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October 25, 2012

Mr. Boris Bershteyn
 Acting Administrator
 Office of Information and Regulatory Affairs
 Office of Management and Budget
 Eisenhower Executive Office Building
 Washington, D.C. 20500

Dear Acting Administrator Bershteyn:

Thank you for taking the time to discuss the status of the Spring 2012 Unified Agenda ("Spring Agenda") on October 12, 2012. It became clear during our conversation that rather than publishing the Spring Agenda, the Office of Information and Regulatory Affairs (OIRA) is working to publish the Fall 2012 Unified Agenda ("Fall Agenda"). OIRA's handling of the Spring Agenda is unacceptable and unlawful. To ensure OIRA meets its deadlines and the American people are no longer denied this important information, we write to request information and documents relating to the Spring and Fall Agendas.

The *Regulatory Flexibility Act of 1980* requires federal agencies to publish, in April and October, a semiannual regulatory agenda in the *Federal Register* describing economically significant regulatory actions being developed.¹ Executive Order 12866 requires agencies to publish every 6 months a regulatory agenda including all regulations under development or review during the 12 months following publication.² The Office of Management and Budget (OMB) directed federal agencies to submit all Spring Agenda materials to OMB by April 13, 2012.³

On July 12, 2012, we wrote Cass Sunstein, then the OIRA Administrator, requesting information, documents, and communications relating to the Spring Agenda.⁴ In response, then-Administrator Sunstein sent a four sentence letter, dated August 10, 2012, thanking us for our inquiry and stating that

¹ Public Law 96-354 <http://www.archives.gov/federal-register/laws/regulatory-flexibility/602.html> (Accessed July 10, 2012)

² Memorandum from Cass Sunstein, Administrator, Office of Management and Budget, Memorandum for Regulatory Policy Officers at Executive Departments and Agencies and Managing and Executive Directors of Certain Agencies and Commissions (March 12, 2012) available at: <http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/agenda-data-call-and-guidelines-spring-2012.pdf>.

³ *Id.*

⁴ Letter from the Honorable John Kline, Virginia Foxx, David Roe, and Tim Walberg, Representatives, U.S. House of Representatives, to the Honorable Cass Sunstein, Administrator, Office of Information and Regulatory Affairs (July 12, 2012) (on file with author).

“we are still working with the agencies to prepare that Agenda.”⁵ Then-Administrator Sunstein’s response remains unacceptable.

When the Spring Agenda was not published and the administration failed to adequately respond to our repeated requests for information, documents, and communications related to that agenda, we sent a second letter on September 14, 2012, requesting a meeting with OMB Acting Director Zients. We sought an explanation for OIRA’s late and insufficient response and the administration’s delay in producing its Spring Agenda, and information on regulatory actions being developed by the Department of Labor (DOL).⁶

On October 12, 2012, four months after our initial inquiry, you made yourself available by phone to discuss the status of the Spring Agenda. You indicated OIRA will not publish a Spring Agenda and will instead publish the Fall Agenda. This omission directly contradicts assurances we received from then-Administrator Sunstein that the agency was working to “prepare that Agenda.”⁷ You offered no explanation for your predecessor’s failure to publish the Spring Agenda, nor did you provide an adequate explanation for your own failure to produce it.

You indicated you have held the Spring Agenda so it can be updated to reflect changes in the law. However, the Unified Agenda is intended to be a snapshot describing economically significant regulations being developed at a particular point in time. In many cases, regulations included in the Unified Agenda are never proposed or finalized. Given the ever-changing regulatory environment, if the Unified Agenda was delayed to accommodate changes in the law, it could be delayed for months on end. Such delay, even if done with the best intentions, is unacceptable and unlawful.

The administration has ignored statutory obligations and executive orders. This failure has deprived the American people of information that is essential to decreasing economic uncertainty and increasing regulatory transparency.

To ensure the administration meets its October deadline and the American people are no longer denied details of the administration’s regulatory plans, we request information and documents relating to the Fall Agenda. Additionally, we again request information and documents relating to the Spring Agenda. Please provide the following to the Committee on Education and the Workforce **no later than November 8, 2012**:

1. An explanation of why OMB did not publish the Spring 2012 Unified Agenda;
2. The date OMB anticipates public release of the Fall 2012 Unified Agenda;

⁵ Letter from Cass R. Sunstein to the Honorable John Kline and Virginia Foxx, Representatives, U.S. House of Representatives (August 10, 2012) (on file with author).

⁶ Letter from the Honorable John Kline, Virginia Foxx, David Roe, and Tim Walberg, Representatives, U.S. House of Representatives, to the Honorable Jeffrey Zients, Acting Director, Office of Management and Budget (September 14, 2012) (on file with author).

⁷ Letter from Cass R. Sunstein to the Honorable John Kline and Virginia Foxx, Representatives, U.S. House of Representatives (August 10, 2012) (on file with author).

Mr. Boris Bershteyn

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3. The date DOL submitted its materials to OMB for the Spring and Fall 2012 Unified Agenda;⁸
4. A copy of DOL's Spring and Fall 2012 Unified Agenda preamble;⁹
5. A list of all proposed rules, including a brief description and expected date of issuance, within DOL's regulatory agenda, in accordance with the *Regulatory Flexibility Act*;¹⁰ and
6. A list of any rules, including a brief description, DOL has identified for periodic review under Section 610 of the *Regulatory Flexibility Act*.¹¹

If you are unable to provide the requested information by the date specified, please inform the committee in writing why you cannot meet the deadline, and the date by which you will provide the requested information. If you have additional questions or comments, please contact Joe Wheeler of the committee staff at (202) 225-7101.

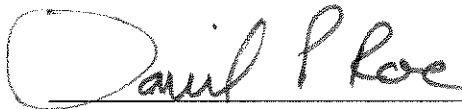
Sincerely,



JOHN KLINE
Chairman
Committee on Education and the Workforce



VIRGINIA FOXX
Chairwoman
Subcommittee on Higher Education and
Workforce Training



DAVID "PHIL" ROE
Chairman
Subcommittee on Health, Employment,
Labor, and Pensions



TIM WALBERG
Chairman
Subcommittee on Workforce Protections

Enclosure

CC: The Honorable George Miller, Senior Democratic Member, Committee on Education and the Workforce

The Honorable Hilda L. Solis, Secretary, Department of Labor

⁸ As submitted to OMB in accordance with its Spring 2012 Unified Agenda of Federal Regulatory and Deregulatory Actions memorandum (March 12, 2012) <http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/agenda-data-call-and-guidelines-spring-2012.pdf> and the Fall 2012 equivalent.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*