

ONE HUNDRED ELEVENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM  
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May 11, 2009

The Honorable Peter R. Orszag  
Director  
Office of Management and Budget  
725 17th Street, NW  
Washington, DC 20503

Dear Director Orszag:

The Government Accountability Office (GAO) released a report entitled “Federal Rulemaking: Improvements Needed to Monitoring and Evaluation of Rules Development as Well as to the Transparency of OMB Regulatory Reviews.”<sup>1</sup> GAO reviewed a sample of rules issued between 2006 and 2008 covering a variety of topics that impact public health and safety. GAO’s findings indicate a troubling amount of interference in agency rulemakings by OMB’s Office of Information and Regulatory Affairs (OIRA) during the previous Administration and a need for more transparency in OIRA’s review of rules.

GAO found that OIRA made changes to 10 out of 12 rules reviewed with about half of those involving changes to the regulatory text. GAO also found that the agencies reviewed did not consistently implement existing requirements to disclose changes made by OIRA.

GAO makes four recommendations to OMB to improve the transparency of its reviews. These include: (1) defining in guidance the types of changes made during OIRA reviews that need to be publicly identified, (2) instructing agencies “to clearly attribute changes ‘made at the suggestion or recommendation of OIRA,’” (3) directing agencies to clearly state in final rules whether substantive changes were made as a result of OIRA’s reviews, and (4) standardizing how agencies label documentation of changes to rules in public rulemaking dockets.

In his January 30, 2009, memorandum on regulatory review, President Obama requested

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<sup>1</sup> Government Accountability Office, *Federal Rulemaking: Improvements Needed to Monitoring and Evaluation of Rules Development as Well as to the Transparency of OMB Regulatory Reviews* (Apr. 2009)(GAO-09-205).

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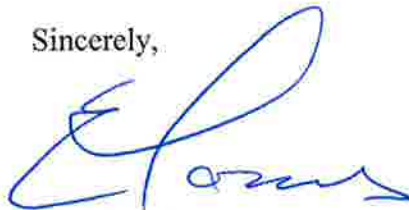
guidance on disclosure and transparency. To the extent OMB continues to play a role in reviewing agency rulemakings, I urge you to incorporate GAO's recommendations for improving the transparency of those reviews. I also urge you to consider the recommendations GAO made in its 2003 report on the regulatory process such as requiring agencies to include information about changes made during OIRA reviews in the public rulemaking docket for the rule.<sup>2</sup>

President Obama also requested recommendations for "methods of ensuring regulatory review does not produce undue delay." GAO found that the regulatory agencies it reviewed took an average of 4 years to promulgate a rulemaking. The one independent agency reviewed --the Securities and Exchange Commission -- took an average of about one year while the agencies that must comply with EO 12866 took much longer to issue a rule. The Environmental Protection Agency (EPA) took an average of 5 1/2 years while the Food and Drug Administration (FDA) took an average of 7 years. While GAO's review found that the agencies did not track the resources required to conduct a specific rulemaking, agency officials said that "rules that require OIRA and interagency review typically need additional time for the external review process." Agency officials also pointed to requirements such as the Paperwork Reduction Act and the Regulatory Flexibility Act as adding time to the rulemaking process.

I urge you to evaluate GAO's findings on the extensive time required for agencies charged with issuing environmental, health, and safety protections such as EPA and FDA to issue rules. It is critical for agencies to be able to issue rules in a timely manner to effectively respond to problems and protect consumers.

Thank you for your consideration of these important issues.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Edolphus Towns', is written over a light blue circular stamp.

Edolphus Towns  
Chairman

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<sup>2</sup> Government Accountability Office, *Rulemaking: OMB's Role in Reviews of Agencies' Draft Rules and the Transparency of Those Reviews* (Sept. 2003) (GAO-03-929).