

Dominic J. Mancini, Acting Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street NW
Washington, DC 20503
reducingregulation@-omb.eop.gov

Re: Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, Titled “Reducing Regulation and Controlling Regulatory Costs.”

Dear Acting Administrator:

On behalf of the groups listed below, we submit these comments on the Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, Titled “Reducing Regulation and Controlling Regulatory Costs.”

As the interim guidance implements the January 30, 2017 Executive Order, the authority to issue the interim guidance depends on the validity of the Executive Order. In the Executive Order, the President directs federal agencies to identify at least two existing regulations to be repealed for every new existing regulation promulgated. For fiscal year 2017, the Executive Order directs federal agencies to ensure that the total incremental costs from all new and repealed regulations is no greater than \$0. For subsequent fiscal years, the Executive Order directs the Director of the Office of Management and Budget (OMB) to place a dollar cap on incremental costs allowed for each agency in issuing new and repealing existing regulations. The Interim Guidance is directed at Section 2 of the Executive Order, the provisions that apply to the current fiscal year.

OMB should revoke the Interim Guidance because OMB lacks the authority to implement or impose any requirements pursuant to the Executive Order. OMB derives its legal authority from Congress or the President. Congress has not enacted legislation imposing regulatory budgets and essentially a regulatory cost trading program on federal agencies. While the President has issued the Executive Order purporting to do so, he lacks the constitutional authority to adopt such program.

Federal agencies issue regulations that have the effect of law pursuant to congressional delegation of authority. In the statutes delegating such authority, Congress has established goals such as providing health care for millions of Americans, protecting workers, fighting hunger, defending civil rights and voting rights, safeguarding our environment, ensuring the safety of food, drinking water, and medicine, promoting the integrity of financial institutions, and supporting public education. Moreover, it has set out the criteria to be applied by the agencies in adopting rules. Congress has also enacted the Administrative Procedure Act establishing rulemaking procedures that insist on transparency, opportunities for public input, and reasoned,

evidence-based decision-making. Agencies must adopt regulations based on the laws and rulemaking record for each regulation.

No statute authorizes agencies to trade one rule for one or more others based on costs to the private sector. In fact, where agencies consider costs, Congress has prescribed how costs may be considered and, where costs may be considered, balanced decision-making prohibits consideration of economic costs to the regulated industry without considering the public and economic benefits of the regulation.

The Executive Order superimposes a new rulemaking system onto all federal rulemaking. This system elevates costs to the regulated industry, indeed focuses solely on such costs, even though Congress made protecting people paramount in laws like the Occupational Safety and Health Act, the Food Quality Protection Act, and the Clean Air Act, and sought to further national goals of providing health coverage to millions of previously uninsured Americans in the Affordable Care Act and preventing abuse of women in the Violence Against Women Act.

Under the Constitution, the President lacks the authority to direct federal agencies to exceed their authority and violate the laws that give them their powers. Nor can the President unilaterally amend or override such laws or the laws that require fair, transparent, and reasoned rulemaking decisions. Amending laws is the purview of Congress under our constitutional system. The Executive Order is therefore in excess of the President's authority and unlawful.

The Interim Guidance similarly exceeds the President's and Executive Branch's authority. It provides direction to agencies to apply the Executive Order's requirements to their rulemakings this fiscal year. It identifies the applicable timeframe and which regulations are prohibited unless they offset costs by repealing two other regulations. It provides instructions on how to estimate regulatory costs and that which may be used to offset costs, and it directs agencies to "[f]ully offset the total incremental costs of such new significant regulatory action as of September 30, 2017." Interim Guidance at 2.

By issuing the Interim Guidance, OMB is taking steps to put in place a regulatory cost trading system overseen by OMB. This system will unlawfully impose extensive burdens and costs on federal agencies. Beyond wasting taxpayer dollars, it will inexcusably delay, weaken, and jettison regulations that have been adopted to protect the public from toxic chemicals, harmful pollution, workplace hazards, consumer fraud, and safety hazards on our highways and railroads.

Like the Executive Order, the Interim Guidance exceeds presidential authority and is unconstitutional. As an officer of the United States, the Director of OMB has taken an oath to "support and defend the Constitution" and to faithfully discharge the duties of his office. *See* 5 U.S.C. § 3331. We ask you to uphold your solemn oath and withdraw the Interim Guidance.

Sincerely,

AFL-CIO
AJ Rosen & Associates LLC
Alaska Wilderness League
American Association for Justice

American Association of University Women
American Family Voices
American Federation of State, County and Municipal Employees
American Federation of Teachers
American Sustainable Business Council
American Veterans
American-Arab Anti-Discrimination Committee
Americans for Financial Reform
Amigos Bravos
And All Her Ways Are Peace
Apostolic Faith Center
Association of Asian Pacific Community Health Organizations
Bend the Arc Jewish Action
BlueGreen Alliance
Bluestem Communications
Brazilian Worker Center
California Kids IAQ
Center for Biological Diversity
Center for Digital Democracy
Center for Food Safety
Center for Medicare Advocacy, Inc.
Center for Progressive Reform
Center for Responsible Lending
Clean Water Action
Coalition for a Safe Environment
Coalition on Human Needs
Communities for a Better Environment
Community Dreams
Connecticut Fair Housing Center
Consumer Action
Consumer Federation of America
Consumers for Auto Reliability and Safety
Daily Kos
Earthjustice
Earthworks
Ecology Center
Economic Policy Institute
EMERGE
Endangered Habitat League
Endangered Species Coalition
Environmental Working Group
Equal Justice Society
Family Equality Council
Farmworker Justice
Food & Water Watch
Free Press

Freshwater for Life Action Coalition
Friends of the Earth
Health Professionals and Allied Employees, AFT/AFL-CIO
Homeowners Against Deficient Dwellings
Human Rights Campaign
Idaho Conservation League
Institute for Agriculture and Trade Policy
Institute for Science and Human Values
International Alliance for Nurses for Healthy Environments
International Fund for Animal Welfare
Iowa Environmental Council
Labadie Environmental Organization
Labor & Employment Committee of National Lawyers Guild
League of Conservation Voters
League of United Latin American Citizens
League of Women Voters of the United States
Legal Aid At Work
Main Street Alliance
Massachusetts Coalition for Occupational Safety & Health
Maurice & Jane Sugar Law Center for Economic & Social Justice
Milwaukee Riverkeeper
NAACP
NAACP San Pedro-Wilmington Branch # 1069
National Association for College Admission Counseling
National Center for Lesbian Rights
National Center for Transgender Equality
National Coalition Against Domestic Violence
National Consumer Law Center
National Consumers League
National Education Association
National Employment Law Project
National Employment Lawyers Association
National Law Center on Homelessness & Poverty
National LGBTQ Task Force
National Organization for Women
National Parks Conservation Association
National Partnership for Women & Families
National Women's Law Center
Natural Resources Defense Council
NETWORK Lobby for Catholic Social Justice
Occupational Safety & Health Law Project
Ohio Citizen Action
Parents for Nontoxic Alternatives
Pesticide Action Network
Physicians for Social Responsibility
Poverty & Race Research Action Council

Prairie Rivers Network
Public Citizen
Public Justice Center
San Pedro & Peninsula Homeowners Coalition
Sargent Shriver National Center on Poverty Law
SEIU
Sierra Club
SouthWings
St. Philomena Social Justice Ministry
The Public Interest Law Center
The Wilderness Society
Trustees for Alaska
Turtle Island Restoration Network
Union of Concerned Scientists
United We Dream
Water Alliance
Water You Fighting For
Waterkeeper Alliance
Western Watersheds Project
Whitman-Walker Health
Wildlands Network
Wilmington Improvement Network
Women's Voices for the Earth
Woodstock Institute
Workers' Center of Central New York
Worksafe