§ 596. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter not more than $3,200,000 for fiscal year 2009, $3,200,000 for fiscal year 2010, and $3,200,000 for fiscal year 2011. Of any amounts appropriated under this section, not more than $1,500 may be made available in each fiscal year for official representation and entertainment expenses for foreign dignitaries.

For purposes of this chapter—
(1) the term “agency” means an agency as defined in section 551(1) of this title;
(2) the term “rule” means any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of this title, or any other law, including any rule of general applicability governing Federal grants to State and local governments for which the agency provides an opportunity for notice and public comment, except that the term “rule” does not include a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting, or practices relating to such rates, wages, structures, prices, appliances, services, or allowances;
(3) the term “small business” has the same meaning as the term “small business concern” under section 3 of the Small Business Act, unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;
(4) the term “small organization” means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;
(5) the term “small governmental jurisdiction” means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;
(6) the term “small entity” shall have the same meaning as the terms “small business”, “small organization” and “small governmental jurisdiction” defined in paragraphs (3), (4) and (5) of this section; and
(7) the term “collection of information”—
(A) means the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either—
(i) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, 10 or more persons, other than agencies, instrumentalities, or employees of the United States; or
(ii) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes; and
(B) shall not include a collection of information described under section 3518(c)(1) of title 44, United States Code.

(8) Recordkeeping requirement.—The term “recordkeeping requirement” means a requirement imposed by an agency on persons to maintain specified records.


References in Text
Section 3 of the Small Business Act, referred to in par. (3), is classified to section 632 of Title 15, Commerce and Trade.

Amendments
1996—Pars. (7), (8). Pub. L. 104–121 added pars. (7) and (8).

Effective Date of 1996 Amendment
Section 245 of title II of Pub. L. 104–121 provided that: “This subtitle [subtitle D (§§241–245) of title II of Pub. L. 104–121, amending this section to 605, 609, 611, and 612 of this title and enacting provisions set out as a note under section 609 of this title] shall become effective on the expiration of 90 days after the date of enactment of this subtitle [Mar. 29, 1996], except that such amendments shall not apply to interpretative rules for which a notice of proposed rulemaking was published prior to the date of enactment.”

Effective Date
Section 4 of Pub. L. 96–354 provided that: “The provisions of this Act [enacting this chapter] shall take effect January 1, 1981, except that the requirements of sections 603 and 604 of title 5, United States Code (as added by section 3 of this Act) shall apply only to rules for which a notice of proposed rulemaking is issued on or after January 1, 1981.”

Short Title of 1996 Amendment
Section 1 of Pub. L. 104–121 provided that: “This Act [enacting sections 601 to 608 of this title, section 637 of Title 15, Commerce and Trade, and sections 1220b–15 and 1383c of Title 42, The Public Health and Welfare, amending and sections 504, 603 to 605, 609, 611, and 612 of this title, sections 660c and 901 of Title 2, The Congress, section 468 of Title 15, sections 2112 of Title 28, Judiciary and Judicial Procedure, section 3101 of Title 31, Money and Finance, and sections 401, 402, 403, 465, 422, 423, 425, 502, 903, 1382, 1362c, 1383, and 1383c of Title 42, enacting provisions set out as notes under this section and sections 504, 609, and 901 of this title and sections 401, 402, 403, 405, 902, 1305, 1320b–15, and 1382 of Title 42, amending provisions set out as a note under section 631 of Title 15, and repealing provisions set out as a note under section 425 of Title 42] may be cited as the ‘Contract with America Advancement Act of 1996.’”

Short Title
Section 1 of Pub. L. 96–354 provided that: “That this Act [enacting this chapter] may be cited as the ‘Regulatory Flexibility Act’.”

Regulatory Enforcement Reports
“(a) Definition.—In this section, the term ‘agency’ has the meaning given that term under section 551 of title 5, United States Code.
“(b) in General.—
“(1) Initial Report.—Not later than December 31, 2003, each agency shall submit an initial report to—
“(A) the chairpersons and ranking minority members of—
“(i) the Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] and the Committee on Small Business and Entrepreneurship of the Senate; and
(ii) the Committee on Government Reform [now Committee on Oversight and Government Reform] and the Committee on Small Business of the House of Representatives; and

(B) the Small Business and Agriculture Regulatory Enforcement Ombudsman designated under section 30(b) of the Small Business Act (15 U.S.C. 657(b)).

(2) FINAL REPORT.—Not later than December 31, 2004, each agency shall submit a final report to the members and officer described under paragraph (1) (A) and (B).

(3) CONTENT.—The initial report under paragraph (1) shall include information with respect to the 1-year period beginning on October 1, 2002, and the final report under paragraph (2) shall include information with respect to the 1-year period beginning on October 1, 2003, on each of the following:

(A) The number of enforcement actions in which a civil penalty is assessed.

(B) The number of enforcement actions in which a civil penalty is assessed against a small entity.

(C) The number of enforcement actions described under subparagraphs (A) and (B) in which the civil penalty is reduced or waived.

(D) The total monetary amount of the reductions or waivers referred to under subparagraph (C).

(4) DEFINITIONS IN REPORTS.—Each report under this subsection shall include definitions selected at the discretion of the reporting agency of the terms ‘enforcement actions’, ‘reduction or waiver’, and ‘small entity’ as used in the report.

ASSESSMENT OF FEDERAL REGULATIONS AND POLICIES ON FAMILIES


(A) require agencies to assess the impact of proposed policy or regulation that may affect family well-being, the head of each agency shall—

(A) submit a written certification to the Director of the Office of Management and Budget and to Congress that such policy or regulation has been assessed in accordance with this section; and

(B) provide an adequate rationale for implementation of each policy or regulation that may negatively affect family well-being.

(2) OFFICE OF MANAGEMENT AND BUDGET.—The Director of the Office of Management and Budget shall—

(A) ensure that policies and regulations proposed by agencies are implemented consistent with this section; and

(B) compile, index, and submit annually to the Congress the written certifications received pursuant to paragraph (1)(A).

(3) OFFICE OF POLICY DEVELOPMENT.—The Office of Policy Development shall—

(A) assess proposed policies and regulations in accordance with this section;

(B) provide evaluations of policies and regulations that may affect family well-being, to the Director of the Office of Management and Budget; and

(C) advise the President on policy and regulatory actions that may be taken to strengthen the institutions of marriage and family in the United States.

(4) ASSESSMENTS UPON REQUEST BY MEMBERS OF CONGRESS.—Upon request by a Member of Congress relating to a proposed policy or regulation, an agency shall conduct an assessment in accordance with subsection (c), and shall provide a certification and rationale in accordance with subsection (d).

(5) JUDICIAL REVIEW.—This section is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

SMALL BUSINESS REGULATORY FAIRNESS


SEC. 201. SHORT TITLE.

This title [enacting sections 801 to 808 of this title and section 657 of Title 15, Commerce and Trade, amending this section, sections 504, 603 to 605, 609, 611, and 612 of this title, section 688 of Title 18, and section 2412 of Title 28, Judiciary and Judicial Procedure, enacting provisions set out as notes under this section and sections 504, 609, and 801 of this title, and amending provisions set out as a note under section 631 of Title 15] may be cited as the ‘Small Business Regulatory Enforcement Fairness Act of 1996’.

SEC. 202. FINDINGS.

Congress finds that

(1) a vibrant and growing small business sector is critical to creating jobs in a dynamic economy;

(2) small businesses bear a disproportionate share of regulatory costs and burdens;

(3) fundamental changes that are needed in the regulatory and enforcement culture of Federal agencies to make agencies more responsive to small business can be made without compromising the statutory missions of the agencies;

(4) three of the top recommendations of the 1995 White House Conference on Small Business involve reforms to the way government regulations are developed and enforced, and reductions in government paperwork requirements;

(5) the requirements of chapter 6 of title 5, United States Code, have too often been ignored by government agencies, resulting in greater regulatory burdens on small entities than necessitated by statute; and
"(6) small entities should be given the opportunity to seek judicial review of agency actions required by chapter 6 of title 5, United States Code.

"SEC. 203. PURPOSES.

"The purposes of this title are—

"(1) to implement certain recommendations of the 1995 White House Conference on Small Business regarding the development and enforcement of Federal regulations;

"(2) to provide for judicial review of chapter 6 of title 5, United States Code;

"(3) to encourage the effective participation of small businesses in the Federal regulatory process;

"(4) to simplify the language of Federal regulations affecting small businesses;

"(5) to develop more accessible sources of information on regulatory and reporting requirements for small businesses;

"(6) to create a more cooperative regulatory environment among agencies and small businesses that is less punitive and more solution-oriented; and

"(7) to make Federal regulators more accountable for their enforcement actions by providing small entities with a meaningful opportunity for redress of excessive enforcement activities.

"SUBTITLE A—REGULATORY COMPLIANCE SIMPLIFICATION

"SEC. 211. DEFINITIONS.

"For purposes of this subtitle—

"(1) the terms 'rule' and 'small entity' have the same meanings as in section 601 of title 5, United States Code;

"(2) the term 'agency' has the same meaning as in section 551 of title 5, United States Code; and

"(3) the term 'small entity compliance guide' means a document designated and entitled as such by an agency.

"SEC. 212. COMPLIANCE GUIDES.

"(a) COMPLIANCE GUIDE.—For each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis under section 605(b) [probably should be 'section 604'] of title 5, United States Code, the agency shall publish 1 or more guides to assist small entities in complying with the rule and shall entitle such publications 'small entity compliance guides'.

"(b) PUBLICATION OF GUIDES.—The publication of each guide under this subsection shall include—

"(A) the posting of the guide in an easily identified location on the website of the agency; and

"(B) distribution of the guide to known industry contacts, such as small entities, associations, or industry leaders affected by the rule.

"(c) PUBLICATION DATE.—An agency shall publish each guide (including the posting and distribution of the guide as described under paragraph (2))—

"(i) on the same date as the date of publication of the final rule (or as soon as possible after that date); and

"(ii) if determined appropriate by the agency, to meet the requirements of that rule become effective.

"(d) COMPLIANCE ACTIONS.—

"(1) IN GENERAL.—Each guide shall explain the actions a small entity is required to take to comply with a rule.

"(e) EXPLANATION.—The explanation under subparagraph (A)—

"(i) shall include a description of actions needed to meet the requirements of a rule, to enable a small entity to know when such requirements are met; and

"(ii) if determined appropriate by the agency, may include a description of possible procedures, such as conducting tests, that may assist a small entity in meeting such requirements, except that, compliance with any procedures described pursuant to this section does not establish compliance with the rule, or establish a presumption or inference of such compliance.

"(f) PROCEDURES.—Procedures described under subparagraph (b)(ii)—

"(i) shall be suggestions to assist small entities; and

"(ii) shall not be additional requirements, or diminish requirements, relating to the rule.

"(g) AGENCY PREPARATION OF GUIDES.—The agency shall, in its sole discretion, taking into account the subject matter of the rule and the language of relevant statutes, ensure that the guide is written using sufficiently plain language likely to be understood by affected small entities. Agencies may prepare separate guides covering groups or classes of similarly affected small entities and may cooperate with associations of small entities to develop and distribute such guides. An agency may prepare guides and apply this section with respect to a rule or a group of related rules.

"(h) REPORTING.—Not later than 1 year after the date of enactment of the Fair Minimum Wage Act of 2007 [May 25, 2007], and annually thereafter, the head of each agency shall submit a report to the Committee on Small Business and Entrepreneurship of the Senate, the Committee on Small Business of the House of Representatives, and any other committee of relevant jurisdiction describing the status of the agency's compliance with paragraphs (1) through (5).

"(i) COMPREHENSIVE SOURCE OF INFORMATION.—Agencies shall cooperate to make available to small entities through comprehensive sources of information, the small entity compliance guides and all other available information on statutory and regulatory requirements affecting small entities.

"(j) LIMITATION ON JUDICIAL REVIEW.—An agency's small entity compliance guide shall not be subject to judicial review, except that in any civil or administrative action against a small entity for a violation occurring after the effective date of this section, the content of the small entity compliance guide may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages.

"SEC. 213. INFORMAL SMALL ENTITY GUIDANCE.

"(a) GENERAL.—Whenever appropriate in the interest of administering statutes and regulations within the jurisdiction of an agency which regulates small entities, it shall be the practice of the agency to answer inquiries by small entities concerning information on, and advice about, compliance with such statutes and regulations, interpreting and applying the law to specific sets of facts supplied by the small entity. In any civil or administrative action against a small entity, guidance given by an agency applying the law to facts provided by the small entity may be considered in the consideration of the reasonableness or appropriateness of any proposed fines, penalties or damages sought against such small entity.

"(b) PROGRAM.—Each agency regulating the activities of small entities shall establish a program for responding to such inquiries no later than 1 year after enactment of this section [Mar. 29, 1996], utilizing existing functions and personnel of the agency to the extent practicable.

"(c) REPORTING.—Each agency regulating the activities of small business shall report to the Committee on Small Business [now Committee on Small Business and Entrepreneurship] and Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] of the Senate and the Committee on Small Business and Committee on the Judiciary of the House of Representatives no later than 2 years after the date of the enactment of this section on the scope of the agency's program, the number of small entities using the program, and the achievements of the program to assist small entity compliance with agency regulations.

"SEC. 214. SERVICES OF SMALL BUSINESS DEVELOPMENT CENTERS.

"(a) [Amended section 648 of Title 15, Commerce and Trade.]
“(b) Nothing in this Act [see Short Title of 1996 Amendment note, above] in any way affects or limits the ability of other technical assistance or extension programs to perform or continue to perform services related to compliance assistance.

SEC. 215. COOPERATION ON GUIDANCE.

“Agencies may, to the extent resources are available and where appropriate, in cooperation with the States, develop guides that fully integrate requirements of both Federal and State regulations where regulations within an agency’s area of interest at the Federal and State levels impact small entities. Where regulations vary among the States, separate guides may be created for separate States in cooperation with State agencies.

SEC. 216. EFFECTIVE DATE.

“This subtitle and the amendments made by this subtitle shall take effect on the expiration of 90 days after the date of enactment of this subtitle [Mar. 29, 1996].

SUBTITLE B—REGULATORY ENFORCEMENT REFORMS

SEC. 221. DEFINITIONS.

“For purposes of this subtitle—

"(1) the terms ‘rule’ and ‘small entity’ have the same meanings as in section 601 of title 5, United States Code;"

"(2) the term ‘agency’ has the same meaning as in section 551 of title 5, United States Code; and"

"(3) excluding violations that pose serious health, safety or environmental threats; and"

"(4) excluding violations involving willful or criminal conduct;"

"(5) excluding violations that pose serious health, safety or environmental threats; and"

"(6) requiring a good faith effort to comply with the law.

"(c) REPORTING.—Agencies shall report to the Committee on Small Business and Entrepreneurship and Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] of the Senate and the Committee on Small Business and Committee on Judiciary of the House of Representatives no later than 2 years after the date of enactment of this section [Mar. 29, 1996] on the scope of their program or policy, the number of enforcement actions against small entities that qualified or failed to qualify for the program or policy, and the total amount of penalty reductions and waivers.

SEC. 224. EFFECTIVE DATE.

“[Title 5—Government Organization and Employees] [§601]

EFFECTS OF DEREGULATION ON RURAL AMERICA

Pub. L. 101–574, title III, §309, Nov. 15, 1990, 104 Stat. 2831, provided that:

“(a) STUDY.—The Office of Technology Assessment shall conduct a study of the effects of deregulation on the economic vitality of rural America. Such study shall include, but not be limited to, a thorough analysis of the impact of deregulation on—

“(1) the number of loans made by financial institutions to small businesses located in rural areas, a change in the level of security interests required for such loans, and the cost of such loans to rural small businesses for creation and expansion;

“(2) airline service in cities and towns with populations of 100,000 or less, including airline fare, the number of flights available, number of seats available, scheduling of flights, continuity of service, number of markets being served by large and small airlines, availability of nonstop service, availability of direct service, number of economic cancellations, number of flight delays, the types of airplanes used, and time delays;

“(3) the availability and costs of bus, rail and trucking transportation for businesses located in rural areas;

“(4) the availability and costs of state-of-the-art telecommunications services to small businesses located in rural areas, including voice telephone service, private [not multiparty] telephone service, reliable facsimile document and data transmission, competitive long distance carriers, cellular (mobile) telephone service, multifrequency tone signaling services such as touchtone services, custom-calling services (including three-way calling, call forwarding, and call waiting), voicemail services, and 911 emergency services with automatic number identification;

“(5) the availability and costs to rural schools, hospitals, and other public facilities, of sending and receiving audio and visual signals in cases where such ability will enhance the quality of services provided to rural residents and businesses; and

“(6) the availability and costs of services enumerated in paragraphs (1) through (5) in urban areas compared to rural areas.

“(b) REPORT.—Not later than 12 months after the date of enactment of this title [Nov. 15, 1990], the Office of Technology Assessment shall transmit to Congress a report on the results of the study conducted under subsection (a) together with its recommendations on how to address the problems facing small businesses in rural areas.”

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE

Section 2 of Pub. L. 96–354 provided that:

“(a) The Congress finds and declares that—

“(1) when adopting regulations to protect the health, safety and economic welfare of the Nation, Federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public;

“(2) laws and regulations designed for application to large scale entities have often been applied uniformly to small businesses, small organizations, and small governmental jurisdictions even though the problems that gave rise to government action may not have been caused by those smaller entities;

“(3) uniform Federal regulatory and reporting requirements have in numerous instances imposed unnecessary and disproportionately burdensome demands including legal, accounting and consulting costs upon small businesses, small organizations, and small governmental jurisdictions with limited resources;

“(4) the failure to recognize differences in the scale and resources of regulated entities has in numerous instances adversely affected competition in the marketplace, discouraged innovation and restricted improvements in productivity;
“(5) unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes;

“(6) the practice of treating all regulated businesses, organizations, and governmental jurisdictions as equivalent may lead to inefficient use of regulatory agency resources, the creation of enforcement problems, and, in some cases, to actions inconsistent with the legislative intent of health, safety, environmental and economic welfare legislation;

“(7) alternative regulatory approaches which do not conflict with the stated objectives of applicable statutes may be available which minimize the significant economic impact of rules on small businesses, small organizations, and small governmental jurisdictions;

“(8) the process by which Federal regulations are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, small organizations, and small governmental jurisdictions to examine the impact of proposed and existing rules on such entities, and to review the continued need for existing rules.

“(b) It is the purpose of this Act [enacting this chapter] to establish as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.”

EXECUTIVE ORDER No. 12291
Ex. Ord. No. 12291, Feb. 17, 1981, 46 F.R. 13183, which established requirements for agencies to follow in promulgating regulations, reviewing existing regulations, and developing legislative proposals concerning regulations, was revoked by Ex. Ord. No. 12866, §11, Sept. 30, 1993, 58 F.R. 51735, set out below.

EXECUTIVE ORDER No. 12498
Ex. Ord. No. 12498, Jan. 4, 1985, 50 F.R. 1036, which established a regulatory planning process by which to develop and publish a regulatory program for each year, was revoked by Ex. Ord. No. 12866, §11, Sept. 30, 1993, 58 F.R. 51735, set out below.

EXECUTIVE ORDER No. 12906
Ex. Ord. No. 12906, Sept. 2, 1987, 52 F.R. 34188, which provided criteria for executive departments and agencies to follow in making policies and regulations to ensure consideration of effect of those policies and regulations on autonomy and rights of the family, was revoked by Ex. Ord. No. 13045, §7, Apr. 21, 1997, 62 F.R. 19888, set out as a note under section 4321 of Title 42, The Public Health and Welfare.

EXECUTIVE ORDER No. 12612
Ex. Ord. No. 12612, Oct. 26, 1987, 52 F.R. 41685, which set out fundamental federalism principles and policy-making criteria for executive departments and agencies to follow in formulating and implementing policies and limited the instances when executive departments and agencies could construe a Federal statute to preempt State law, was revoked by Ex. Ord. No. 13312, §10(b), Aug. 4, 1999, 64 F.R. 43259, set out below.

EX. ORD. No. 12630, GOVERNMENTAL ACTIONS AND INTERFERENCE WITH CONSTITUTIONALLY PROTECTED PROPERTY RIGHTS
Ex. Ord. No. 12630, Mar. 15, 1988, 53 F.R. 8859, provided: By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to ensure that government actions are undertaken on a well-reasoned basis with due regard for fiscal accountability, for the financial impact of the obligations imposed on the Federal government by the Just Compensation Clause of the Fifth Amendment, and for the Constitution, it is hereby ordered as follows:

SECTION 1. Purpose. (a) The Fifth Amendment of the United States Constitution provides that private property shall not be taken for public use without just compensation. Government historically has used the formal exercise of the power of eminent domain, which provides orderly processes for paying just compensation, to acquire private property for public use. Recent Supreme Court decisions, however, in reaffirming the fundamental protection of private property rights provided by the Fifth Amendment and in assessing the nature of governmental actions that have an impact on constitutionally protected property rights, have also reaffirmed that governmental actions that do not formally invoke the condemnation power, including regulations, may result in a taking for which just compensation is required.

(b) Responsible fiscal management and fundamental principles of good government require that government decision-makers evaluate carefully the effects of administrative, regulatory, and legislative actions on constitutionally protected property rights. Executive departments and agencies should review their actions carefully to prevent unnecessary takings and should account in decision-making for those takings that are necessitated by statutory mandate.

(c) The purpose of this Order is to assist Federal departments and agencies in undertaking such reviews and in proposing, planning, and implementing actions with due regard for the constitutional protections provided by the Fifth Amendment and to reduce the incidence of undue or inadvertent burdens on the public fisc resulting from lawful governmental action. In furtherance of the purpose of this Order, the Attorney General shall, consistent with the principles stated herein and in consultation with the Executive departments and agencies, promulgate Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings in which each Executive department or agency shall refer in making the evaluations required by this Order or in otherwise taking any action that is the subject of this Order. The Guidelines shall be promulgated no later than May 1, 1988, and shall be disseminated to all units of each Executive department and agency no later than July 1, 1988. The Attorney General shall, as necessary, update these guidelines to reflect fundamental changes in takings law occurring as a result of Supreme Court decisions.

SEC. 2. Definitions. For the purpose of this Order: (a) ‘‘Policies that have takings implications’’ refers to Federal regulations, proposed Federal regulations, proposed Federal legislation, comments on proposed Federal legislation, or other Federal policy statements that, if implemented or enacted, could effect a taking, such as rules and regulations that propose or implement licensing, permitting, or other condition requirements or limitations on private property use, or that require dedications or exactions from owners of private property. ‘‘Policies that have takings implications’’ does not include:

(1) Actions abolishing regulations, discontinuing governmental programs, or modifying regulations in a manner that lessens interference with the use of private property;

(2) Actions taken with respect to properties held in trust by the United States or in preparation for or during treaty negotiations with foreign nations;

(3) Law enforcement actions involving seizure, for violations of law, of property for forfeiture or as evidence in criminal proceedings;

(4) Studies or similar efforts or planning activities;

(5) Communications between Federal agencies or departments and State or local land-use planning agencies regarding planned or proposed State or local actions regulating private property regardless of whether such communications are initiated by a Federal agency or department or are undertaken in response to an invitation by the State or local authority;

...
(6) The placement of military facilities or military activities involving the use of Federal property alone; or

(7) Any military or foreign affairs functions (including procurement functions thereunder) but not including the U.S. Army Corps of Engineers civil works program.

(b) Private property refers to all property protected by the Just Compensation Clause of the Fifth Amendment.

c) "Actions" refers to proposed Federal regulations, proposed Federal legislation, comments on proposed Federal legislation, applications of Federal regulations to specific property, or Federal governmental actions physically invading or occupying private property, or other policy statements or actions related to Federal regulation or direct physical invasion or occupancy, but does not include:

(1) Actions in which the power of eminent domain is formally exercised;

(2) Actions taken with respect to properties held in trust by the United States or in preparation for or during treaty negotiations with foreign nations;

(3) Law enforcement actions involving seizure, for violations of law, of property for forfeiture or as evidence in criminal proceedings;

(4) Studies or similar efforts or planning activities;

(5) Communications between Federal agencies or departments and State or local land-use planning agencies regarding planned or proposed State or local actions regulating private property regardless of whether such communications are initiated by a Federal agency or the action contemplated a taking or authorized the payment of compensation. Accordingly, governmental actions that may have a significant impact on the use or value of private property should be scrutinized to avoid undue or unplanned burdens on the public fisc.

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(e) The Just Compensation Clause is self-actuating, requiring that compensation be paid whenever governmental action results in a taking of private property regardless of whether the underlying authority for the action contemplated a taking or authorized the payment of compensation. Accordingly, governmental actions that may have a significant impact on the use or value of private property should be scrutinized to avoid undue or unplanned burdens on the public fisc.

SISC. 4. Department and Agency Action. In addition to the fundamental principles set forth in Section 3, Executive departments and agencies shall adhere, to the extent permitted by law, to the following criteria when implementing policies that have takings implications:

(a) When an Executive department or agency requires a private party to obtain a permit in order to undertake a taking of private property that substantially affect its value or use, any conditions imposed on the granting of a permit shall:

(1) Serve the same purpose that would have been served by a prohibition of the use or action, and

(2) Substantially advance that purpose.

(b) When a proposed action would place a restriction on a use of private property, the restriction imposed on the use shall not be disproportionate to the extent to which the use contributes to the overall problem that the restriction is imposed to redress:

(1) Serve the same purpose that would have been served by a prohibition of the use or action, and

(2) Substantially advance that purpose.

(c) When a proposed action involves a permitting process or any other decision-making process that will interfere with, or otherwise prohibit, the use of private property pending the completion of the process, the duration of the process shall be kept to the minimum necessary.

(d) Before undertaking any proposed action regulating private property use for the protection of public health or safety, the Executive department or agency involved shall, in internal deliberative documents and any submissions to the Director of the Office of Management and Budget that are required:

(1) Identify clearly, with as much specificity as possible, the public health or safety risk created by the private property use that is the subject of the proposed action;

(2) Establish that such proposed action substantially advances the purpose of protecting public health and safety against the specifically identified risk;

(3) Establish to the extent possible that the restrictions imposed on the private property are not disproportionate to the extent to which the use contributes to the overall risk; and

(4) Estimate, to the extent possible, the potential cost to the government in the event that a court later determines that the action constituted a taking.

In instances in which that is an immediate threat to health and safety that constitutes an emergency requiring immediate response, this analysis may be done upon completion of the emergency action.

SISC. 5. Executive Department and Agency Implementation. (a) The head of each Executive department and agency shall designate an official to be responsible for ensuring compliance with this Order with respect to the actions of the department or agency.

(b) Executive departments and agencies shall, to the extent permitted by law, identify the takings implications of proposed regulatory actions and address the merits of those actions in light of the identified takings implications, if any, in all required submissions made to the Office of Management and Budget. Significant takings implications should also be identified and discussed in notices of proposed rule-making and messages transmitting legislative proposals to the Congress stating the departments' and agencies' conclusions on the takings issues.

(c) Executive departments and agencies shall identify each existing Federal rule and regulation against which a takings award has been made or against which a takings claim is pending including the amount of each claim or award. A "takings claim" pending in court, a "takings" claim pending if the award was made, or the pending claim brought, pursuant to the Just Compensa-
The American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves their health, safety, environment, and well-being; an economy that operates without unnecessary or unreasonable costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires otherwise.

Section 1. Statement of Regulatory Philosophy and Principles.

(a) The Regulatory Philosophy. Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people. In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

(b) The Principles of Regulation. To ensure that the agencies’ regulatory programs are consistent with the philosophy set forth above, agencies should adhere to the following principles, to the extent permitted by law and where applicable:

(1) Each agency shall identify the problem that it intends to address (including, where applicable, the failures of private markets or public institutions that warrant new agency action) as well as assess the significance of that problem.

(2) Each agency shall examine whether existing regulations (or other law) have created, or contributed to, the problem that a new regulation is intended to correct and whether those regulations (or other law) should be modified to achieve the intended goal of regulation more effectively.

(3) Each agency shall identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

(4) In setting regulatory priorities, each agency shall consider, to the extent reasonable, the degree and nature of the risks posed by various substances or activities within its jurisdiction.

(5) When an agency determines that a regulation is the best available method of achieving the regulatory objective, it shall design its regulations in the most...
cost-effective manner to achieve the regulatory ob-
jective. In doing so, each agency shall consider incen-
tives for innovation, consistency, predictability, the cost of enforcement and compliance (to the govern-
ment, regulated entities, and the public), flexibility, distributive impacts, and equity.
(6) Each agency shall assess both the costs and the ben-
etits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify,
propose or adopt a regulation only upon a reasoned
determination that the benefits of the intended regu-
lation justify its costs.
(7) Each agency shall base its decisions on the best
reasonably obtainable scientific, technical, economic,
and other information concerning the need for, and
consequences of, the intended regulation.
(8) Each agency shall identify and assess alter-
native forms of regulation and shall, to the extent feasible, specify performance objectives, rather than
specifying the behavior or manner of compliance that
regulated entities must adopt.
(9) Wherever feasible, agencies shall seek views of
appropriate State, local, and tribal officials before
imposing regulatory requirements that might signifi-
cantly or uniquely affect those governmental enti-
ties. Each agency shall assess the effects of Federal
regulations on State, local, and tribal governments,
including specifically the availability of resources to
carry out those mandates, and seek to minimize those
burdens that uniquely or significantly affect such
governmental entities, consistent with achiev-
ing regulatory objectives. In addition, as appropriate,
agencies shall seek to harmonize Federal regulatory
actions with related State, local, and tribal regu-
latory and other governmental functions.
(10) Each agency shall avoid regulations that are
inconsistent, incompatible, or duplicative with its
other regulations or those of other Federal agencies.
(11) Each agency shall tailor its regulations to im-
pose the least burden on society, including individ-
uals, businesses of differing sizes, and other entities
(including small communities and governmental enti-
ties), consistent with obtaining the regulatory objec-
tives, taking into account, among other things, and
to the extent practicable, the costs of cumulative
regulations.
(12) Each agency shall draft its regulations to be
simple and easy to understand, with the goal of mini-
mizing the potential for uncertainty and litigation
arising from such uncertainty.
Sic. 3. Organization. An efficient regulatory planning
and review process is vital to ensure that the Federal
Government’s regulatory system best serves the Amer-
ican people.
(a) The Agencies. Because Federal agencies are the re-
positories of significant substantive expertise and expe-
rience, they are responsible for developing regulations
and assuring that the regulations are consistent with applicable law, the President’s priorities, and the prin-
ciples set forth in this Executive order.
(b) The Office of Management and Budget. Coordinated
review of agency rulemaking is necessary to ensure
that regulations are consistent with applicable law, the
President’s priorities, and the principles set forth in
this Executive order, and that decisions made by one
agency do not conflict with the policies or actions
taken or planned by another agency. The Office of Man-
gagement and Budget (OMB) shall carry out that review
function. Within OMB, the Office of Information and
Regulatory Affairs (OIRA) is the repository of expertise
concerning regulatory issues, including methodologies
and procedures that affect more than one agency, this
Executive order, and the President’s regulatory poli-
cies. To the extent permitted by law, OMB shall pro-
vide guidance to agencies and assist the President, the
Vice President, and other regulatory policy advisors to
the President in regulatory planning and shall be the
entity that reviews individual regulations, as provided
by this Executive order.
(c) The Vice President. The Vice President is the prin-
cipal advisor to the President on, and shall coordinate
the development and presentation of recommendations
concerning, regulatory policy, planning, and review, as
set forth in this Executive order. In fulfilling their re-
sponsibilities under this Executive order, the President
and the Vice President shall be assisted by the regu-
latory policy advisors within the Executive Office of
the President and by such agency officials and person-
nel as the President and the Vice President may, from
time to time, consult.
Sic. 3. Definitions. For purposes of this Executive
order: (a) “Advisors” refers to such regulatory policy
advisors to the President as the President and the Vice
President may from time to time consult, including,
among others: (1) the Director of OMB; (2) the Chair (or
another member) of the Council of Economic Advisors;
(3) the Assistant to the President for Economic Policy;
(4) the Assistant to the President for Domestic Policy;
(5) the Assistant to the President for National Security
Affairs; (6) the Assistant to the President for Science
and Technology; (7) the Assistant to the President for
Intergovernmental Affairs; (8) the Assistant to the
President and Staff Secretary; (9) the Assistant to the
President and Chief of Staff to the Vice President; (10)
the Assistant to the President and Counsel to the
President; (11) the Deputy Assistant to the President
and Director of the White House Office on Environ-
mental Policy; and (12) the Administrator of OIRA, who
shall also coordinate communications relating to this
Executive order among the agencies, OMB, the other
Advisors, and the Office of the Vice President.
(b) “Agency,” unless otherwise indicated, means any
authority of the United States that is an “agency”
under 44 U.S.C. 3502(1), other than those considered
to be independent regulatory agencies, as defined in 44
(c) “Director” means the Director of OMB.
(d) “Regulation” or “rule” means any agency state-
gment of general applicability and future effect, which
the agency intends to have the force and effect of law,
that is designed to implement, interpret, or prescribe
law or policy or to describe the procedure or practice
requirements of an agency. It does not, however, in-
clude:
(1) Regulations or rules issued in accordance with
the formal rulemaking provisions of 5 U.S.C. 556, 557;
(2) Regulations or rules that pertain to a military
or foreign affairs function of the United States, other-
than procurement regulations and regulations involv-
ing the import or export of non-defense articles and
services;
(3) Regulations or rules that are limited to agency
organization, management, or personnel matters; or
(4) Any other category of regulations exempted by
the Administrator of OIRA.
(e) “Regulatory action” means any substantive ac-
tion by an agency (normally published in the Federal
Register) that promulgates or is expected to lead to the
promulgation of a final rule or regulation, including
notices of inquiry, advance notices of proposed rule-
making, and notices of proposed rulemaking.
(f) “Significant regulatory action” means any regu-
larly action that is likely to result in a rule that may
(1) Have an annual effect on the economy of $100
million or more or adversely affect in a material way
the economy, a sector of the economy, productivity,
competition, jobs, the environment, public health or
safety, or State, local, or tribal governments or com-
unities;
(2) Create a serious inconsistency or otherwise
interfere with an action taken or planned by another
agency;
(3) Materially alter the budgetary impact of enti-
telements, grants, user fees, or loan programs or the
rights and obligations of recipients thereof; or
(4) Raise novel legal or policy issues arising out of
legal mandates, the President’s priorities, or the
principles set forth in this Executive order.
Sic. 4. Planning Mechanism. In order to have an effec-
tive regulatory program, to provide for coordination of
regulations, to maximize consultation and the resolu-
tion of potential conflicts at an early stage, to involve the public and its State, local, and tribal officials in regulatory planning, and to ensure that new or revised regulations promote the President's priorities and the principles set forth in this Executive order, these procedures shall be followed, to the extent permitted by law: (a) Agencies' Policy Meeting. Early in each year's policy cycle, the Vice President shall convene a meeting of the Advisors and the heads of agencies to seek a common understanding of priorities and to coordinate regulatory efforts to be accomplished in the upcoming year. (b) Unified Regulatory Agenda. For purposes of this subsection, the term "agency" or "agencies" shall also include those considered to be independent regulatory agencies, as defined in 5 U.S.C. 302(10). Each agency shall prepare an agenda of all regulations under development or review, at a time and in a manner specified by the Administrator of OIRA. The description of each regulatory action shall contain, at a minimum, a regulation identifier number, a brief summary of the action, the legal authority for the action, any legal deadline for the action, and the name and telephone number of a knowledgeable agency official. Agencies may incorporate the information required under 5 U.S.C. 602 and [former] 41 U.S.C. 402 into these agendas.

(c) The Regulatory Plan. For purposes of this subsection, the term "agency" or "agencies" shall also include those considered to be independent regulatory agencies, as defined in 41 U.S.C. 402(10). (1) As part of the Unified Regulatory Agenda, beginning in 1994, each agency shall prepare a Regulatory Plan ("Plan") of the most important significant regulatory actions that the agency reasonably expects to issue in proposed or final form in that fiscal year or thereafter. The Plan shall be approved personally by the agency head and shall contain at a minimum:

(A) A statement of the agency's regulatory objectives and priorities and how they relate to the President's priorities;

(B) A summary of each planned significant regulatory action including, to the extent possible, alternatives to be considered and preliminary estimates of the anticipated costs and benefits;

(C) A summary of the legal basis for each such action, including whether any aspect of the action is required by statute or court order;

(D) A statement of the need for each such action and, if applicable, how the action will reduce risks to public health, safety, or the environment, as well as how the magnitude of the risk addressed by the action relates to other risks within the jurisdiction of the agency;

(E) The agency's schedule for action, including a statement of any applicable statutory or judicial deadlines; and

(F) The name, address, and telephone number of a person the public may contact for additional information about the planned regulatory action.

(2) Each agency shall forward its Plan to OIRA by June 1st of each year.

(3) Within 10 calendar days after OIRA has received an agency's Plan, OIRA shall circulate it to other affected agencies, the Advisors, and the Vice President.

(4) An agency head who believes that a planned regulatory action of another agency may conflict with its own policy or action taken or planned shall promptly notify, in writing, the Administrator of OIRA, who shall forward that communication to the issuing agency, the Advisors, and the Vice President.

(5) If the Administrator of OIRA believes that a planned regulatory action of an agency may be inconsistent with the President's priorities or the principles set forth in this Executive order or may be in conflict with any policy or action taken or planned by another agency, the Administrator of OIRA shall promptly notify, in writing, the affected agencies, the Advisors, and the Vice President.

(6) The Vice President, with the Advisors' assistance, may consult with the heads of agencies with respect to their Plans and, in appropriate instances, request further consideration or inter-agency coordination.

(7) The Plans developed by the issuing agency shall be published annually in the October publication of the Unified Regulatory Agenda. This publication shall be made available to the Congress; State, local, and tribal governments; and the public. Any views on any aspect of a Plan shall be considered whether any planned regulatory action might conflict with any other planned or existing regulation, impose any unintended consequences on the public, or confer any unclaimed benefits on the public, should be directed to the issuing agency, with a copy to OIRA.

(d) Regulatory Working Group. Within 30 days of the date of this Executive order, the Administrator of OIRA shall convene a Regulatory Working Group ("Working Group"), which shall consist of representatives of the heads of each agency that the Administrator determines to have significant domestic regulatory responsibility, the Advisors, and the Vice President. The Administrator of OIRA shall chair the Working Group and shall periodically advise the Vice President on the activities of the Working Group. The Working Group shall serve as a forum to assist agencies in identifying and analyzing important regulatory issues (including, among others) the development of innovative regulatory techniques, the methods, efficacy, and utility of comparative risk assessment in regulatory decision-making, and the development of short forms and other streamlined regulatory approaches for small businesses and other entities. The Working Group shall meet at least quarterly and may meet as a whole or in subgroups of agencies with an interest in particular issues or subject areas. To inform these discussions, the Working Group may commission analytical studies and reports by OIRA, the Administrative Conference of the United States, or any other agency.

(e) Conferences. The Administrator of OIRA shall meet quarterly with representatives of State, local, and tribal governments to identify both existing and proposed regulations that may uniquely or significantly affect those governmental entities. The Administrator of OIRA shall also convene, from time to time, conferences with representatives of businesses, nongovernmental organizations, and the public to discuss regulatory issues of common concern.

SEC. 5. Existing Regulations. In order to reduce the regulatory burden on the American people, their families, their communities, their State, local, and tribal governments, and their industries; to determine whether regulations promulgated by the executive branch of the Federal Government have become unjustified or unnecessary as a result of changed circumstances; and to confirm that regulations are both compatible with each other and not duplicative or inappropriately burdensome in the aggregate; to ensure that all regulations are consistent with the President's priorities and the principles set forth in this Executive order, within applicable law; and to otherwise improve the effectiveness of existing regulations: (a) Within 90 days of the date of this Executive order, each agency shall submit to OIRA a program, consistent with its resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified or eliminated so as to make the agency's regulatory program more effective in achieving the regulatory objectives, less burdensome, or in greater alignment with the President's priorities and the principles set forth in this Executive order. Any significant regulations selected for review shall be included in the agency's annual Plan. The agency shall also identify any legislative mandate that requires the agency to promulgate or continue to impose regulations that the agency believes are unnecessary or outdated by reason of changed circumstances;

(b) The Administrator of OIRA shall work with the Regulatory Working Group and other interested entities to pursue the objectives of this section. Section
local, and tribal governments are specifically encouraged
to assist in the identification of regulations that impose significant or unique burdens on those government
or that are otherwise inconsistent with the public
interest.

(c) The Vice President, in consultation with the Advi-
sers, may identify for review by the appropriate agency or
agencies or groups of regulations of more than one agency that af-
flect a particular group, industry, or sector of the econ-
omy, or may identify legislative mandates that may be
appropriate for reconsideration by the Congress.

SEC. 6. Centralized Review of Regulations. The guide-
lines set forth below shall apply to all regulatory ac-
tion, for both new and existing regulations, by agen-
cies other than those agencies specifically exempted by the
Administrator of OIRA:

(a) Agency Responsibilities. (1) Each agency shall (con-
sistent with its own rules, regulations, or procedures)
provide the public with meaningful participation in the
regulatory process. In particular, before issuing a no-
tice of proposed rulemaking, each agency should, where
appropriate, seek the involvement of those who are in-
tended to benefit from and those expected to be bur-
dered by any regulation (including, specifically, State,
local, and tribal officials). In addition, each agency should
afford the public a meaningful opportunity to
comment on any proposed regulation, which in most
cases should include a comment period of not less than
60 days. Each agency also is directed to explore and
where appropriate, use consensus mechanisms for de-
veloping regulations, including negotiated rulemaking.

(2) Within 60 days of the date of this Executive order,
each agency head shall designate a Regulatory Policy
Officer who shall report to the agency head. The Regu-
larly Policy Officer shall be involved at each stage of
the regulatory process to foster the development of ef-
fective, innovative, and least burdensome regulations
and to further the principles set forth in this Executive
order.

(3) In addition to adhering to its own rules and proce-
dures and to the requirements of the Administrative
Procedure Act [see Short Title note preceding section
551 of this title], the Regulatory Flexibility Act [5
U.S.C. 601 et seq.], the Paperwork Reduction Act [44
U.S.C. 3501 et seq.], and other applicable law, each
agency shall develop its regulatory actions in a timely
fashion and adhere to the following procedures with re-
spect to a regulatory action:

(A) Each agency shall provide OIRA, at such times and
in the manner specified by the Administrator of
OIRA, with a list of its planned regulatory actions, indicat-
ing those which the agency believes are sig-
nificant regulatory actions within the meaning of
this Executive order. Absent a material change in the
development of the planned regulatory action, those
not designated as significant will not be subject to re-
view under this section unless, within 10 working
days of receipt of the list, the Administrator of OIRA
notifies the agency that OIRA has determined that a
planned regulation is a significant regulatory action
within the meaning of this Executive order. The Ad-
ministrator of OIRA may waive review of any planned
regulatory action designated by the agency as
significant, in which case the agency need not fur-
ther comply with subsection (a)(3)(B) or subsection
(a)(3)(C) of this section.

(B) For each matter identified as, or determined by the
Administrator of OIRA to be, a significant regula-
tory action, the issuing agency shall provide to
OIRA:

(i) An assessment, including the underlying
analysis, of benefits anticipated from the regu-
larly action (such as, but not limited to, the pro-
motion of the efficient functioning of the economy
and private markets, the enhancement of health
and safety, the protection of the natural environ-
ment, and the elimination or reduction of discrimi-
nation or bias) together with, to the extent fea-
sible, a quantification of those benefits;

(ii) An assessment, including the underlying
analysis, of costs anticipated from the regulatory
action (such as, but not limited to, the direct cost
to both the government in administering the regu-
lation and to businesses and others in complying
with the regulation, and any adverse effects on the
efficient functioning of the economy, private mar-
kets (including productivity, employment, and
competitiveness), health, safety, and the natural
environment), together with, to the extent feasible,
a quantification of those costs; and

(iii) An assessment, including the underlying
analysis, of costs and benefits of potentially effec-
tive and reasonably feasible alternatives to the
planned regulation, identified by the agencies or
the public (including improving the current regula-
tion and reasonably viable nonregulatory actions),
and an explanation why the planned regulatory ac-
tion is preferable to the identified potential alter-
natives.

(D) In emergency situations or when an agency is
obligated by law to act more quickly than normal re-
view procedures allow, the agency shall notify OIRA
as soon as possible and, to the extent practicable,
comply with subsections (a)(3)(B) and (C) of this
section. For those regulatory actions that are governed
by a statutory or court-imposed deadline, the agency
shall, to the extent practicable, schedule rulemaking
proceedings so as to permit sufficient time for OIRA
to conduct its review, as set forth below in subsection
(b)(2) through (4) of this section.

(E) After the regulatory action has been published in the
Federal Register or otherwise issued to the public, the
agency shall:

(i) Make available to the public the information
set forth in subsections (a)(3)(B) and (C),
(ii) Identify for the public, in a complete, clear,
and simple manner, the substantive changes be-
tween the draft submitted to OIRA for review and
the action subsequently announced; and

(iii) Identify for the public those changes in the
regulatory action that were made at the suggestion
or recommendation of OIRA.

(F) All information provided to the public by the agency
shall be in plain, understandable language.

(b) OIRA Responsibilities. The Administrator of OIRA
shall provide meaningful guidance and oversight so
that each agency’s regulatory actions are consistent with
applicable law, the President’s priorities, and the
principles set forth in this Executive order and do not
conflict with the policies of any other agency. OIRA
shall, to the extent permitted by law, adhere to the
following guidelines:

(1) OIRA may review only actions identified by the
agency or by OIRA as significant regulatory actions
under subsection (a)(3)(A) of this section.

(2) OIRA shall waive review or notify the agency in
writing of the results of its review within the follow-
ing time periods:

(A) For any notices of inquiry, advance notices of
proposed rulemaking, or other preliminary regu-
latory actions prior to a Notice of Proposed Rulemaking, within 10 working days after the date of submission of the draft action to OIRA;

(b) For all other regulatory actions, within 90 calendar days after the date of submission of the information set forth in subsections (a)(3)(B) and (C) of this section, unless OIRA has previously reviewed this information and, since that review, there has been no material change in the facts and circumstances upon which the regulatory action is based, in which case, OIRA shall complete its review within 15 days; and

(C) The review process may be extended (1) once by no more than 30 calendar days upon the written approval of the Director and (2) at the request of the agency head.

(3) For each regulatory action that the Administrator of OIRA returns to an agency for further consideration of some or all of its provisions, the Administrator of OIRA shall provide the issuing agency a written explanation for such return, setting forth the pertinent provision of this Executive order on which OIRA is relying. If the agency head disagrees with some or all of the bases for the return, the agency head shall so inform the Administrator of OIRA in writing.

(4) A review has been requested as otherwise provided by law or required by a Court, in order to ensure greater openness, accessibility, and accountability in the regulatory review process, OIRA shall be governed by the following disclosure requirements:

(A) Only the Administrator of OIRA (or a particular designee) shall receive oral communications initiated by persons not employed by the executive branch of the Federal Government regarding the substance of a regulatory action under OIRA review;

(B) All substantive communications between OIRA personnel and persons not employed by the executive branch of the Federal Government regarding a regulatory action under review shall be governed by the following guidelines: (i) A representative from the issuing agency shall be invited to any meeting between OIRA personnel and such person(s); (ii) OIRA shall forward to the issuing agency, within 10 working days of receipt of the communication(s), all written communications, regardless of format, between OIRA personnel and any person who is not employed by the executive branch of the Federal Government, and the dates and names of individuals involved in all substantive oral communications (including meetings to which an agency representative was invited, but did not attend, and telephone conversations between OIRA personnel and any such persons); and

(iii) OIRA shall publicly disclose relevant information about such communication(s), as set forth below in subsection (b)(4)(C) of this section.

(C) OIRA shall maintain a publicly available log containing the status of all regulatory actions, including if (and if so, when and by whom) Vice Presidential and Presidential consideration was requested;

(ii) A notation of all written communications forwarded to an issuing agency under subsection (b)(4)(ii) of this section; and

(iii) The dates and names of individuals involved in all substantive oral communications, including meetings and telephone conversations, between OIRA personnel and any person not employed by the executive branch of the Federal Government, and the subject matter discussed during such communications;

(b) For all other regulatory actions, within 90 calendar days after the date of submission of the draft action to OIRA:

(2) For all other regulatory actions, within 90 calendar days after the date of submission of the information set forth in subsections (a)(3)(B) and (C) of this section, unless OIRA has previously reviewed this information and, since that review, there has been no material change in the facts and circumstances upon which the regulatory action is based, in which case, OIRA shall complete its review within 15 days; and

(C) The review process may be extended (1) once by no more than 30 calendar days upon the written approval of the Director and (2) at the request of the agency head.

(3) For each regulatory action that the Administrator of OIRA returns to an agency for further consideration of some or all of its provisions, the Administrator of OIRA shall provide the issuing agency a written explanation for such return, setting forth the pertinent provision of this Executive order on which OIRA is relying. If the agency head disagrees with some or all of the bases for the return, the agency head shall so inform the Administrator of OIRA in writing.

(4) A review has been requested as otherwise provided by law or required by a Court, in order to ensure greater openness, accessibility, and accountability in the regulatory review process, OIRA shall be governed by the following disclosure requirements:

(A) Only the Administrator of OIRA (or a particular designee) shall receive oral communications initiated by persons not employed by the executive branch of the Federal Government regarding the substance of a regulatory action under OIRA review;

(B) All substantive communications between OIRA personnel and persons not employed by the executive branch of the Federal Government regarding a regulatory action under review shall be governed by the following guidelines: (i) A representative from the issuing agency shall be invited to any meeting between OIRA personnel and such person(s); (ii) OIRA shall forward to the issuing agency, within 10 working days of receipt of the communication(s), all written communications, regardless of format, between OIRA personnel and any person who is not employed by the executive branch of the Federal Government, and the dates and names of individuals involved in all substantive oral communications (including meetings to which an agency representative was invited, but did not attend, and telephone conversations between OIRA personnel and any such persons); and

(iii) OIRA shall publicly disclose relevant information about such communication(s), as set forth below in subsection (b)(4)(C) of this section.

(C) OIRA shall maintain a publicly available log containing the status of all regulatory actions, including if (and if so, when and by whom) Vice Presidential and Presidential consideration was requested;

(ii) A notation of all written communications forwarded to an issuing agency under subsection (b)(4)(ii) of this section; and

(iii) The dates and names of individuals involved in all substantive oral communications, including meetings and telephone conversations, between OIRA personnel and any person not employed by the executive branch of the Federal Government, and the subject matter discussed during such communications;
tions from those orders heretofore granted for any category of rule are revoked.

[Section 1 of Ex. Ord. No. 13497, which revoked Ex. Ords. 13286 and 1922, was executed by undoing the amendments by those Ex. Ords. to Ex. Ord. 12966, set out above.]

EXECUTIVE ORDER NO. 12875
Ex. Ord. No. 12875, Oct. 26, 1993, 58 F.R. 58093, which provided for the reduction of unfunded mandates on State, local, or tribal governments and increased flexibility for State and local waivers of statutory or regulatory requirements, was revoked by Ex. Ord. No. 13132, § 10(b), Aug. 4, 1999, 64 F.R. 43259, set out below.

EXECUTIVE ORDER NO. 13083
Ex. Ord. No. 13083, May 14, 1998, 63 F.R. 27651, which listed fundamental federalism principles and federalism policymaking criteria to guide agencies in formulating and implementing policies and required agencies to have a process to permit State and local governments to provide input into the development of regulatory policies that have federalism implications and to streamline the State and local government waiver process, was revoked by Ex. Ord. No. 13132, § 10(b), Aug. 4, 1999, 64 F.R. 43259, set out below.

EXECUTIVE ORDER NO. 13095

EX. ORD. NO. 13107. IMPLEMENTATION OF HUMAN RIGHTS TREATIES
Ex. Ord. No. 13107, Dec. 10, 1998, 63 F.R. 68991, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, and bearing in mind the obligations of the United States pursuant to the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), and other relevant treaties concerning the protection and promotion of human rights to which the United States is now or may become a party in the future, it is hereby ordered as follows:

SECTION 1. Implementation of Human Rights Obligations. (a) It shall be the policy and practice of the Government of the United States, being committed to the protection and promotion of human rights and fundamental freedoms, fully to respect and implement its obligations under the international human rights treaties to which it is a party, including the ICCPR, the CAT, and the CERD. (b) It shall also be the policy and practice of the Government of the United States to promote respect for international human rights, both in our relationships with all other countries and by working with and strengthening the various international mechanisms for the promotion of human rights, including, inter alia, those of the United Nations, the International Labor Organization, and the Organization of American States.

Solicitor. 2. Responsibility of Executive Departments and Agencies. (a) All executive departments and agencies (as defined in 5 U.S.C. 101–105, including boards and commissions, and hereinafter referred to collectively as "agency" or "agencies") shall maintain a current awareness of United States international human rights obligations that are relevant to their functions and shall perform such functions so as to respect and implement those obligations fully. The head of each agency shall designate a single contact officer who will be responsible for overall coordination of the implementation of this order. Under this order, all such agencies shall retain in their established law enforcement and monitoring responsibilities and authorities, or, to the extent that matters do not fall within the operating and program responsibilities and authorities of any agency, that most closely relate to their general areas of concern.

Solicitor. 3. Human Rights Inquiries and Complaints. Each agency shall take lead responsibility, in cooperation with other appropriate agencies, for responding to inquiries, requests for information, and complaints about alleged human rights obligations that fall within its areas of responsibility, referring it to the appropriate agency for response.

Solicitor. 4. Interagency Working Group on Human Rights Treaties. (a) There is hereby established an Interagency Working Group on Human Rights Treaties for the purpose of providing guidance, oversight, and coordination with respect to questions concerning the adherence to and implementation of human rights obligations and related matters. (b) The designee of the Assistant to the President for National Security Affairs shall chair the Interagency Working Group, which shall consist of appropriate policy and legal representatives at the Assistant Secretary level from the Department of State, the Department of Justice, the Department of Labor, the Department of Defense, the Joint Chiefs of Staff, and other agencies as the chair deems appropriate. The principal members may designate alternates to attend meetings in their stead.

(c) The principal functions of the Interagency Working Group shall include: (i) coordinating the interagency review of any significant issues concerning the implementation of this order and analysis and recommendations in connection with pursuing the ratification of human rights treaties, as such questions may from time to time arise, not fall within its areas of responsibility, referring it to the appropriate agency for response.

(vii) coordinating and directing an annual review of Federal law and policy.

(b) The heads of agencies shall have lead responsibility, in coordination with other appropriate agencies, for questions concerning implementation of human rights obligations that fall within their respective operating and program responsibilities and authorities or, to the extent that matters do not fall within the operating and program responsibilities and authorities of any agency, that most closely relate to their general areas of concern.

SEC. 3. Human Rights Inquiries and Complaints. Each agency shall take lead responsibility, in cooperation with other appropriate agencies, for responding to inquiries, requests for information, and complaints about violations of human rights obligations that fall within its areas of responsibility, referring them to the appropriate agency for response.

SEC. 4. Interagency Working Group on Human Rights Treaties. (a) There is hereby established an Interagency Working Group on Human Rights Treaties for the purpose of providing guidance, oversight, and coordination with respect to questions concerning the adherence to and implementation of human rights obligations and related matters.

(b) The designee of the Assistant to the President for National Security Affairs shall chair the Interagency Working Group, which shall consist of appropriate policy and legal representatives at the Assistant Secretary level from the Department of State, the Department of Justice, the Department of Labor, the Department of Defense, the Joint Chiefs of Staff, and other agencies as the chair deems appropriate. The principal members may designate alternates to attend meetings in their stead.

(c) The principal functions of the Interagency Working Group shall include: (i) coordinating the interagency review of any significant issues concerning the implementation of this order and analysis and recommendations in connection with pursuing the ratification of human rights treaties, as such questions may from time to time arise, not fall within its areas of responsibility, referring it to the appropriate agency for response.

(vii) coordinating and directing an annual review of Federal law and policy.
making such other recommendations as it shall deem appropriate to the President, through the Assistant to the President for National Security Affairs, concerning United States adherence to or implementation of human rights treaties and related matters; and

(ix) coordinating such other significant tasks in connection with human rights treaties or international human rights institutions, including the Inter-American Commission on Human Rights and the Special Rapporteurs and complaints procedures established by the United Nations Human Rights Commission.

(d) The work of the Interagency Working Group shall not supplant the work of other interagency entities, including the President’s Committee on the International Labor Organization, that address international human rights issues.

SIC. 5. Cooperation Among Executive Departments and Agencies. All agencies shall cooperate in carrying out the provisions of this order. The Interagency Working Group shall facilitate such cooperative measures.

SIC. 6. Judicial Review, Scope, and Administration. (a) Nothing in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

(b) This order does not supersede Federal statutes and does not impose any justiciable obligations on the executive branch.

(c) The term “treaty obligations” shall mean treaty obligations as approved by the Senate pursuant to Article II, section 2, clause 2 of the United States Constitution.

(d) To the maximum extent practicable and subject to the availability of appropriations, agencies shall carry out the provisions of this order.

WILLIAM J. CLINTON.

EX. ORD. No. 13132. FEDERALISM

Ex. Ord. No. 13132, Aug. 4, 1999, 64 FR 43255, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to guarantee the division of governmental responsibilities between the national government and the States that was intended by the Framers of the Constitution, to ensure that the principles of federalism established by the Framers guide the executive departments and agencies in the formulation and implementation of policies, and to further the policies of the Unfunded Mandates Reform Act [of 1995, Pub. L. 104-4, see Tables for classification], it is hereby ordered as follows:

SECTION 1. Definitions. For purposes of this order:

(a) “Policies that have federalism implications” refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

(b) “State” or “States” refer to the States of the United States of America, individually or collectively, and, where relevant, to State governments, including units of local government and other political subdivisions established by the States.

(c) “Agency” means any authority of the United States that is an “agency” under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(d) “State and local officials” means elected officials of State and local governments or their representative national organizations.

SIC. 2. Fundamental Federalism Principles. In formulating and implementing policies that have federalism implications, agencies shall be guided by the following fundamental federalism principles:

(a) Federalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government closest to the people.

(b) The people of the States created the national government and delegated to it enumerated governmental powers. All other sovereign powers, save those expressly prohibited by the Constitution, are reserved to the States or to the people.

(c) The constitutional relationship among sovereign governments, State and national, is inherent in the structure of government and is formalized in and protected by the Tenth Amendment to the Constitution.

(d) The people of the States are free, subject only to restrictions in the Constitution itself or in constitutionally authorized Acts of Congress, to define the moral, political, and legal character of their lives.

(e) The Framers recognized unique authorities, qualities, and abilities to meet the needs of the people and should function as laboratories of democracy.

(f) The nature of our constitutional system encourages a healthy diversity in the public policies adopted by the people of the several States according to their own conditions, needs, and desires. In the search for enlightened public policy, individual States and communities are free to experiment with a variety of approaches to public issues. One-size-fits-all approaches to public policy problems can inhibit the creation of effective solutions to those problems.

(g) Acts of the national government—whether legislative, executive, or judicial in nature—that exceed the enumerated powers of that government under the Constitution violate the principle of federalism established by the Framers.

(h) Policies of the national government should recognize the responsibility of—and should encourage opportunities for—individuals, families, neighborhoods, local governments, and private associations to achieve their personal, social, and economic objectives through cooperative effort.

(i) The national government should be deferential to the States when taking action that affects the policymaking discretion of the States and shall, only with the greatest caution where State or local governments have identified uncertainties regarding the constitutional or statutory authority of the national government.

SIC. 3. Federalism Policymaking Criteria. In addition to adhering to the fundamental federalism principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have federalism implications:

(a) There shall be strict adherence to constitutional principles. Agencies shall closely examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and shall carefully assess the necessity for such action. To the extent practicable, State and local officials shall be consulted before any such action is implemented. Executive Order 12372 of July 14, 1982 (“Federalism: Program Review of Federal Programs”) [31 U.S.C. 6506 note] remains in effect for the programs and activities to which it is applicable.

(b) National action limiting the policymaking discretion of the States shall be taken only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance. Where there are significant uncertainties as to whether national action is authorized or appropriate, agencies shall consult with appropriate State and local officials to determine whether Federal objectives can be attained by other means.

(c) With respect to Federal statutes and regulations administered by the States, the national government shall grant the States the maximum administrative discretion possible. Intrusive Federal oversight of State administration is neither necessary nor desirable.

(d) When undertaking to formulate and implement policies that have federalism implications, agencies shall:
(1) encourage States to develop their own policies to achieve program objectives and to work with appropriate officials in other States;
(2) where possible, refer to the States to establish standards;
(3) in determining whether to establish uniform national standards, consult with appropriate State and local officials as to the need for national standards and any alternatives that would limit the scope of national standards or otherwise preserve State prerogatives and authority; and
(4) where national standards are required by Federal statutes, consult with appropriate State and local officials in developing those standards.

Sec. 6. Consultation.
(a) Each agency shall have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. Within 90 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency’s implementation of this order and that designated official shall submit to the Office of Management and Budget a description of the agency’s consultation process.
(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has federalism implications and that preempts State law, unless the agency, prior to the promulgation of the regulation,
(1) consulted with State and local officials on the need for national standards, consult with appropriate State and local officials; and
(2) makes available to the Director of the Office of Management and Budget any written communications submitted to the agency by State and local officials.

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(a) Agencies shall construe, in regulations and otherwise, a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.
(b) Where a Federal statute does not preempt State law addressed in subsection (a) of this section, agencies shall construe any authorization in the statute for the issuance of regulations as authorizing preemption of State law by rulemaking only when the exercise of State authority directly conflicts with the exercise of Federal authority under the Federal statute or there is clear evidence to conclude that the Congress intended the agency to have the authority to preempt State law.
(c) Any regulatory preemption of State law shall be restricted to the minimum level necessary to achieve the objectives of the statute pursuant to which the regulations are promulgated.
(d) When an agency foresees the possibility of a conflict between State law and Federal protected interests in the area of regulatory responsibilities, the agency shall consult, to the extent practicable, with appropriate State and local officials in an effort to avoid such a conflict.
(e) When an agency proposes to act through adjudication or rulemaking to preempt State law, the agency shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings.

Sec. 5. Special Requirements for Legislative Proposals. Agencies shall not submit to the Congress legislation that would:
(a) directly regulate the States in ways that would either interfere with functions essential to the States’ separate and independent existence or be inconsistent with the fundamental federalism principles in section 2;
(b) attach to Federal grants conditions that are not reasonably related to the purpose of the grant;
(c) preempt State law, unless preemption is consistent with the fundamental federalism principles set forth in section 2, and unless a clearly legitimate national purpose, consistent with the federalism policy-making criteria set forth in section 3, cannot otherwise be met.

Sec. 7. Increasing Flexibility for State and Local Waivers.
(a) Agencies shall review the processes under which State and local governments apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.
(b) Each agency shall, to the extent practicable and permitted by law, consider any application by a State for a waiver of statutory or regulatory requirements in connection with any program administered by that agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the State or local level in cases in which the proposed waiver is consistent with applicable Federal policy objectives and is otherwise appropriate.
(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency. If the application for a waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefor.
(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

Sec. 8. Accountability.
(a) In transmitting any draft final regulation that has federalism implications to the Office of Management and Budget pursuant to Executive Order 12866 of September 30, 1993 [set out above], each agency shall include a certification from the official designated to ensure that the regulation imposes substantial direct compliance costs on State and local governments, and that is not required by statute, unless:
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Constitution and the laws of the United States of America, and in order to help the Federal Government coordinate a national effort to expand opportunities for Faith-Based and Community Initiatives (Center). The purpose of the executive department Centers will be to coordinate department efforts to eliminate regulatory, contracting, and other programmatic obstacles to the participation of faith-based and other community organizations in the delivery of social services by the department, including but not limited to regulations, rules, orders, procurement, and other internal policies and practices, and outreach activities that either facially discriminate against or otherwise discourage or disadvantage the participation of faith-based and other community organizations in Federal programs; (b) cooperate with the White House OFBCI and provide such information, support, and assistance to the White House OFBCI as it may request, to the extent permitted by law.

Sect. 7. Administration and Judicial Review. (a) The agencies' actions directed by this Executive Order shall be carried out subject to the availability of appropriations and to the extent permitted by law; (b) This order does not create any right or benefit, substantive or procedural, enforceable at law or equity.
against the United States, its agencies or instrumentalties, its officers or employees, or any other person. **George W. Bush.**

**EX. ORD. NO. 13272. PROPER CONSIDERATION OF SMALL ENTITIES IN AGENCY RULEMAKING**

Ex. Ord. No. 13272, Aug. 13, 2002, 67 F.R. 53661, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

**SECTION 1. General Requirements.** Each agency shall establish procedures and policies to promote compliance with the Regulatory Flexibility Act, as amended (5 U.S.C. §601 et seq.) (the "Act"). Agencies shall thoroughly review draft rules to assess and take appropriate account of the potential impact on small businesses, small governmental jurisdictions, and small organizations, as provided by the Act. The Chief Counsel for Advocacy of the Small Business Administration (Advocacy) shall remain available to advise agencies in performing that review consistent with the provisions of the Act.

**SECTION 2. Responsibilities of Advocacy.** Consistent with the requirements of the Act, other applicable law, and Executive Order 12866 of September 30, 1993, as amended [set out above], Advocacy:

(a) shall notify agency heads from time to time of the requirements of the Act, including by issuing notifications with respect to the basic requirements of the Act within 90 days of the date of this order;

(b) shall provide training to agencies on compliance with the Act; and

(c) may provide comment on draft rules to the agency that has proposed or intends to propose the rules and to the Office of Information and Regulatory Affairs of the Office of Management and Budget (OIRA).  

**SECTION 3. Responsibilities of Federal Agencies.** Consistent with the requirements of the Act and applicable law, agencies shall:

(a) Within 180 days of the date of this order, issue written procedures and policies, consistent with the Act, to ensure that the potential impacts of agencies’ draft rules on small businesses, small governmental jurisdictions, and small organizations are properly considered during the rulemaking process. Agency heads shall submit, no later than 90 days from the date of this order, their written procedures and policies to Advocacy for comment. Prior to issuing final procedures and policies, agencies shall consider any such comments received within 60 days of the date of the submission of the agency’s procedures and policies to Advocacy. Except to the extent otherwise specifically provided by statute or Executive Order, agencies shall make the final procedures and policies available to the public through the Internet or other easily accessible means;

(b) Notify Advocacy of any draft rules that may have a significant economic impact on a substantial number of small entities under the Act. Such notifications shall be made (i) when the agency submits a draft rule to OIRA under Executive Order 12866 [set out above] if that order requires such submission, or (ii) if no submission to OIRA is so required, at a reasonable time prior to publication of the rule by the agency; and

(c) Give every appropriate consideration to any comments provided by Advocacy regarding a draft rule. Consistent with applicable law and appropriate protection of executive deliberations and legal privileges, an agency shall include, in any explanation or discussion accompanying publication in the Federal Register of a final rule, the agency’s response to any written comments submitted by Advocacy on the proposed rule that preceded the final rule; provided, however, that such inclusion is not required if the head of the agency certifies that the public interest is not served thereby. Agencies and Advocacy may, to the extent permitted by law, engage in an exchange of data and research, as appropriate, to foster the purposes of the Act.  

**Definitions.** Terms defined in section 601 of title 5, United States Code, including the term “agency,” shall have the same meaning in this order.

**SECTION 5. Preservation of Authority.** Nothing in this order shall be construed to impair or affect the authority of the Administrator of the Small Business Administration to supervise the Small Business Administration as provided in the first sentence of section 2(b)(1) of Pub. Law 85-9936 [Pub. L. 85-9936 (15 U.S.C. 633(b)(1))].

**SECTION 6. Reporting.** For the purpose of promoting compliance with this order, Advocacy shall submit a report not less than annually to the Director of the Office of Management and Budget on the extent of compliance with this order by agencies.

**SECTION 7. Confidentiality.** Consistent with existing law, Advocacy may publicly disclose information that it receives from the agencies in the course of carrying out this order only to the extent that such information has been lawfully and properly disclosed by OIRA or the relevant rulemaking agency.

**SECTION 8. Judicial Review.** This order is intended only to improve the internal management of the Federal Government. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person. **George W. Bush.**

**EX. ORD. NO. 13279. EQUAL PROTECTION OF THE LAWS FOR FAITH-BASED AND OTHER NEIGHBORHOOD ORGANIZATIONS**


By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 121(a) of title 49, United States Code, and section 301 of title 5, United States Code, and in order to guide Federal agencies in formulating and developing policies with implications for faith-based organizations and other [sic] neighborhood organizations, to ensure equal protection of the laws for faith-based and other neighborhood organizations, to further the national effort to expand opportunities for, and strengthen the capacity of, faith-based and other [sic] neighborhood organizations so that they may better meet the needs of America’s communities, and to ensure the economical and efficient administration and completion of Government contracts, it is hereby ordered as follows:

**Section 1. Definitions.** For purposes of this order:

(a) “Federal financial assistance” means assistance that non-Federal entities receive or administer in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, financial or technical assistance, or other assistance, but does not include a tax credit, deduction, or exemption.

(b) “Social service program” means a program that is a tax credit, deduction, or exemption.

(c) Child care services, protective services for children and adults, services for children and adults in foster care, adoption services, services related to the management and maintenance of the home, day care services for adults, and services to meet the special needs of children, older individuals, and individuals with disabilities (including physical, mental, or emotional disabilities);

(ii) transportation services;

(iii) job training and related services, and employment services;

(iv) information, referral, and counseling services;

(v) the preparation and delivery of meals and services related to soup kitchens or food banks;
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(vii) health support services;
(viii) literacy and mentoring programs;
(ix) services for the prevention and treatment of juvenile delinquency and substance abuse, services for the prevention of crime and the provision of assistance to the victims and the families of criminal offenders, and services related to intervention in, and prevention of, domestic violence; and
(x) services related to the provision of assistance for housing under Federal law.

(c) Policies that have implications for faith-based and other neighborhood organizations refers to all policies, programs, and regulations, including official guidance and internal agency procedures, that have significant effects on faith-based organizations participating in or seeking to participate in social service programs supported with Federal financial assistance.

(d) “Agency” means a department or agency in the executive branch.

(e) Specify agency heads: means:
(i) the Attorney General;
(ii) the Secretary of Agriculture;
(iii) the Secretary of Commerce;
(iv) the Secretary of Labor;
(v) the Secretary of Health and Human Services;
(vi) the Secretary of Housing and Urban Development;
(vii) the Secretary of Education;
(viii) the Secretary of Veterans Affairs;
(ix) the Secretary of Homeland Security;
(x) the Administrator of the Environmental Protection Agency;
(xi) the Administrator of the Small Business Administration;
(xii) the Administrator of the United States Agency for International Development; and
(xiii) the Chief Executive Officer of the Corporation for National and Community Service.

SIRC 2. Fundamental Principles. In formulating and implementing policies that have implications for faith-based and other neighborhood organizations, agencies that administer social service programs or that support (including through prime awards or sub-awards) social service programs with Federal financial assistance shall, to the extent permitted by law, be guided by the following fundamental principles:

(a) Federal financial assistance for social service programs should be distributed in the most effective and efficient manner possible.

(b) The Nation’s social service capacity will benefit if all eligible organizations, including faith-based and other neighborhood organizations, are able to compete on an equal footing for Federal financial assistance used to support social service programs.

(c) The organization’s mission statements and other chartering or governing documents must be free from political interference or even influence set forth in paragraph (c) of section 3 of this order.

(d) Each agency responsible for administering or awarding Federal financial assistance for social service programs shall post online, in an easily accessible manner,

Referral to an Alternative Provider

Agency Responsibilities

Agency Responsibilities. If a beneficiary or prospective beneficiary of a social service program supported by Federal financial assistance objects to the religious character of an organization that provides services under the program, the organization may retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct Federal financial assistance that it receives (including through a prime award or sub-award) to support or engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization), or in any other manner prohibited by law. Among other things, faith-based organizations that administer social service programs and to participate fully in social service programs supported with Federal financial assistance without impairing their independence, autonomy, expression outside the programs in question, or religious character. Accordingly, a faith-based organization that applies for, or participates in, a social service program supported with Federal financial assistance may retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct Federal financial assistance that it receives (including through a prime award or sub-award) to support or engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization), or in any other manner prohibited by law. Among other things, faith-based organizations that participate in social service programs supported with Federal financial assistance may use their facilities to provide social services supported with Federal financial assistance, without removing or altering religious art, icons, scriptures, or other symbols from these facilities. In addition, a faith-based organization that applies for, or participates in, a social service program supported with Federal financial assistance may retain religious terms in its name, select its board members on a religious basis, and include religious references in its organization’s mission statements and other chartering or governing documents.

(b) Each agency responsible for administering or awarding Federal financial assistance for social service programs shall offer protections for beneficiaries of such programs pursuant to the following principles:

(i) Referral to an Alternative Provider. If a beneficiary or prospective beneficiary of a social service program supported by Federal financial assistance objects to the religious character of an organization that provides services under the program, the organization may retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs.

(ii) The organization’s mission statements and other chartering or governing documents must be free from political interference or even influence set forth in paragraph (c) of section 3 of this order.

(iii) Decisions about awards of Federal financial assistance must be free from political interference or even influence set forth in paragraph (c) of section 3 of this order.

(iv) To promote transparency and accountability, agencies that provide Federal financial assistance for social service programs shall post online, in an easily accessible manner, regulations, guidelines documents, and policies that reflect or elaborate upon the fundamental principles described in this section. Agencies shall also post online a list of entities that receive Federal financial assistance for provision of social service programs, consistent with law and pursuant to guidance set forth in paragraphs (c) and (d) of section 3 of this order.

(v) The Nation’s social service capacity will benefit if all eligible organizations, including faith-based and other neighborhood organizations, are able to compete on an equal footing for Federal financial assistance used to support social service programs.

(c) Policies that have implications for faith-based and other neighborhood organizations refers to all policies, programs, and regulations, including official guidance and internal agency procedures, that have significant effects on faith-based organizations participating in or seeking to participate in social service programs supported with Federal financial assistance.

(d) “Agency” means a department or agency in the executive branch.

(e) Specify agency heads: means:

(i) the Attorney General;
(ii) the Secretary of Agriculture;
(iii) the Secretary of Commerce;
(iv) the Secretary of Labor;
(v) the Secretary of Health and Human Services;
(vi) the Secretary of Housing and Urban Development;
(vii) the Secretary of Education;
(viii) the Secretary of Veterans Affairs;
(ix) the Secretary of Homeland Security;
(x) the Administrator of the Environmental Protection Agency;
(xi) the Administrator of the Small Business Administration;
(xii) the Administrator of the United States Agency for International Development; and
(xiii) the Chief Executive Officer of the Corporation for National and Community Service.

SIRC 2. Fundamental Principles. In formulating and implementing policies that have implications for faith-based and other neighborhood organizations, agencies that administer social service programs or that support (including through prime awards or sub-awards) social service programs with Federal financial assistance shall, to the extent permitted by law, be guided by the following fundamental principles:

(a) Federal financial assistance for social service programs should be distributed in the most effective and efficient manner possible.

(b) The Nation’s social service capacity will benefit if all eligible organizations, including faith-based and other neighborhood organizations, are able to compete on an equal footing for Federal financial assistance used to support social service programs.

(c) The organization’s mission statements and other chartering or governing documents must be free from political interference or even influence set forth in paragraph (c) of section 3 of this order.

(d) Each agency responsible for administering or awarding Federal financial assistance for social service programs shall offer protections for beneficiaries of such programs pursuant to the following principles:

(i) Referral to an Alternative Provider. If a beneficiary or prospective beneficiary of a social service program supported by Federal financial assistance objects to the religious character of an organization that provides services under the program, the organization may retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs.

(ii) The organization’s mission statements and other chartering or governing documents must be free from political interference or even influence set forth in paragraph (c) of section 3 of this order.

(iii) Decisions about awards of Federal financial assistance must be free from political interference or even influence set forth in paragraph (c) of section 3 of this order.

(iv) To promote transparency and accountability, agencies that provide Federal financial assistance for social service programs shall post online, in an easily accessible manner, regulations, guidelines documents, and policies that reflect or elaborate upon the fundamental principles described in this section. Agencies shall also post online a list of entities that receive Federal financial assistance for provision of social service programs, consistent with law and pursuant to guidance set forth in paragraphs (c) and (d) of section 3 of this order.

(v) The Nation’s social service capacity will benefit if all eligible organizations, including faith-based and other neighborhood organizations, are able to compete on an equal footing for Federal financial assistance used to support social service programs.

(c) Policies that have implications for faith-based and other neighborhood organizations refers to all policies, programs, and regulations, including official guidance and internal agency procedures, that have significant effects on faith-based organizations participating in or seeking to participate in social service programs supported with Federal financial assistance.

(d) “Agency” means a department or agency in the executive branch.

(e) Specify agency heads: means:

(i) the Attorney General;
(ii) the Secretary of Agriculture;
(iii) the Secretary of Commerce;
(iv) the Secretary of Labor;
(v) the Secretary of Health and Human Services;
(vi) the Secretary of Housing and Urban Development;
(vii) the Secretary of Education;
(viii) the Secretary of Veterans Affairs;
(ix) the Secretary of Homeland Security;
(x) the Administrator of the Environmental Protection Agency;
(xi) the Administrator of the Small Business Administration;
(xii) the Administrator of the United States Agency for International Development; and
(xiii) the Chief Executive Officer of the Corporation for National and Community Service.

SIRC 2. Fundamental Principles. In formulating and implementing policies that have implications for faith-based and other neighborhood organizations, agencies that administer social service programs or that support (including through prime awards or sub-awards) social service programs with Federal financial assistance shall, to the extent permitted by law, be guided by the following fundamental principles:

(a) Federal financial assistance for social service programs should be distributed in the most effective and efficient manner possible.

(b) The Nation’s social service capacity will benefit if all eligible organizations, including faith-based and other neighborhood organizations, are able to compete on an equal footing for Federal financial assistance used to support social service programs.

(c) The organization’s mission statements and other chartering or governing documents must be free from political interference or even influence set forth in paragraph (c) of section 3 of this order.

(d) Each agency responsible for administering or awarding Federal financial assistance for social service programs shall offer protections for beneficiaries of such programs pursuant to the following principles:

(i) Referral to an Alternative Provider. If a beneficiary or prospective beneficiary of a social service program supported by Federal financial assistance objects to the religious character of an organization that provides services under the program, the organization may retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs.

(ii) The organization’s mission statements and other chartering or governing documents must be free from political interference or even influence set forth in paragraph (c) of section 3 of this order.

(iii) Decisions about awards of Federal financial assistance must be free from political interference or even influence set forth in paragraph (c) of section 3 of this order.

(iv) To promote transparency and accountability, agencies that provide Federal financial assistance for social service programs shall post online, in an easily accessible manner, regulations, guidelines documents, and policies that reflect or elaborate upon the fundamental principles described in this section. Agencies shall also post online a list of entities that receive Federal financial assistance for provision of social service programs, consistent with law and pursuant to guidance set forth in paragraphs (c) and (d) of section 3 of this order.

(v) The Nation’s social service capacity will benefit if all eligible organizations, including faith-based and other neighborhood organizations, are able to compete on an equal footing for Federal financial assistance used to support social service programs.

(c) Policies that have implications for faith-based and other neighborhood organizations refers to all policies, programs, and regulations, including official guidance and internal agency procedures, that have significant effects on faith-based organizations participating in or seeking to participate in social service programs supported with Federal financial assistance.
the appearance of such interference and must be made on the basis of merit, not on the basis of the religious affiliation of a recipient organization or lack thereof.

Section 2. Ensuring Uniform Implementation Across the Federal Government. In order to promote uniformity in agencies’ policies that have implications for faith-based and other neighborhood organizations and in related guidance, and to ensure that those policies and guidance are consistent with the fundamental principles set forth in section 2 of this order, there is established an Interagency Working Group on Faith-Based and Other Neighborhood Partnerships (Working Group).

(a) Mission and Function of the Working Group. The Working Group shall meet periodically to review and evaluate existing agency regulations, guidance documents, and policies that have implications for faith-based and other neighborhood organizations. Where appropriate, specified agency heads shall, to the extent permitted by law, amend all such existing policies of their respective agencies to ensure that they are consistent with the fundamental principles set forth in section 2 of this order.

(b) Uniform Agency Implementation. Within 120 days of the date of this order, the Working Group shall submit a report to the President on amendments, changes, or additions that are necessary to ensure that regulations and guidance documents associated with the distribution of Federal financial assistance for social service programs are consistent with the fundamental principles set forth in section 2 of this order. The Working Group’s report should include, but not be limited to, a model set of regulations and guidance documents for agencies to adopt in the following areas:

(i) prohibited uses of direct Federal financial assistance and separation requirements; (ii) protections for religious identity; (iii) the distinction between “direct” and “indirect” Federal financial assistance; (iv) protections for beneficiaries of social service programs; (v) transparency requirements, consistent with and in furtherance of existing open government initiatives; (vi) obligations of nongovernmental and governmental intermediaries; (vii) instructions for peer reviewers and those who recruit peer reviewers; and (viii) training on these matters for government employees and for Federal, State, and local governmental and nongovernmental organizations that receive Federal financial assistance under social service programs. In developing this report and in reviewing agency regulations and guidance for consistency with section 2 of this order, the Working Group shall consult the March 2010 report and recommendations prepared by the President’s Advisory Council on Faith-Based and Neighborhood Partnerships on the topic of reforming the Office of Faith-Based and Neighborhood Partnerships.

Guidance. The Director of the Office of Management and Budget (OMB), following receipt of a copy of the report of the Working Group, and in coordination with the Department of Justice, shall issue guidance on the implementation of this order, including in particular subsections 2(b)-(j).

(d) Membership of the Working Group. The Director of the Office of Faith-Based and Neighborhood Partnerships and a senior official from the OMB designated by the Director of the OMB shall serve as the Co-Chairs of the Working Group. The Co-Chairs shall convene regular meetings of the Working Group, determine its agenda, and direct its work. In addition to the Co-Chairs, the Working Group shall consist of a senior official with knowledge of policies that have implications for faith-based and other neighborhood organizations from the following agencies and offices:

(i) the Department of State;
(ii) the Department of Justice;
(iii) the Department of the Interior;
(iv) the Department of Agriculture;
(v) the Department of Commerce;
(vi) the Department of Labor;
(vii) the Department of Health and Human Services;
(viii) the Department of Housing and Urban Development;
(ix) the Department of Education;
(x) the Department of Veterans Affairs;
(xi) the Department of Homeland Security;
(xii) the Environmental Protection Agency;
(xiii) the Small Business Administration;
(xiv) the United States Agency for International Development;
(xv) the Corporation for National and Community Service; and
(xvi) other agencies and offices as the President, from time to time, may designate.

(e) Administration of the Initiative. The Department of Health and Human Services shall provide funding and administrative support for the Working Group to the extent permitted by law and within existing appropriations.

Section 4. Amendment of Executive Order 11246.

Pursuant to section 121(a) of title 40, United States Code, and section 301 of title 3, United States Code, and in order to further the strong Federal interest in ensuring that the cost and progress of Federal procurement contracts are not adversely affected by an artificial restriction of the labor pool caused by the unwarranted exclusion of faith-based organizations from such contracts, section 204 of Executive Order 11246 of September 24, 1965, as amended, [42 U.S.C. 2000e note] is hereby further amended to read as follows:

“SEC. 204. (a) The Secretary of Labor may, when the Secretary deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this Order in any specific contract, subcontract, or purchase order.

(b) The Secretary of Labor may, by rule or regulation, exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier.

(c) Section 202 of this Order shall not apply to a Government contractor or subcontractor that is a religious corporation, association, educational institution, or society, with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities. Such contractors and subcontractors are not exempted or excused from complying with the other requirements contained in this Order.

(d) The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor that are in all respects separate and distinct from activities of the contractor related to the performance of the contract; provided, that such an exemption will not interfere with or impede the effectuation of the purposes of this Order: and provided further, that in the absence of such an exemption all facilities shall be covered by the provisions of this Order.”

Section 5. General Provisions.


(b) The agencies shall coordinate with the White House OFBCI concerning the implementation of this order.

(c) Nothing in this order shall be construed to require an agency to take any action that would impair the conduct of foreign affairs or the national security.

Section 6. Responsibilities of Executive Departments and Agencies.

All executive departments and agencies (agencies) shall:

(a) designate an agency employee to serve as the liaison and point of contact with the White House OFBCI; and
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(b) cooperate with the White House OFBCI and provide such information, support, and assistance to the White House OFBCI as it may request, to the extent permitted by law.

SUS 7. Judicial Review.

This order is intended only to improve the internal management of the executive branch, and it is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, or entities, its officers, employees or agents, or any person.

EX. ORD. NO. 13280. Responsibilities of the Department of Agriculture and the Agency for International Development with Respect to Faith-Based and Community Initiatives

Ex. Ord. No. 13280, Dec. 12, 2002, 67 F.R. 77145, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to help the Federal Government coordinate a national effort to expand opportunities for faith-based and other community organizations and to strengthen their capacity to better meet social needs in America’s communities, it is hereby ordered as follows:

Section 1. Establishment of Centers for Faith-Based and Community Initiatives at the Department of Agriculture and the Agency for International Development. (a) The Secretary of Agriculture and the Administrator of the Agency for International Development shall each establish within their respective agencies a Center for Faith-Based and Community Initiatives (Center).

(b) Each of these Centers shall be supervised by a Director, appointed by the agency head in consultation with the White House Office of Faith-Based and Community Initiatives (White House OFBCI).

(c) Each agency shall provide its Center with appropriate staff, administrative support, and other resources to meet its responsibilities under this order.

(d) Each Center shall begin operations no later than 45 days from the date of this order.

Section 2. Purpose of Executive Branch Centers for Faith-Based and Community Initiatives. The purpose of the agency Centers will be to coordinate agency efforts to eliminate regulatory, contracting, and other programmatic obstacles to the participation of faith-based and other community organizations in the provision of social services.

Responsibilities of the Centers for Faith-Based and Community Initiatives. Each Center shall, to the extent permitted by law:

(a) conduct, in coordination with the White House OFBCI and agency-wide audits, to identify all existing barriers to the participation of faith-based and other community organizations in the delivery of social services by the agency, including but not limited to regulations, orders, procurements, and other internal policies and practices, and outreach activities that either facially discriminate against or otherwise discourage or disadvantage the participation of faith-based and other community organizations in Federal programs;

(b) coordinate a comprehensive agency effort to incorporate faith-based and other community organizations in agency programs and initiatives to the greatest extent possible;

(c) propose initiatives to remove barriers identified pursuant to section 3(a) of this order, including but not limited to reform of regulations, procurements, and other internal policies and practices, and outreach activities;

(d) propose the development of innovative pilot and demonstration programs to increase the participation of faith-based and other community organizations in Federal as well as State and local initiatives; and

(e) develop and coordinate agency outreach efforts to disseminate information to faith-based and other community organizations with respect to programming changes, contracting opportunities, and other agency initiatives, including but not limited to Web and Internet resources.

SUS 4. Reporting Requirements.

(a) Report. Not later than 180 days from the date of this order and annually thereafter, each of the two Centers described in section 1 of this order shall prepare and submit a report to the White House OFBCI.

(b) Contents. The report shall include a description of the agency’s efforts in carrying out its responsibilities under this order, including but not limited to:

(1) a comprehensive analysis of the barriers to the full participation of faith-based and other community organizations in the delivery of social services identified pursuant to section 3(a) of this order and the proposed strategies to eliminate those barriers; and

(2) a summary of the technical assistance and other information that will be available to faith-based and other community organizations regarding the program activities of the agency and the preparation of applications or proposals for grants, cooperative agreements, contracts, and procurement.

(c) Performance Indicators. The first report, filed 180 days after the date of this order, shall include annual performance indicators and measurable objectives for agency action. Each report filed thereafter shall measure the agency’s performance against the objectives set forth in the initial report.

Section 5. Responsibilities of the Secretary of Agriculture and the Administrator of the Agency for International Development. The Secretary and the Administrator shall:

(a) designate an employee within their respective agencies to serve as the liaison and point of contact with the White House OFBCI; and

(b) cooperate with the White House OFBCI and provide such information, support, and assistance to the White House OFBCI as it may request, to the extent permitted by law.

Section 6. Administration and Judicial Review. (a) The agency actions directed by this executive order shall be carried out subject to the availability of appropriations and to the extent permitted by law.

(b) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, or entities, its officers, employees or agents, or any other person.

GEORGE W. BUSH

EX. ORD. NO. 13342. Responsibilities of the Departments of Commerce and Veterans Affairs and the Small Business Administration with Respect to Faith-Based and Community Initiatives

Ex. Ord. No. 13342, June 1, 2004, 69 F.R. 31509, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to help the Federal Government coordinate a national effort to expand opportunities for faith-based and other community organizations and to strengthen their capacity to better meet America’s social and community needs, it is hereby ordered as follows:

SECTION 1. Establishment of Centers for Faith-Based and Community Initiatives at the Departments of Commerce and Veterans Affairs and the Small Business Administration. (a) The Secretaries of Commerce and Veterans Affairs and the Administrator of the Small Business Administration shall each establish within their respective agencies a Center for Faith-Based and Community Initiatives (Center).

(b) Each of these Centers shall be supervised by a Director, appointed by the agency head in consultation with the White House Office of Faith-Based and Community Initiatives (White House OFBCI).

(c) Each agency shall provide its Center with appropriate staff, administrative support, and other resources to meet its responsibilities under this order.

(d) Each Center shall begin operations no later than 45 days from the date of this order.
agency Centers will be to coordinate agency efforts to eliminate regulatory, contracting, and other programmatic obstacles to the participation of faith-based and other community organizations in the provision of social and community services.

SIC. 3. Responsibilities of the Centers for Faith-Based and Community Initiatives. Each Center shall, to the extent permitted by law:
(a) conduct, in coordination with the White House OFBCI, an agency-wide audit to identify all existing barriers to the participation of faith-based and other community organizations in the delivery of social and community services by the agency, including but not limited to regulations, rules, orders, procurement, and other internal policies and practices, and outreach activities that either facially discriminate against or otherwise discourage or disadvantage the participation of faith-based and other community organizations in Federal programs;
(b) coordinate a comprehensive agency effort to incorporate faith-based and other community organizations in agency programs and initiatives to the greatest extent possible;
(c) propose initiatives to remove barriers identified pursuant to section 3(a) of this order, including but not limited to reform of regulations, procurement, and other internal policies and practices, and outreach activities;
(d) propose the development of innovative pilot and demonstration programs to increase the participation of faith-based and other community organizations in Federal as well as State and local initiatives; and
(e) develop and coordinate outreach efforts to disseminate information more effectively to faith-based and other community organizations with respect to programming changes, contracting opportunities, and other agency initiatives, including but not limited to Web and Internet resources.

SIC. 4. Reporting Requirements. (a) Report. Not later than 180 days from the date of this order annually thereafter, each of the three Centers described in section 1 of this order shall prepare and submit a report to the President through the White House OFBCI.
(b) Contents. The report shall include a description of the agency's efforts in carrying out its responsibilities under this order, including but not limited to:
(i) a comprehensive analysis of the barriers to the full participation of faith-based and other community organizations in the delivery of social and community services identified pursuant to section 3(a) of this order and the proposed strategies to eliminate those barriers; and
(ii) a summary of the technical assistance and other information that will be available to faith-based and other community organizations regarding the program activities of the agency and the preparation of applications or proposals for grants, cooperative agreements, contracts, and procurement.
(c) Performance Indicators. The first report, filed pursuant to section 4(a) of this order, shall include annual performance indicators and measurable objectives for agency action. Each report filed thereafter shall measure the agency's performance against the objectives set forth in the initial report.

SIC. 5. Responsibilities of the Secretaries of Commerce and Veterans Affairs and the Administrator of the Small Business Administration. The Secretaries and the Administrator shall:
(a) designate an employee within their respective agencies to serve as the liaison and point of contact with the White House OFBCI; and
(b) cooperate with the White House OFBCI and provide such information, support, and assistance to the White House OFBCI as it may request, to the extent permitted by law.

SIC. 6. Administration and Judicial Review. (a) The agency actions directed by this executive order shall be carried out subject to the availability of appropriations and the extent permitted by law.
(b) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers, employees or agents, or any other person.

GEORGE W. BUSH.

EX. ORD. NO. 13397. RESPONSIBILITIES OF THE DEPARTMENT OF HOMELAND SECURITY WITH RESPECT TO FAITH-BASED AND COMMUNITY INITIATIVES

Ex. Ord. No. 13397, Mar. 7, 2006, 71 F.R. 12275, provided:
By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to help the Federal Government coordinate a national effort to expand opportunities for faith-based and other community organizations and to strengthen their capacity to better meet America's social and community needs, it is hereby ordered as follows:

(a) The Secretary of Homeland Security (Secretary) shall establish within the Department of Homeland Security (Department) a Center for Faith-Based and Community Initiatives (Center).
(b) The Center shall be supervised by a Director appointed by the Secretary. The Secretary shall consult with the Director of the White House Office of Faith-Based and Community Initiatives (WHOFBCI Director) prior to making such appointment.
(c) The Department shall provide the Center with appropriate staff, administrative support, and other resources to meet its responsibilities under this order.
(d) The Center shall begin operations no later than 45 days from the date of this order.

SIC. 2. Purpose of Center. The purpose of the Center shall be to coordinate agency efforts to eliminate regulatory, contracting, and other programmatic obstacles to the participation of faith-based and other community organizations in the provision of social and community services.

SIC. 3. Responsibilities of the Center for Faith-Based and Community Initiatives. In carrying out the purpose set forth in section 2 of this order, the Center shall:
(a) coordinate a comprehensive agency effort to incorporate faith-based and other community organizations in agency programs and initiatives to the greatest extent possible;
(b) coordinate a comprehensive departmental effort to incorporate faith-based and other community organizations in Department programs and initiatives to the greatest extent possible;
(c) propose initiatives to remove barriers identified pursuant to section 3(a) of this order, including but not limited to reform of regulations, procurement, and other internal policies and practices, and outreach activities that unlawfully discriminate against, or otherwise discourage or disadvantage the participation of faith-based and other community organizations in Federal programs;
(d) propose the development of innovative pilot and demonstration programs to increase the participation of faith-based and other community organizations in Federal as well as State and local initiatives; and
(e) develop and coordinate Departmental outreach efforts to disseminate information more effectively to faith-based and other community organizations with respect to programming changes, contracting opportunities, and other agency initiatives, including but not limited to Web and Internet resources.

SIC. 4. Reporting Requirements. (a) Report. Not later than 180 days from the date of this order and annually thereafter, the Center shall prepare and submit a report to the WHOFBCI Director.
(b) Contents. The report shall include a description of the Department's efforts in carrying out its responsibilities under this order, including but not limited to:
(i) a comprehensive analysis of the barriers to the full participation of faith-based and other community organizations in the delivery of social and community services identified pursuant to section 3(a) of this order and the proposed strategies to eliminate those barriers; and
(ii) a summary of the technical assistance and other information that will be available to faith-based and other community organizations regarding the program activities of the agency and the preparation of applications or proposals for grants, cooperative agreements, contracts, and procurement.

(c) Performance Indicators. The first report shall include annual performance indicators and measurable objectives for Departmental action. Each report filed against the objectives set forth in the initial report shall:

(a) designate an employee within the department to serve as the liaison and point of contact with the WHOFBCI Director; and
(b) cooperate with the WHOFBCI Director and provide such information, support, and assistance to the order.

Sect. 4. General Provisions. (a) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(b) Nothing in this order shall be construed to prohibit a taking of private property by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(c) This order shall be implemented in a manner consistent with Executive Order 12680 of March 15, 1988.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, entities, officers, employees, or agents, or any other person.

George W. Bush.

EX. ORD. NO. 13497. REVOCATION OF CERTAIN EXECUTIVE ORDERS CONCERNING REGULATORY PLANNING AND REVIEW
Ex. Ord. No. 13497, Jan. 30, 2009, 74 F.R. 6113, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered that:


Sect. 2. The Director of the Office of Management and Budget and the heads of executive departments and agencies shall promptly rescind any orders, rules, regulations, guidelines, or policies implementing or enforcing Executive Order 12256 or Executive Order 13422, to the extent consistent with law.

Sect. 3. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, entities, its officers, employees, or agents, or any other person.

Barack Obama.
The Administrator, Environmental Protection Agency
The Administrator, Small Business Administration
The Secretary of the Army
The Secretary of the Navy
The Secretary of the Air Force
The Director, Federal Emergency Management Agency
The Administrator, National Aeronautics and Space Administration
The Director, National Science Foundation
The Acting Archivist of the United States
The Administrator of General Services
The Chair, Railroad Retirement Board
The Chairperson, Architectural and Transportation Barriers Compliance Board
The Executive Director, Pension Benefit Guaranty Corporation

On March 16, I announced that the Administration would implement new policies to give compliance officials more flexibility in dealing with small business and to cut back on paperwork. These Governmentwide policies, as well as the specific agency actions I announced, are part of this Administration’s continuing commitment to sensible regulatory reform. With your help and cooperation, we hope to move the Government toward a more flexible, effective, and user-friendly approach to regulation.

A. Actions: This memorandum directs the designated department and agency heads to implement the policies set forth below.

1. Authority to Waive Penalties. (a) To the extent permitted by law, each agency shall use its discretion to modify the penalties for small businesses in the following situations. Agencies shall exercise their enforcement discretion to waive the imposition of all or a portion of a penalty when the violation is corrected within a time period appropriate to the violation in question. For those violations that may take longer to correct than the period set by the agency, the agency shall use its enforcement discretion to waive up to 100 percent of the financial penalties if the amounts waived are used to bring the entity into compliance. The provisions in paragraph 1(a) of this memorandum shall apply only where there has been a good faith effort to comply with applicable regulations and the violation does not involve criminal wrongdoing or significant threat to health, safety, or the environment.

(b) Each agency shall, by June 15, 1995, submit a plan to the Director of the Office of Management and Budget ("Director") describing the actions it will take to implement the policies in paragraph 1(a) of this memorandum. The plan shall provide that the agency will implement the policies described in paragraph 1(a) of this memorandum on or before July 14, 1995. Plans should include information on how notification will be given to frontline workers and small businesses.

2. Cutting Frequency of Reports. (a) Each agency shall reduce by one-half the frequency of the regularly scheduled reports that the public is required, by rule or by policy, to provide to the Government (from quarterly to semiannually, from semianually to annually, etc.), unless the department or agency head determines that such action is not legally permissible; would not adequately protect health, safety, or the environment; would be inconsistent with achieving regulatory flexibility or reducing regulatory burdens; or would impede the effective administration of the agency’s program. The duty to make such determinations shall be nondelegable.

(b) Each agency shall, by June 15, 1995, submit a plan to the Director describing the actions it will take to implement the policies in paragraph 2(a), including a copy of any determination that certain reports are excluded.

B. Application and Scope: 1. The Director may issue further guidance as necessary to carry out the purposes of this memorandum.

2. This memorandum does not apply to matters related to law enforcement, national security, or foreign affairs, the importation or exportation of prohibited or restricted items, Government taxes, duties, fees, revenues, or receipts; nor does it apply to agencies (or components thereof) whose principal purpose is the collection, analysis, and dissemination of statistical information.

3. This memorandum is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees.

4. The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

William J. Clinton.

Memorandum of President of the United States, June 1, 1998, 63 F.R. 31885, provided:

Memorandum for the Heads of Executive Departments and Agencies

The Vice President and I have made reinventing the Federal Government a top priority of our Administration. We are determined to make the Government more responsive, accessible, and understandable in its communications with the public.

The Federal Government’s writing must be in plain language. By using plain language, we send a clear message about what the Government is doing, what it requires, and what services it offers. Plain language saves the Government and the private sector time, effort, and money.

Plain language requirements vary from one document to another, depending on the intended audience. Plain language documents have logical organization, easy-to-read design features, and use:

• common, everyday words, except for necessary technical terms;
• “you” and other pronouns;
• the active voice; and
• short sentences.

To ensure the use of plain language, I direct you to do the following:

• By October 1, 1998, use plain language in all new documents, other than regulations, that explain how to obtain a benefit or service or how to comply with a requirement you administer or enforce. For example, these documents may include letters, forms, notices, and instructions. By January 1, 2002, all such documents created prior to October 1, 1998, must also be in plain language.

• By January 1, 1999, use plain language in all proposed and final rulemaking documents published in the Federal Register, unless you proposed the rule before that date. You should consider rewriting existing regulations in plain language when you have the opportunity and resources to do so.

The National Partnership for Reinventing Government will issue guidance to help you comply with these directives and to explain more fully the elements of plain language. You should also use customer feedback and common sense to guide your plain language efforts.

I ask the independent agencies to comply with these directives.

This memorandum does not confer any right or benefit enforceable by law against the United States or its representatives. The Director of the Office of Management and Budget will publish this memorandum in the Federal Register.

William J. Clinton.
Memorandum for the Heads of Executive Departments and Agencies
From our Nation’s founding, the American constitutional order has been a Federal system, ensuring a strong role for both the national Government and the States. The Federal Government’s role in promoting the general welfare and guarding individual liberties is central, but State law and national law often operate concurrently to provide independent safeguards for the public. Throughout our history, State and local governments have frequently protected health, safety, and the environment more aggressively than has the national Government.

An understanding of the important role of State governments in our Federal system is reflected in longstanding practices by executive departments and agencies, which have shown respect for the traditional prerogatives of the States. In recent years, however, notwithstanding Executive Order 13132 of August 4, 1999 (Federalism), executive departments and agencies have sometimes announced that their regulations preempt State law, including State common law, without explicit preemption by the Congress or otherwise sufficient basis under applicable legal principles.

The purpose of this memorandum is to state the general policy of my Administration that preemption of State law by executive departments and agencies should be undertaken only with full consideration of the legitimate prerogatives of the States and with a sufficient legal basis for preemption. Executive departments and agencies should be mindful that in our Federal system, the citizens of the several States have distinctive circumstances and values, and that in many instances it is appropriate for them to apply to themselves rules and principles that reflect these circumstances and values. As Justice Brandeis explained more than 70 years ago, “[I]t is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”

To ensure that executive departments and agencies include statements of preemption in regulations only when such statements have a sufficient legal basis:
1. Heads of departments and agencies should not include in regulatory preambles statements that the department or agency intends to preempt State law through the regulation except where preemption provisions are justified under applicable legal principles.

2. Heads of departments and agencies should not include preemption provisions in codified regulations except where such provisions would be justified under legal principles governing preemption, including the principles outlined in Executive Order 13132.

3. Heads of departments and agencies should review regulations issued within the past 10 years that contain statements in regulatory preambles or codified provisions intended by the department or agency to preempt State law, in order to decide whether such statements or provisions are justified under applicable legal principles governing preemption. Where the head of a department or agency determines that a regulatory statement of preemption or codified regulatory provision cannot be so justified, the head of that department or agency should initiate appropriate action, which may include amendment of the relevant regulation.

Executive departments and agencies shall carry out the provisions of this memorandum to the extent permitted by law and consistent with their statutory authorities. Heads of departments and agencies should consult as necessary with the Attorney General and the Office of Management and Budget’s Office of Information and Regulatory Affairs to determine how the requirements of this memorandum apply to particular situations.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

§ 602. Regulatory agenda
(a) During the months of October and April of each year, each agency shall publish in the Federal Register a regulatory flexibility agenda which shall contain—
(1) a brief description of the subject area of any rule which the agency expects to propose or promulgate which is likely to have a significant economic impact on a substantial number of small entities;
(2) a summary of the nature of any such rule under consideration for each subject area listed in the agenda pursuant to paragraph (1), the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking; and
(3) the name and telephone number of an agency official knowledgeable concerning the items listed in paragraph (1).
(b) Each regulatory flexibility agenda shall be transmitted to the Chief Counsel for Advocacy of the Small Business Administration for comment, if any.
(c) Each agency shall endeavor to provide notice of each regulatory flexibility agenda to small entities or their representatives through direct notification or publication of the agenda in publications likely to be obtained by such small entities and shall invite comments upon each subject area on the agenda.
Nothing in this section precludes an agency from considering or acting on any matter not included in a regulatory flexibility agenda, or requires an agency to consider or act on any matter listed in such agenda.


§ 603. Initial regulatory flexibility analysis
(a) Whenever an agency is required by section 553 of this title, or any other law, to publish general notice of proposed rulemaking for any proposed rule, or publishes a notice of proposed rulemaking for an interpretative rule involving the internal revenue laws of the United States, the agency shall prepare and make available for public comment an initial regulatory flexibility analysis. Such analysis shall describe the impact of the proposed rule on small entities. The initial regulatory flexibility analysis or a summary shall be published in the Federal Register at the time of the publication of general notice of proposed rulemaking for the rule. The agency shall transmit a copy of the initial regulatory flexibility analysis to the Chief Counsel for Advocacy of the Small Business Administration. In the case of an interpretative rule involving the internal revenue laws of the United States, this chapter applies to interpretative rules published in the Federal Register for codification in the Code of Federal Regulations, but only to the ex-