economic growth, and job creation. More than half of all American businesses, small organizations, and small governmental entities work in the private sector either are employed by a small business or own one. During a recent 15-year period, small businesses created more than 60 percent of all new jobs in the Nation. Although small businesses and new companies provide the foundations for economic growth and job creation, they have faced severe challenges as a result of the recession. One consequence has been the loss of significant numbers of jobs.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, establishes a deep national commitment to achieving statutory goals without imposing unnecessary burdens on the public. The RFA emphasizes the importance of recognizing “differences in the scale and resources of regulated entities” and of considering “alternative regulatory approaches . . . which minimize the significant economic impact of rules on small businesses, small organizations, and small governmental jurisdictions.” 5 U.S.C. 601 note.

To promote its central goals, the RFA imposes a series of requirements designed to ensure that agencies produce regulatory flexibility analyses that give careful consideration to the effects of their regulations on small businesses and explore significant alternatives in order to minimize any significant economic impact on small businesses. Among other things, the RFA requires that when an agency proposing a rule with such impact is required to provide notice of the proposed rule, it must also produce an initial regulatory flexibility analysis that includes discussion of significant alternatives. Significant alternatives include the use of performance rather than design standards; simplification of compliance and reporting requirements for small businesses; establishment of different timetables that take into account the resources of small businesses; and exemption from coverage for small businesses.

Consistent with the goal of open government, the RFA also encourages public participation in and transparency about the rulemaking process. Among other things, the statute requires agencies proposing rules with a significant economic impact on small businesses to provide an opportunity for public comment on any required initial regulatory flexibility analysis, and generally requires agencies promulgating final rules with such significant economic impact to respond, in a final regulatory flexibility analysis, to comments filed by the Chief Counsel for Advocacy of the Small Business Administration.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Nothing in this memorandum shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals. The Director of OMB is authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

REGULATORY FLEXIBILITY, SMALL BUSINESS, AND JOB CREATION

Memorandum of President of the United States, Jan. 18, 2011, 76 F.R. 3827, provided:

Memorandum for the Heads of Executive Departments and Agencies

Small businesses play an essential role in the American economy; they help to fuel productivity, economic growth, and job creation. More than half of all Americans working in the private sector either are employed by a small business or own one. During a recent 15-year period, small businesses created more than 60 percent of all new jobs in the Nation.

Although small businesses and new companies provide the foundations for economic growth and job creation, they have faced severe challenges as a result of the recession. One consequence has been the loss of significant numbers of jobs.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, establishes a deep national commitment to achieving statutory goals without imposing unnecessary burdens on the public. The RFA emphasizes the importance of recognizing “differences in the scale and resources of regulated entities” and of considering “alternative regulatory approaches . . . which minimize the significant economic impact of rules on small businesses, small organizations, and small governmental jurisdictions.” 5 U.S.C. 601 note.

To promote its central goals, the RFA imposes a series of requirements designed to ensure that agencies produce regulatory flexibility analyses that give careful consideration to the effects of their regulations on small businesses and explore significant alternatives in order to minimize any significant economic impact on small businesses. Among other things, the RFA requires that when an agency proposing a rule with such impact is required to provide notice of the proposed rule, it must also produce an initial regulatory flexibility analysis that includes discussion of significant alternatives. Significant alternatives include the use of performance rather than design standards; simplification of compliance and reporting requirements for small businesses; establishment of different timetables that take into account the resources of small businesses; and exemption from coverage for small businesses.

Consistent with the goal of open government, the RFA also encourages public participation in and transparency about the rulemaking process. Among other things, the statute requires agencies proposing rules with a significant economic impact on small businesses to provide an opportunity for public comment on any required initial regulatory flexibility analysis, and generally requires agencies promulgating final rules with such significant economic impact to respond, in a final regulatory flexibility analysis, to comments filed by the Chief Counsel for Advocacy of the Small Business Administration.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Nothing in this memorandum shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals. The Director of OMB is authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

MEMORANDUM ON MODERNIZING FEDERAL INFRASTRUCTURE REVIEW AND PERMITTING REGULATIONS, POLICIES, AND PROCEDURES

Memorandum of President of the United States, May 17, 2013, 78 F.R. 30733, provided:

Memorandum for the Heads of Executive Departments and Agencies

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Nothing in this memorandum shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

Modernizing Federal Infrastructure Review and Permitting Regulations, Policies, and Procedures

Memorandum of President of the United States, May 17, 2013, 78 F.R. 30733, provided:

Memorandum for the Heads of Executive Departments and Agencies

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Nothing in this memorandum shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.
critical to maintaining our Nation’s competitive edge in a global economy and to securing our path to energy independence. In taking steps to improve our infrastructure, we must remember that the protection and continued enjoyment of our Nation’s environmental, historical, and cultural resources remain an equally important driver of economic opportunity, resiliency, and quality of life.

Through the implementation of Executive Order 13604 of March 22, 2012 (Improving Performance of Federal Permitting and Review of Infrastructure Projects), executive departments and agencies (agencies) have achieved better outcomes for communities and the environment and realized substantial time savings in review and permitting by prioritizing the deployment of resources to specific sectors and projects, and by implementing best-management practices.

These best-management practices include: integrating project reviews among agencies with permitting responsibilities; ensuring early coordination with other Federal agencies, as well as with State, local, and tribal governments; strategically engaging with, and conducting outreach to, stakeholders; employing project planning processes and individual project designs that consider local and regional ecological planning goals; utilizing landscape- and watershed-level mitigation practices; promoting the sharing of scientific and environmental data in open-data formats to minimize redundancies; facilitating informed project planning, and identifying data gaps early in the review and permitting process; promoting performance-based permitting and regulatory approaches; expanding the use of general permits where appropriate; improving transparency and accountability through the electronic tracking of review and permitting schedules; and applying best environmental and cultural practices as set forth in existing statutes and policies.

Based on the process and policy improvements that are already being implemented across the Federal Government, we can continue to modernize the Federal Government’s review and permitting of infrastructure projects by half, while also improving outcomes for communities and the environment by institutionalizing these best-management practices, and by making additional improvements to enhance efficiencies in the application of regulations and processes involving multiple agencies—including expanding the use of web-based technologies to share project-related information, facilitating targeted and relevant environmental reviews, and providing meaningful opportunities for public input through stakeholder engagement.

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to advance the goal of cutting aggregate timelines for major infrastructure projects in half, while also improving outcomes for communities and the environment, I hereby direct the following:

Section 1. Modernization of Review and Permitting Regulations, Policies, and Procedures. (a) The Steering Committee on Federal Infrastructure Permitting and Review Process Improvement (Steering Committee), established by Executive Order 13604, shall work with the Chief Performance Officer (CPO), in coordination with the Office of Information and Regulatory Affairs (OIRA) and the Council on Environmental Quality (CEQ), to modernize Federal infrastructure review and permitting regulations, policies, and procedures to significantly reduce the aggregate time required by the Federal Government to make decisions in the review and permitting of infrastructure projects, while improving environmental and community outcomes.

This modernization shall build upon and incorporate reforms identified by agencies pursuant to Executive Order 13604 and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). (b) Through an interagency process, coordinated by the CPO and OIRA, the Steering Committee shall conduct the following modernization efforts:

(1) Within 60 days of the date of this memorandum, the Steering Committee shall identify and prioritize opportunities to modernize key regulations, policies, and procedures—both agency-specific and those involving multiple agencies—to reduce the aggregate project review and permitting time, while improving environmental and community outcomes.

(ii) Within 120 days of the date of this memorandum, the Steering Committee shall prepare a plan for a comprehensive modernization of Federal review and permitting for infrastructure projects based on the analysis required by subsection (b)(7) of this section that outlines specific steps for re-engineering both the intra- and inter-agency review and approval processes based on experience implementing Executive Order 13604. The plan shall identify proposed actions and associated timelines to:

(1) institutionalize or expand best practices or process improvements that agencies are already implementing to improve the efficiency of reviews, while improving outcomes for communities and the environment;

(2) revise key review and permitting regulations, policies, and procedures (both agency-specific and Government-wide);

(3) identify high-performance attributes of infrastructure projects that demonstrate how they seek to advance existing statutory and policy objectives and how they lead to improved outcomes for communities and the environment, thereby facilitating a faster and more efficient review and permitting process;

(4) create process efficiencies, including additional use of concurrent and integrated reviews;

(5) identify opportunities to use existing share-in-cost authorities and other non-appropriated funding sources to support early coordination and project review;

(6) effectively engage the public and interested stakeholders;

(7) expand coordination with State, local, and tribal governments;

(8) strategically expand the use of information technology (IT) tools and identify priority areas for IT investment to replace paperwork processes, enhance effective project siting decisions, enhance interagency collaboration, and improve the monitoring of project impacts and mitigation commitments; and

(9) identify improvements to mitigation policies to provide project developers with added predictability, facilitate landscape-scale mitigation based on conservation plans and regional environmental assessments, facilitate interagency mitigation planning where appropriate, ensure accountability and the long-term effectiveness of mitigation activities, and utilize innovative mechanisms where appropriate.

The modernization plan prepared pursuant to this section shall take into account funding and resource constraints and shall prioritize implementation accordingly.

(c) Infrastructure sectors covered by the modernization effort include: surface transportation, such as roadways, bridges, railroads, and transit; aviation; ports and related infrastructure, including navigational channels; water resources projects; renewable energy generation; conventional energy production in high-demand areas; electricity transmission; broadband; pipelines; storm water infrastructure; and other sectors as determined by the Steering Committee.

(d) The following agencies or offices and their relevant sub-divisions shall engage in the modernization effort:

(i) the Department of Defense;

(ii) the Department of the Interior;

(iii) the Department of Agriculture;

(iv) the Department of Commerce;

(v) the Department of Energy; and

(vi) the Department of Homeland Security;
and the development of new infrastructure projects.

While there is no replacement for adequate public funds and Agencies invite to participate.

General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals, or the regulatory review process.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum shall be implemented consistent with Executive Order 12898 of February 11, 1994 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations), Executive Order 13175 of November 6, 2000 (Consultation and Coordination with Indian Tribal Governments), my memorandum of November 5, 2009 (Tribal Consultation), and my memorandum of February 11, 2014 (Consultation and Coordination with Indian Tribal Governments), and my memorandum of November 5, 2009 (Tribal Consultation).

(d) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(e) The Director of the Office of Management and Budget is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

EXPANDING FEDERAL SUPPORT FOR PREDEVELOPMENT ACTIVITIES FOR NONFEDERAL DOMESTIC INFRASTRUCTURE ASSETS

Memorandum of President of the United States, Jan. 16, 2015, 80 F.R. 3455, provided:

Memorandum for the Heads of Executive Departments and Agencies

This United States is significantly underinvesting in both the maintenance of existing public infrastructure and the development of new infrastructure projects. While there is no replacement for adequate public funding and alternative financing, the lack of funding for the phases of infrastructure project development that precede actual construction, infrastructure projects require upfront costs, commonly known as “pre-development” costs, for activities such as project and system planning, economic impact analyses, preliminary engineering assessments, and environmental review. Although only accounting for a small percentage of total costs, predevelopment activities have considerable influence on which projects will move forward, where and how they will be built, who will fund them, and who will benefit from them. Yet, in light of factors like fiscal constraints, the extent of overall needs, and risk averse, State, local, and tribal governments tend to focus scarce resources on constructing and developing conventional projects and addressing their most critical infrastructure needs, thereby underinvesting in predevelopment.

Greater attention to the predevelopment phase could yield a range of benefits—for example, providing the opportunity to develop longer-term, more innovative, and more complex infrastructure projects and facilitating assessment of a range of financing approaches, including public-private partnerships. Additional investment in predevelopment costs also may enable State, local, and tribal governments to utilize innovations in infrastructure design and emerging technologies, reduce long-term costs to infrastructure project users, and provide other benefits, such as improved environmental performance and enhanced resilience to climate change.

The Federal Government can meaningfully expand opportunities for public-private collaboration, encourage more transformational projects, and improve project outcomes by encouraging Federal investment in robust predevelopment activities and providing other forms of support, such as technical assistance, to communities during the predevelopment phase.

Therefore, by the authority vested in me as President and the laws of the United States of America, I hereby direct the following:

SECTION 1. Policy. It shall be the policy of the Federal Government for all executive departments and agencies (agencies) that provide grants, technical assistance, and other forms of support for nonfederal domestic infrastructure assets, to regulate the development of these infrastructure assets, to actively support nonfederal predevelopment activities with all available tools, including grants, technical assistance, and regulatory changes, to the extent permitted by law and consistent with agency mission. Agencies shall seek to make predevelopment funding and support available, as permitted by law and consistent with agency mission, and where it is in the public interest and does not supplant existing public investment, to encourage opportunities for private sector investment. Agencies shall pay particular attention to predevelopment activities in sectors where State, local, and tribal governments have traditionally played a significant role, such as surface transportation, drinking water, sewage and storm water management systems, landslide ports, and social infrastructure like schools and community facilities.

SIC. 2. Definitions. For the purposes of this memorandum:

(a) “Predevelopment activities” means activities that provide decisionmakers with the opportunity to identify and assess potential infrastructure projects and modifications to existing infrastructure projects, and to advance those projects from the conceptual phase to actual construction. Predevelopment activities include:

(i) project planning, feasibility studies, economic assessments and cost-benefit analyses, and public benefit studies and value-for-money analyses;

(ii) design and engineering;

(iii) financial planning (including the identification of funding and financing options);

(iv) permitting, environmental review, and regulatory processes;

(v) assessment of the impacts of potential projects on the area, including the effect on communities, the environment, the workforce, and wages and benefits, as well as assessment of infrastructure vulnerability and resilience to climate change and other risks; and

(vi) public outreach and community engagement.

(b) “Predevelopment funding” means funding for predevelopment activities and associated costs, such as flexible staff, external advisors, convening potential investment partners, and associated legal costs directly related to predevelopment activities.

SIC. 3. Federal Action to Support Predevelopment Activities. Agencies shall take the following actions to support predevelopment activities:

(a) the Department of Commerce, through the Economic Development Administration’s Public Works grants and Economic Adjustment Assistance grants, and consistent with the programs’ mission and goals, shall take steps to increase assistance for the predevelopment phase of infrastructure projects;

(b) the Department of Transportation shall develop guidance to clarify where predevelopment activities are eligible for funding through its programs. To further encourage early collaboration in the project development process, the Department of Transportation shall also clarify options for providing early feedback into environmental review processes;
§ 602. Regulatory agenda

(a) During the months of October and April of each year, each agency shall publish in the Federal Register a regulatory flexibility agenda which shall contain—

(1) a brief description of the subject area of any rule which the agency expects to propose or promulgate which is likely to have a significant economic impact on a substantial number of small entities;

(2) a summary of the nature of any such rule under consideration for each subject area listed in the agenda pursuant to paragraph (1), the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking; and

(3) the name and telephone number of an agency official knowledgeable concerning the items listed in paragraph (1).

(b) Each regulatory flexibility agenda shall be transmitted to the Chief Counsel for Advocacy of the Small Business Administration for comment, if any.

(c) Each agency shall endeavor to provide notice of each regulatory flexibility agenda to small entities or their representatives through direct notification or publication of the agenda in publications likely to be obtained by such small entities and shall invite comments upon each subject area on the agenda.

(d) Nothing in this section precludes an agency from considering or acting on any matter not included in a regulatory flexibility agenda, or requires an agency to consider or act on any matter listed in such agenda.


Statutory Notes and Related Subsidiaries

Effective Date

§ 603. Initial regulatory flexibility analysis

(a) Whenever an agency is required by section 553 of this title, or any other law, to publish a general notice of proposed rulemaking, or publishes a notice of proposed rulemaking for an interpretative rule involving the internal revenue laws of the United States, the agency shall prepare and make available for public comment an initial regulatory flexibility analysis. Such analysis shall describe the impact of the proposed rule on small entities. The initial regulatory flexibility analysis or a summary shall be published in the Federal Register at the time of the publication of general notice of proposed rulemaking for the rule. The agency shall transmit a copy of the initial regulatory flexibility analysis to the Chief Counsel for Advocacy of the Small Business Administration. In the case of an interpretative rule involving the internal revenue laws of the United States, this chapter applies to interpretative rules published in the Federal Register for codification in the Code of Federal Regulations, but only to the extent that such interpretative rules impose on small entities a collection of information requirement.

(b) Each initial regulatory flexibility analysis required under this section shall contain—

(1) a description of the reasons why action by the agency is being considered;

(2) a succinct statement of the objectives of, and legal basis for, the proposed rule;

§ 604. Initial regulatory flexibility analysis—interpretative rules

(a) Each interpretative rule involving the internal revenue laws of the United States, the agency shall prepare and make available for public comment an initial regulatory flexibility analysis. Such analysis shall describe the impact of the proposed rule on small entities. The analysis or a summary shall be published in the Federal Register at the time of the publication of general notice of proposed rulemaking for the rule. The agency shall transmit a copy of the analysis to the Chief Counsel for Advocacy of the Small Business Administration. In the case of an interpretative rule involving the internal revenue laws of the United States, this chapter applies to interpretative rules published in the Federal Register for codification in the Code of Federal Regulations, but only to the extent that such interpretative rules impose on small entities a collection of information requirement.

(b) Each initial regulatory flexibility analysis required under this section shall contain—

(1) a description of the reasons why action by the agency is being considered;

(2) a succinct statement of the objectives of, and legal basis for, the proposed rule;

(3) the name and telephone number of an agency official knowledgeable concerning the items listed in paragraph (1).