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COMMITTEE ON EDUCATION
AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

November 9, 2017

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The Honorable R. Alexander Acosta
Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Secretary Acosta:

I am pleased you are scheduled to testify before the Committee on Education and the Workforce on November 15, 2017, and look forward to your appearance.

In advance of your appearance, this letter requests documents and information related to the implementation of the President's agenda to roll back regulatory protections for America's workers in the Department of Labor (DOL).

I understand that the Department has appointed a "regulatory reform taskforce" that is tasked with identifying regulations for repeal, replacement or modification. The Department is also setting up a "bank" into which to deposit the repealed regulations to satisfy Executive Order 13771, which requires agencies to offset the number and costs of new regulations.

A Memorandum was sent to you on May 23, 2017 that identified the number of targeted deregulatory actions for each DOL sub-agency, and referenced 12 pages of agency reports with specified candidates for "modification, repeal and replacement."^[1] The Memorandum lists "up to" five deregulatory actions for the Employee Benefits Security Administration (EBSA), four deregulatory actions for the Occupational Safety and Health Administration (OSHA), three deregulatory actions for the Wage and Hour Division (WHD), and "seven broad regulations" and "two information collections" that could be repealed in the Employment and Training Administration (ETA) and Veterans Employment Training Service (VETS). With regard to the Mine Safety and Health Administration (MSHA), it is unclear how many deregulatory actions have been identified; however, the MSHA website seeks input on regulations that "could be repealed, replaced or modified." The Memorandum indicates DOL is examining other agencies to find "other potential deregulatory actions."

^[1] Memorandum from Stephanie Swirsky, Deputy Assistant Secretary for Policy, and Laura Dawkins, Office of Regulatory and Programmatic Policy to the Secretary of Labor, entitled "Progress Report on Implementation of Executive Order 13777 'Enforcing the Regulatory Reform Agenda'" (May 23, 2017).

Troubling, however, is the absence of any discussion in this Memorandum of how to ensure regulations, which are essential for worker protection, will not be targeted for rollback in response to advocacy from special interests alleging that such protections are “excessively burdensome.” Examples of harmful rollbacks include changes that could weaken worker health and safety protections, make retirement savings less secure, reduce access to and the amount of overtime pay, or limit opportunities for job and career readiness. I would note, for example, that OSHA’s health regulations protecting shipyard and construction workers from exposure to beryllium-containing abrasive blasting materials have already been proposed for rollback – apparently at the behest of a narrow industrial interest.^[2]

Stakeholder outreach is part of this regulatory rollback process, but appears to only target businesses and trade associations. Incredibly, the Memorandum rejects broad outreach to impacted workers or the public, and states that this “may result in unfocused feedback that is not actionable.”

In preparation for the upcoming hearing before the Committee, this letter requests the following documents:

- 1) A complete and unredacted copy of the May 23, 2017 Memorandum with all attachments, including the 12-page attachment containing sub-agency reports with specified candidates.
- 2) A list of the specified regulations for modification, repeal and replacement, covering EBSA, WHD, OSHA, MSHA, ETA, VETS, and other agencies which were referenced in the May 23 Memorandum for “modification, repeal and replacement.”
- 3) Outreach plans for each sub-agency.
- 4) A list of attendees and minutes or summary of the Small Business Administration Roundtable held on June 7-8, 2017.
- 5) A memorandum or report summarizing the retrospective review of regulations undertaken by the DOL or its sub-agencies, which the May 23 Memorandum targets for completion by July 2017.
- 6) The “Second Report to the Secretary” which the May 23 Memorandum targets for Fall 2017.

Please provide these documents in electronic form to Richard Miller, Director of Labor Policy, no later than noon on Tuesday, November 14, 2017 at richard.miller@mail.house.gov.

Sincerely,



ROBERT C. “BOBBY” SCOTT
Ranking Member

^[2] Barry Meier and Danielle Ivory, “Under Trump, Worker Protections Are Viewed With Skepticism”, New York Times (June 5, 2017). Available at: <https://www.nytimes.com/2017/06/05/business/under-trump-worker-protections-are-viewed-with-new-skepticism.html>.

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Encl: May 23, 2017 Memorandum with redactions.

Cc: Hon. Virginia Foxx, Chair, Committee on Education and the Workforce



Information

MEMORANDUM FOR THE SECRETARY

FROM: Stephanie Swirsky *SS*
Deputy Assistant Secretary for Policy

Laura Dawkins *LD*
Director, Office of Regulatory and Programmatic Policy

DATE: May 23, 2017

Subject: Progress Report on Implementation of Executive Order 13777, "Enforcing the Regulatory Reform Agenda"

Summary

On February 24, 2017, President Trump signed Executive Order (EO) 13777, entitled "Enforcing the Regulatory Reform Agenda."¹ The EO directs agencies to appoint a Regulatory Reform Officer (RRO) and to establish a Regulatory Reform Task Force (RRTF). It also requires the task force to provide a report to the agency head within ninety (90) days (May 25, 2017), and on a schedule determined by the agency head thereafter, detailing the agency's progress toward improving the implementation of regulatory reform initiatives and policies pursuant to the EO and identifying regulations for repeal, replacement, or modification. This memo serves as the initial report.

Initial Plan

The Office of the Assistant Secretary for Policy (OASP) is responsible for overseeing the Department's regulatory activities. OASP also manages the Department's regulatory interaction with the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA), and the Office of the Federal Register. In addition, OASP develops initiatives and manages cross and intra-departmental activities to advance the mission of the Department. It is because of these roles that OASP is uniquely situated to manage the Department's efforts under this EO.

¹ Exec. Order No. 13,777, 82 Fed. Reg. 12,285 (February 24, 2017) (Enforcing the Regulatory Reform Agenda). (<https://www.whitehouse.gov/the-press-office/2017/02/24/presidential-executive-order-enforcing-regulatory-reform-agenda>)

Appointment of a Regulatory Reform Officer

In March 2017, OASP proposed, and Acting Secretary Hugler approved, an initial path forward for implementing the EO.² The EO mandated the appointment of an RRO within sixty (60) days of the date of the order (April 25, 2017). Each RRO is tasked with overseeing the implementation of regulatory reform initiatives and policies, and keeping agency leadership apprised of such activities. The Department appointed the Director of the Office of Regulatory and Programmatic Policy (ORPP) within OASP to serve as the RRO.

Creation of a Regulatory Reform Task Force

The EO also directed agencies to establish an RRTF that is composed of: (1) the agency RRO (who chairs the task force); (2) the agency Regulatory Policy Officer designated under Executive Order 12866; (3) a representative from the agency's central policy office or equivalent central office; and (4) at least three additional senior agency officials as determined by the agency head.

It was determined that there would not be sub-agency specific task forces but, rather, the RRTF would be managed at the department level and would be comprised of career leadership from the DOL agencies responsible for the majority of the Department's regulations. The membership includes the following (or their designee):

- (1) RRO (Director, ORPP);
- (2) Deputy Secretary or designee;
- (3) Regulatory Policy Officer (Assistant Secretary for Policy);
- (4) Deputy Assistant Secretary for Policy;
- (5) Assistant Administrator of Policy, WHD;
- (6) Deputy Assistant Secretary for Program Operations, EBSA;
- (7) Director of Standards and Guidance, OSHA;
- (8) Deputy Assistant Secretary for Operations, MSHA;
- (9) Deputy Solicitor for National Operations;
- (10) Director, Performance Management Center, OASAM; and
- (11) Departmental Clearance Officer for Information Collections, Office of the Chief Information Officer, OASAM

Other agencies, such as ETA, OLMS, and OFCCP, are participants but not official members of the RRTF. In addition, OASP staff worked with those agencies that are not members or participants of the RRTF to secure their contributions to this effort.

The RRTF is tasked with evaluating existing regulations and making recommendations regarding the repeal, replacement, or modification of regulations that:

- (1) Eliminate jobs or inhibit job creation;
- (2) Are outdated, unnecessary, or ineffective;

² Memorandum from Stephanie Swirsky, Deputy Assistant Secretary of Policy and Laura Dawkins, Director, Office of Regulatory and Programmatic Policy, OASP, "Implementation of Executive Order, 'Enforcing the Regulatory Reform Agenda'" (March 9, 2017).

- (3) Impose costs that exceed benefits;
- (4) Create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;
- (5) Rely in whole or in part on data, information, or methods that are not publicly available or that are not transparent enough to be reproduced; or
- (6) Derive from executive orders or other Presidential directives that have been rescinded or modified.

The EO further directs the RRTF to seek input and other assistance from entities significantly affected by Federal regulations, including State, local, and tribal governments, small businesses, consumers, non-governmental organizations, and trade associations.

Implementation

The RRTF convened two meetings with discussions centering on the EO-mandated deliverables, with agencies agreeing on guiding principles for: (1) reviewing regulatory actions; (2) conducting stakeholder outreach; (3) developing performance metrics; and (4) reporting its progress. Based upon those principles, agencies have taken significant action to begin identifying regulations for repeal, replacement, and modification.

Guiding Principles

Qualifying Regulatory Actions

The RRTF agreed on the range of agency regulatory actions that should be considered for review. Those actions include:

- Informal, formal, and negotiated rulemaking;
- Guidance and interpretive documents;
- Some actions related to international regulatory cooperation; and
- Information collection requests that repeal or streamline recordkeeping, reporting, or disclosure requirements. OASAM OCIO agreed to provide a monthly report to OASP identifying information collection requests that reduce burden for inclusion in the effort.

Stakeholder Engagement

The RRTF also examined the requirement to conduct stakeholder outreach as part of the Regulatory Reform process, options to perform the outreach, and concerns that broad outreach may result in unfocused feedback that was not actionable. The RRTF concluded that it will solicit stakeholder input through ongoing agency-specific engagements as it will be the most effective process for obtaining specific, actionable stakeholder input since each agency's stakeholder community is unique. Options for broader or more formal outreach will be considered based on future OIRA guidance around outreach expectations.

Annual Performance Plan

The EO directs agencies to incorporate into their annual performance plans (APP), performance indicators that measure progress toward implementing regulatory reform initiatives and identifying regulations for repeal, replacement, or modification. On April 28, 2017, OIRA issued guidance regarding measures to include in APPs.³ This guidance specified the following to be included in those plans beginning with the FY 2019 APP:

- (1) Five performance indicators for use in assessing progress toward identifying regulations for repeal, replacement, or modification;
- (2) Other meaningful performance indicators and goals for the purpose of evaluating and improving the net benefits of regulatory programs; and
- (3) Performance in terminating any programs or activities that derive from or implement EOs, guidance documents, policy memoranda, rule interpretations, and similar documents, or relevant portions thereof, that have been rescinded or that were terminated during the fiscal year.

The RRTF agreed that because this effort is being managed at the Department level, these performance measures would be included in OASP's Operating Plan. OASAM's Performance Management Center will work with OASP to develop the specific performance metrics to include in its FY 2018 Operating Plan (and first reported in the Department's FY 2019 APP).

Report to Agency Head

The RRTF determined it is most efficient to provide Agency leadership with its progress semi-annually to coincide with the development and issuance of the Unified Regulatory Agenda.

Agency Actions

The Department incorporated the work of the RRTF into the development of its submission to the Spring 2017 Unified Regulatory Agenda. As part of the agenda development, agencies were asked to consider inclusion of deregulatory actions repealing, replacing, or modifying outdated, inefficient, unnecessary, or overly burdensome regulations. As a result of this review, the Department included 11 deregulatory actions on the Spring Agenda.⁴

In addition, each RRTF member agency submitted a brief report on the initial actions they have taken in response to the EO, stakeholder outreach activities, and regulations that they have identified as possible candidates for modification, repeal, or replacement.⁵ Below are highlights of the member agency actions planned and to date:

³ Memorandum from Dominic J. Mancini, Acting Administrator, Office of Information and Regulatory Affairs, OMB, "Guidance on Regulatory Reform Accountability under Executive Order 13777, titled 'Enforcing the Regulatory Reform Agenda'" (April 28, 2017) (<https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/M-17-23.pdf>).

⁴ The Department's Spring 2017 Unified Regulatory Agenda submission is attached to this memorandum.

⁵ The agency reports are attached to this memorandum. <-- 12 pages withheld pursuant to FOIA Exemption (b)(5) -

EBSA

- Explore the establishment of a new internal committee to undertake a long-term, comprehensive review of all regulations under EBSA's jurisdiction.
- Conduct Direct Public Engagement, including maintaining a rigorous practice of soliciting informal public input through speeches, meetings, and public outreach events, and seriously considering publishing a Request for Information (RFI) on the new definition of "fiduciary."
- Requested that the ERISA Advisory Council initiate a focused examination of the pension and welfare plan (including health plan) disclosure requirements under Title 29 of the CFR and to make a written report with recommendations for improvement. EBSA will use the Council's report as a basis for internal consideration of possible deregulatory actions in the future.
- Identify up to five deregulatory actions for inclusion on the Spring Unified Regulatory Agenda.

MSHA

- Establish an internal Working Group comprised of staff from several agency program offices to evaluate and identify deregulatory actions.
- Conduct robust stakeholder outreach by:
 - Informing participants during its quarterly training and stakeholder calls, walks and talks, conferences, and alliance meetings that it is seeking input on its regulatory reform initiative.
 - (b) (5)

OSHA

- Form a Working Group to systematically review existing standards and identify opportunities to eliminate or modify unnecessary or outdated requirements.
- Work with the SBA Office of Advocacy to begin stakeholder outreach through its Small Business Roundtables.
- Identify four deregulatory actions for inclusion on the Spring Unified Regulatory Agenda.

WHD

- Continue to meet with stakeholders and conducting stakeholder outreach to keep the cycle of feedback on regulatory and guidance issues in the forefront.
- Identify three deregulatory actions.
- Develop a plan to review all 16 of its information collections as they come up for renewal over the next three years to search for efficiencies and opportunities to streamline processes.

As part of this effort, OASP analysts worked with agencies that are not part of the RRTF to begin to identify regulatory actions that could be repealed, replaced, or modified. Combined, ETA and VETS identified approximately seven broad regulations that could potentially be repealed and two information collections that could be phased out. Several other agencies responded that they had determined they had no regulations to repeal because they implement statutory or executive order requirements. OASP will continue to work with these agencies to identify other potential deregulatory actions.

Next Steps

The RRTF will continue its work in identifying regulations for repeal, replacement, or modification with an eye toward maintaining a “bank” from which to draw deregulatory actions to satisfy the requirement of EO 13771 (which requires agencies to offset the number and cost of new regulations)⁶ and 13777. In addition, the RRTF will participate in the update of the Department’s Retrospective Review Plan. It will also develop an approach and structure for public outreach, including leveraging the robust stakeholder meetings each of the RRTF agencies conduct with their stakeholders. As part of that stakeholder outreach, members of the RRTF will participate in the regulatory roundtables the SBA’s Office of Advocacy will conduct across the country. These roundtables are an SBA effort to hear directly from small businesses about what regulations concern them most. Below is a list and timetable of these activities.

Action	Date
RRTF Touch Base	Monthly – next one in June 2017
Attendance at SBA Roundtable	June 7-8, 2017
Retrospective Review Complete	July 2017
Fall Regulatory Plan and Unified Regulatory Agenda	Fall 2017
Second Report to the Secretary	Fall 2017

For additional information regarding the Executive Order or this memorandum or if you would like a briefing on the Executive Order or this memorandum, please contact Stephanie Swirsky (b)(6) or Laura Dawkins (b)(6)

Attachments

cc:

Tim Hauser
 Mary Ziegler
 Sheila McConnell
 Susan Harthill
 Dennis Johnson
 Michel Smyth

⁶ Exec. Order No. 13,771, 82 Fed. Reg. 9,339 (January 30, 2017) (Reducing Regulation and Controlling Regulatory Costs). (<https://www.whitehouse.gov/the-press-office/2017/01/30/presidential-executive-order-reducing-regulation-and-controlling>)