

United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

CHRISTOPHER R. HIXON, STAFF DIRECTOR
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December 7, 2016

The Honorable Howard Shelanski
Administrator
Office of Information and Regulatory Affairs
725 17th Street, NW
Washington, D.C. 20503

Dear Administrator Shelanski:

On November 8, the American people voiced their disapproval of the type of government that ignores the input of small business owners, consumers, and job creators. The incoming Administration and the 115th Congress will likely re-examine and unwind burdensome regulations imposed by the Obama Administration. However, in an effort to finalize as many rules as possible before the next president takes office, the Obama Administration is reportedly engaging in a last-minute deluge to promulgate so-called “midnight regulations.” This recent regulatory surge and the pressure to have these rules finalized before January 20, 2017 raises concerns about the ability of the Office of Information and Regulatory Affairs (OIRA) to carefully and properly review these rules.

Before a rule is finalized, OIRA is charged with thoroughly reviewing proposed agency regulations. OIRA ensures that proposed regulations are in compliance with Executive Orders 12866 and 13563, which specify rulemaking requirements for executive branch agencies.¹

According to a recent report, the Obama Administration is enacting economically significant regulations at an unprecedented rate compared to previous administrations.² By November 30, 2016, “[President] Obama will already have enacted 56 percent more economically significant rules . . . than George W. Bush did during his entire two terms.”³ As of December 7, 2016, there are 136 proposed regulations that are currently under OIRA’s review.⁴ Of those rules, 27 are considered economically significant.⁵ Given that there are 43 days until

¹ Exec. Order No. 12,866, 58 Fed. Reg. 51735 (Sept. 30, 1993); Exec. Order No. 13,563, 76 Fed. Reg. 3821 (Jan. 18, 2011).

² An “economically significant” rule has an annual economic impact of at least \$100 million.

³ Juliet Eilperin, *In a Race to the Finish, Obama Administration Presses Ahead with Ambitious Rules*, WASH. POST, Dec. 1, 2016, https://www.washingtonpost.com/politics/in-a-race-to-the-finish-obama-administration-presses-ahead-with-ambitious-rules/2016/11/30/125867d0-b0bf-11e6-be1c-8cec35b1ad25_story.html?hpid=hp_rhp-top-table-main_whrules-810am%3Ahomepage%2Fstory&utm_term=.38e16067b47a.

⁴ Office of Info. & Regulatory Affairs, Office of Mgmt. & Budget, Exec. Office of the President, *Regulatory Actions Currently Under Review by Agency* (2016), available at <http://www.reginfo.gov/public/jsp/EO/eoDashboard.jsp>.

⁵ Office of Info. & Regulatory Affairs, Office of Mgmt. & Budget, Exec. Office of the President, *Regulatory Actions Currently Under Review by Agency* (2016), available at <http://www.reginfo.gov/public/jsp/EO/eoDashboard.jsp>. Under “View” go to “By Economic Significance.”

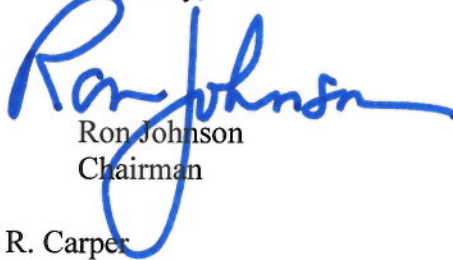
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January 20, 2017, OIRA would have to complete review of at least 3 regulations a day in order to facilitate the finalization of the remaining rules.⁶

In a December 2015 memo you issued to all deputy secretaries, you wrote that, “agencies should strive to complete their highest priority rulemakings by the summer of 2016 to avoid an end-of-year scramble that has the potential to lower the quality of regulations that OIRA receives for review and to tax resources available for interagency review.”⁷ Now, with 27 economically significant regulations still pending in the waning days of the Obama Administration, there is a strong possibility of lower-quality final regulations.⁸ Given your own concerns that an “end-of-year scramble” could lead to the “lower quality of regulations OIRA receives” and the likelihood that the incoming Administration and the 115th Congress will unwind many of these proposals, I request that you consider cessation of all midnight regulations to spare American small-businesses and consumers the avoidable and unnecessary compliance costs.

Thank you for your prompt attention to this important matter.

Sincerely,

A handwritten signature in blue ink that reads "Ron Johnson". The signature is fluid and cursive, with the first name "Ron" being particularly prominent.

Ron Johnson
Chairman

cc: The Honorable Thomas R. Carper
Ranking Member

⁶ *Id.*

⁷ Memorandum from Dr. Howard Shelanski, Administrator, Office of Info. And Regulatory Affairs on Regulatory Review at the End of the Administration (Dec. 17, 2015), *available at* https://www.whitehouse.gov/sites/default/files/omb/assets/agencyinformation_circulars_memoranda_2015_pdf/regulatory_review_at_the_end_of_the_administration.pdf.

⁸ Office of Info. & Regulatory Affairs, Office of Mgmt. & Budget, Exec. Office of the President, Regulatory Actions Currently Under Review by Agency (2016), *available at* <http://www.reginfo.gov/public/jsp/EO/eoDashboard.jsp>. Under “View” go to “By Economic Significance.”