

## OMB URGES PARTICIPATION IN ITS REGULATORY REFORM EFFORTS

by  
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In a time of modest or negative growth in many federal agency budgets, advocates of regulatory reform have had difficulty shifting the attention of agency officials from development of new regulations (often involving statutory or judicial deadlines) to the review of existing rules and statements of agency policies. Therefore, any opportunity to address shortcomings in existing agency regulations should not be missed. The Office of Management and Budget's (OMB) request for public comments on its latest Draft Report to Congress on the Costs and Benefits of Federal Regulations represents just such an opportunity. 67 Fed. Reg. 15014 (Mar. 28, 2002).

Under section 624 of the FY 2001 Treasury and General Government Appropriations Act, Pub. L. No. 106-554, commonly referred to as the "Regulatory Right-to-Know Act," OMB must annually report to Congress on the costs and benefits of regulations in the aggregate, by agency and agency program, and by major rule. The report must also analyze the impacts of federal regulations on state, local, and tribal government, small businesses, wages, and economic growth. Finally, OMB must seek public comments on the draft report and solicit recommendations for reform.

OMB has highlighted three key areas for public nominations for regulatory reforms:

- Reforms to identified existing regulations that, if adopted, would increase overall net benefits to the public, considering both quantitative and qualitative factors. Such recommendations could involve expansion, simplification/modification, or rescission of such programs.
- Identification of specific rules, guidance documents, and paperwork requirements that impose large burdens on small businesses without adequate justification.
- Reviews of problematic agency guidance documents of national or international significance that may warrant reform through notice and comment rulemaking, peer review, interagency review, or rescission.

The draft report states that OMB will consider the nominations, conduct a preliminary evaluation, and issue their judgements in the final report. OMB will request that federal agencies consider all nominations, particularly those identified by OMB as meriting "high priority." It is unclear whether OMB will have further ongoing involvement on these reform recommendations.

This comment period also provides a rare opportunity to impact the operations of independent agencies. Congress did not exempt independent agencies from OMB's scrutiny under the report, and OMB generally found that "[i]n comparison to the agencies subject to E.O. 12866, the independent agencies provided relatively little quantitative information on the costs and benefits of the major rules." 67 Fed. Reg. 15029. For example, OMB found that the Federal Communications Commission did not prepare cost-benefit analyses. *Id.*

The Center for Regulatory Effectiveness (CRE) has been concerned about this relative lack of transparency and analytical rigor on the part of the independent agencies, and in its comments to OMB, the Center has urged consideration of its proposal for OMB review of independent agency rules, all under existing

legal authority (*see* the CRE website at [http://www.TheCRE.com/ombpapers/20020225\\_cre-blueprint.html](http://www.TheCRE.com/ombpapers/20020225_cre-blueprint.html) for additional detail).

In sum, OMB's Draft Report on the Costs and Benefits of Federal Regulations represents a significant opportunity for the public to gain the attention of Congress, OMB, and senior Administration and agency officials regarding areas of needed regulatory reform. Interested parties are strongly encouraged to submit their reform recommendations to OMB by the comment deadline of **May 28, 2002**.

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