

1982—Subsec. (c)(13). Pub. L. 97-258 substituted “section 1342 of title 31” for “section 3679(b) of the Revised Statutes (31 U.S.C. 665(b))”.

1972—Subsec. (c)(10). Pub. L. 92-526, §1(a), inserted provisions authorizing contracts for the performance of such studies with any public or private persons, etc., under title III of the Federal Property and Administrative Services Act of 1949, as amended, and substituted provisions authorizing the payment of experts and consultants in accordance with rates not in excess of the maximum rate of pay for grade GS-15 as provided in section 5332 of this title, for provisions authorizing the payment of such individuals at rates not in excess of \$100 a day.

Subsec. (c)(11) to (15). Pub. L. 92-526, §1(b), added pars. (11) to (13) and redesignated former pars. (11) and (12) as (14) and (15), respectively.

### Statutory Notes and Related Subsidiaries

#### TERMINATION OF ADMINISTRATIVE CONFERENCE OF UNITED STATES

For termination of Administrative Conference of United States, see note set out preceding section 591 of this title.

### § 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 \$2,500 may be made available in each fiscal year for official representation and entertainment expenses for foreign dignitaries.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 391, §576; Pub. L. 91-164, Dec. 24, 1969, 83 Stat. 446; Pub. L. 92-526, §2, Oct. 21, 1972, 86 Stat. 1048; Pub. L. 95-293, §1(a), June 13, 1978, 92 Stat. 317; Pub. L. 97-330, Oct. 15, 1982, 96 Stat. 1618; Pub. L. 99-470, §2(a), Oct. 14, 1986, 100 Stat. 1198; Pub. L. 101-422, §1, Oct. 12, 1990, 104 Stat. 910; renumbered §596, Pub. L. 102-354, §2(2), Aug. 26, 1992, 106 Stat. 944; Pub. L. 108-401, §3, Oct. 30, 2004, 118 Stat. 2255; Pub. L. 110-290, §2, July 30, 2008, 122 Stat. 2914.)

#### HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 1045e.	Aug. 30, 1964, Pub. L. 88-499, §7, 78 Stat. 618.

The word “hereby” is omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

### Editorial Notes

#### AMENDMENTS

2008—Pub. L. 110-290 amended section generally. Prior to amendment, text read as follows: “There are authorized to be appropriated to carry out this subchapter not more than \$3,000,000 for fiscal year 2005, \$3,100,000 for fiscal year 2006, and \$3,200,000 for fiscal year 2007. Of any amounts appropriated under this section, not more than \$2,500 may be made available in each fiscal year for official representation and entertainment expenses for foreign dignitaries.”

2004—Pub. L. 108-401 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: “There are authorized to be appropriated to carry out the purposes of this subchapter not more than \$2,000,000 for fiscal year 1990, \$2,100,000 for fiscal year 1991, \$2,200,000 for fiscal year

1992, \$2,300,000 for fiscal year 1993, and \$2,400,000 for fiscal year 1994. 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.”

1992—Pub. L. 102-354 renumbered section 576 of this title as this section.

1990—Pub. L. 101-422 amended section generally. Prior to amendment, section read as follows: “There are authorized to be appropriated to carry out the purposes of this subchapter not more than \$1,600,000 for fiscal year 1986 and not more than \$2,000,000 for each fiscal year thereafter up to and including fiscal year 1990. Of any amounts appropriated under this section, not more than \$1,000 may be made available in each fiscal year for official reception and entertainment expenses for foreign dignitaries.”

1986—Pub. L. 99-470 substituted “Authorization of appropriations” for “Appropriations” in section catchline and amended text generally. Prior to amendment, text read as follows: “There are authorized to be appropriated to carry out the purposes of this subchapter sums not to exceed \$2,300,000 for the fiscal year ending September 30, 1982, and not to exceed \$2,300,000 for each fiscal year thereafter up to and including the fiscal year ending September 30, 1986.”

1982—Pub. L. 97-330 substituted provisions authorizing appropriations of not to exceed \$2,300,000 for fiscal year ending Sept. 30, 1982, and not to exceed \$2,300,000 for each fiscal year thereafter up to and including fiscal year ending Sept. 30, 1986, for provisions that had authorized appropriations of not to exceed \$1,700,000 for fiscal year ending Sept. 30, 1979, \$2,000,000 for fiscal year ending Sept. 30, 1980, \$2,300,000 for fiscal year ending Sept. 30, 1981, and \$2,300,000 for fiscal year ending Sept. 30, 1982.

1978—Pub. L. 95-293 substituted provisions authorizing appropriations for fiscal years ending Sept. 30, 1979, Sept. 30, 1980, Sept. 30, 1981, and Sept. 30, 1982, of \$1,700,000, \$2,000,000, \$2,300,000, and \$2,300,000, respectively, for provisions authorizing appropriations for fiscal years ending June 30, 1974, June 30, 1975, June 30, 1976, June 30, 1977, and June 30, 1978, of \$760,000, \$805,000, \$850,000, \$900,000, and \$950,000, respectively, and provisions authorizing for each fiscal year thereafter such sums as may be necessary.

1972—Pub. L. 92-526 substituted provisions authorizing to be appropriated necessary sums not in excess of \$760,000 for fiscal year ending June 30, 1974, \$805,000 for fiscal year ending June 30, 1975, \$850,000 for fiscal year ending June 30, 1976, \$900,000 for fiscal year ending June 30, 1977, and \$950,000 for fiscal year ending June 30, 1978, and each fiscal year thereafter, for provisions authorizing to be appropriated necessary sums, not in excess of \$450,000 per annum.

1969—Pub. L. 91-164 substituted “\$450,000 per annum” for “\$250,000”.

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-293, §1(b), June 13, 1978, 92 Stat. 317, provided that: “The amendment made by subsection (a) [amending this section] shall take effect October 1, 1977.”

### CHAPTER 6—THE ANALYSIS OF REGULATORY FUNCTIONS

Sec.	
601.	Definitions.
602.	Regulatory agenda.
603.	Initial regulatory flexibility analysis.
604.	Final regulatory flexibility analysis.
605.	Avoidance of duplicative or unnecessary analyses.
606.	Effect on other law.
607.	Preparation of analyses.
608.	Procedure for waiver or delay of completion.

Sec.	
609.	Procedures for gathering comments.
610.	Periodic review of rules.
611.	Judicial review.
612.	Reports and intervention rights.

### § 601. Definitions

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 which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, 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 per-

sons, 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.

(Added Pub. L. 96-354, §3(a), Sept. 19, 1980, 94 Stat. 1165; amended Pub. L. 104-121, title II, §241(a)(2), Mar. 29, 1996, 110 Stat. 864.)

### Editorial Notes

#### 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).

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-121, title II, §245, Mar. 29, 1996, 110 Stat. 868, provided that: “This subtitle [subtitle D (§§241-245) of title II of Pub. L. 104-121, amending this section and sections 603 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

Pub. L. 96-354, §4, Sept. 19, 1980, 94 Stat. 1170, 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

Pub. L. 104-121, §1, Mar. 29, 1996, 110 Stat. 847, provided that: “This Act [enacting sections 801 to 808 of this title, section 657 of Title 15, Commerce and Trade, and sections 1320b-15 and 1383e of Title 42, The Public Health and Welfare, amending this section and sections 504, 603 to 605, 609, 611, and 612 of this title, sections 665e and 901 of Title 2, The Congress, section 648 of Title 15, section 2412 of Title 28, Judiciary and Judicial Procedure, section 3101 of Title 31, Money and Finance, and sections 401, 402, 403, 405, 422, 423, 425, 902, 903, 1382, 1382c, 1383, and 1383c of Title 42, enacting provisions set out as notes under this section and sections 504, 609, and 801 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

Pub. L. 96-354, §1, Sept. 19, 1980, 94 Stat. 1164, provided: “That this Act [enacting this chapter] may be cited as the ‘Regulatory Flexibility Act’.”

## REGULATORY ENFORCEMENT REPORTS

Pub. L. 107-198, §4, June 28, 2002, 116 Stat. 732, provided that:

“(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 Accountability] 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

Pub. L. 105-277, div. A, §101(h) [title VI, §654], Oct. 21, 1998, 112 Stat. 2681-480, 2681-528, as amended by Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814, provided that:

“(a) PURPOSES.—The purposes of this section are to—

“(1) require agencies to assess the impact of proposed agency actions on family well-being; and

“(2) improve the management of executive branch agencies.

“(b) DEFINITIONS.—In this section—

“(1) the term ‘agency’ has the meaning given the term ‘Executive agency’ by section 105 of title 5, United States Code, except such term does not include the Government Accountability Office; and

“(2) the term ‘family’ means—

“(A) a group of individuals related by blood, marriage, adoption, or other legal custody who live together as a single household; and

“(B) any individual who is not a member of such group, but who is related by blood, marriage, or adoption to a member of such group, and over half of whose support in a calendar year is received from such group.

“(c) FAMILY POLICYMAKING ASSESSMENT.—Before implementing policies and regulations that may affect family well-being, each agency shall assess such actions with respect to whether—

“(1) the action strengthens or erodes the stability or safety of the family and, particularly, the marital commitment;

“(2) the action strengthens or erodes the authority and rights of parents in the education, nurture, and supervision of their children;

“(3) the action helps the family perform its functions, or substitutes governmental activity for the function;

“(4) the action increases or decreases disposable income or poverty of families and children;

“(5) the proposed benefits of the action justify the financial impact on the family;

“(6) the action may be carried out by State or local government or by the family; and

“(7) the action establishes an implicit or explicit policy concerning the relationship between the behavior and personal responsibility of youth, and the norms of society.

“(d) GOVERNMENTWIDE FAMILY POLICY COORDINATION AND REVIEW.—

“(1) CERTIFICATION AND RATIONALE.—With respect to each 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.

“(e) 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).

“(f) 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

Pub. L. 104-121, title II, §§201-224, Mar. 29, 1996, 110 Stat. 857-862, as amended by Pub. L. 110-28, title VIII, §8302, May 25, 2007, 121 Stat. 204, provided that:

“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 648 of Title 15, 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.—

“(1) IN GENERAL.—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’.

“(2) 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.

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

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

“(B) not later than the date on which the requirements of that rule become effective.

#### “(4) COMPLIANCE ACTIONS.—

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

“(B) 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.

“(C) 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.

“(5) 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.

“(6) 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).

“(b) 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.

“(c) 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 as evidence 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) the term ‘small entity compliance guide’ means a document designated as such by an agency.

“SEC. 222. SMALL BUSINESS AND AGRICULTURE ENFORCEMENT OMBUDSMAN.

“[Enacted section 657 of Title 15, Commerce and Trade.]

“SEC. 223. RIGHTS OF SMALL ENTITIES IN ENFORCEMENT ACTIONS.

“(a) IN GENERAL.—Each agency regulating the activities of small entities shall establish a policy or program within 1 year of enactment of this section [Mar. 29, 1996] to provide for the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity. Under appropriate circumstances, an agency may consider ability to pay in determining penalty assessments on small entities.

“(b) CONDITIONS AND EXCLUSIONS.—Subject to the requirements or limitations of other statutes, policies or programs established under this section shall contain conditions or exclusions which may include, but shall not be limited to—

“(1) requiring the small entity to correct the violation within a reasonable correction period;

“(2) limiting the applicability to violations discovered through participation by the small entity in a compliance assistance or audit program operated or supported by the agency or a State;

“(3) excluding small entities that have been subject to multiple enforcement actions by the agency;

“(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 [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 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.

“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].”

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 areas. 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

Pub. L. 96-354, §2, Sept. 19, 1980, 94 Stat. 1164, 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 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, 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 Documents

#### EXECUTIVE ORDER NO. 12291

Ex. Ord. No. 12291, Feb. 17, 1981, 46 F.R. 13193, which established requirements for agencies to follow in promulgating regulations, reviewing existing regulations, and developing legislative proposals concerning regulation, 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. 12606

Ex. Ord. No. 12606, Sept. 2, 1987, 52 F.R. 34188, which provided criteria for executive departments and agencies to follow in making policies and regulations to en-

sure 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. 13132, §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 effect of their 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 risk 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 to 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, pro-

posed 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 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.

SEC. 3. *General Principles.* In formulating or implementing policies that have takings implications, each Executive department and agency shall be guided by the following general principles:

(a) Governmental officials should be sensitive to, anticipate, and account for, the obligations imposed by the Just Compensation Clause of the Fifth Amendment in planning and carrying out governmental actions so that they do not result in the imposition of unanticipated or undue additional burdens on the public fisc.

(b) Actions undertaken by governmental officials that result in a physical invasion or occupancy of pri-

vate property, and regulations imposed on private property that substantially affect its value or use, may constitute a taking of property. Further, governmental action may amount to a taking even though the action results in less than a complete deprivation of all use or value, or of all separate and distinct interests in the same private property and even if the action constituting a taking is temporary in nature.

(c) Government officials whose actions are taken specifically for purposes of protecting public health and safety are ordinarily given broader latitude by courts before their actions are considered to be takings. However, the mere assertion of a public health and safety purpose is insufficient to avoid a taking. Actions to which this Order applies asserted to be for the protection of public health and safety, therefore, should be undertaken only in response to real and substantial threats to public health and safety, be designed to advance significantly the health and safety purpose, and be no greater than is necessary to achieve the health and safety purpose.

(d) While normal governmental processes do not ordinarily effect takings, undue delays in decision-making during which private property use is interfered with carry a risk of being held to be takings. Additionally, a delay in processing may increase significantly the size of compensation due if a taking is later found to have occurred.

(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.

SEC. 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 specific use of, or action with respect to, private property, 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.

(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 there 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.

SEC. 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" award has been made or a "takings" claim pending if the award was made, or the pending claim brought, pursuant to the Just Compensation Clause of the Fifth Amendment. An itemized compilation of all such awards made in Fiscal Years 1985, 1986, and 1987 and all such pending claims shall be submitted to the Director, Office of Management and Budget, on or before May 16, 1988.

(d) Each Executive department and agency shall submit annually to the Director, Office of Management and Budget, and to the Attorney General an itemized compilation of all awards of just compensation entered against the United States for takings, including awards of interest as well as monies paid pursuant to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601.

(e)(1) The Director, Office of Management and Budget, and the Attorney General shall each, to the extent permitted by law, take action to ensure that the policies of the Executive departments and agencies are consistent with the principles, criteria, and requirements stated in Sections 1 through 5 of this Order, and the Office of Management and Budget shall take action to ensure that all takings awards levied against agencies are properly accounted for in agency budget submissions.

(2) In addition to the guidelines required by Section 1 of this Order, the Attorney General shall, in consultation with each Executive department and agency to which this Order applies, promulgate such supplemental guidelines as may be appropriate to the specific obligations of that department or agency.

SEC. 6. *Judicial Review.* This Order is intended only to improve the internal management of the Executive branch and 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.

RONALD REAGAN.

EX. ORD. NO. 12861. ELIMINATION OF ONE-HALF OF  
EXECUTIVE BRANCH INTERNAL REGULATIONS

Ex. Ord. No. 12861, Sept. 11, 1993, 58 F.R. 48255, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and section 1111 of title 31, United States Code, and to cut 50 percent of the executive branch's internal regulations in order to streamline and improve customer service to the American people, it is hereby ordered as follows:

SECTION 1. *Regulatory Reductions.* Each executive department and agency shall undertake to eliminate not

less than 50 percent of its civilian internal management regulations that are not required by law within 3 years of the effective date of this order. An agency internal management regulation, for the purposes of this order, means an agency directive or regulation that pertains to its organization, management, or personnel matters. Reductions in agency internal management regulations shall be concentrated in areas that will result in the greatest improvement in productivity, streamlining of operations, and improvement in customer service.

SEC. 2. *Coverage.* This order applies to all executive branch departments and agencies.

SEC. 3. *Implementation.* The Director of the Office of Management and Budget shall issue instructions regarding the implementation of this order, including exemptions necessary for the delivery of essential services and compliance with applicable law.

SEC. 4. *Independent Agencies.* All independent regulatory commissions and agencies are requested to comply with the provisions of this order.

WILLIAM J. CLINTON.

EX. ORD. NO. 12866. REGULATORY PLANNING AND REVIEW

Ex. Ord. No. 12866, Sept. 30, 1993, 58 F.R. 51735, as amended by Ex. Ord. No. 13258, Feb. 26, 2002, 67 F.R. 9385; Ex. Ord. No. 13422, Jan. 18, 2007, 72 F.R. 2763; Ex. Ord. No. 13497, § 1, Jan. 30, 2009, 74 F.R. 6113; Ex. Ord. No. 14094, § 1(b), Apr. 6, 2023, 88 F.R. 21879, provided:

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 and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for economic growth; regulatory approaches that respect the role of State, local, and tribal governments; and regulations that are effective, consistent, sensible, and understandable. We do not have such a regulatory system today.

With this Executive order, the Federal Government begins a program to reform and make more efficient the regulatory process. The objectives of this Executive order are to enhance planning and coordination with respect to both new and existing regulations; to reaffirm the primacy of Federal agencies in the regulatory decision-making process; to restore the integrity and legitimacy of regulatory review and oversight; and to make the process more accessible and open to the public. In pursuing these objectives, the regulatory process shall be conducted so as to meet applicable statutory requirements and with due regard to the discretion that has been entrusted to the Federal agencies.

Accordingly, 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. *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 objective. In doing so, each agency shall consider incentives for innovation, consistency, predictability, the costs of enforcement and compliance (to the government, regulated entities, and the public), flexibility, distributive impacts, and equity.

(6) Each agency shall assess both the costs and the benefits 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 regulation 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 alternative 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 significantly or uniquely affect those governmental entities. 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 achieving regulatory objectives. In addition, as appropriate, agencies shall seek to harmonize Federal regulatory actions with related State, local, and tribal regulatory 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 impose the least burden on society, including individuals, businesses of differing sizes, and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, 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 minimizing the potential for uncertainty and litigation arising from such uncertainty.

SEC. 2. *Organization.* An efficient regulatory planning and review process is vital to ensure that the Federal

Government's regulatory system best serves the American people.

(a) *The Agencies.* Because Federal agencies are the repositories of significant substantive expertise and experience, they are responsible for developing regulations and assuring that the regulations are consistent with applicable law, the President's priorities, and the principles 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 Management 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 policies. To the extent permitted by law, OMB shall provide 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 principal 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 responsibilities under this Executive order, the President and the Vice President shall be assisted by the regulatory policy advisors within the Executive Office of the President and by such agency officials and personnel as the President and the Vice President may, from time to time, consult.

SEC. 3. *Definitions.* For purposes of this Executive order: (a) "Advisors" refers to such regulatory policy advisors to the President as the President and 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 Advisers; (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 Environmental Policy; and (12) the Administrator of OIRA, who also shall 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 U.S.C. 3502(10).

(c) "Director" means the Director of OMB.

(d) "Regulation" or "rule" means an agency statement 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, include:

(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 involving 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 action 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 rulemaking, and notices of proposed rulemaking.

(f) "Significant regulatory action" means any regulatory action that is likely to result in a rule that may:

(1) have an annual effect on the economy of \$200 million or more (adjusted every 3 years by the Administrator of OIRA for changes in gross domestic product); 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, territorial, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in this Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

SEC. 4. *Planning Mechanism.* In order to have an effective regulatory program, to provide for coordination of regulations, to maximize consultation and the resolution 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 planning 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 44 U.S.C. 3502(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 44 U.S.C. 3502(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 any agency Plan, including 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 (1) the development of innovative regulatory techniques, (2) the methods, efficacy, and utility of comparative risk assessment in regulatory decision-making, and (3) 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 its 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 fami-

lies, 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; 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 mandates that require 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. State, local, and tribal governments are specifically encouraged to assist in the identification of regulations that impose significant or unique burdens on those governmental entities and that appear to have outlived their justification or be otherwise inconsistent with the public interest.

(c) The Vice President, in consultation with the Advisors, may identify for review by the appropriate agency or agencies other existing regulations of an agency or groups of regulations of more than one agency that affect a particular group, industry, or sector of the economy, or may identify legislative mandates that may be appropriate for reconsideration by the Congress.

**SEC. 6. Centralized Review of Regulations.** The guidelines set forth below shall apply to all regulatory actions, for both new and existing regulations, by agencies other than those agencies specifically exempted by the Administrator of OIRA:

(a) *Agency Responsibilities.* (1) Each agency shall (consistent with its own rules, regulations, or procedures) provide the public with meaningful participation in the regulatory process. In particular, before issuing a notice of proposed rulemaking, each agency should, where appropriate, seek the involvement of those who are intended to benefit from and those expected to be burdened 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 consensual mechanisms for developing 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 Regulatory Policy Officer shall be involved at each stage of the regulatory process to foster the development of effective, 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 procedures 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 respect 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, indicating those which the agency believes are significant 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 review 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 Administrator of OIRA may waive review of any planned regulatory action designated by the agency as significant, in which case the agency need not further 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 regulatory action, the issuing agency shall provide to OIRA:

(i) The text of the draft regulatory action, together with a reasonably detailed description of the need for the regulatory action and an explanation of how the regulatory action will meet that need; and

(ii) An assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate and, to the extent permitted by law, promotes the President's priorities and avoids undue interference with State, local, and tribal governments in the exercise of their governmental functions.

(C) For those matters identified as, or determined by the Administrator of OIRA to be, a significant regulatory action within the scope of section 3(f)(1), the agency shall also provide to OIRA the following additional information developed as part of the agency's decision-making process (unless prohibited by law):

(i) An assessment, including the underlying analysis, of benefits anticipated from the regulatory action (such as, but not limited to, the promotion of the efficient functioning of the economy and private markets, the enhancement of health and safety, the protection of the natural environment, and the elimination or reduction of discrimination or bias) together with, to the extent feasible, 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 both to the government in administering the regulation and to businesses and others in complying with the regulation, and any adverse effects on the efficient functioning of the economy, private markets (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 effective and reasonably feasible alternatives to the planned regulation, identified by the agencies or the public (including improving the current regulation and reasonably viable nonregulatory actions), and an explanation why the planned regulatory action is preferable to the identified potential alternatives.

(D) In emergency situations or when an agency is obligated by law to act more quickly than normal review 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 between 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 or actions of another 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 following time periods:

(A) For any notices of inquiry, advance notices of proposed rulemaking, or other preliminary regulatory 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 45 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) Except 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 that shall contain, at a minimum, the following information pertinent to regulatory actions under review:

(i) 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)(B)(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.

(D) After the regulatory action has been published in the Federal Register or otherwise issued to the public, or after the agency has announced its decision not to publish or issue the regulatory action, OIRA shall make available to the public all documents exchanged between OIRA and the agency during the review by OIRA under this section.

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

SEC. 7. *Resolution of Conflicts.* To the extent permitted by law, disagreements or conflicts between or among agency heads or between OMB and any agency that cannot be resolved by the Administrator of OIRA shall be resolved by the President, or by the Vice President acting at the request of the President, with the relevant agency head (and, as appropriate, other interested government officials). Vice Presidential and Presidential consideration of such disagreements may be initiated only by the Director, by the head of the issuing agency, or by the head of an agency that has a significant interest in the regulatory action at issue. Such review will not be undertaken at the request of other persons, entities, or their agents.

Resolution of such conflicts shall be informed by recommendations developed by the Vice President, after consultation with the Advisors (and other executive branch officials or personnel whose responsibilities to the President include the subject matter at issue). The development of these recommendations shall be concluded within 60 days after review has been requested.

During the Vice Presidential and Presidential review period, communications with any person not employed by the Federal Government relating to the substance of the regulatory action under review and directed to the Advisors or their staffs or to the staff of the Vice President shall be in writing and shall be forwarded by the recipient to the affected agency(ies) for inclusion in the public docket(s). When the communication is not in writing, such Advisors or staff members shall inform the outside party that the matter is under review and that any comments should be submitted in writing.

At the end of this review process, the President, or the Vice President acting at the request of the President, shall notify the affected agency and the Administrator of OIRA of the President's decision with respect to the matter.

SEC. 8. *Publication.* Except to the extent required by law, an agency shall not publish in the Federal Register or otherwise issue to the public any regulatory action that is subject to review under section 6 of this Executive order until (1) the Administrator of OIRA notifies the agency that OIRA has waived its review of the action or has completed its review without any re-

quests for further consideration, or (2) the applicable time period in section 6(b)(2) expires without OIRA having notified the agency that it is returning the regulatory action for further consideration under section 6(b)(3), whichever occurs first. If the terms of the preceding sentence have not been satisfied and an agency wants to publish or otherwise issue a regulatory action, the head of that agency may request Presidential consideration through the Vice President, as provided under section 7 of this order. Upon receipt of this request, the Vice President shall notify OIRA and the Advisors. The guidelines and time period set forth in section 7 shall apply to the publication of regulatory actions for which Presidential consideration has been sought.

SEC. 9. *Agency Authority.* Nothing in this order shall be construed as displacing the agencies' authority or responsibilities, as authorized by law.

SEC. 10. *Judicial Review.* Nothing in this Executive order shall affect any otherwise available judicial review of agency action. This Executive order is intended only to improve the internal management of the Federal Government 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 instrumentalities, its officers or employees, or any other person.

SEC. 11. *Revocations.* Executive Orders Nos. 12291 and 12498; all amendments to those Executive orders; all guidelines issued under those orders; and any exemptions from those orders heretofore granted for any category of rule are revoked.

[Section 1 of Ex. Ord. No. 13497, which revoked Ex. Ords. 13258 and 13422, was executed by undoing the amendments by those Ex. Ords. to Ex. Ord. 12866, 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. 13095, Aug. 5, 1998, 63 F.R. 42565, which suspended Ex. Ord. No. 13083, was revoked by Ex. Ord. No. 13132, §10(b), Aug. 4, 1999, 64 F.R. 43259, set out below.

#### 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 concerned with 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.

SEC. 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 their established institutional roles in the implementation, interpretation, and enforcement 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 coordination 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 or, if the matter does not fall within its areas of responsibility, referring it 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;

(ii) coordinating the preparation of reports that are to be submitted by the United States in fulfillment of treaty obligations;

(iii) coordinating the responses of the United States Government to complaints against it concerning alleged human rights violations submitted to the United Nations, the Organization of American States, and other international organizations;

(iv) developing effective mechanisms to ensure that legislation proposed by the Administration is reviewed for conformity with international human rights obligations and that these obligations are taken into account in reviewing legislation under consideration by the Congress as well;

(v) developing recommended proposals and mechanisms for improving the monitoring of the actions by the various States, Commonwealths, and territories of the United States and, where appropriate, of Native Americans and Federally recognized Indian tribes, including the review of State, Commonwealth, and territorial laws for their conformity with relevant treaties, the provision of relevant information for reports and other monitoring purposes, and the promotion of effective remedial mechanisms;

(vi) developing plans for public outreach and education concerning the provisions of the ICCPR, CAT, CERD, and other relevant treaties, and human rights-related provisions of domestic law;

(vii) coordinating and directing an annual review of United States reservations, declarations, and understandings to human rights treaties, and matters as to which there have been nontrivial complaints or allegations of inconsistency with or breach of international human rights obligations, in order to determine whether there should be consideration of any modification of relevant reservations, declarations, and understandings to human rights treaties, or United States practices or laws. The results and recommendations of this review shall be reviewed by the head of each participating agency;

(viii) 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.

SEC. 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.

SEC. 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 F.R. 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 formula-

tion 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.

SEC. 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 the States 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 very structure of the Constitution 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 that the States possess 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 should act only with the greatest caution where State or local governments have identified uncertainties regarding the constitutional or statutory authority of the national government.

SEC. 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 ("Intergovernmental 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, defer 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. 4. *Special Requirements for Preemption.* Agencies, in taking action that preempts State law, shall act in strict accordance with governing law.

(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 (as 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 Federally protected interests within its area of regulatory responsibility, 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 no-

tice 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; or

(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 policymaking criteria set forth in section 3, cannot otherwise be met.

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, that imposes substantial direct compliance costs on State and local governments, and that is not required by statute, unless:

(1) funds necessary to pay the direct costs incurred by the State and local governments in complying with the regulation are provided by the Federal Government; or

(2) the agency, prior to the formal promulgation of the regulation,

(A) consulted with State and local officials early in the process of developing the proposed regulation;

(B) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of the Office of Management and Budget a federalism summary impact statement, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met; and

(C) makes available to the Director of the Office of Management and Budget any written communications submitted to the agency by State and local officials.

(c) 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 formal promulgation of the regulation,

(1) consulted with State and local officials early in the process of developing the proposed regulation;

(2) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of the Office of Management and Budget a federalism summary impact statement, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met; and

(3) makes available to the Director of the Office of Management and Budget any written communications submitted to the agency by State and local officials.

**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 compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.

(b) In transmitting proposed legislation that has federalism implications to the Office of Management and Budget, each agency shall include a certification from the official designated to ensure compliance with this order that all relevant requirements of this order have been met.

(c) Within 180 days after the effective date of this order, the Director of the Office of Management and Budget and the Assistant to the President for Intergovernmental Affairs shall confer with State and local officials to ensure that this order is being properly and effectively implemented.

**SEC. 9. Independent Agencies.** Independent regulatory agencies are encouraged to comply with the provisions of this order.

**SEC. 10. General Provisions.**

(a) This order shall supplement but not supersede the requirements contained in Executive Order 12372 ("Intergovernmental Review of Federal Programs") [31 U.S.C. 6506 note], Executive Order 12866 ("Regulatory Planning and Review") [set out above], Executive Order 12988 ("Civil Justice Reform" [28 U.S.C. 519 note]), and OMB Circular A-19.

(b) Executive Order 12612 ("Federalism"), Executive Order 12875 ("Enhancing the Intergovernmental Partnership"), Executive Order 13083 ("Federalism"), and Executive Order 13095 ("Suspension of Executive Order 13083") are revoked.

(c) This order shall be effective 90 days after the date of this order.

**SEC. 11. Judicial Review.** This order is intended only to improve the internal management of the executive branch, and 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.

WILLIAM J. CLINTON.

**EX. ORD. NO. 13198. AGENCY RESPONSIBILITIES WITH RESPECT TO FAITH-BASED AND COMMUNITY INITIATIVES**

Ex. Ord. No. 13198, Jan. 29, 2001, 66 F.R. 8497, as amended by Ex. Ord. No. 13831, §2(a), May 3, 2018, 83 F.R. 20715; Ex. Ord. No. 14015, §5(a), Feb. 14, 2021, 86 F.R. 10008, 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 Executive Department Centers for Faith-Based and Neighborhood Partnerships.** (a) The Attorney General, the Secretary of Education, the Secretary of Labor, the Secretary of Health and Human Services, and the Secretary of Housing and Urban Development shall each establish within their respective departments a Center for Faith-Based and Neighborhood Partnerships (Center).

(b) Each executive department Center shall be supervised by a Director, appointed by the department head in consultation with the White House Office of Faith-Based and Neighborhood Partnerships (White House Office of Faith-Based and Neighborhood Partnerships).

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

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

**SEC. 2. Purpose of Executive Department Centers for Faith-Based and Neighborhood Partnerships.** 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 provision of social services.

**SEC. 3. Responsibilities of Executive Department Centers for Faith-Based and Neighborhood Partnerships.** Each Center shall, to the extent permitted by law: (a) conduct, in coordination with the White House Office of Faith-Based and Neighborhood Partnerships, a department-wide audit to identify all existing barriers 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) 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;

(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 department outreach efforts to disseminate information more effectively to faith-based and other community organizations with respect to programming changes, contracting opportunities, and other department initiatives, including but not limited to Web and Internet resources.

**SEC. 4. Additional Responsibilities of the Department of Health and Human Services and the Department of Labor Centers.** In addition to those responsibilities described in section 3 of this order, the Department of Health and Human Services and the Department of Labor Centers shall, to the extent permitted by law: (a) conduct a comprehensive review of policies and practices affecting existing funding streams governed by so-called "Charitable Choice" legislation to assess the department's compliance with the requirements of Charitable Choice; and (b) promote and ensure compliance with existing Charitable Choice legislation by the department, as well as its partners in State and local government, and their contractors.

**SEC. 5. Reporting Requirements.** (a) Report. Not later than 180 days after the date of this order and annually thereafter, each of the five executive department Cen-



ters described in section 1 of this order shall prepare and submit a report to the White House Office of Faith-Based and Neighborhood Partnerships.

(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:

(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 department 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 department action. Each report filed thereafter shall measure the department's performance against the objectives set forth in the initial report.

SEC. 6. *Responsibilities of All 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 Office of Faith-Based and Neighborhood Partnerships; and

(b) cooperate with the White House Office of Faith-Based and Neighborhood Partnerships and provide such information, support, and assistance to the White House Office of Faith-Based and Neighborhood Partnerships as it may request, to the extent permitted by law.

SEC. 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 instrumentalities, its officers or employees, or any other person.

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

Ex. Ord. No. 13272, Aug. 13, 2002, 67 F.R. 53461, 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.

SEC. 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).

SEC. 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 from the date of the submission of the agencies' 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.

SEC. 4. *Definitions.* Terms defined in section 601 of title 5, United States Code, including the term "agency," shall have the same meaning in this order.

SEC. 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 Public Law 85-09536 [Pub. L. 85-536] (15 U.S.C. 633(b)(1)).

SEC. 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.

SEC. 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 already has been lawfully and publicly disclosed by OIRA or the relevant rulemaking agency.

SEC. 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

Ex. Ord. No. 13279, Dec. 12, 2002, 67 F.R. 77141, as amended by Ex. Ord. No. 13403, § 2, May 12, 2006, 71 F.R. 28543; Ex. Ord. No. 13559, Nov. 17, 2010, 75 F.R. 71319; Ex. Ord. No. 13831, § 2, May 3, 2018, 83 F.R. 20715; Ex. Ord. No. 14015, § 5(a), Feb. 14, 2021, 86 F.R. 10008, provided:

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 40, United States Code, and section 301 of title 3, United States Code, and in order to guide Federal agencies in formulating and developing policies with implications for faith-based organizations and other other [sic] neigh-

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 other [sic] neighborhood organizations so that they may better meet social needs in 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, food commodities, direct appropriations, or other assistance, but does not include a tax credit, deduction, or exemption.

(b) "Social service program" means a program that is administered by the Federal Government, or by a State or local government using Federal financial assistance, and that provides services directed at reducing poverty, improving opportunities for low-income children, revitalizing low-income communities, empowering low-income families and low-income individuals to become self-sufficient, or otherwise helping people in need. Such programs include, but are not limited to, the following:

(i) 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;

(vi) health support services;

(vii) literacy and mentoring programs;

(viii) 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

(ix) 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) "Specified 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.

SEC. 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) No organization should be discriminated against on the basis of religion or religious belief in the administration or distribution of Federal financial assistance under social service programs.

(d) All organizations that receive Federal financial assistance under social service programs should be prohibited from discriminating against beneficiaries or prospective beneficiaries of the social service programs on the basis of religion or religious belief. Accordingly, organizations, in providing services supported in whole or in part with Federal financial assistance, and in their outreach activities related to such services, should not be allowed to discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

(e) The Federal Government must implement Federal programs in accordance with the Establishment Clause and the Free Exercise Clause of the First Amendment to the United States Constitution, as well as other applicable law, and must monitor and enforce standards regarding the relationship between religion and government in ways that avoid excessive entanglement between religious bodies and governmental entities.

(f) Organizations that engage in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) must perform such activities and offer such services outside of programs that are supported with direct Federal financial assistance (including through prime awards or sub-awards), separately in time or location from any such programs or services supported with direct Federal financial assistance, and participation in any such explicitly religious activities must be voluntary for the beneficiaries of the social service program supported with such Federal financial assistance.

(g) Faith-based organizations should be eligible to compete for Federal financial assistance used to support social service programs and to participate fully in the 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 receive 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.

(h) To promote transparency and accountability, agencies that provide Federal financial assistance for social service programs shall post online, in an easily accessible manner, regulations, guidance 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 paragraph (c) of section 3 of this order.

(i) Decisions about awards of Federal financial assistance must be free from political interference or even 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.

**SEC. 3. 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 White House Office of Faith-Based and Neighborhood Partnerships.

(c) *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 to agencies on the implementation of this order, including in particular subsections 2(h)–(j).

(d) *Membership of the Working Group.* The Director of the White House 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.

**SEC. 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 is 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."

**SEC. 5. General Provisions.**

(a) This order supplements but does not supersede the requirements contained in Executive Orders 13198 [set

out above] and 13199 [3 U.S.C. note prec. 101] of January 29, 2001.

(b) The agencies shall coordinate with the White House Office of Faith-Based and Neighborhood Partnerships 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.

SEC. 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 Office of Faith-Based and Neighborhood Partnerships; and

(b) cooperate with the White House Office of Faith-Based and Neighborhood Partnerships and provide such information, support, and assistance to the White House Office of Faith-Based and Neighborhood Partnerships as it may request, to the extent permitted by law.

SEC. 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, as amended by Ex. Ord. No. 13831, §2(a), May 3, 2018, 83 F.R. 20715; Ex. Ord. No. 14015, §5(a), Feb. 14, 2021, 86 F.R. 10008, 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 Neighborhood Partnerships 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 Neighborhood Partnerships (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 Neighborhood Partnerships (White House Office of Faith-Based and Neighborhood Partnerships).

(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.

SEC. 2. *Purpose of Executive Branch Centers for Faith-Based and Neighborhood Partnerships.* 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.

SEC. 3. *Responsibilities of the Centers for Faith-Based and Neighborhood Partnerships.* Each Center shall, to the extent permitted by law:

(a) conduct, in coordination with the White House Office of Faith-Based and Neighborhood Partnerships, an agency-wide audit 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, 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 agency 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.

SEC. 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 Office of Faith-Based and Neighborhood Partnerships.

(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 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 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.

SEC. 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 Office of Faith-Based and Neighborhood Partnerships; and

(b) cooperate with the White House Office of Faith-Based and Neighborhood Partnerships and provide such information, support, and assistance to the White House Office of Faith-Based and Neighborhood Partnerships as it may request, to the extent permitted by law.

SEC. 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.

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, as amended by Ex. Ord. No. 13831, §2(a), May 3, 2018, 83 F.R. 20715; Ex. Ord. No. 14015, §5(a), Feb. 14, 2021, 86 F.R. 10008, 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 Neighborhood Partnerships 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 Neighborhood Partnerships (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 Neighborhood Partnerships (White House Office of Faith-Based and Neighborhood Partnerships).

(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.

**SEC. 2. *Purpose of Executive Branch Centers for Faith-Based and Neighborhood Partnerships.*** 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 and community services.

**SEC. 3. *Responsibilities of the Centers for Faith-Based and Neighborhood Partnerships.*** Each Center shall, to the extent permitted by law:

(a) conduct, in coordination with the White House Office of Faith-Based and Neighborhood Partnerships, 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 agency 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.

**SEC. 4. *Reporting Requirements.*** (a) *Report.* Not later than 180 days from the date of this order and 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 Office of Faith-Based and Neighborhood Partnerships.

(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.

**SEC. 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 Office of Faith-Based and Neighborhood Partnerships; and

(b) cooperate with the White House Office of Faith-Based and Neighborhood Partnerships and provide such information, support, and assistance to the White House Office of Faith-Based and Neighborhood Partnerships as it may request, to the extent permitted by law.

**SEC. 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 in equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers, employees or agents, or any other person.

**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, as amended by Ex. Ord. No. 13831, §2(a), May 3, 2018, 83 F.R. 20715; Ex. Ord. No. 14015, §5, Feb. 14, 2021, 86 F.R. 10008, 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 a Center for Faith-Based and Neighborhood Partnerships at the Department of Homeland Security.***

(a) The Secretary of Homeland Security (Secretary) shall establish within the Department of Homeland Security (Department) a Center for Faith-Based and Neighborhood Partnerships (Center).

(b) The Center shall be supervised by a Director appointed by [the] Secretary. The Secretary shall consult with the Executive Director of the White House Office of Faith-Based and Neighborhood Partnerships (Executive 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.

**SEC. 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.

**SEC. 3. *Responsibilities of the Center for Faith-Based and Neighborhood Partnerships.*** In carrying out the purpose set forth in section 2 of this order, the Center shall:

(a) conduct, in coordination with the Executive Director, a department-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 Department, including but

not limited to regulations, rules, orders, 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;

(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;

(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.

#### SEC. 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 Executive 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 thereafter shall measure the Department's performance against the objectives set forth in the initial report.

SEC. 5. *Responsibilities of the Secretary.* The Secretary shall:

(a) designate an employee within the department to serve as the liaison and point of contact with the Executive Director; and

(b) cooperate with the Executive Director and provide such information, support, and assistance to the Executive Director as requested to implement this order.

SEC. 6. *General Provisions.* (a) This order shall be implemented 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 in equity by a party against the United States, its agencies, or entities, its officers, employees, or agents, or any other person.

#### EX. ORD. NO. 13406. PROTECTING THE PROPERTY RIGHTS OF THE AMERICAN PEOPLE

Ex. Ord. No. 13406, June 23, 2006, 71 F.R. 36973, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to strengthen the rights of the American people against the taking of their private property, it is hereby ordered as follows:

SECTION 1. *Policy.* It is the policy of the United States to protect the rights of Americans to their private property, including by limiting the taking of private property by the Federal Government to situations in which the taking is for public use, with just compensa-

tion, and for the purpose of benefiting the general public and not merely for the purpose of advancing the economic interest of private parties to be given ownership or use of the property taken.

SEC. 2. *Implementation.* (a) The Attorney General shall:

(i) issue instructions to the heads of departments and agencies to implement the policy set forth in section 1 of this order; and

(ii) monitor takings by departments and agencies for compliance with the policy set forth in section 1 of this order.

(b) Heads of departments and agencies shall, to the extent permitted by law:

(i) comply with instructions issued under subsection (a)(i); and

(ii) provide to the Attorney General such information as the Attorney General determines necessary to carry out subsection (a)(ii).

SEC. 3. *Specific Exclusions.* Nothing in this order shall be construed to prohibit a taking of private property by the Federal Government, that otherwise complies with applicable law, for the purpose of:

(a) public ownership or exclusive use of the property by the public, such as for a public medical facility, roadway, park, forest, governmental office building, or military reservation;

(b) projects designated for public, common carrier, public transportation, or public utility use, including those for which a fee is assessed, that serve the general public and are subject to regulation by a governmental entity;

(c) conveying the property to a nongovernmental entity, such as a telecommunications or transportation common carrier, that makes the property available for use by the general public as of right;

(d) preventing or mitigating a harmful use of land that constitutes a threat to public health, safety, or the environment;

(e) acquiring abandoned property;

(f) quieting title to real property;

(g) acquiring ownership or use by a public utility;

(h) facilitating the disposal or exchange of Federal property; or

(i) meeting military, law enforcement, public safety, public transportation, or public health emergencies.

SEC. 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 impair or otherwise affect:

(i) authority granted by law to a department or agency or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(c) This order shall be implemented in a manner consistent with Executive Order 12630 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 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:

SECTION 1. Executive Order 13258 of February 26, 2002, and Executive Order 13422 of January 18, 2007, concerning regulatory planning and review, which amended Executive Order 12866 of September 30, 1993, are revoked.

SEC. 2. The Director of the Office of Management and Budget and the heads of executive departments and agencies shall promptly rescind any orders, rules, regu-

lations, guidelines, or policies implementing or enforcing Executive Order 13258 or Executive Order 13422, to the extent consistent with law.

SEC. 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, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

EX. ORD. NO. 13563. IMPROVING REGULATION AND  
REGULATORY REVIEW

Ex. Ord. No. 13563, Jan. 18, 2011, 76 F.R. 3821, 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 improve regulation and regulatory review, it is hereby ordered as follows:

SECTION 1. *General Principles of Regulation.* (a) Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. It must be based on the best available science. It must allow for public participation and an open exchange of ideas. It must promote predictability and reduce uncertainty. It must identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends. It must take into account benefits and costs, both quantitative and qualitative. It must ensure that regulations are accessible, consistent, written in plain language, and easy to understand. It must measure, and seek to improve, the actual results of regulatory requirements.

(b) This order is supplemental to and reaffirms the principles, structures, and definitions governing contemporary regulatory review that were established in Executive Order 12866 of September 30, 1993. As stated in that Executive Order and to the extent permitted by law, each agency must, among other things: (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) 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.

(c) In applying these principles, each agency is directed to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. Where appropriate and permitted by law, each agency may consider (and discuss qualitatively) values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

SEC. 2. *Public Participation.* (a) Regulations shall be adopted through a process that involves public participation. To that end, regulations shall be based, to the extent feasible and consistent with law, on the open exchange of information and perspectives among State, local, and tribal officials, experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole.

(b) To promote that open exchange, each agency, consistent with Executive Order 12866 and other applicable legal requirements, shall endeavor to provide the public with an opportunity to participate in the regulatory

process. To the extent feasible and permitted by law, each agency shall afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally be at least 60 days. To the extent feasible and permitted by law, each agency shall also provide, for both proposed and final rules, timely online access to the rulemaking docket on regulations.gov, including relevant scientific and technical findings, in an open format that can be easily searched and downloaded. For proposed rules, such access shall include, to the extent feasible and permitted by law, an opportunity for public comment on all pertinent parts of the rulemaking docket, including relevant scientific and technical findings.

(c) Before issuing a notice of proposed rulemaking, each agency, where feasible and appropriate, shall seek the views of those who are likely to be affected, including those who are likely to benefit from and those who are potentially subject to such rulemaking.

SEC. 3. *Integration and Innovation.* Some sectors and industries face a significant number of regulatory requirements, some of which may be redundant, inconsistent, or overlapping. Greater coordination across agencies could reduce these requirements, thus reducing costs and simplifying and harmonizing rules. In developing regulatory actions and identifying appropriate approaches, each agency shall attempt to promote such coordination, simplification, and harmonization. Each agency shall also seek to identify, as appropriate, means to achieve regulatory goals that are designed to promote innovation.

SEC. 4. *Flexible Approaches.* Where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, each agency shall identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. These approaches include warnings, appropriate default rules, and disclosure requirements as well as provision of information to the public in a form that is clear and intelligible.

SEC. 5. *Science.* Consistent with the President's Memorandum for the Heads of Executive Departments and Agencies, "Scientific Integrity" (March 9, 2009), and its implementing guidance, each agency shall ensure the objectivity of any scientific and technological information and processes used to support the agency's regulatory actions.

SEC. 6. *Retrospective Analyses of Existing Rules.* (a) To facilitate the periodic review of existing significant regulations, agencies shall consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. Such retrospective analyses, including supporting data, should be released online whenever possible.

(b) Within 120 days of the date of this order, each agency shall develop and submit to the Office of Information and Regulatory Affairs a preliminary plan, consistent with law and 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, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.

SEC. 7. *General Provisions.* (a) For purposes of this order, "agency" shall have the meaning set forth in section 3(b) of Executive Order 12866.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(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, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

EX. ORD. NO. 13579. REGULATION AND INDEPENDENT REGULATORY AGENCIES

Ex. Ord. No. 13579, July 11, 2011, 76 F.R. 41587, 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 improve regulation and regulatory review, it is hereby ordered as follows:

SECTION 1. *Policy.* (a) Wise regulatory decisions depend on public participation and on careful analysis of the likely consequences of regulation. Such decisions are informed and improved by allowing interested members of the public to have a meaningful opportunity to participate in rulemaking. To the extent permitted by law, such decisions should be made only after consideration of their costs and benefits (both quantitative and qualitative).

(b) Executive Order 13563 of January 18, 2011, “Improving Regulation and Regulatory Review,” directed to executive agencies, was meant to produce a regulatory system that protects “public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation.” Independent regulatory agencies, no less than executive agencies, should promote that goal.

(c) Executive Order 13563 set out general requirements directed to executive agencies concerning public participation, integration and innovation, flexible approaches, and science. To the extent permitted by law, independent regulatory agencies should comply with these provisions as well.

SEC. 2. *Retrospective Analyses of Existing Rules.* (a) To facilitate the periodic review of existing significant regulations, independent regulatory agencies should consider how best to promote retrospective analysis of rules that may be outdated, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. Such retrospective analyses, including supporting data and evaluations, should be released online whenever possible.

(b) Within 120 days of the date of this order, each independent regulatory agency should develop and release to the public a plan, consistent with law and reflecting its resources and regulatory priorities and processes, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency’s regulatory program more effective or less burdensome in achieving the regulatory objectives.

SEC. 3. *General Provisions.* (a) For purposes of this order, “executive agency” shall have the meaning set forth for the term “agency” in section 3(b) of Executive Order 12866 of September 30, 1993, and “independent regulatory agency” shall have the meaning set forth in 44 U.S.C. 3502(5).

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(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, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

EX. ORD. NO. 13604. IMPROVING PERFORMANCE OF FEDERAL PERMITTING AND REVIEW OF INFRASTRUCTURE PROJECTS

Ex. Ord. No. 13604, Mar. 22, 2012, 77 F.R. 18887, 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 significantly reduce the aggregate time required to make decisions in the permitting and review of infrastructure projects by the Federal Government, while improving environmental and community outcomes, it is hereby ordered as follows:

SECTION 1. *Policy.* (a) To maintain our Nation’s competitive edge and ensure an economy built to last, the United States must have fast, reliable, resilient, and environmentally sound means of moving people, goods, energy, and information. In a global economy, we will compete for the world’s investments based in significant part on the quality of our infrastructure. Investing in the Nation’s infrastructure provides immediate and long-term economic benefits for local communities and the Nation as a whole.

The quality of our Nation’s infrastructure depends in critical part on Federal permitting and review processes, including planning, approval, and consultation processes. These processes inform decision-makers and affected communities about the potential benefits and impacts of proposed infrastructure projects, and ensure that projects are designed, built, and maintained in a manner that is consistent with protecting our public health, welfare, safety, national security, and environment. Reviews and approvals of infrastructure projects can be delayed due to many factors beyond the control of the Federal Government, such as poor project design, incomplete applications, uncertain funding, or multiple reviews and approvals by State, local, tribal, or other jurisdictions. Given these factors, it is critical that executive departments and agencies (agencies) take all steps within their authority, consistent with available resources, to execute Federal permitting and review processes with maximum efficiency and effectiveness, ensuring the health, safety, and security of communities and the environment while supporting vital economic growth.

To achieve that objective, our Federal permitting and review processes must provide a transparent, consistent, and predictable path for both project sponsors and affected communities. They must ensure that agencies set and adhere to timelines and schedules for completion of reviews, set clear permitting performance goals, and track progress against those goals. They must encourage early collaboration among agencies, project sponsors, and affected stakeholders in order to incorporate and address their interests and minimize delays. They must provide for transparency and accountability by utilizing cost-effective information technology to collect and disseminate information about individual projects and agency performance, so that the priorities and concerns of all our citizens are considered. They must rely upon early and active consultation with State, local, and tribal governments to avoid conflicts or duplication of effort, resolve concerns, and allow for concurrent rather than sequential reviews. They must recognize the critical role project sponsors play in assuring the timely and cost-effective review of projects by providing complete information and analysis and by supporting, as appropriate, the costs associated with review. And, they must enable agencies to share priorities, work collaboratively and concurrently to advance reviews and permitting decisions, and facilitate the resolution of disputes at all levels of agency organization.

Each of these elements must be incorporated into routine agency practice to provide demonstrable improvements in the performance of Federal infrastructure permitting and review processes, including lower costs, more timely decisions, and a healthier and cleaner environment. Also, these elements must be integrated into project planning processes so that projects



are designed appropriately to avoid, to the extent practicable, adverse impacts on public health, security, historic properties and other cultural resources, and the environment, and to minimize or mitigate impacts that may occur. Permitting and review process improvements that have proven effective must be expanded and institutionalized.

(b) In advancing this policy, this order expands upon efforts undertaken pursuant to Executive Order 13580 of July 12, 2011 (Interagency Working Group on Coordination of Domestic Energy Development and Permitting in Alaska), Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review), and my memorandum of August 31, 2011 (Speeding Infrastructure Development Through More Efficient and Effective Permitting and Environmental Review), as well as other ongoing efforts.

SEC. 2. *Steering Committee on Federal Infrastructure Permitting and Review Process Improvement.* There is established a Steering Committee on Federal Infrastructure Permitting and Review Process Improvement (Steering Committee), to be chaired by the Chief Performance Officer (CPO), in consultation with the Chair of the Council on Environmental Quality (CEQ).

(a) *Infrastructure Projects Covered by this Order.* The Steering Committee shall facilitate improvements in Federal permitting and review processes for infrastructure projects in sectors including surface transportation, aviation, ports and waterways, water resource projects, renewable energy generation, electricity transmission, broadband, pipelines, and other such sectors as determined by the Steering Committee.

(b) *Membership.* Each of the following agencies (Member Agencies) shall be represented on the Steering Committee by a Deputy Secretary or equivalent officer of the United States:

- (i) the Department of Defense;
- (ii) the Department of the Interior;
- (iii) the Department of Agriculture;
- (iv) the Department of Commerce;
- (v) the Department of Transportation;
- (vi) the Department of Energy;
- (vii) the Department of Homeland Security;
- (viii) the Environmental Protection Agency;
- (ix) the Advisory Council on Historic Preservation;
- (x) the Department of the Army; and
- (xi) such other agencies or offices as the CPO may invite to participate.

(c) *Projects of National or Regional Significance.* In furtherance of the policies of this order, the Member Agencies shall coordinate and consult with each other to select, submit to the CPO by April 30, 2012, and periodically update thereafter, a list of infrastructure projects of national or regional significance that will have their status tracked on the online Federal Infrastructure Projects Dashboard (Dashboard) created pursuant to my memorandum of August 31, 2011.

(d) *Responsibilities of the Steering Committee.* The Steering Committee shall:

- (i) develop a Federal Permitting and Review Performance Plan (Federal Plan), as described in section 3(a) of this order;
- (ii) implement the Federal Plan and coordinate resolution of disputes among Member Agencies relating to implementation of the Federal Plan; and
- (iii) coordinate and consult with other agencies, offices, and interagency working groups as necessary, including the President's Management Council and Performance Improvement Councils, and, with regard to use and expansion of the Dashboard, the Chief Information Officer (CIO) and Chief Technology Officer to implement this order.

(e) *Duties of the CPO.* The CPO shall:

- (i) in consultation with the Chair of CEQ and Member Agencies, issue guidance on the implementation of this order;
- (ii) in consultation with Member Agencies, develop and track performance metrics for evaluating implementation of the Federal Plan and Agency Plans; and
- (iii) by January 31, 2013, and annually thereafter, after input from interested agencies, evaluate and re-

port to the President on the implementation of the Federal Plan and Agency Plans, and publish the report on the Dashboard.

(f) *No Involvement in Particular Permits or Projects.* Neither the Steering Committee, nor the CPO, may direct or coordinate agency decisions with respect to any particular permit or project.

SEC. 3. *Plans for Measurable Performance Improvement.*

(a) By May 31, 2012, the Steering Committee shall, following coordination with Member Agencies and other interested agencies, develop and publish on the Dashboard a Federal Plan to significantly reduce the aggregate time required to make Federal permitting and review decisions on infrastructure projects while improving outcomes for communities and the environment. The Federal Plan shall include, but not be limited to, the following actions to implement the policies outlined in section 1 of this order, and shall reflect the agreement of any Member Agency with respect to requirements in the Federal Plan affecting such agency:

(i) institutionalizing best practices for: enhancing Federal, State, local, and tribal government coordination on permitting and review processes (such as conducting reviews concurrently rather than sequentially to the extent practicable); avoiding duplicative reviews; and engaging with stakeholders early in the permitting process;

(ii) developing mechanisms to better communicate priorities and resolve disputes among agencies at the national and regional levels;

(iii) institutionalizing use of the Dashboard, working with the CIO to enhance the Dashboard, and utilizing other cost-effective information technology systems to share environmental and project-related information with the public, project sponsors, and permit reviewers; and

(iv) identifying timeframes and Member Agency responsibilities for the implementation of each proposed action.

(b) Each Member Agency shall:

(i) by June 30, 2012, submit to the CPO an Agency Plan identifying those permitting and review processes the Member Agency views as most critical to significantly reducing the aggregate time required to make permitting and review decisions on infrastructure projects while improving outcomes for communities and the environment, and describing specific and measurable actions the agency will take to improve these processes, including:

(1) performance metrics, including timelines or schedules for review;

(2) technological improvements, such as institutionalized use of the Dashboard and other information technology systems;

(3) other practices, such as pre-application procedures, early collaboration with other agencies, project sponsors, and affected stakeholders, and coordination with State, local, and tribal governments; and

(4) steps the Member Agency will take to implement the Federal Plan.

(ii) by July 31, 2012, following coordination with other Member Agencies and interested agencies, publish its Agency Plan on the Dashboard; and

(iii) by December 31, 2012, and every 6 months thereafter, report progress to the CPO on implementing its Agency Plan, as well as specific opportunities for additional improvements to its permitting and review procedures.

SEC. 4. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order shall be implemented consistent with Executive Order 13175 of November 6, 2000 (Consultation

and Coordination with Indian Tribal Governments) and my memorandum of November 5, 2009 (Tribal Consultation).

(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, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

EX. ORD. NO. 13609. PROMOTING INTERNATIONAL REGULATORY COOPERATION

Ex. Ord. No. 13609, May 1, 2012, 77 F.R. 26413, 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 promote international regulatory cooperation, it is hereby ordered as follows:

SECTION 1. *Policy*. Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review), states that our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. In an increasingly global economy, international regulatory cooperation, consistent with domestic law and prerogatives and U.S. trade policy, can be an important means of promoting the goals of Executive Order 13563.

The regulatory approaches taken by foreign governments may differ from those taken by U.S. regulatory agencies to address similar issues. In some cases, the differences between the regulatory approaches of U.S. agencies and those of their foreign counterparts might not be necessary and might impair the ability of American businesses to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

SEC. 2. *Coordination of International Regulatory Cooperation*. (a) The Regulatory Working Group (Working Group) established by Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), which was reaffirmed by Executive Order 13563, shall, as appropriate:

(i) serve as a forum to discuss, coordinate, and develop a common understanding among agencies of U.S. Government positions and priorities with respect to:

(A) international regulatory cooperation activities that are reasonably anticipated to lead to significant regulatory actions;

(B) efforts across the Federal Government to support significant, cross-cutting international regulatory cooperation activities, such as the work of regulatory cooperation councils; and

(C) the promotion of good regulatory practices internationally, as well as the promotion of U.S. regulatory approaches, as appropriate; and

(ii) examine, among other things:

(A) appropriate strategies for engaging in the development of regulatory approaches through international regulatory cooperation, particularly in emerging technology areas, when consistent with section 1 of this order;

(B) best practices for international regulatory cooperation with respect to regulatory development, and, where appropriate, information exchange and other regulatory tools; and

(C) factors that agencies should take into account when determining whether and how to consider other regulatory approaches under section 3(d) of this order.

(b) As Chair of the Working Group, the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) shall convene the Working Group as necessary to dis-

cuss international regulatory cooperation issues as described above, and the Working Group shall include a representative from the Office of the United States Trade Representative and, as appropriate, representatives from other agencies and offices.

(c) The activities of the Working Group, consistent with law, shall not duplicate the efforts of existing interagency bodies and coordination mechanisms. The Working Group shall consult with existing interagency bodies when appropriate.

(d) To inform its discussions, and pursuant to section 4 of Executive Order 12866, the Working Group may commission analytical reports and studies by OIRA, the Administrative Conference of the United States, or any other relevant agency, and the Administrator of OIRA may solicit input, from time to time, from representatives of business, nongovernmental organizations, and the public.

(e) The Working Group shall develop and issue guidelines on the applicability and implementation of sections 2 through 4 of this order.

(f) For purposes of this order, the Working Group shall operate by consensus.

SEC. 3. *Responsibilities of Federal Agencies*. To the extent permitted by law, and consistent with the principles and requirements of Executive Order 13563 and Executive Order 12866, each agency shall:

(a) if required to submit a Regulatory Plan pursuant to Executive Order 12866, include in that plan a summary of its international regulatory cooperation activities that are reasonably anticipated to lead to significant regulations, with an explanation of how these activities advance the purposes of Executive Order 13563 and this order;

(b) ensure that significant regulations that the agency identifies as having significant international impacts are designated as such in the Unified Agenda of Federal Regulatory and Deregulatory Actions, on RegInfo.gov, and on Regulations.gov;

(c) in selecting which regulations to include in its retrospective review plan, as required by Executive Order 13563, consider:

(i) reforms to existing significant regulations that address unnecessary differences in regulatory requirements between the United States and its major trading partners, consistent with section 1 of this order, when stakeholders provide adequate information to the agency establishing that the differences are unnecessary; and

(ii) such reforms in other circumstances as the agency deems appropriate; and

(d) for significant regulations that the agency identifies as having significant international impacts, consider, to the extent feasible, appropriate, and consistent with law, any regulatory approaches by a foreign government that the United States has agreed to consider under a regulatory cooperation council work plan.

SEC. 4. *Definitions*. For purposes of this order:

(a) “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).

(b) “International impact” is a direct effect that a proposed or final regulation is expected to have on international trade and investment, or that otherwise may be of significant interest to the trading partners of the United States.

(c) “International regulatory cooperation” refers to a bilateral, regional, or multilateral process, other than processes that are covered by section 6(a)(ii), (iii), and (v) of this order, in which national governments engage in various forms of collaboration and communication with respect to regulations, in particular a process that is reasonably anticipated to lead to the development of significant regulations.

(d) “Regulation” shall have the same meaning as “regulation” or “rule” in section 3(d) of Executive Order 12866.

(e) “Significant regulation” is a proposed or final regulation that constitutes a significant regulatory action.

(f) “Significant regulatory action” shall have the same meaning as in section 3(f) of Executive Order 12866.

SEC. 5. *Independent Agencies.* Independent regulatory agencies are encouraged to comply with the provisions of this order.

SEC. 6. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to a department or agency, or the head thereof;

(ii) the coordination and development of international trade policy and negotiations pursuant to section 411 of the Trade Agreements Act of 1979 (19 U.S.C. 2451 [2541]) and section 141 of the Trade Act of 1974 (19 U.S.C. 2171);

(iii) international trade activities undertaken pursuant to section 3 of the Act of February 14, 1903 (15 U.S.C. 1512), subtitle C of the Export Enhancement Act of 1988, as amended (15 U.S.C. 4721 et seq.), and Reorganization Plan No. 3 of 1979 (19 U.S.C. 2171 note);

(iv) the authorization process for the negotiation and conclusion of international agreements pursuant to 1 U.S.C. 112(b) [see now 1 U.S.C. 112(b)(g)] and its implementing regulations (22 C.F.R. 181.4) and implementing procedures (11 FAM 720);

(v) activities in connection with subchapter II of chapter 53 of title 31 of the United States Code, title 26 of the United States Code, or Public Law 111-203 and other laws relating to financial regulation; or (vi) [sic] the functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) 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, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

#### EX. ORD. NO. 13610. IDENTIFYING AND REDUCING REGULATORY BURDENS

Ex. Ord. No. 13610, May 10, 2012, 77 F.R. 28469, 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 modernize our regulatory system and to reduce unjustified regulatory burdens and costs, it is hereby ordered as follows:

SECTION 1. *Policy.* Regulations play an indispensable role in protecting public health, welfare, safety, and our environment, but they can also impose significant burdens and costs. During challenging economic times, we should be especially careful not to impose unjustified regulatory requirements. For this reason, it is particularly important for agencies to conduct retrospective analyses of existing rules to examine whether they remain justified and whether they should be modified or streamlined in light of changed circumstances, including the rise of new technologies.

Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review), states that our regulatory system “must measure, and seek to improve, the actual results of regulatory requirements.” To promote this goal, that Executive Order requires agencies not merely to conduct a single exercise, but to engage in “periodic review of existing significant regulations.” Pursuant to section 6(b) of that Executive Order, agencies are required to develop retrospective review plans to review existing significant regulations in order to “determine whether any such regulations should be modified, streamlined, expanded, or repealed.” The purpose of this requirement is to “make the agency’s regulatory program more effective or less burdensome in achieving the regulatory objectives.”

In response to Executive Order 13563, agencies have developed and made available for public comment retrospective review plans that identify over five hundred

initiatives. A small fraction of those initiatives, already finalized or formally proposed to the public, are anticipated to eliminate billions of dollars in regulatory costs and tens of millions of hours in annual paperwork burdens. Significantly larger savings are anticipated as the plans are implemented and as action is taken on additional initiatives.

As a matter of longstanding practice and to satisfy statutory obligations, many agencies engaged in periodic review of existing regulations prior to the issuance of Executive Order 13563. But further steps should be taken, consistent with law, agency resources, and regulatory priorities, to promote public participation in retrospective review, to modernize our regulatory system, and to institutionalize regular assessment of significant regulations.

SEC. 2. *Public Participation in Retrospective Review.* Members of the public, including those directly and indirectly affected by regulations, as well as State, local, and tribal governments, have important information about the actual effects of existing regulations. For this reason, and consistent with Executive Order 13563, agencies shall invite, on a regular basis (to be determined by the agency head in consultation with the Office of Information and Regulatory Affairs (OIRA)), public suggestions about regulations in need of retrospective review and about appropriate modifications to such regulations. To promote an open exchange of information, retrospective analyses of regulations, including supporting data, shall be released to the public online wherever practicable.

SEC. 3. *Setting Priorities.* In implementing and improving their retrospective review plans, and in considering retrospective review suggestions from the public, agencies shall give priority, consistent with law, to those initiatives that will produce significant quantifiable monetary savings or significant quantifiable reductions in paperwork burdens while protecting public health, welfare, safety, and our environment. To the extent practicable and permitted by law, agencies shall also give special consideration to initiatives that would reduce unjustified regulatory burdens or simplify or harmonize regulatory requirements imposed on small businesses. Consistent with Executive Order 13563 and Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), agencies shall give consideration to the cumulative effects of their own regulations, including cumulative burdens, and shall to the extent practicable and consistent with law give priority to reforms that would make significant progress in reducing those burdens while protecting public health, welfare, safety, and our environment.

SEC. 4. *Accountability.* Agencies shall regularly report on the status of their retrospective review efforts to OIRA. Agency reports should describe progress, anticipated accomplishments, and proposed timelines for relevant actions, with an emphasis on the priorities described in section 3 of this order. Agencies shall submit draft reports to OIRA on September 10, 2012, and on the second Monday of January and July for each year thereafter, unless directed otherwise through subsequent guidance from OIRA. Agencies shall make final reports available to the public within a reasonable period (not to exceed three weeks from the date of submission of draft reports to OIRA).

SEC. 5. *General Provisions.* (a) For purposes of this order, “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).

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to a department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(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, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

EX. ORD. NO. 13707. USING BEHAVIORAL SCIENCE INSIGHTS TO BETTER SERVE THE AMERICAN PEOPLE

Ex. Ord. No. 13707, Sept. 15, 2015, 80 F.R. 56365, provided:

A growing body of evidence demonstrates that behavioral science insights—research findings from fields such as behavioral economics and psychology about how people make decisions and act on them—can be used to design government policies to better serve the American people.

Where Federal policies have been designed to reflect behavioral science insights, they have substantially improved outcomes for the individuals, families, communities, and businesses those policies serve. For example, automatic enrollment and automatic escalation in retirement savings plans have made it easier to save for the future, and have helped Americans accumulate billions of dollars in additional retirement savings. Similarly, streamlining the application process for Federal financial aid has made college more financially accessible for millions of students.

To more fully realize the benefits of behavioral insights and deliver better results at a lower cost for the American people, the Federal Government should design its policies and programs to reflect our best understanding of how people engage with, participate in, use, and respond to those policies and programs. By improving the effectiveness and efficiency of Government, behavioral science insights can support a range of national priorities, including helping workers to find better jobs; enabling Americans to lead longer, healthier lives; improving access to educational opportunities and support for success in school; and accelerating the transition to a low-carbon economy.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States, I hereby direct the following:

SECTION 1. *Behavioral Science Insights Policy Directive.*

(a) Executive departments and agencies (agencies) are encouraged to:

(i) identify policies, programs, and operations where applying behavioral science insights may yield substantial improvements in public welfare, program outcomes, and program cost effectiveness;

(ii) develop strategies for applying behavioral science insights to programs and, where possible, rigorously test and evaluate the impact of these insights;

(iii) recruit behavioral science experts to join the Federal Government as necessary to achieve the goals of this directive; and

(iv) strengthen agency relationships with the research community to better use empirical findings from the behavioral sciences.

(b) In implementing the policy directives in section (a), agencies shall:

(i) identify opportunities to help qualifying individuals, families, communities, and businesses access public programs and benefits by, as appropriate, streamlining processes that may otherwise limit or delay participation—for example, removing administrative hurdles, shortening wait times, and simplifying forms;

(ii) improve how information is presented to consumers, borrowers, program beneficiaries, and other individuals, whether as directly conveyed by the agency, or in setting standards for the presentation of information, by considering how the content, format, timing, and medium by which information is conveyed affects comprehension and action by individuals, as appropriate;

(iii) identify programs that offer choices and carefully consider how the presentation and structure of those choices, including the order, number, and ar-

rangement of options, can most effectively promote public welfare, as appropriate, giving particular consideration to the selection and setting of default options; and

(iv) review elements of their policies and programs that are designed to encourage or make it easier for Americans to take specific actions, such as saving for retirement or completing education programs. In doing so, agencies shall consider how the timing, frequency, presentation, and labeling of benefits, taxes, subsidies, and other incentives can more effectively and efficiently promote those actions, as appropriate. Particular attention should be paid to opportunities to use nonfinancial incentives.

(c) For policies with a regulatory component, agencies are encouraged to combine this behavioral science insights policy directive with their ongoing review of existing significant regulations to identify and reduce regulatory burdens, as appropriate and consistent with Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review), and Executive Order 13610 of May 10, 2012 (Identifying and Reducing Regulatory Burdens).

SEC. 2. *Implementation of the Behavioral Science Insights Policy Directive.* (a) The Social and Behavioral Sciences Team (SBST), under the National Science and Technology Council (NSTC) and chaired by the Assistant to the President for Science and Technology, shall provide agencies with advice and policy guidance to help them execute the policy objectives outlined in section 1 of this order, as appropriate.

(b) The NSTC shall release a yearly report summarizing agency implementation of section 1 of this order each year until 2019. Member agencies of the SBST are expected to contribute to this report.

(c) To help execute the policy directive set forth in section 1 of this order, the Chair of the SBST shall, within 45 days of the date of this order and thereafter as necessary, issue guidance to assist agencies in implementing this order.

SEC. 3. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to a department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) Independent agencies are strongly encouraged to comply with the requirements of this order.

(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, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

EX. ORD. NO. 13725. STEPS TO INCREASE COMPETITION AND BETTER INFORM CONSUMERS AND WORKERS TO SUPPORT CONTINUED GROWTH OF THE AMERICAN ECONOMY

Ex. Ord. No. 13725, Apr. 15, 2016, 81 F.R. 23417, 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 protect American consumers and workers and encourage competition in the U.S. economy, it is hereby ordered as follows:

SECTION 1. *Policy.* Maintaining, encouraging, and supporting a fair, efficient, and competitive marketplace is a cornerstone of the American economy. Consumers and workers need both competitive markets and information to make informed choices.

Certain business practices such as unlawful collusion, illegal bid rigging, price fixing, and wage setting, as well as anticompetitive exclusionary conduct and mergers stifle competition and erode the foundation of

America's economic vitality. The immediate results of such conduct—higher prices and poorer service for customers, less innovation, fewer new businesses being launched, and reduced opportunities for workers—can impact Americans in every walk of life.

Competitive markets also help advance national priorities, such as the delivery of affordable health care, energy independence, and improved access to fast and affordable broadband. Competitive markets also promote economic growth, which creates opportunity for American workers and encourages entrepreneurs to start innovative companies that create jobs.

The Department of Justice (DOJ) and the Federal Trade Commission (FTC) have a proven record of detecting and stopping anticompetitive conduct and challenging mergers and acquisitions that threaten to consolidate markets and reduce competition.

Promoting competitive markets and ensuring that consumers and workers have access to the information needed to make informed choices must be a shared priority across the Federal Government. Executive departments and agencies can contribute to these goals through, among other things, pro-competitive rulemaking and regulations, and by eliminating regulations that create barriers to or limit competition. Such Government-wide action is essential to ensuring that consumers, workers, startups, small businesses, and farms reap the full benefits of competitive markets.

**SEC. 2. *Agency Responsibilities.*** (a) Executive departments and agencies with authorities that could be used to enhance competition (agencies) shall, where consistent with other laws, use those authorities to promote competition, arm consumers and workers with the information they need to make informed choices, and eliminate regulations that restrict competition without corresponding benefits to the American public.

(b) Agencies shall identify specific actions that they can take in their areas of responsibility to build upon efforts to detect abuses such as price fixing, anti-competitive behavior in labor and other input markets, exclusionary conduct, and blocking access to critical resources that are needed for competitive entry. Behaviors that appear to violate our antitrust laws should be referred to antitrust enforcers at DOJ and the FTC. Such a referral shall not preclude further action by the referring agency against that behavior under that agency's relevant statutory authority.

(c) Agencies shall also identify specific actions that they can take in their areas of responsibility to address undue burdens on competition. As permitted by law, agencies shall consult with other interested parties to identify ways that the agency can promote competition through pro-competitive rulemaking and regulations, by providing consumers and workers with information they need to make informed choices, and by eliminating regulations that restrict competition without corresponding benefits to the American public.

(d) Not later than 30 days from the date of this order, agencies shall submit to the Director of the National Economic Council an initial list of (1) actions each agency can potentially take to promote more competitive markets; (2) any specific practices, such as blocking access to critical resources, that potentially restrict meaningful consumer or worker choice or unduly stifle new market entrants, along with any actions the agency can potentially take to address those practices; and (3) any relevant authorities and tools potentially available to enhance competition or make information more widely available for consumers and workers.

(e) Not later than 60 days from the date of this order, agencies shall report to the President, through the Director of the National Economic Council, recommendations on agency-specific actions that eliminate barriers to competition, promote greater competition, and improve consumer access to information needed to make informed purchasing decisions. Such recommendations shall include a list of priority actions, including rulemakings, as well as timelines for completing those actions.

(f) Subsequently, agencies shall report semi-annually to the President, through the Director of the National

Economic Council, on additional actions that they plan to undertake to promote greater competition.

(g) Sections 2(d), 2(e), and 2(f) of this order do not require reporting of information related to law enforcement policy and activities.

**SEC. 3. *General Provisions.*** (a) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(b) Independent agencies are strongly encouraged to comply with the requirements of this order.

(c) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to a department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(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, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

EX. ORD. NO. 13748. ESTABLISHING A COMMUNITY SOLUTIONS COUNCIL

Ex. Ord. No. 13748, Nov. 16, 2016, 81 F.R. 83619, 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. *Policy.*** Place is a strong determinant of opportunity and well-being. Research shows that the neighborhood in which a child grows up impacts his or her odds of going to college, enjoying good health, and obtaining a lifetime of economic opportunities. Even after 73 consecutive months of total job growth since 2009, communities of persistent poverty remain and for far too many, the odds are stacked against opportunity and achieving the American dream. In addition, between now and 2050, growing our economy, expected population growth, climate change, and demographic shifts will require major new investments in physical, social, and technological infrastructure.

Specific challenges in communities—including crime, access to care, opportunities to pursue quality education, lack of housing options, unemployment, and deteriorating infrastructure—can be met by leveraging Federal assistance and resources. While the Federal Government provides rural, suburban, urban, and tribal communities with significant investments in aid annually, coordinating these investments, as appropriate, across agencies based on locally led visions can more effectively reach communities of greatest need to maximize impact. In recent years, the Federal Government has deepened its engagement with communities, recognizing the critical role of these partnerships in enabling Americans to live healthier and more prosperous lives. Since 2015, the Community Solutions Task Force, comprising executive departments, offices, and agencies (agencies) across the Federal Government, has served as the primary interagency coordinator of agency work to engage with communities to deliver improved outcomes. This order builds on recent work to facilitate inter-agency and community-level collaboration to meet the unique needs of communities in a way that reflects these communities' local assets, economies, geography, size, history, strengths, talent networks, and visions for the future.

**SEC. 2. *Principles.*** Our effort to modernize the Federal Government's work with communities is rooted in the following principles:

(a) A community-driven, locally led vision and long-term plan for clear outcomes should guide individual projects.

(b) The Federal Government should coordinate its efforts at the Federal, regional, State, local, tribal, and community level, and with cross-sector partners, to offer a more seamless process for communities to access needed support and ensure equitable investments.

(c) The Federal Government should help communities identify, develop, and share local solutions, rely on data to determine what does and does not work, and harness technology and modern collaboration and engagement methods to help share these solutions and help communities meet their local goals.

*SEC. 3. Community Solutions Council.*

(a) *Establishment.* There is hereby established a Council for Community Solutions (Council), led by two Co-Chairs. One Co-Chair will be an Assistant to the President or the Director of the Office of Management and Budget, as designated by the President. The second Co-Chair will be rotated every 4 years and designated by the President from among the heads of the Departments of Justice, Agriculture, Commerce, Labor, Health and Human Services, Housing and Urban Development, Transportation, and Education, and the Environmental Protection Agency (Agency Co-Chair).

(b) *Membership.* The Council shall consist of the following members:

- (i) the Secretary of State;
- (ii) the Secretary of the Treasury;
- (iii) the Secretary of Defense;
- (iv) the Attorney General;
- (v) the Secretary of the Interior;
- (vi) the Secretary of Agriculture;
- (vii) the Secretary of Commerce;
- (viii) the Secretary of Labor;
- (ix) the Secretary of Health and Human Services;
- (x) the Secretary of Housing and Urban Development;
- (xi) the Secretary of Transportation;
- (xii) the Secretary of Energy;
- (xiii) the Secretary of Education;
- (xiv) the Secretary of Veterans Affairs;
- (xv) the Secretary of Homeland Security;
- (xvi) the Administrator of the Environmental Protection Agency;
- (xvii) the Administrator of General Services;
- (xviii) the Administrator of the Small Business Administration;
- (xix) the Chief Executive Officer of the Corporation for National and Community Service;
- (xx) the Chairperson of the National Endowment for the Arts;
- (xxi) the Director of the Institute for Museum and Library Services;
- (xxii) the Federal Co-Chair of the Delta Regional Authority;
- (xxiii) the Federal Co-Chair of the Appalachian Regional Commission;
- (xxiv) the Director of the Office of Personnel Management;
- (xxv) the Director of the Office of Management and Budget;
- (xxvi) the Chair of the Council of Economic Advisers;
- (xxvii) the Assistant to the President for Intergovernmental Affairs and Public Engagement;
- (xxviii) the Assistant to the President and Cabinet Secretary;
- (xxix) the Assistant to the President for Economic Policy and Director of the National Economic Council;
- (xxx) the Chair of the Council on Environmental Quality;
- (xxxi) the Director of the Office of Science and Technology Policy;
- (xxxii) the Assistant to the President and Chief Technology Officer;
- (xxxiii) the Administrator of the United States Digital Service; and
- (xxxiv) other officials, as the Co-Chairs may designate or invite to participate.

(c) *Administration.*

(i) The President will designate one of the Co-Chairs to appoint or designate, as appropriate, an Executive Director, who shall coordinate the Council's activities. The department, agency, or component within the Executive Office of the President in which the Executive Director is appointed or designated, as appropriate, (funding entity) shall provide funding and administrative support for the Council to the extent permitted by

law and within existing appropriations as may be necessary for the performance of its functions.

(ii) To the extent permitted by law, including the Economy Act, and within existing appropriations, participating agencies may detail staff to the funding entity to support the Council's coordination and implementation efforts.

(iii) The Co-Chairs shall convene regular meetings of the Council, determine its agenda, and direct its work. At the direction of the Co-Chairs, the Council may establish subgroups consisting exclusively of Council members or their designees, as appropriate.

(iv) A member of the Council may designate a senior-level official who is part of the member's department, agency, or office to perform the Council functions of the member.

*SEC. 4. Mission and Priorities of the Council.* (a) The Council shall foster collaboration across agencies, policy councils, and offices to coordinate actions, identify working solutions to share broadly, and develop and implement policy recommendations that put the community-driven, locally led vision at the center of policymaking. The Council shall:

(i) Work across agencies to coordinate investments in initiatives and practices that align the work of the Federal Government to have the greatest impact on the lives of individuals and communities.

(ii) Use evidence-based practices in policymaking, including identifying existing solutions, scaling up practices that are working, and designing solutions with regular input of the individuals and communities to be served.

(iii) Invest in recruiting, training, and retaining talent to further the effective delivery of services to individuals and communities and empower them with best-practice community engagement options, open government transparency methods, equitable policy approaches, technical assistance and capacity building tools, and data-driven practice.

(b) Consistent with the principles set forth in this order and in accordance with applicable law, including the Federal Advisory Committee Act, the Council should conduct outreach to representatives of nonprofit organizations, civil rights organizations, businesses, labor and professional organizations, start-up and entrepreneurial communities, State, local, and tribal government agencies, school districts, youth, elected officials, seniors, faith and other community-based organizations, philanthropies, technologists, other institutions of local importance, and other interested or affected persons with relevant expertise in the expansion and improvement of efforts to build local capacity, ensure equity, and address economic, social, environmental, and other issues in communities or regions.

*SEC. 5. Executive Orders 13560 and 13602, and Building Upon Other Efforts.* This order supersedes Executive Order 13560 of December 14, 2010 (White House Council for Community Solutions), and Executive Order 13602 of March 15, 2012 (Establishing a White House Council on Strong Cities, Strong Communities), which are hereby revoked.

This Council builds on existing efforts involving Federal working groups, task forces, memoranda of agreement, and initiatives, including the Community Solutions Task Force, the Federal Working Groups dedicated to supporting the needs and priorities of local leadership in Detroit, Baltimore, and Pine Ridge; the Interagency Working Group on Environmental Justice; the Partnership for Sustainable Communities; Local Foods, Local Places; Performance Partnership Pilots for Disconnected Youth; Empowerment Zones; StrikeForce; Partnerships for Opportunity and Workforce and Economic Revitalization; the Neighborhood Revitalization Initiative; Climate Action Champions; Better Communities Alliance; Investing in Manufacturing Communities Partnership; Promise Zones; and the 2016 Memorandum of Agreement on Interagency Technical Assistance. The Council shall also coordinate with existing Chief Officer Councils across the government with oversight responsibility for human capital, performance improvement, and financial assistance.

SEC. 6. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof, or the status of that department or agency within the Federal Government; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) 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, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

#### EXECUTIVE ORDER NO. 13771

Ex. Ord. No. 13771, Jan. 30, 2017, 82 F.R. 9339, which required an executive department or agency that publicly proposes for notice and comment or otherwise promulgates a new regulation to identify at least two existing regulations to be repealed for fiscal year 2017, and for subsequent fiscal years required annual regulatory cost submissions to the Office of Management and Budget, was revoked by Ex. Ord. No. 13992, § 2, Jan. 20, 2021, 86 F.R. 7049, set out in a note under section 551 of this title.

#### EXECUTIVE ORDER NO. 13777

Ex. Ord. No. 13777, Feb. 24, 2017, 82 F.R. 12285, which established Regulatory Reform Task Forces to identify certain regulations to repeal, replace, or modify, was revoked by Ex. Ord. No. 13992, § 2, Jan. 20, 2021, 86 F.R. 7049, set out in a note under section 551 of this title.

#### EXECUTIVE ORDER NO. 13828

Ex. Ord. No. 13828, Apr. 10, 2018, 83 F.R. 15941, which required certain agencies to review their regulations and guidance documents relating to public assistance programs, was revoked by Ex. Ord. No. 14018, § 1, Feb. 24, 2021, 86 F.R. 11855.

#### EXECUTIVE ORDER NO. 13891

Ex. Ord. No. 13891, Oct. 9, 2019, 84 F.R. 55235, which related to agency non-binding guidance documents, was revoked by Ex. Ord. No. 13992, § 2, Jan. 20, 2021, 86 F.R. 7049, set out in a note under section 551 of this title.

#### EXECUTIVE ORDER NO. 13893

Ex. Ord. No. 13893, Oct. 10, 2019, 84 F.R. 55487, which related to reducing mandatory spending incurred by discretionary administrative actions, was revoked by Ex. Ord. No. 13992, § 2, Jan. 20, 2021, 86 F.R. 7049, set out in a note under section 551 of this title.

#### EXECUTIVE ORDER NO. 13924

Ex. Ord. No. 13924, May 19, 2020, 85 F.R. 31353, which related to regulatory relief to support recovery from the economic consequences of COVID-19, was revoked by Ex. Ord. No. 14018, § 1, Feb. 24, 2021, 86 F.R. 11855.

#### EXECUTIVE ORDER NO. 13927

Ex. Ord. No. 13927, June 4, 2020, 85 F.R. 35165, which related to accelerating the nation's economic recovery from the COVID-19 emergency by expediting infrastructure investments and other activities, was revoked by Ex. Ord. No. 13990, § 7(a), Jan. 20, 2021, 86 F.R. 7041, set out in a note under section 4321 of Title 42, The Public Health and Welfare.

#### EX. ORD. NO. 13966. INCREASING ECONOMIC AND GEOGRAPHIC MOBILITY

Ex. Ord. No. 13966, Dec. 14, 2020, 85 F.R. 81777, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of

America, including section 305 of title 5, United States Code, and section 301 of title 3, United States Code, it is hereby ordered as follows:

SECTION 1. *Policy and Principles.* As expressed in Executive Order 13777 of February 24, 2017 (Enforcing the Regulatory Reform Agenda) [formerly set out above], it is the policy of the United States to alleviate unnecessary regulatory burdens placed on the American people. Overly burdensome occupational licensing requirements can impede job creation and slow economic growth, which undermines our Nation's prosperity and the economic well-being of the American people. Such regulations can prevent American workers and job seekers from earning a living, maximizing their personal and economic potential, and achieving the American Dream. The purpose of this order is to reduce the burden of occupational regulations in order to promote the free practice of commerce, lower consumer costs, and increase economic and geographic mobility, including for military spouses.

My Administration is committed to continuing this important work by partnering with State, local, territorial, and tribal leaders throughout the country to eliminate harmful occupational regulations, which are frequently designed to protect politically connected interest groups. To this end, in October 2019, my Administration announced the establishment of the Governors' Initiative on Regulatory Innovation, which works with State, local, and tribal leaders to advance occupational licensing reforms, better align State and Federal regulations, and eliminate unnecessary regulations that drive up consumer costs.

Occupational regulations can protect practitioners from competition rather than protect the public from malpractice. Unfortunately, the number of occupational regulations has substantially increased over the last few decades. Since the 1950s, the percentage of jobs requiring a government-mandated occupational license has increased from less than 5 percent to between 25 and 30 percent. By requiring workers to acquire new licenses when they move to a new jurisdiction, occupational regulations reduce worker mobility, disproportionately harm low-income Americans, and are particularly burdensome to military spouses who must relocate to support the service members committed to keeping our country safe. Additionally, blanket prohibitions that prevent individuals with criminal records from obtaining occupational licenses may exacerbate disparities in employment opportunity and increase the likelihood of recidivism, particularly as regulatory barriers to enter lower- and middle-income occupations are associated with higher recidivism rates. Licensing requirements unnecessary to protect consumers from significant and demonstrable harm also frequently impose expensive educational requirements on potential job seekers, even for occupations with limited future earnings potential. According to recent research, licensing requirements have cost our country an estimated 2.85 million jobs and over \$200 billion annually in increased consumer costs.

Therefore, it is the policy of the United States Government to support occupational regulation reform throughout the Nation, building on occupational licensing reforms enacted most recently in Arizona, Florida, Iowa, Missouri, and South Dakota, guided by six principles:

*Principle 1.* All recognized occupational licensure boards should be subject to active supervision of [sic] a designated governmental agency or office.

*Principle 2.* All occupational licensure boards recognized by a State, territorial, or tribal government that oversee personal qualifications related to the practice of an occupation should adopt and maintain the criteria and methods of occupational regulation that are least restrictive to competition sufficient to protect consumers from significant and demonstrable harm to their health and safety. The policies and procedures of such boards should be designed to protect consumer and worker safety and to encourage competition.

*Principle 3.* State, territorial, and tribal governments should review existing occupational regulations, in-

cluding associated scope-of-practice provisions, to ensure that their requirements are the least restrictive to competition sufficient to protect consumers from significant and demonstrable harm. State, territorial, and tribal governments should also regularly review and analyze all occupational regulations, including associated personal qualifications required to obtain an occupational license, to ensure the adoption of the least restrictive requirements necessary to protect consumers from significant and demonstrable harm.

*Principle 4.* Individuals with criminal records should be encouraged to submit to the appropriate licensure board a preliminary application for an occupational license for a determination as to whether the criminal record would preclude their attainment of the appropriate occupational license.

*Principle 5.* A State, territorial, or tribal government should issue an occupational license to a person in the discipline applied for and at the same level of practice if the individual satisfies four requirements:

(a) the individual holds an occupational license for that discipline from another jurisdiction in the United States and is in good standing;

(b) the individual verifies having met, as applicable, the minimum examination, education, work, or clinical-supervision requirements imposed by the State, territory, or tribe;

(c) the individual:

(i) has not had the license previously revoked or suspended;

(ii) has not been disciplined related to the license by any other regulating entity; and

(iii) is not subject to any pending complaint, allegation, or investigation related to the license; and

(d) the individual pays all applicable fees required to obtain the new license.

*Principle 6.* Accommodations should be made for any applicant for an occupational license who is the spouse of an active duty member of the uniformed services and who is relocating with the member due to the member's official permanent change of station orders.

*SEC. 2. Review of and Report on Authorities, Regulations, Guidance, and Policies.* The head of each executive department and agency (agency) shall, within 90 days of the date of this order [Dec. 14, 2020] and every 2 years thereafter:

(a) review the agency's authorities, regulations, guidance, and policies to identify changes necessary to ensure alignment with the principles set forth in section 1 of this order; and

(b) submit a report to the Director of the Office of Management and Budget (Director of OMB), the Assistant to the President for Domestic Policy, and the Assistant to the President and Director of Intergovernmental Affairs (Director of IGA) identifying all necessary changes identified pursuant to subsection (a) of this section.

*SEC. 3. Identification and Report of Opportunities to Encourage Occupational Regulation Reform.* (a) Within 90 days of the date of this order, and every 2 years thereafter, the head of each agency shall submit a report to the Director of OMB, the Assistant to the President for Domestic Policy, and the Director of IGA identifying a list of recommended actions available to any and all agencies to recognize and reward State, territorial, and tribal governments that have in place policies and procedures regarding occupational regulation that are consistent with the principles set forth in section 1 of this order; and

(b) Within 120 days of the date of this order, and every 2 years thereafter, the Assistant to the President for Domestic Policy, in consultation with the Secretary of Commerce, the Secretary of Labor, the Director of OMB, the Administrator of the Small Business Administration, the Director of IGA, and the heads of other agencies and offices as appropriate, shall submit a report to the President identifying:

(i) recommended changes to Federal law, regulations, guidance, and other policies to ensure alignment with the principles set forth in section 1 of this order;

(ii) recommended actions to be taken by agencies to recognize and reward State, territorial, and tribal governments that have in place policies and procedures regarding occupational regulation that are consistent with the principles set forth in section 1 of this order; and

(iii) a list of criteria that may be used to evaluate whether a State, territorial, or tribal government has in place policies and procedures that are consistent with the principles set forth in section 1 of this order.

*SEC. 4. Implementation of Recommendations to Recognize and Reward State, Territorial, and Tribal Regulatory Reform.* (a) Within 180 days of the date of this order, and every 2 years thereafter, the Administrator of the Small Business Administration, in consultation with the Secretary of Commerce, the Secretary of Labor, the Secretary of Health and Human Services, and the heads of other agencies as appropriate, shall seek and report on information from State, territorial, and tribal governments regarding whether they have in place policies and procedures consistent with the principles set forth in section 1 of this order and shall make the report publicly available, including on agencies' websites. The information sought shall be consistent with the criteria identified as required by section 3(b)(iii) of this order.

(b) Consistent with applicable law, and to the extent that the President approves any of the actions recommended pursuant to section 3(b)(ii) of this order, agencies shall implement such actions for the purpose of recognizing and rewarding a State, territorial, or tribal government that has in place policies and procedures regarding occupational regulation that are consistent with the principles set forth in section 1 of this order.

*SEC. 5. Definitions.* For the purposes of this order:

(a) "Active supervision" means:

(i) reviewing proposed occupational licensure board rules, policies, or other regulatory actions that may restrict market competition prior to issuance;

(ii) ensuring that any entity seeking to impose occupational licensing criteria adopts the criteria that are least restrictive to competition sufficient to protect consumers from significant and demonstrable harm to their health or safety; and

(iii) analyzing, where information is readily available, the effects of proposed rules, policies, and other regulatory actions on employment opportunities, consumer costs, market competition, and administrative costs.

(b) "Agency" has the meaning given that term in section 3502(1) of title 44, United States Code, except that the term does not include the agencies described in section 3502(5) of title 44, United States Code, other than the Bureau of Consumer Financial Protection.

(c) "Occupational license" means a license, registration, or certification without which an individual lacks the legal permission of a State, local, territorial, or tribal government to perform certain defined services for compensation.

(d) "Occupational regulation" includes:

(i) licensing or government certification, by which a government body requires personal qualifications in order to be permitted to practice an occupation; and

(ii) registration, bonding, or inspections, by which a government body does not require personal qualifications in order to be permitted to practice an occupation.

*SEC. 6. General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforce-



able 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.

DONALD J. TRUMP.

EXECUTIVE ORDER NO. 13980

Ex. Ord. No. 13980, Jan. 18, 2021, 86 F.R. 6817, which related to regulations that may subject a violator to criminal penalties, was revoked by Ex. Ord. No. 14029, §1, May 14, 2021, 86 F.R. 27025.

EX. ORD. NO. 13985. ADVANCING RACIAL EQUITY AND SUPPORT FOR UNDERSERVED COMMUNITIES THROUGH THE FEDERAL GOVERNMENT

Ex. Ord. No. 13985, Jan. 20, 2021, 86 F.R. 7009, 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:

SECTION 1. *Policy.* Equal opportunity is the bedrock of American democracy, and our diversity is one of our country's greatest strengths. But for too many, the American Dream remains out of reach. Entrenched disparities in our laws and public policies, and in our public and private institutions, have often denied that equal opportunity to individuals and communities. Our country faces converging economic, health, and climate crises that have exposed and exacerbated inequities, while a historic movement for justice has highlighted the unbearable human costs of systemic racism. Our Nation deserves an ambitious whole-of-government equity agenda that matches the scale of the opportunities and challenges that we face.

It is therefore the policy of my Administration that the Federal Government should pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality. Affirmatively advancing equity, civil rights, racial justice, and equal opportunity is the responsibility of the whole of our Government. Because advancing equity requires a systematic approach to embedding fairness in decision-making processes, executive departments and agencies (agencies) must recognize and work to redress inequities in their policies and programs that serve as barriers to equal opportunity.

By advancing equity across the Federal Government, we can create opportunities for the improvement of communities that have been historically underserved, which benefits everyone. For example, an analysis shows that closing racial gaps in wages, housing credit, lending opportunities, and access to higher education would amount to an additional \$5 trillion in gross domestic product in the American economy over the next 5 years. The Federal Government's goal in advancing equity is to provide everyone with the opportunity to reach their full potential. Consistent with these aims, each agency must assess whether, and to what extent, its programs and policies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups. Such assessments will better equip agencies to develop policies and programs that deliver resources and benefits equitably to all.

SEC. 2. *Definitions.* For purposes of this order: (a) The term "equity" means the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.

(b) The term "underserved communities" refers to populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects

of economic, social, and civic life, as exemplified by the list in the preceding definition of "equity."

SEC. 3. *Role of the Domestic Policy Council.* The role of the White House Domestic Policy Council (DPC) is to coordinate the formulation and implementation of my Administration's domestic policy objectives. Consistent with this role, the DPC will coordinate efforts to embed equity principles, policies, and approaches across the Federal Government. This will include efforts to remove systemic barriers to and provide equal access to opportunities and benefits, identify communities the Federal Government has underserved, and develop policies designed to advance equity for those communities. The DPC-led interagency process will ensure that these efforts are made in coordination with the directors of the National Security Council and the National Economic Council.

SEC. 4. *Identifying Methods to Assess Equity.* (a) The Director of the Office of Management and Budget (OMB) shall, in partnership with the heads of agencies, study methods for assessing whether agency policies and actions create or exacerbate barriers to full and equal participation by all eligible individuals. The study should aim to identify the best methods, consistent with applicable law, to assist agencies in assessing equity with respect to race, ethnicity, religion, income, geography, gender identity, sexual orientation, and disability.

(b) As part of this study, the Director of OMB shall consider whether to recommend that agencies employ pilot programs to test model assessment tools and assist agencies in doing so.

(c) Within 6 months of the date of this order [Jan. 20, 2021], the Director of OMB shall deliver a report to the President describing the best practices identified by the study and, as appropriate, recommending approaches to expand use of those methods across the Federal Government.

SEC. 5. *Conducting an Equity Assessment in Federal Agencies.* The head of each agency, or designee, shall, in consultation with the Director of OMB, select certain of the agency's programs and policies for a review that will assess whether underserved communities and their members face systemic barriers in accessing benefits and opportunities available pursuant to those policies and programs. The head of each agency, or designee, shall conduct such review and within 200 days of the date of this order provide a report to the Assistant to the President for Domestic Policy (APDP) reflecting findings on the following:

(a) Potential barriers that underserved communities and individuals may face to enrollment in and access to benefits and services in Federal programs;

(b) Potential barriers that underserved communities and individuals may face in taking advantage of agency procurement and contracting opportunities;

(c) Whether new policies, regulations, or guidance documents may be necessary to advance equity in agency actions and programs; and

(d) The operational status and level of institutional resources available to offices or divisions within the agency that are responsible for advancing civil rights or whose mandates specifically include serving underrepresented or disadvantaged communities.

SEC. 6. *Allocating Federal Resources to Advance Fairness and Opportunity.* The Federal Government should, consistent with applicable law, allocate resources to address the historic failure to invest sufficiently, justly, and equally in underserved communities, as well as individuals from those communities. To this end:

(a) The Director of OMB shall identify opportunities to promote equity in the budget that the President submits to the Congress.

(b) The Director of OMB shall, in coordination with the heads of agencies, study strategies, consistent with applicable law, for allocating Federal resources in a manner that increases investment in underserved communities, as well as individuals from those communities. The Director of OMB shall report the findings of this study to the President.

SEC. 7. *Promoting Equitable Delivery of Government Benefits and Equitable Opportunities.* Government programs are designed to serve all eligible individuals. And Government contracting and procurement opportunities should be available on an equal basis to all eligible providers of goods and services. To meet these objectives and to enhance compliance with existing civil rights laws:

(a) Within 1 year of the date of this order, the head of each agency shall consult with the APDP and the Director of OMB to produce a plan for addressing:

(i) any barriers to full and equal participation in programs identified pursuant to section 5(a) of this order; and

(ii) any barriers to full and equal participation in agency procurement and contracting opportunities identified pursuant to section 5(b) of this order.

(b) The Administrator of the U.S. Digital Service, the United States Chief Technology Officer, the Chief Information Officer of the United States, and the heads of other agencies, or their designees, shall take necessary actions, consistent with applicable law, to support agencies in developing such plans.

SEC. 8. *Engagement with Members of Underserved Communities.* In carrying out this order, agencies shall consult with members of communities that have been historically underrepresented in the Federal Government and underserved by, or subject to discrimination in, Federal policies and programs. The head of each agency shall evaluate opportunities, consistent with applicable law, to increase coordination, communication, and engagement with community-based organizations and civil rights organizations.

SEC. 9. *Establishing an Equitable Data Working Group.* Many Federal datasets are not disaggregated by race, ethnicity, gender, disability, income, veteran status, or other key demographic variables. This lack of data has cascading effects and impedes efforts to measure and advance equity. A first step to promoting equity in Government action is to gather the data necessary to inform that effort.

(a) *Establishment.* There is hereby established an Interagency Working Group on Equitable Data (Data Working Group).

(b) *Membership.*

(i) The Chief Statistician of the United States and the United States Chief Technology Officer shall serve as Co-Chairs of the Data Working Group and coordinate its work. The Data Working Group shall include representatives of agencies as determined by the Co-Chairs to be necessary to complete the work of the Data Working Group, but at a minimum shall include the following officials, or their designees:

(A) the Director of OMB;

(B) the Secretary of Commerce, through the Director of the U.S. Census Bureau;

(C) the Chair of the Council of Economic Advisers;

(D) the Chief Information Officer of the United States;

(E) the Secretary of the Treasury, through the Assistant Secretary of the Treasury for Tax Policy;

(F) the Chief Data Scientist of the United States; and

(G) the Administrator of the U.S. Digital Service.

(ii) The DPC shall work closely with the Co-Chairs of the Data Working Group and assist in the Data Working Group's interagency coordination functions.

(iii) The Data Working Group shall consult with agencies to facilitate the sharing of information and best practices, consistent with applicable law.

(c) *Functions.* The Data Working Group shall:

(i) through consultation with agencies, study and provide recommendations to the APDP identifying inadequacies in existing Federal data collection programs, policies, and infrastructure across agencies, and strategies for addressing any deficiencies identified; and

(ii) support agencies in implementing actions, consistent with applicable law and privacy interests, that expand and refine the data available to the Federal

Government to measure equity and capture the diversity of the American people.

(d) OMB shall provide administrative support for the Data Working Group, consistent with applicable law.

SEC. 10. *Revocation.* (a) Executive Order 13950 of September 22, 2020 (Combating Race and Sex Stereotyping) [former 5 U.S.C. 4103 note], is hereby revoked.

(b) The heads of agencies covered by Executive Order 13950 shall review and identify proposed and existing agency actions related to or arising from Executive Order 13950. The head of each agency shall, within 60 days of the date of this order, consider suspending, revising, or rescinding any such actions, including all agency actions to terminate or restrict contracts or grants pursuant to Executive Order 13950, as appropriate and consistent with applicable law.

(c) Executive Order 13958 of November 2, 2020 (Establishing the President's Advisory 1776 Commission) [former 20 U.S.C. 3411 note], is hereby revoked.

SEC. 11. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) Independent agencies are strongly encouraged to comply with the provisions of this order.

(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, or entities, its officers, employees, or agents, or any other person.

J.R. BIDEN, JR.

EX. ORD. NO. 14075. ADVANCING EQUALITY FOR LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER, AND INTERSEX INDIVIDUALS

Ex. Ord. No. 14075, June 15, 2022, 87 F.R. 37189, 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. *Policy.* Our Nation has made great strides in fulfilling the fundamental promises of freedom and equality for lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) Americans, owing to the leadership of generations of LGBTQI+ individuals. In spite of this historic progress, LGBTQI+ individuals and families still face systemic discrimination and barriers to full participation in our Nation's economic and civic life. These disparities and barriers can be the greatest for transgender people and LGBTQI+ people of color. Today, unrelenting political and legislative attacks at the State level—on LGBTQI+ children and families in particular—threaten the civil rights gains of the last half century and put LGBTQI+ people at risk. These attacks defy our American values of liberty and dignity, corrode our democracy, and threaten basic personal safety. They echo the criminalization that LGBTQI+ people continue to face in some 70 countries around the world. The Federal Government must defend the rights and safety of LGBTQI+ individuals.

It is therefore the policy of my Administration to combat unlawful discrimination and eliminate disparities that harm LGBTQI+ individuals and their families, defend their rights and safety, and pursue a comprehensive approach to delivering the full promise of equality for LGBTQI+ individuals, consistent with Executive Order 13988 of January 20, 2021 (Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation) [42 U.S.C. 2000e note].

The Federal Government must take action to address the significant disparities that LGBTQI+ youth face in the foster care system, the misuse of State and local child welfare agencies to target LGBTQI+ youth and

families, and the mental health needs of LGBTQI+ youth. My Administration must safeguard LGBTQI+ youth from dangerous practices like so-called “conversion therapy”—efforts to suppress or change an individual’s sexual orientation, gender identity, or gender expression—a discredited practice that research indicates can cause significant harm, including higher rates of suicide-related thoughts and behaviors by LGBTQI+ youth. The Federal Government must strengthen the supports for LGBTQI+ students in our Nation’s schools and other education and training programs. It must also address the discrimination and barriers that LGBTQI+ individuals and families face by expanding access to comprehensive health care, including reproductive health; protecting the rights of LGBTQI+ older adults; and preventing and addressing LGBTQI+ homelessness and housing instability. Through these actions, the Federal Government will help ensure that every person—regardless of who they are or whom they love—has the opportunity to live freely and with dignity.

**SEC. 2. Addressing Harmful and Discriminatory Legislative Attacks on LGBTQI+ Children, Youth, and Families.** (a) The Secretary of Health and Human Services (HHS) shall, as appropriate and consistent with applicable law, use the Department of HHS’s authorities to protect LGBTQI+ individuals’ access to medically necessary care from harmful State and local laws and practices, and shall promote the adoption of promising policies and practices to support health equity, including in the area of mental health care, for LGBTQI+ youth and adults. Within 200 days of the date of this order [June 15, 2022], the Secretary of HHS shall develop and release sample policies for States to safeguard and expand access to health care for LGBTQI+ individuals and their families, including mental health services.

(b) The Secretary of Education shall, as appropriate and consistent with applicable law, use the Department of Education’s authorities to support LGBTQI+ students, their families, educators, and other school personnel targeted by harmful State and local laws and practices, and shall promote the adoption of promising policies and practices to support the safety, well-being, and rights of LGBTQI+ students. Within 200 days of the date of this order, the Secretary of Education shall develop and release sample policies for supporting LGBTQI+ students’ well-being and academic success in schools and educational institutions.

**SEC. 3. Addressing Exposure to So-Called Conversion Therapy.** (a) The Secretary of HHS shall establish an initiative to reduce the risk of youth exposure to so-called conversion therapy. As part of that initiative, the Secretary of HHS shall, as appropriate and consistent with applicable law:

(i) consider whether to issue guidance clarifying for HHS programs and services agencies that so-called conversion therapy does not meet criteria for use in federally funded health and human services programs;

(ii) increase public awareness of the harms and risks associated with so-called conversion therapy for LGBTQI+ youth and their families;

(iii) increase the availability of technical assistance and training to health care and social service providers on evidence-informed promising practices for supporting the health, including mental health, of LGBTQI+ youth, and on the dangers of so-called conversion therapy; and

(iv) seek funding opportunities for providers of evidence-based trauma-informed services to better support survivors of so-called conversion therapy.

(b) The Federal Trade Commission is encouraged to consider whether so-called conversion therapy constitutes an unfair or deceptive act or practice, and to issue such consumer warnings or notices as may be appropriate.

(c) To address so-called conversion therapy around the world, within 180 days of the date of this order, the Secretary of State, in collaboration with the Secretary of the Treasury, the Secretary of HHS, and the Admin-

istrator of the United States Agency for International Development, shall develop an action plan to promote an end to its use around the world. In developing the action plan, the Secretary of State shall consider the use of United States foreign assistance programs and the United States voice and vote in multilateral development banks and international development institutions of which the United States is a shareholder or donor to take appropriate steps to prevent the use of so-called conversion therapy, as well as to help ensure that United States foreign assistance programs do not use foreign assistance funds for so-called conversion therapy. To further critical data collection, the Secretary of State shall instruct all United States Embassies and Missions worldwide to submit additional information on the practice and incidence of so-called conversion therapy as part of the Country Reports on Human Rights Practices.

**SEC. 4. Promoting Family Counseling and Support of LGBTQI+ Youth as a Public Health Priority of the United States.** (a) “Family counseling and support programs” are defined for the purposes of this order as voluntary programs in which families and service providers may elect to participate that seek to prevent or reduce behaviors associated with family rejection of LGBTQI+ youth by providing developmentally appropriate support, counseling, or information to parents, families, caregivers, child welfare and school personnel, or health care professionals on how to support an LGBTQI+ youth’s safety and well-being.

(b) The Secretary of HHS shall seek to expand the availability of family counseling and support programs in federally funded health, human services, and child welfare programs by:

(i) considering whether to issue guidance regarding the extent to which Federal funding under Title IV-B [42 U.S.C. 620 et seq.] and IV-E [42 U.S.C. 670 et seq.] of the Social Security Act, 42 U.S.C. Ch. 7, may be used to provide family counseling and support programs;

(ii) considering funding opportunities for programs that implement family counseling and support models;

(iii) considering opportunities through the Centers for Disease Control and Prevention (CDC) and the National Institutes of Health to increase Federal research into the impacts of family rejection and family support on the mental health and long-term well-being of LGBTQI+ individuals; and

(iv) ensuring that HHS data, investments, resources, and partnerships related to the CDC Adverse Childhood Experiences program address the disparities faced by LGBTQI+ children and youth.

**SEC. 5. Addressing Discrimination and Barriers Faced by LGBTQI+ Children, Youth, Parents, Caretakers, and Families in the Child Welfare System and Juvenile Justice Systems.** (a) The Secretary of HHS shall consider how to use the Department’s authorities to strengthen non-discrimination protections on the basis of sex, including sexual orientation, gender identity, and sex characteristics, in its programs and services, consistent with Executive Order 13988 and applicable legal requirements.

(b) The Secretary of HHS shall direct the Assistant Secretary for Family Support to establish an initiative to partner with State child welfare agencies to help address and eliminate disparities in the child welfare system experienced by LGBTQI+ children, parents, and caregivers, including: the over-representation of LGBTQI+ youth in the child welfare system, including over-representation in congregate placements; disproportionately high rates of abuse, and placements in unsupportive or hostile environments faced by LGBTQI+ youth in foster care; disproportionately high rates of homelessness faced by LGBTQI+ youth who exit foster care; and discrimination faced by LGBTQI+ parents, kin, and foster and adoptive families. The initiative, as appropriate and consistent with applicable law, shall also take actions to:

(i) seek funding opportunities for programs and services that improve outcomes for LGBTQI+ children in the child welfare system;

(ii) provide increased training and technical assistance to State child welfare agencies and child welfare personnel on promising practices to support LGBTQI+ youth in foster care and LGBTQI+ parents and caregivers;

(iii) develop sample policies for supporting LGBTQI+ children, parents, and caregivers in the child welfare system;

(iv) promote equity and inclusion for LGBTQI+ foster and adoptive parents in their interactions with the child welfare system;

(v) evaluate the rate of child removals from LGBTQI+ families of origin, in particular families that include LGBTQI+ women of color, and develop proposals to address any disproportionate rates of child removals faced by such families;

(vi) assess and improve the responsible collection and use of data on sexual orientation and gender identity in the child welfare system to measure and address inequities faced by LGBTQI+ children, parents, and caregivers, while safeguarding the privacy, safety, and civil rights of LGBTQI+ youth; and

(vii) advance policies that help to prevent the placement of LGBTQI+ youth in foster and congregate care environments that will be hostile to their gender identity or sexual orientation.

(c) The Attorney General shall establish a clearinghouse within the Office of Juvenile Justice and Delinquency Prevention to provide effective training, technical assistance, and other resources for jurisdictions seeking to better serve LGBTQI+ youth using a continuum-of-care framework. The clearinghouse shall include juvenile justice and delinquency prevention programs addressing the needs, including mental health needs, of LGBTQI+ youth.

SEC. 6. *Reviewing Eligibility Standards for Federal Benefits and Programs.* (a) Within 180 days of the date of this order, the Secretary of HHS shall conduct a study on the impact that current Federal statutory and regulatory eligibility standards have on the ability of LGBTQI+ and other households as determined by the Secretary to access Federal benefits and programs for families, and shall produce a public report with findings and recommendations that could increase LGBTQI+ and such other households' participation in and eligibility for Federal benefits and programs for families.

(b) Within 100 days of the release of the recommendations required by subsection (a) of this section, the Director of the Office of Management and Budget (OMB) shall coordinate with executive departments and agencies (agencies) that administer programs that establish eligibility standards for participation by families to complete a review of agencies' current eligibility standards for families. Such agencies shall seek opportunities, consistent with applicable law, to adopt more inclusive eligibility standards in line with the recommendations in the report produced pursuant to subsection (a) of this section.

SEC. 7. *Safeguarding Access to Health Care and Other Health Supports for LGBTQI+ Individuals.* The Secretary of HHS shall establish an initiative to address the health disparities facing LGBTQI+ youth and adults, take steps to prevent LGBTQI+ suicide, and address the barriers and exclusionary policies that LGBTQI+ individuals and families face in accessing quality, affordable, comprehensive health care, including mental health care, reproductive health care, and HIV prevention and treatment. As part of that initiative, the Secretary of HHS shall, as appropriate and consistent with applicable law:

(a) seek funding opportunities related to health, including mental health, for LGBTQI+ individuals, especially youth, including resources for the Nation's suicide prevention and crisis support services to support LGBTQI+ individuals;

(b) promote expanded access to comprehensive health care for LGBTQI+ individuals, including by working with States on expanding access to gender-affirming care;

(c) issue guidance through the Substance Abuse and Mental Health Services Administration and the Office of the Assistant Secretary for Health, within 100 days of the date of this order, on providing evidence-informed mental health care and substance use treatment and support services for LGBTQI+ youth; and

(d) develop and issue a report, within 1 year of the date of this order, and after consultation with medical experts, medical associations, and individuals with lived expertise, on promising practices for advancing health equity for intersex individuals.

SEC. 8. *Supporting LGBTQI+ Students in our Nation's Schools and Educational Institutions.* The Secretary of Education shall establish a Working Group on LGBTQI+ Students and Families, which shall lead an initiative to address discrimination against LGBTQI+ students and strengthen supports for LGBTQI+ students and families. Through that Working Group, the Secretary of Education shall, as appropriate and consistent with applicable law:

(a) review, revise, develop, and promote guidance, technical assistance, training, promising practices, and sample policies for States, school districts, and other educational institutions to promote safe and inclusive learning environments in which all LGBTQI+ students thrive and to address bullying of LGBTQI+ students;

(b) identify promising practices for helping to ensure that school-based health services and supports, especially mental health services, are accessible to and supportive of LGBTQI+ students;

(c) seek funding opportunities for grantees and programs that will improve educational and health outcomes, especially mental health outcomes, for LGBTQI+ students and other underserved students; and

(d) seek to strengthen supportive services for LGBTQI+ students and families experiencing homelessness, including those provided by the National Center for Homeless Education.

SEC. 9. *Preventing and Ending LGBTQI+ Homelessness and Housing Instability.* (a) The Secretary of Housing and Urban Development (HUD) shall establish a Working Group on LGBTQI+ Homelessness and Housing Equity, which shall lead an initiative that aims to prevent and address homelessness and housing instability among LGBTQI+ individuals, including youth, and households. As part of that initiative, the Secretary of HUD shall, as appropriate and consistent with applicable law:

(i) identify and address barriers to housing faced by LGBTQI+ individuals, including youth, and families that place them at high risk of housing instability and homelessness;

(ii) provide guidance and technical assistance to HUD contractors, grantees, and programs on effectively and respectfully serving LGBTQI+ individuals, including youth, and families;

(iii) develop and provide guidance, sample policies, technical assistance, and training to Continuums of Care, established pursuant to HUD's Continuum of Care Program; homeless service providers; and housing providers to improve services and outcomes for LGBTQI+ individuals, including youth, and families who are experiencing or are at risk of homelessness, and to ensure compliance with the Fair Housing Act, 42 U.S.C. 3601 *et seq.*, and HUD's 2012 and 2016 Equal Access Rules; and

(iv) seek funding opportunities, including through the Youth Homelessness Demonstration Program, for culturally appropriate services that address barriers to housing for LGBTQI+ individuals, including youth, and families, and the high rates of LGBTQI+ youth homelessness.

(b) The Secretary of HHS, through the Assistant Secretary for Family Support, shall, as appropriate and consistent with applicable law:

(i) use agency guidance, training, and technical assistance to implement non-discrimination protections on the basis of sexual orientation and gender identity in programs established pursuant to the Runaway and Homeless Youth Act (Public Law 110-378) [title III of Pub. L. 93-415, 34 U.S.C. 11201 *et seq.*], and ensure that

such programs address LGBTQI+ youth homelessness; and

(ii) coordinate with youth advisory boards funded through the Runaway and Homeless Youth Training and Technical Assistance Center and the National Runaway Safeline to seek input from LGBTQI+ youth who have experienced homelessness on improving federally funded services and programs.

SEC. 10. *Strengthening Supports for LGBTQI+ Older Adults.* The Secretary of HHS shall address discrimination, social isolation, and health disparities faced by LGBTQI+ older adults, including by:

(a) developing and publishing guidance on non-discrimination protections on the basis of sex, including sexual orientation, gender identity, and sex characteristics, and other rights of LGBTQI+ older adults in long-term care settings;

(b) developing and publishing a document parallel to the guidance required by subsection (a) of this section in plain language, titled “Bill of Rights for LGBTQI+ Older Adults,” to support LGBTQI+ older adults and providers in understanding the rights of LGBTQI+ older adults in long-term care settings;

(c) considering whether to issue a notice of proposed rulemaking to clarify that LGBTQI+ individuals are included in the definition of “greatest social need” for purposes of targeting outreach, service provision, and funding under the Older Americans Act [of 1965], 42 U.S.C. 3001 *et seq.*; and

(d) considering ways to improve and increase appropriate data collection on sexual orientation and gender identity in surveys on older adults, including by providing technical assistance to States on the collection of such data.

SEC. 11. *Promoting Inclusive and Responsible Federal Data Collection Practices.* (a) Advancing equity and full inclusion for LGBTQI+ individuals requires that the Federal Government use evidence and data to measure and address the disparities that LGBTQI+ individuals, families, and households face, while safeguarding privacy, security, and civil rights.

(b) To advance the responsible and effective collection and use of data on sexual orientation, gender identity, and sex characteristics (SOGI data), the Co-Chairs of the Interagency Working Group on Equitable Data established in Executive Order 13985 of January 20, 2021 (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government) [set out above], shall, within 30 days of the date of this order [June 15, 2022], establish a subcommittee on SOGI data to coordinate with agencies on strengthening the Federal Government’s collection of SOGI data to advance equity for LGBTQI+ individuals. Within 120 days of the date of this order, the subcommittee shall, in coordination with the Director of OMB, develop and release a Federal Evidence Agenda on LGBTQI+ Equity, which shall:

(i) describe disparities faced by LGBTQI+ individuals that could be better understood through Federal statistics and data collection;

(ii) identify, in coordination with agency Statistical Officials, Chief Science Officers, Chief Data Officers, and Evaluation Officers, Federal data collections where improved SOGI data collection may be important for advancing the Federal Government’s ability to measure disparities facing LGBTQI+ individuals; and

(iii) identify practices for all agencies engaging in SOGI data collection to follow in order to safeguard privacy, security, and civil rights, including with regard to appropriate and robust practices of consent for the collection of this data and restrictions on its use or transfer.

(c) Within 200 days of the date of this order, the head of each agency that conducts relevant programs or statistical surveys related to the Federal Evidence Agenda on LGBTQI+ Equity shall submit to the Co-Chairs of the Interagency Working Group on Equitable Data a SOGI Data Action Plan, which shall detail how the agency plans to use SOGI data to advance equity for LGBTQI+ individuals and shall identify how the agency

plans to implement the recommendations in the Federal Evidence Agenda on LGBTQI+ Equity.

(d) To support implementation of agency SOGI Data Action Plans, the head of each agency shall include in the agency’s annual budget submission to the Director of OMB a request for any necessary funding increases to support improved SOGI data practices.

(e) Within 180 days of the date of this order, to support agencies in appropriately collecting and using SOGI data, the Director of OMB, through the Chief Statistician of the United States, shall publish a report with recommendations for agencies on the best practices for the collection of SOGI data on Federal statistical surveys, including strategies to preserve data privacy and safety.

(f) On an annual basis, the Director of OMB, through the Chief Statistician of the United States, shall evaluate the efficacy of SOGI data practices across agencies, and shall consider whether to update reports, guidance, or directives based upon the latest evidence and research as needed.

SEC. 12. *Reporting.* Within 1 year of the date of this order:

(a) The Attorney General shall submit a report to the President through the Assistant to the President for Domestic Policy (APDP) detailing progress in implementing section 5 of this order;

(b) The Secretary of HHS shall submit a report to the President through the APDP detailing progress in implementing sections 2 through 7 and 9 through 11 of this order;

(c) The Secretary of Education shall submit a report to the President through the APDP detailing progress in implementing sections 2, 8, and 11 of this order;

(d) The Secretary of HUD shall submit a report to the President through the APDP detailing progress in implementing sections 9 and 11 of this order;

(e) The Secretary of State shall submit a report to the President through the APDP detailing progress in implementing section 3 of this order;

(f) The Director of OMB shall submit a report to the President through the APDP detailing progress in implementing sections 6 and 11 of this order; and

(g) The Director of OMB, through the Chief Statistician of the United States, shall submit a report to the President through the APDP detailing progress in implementing section 11 of this order.

SEC. 13. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) 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, or entities, its officers, employees, or agents, or any other person.

J.R. BIDEN, JR.

EX. ORD. NO. 14091. FURTHER ADVANCING RACIAL EQUITY AND SUPPORT FOR UNDERSERVED COMMUNITIES THROUGH THE FEDERAL GOVERNMENT

Ex. Ord. No. 14091, Feb. 16, 2023, 88 F.R. 10825, 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. *Policy.* On my first day in office, I signed Executive Order 13985 of January 20, 2021 (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government) [set out above], which charged the Federal Government with advancing equity for all, including communities that have long been underserved, and addressing systemic

racism in our Nation's policies and programs. By advancing equity, the Federal Government can support and empower all Americans, including the many communities in America that have been underserved, discriminated against, and adversely affected by persistent poverty and inequality. We can also deliver resources and benefits equitably to the people of the United States and rebuild trust in Government.

Over the past 2 years, through landmark legislation—including the American Rescue Plan Act of 2021 (Public Law 117-2); the bipartisan Infrastructure Investment and Jobs Act (Public Law 117-58) (Bipartisan Infrastructure Law); division A of Public Law 117-167, known as the Creating Helpful Incentives to Produce Semiconductors (CHIPS) Act of 2022; Public Law 117-169, commonly referred to as the Inflation Reduction Act of 2022; and the Bipartisan Safer Communities Act (Public Law 117-159) [see Tables for classifications]—as well as executive action, my Administration has vigorously championed racial equity and has advanced equal opportunity for underserved communities. Executive departments and agencies (agencies) have engaged in historic work assessing how their policies and programs perpetuate barriers for underserved communities and developing strategies for removing those barriers. They have made important progress incorporating an evidence-based approach to equitable policymaking and implementation, and they have crafted new action plans to advance equity. In short, my Administration has embedded a focus on equity into the fabric of Federal policymaking and service delivery. Our work to transform the way the Federal Government serves the American people has been complemented by Executive Order 14035 of June 25, 2021 (Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce) [42 U.S.C. 2000e note], which continues to help ensure that my Administration—the most diverse in our Nation's history—reflects the growing diversity of the communities we serve.

My Administration's commitment to equity has produced better decision-making and more equitable outcomes. We have delivered the most equitable economic recovery in memory, and, driven by the expanded Child Tax Credit, we cut child poverty to its lowest rate on record in 2021, including record low Black, Latino, Native American, and rural child poverty. Under my Administration, the economy has created nearly 11 million jobs, and we have brought down unemployment nationwide—in particular for Black and Latino workers, for whom unemployment rates are near 50-year lows. My Administration has provided emergency rental assistance to help millions of families stay in their homes, and we have prohibited Federal contractors from paying people with disabilities subminimum wages. We are rebuilding roads and bridges, replacing the Nation's lead pipes to provide clean drinking water for all, delivering access to affordable high-speed internet to Americans in both rural and urban communities, investing in public transit, and reconnecting communities previously cut off from economic opportunity by highways, rail lines, or disinvestment. My Administration has provided funding to improve accessibility for passengers with disabilities on rail systems and in airports, expanded health coverage for millions of Americans, and expanded home- and community-based services so more people with disabilities and older adults can live independently. We have secured billions of dollars in direct new investments for Tribal Nations and Native American communities and have directed an increase in the share of Federal Government contract spending awarded to small disadvantaged businesses. My Administration has taken action to strengthen public safety, advance criminal justice reform, correct our country's failed approach to marijuana, protect civil rights, and stand up against rising extremism and hate-fueled violence that threaten the fabric of our democracy. We have taken historic steps to advance full equality for lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) Americans, including by ending the ban on transgender service members in our

military; prohibiting discrimination based on sexual orientation, gender identity, and sex characteristics across Federal programs; and signing into law the Respect for Marriage Act (Public Law 117-228) [enacting section 1738C of Title 28, Judiciary and Judicial Procedure, and provisions set out as notes under section 7 of Title 1, General Provisions, and repealing former section 1738C of Title 28] to preserve protections for the rights of same-sex and interracial couples. My Administration is also implementing the first-ever National Strategy on Gender Equity and Equality to ensure that all people, regardless of gender, have the opportunity to realize their full potential.

These transformative achievements have advanced the work of building a more equitable Nation. Yet, members of underserved communities—many of whom have endured generations of discrimination and disinvestment—still confront significant barriers to realizing the full promise of our great Nation, and the Federal Government has a responsibility to remove these barriers. It is imperative to reject the narrow, cramped view of American opportunity as a zero-sum game. When any person or community is denied freedom, dignity, and prosperity, our entire Nation is held back. But when we lift each other up, we are all lifted up. Therefore, my Administration must take additional action across the Federal Government—in collaboration with civil society, the private sector, and State and local government—to continue the work begun with Executive Order 13985 to combat discrimination and advance equal opportunity, including by redressing unfair disparities and removing barriers to Government programs and services. Achieving racial equity and support for underserved communities is not a one-time project. It must be a multi-generational commitment, and it must remain the responsibility of agencies across the Federal Government. It therefore continues to be the policy of my Administration to advance an ambitious, whole-of-government approach to racial equity and support for underserved communities and to continuously embed equity into all aspects of Federal decision-making.

This order builds upon my previous equity-related Executive Orders by extending and strengthening equity-advancing requirements for agencies, and it positions agencies to deliver better outcomes for the American people. In doing so, the Federal Government shall continue to pursue ambitious goals to build a strong, fair, and inclusive workforce and economy; invest in communities where Federal policies have historically impeded equal opportunity—both rural and urban—in ways that mitigate economic displacement, expand access to capital, preserve housing and neighborhood affordability, root out discrimination in the housing market, and build community wealth; advance equity in health, including mental and behavioral health and well-being; deliver an equitable response to the COVID-19 pandemic; deliver environmental justice and implement the Justice40 Initiative; build prosperity in rural communities; ensure equitable procurement practices, including through small disadvantaged businesses contracting and the Buy Indian Act (25 U.S.C. 47); pursue educational equity so that our Nation's schools put every student on a path to success; improve our Nation's criminal justice system to end unjust disparities, strengthen public safety, and ensure equal justice under law; promote equity in science and root out bias in the design and use of new technologies, such as artificial intelligence; protect the right to vote and realize the promise of our Nation's civil rights laws; and promote equity and human rights around the world through our foreign policy and foreign assistance. By redoubling our efforts, the Federal Government can help bridge the gap between the world we see and the future we seek.

SEC. 2. *Establishing Equity-Focused Leadership Across the Federal Government.* (a) *Establishment of Agency Equity Teams.* The Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Attorney General, the Secretary of the Interior, the Secretary of Ag-

riculture, the Secretary of Commerce, the Secretary of Labor, the Secretary of Health and Human Services, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Secretary of Energy, the Secretary of Education, the Secretary of Veterans Affairs, the Secretary of Homeland Security, the Administrator of the Small Business Administration, the Commissioner of Social Security, the Administrator of General Services, the Administrator of the United States Agency for International Development, the Administrator of the Environmental Protection Agency, the Administrator of the National Aeronautics and Space Administration, the Director of the National Science Foundation, and the Director of the Office of Personnel Management (agency heads) shall, within 30 days of the date of this order [Feb. 16, 2023], ensure that they have in place an Agency Equity Team within their respective agencies to coordinate the implementation of equity initiatives and ensure that their respective agencies are delivering equitable outcomes for the American people.

(i) Each Agency Equity Team shall be led by a designated senior official (senior designee) charged with implementing my Administration's equity initiatives, and shall include senior officials from the office of the agency head and the agency's program, policy, civil rights, regulatory, science, technology, service delivery, financial assistance and grants, data, budget, procurement, public engagement, legal, and evaluation offices, as well as the agency's Chief Diversity Officer, to the extent applicable. Agency Equity Teams shall include a combination of competitive service employees, as defined by 5 U.S.C. 2102(a), and appointees, as defined in Executive Order 13989 of January 20, 2021 (Ethics Commitments by Executive Branch Personnel) [5 U.S.C. 7301 note], and, to the extent practicable, shall build upon and coordinate with the agency's existing structures and processes, including with the agency's environmental justice officer designated pursuant to Executive Order 14008 of January 27, 2021 (Tackling the Climate Crisis at Home and Abroad) [42 U.S.C. 4321 note], and with the senior agency official designated to coordinate with the Gender Policy Council pursuant to Executive Order 14020 of March 8, 2021 (Establishment of the White House Gender Policy Council) [42 U.S.C. 2000e note].

(ii) The senior designee at each agency shall be responsible for delivering equitable outcomes, to the extent consistent with applicable law, and shall report to the agency head.

(iii) Each Agency Equity Team shall support continued equity training and equity leadership development for staff across all levels of the agency's workforce.

(iv) Each agency's senior designee shall coordinate with the agency head, agency budget officials, and the Office of Management and Budget (OMB) to ensure that the Agency Equity Team has sufficient resources, including staffing and data collection capacity, to advance the agency's equity goals. Agency heads shall ensure that their respective Agency Equity Teams serve in an advisory and coordination role on priority agency actions.

(b) *Establishment of the White House Steering Committee on Equity.* There is hereby established a White House Steering Committee on Equity (Steering Committee), which shall be chaired by the Assistant to the President for Domestic Policy. The Steering Committee shall include senior officials representing policy councils and offices within the Executive Office of the President, as appropriate. The Steering Committee shall:

(i) coordinate Government-wide efforts to advance equity;

(ii) coordinate an annual process to consult with agency heads on their respective agencies' Equity Action Plans, established in section 3(a) of this order;

(iii) coordinate with the leadership of the White House Initiatives created by Executive Order 14031 of May 28, 2021 (Advancing Equity, Justice, and Opportunity for Asian Americans, Native Hawaiians, and Pacific Islanders) [42 U.S.C. 3501 note]; Executive Order

14041 of September 3, 2021 (White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity Through Historically Black Colleges and Universities) [20 U.S.C. 1060 note]; Executive Order 14045 of September 13, 2021 (White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Hispanics) [20 U.S.C. 3411 note]; Executive Order 14049 of October 11, 2021 (White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Native Americans and Strengthening Tribal Colleges and Universities) [20 U.S.C. 7401 note]; and Executive Order 14050 of October 19, 2021 (White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Black Americans) [20 U.S.C. 3411 note];

(iv) coordinate with the White House Environmental Justice Interagency Council to ensure that equity and environmental justice efforts are consistent and mutually reinforcing;

(v) coordinate with the White House Gender Policy Council to align efforts to advance gender equity with broader equity efforts; and

(vi) monitor agencies' activities and promote accountability to ensure that agencies undertake ambitious and measurable steps to deliver equitable outcomes for the American people.

SEC. 3. *Delivering Equitable Outcomes Through Government Policies, Programs, and Activities.* Each agency head shall support ongoing implementation of a comprehensive equity strategy that uses the agency's policy, budgetary, programmatic, service-delivery, procurement, data-collection processes, grantmaking, public engagement, research and evaluation, and regulatory functions to enable the agency's mission and service delivery to yield equitable outcomes for all Americans, including underserved communities.

(a) In September 2023, and on an annual basis thereafter, concurrent with the agencies' submission to OMB for the President's Budget, agency heads shall submit an Equity Action Plan to the Steering Committee. The Equity Action Plan shall include actions to advance equity, including under Executive Order 13985, Executive Order 13988 of January 20, 2021 (Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation) [42 U.S.C. 2000e note], Executive Order 14008, and Executive Order 14020.

(b) Each Equity Action Plan, which shall be made public, shall include:

(i) an update on the progress made by the agency on the actions, performance measures, and milestones highlighted in the preceding year's Equity Action Plan, as well as the agency's performance on the annual Environmental Justice Scorecard established pursuant to section 223 of Executive Order 14008, as applicable;

(ii) potential barriers that underserved communities may face in accessing and benefitting from the agency's policies, programs, and activities, including procurement, contracting, and grant opportunities;

(iii) strategies, including new or revised policies and programs, to address the barriers described in subsection (b)(ii) of this section and to ensure equitable access and opportunity for underserved communities; and

(iv) a description of how the agency intends to meaningfully engage with underserved communities, including through accessible, culturally and linguistically appropriate outreach, and the incorporation of the perspectives of those with lived experiences into agency policies, programs, and activities.

(c) Starting with formulation of the Fiscal Year 2025 Budget and for each subsequent year, the Director of OMB shall consider how the President's Budget can support the Equity Action Plans described in subsection (a) of this section in order to reinforce agency efforts to meaningfully engage with and invest in underserved communities and advance equitable outcomes.

(d) To ensure effective implementation of Equity Action Plans, and to strengthen the Federal Government's equitable delivery of resources and benefits to all, agency heads shall:

(i) prioritize and incorporate strategies to advance equity—including by pursuing evidence-based approaches, reducing administrative burdens, increasing access to technical assistance, and implementing equitable data practices, consistent with applicable law, into their respective:

(A) agency strategic plans developed pursuant to 5 U.S.C. 306(a);

(B) agency performance plans developed pursuant to 31 U.S.C. 1115 and 1116;

(C) portions of performance plans relating to human and capital resource requirements to achieve performance goals pursuant to 31 U.S.C. 1115(b)(5)(A);

(D) agency priority goals developed pursuant to 31 U.S.C. 1120;

(E) evaluation and evidence-building activities pursuant to the Foundations for Evidence-Based Policymaking Act of 2018 (Public Law 115-435) [see Tables for classification] and section 5 of the Presidential Memorandum of January 27, 2021 (Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking) [42 U.S.C. 6601 note];

(F) customer experience capacity assessments and action plans pursuant to section 280 of OMB Circular A-11 and Executive Order 14058 of December 13, 2021 (Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government) [31 U.S.C. 501 note];

(G) selection of items for their respective regulatory agendas and plans pursuant to sections 4(b) and (c) of Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review) [set out above], as amended;

(H) individual performance plans for senior executives consistent with 5 U.S.C. 4312, and for other senior employees consistent with 5 U.S.C. 4302; and

(I) as permitted by law, activities, acquisitions, and strategies that the Director of OMB determines to be appropriate to further the implementation of this order;

(ii) identify opportunities, as appropriate and consistent with applicable law, to incorporate into new regulations and to modify their respective agencies' regulations, internal- and public-facing guidance, and other policies to include advancing equity as part of their respective agencies' missions; and

(iii) promote coordination within and among their respective agencies concerning the elements of their respective Equity Action Plans and the recommendations of the Interagency Working Group on Equitable Data established in Executive Order 13985.

SEC. 4. *Embedding Equity into Government-wide Processes.*

(a) The Director of OMB shall consider opportunities to review and update internal processes, directives, and Government-wide guidance (such as OMB Circulars and Memoranda) to support equitable decision-making, promote equitable deployment of financial and technical assistance, and assist agencies in advancing equity, as appropriate and wherever possible.

(b) When designing, developing, acquiring, and using artificial intelligence and automated systems in the Federal Government, agencies shall do so, consistent with applicable law, in a manner that advances equity.

SEC. 5. *Delivering Equitable Outcomes in Partnership with Underserved Communities.* Underserved communities often face significant barriers and legacy exclusions in engaging with agencies and providing input on Federal policies and programs that affect them. Agencies must increase engagement with underserved communities by identifying and applying innovative approaches to improve the quality, frequency, and accessibility of engagement. Agencies shall, consistent with applicable law:

(a) conduct proactive engagement, as appropriate, with members of underserved communities—for example, through culturally and linguistically appropriate listening sessions, outreach events, or requests for information—during development and implementation of agencies' respective annual Equity Action Plans, an-

nual budget submissions, grants and funding opportunities, and other actions, including those outlined in section 3(d) of this order;

(b) collaborate with OMB, as appropriate, to identify and develop tools and methods for engagement with underserved communities, including those related to agency budget development and rulemaking;

(c) create more flexibilities, incentives, and guidelines for recipients of Federal funding and permits to proactively engage with underserved communities as projects are designed and implemented;

(d) identify funding opportunities for community- and faith-based organizations working in and with underserved communities to improve access to benefits and services for members of underserved communities; and

(e) identify and address barriers for individuals with disabilities, as well as older adults, to participate in the engagement process, including barriers to the accessibility of physical spaces, virtual platforms, presentations, systems, training, and documents.

SEC. 6. *Creating Economic Opportunity in Rural America and Advancing Urban Equitable Development.* (a) Agencies shall undertake efforts, to the extent consistent with applicable law, to help rural communities identify and access Federal resources in order to create equitable economic opportunity and advance projects that build community wealth, including by providing or supporting technical assistance; incentivizing the creation of good, high-paying union jobs in rural areas; conducting outreach to and soliciting input from rural community leaders; and contributing new resources and support to interagency programs such as the Rural Partners Network.

(b) Agencies shall undertake efforts, to the extent consistent with applicable law, to strengthen urban equitable development policies and practices, such as advancing community wealth building projects; preventing physical and economic displacement as the result of Federal investments; facilitating equitable flows of private capital, including to underserved communities; and incorporating outcome-based metrics focused on urban equitable development in the design and deployment of Federal programs and policies. To support these efforts, the Assistant to the President for Domestic Policy shall issue a policy memorandum on actions agencies can take to advance urban equitable development.

(c) Executive Order 13946 of August 24, 2020 (Targeting Opportunity Zones and Other Distressed Communities for Federal Site Locations) [85 F.R. 52879], including the amendments it made to Executive Order 12072 of August 16, 1978 (Federal Space Management) [40 U.S.C. 121 note], and to Executive Order 13006 of May 21, 1996 (Locating Federal Facilities on Historic Properties in Our Nation's Central Cities) [40 U.S.C. 3306 note], is revoked. Executive Orders 12072 and 13006 are reinstated as they were prior to issuance of Executive Order 13946. Executive Order 13853 of December 12, 2018 (Establishing the White House Opportunity and Revitalization Council) [42 U.S.C. 5301 note], is also revoked. All agencies shall, consistent with applicable law, including the Administrative Procedure Act (5 U.S.C. 551 et seq.), consider taking prompt action to revoke any rules, regulations, guidelines, or policies implementing these Presidential actions that are inconsistent with the provisions of this order. Further, agencies shall ensure that planning for new Federal facilities or new leases includes consideration of neighborhoods and locations that are near existing employment centers and are accessible to a broad range of the region's workforce and population by public transit (where it exists), consistent with Executive Order 12072. Agencies shall identify displacement risks associated with Federal facility siting and development and shall engage with any community that may be affected, along with appropriate regional and local officials, to mitigate those displacement risks.

SEC. 7. *Advancing Equitable Procurement.* (a) The Government-wide goal for Federal procurement dollars



awarded to small business concerns owned and controlled by socially and economically disadvantaged individuals (SDBs) shall be 15 percent in Fiscal Year 2025. In furtherance of this goal, OMB shall set a Government-wide SDB goal for Fiscal Year 2024. The Small Business Administration shall, on an annual basis, work with each agency to establish an agency-specific goal that, in aggregate, supports the Government-wide goal. Further, agencies shall undertake efforts to increase contracting opportunities for all other small business concerns as described in the Small Business Act (15 U.S.C. ch. 14A) [§631 et seq.].

(b) Agencies shall expand procurement opportunities for SDBs through Federal financial assistance, consistent with applicable law, under the Bipartisan Infrastructure Law, the Inflation Reduction Act of 2022, and other Federal financial assistance programs.

SEC. 8. *Affirmatively Advancing Civil Rights.* Agencies shall comprehensively use their respective civil rights authorities and offices to prevent and address discrimination and advance equity for all, including to increase the effects of civil rights enforcement and to increase public awareness of civil rights principles, consistent with applicable law. Agencies shall consider opportunities to:

(a) further elevate their respective civil rights offices, including by directing that their most senior civil rights officer report to the agency head;

(b) ensure that their respective civil rights offices are consulted on decisions regarding the design, development, acquisition, and use of artificial intelligence and automated systems;

(c) increase coordination, communication, and engagement with community-based organizations and civil rights organizations;

(d) increase the capacity, including staffing capacity, of their respective civil rights offices, in coordination with OMB;

(e) improve accessibility for people with disabilities and improve language access services to ensure that all communities can engage with agencies' respective civil rights offices, including by fully implementing Executive Order 13166 of August 11, 2000 (Improving Access to Services for Persons with Limited English Proficiency) [42 U.S.C. 2000d-1 note]; and

(f) prevent and remedy discrimination, including by protecting the public from algorithmic discrimination.

SEC. 9. *Further Advancing Equitable Data Practices.* The Office of Science and Technology Policy (OSTP) National Science and Technology Council Subcommittee on Equitable Data shall, to the extent consistent with applicable law, coordinate the implementation of relevant recommendations of the Interagency Working Group on Equitable Data established in Executive Order 13985. The Director of OSTP shall provide a report on the Subcommittee's progress to the Steering Committee every January and July.

SEC. 10. *Definitions.* For purposes of this order:

(a) The term “equity” means the consistent and systematic treatment of all individuals in a fair, just, and impartial manner, including individuals who belong to communities that often have been denied such treatment, such as Black, Latino, Indigenous and Native American, Asian American, Native Hawaiian, and Pacific Islander persons and other persons of color; members of religious minorities; women and girls; LGBTQI+ persons; persons with disabilities; persons who live in rural areas; persons who live in United States Territories; persons otherwise adversely affected by persistent poverty or inequality; and individuals who belong to multiple such communities.

(b) The term “underserved communities” refers to those populations as well as geographic communities that have been systematically denied the opportunity to participate fully in aspects of economic, social, and civic life, as defined in Executive Orders 13985 and 14020.

(c) The term “equitable development” refers to a positive development approach that employs processes, policies, and programs that aim to meet the needs of all communities and community members, with a par-

ticular focus on underserved communities and populations.

(d) The term “community wealth building” refers to an approach to economic development that strengthens the capacities of underserved communities by ensuring institutions and local economies have ownership models with greater community participation and control. This results in upgrading skills, growing entrepreneurs, increasing incomes, expanding net asset ownership, and fostering social well-being.

(e) The term “equitable data” refers to data that allow for rigorous assessment of the extent to which Government programs and policies yield consistently fair, just, and impartial treatment of all individuals.

(f) The term “algorithmic discrimination” refers to instances when automated systems contribute to unjustified different treatment or impacts disfavoring people based on their actual or perceived race, color, ethnicity, sex (including based on pregnancy, childbirth, and related conditions; gender identity; intersex status; and sexual orientation), religion, age, national origin, limited English proficiency, disability, veteran status, genetic information, or any other classification protected by law.

SEC. 11. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) Agencies not covered by section 2(a) of this order, including independent agencies, are strongly encouraged to comply with the provisions of this order.

(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, or entities, its officers, employees, or agents, or any other person.

J.R. BIDEN, JR.

#### EX. ORD. NO. 14094. MODERNIZING REGULATORY REVIEW

Ex. Ord. No. 14094, Apr. 6, 2023, 88 F.R. 21879, 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 modernize the regulatory process to advance policies that promote the public interest and address national priorities, it is hereby ordered as follows:

SECTION 1. *Improving the Effectiveness of the Regulatory Review Process.* (a) This order supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review) [set out above], and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review) [set out above]. Any provisions of those orders not amended in this order shall remain in effect. This order also further implements the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review) [86 F.R. 7223].

(b) [Amended Ex. Ord. No. 12866, set out above]

SEC. 2. *Affirmative Promotion of Inclusive Regulatory Policy and Public Participation.* (a) To the extent practicable and consistent with applicable law, regulatory actions should be informed by input from interested or affected communities; State, local, territorial, and Tribal officials and agencies; interested or affected parties in the private sector and other regulated entities; those with expertise in relevant disciplines; and the public as a whole. Opportunities for public participation shall be designed to promote equitable and meaningful participation by a range of interested or affected parties, including underserved communities.

(b) To inform the regulatory planning process, executive departments and agencies (agencies) shall, to the extent practicable and consistent with applicable law:

(i) clarify opportunities for interested persons to petition for the issuance, amendment, or repeal of a rule under 5 U.S.C. 553(e);

(ii) endeavor to respond to such petitions efficiently, in light of agency judgments of available resources and priorities; and

(iii) maintain, subject to available resources, a log of such petitions received, and share with the Administrator of the Office of Information and Regulatory Affairs (OIRA), upon request, information on the status of recently resolved and pending petitions.

(c) To inform the development of regulatory agendas and plans, agencies shall endeavor, as practicable and appropriate, to proactively engage interested or affected parties, including members of underserved communities; consumers; workers and labor organizations; program beneficiaries; businesses and regulated entities; those with expertise in relevant disciplines; and other parties that may be interested or affected. These efforts shall incorporate, to the extent consistent with applicable law, best practices for information accessibility and engagement with interested or affected parties, including, as practicable and appropriate, community-based outreach; outreach to organizations that work with interested or affected parties; use of agency field offices; use of alternative platforms and media for engaging the public; and expansion of public capacity for engaging in the rulemaking process.

(d) The Administrator of OIRA, in consultation with relevant agencies, as appropriate, shall consider guidance or tools to modernize the notice-and-comment process, including through technological changes. These reforms may include guidance or tools to address mass comments, computer-generated comments (such as those generated through artificial intelligence), and falsely attributed comments.

(e) Section 6(b)(4) of Executive Order 12866 establishes a process for persons not employed by the executive branch of the Federal Government to request meetings with OIRA officials regarding the substance of regulatory actions under OIRA review. Public trust in the regulatory process depends on protecting regulatory development from the risk or appearance of disparate and undue influence, including in the OIRA review process. In order to reduce this risk or appearance, the Administrator of OIRA shall, to the extent practicable and consistent with applicable law:

(i) Provide information to facilitate the initiation of meeting requests regarding regulatory actions under OIRA review from potential participants not employed by the executive branch of the Federal Government who have not historically requested such meetings, including those from underserved communities; and

(ii) Implement reforms to improve procedures and policies with respect to OIRA's consideration of meeting requests initiated by persons not employed by the executive branch of the Federal Government regarding the substance of regulatory actions under OIRA review to further the efficiency and effectiveness of such meetings. These reforms may include:

(A) efforts to ensure access for meeting requesters who have not historically requested such meetings;

(B) discouraging meeting requests that are duplicative of earlier meetings with OIRA regarding the same regulatory action by the same meeting requesters;

(C) consolidation of meetings by requester, subject matter, or any other consistently applied factors deemed appropriate to improve efficiency and effectiveness; and

(D) disclosure of data in an open, machine-readable, and accessible format that includes the dates and names of individuals involved in all substantive meetings and the subject matter discussed during such meetings, as required by section 6(b)(4)(C)(iii) of Executive Order 12866, so as to better facilitate transparency and analysis.

**SEC. 3. Improving Regulatory Analysis.** (a) Regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statu-

tory objectives, and are consistent with Executive Order 12866, Executive Order 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law.

(b) Within 1 year of the date of this order [Apr. 6, 2023], the Director of the Office of Management and Budget, through the Administrator of OIRA and in consultation with the Chair of the Council of Economic Advisers and representatives of relevant agencies, shall issue revisions to the Office of Management and Budget's Circular A-4 of September 17, 2003 (Regulatory Analysis), in order to implement the policy set forth in subsection (a) of this section.

**SEC. 4. General Provisions.** (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) 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, or entities, its officers, employees, or agents, or any other person.

J.R. BIDEN, JR.

#### REGULATORY REFORM—WAIVER OF PENALTIES AND REDUCTION OF REPORTS

Memorandum of President of the United States, Apr. 21, 1995, 60 F.R. 20621, provided:

Memorandum for  
The Secretary of State  
The Secretary of the Treasury  
The Secretary of Defense  
The Attorney General  
The Secretary of the Interior  
The Secretary of Agriculture  
The Secretary of Commerce  
The Secretary of Labor  
The Secretary of Health and Human Services  
The Secretary of Housing and Urban Development  
The Secretary of Transportation  
The Secretary of Energy  
The Secretary of Education  
The Secretary of Veterans Affairs  
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 semiannually 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 non-delegable.

(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.

[References to the Director of the Federal Emergency Management Agency to be considered to refer and apply to the Administrator of the Federal Emergency Management Agency, see section 612(c) of Pub. L. 109-295, set out as a note under section 313 of Title 6, Domestic Security.]

#### PLAIN LANGUAGE IN GOVERNMENT WRITING

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 my 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.

#### PREEMPTION

Memorandum of President of the United States, May 20, 2009, 74 F.R. 24693, provided:

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 critical, 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 an 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 also included in the codified regulation.

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.

#### REGULATORY COMPLIANCE

Memorandum of President of the United States, Jan. 18, 2011, 76 F.R. 3825, provided:

Memorandum for the Heads of Executive Departments and Agencies

My Administration is committed to enhancing effectiveness and efficiency in Government. Pursuant to the Memorandum on Transparency and Open Government, issued on January 21, 2009, executive departments and agencies (agencies) have been working steadily to promote accountability, encourage collaboration, and provide information to Americans about their Government’s activities.

To that end, much progress has been made toward strengthening our democracy and improving how Government operates. In the regulatory area, several agencies, such as the Department of Labor and the Environmental Protection Agency, have begun to post online (at [ogesdw.dol.gov](http://ogesdw.dol.gov) and [www.epa-echo.gov](http://www.epa-echo.gov)), and to make

readily accessible to the public, information concerning their regulatory compliance and enforcement activities, such as information with respect to administrative inspections, examinations, reviews, warnings, citations, and revocations (but excluding law enforcement or otherwise sensitive information about ongoing enforcement actions).

Greater disclosure of regulatory compliance information fosters fair and consistent enforcement of important regulatory obligations. Such disclosure is a critical step in encouraging the public to hold the Government and regulated entities accountable. Sound regulatory enforcement promotes the welfare of Americans in many ways, by increasing public safety, improving working conditions, and protecting the air we breathe and the water we drink. Consistent regulatory enforcement also levels the playing field among regulated entities, ensuring that those that fail to comply with the law do not have an unfair advantage over their law-abiding competitors. Greater agency disclosure of compliance and enforcement data will provide Americans with information they need to make informed decisions. Such disclosure can lead the Government to hold itself more accountable, encouraging agencies to identify and address enforcement gaps.

Accordingly, I direct the following:

*First*, agencies with broad regulatory compliance and administrative enforcement responsibilities, within 120 days of this memorandum, to the extent feasible and permitted by law, shall develop plans to make public information concerning their regulatory compliance and enforcement activities accessible, downloadable, and searchable online. In so doing, agencies should prioritize making accessible information that is most useful to the general public and should consider the use of new technologies to allow the public to have access to real-time data. The independent agencies are encouraged to comply with this directive.

*Second*, the Federal Chief Information Officer and the Chief Technology Officer shall work with appropriate counterparts in each agency to make such data available online in searchable form, including on centralized platforms such as [data.gov](http://data.gov), in a manner that facilitates easy access, encourages cross-agency comparisons, and engages the public in new and creative ways of using the information.

*Third*, the Federal Chief Information Officer and the Chief Technology Officer, in coordination with the Director of the Office of Management and Budget (OMB) and their counterparts in each agency, shall work to explore how best to generate and share enforcement and compliance information across the Government, consistent with law. Such data sharing can assist with agencies’ risk-based approaches to enforcement: A lack of compliance in one area by a regulated entity may indicate a need for examination and closer attention by another agency. Efforts to share data across agencies, where appropriate and permitted by law, may help to promote flexible and coordinated enforcement regimes.

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. Nothing in this memorandum shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

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

BARACK OBAMA.

#### REGULATORY FLEXIBILITY, SMALL BUSINESS, AND JOB CREATION

Memorandum of President of the United States, Jan. 18, 2011, 76 F.R. 3827, provided:

Memorandum for the Heads of Executive Departments and Agencies

Small businesses play an essential role in the American economy; they help to fuel productivity, economic growth, and job creation. More than half of all Americans working in the private sector either are employed by a small business or own one. During a recent 15-year period, small businesses created more than 60 percent of all new jobs in the Nation.

Although small businesses and new companies provide the foundations for economic growth and job creation, they have faced severe challenges as a result of the recession. One consequence has been the loss of significant numbers of jobs.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, establishes a deep national commitment to achieving statutory goals without imposing unnecessary burdens on the public. The RFA emphasizes the importance of recognizing “differences in the scale and resources of regulated entities” and of considering “alternative regulatory approaches . . . which minimize the significant economic impact of rules on small businesses, small organizations, and small governmental jurisdictions.” 5 U.S.C. 601 note.

To promote its central goals, the RFA imposes a series of requirements designed to ensure that agencies produce regulatory flexibility analyses that give careful consideration to the effects of their regulations on small businesses and explore significant alternatives in order to minimize any significant economic impact on small businesses. Among other things, the RFA requires that when an agency proposing a rule with such impact is required to provide notice of the proposed rule, it must also produce an initial regulatory flexibility analysis that includes discussion of significant alternatives. Significant alternatives include the use of performance rather than design standards; simplification of compliance and reporting requirements for small businesses; establishment of different timetables that take into account the resources of small businesses; and exemption from coverage for small businesses.

Consistent with the goal of open government, the RFA also encourages public participation in and transparency about the rulemaking process. Among other things, the statute requires agencies proposing rules with a significant economic impact on small businesses to provide an opportunity for public comment on any required initial regulatory flexibility analysis, and generally requires agencies promulgating final rules with such significant economic impact to respond, in a final regulatory flexibility analysis, to comments filed by the Chief Counsel for Advocacy of the Small Business Administration.

My Administration is firmly committed to eliminating excessive and unjustified burdens on small businesses, and to ensuring that regulations are designed with careful consideration of their effects, including their cumulative effects, on small businesses. Executive Order 12866 of September 30, 1993, as amended, states, “Each agency shall tailor its regulations to impose the least burden on society, including individuals, businesses of differing sizes, and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.”

In the current economic environment, it is especially important for agencies to design regulations in a cost-effective manner consistent with the goals of promoting economic growth, innovation, competitiveness, and job creation.

Accordingly, I hereby direct executive departments and agencies and request independent agencies, when initiating rulemaking that will have a significant economic impact on a substantial number of small entities, to give serious consideration to whether and how it is appropriate, consistent with law and regulatory objectives, to reduce regulatory burdens on small businesses, through increased flexibility. As the RFA recognizes, such flexibility may take many forms, including:

- extended compliance dates that take into account the resources available to small entities;

- performance standards rather than design standards;

- simplification of reporting and compliance requirements (as, for example, through streamlined forms and electronic filing options);

- different requirements for large and small firms; and

- partial or total exemptions.

I further direct that whenever an executive agency chooses, for reasons other than legal limitations, not to provide such flexibility in a proposed or final rule that is likely to have a significant economic impact on a substantial number of small entities, it should explicitly justify its decision not to do so in the explanation that accompanies that proposed or final rule.

Adherence to these requirements is designed to ensure that regulatory actions do not place unjustified economic burdens on small business owners and other small entities. If regulations are preceded by careful analysis, and subjected to public comment, they are less likely to be based on intuition and guesswork and more likely to be justified in light of a clear understanding of the likely consequences of alternative courses of action. With that understanding, agencies will be in a better position to protect the public while avoiding excessive costs and paperwork.

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. Nothing in this memorandum shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

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

BARACK OBAMA.

#### MODERNIZING FEDERAL INFRASTRUCTURE REVIEW AND PERMITTING REGULATIONS, POLICIES, AND PROCEDURES

Memorandum of President of the United States, May 17, 2013, 78 F.R. 30733, provided:

Memorandum for the Heads of Executive Departments and Agencies

Reliable, safe, and resilient infrastructure is the backbone of an economy built to last. Investing in our Nation’s infrastructure serves as an engine for job creation and economic growth, while bringing immediate and long-term economic benefits to communities across the country. The quality of our infrastructure is critical to maintaining our Nation’s competitive edge in a global economy and to securing our path to energy independence. In taking steps to improve our infrastructure, we must remember that the protection and continued enjoyment of our Nation’s environmental, historical, and cultural resources remain an equally important driver of economic opportunity, resiliency, and quality of life.

Through the implementation of Executive Order 13604 of March 22, 2012 (Improving Performance of Federal Permitting and Review of Infrastructure Projects), executive departments and agencies (agencies) have achieved better outcomes for communities and the environment and realized substantial time savings in review and permitting by prioritizing the deployment of resources to specific sectors and projects, and by implementing best-management practices.

These best-management practices include: integrating project reviews among agencies with permitting responsibilities; ensuring early coordination with other Federal agencies, as well as with State, local, and tribal governments; strategically engaging with, and conducting outreach to, stakeholders; employing project-planning processes and individual project designs that consider local and regional ecological planning goals; utilizing landscape- and watershed-level

mitigation practices; promoting the sharing of scientific and environmental data in open-data formats to minimize redundancy, facilitate informed project planning, and identify data gaps early in the review and permitting process; promoting performance-based permitting and regulatory approaches; expanding the use of general permits where appropriate; improving transparency and accountability through the electronic tracking of review and permitting schedules; and applying best environmental and cultural practices as set forth in existing statutes and policies.

Based on the process and policy improvements that are already being implemented across the Federal Government, we can continue to modernize the Federal Government's review and permitting of infrastructure projects and reduce aggregate timelines for major infrastructure projects by half, while also improving outcomes for communities and the environment by institutionalizing these best-management practices, and by making additional improvements to enhance efficiencies in the application of regulations and processes involving multiple agencies—including expanding the use of web-based techniques for sharing project-related information, facilitating targeted and relevant environmental reviews, and providing meaningful opportunities for public input through stakeholder engagement.

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to advance the goal of cutting aggregate timelines for major infrastructure projects in half, while also improving outcomes for communities and the environment, I hereby direct the following:

**SECTION 1. *Modernization of Review and Permitting Regulations, Policies, and Procedures.*** (a) The Steering Committee on Federal Infrastructure Permitting and Review Process Improvement (Steering Committee), established by Executive Order 13604, shall work with the Chief Performance Officer (CPO), in coordination with the Office of Information and Regulatory Affairs (OIRA) and the Council on Environmental Quality (CEQ), to modernize Federal infrastructure review and permitting regulations, policies, and procedures to significantly reduce the aggregate time required by the Federal Government to make decisions in the review and permitting of infrastructure projects, while improving environmental and community outcomes.

This modernization shall build upon and incorporate reforms identified by agencies pursuant to Executive Order 13604 and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review).

(b) Through an interagency process, coordinated by the CPO and working closely with CEQ and OIRA, the Steering Committee shall conduct the following modernization efforts:

(i) Within 60 days of the date of this memorandum, the Steering Committee shall identify and prioritize opportunities to modernize key regulations, policies, and procedures—both agency-specific and those involving multiple agencies—to reduce the aggregate project review and permitting time, while improving environmental and community outcomes.

(ii) Within 120 days of the date of this memorandum, the Steering Committee shall prepare a plan for a comprehensive modernization of Federal review and permitting for infrastructure projects based on the analysis required by subsection (b)(i) of this section that outlines specific steps for re-engineering both the intra- and inter-agency review and approval processes based on experience implementing Executive Order 13604. The plan shall identify proposed actions and associated timelines to:

(1) institutionalize or expand best practices or process improvements that agencies are already implementing to improve the efficiency of reviews, while improving outcomes for communities and the environment;

(2) revise key review and permitting regulations, policies, and procedures (both agency-specific and Government-wide);

(3) identify high-performance attributes of infrastructure projects that demonstrate how the projects seek to advance existing statutory and policy objectives and how they lead to improved outcomes for communities and the environment, thereby facilitating a faster and more efficient review and permitting process;

(4) create process efficiencies, including additional use of concurrent and integrated reviews;

(5) identify opportunities to use existing share-in-cost authorities and other non-appropriated funding sources to support early coordination and project review;

(6) effectively engage the public and interested stakeholders;

(7) expand coordination with State, local, and tribal governments;

(8) strategically expand the use of information technology (IT) tools and identify priority areas for IT investment to replace paperwork processes, enhance effective project siting decisions, enhance interagency collaboration, and improve the monitoring of project impacts and mitigation commitments; and

(9) identify improvements to mitigation policies to provide project developers with added predictability, facilitate landscape-scale mitigation based on conservation plans and regional environmental assessments, facilitate interagency mitigation plans where appropriate, ensure accountability and the long-term effectiveness of mitigation activities, and utilize innovative mechanisms where appropriate.

The modernization plan prepared pursuant to this section shall take into account funding and resource constraints and shall prioritize implementation accordingly.

(c) Infrastructure sectors covered by the modernization effort include: surface transportation, such as roadways, bridges, railroads, and transit; aviation; ports and related infrastructure, including navigational channels; water resources projects; renewable energy generation; conventional energy production in high-demand areas; electricity transmission; broadband; pipelines; storm water infrastructure; and other sectors as determined by the Steering Committee.

(d) The following agencies or offices and their relevant sub-divisions shall engage in the modernization effort:

- (i) the Department of Defense;
- (ii) the Department of the Interior;
- (iii) the Department of Agriculture;
- (iv) the Department of Commerce;
- (v) the Department of Transportation;
- (vi) the Department of Energy;
- (vii) the Department of Homeland Security;
- (viii) the Environmental Protection Agency;
- (ix) the Advisory Council on Historic Preservation;
- (x) the Department of the Army;
- (xi) the Council on Environmental Quality; and
- (xii) such other agencies or offices as the CPO may invite to participate.

**SEC. 2. *General Provisions.*** (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals, or the regulatory review process.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum shall be implemented consistent with Executive Order 12898 of February 11, 1994 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations), Executive Order 13175 of November 6, 2000 (Consultation and Coordination with Indian Tribal Governments), and

my memorandum of November 5, 2009 (Tribal Consultation).

(d) 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.

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

BARACK OBAMA.

EXPANDING FEDERAL SUPPORT FOR PREDEVELOPMENT ACTIVITIES FOR NONFEDERAL DOMESTIC INFRASTRUCTURE ASSETS

Memorandum of President of the United States, Jan. 16, 2015, 80 F.R. 3455, provided:

Memorandum for the Heads of Executive Departments and Agencies

The United States is significantly underinvesting in both the maintenance of existing public infrastructure and the development of new infrastructure projects. While there is no replacement for adequate public funding, innovative financing options and increased collaboration between the private and public sectors can help to increase overall investment in infrastructure.

However, a major challenge for innovative infrastructure projects, whether using emerging technologies or alternative financing, is the lack of funding for the phases of infrastructure project development that precede actual construction. Infrastructure projects require upfront costs, commonly known as “predevelopment” costs, for activities such as project and system planning, economic impact analyses, preliminary engineering assessments, and environmental review. Although only accounting for a small percentage of total costs, predevelopment activities have considerable influence on which projects will move forward, where and how they will be built, who will fund them, and who will benefit from them. Yet, in light of factors like fiscal constraints, the extent of overall needs, and risk aversion, State, local, and tribal governments tend to focus scarce resources on constructing and developing conventional projects and addressing their most critical infrastructure needs, thereby underinvesting in predevelopment.

Greater attention to the predevelopment phase could yield a range of benefits—for example, providing the opportunity to develop longer-term, more innovative, and more complex infrastructure projects and facilitating assessment of a range of financing approaches, including public-private partnerships. Additional investment in predevelopment costs also may enable State, local, and tribal governments to utilize innovations in infrastructure design and emerging technologies, reduce long-term costs to infrastructure project users, and provide other benefits, such as improved environmental performance and enhanced resilience to climate change.

The Federal Government can meaningfully expand opportunities for public-private collaboration, encourage more transformational projects, and improve project outcomes by encouraging Federal investment in robust predevelopment activities and providing other forms of support, such as technical assistance, to communities during the predevelopment phase.

Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby direct the following:

**SECTION 1. Policy.** It shall be the policy of the Federal Government for all executive departments and agencies (agencies) that provide grants, technical assistance, and other forms of support for nonfederal domestic infrastructure assets, or regulate the development of these infrastructure assets, to actively support nonfederal predevelopment activities with all available tools, including grants, technical assistance, and regulatory changes, to the extent permitted by law and con-

sistent with agency mission. Agencies shall seek to make predevelopment funding and support available, as permitted by law and consistent with agency mission and where it is in the public interest and does not supplant existing public investment, to encourage opportunities for private sector investment. Agencies shall pay particular attention to predevelopment activities in sectors where State, local, and tribal governments have traditionally played a significant role, such as surface transportation, drinking water, sewage and storm water management systems, landside ports, and social infrastructure like schools and community facilities.

**SEC. 2. Definitions.** For the purposes of this memorandum:

(a) “Predevelopment activities” means activities that provide decisionmakers with the opportunity to identify and assess potential infrastructure projects and modifications to existing infrastructure projects, and to advance those projects from the conceptual phase to actual construction. Predevelopment activities include:

(i) project planning, feasibility studies, economic assessments and cost-benefit analyses, and public benefit studies and value-for-money analyses;

(ii) design and engineering;

(iii) financial planning (including the identification of funding and financing options);

(iv) permitting, environmental review, and regulatory processes;

(v) assessment of the impacts of potential projects on the area, including the effect on communities, the environment, the workforce, and wages and benefits, as well as assessment of infrastructure vulnerability and resilience to climate change and other risks; and

(vi) public outreach and community engagement.

(b) “Predevelopment funding” means funding for predevelopment activities and associated costs, such as flexible staff, external advisors, convening potential investment partners, and associated legal costs directly related to predevelopment activities.

**SEC. 3. Federal Action to Support Predevelopment Activities.** Agencies shall take the following actions to support predevelopment activities:

(a) the Department of Commerce, through the Economic Development Administration’s Public Works grants and Economic Adjustment Assistance grants, and consistent with the programs’ mission and goals, shall take steps to increase assistance for the predevelopment phase of infrastructure projects;

(b) the Department of Transportation shall develop guidance to clarify where predevelopment activities are eligible for funding through its programs. To further encourage early collaboration in the project development process, the Department of Transportation shall also clarify options for providing early feedback into environmental review processes;

(c) the Department of Homeland Security shall clarify for grantees where predevelopment funding is available through the Hazard Mitigation Grant Program;

(d) the Department of Housing and Urban Development shall clarify for grantees how the Community Development Block Grant program and other Federal funding sources can be used for predevelopment activities;

(e) the Department of Agriculture shall develop guidance to clarify where predevelopment activities are eligible for funding through its programs, including grants for water and waste projects pursuant to 7 CFR 1780.1 et seq., the Special Evaluation Assistance for Rural Communities and Households Program, the Community Facilities Grant program, and the Watershed and Flood Prevention Operations Program. To encourage innovative predevelopment work, the Department of Agriculture shall also train Water and Environmental Programs field staff on predevelopment best practices and prioritize predevelopment in the Department of Agriculture’s project development process; and

(f) the other members of the Working Group established in section 3 of my memorandum of July 17, 2014

(Expanding Public-Private Collaboration on Infrastructure Development and Financing), shall take such steps as appropriate to clarify program eligibilities related to predevelopment activities for nonfederal domestic infrastructure assets.

SEC. 4. *Implementation, Public Education, and Best Practices.* The Departments of Agriculture, Commerce, Labor, Housing and Urban Development, Transportation, Energy, and Homeland Security, and the Environmental Protection Agency shall develop plans for implementing the requirements of this memorandum, providing technical assistance to nonfederal actors engaged in predevelopment activities, and educating grantees and the public on the benefits of predevelopment and the Federal resources available for these activities. These agencies shall also work together to develop a guide for nonfederal actors undertaking nonfederal predevelopment activities that includes best practices on how to evaluate and compare traditional and alternative financing strategies. No later than 60 days after the date of this memorandum, these agencies shall provide these plans and the best practice guide to the Director of the National Economic Council. Subsequently, these agencies shall provide regular updates to the Director of the National Economic Council on their progress in increasing support for predevelopment activities.

SEC. 5. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) 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.

(c) The Secretary of Transportation is hereby 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,<sup>1</sup> 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.

(d) 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.

(Added Pub. L. 96-354, §3(a), Sept. 19, 1980, 94 Stat. 1166.)

## Statutory Notes and Related Subsidiaries

### EFFECTIVE DATE

Section effective Jan. 1, 1981, see section 4 of Pub. L. 96-354, set out as a note under section 601 of this title.

## § 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 extent that such interpretative rules impose on small entities a collection of information requirement.

(b) Each initial regulatory flexibility analysis required under this section shall contain—

(1) a description of the reasons why action by the agency is being considered;

(2) a succinct statement of the objectives of, and legal basis for, the proposed rule;

(3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

(4) a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

(5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.

(c) Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant

<sup>1</sup> So in original. The comma probably should be a semicolon.



economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as—

- (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
- (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
- (3) the use of performance rather than design standards; and
- (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

(d)(1) For a covered agency, as defined in section 609(d)(2), each initial regulatory flexibility analysis shall include a description of—

- (A) any projected increase in the cost of credit for small entities;
- (B) any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any increase in the cost of credit for small entities; and
- (C) advice and recommendations of representatives of small entities relating to issues described in subparagraphs (A) and (B) and subsection (b).

(2) A covered agency, as defined in section 609(d)(2), shall, for purposes of complying with paragraph (1)(C)—

- (A) identify representatives of small entities in consultation with the Chief Counsel for Advocacy of the Small Business Administration; and
- (B) collect advice and recommendations from the representatives identified under subparagraph (A) relating to issues described in subparagraphs (A) and (B) of paragraph (1) and subsection (b).

(Added Pub. L. 96-354, §3(a), Sept. 19, 1980, 94 Stat. 1166; amended Pub. L. 104-121, title II, §241(a)(1), Mar. 29, 1996, 110 Stat. 864; Pub. L. 111-203, title X, §1100G(b), July 21, 2010, 124 Stat. 2112.)

#### Editorial Notes

##### AMENDMENTS

2010—Subsec. (d). Pub. L. 111-203 added subsec. (d).  
 1996—Subsec. (a). Pub. L. 104-121, §241(a)(1)(B), inserted at end “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 extent that such interpretative rules impose on small entities a collection of information requirement.”

Pub. L. 104-121, §241(a)(1)(A), which directed the insertion of “, or publishes a notice of proposed rulemaking for an interpretative rule involving the internal revenue laws of the United States” after “proposed rule” was executed by making the insertion where those words appeared in first sentence to reflect the probable intent of Congress.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the designated transfer date, see section 1100H of Pub. L. 111-203, set out as a note under section 552a of this title.

##### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-121 effective on expiration of 90 days after Mar. 29, 1996, but inapplicable to interpretative rules for which a notice of proposed rulemaking was published prior to Mar. 29, 1996, see section 245 of Pub. L. 104-121, set out as a note under section 601 of this title.

##### EFFECTIVE DATE

Section effective Jan. 1, 1981, except that the requirements of this section applicable only to rules for which a notice of proposed rulemaking was issued on or after Jan. 1, 1981, see section 4 of Pub. L. 96-354, set out as a note under section 601 of this title.

#### § 604. Final regulatory flexibility analysis

(a) When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, or promulgates a final interpretative rule involving the internal revenue laws of the United States as described in section 603(a), the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain—

- (1) a statement of the need for, and objectives of, the rule;
- (2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;
- (3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments;
- (4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;
- (5) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

(6)<sup>1</sup> a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected; and

(6)<sup>1</sup> for a covered agency, as defined in section 609(d)(2), a description of the steps the agency has taken to minimize any additional cost of credit for small entities.

(b) The agency shall make copies of the final regulatory flexibility analysis available to

(6)<sup>1</sup> for a covered agency, as defined in section 609(d)(2), a description of the steps the agency has taken to minimize any additional cost of credit for small entities.

(b) The agency shall make copies of the final regulatory flexibility analysis available to

<sup>1</sup> So in original. Two pars. (6) have been enacted.

members of the public and shall publish in the Federal Register such analysis or a summary thereof.

(Added Pub. L. 96-354, §3(a), Sept. 19, 1980, 94 Stat. 1167; amended Pub. L. 104-121, title II, §241(b), Mar. 29, 1996, 110 Stat. 864; Pub. L. 111-203, title X, §1100G(c), July 21, 2010, 124 Stat. 2113; Pub. L. 111-240, title I, §1601, Sept. 27, 2010, 124 Stat. 2551.)

### Editorial Notes

#### AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111-240, §1601(1), struck out “succinct” before “statement”.

Subsec. (a)(2). Pub. L. 111-240, §1601(2), substituted “statement” for “summary” before “of the significant issues” and “of the assessment”.

Subsec. (a)(3), (4). Pub. L. 111-240, §1601(3), (4), added par. (3) and redesignated former par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 111-240, §1601(3), redesignated par. (4) as (5). Former par. (5), relating to description of steps taken to minimize the significant economic impact on small entities, redesignated (6).

Pub. L. 111-203, §1100G(c)(1), which directed amendment of par. (4) by striking “and” at the end, was executed to par. (5) to reflect the probable intent of Congress and the intervening redesignation of par. (4) as (5) by Pub. L. 111-240, §1601(3). See above.

Subsec. (a)(6). Pub. L. 111-240, §1601(3), redesignated par. (5), relating to description of steps taken to minimize the significant economic impact on small entities, as (6).

Pub. L. 111-203, §1100G(c)(3), added par. (6) relating to description of steps taken to minimize any additional cost of credit for small entities.

Pub. L. 111-203, §1100G(c)(2), which directed amendment of par. (5) by substituting “; and” for period at end, was executed to par. (6), relating to description of steps taken to minimize the significant economic impact on small entities, to reflect the probable intent of Congress and the intervening redesignation of par. (5) as (6) by Pub. L. 111-240, §1601(3). See above.

1996—Subsec. (a). Pub. L. 104-121, §241(b)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain—

“(1) a succinct statement of the need for, and the objectives of, the rule;

“(2) a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; and

“(3) a description of each of the significant alternatives to the rule consistent with the stated objectives of applicable statutes and designed to minimize any significant economic impact of the rule on small entities which was considered by the agency, and a statement of the reasons why each one of such alternatives was rejected.”

Subsec. (b). Pub. L. 104-121, §241(b)(2), substituted “such analysis or a summary thereof.” for “at the time of publication of the final rule under section 553 of this title a statement describing how the public may obtain such copies.”

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the designated transfer date, see section 1100H of Pub. L. 111-203, set out as a note under section 552a of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-121 effective on expiration of 90 days after Mar. 29, 1996, but inapplicable to interpretative rules for which a notice of proposed rulemaking was published prior to Mar. 29, 1996, see section 245 of Pub. L. 104-121, set out as a note under section 601 of this title.

#### EFFECTIVE DATE

Section effective Jan. 1, 1981, except that the requirements of this section applicable only to rules for which a notice of proposed rulemaking was issued on or after Jan. 1, 1981, see section 4 of Pub. L. 96-354, set out as a note under section 601 of this title.

### § 605. Avoidance of duplicative or unnecessary analyses

(a) Any Federal agency may perform the analyses required by sections 602, 603, and 604 of this title in conjunction with or as a part of any other agenda or analysis required by any other law if such other analysis satisfies the provisions of such sections.

(b) Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the Federal Register at the time of publication of general notice of proposed rulemaking for the rule or at the time of publication of the final rule, along with a statement providing the factual basis for such certification. The agency shall provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.

(c) In order to avoid duplicative action, an agency may consider a series of closely related rules as one rule for the purposes of sections 602, 603, 604 and 610 of this title.

(Added Pub. L. 96-354, §3(a), Sept. 19, 1980, 94 Stat. 1167; amended Pub. L. 104-121, title II, §243(a), Mar. 29, 1996, 110 Stat. 866.)

### Editorial Notes

#### AMENDMENTS

1996—Subsec. (b). Pub. L. 104-121 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the Federal Register, at the time of publication of general notice of proposed rulemaking for the rule or at the time of publication of the final rule, along with a succinct statement explaining the reasons for such certification, and provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.”

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-121 effective on expiration of 90 days after Mar. 29, 1996, but inapplicable to interpretative rules for which a notice of proposed rulemaking was published prior to Mar. 29, 1996, see section

245 of Pub. L. 104-121, set out as a note under section 601 of this title.

#### EFFECTIVE DATE

Section effective Jan. 1, 1981, see section 4 of Pub. L. 96-354, set out as a note under section 601 of this title.

### § 606. Effect on other law

The requirements of sections 603 and 604 of this title do not alter in any manner standards otherwise applicable by law to agency action.

(Added Pub. L. 96-354, §3(a), Sept. 19, 1980, 94 Stat. 1168.)

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective Jan. 1, 1981, see section 4 of Pub. L. 96-354, set out as a note under section 601 of this title.

### § 607. Preparation of analyses

In complying with the provisions of sections 603 and 604 of this title, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or alternatives to the proposed rule, or more general descriptive statements if quantification is not practicable or reliable.

(Added Pub. L. 96-354, §3(a), Sept. 19, 1980, 94 Stat. 1168.)

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective Jan. 1, 1981, see section 4 of Pub. L. 96-354, set out as a note under section 601 of this title.

### § 608. Procedure for waiver or delay of completion

(a) An agency head may waive or delay the completion of some or all of the requirements of section 603 of this title by publishing in the Federal Register, not later than the date of publication of the final rule, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes compliance or timely compliance with the provisions of section 603 of this title impracticable.

(b) Except as provided in section 605(b), an agency head may not waive the requirements of section 604 of this title. An agency head may delay the completion of the requirements of section 604 of this title for a period of not more than one hundred and eighty days after the date of publication in the Federal Register of a final rule by publishing in the Federal Register, not later than such date of publication, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes timely compliance with the provisions of section 604 of this title impracticable. If the agency has not prepared a final regulatory analysis pursuant to section 604 of this title within one hundred and eighty days from the date of publication of the final rule, such rule shall lapse and have no effect. Such rule shall not be repromulgated until a final regulatory flexibility analysis has been completed by the agency.

(Added Pub. L. 96-354, §3(a), Sept. 19, 1980, 94 Stat. 1168.)

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective Jan. 1, 1981, see section 4 of Pub. L. 96-354, set out as a note under section 601 of this title.

### § 609. Procedures for gathering comments

(a) When any rule is promulgated which will have a significant economic impact on a substantial number of small entities, the head of the agency promulgating the rule or the official of the agency with statutory responsibility for the promulgation of the rule shall assure that small entities have been given an opportunity to participate in the rulemaking for the rule through the reasonable use of techniques such as—

(1) the inclusion in an advanced notice of proposed rulemaking, if issued, of a statement that the proposed rule may have a significant economic effect on a substantial number of small entities;

(2) the publication of general notice of proposed rulemaking in publications likely to be obtained by small entities;

(3) the direct notification of interested small entities;

(4) the conduct of open conferences or public hearings concerning the rule for small entities including soliciting and receiving comments over computer networks; and

(5) the adoption or modification of agency procedural rules to reduce the cost or complexity of participation in the rulemaking by small entities.

(b) Prior to publication of an initial regulatory flexibility analysis which a covered agency is required to conduct by this chapter—

(1) a covered agency shall notify the Chief Counsel for Advocacy of the Small Business Administration and provide the Chief Counsel with information on the potential impacts of the proposed rule on small entities and the type of small entities that might be affected;

(2) not later than 15 days after the date of receipt of the materials described in paragraph (1), the Chief Counsel shall identify individuals representative of affected small entities for the purpose of obtaining advice and recommendations from those individuals about the potential impacts of the proposed rule;

(3) the agency shall convene a review panel for such rule consisting wholly of full time Federal employees of the office within the agency responsible for carrying out the proposed rule, the Office of Information and Regulatory Affairs within the Office of Management and Budget, and the Chief Counsel;

(4) the panel shall review any material the agency has prepared in connection with this chapter, including any draft proposed rule, collect advice and recommendations of each individual small entity representative identified by the agency after consultation with the Chief Counsel, on issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c);

(5) not later than 60 days after the date a covered agency convenes a review panel pursu-

ant to paragraph (3), the review panel shall report on the comments of the small entity representatives and its findings as to issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c), provided that such report shall be made public as part of the rulemaking record; and

(6) where appropriate, the agency shall modify the proposed rule, the initial regulatory flexibility analysis or the decision on whether an initial regulatory flexibility analysis is required.

(c) An agency may in its discretion apply subsection (b) to rules that the agency intends to certify under subsection 605(b), but the agency believes may have a greater than de minimis impact on a substantial number of small entities.

(d) For purposes of this section, the term “covered agency” means—

- (1) the Environmental Protection Agency;
- (2) the Consumer Financial Protection Bureau of the Federal Reserve System; and
- (3) the Occupational Safety and Health Administration of the Department of Labor.

(e) The Chief Counsel for Advocacy, in consultation with the individuals identified in subsection (b)(2), and with the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, may waive the requirements of subsections (b)(3), (b)(4), and (b)(5) by including in the rulemaking record a written finding, with reasons therefor, that those requirements would not advance the effective participation of small entities in the rulemaking process. For purposes of this subsection, the factors to be considered in making such a finding are as follows:

- (1) In developing a proposed rule, the extent to which the covered agency consulted with individuals representative of affected small entities with respect to the potential impacts of the rule and took such concerns into consideration.
- (2) Special circumstances requiring prompt issuance of the rule.
- (3) Whether the requirements of subsection (b) would provide the individuals identified in subsection (b)(2) with a competitive advantage relative to other small entities.

(Added Pub. L. 96-354, §3(a), Sept. 19, 1980, 94 Stat. 1168; amended Pub. L. 104-121, title II, §244(a), Mar. 29, 1996, 110 Stat. 867; Pub. L. 111-203, title X, §1100G(a), July 21, 2010, 124 Stat. 2112.)

#### Editorial Notes

##### AMENDMENTS

2010—Subsec. (d). Pub. L. 111-203 substituted “means—” for “means the Environmental Protection Agency and the Occupational Safety and Health Administration of the Department of Labor.” and added pars. (1) to (3).

1996—Pub. L. 104-121, §244(a)(2), (3), designated existing provisions as subsec. (a) and inserted “including soliciting and receiving comments over computer networks” after “entities” in par. (4).

Pub. L. 104-121, §244(a)(1), which directed insertion of “the reasonable use of” before “techniques,” in introductory provisions, was executed by making the insertion in text which did not contain a comma after the

word “techniques” to reflect the probable intent of Congress.

Subsecs. (b) to (e). Pub. L. 104-121, §244(a)(4), added subsecs. (b) to (e).

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the designated transfer date, see section 1100H of Pub. L. 111-203, set out as a note under section 552a of this title.

##### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-121 effective on expiration of 90 days after Mar. 29, 1996, but inapplicable to interpretative rules for which a notice of proposed rulemaking was published prior to Mar. 29, 1996, see section 245 of Pub. L. 104-121, set out as a note under section 601 of this title.

##### EFFECTIVE DATE

Section effective Jan. 1, 1981, see section 4 of Pub. L. 96-354, set out as a note under section 601 of this title.

##### SMALL BUSINESS ADVOCACY CHAIRPERSONS

Pub. L. 104-121, title II, §244(b), Mar. 29, 1996, 110 Stat. 868, provided that: “Not later than 30 days after the date of enactment of this Act [Mar. 29, 1996], the head of each covered agency that has conducted a final regulatory flexibility analysis shall designate a small business advocacy chairperson using existing personnel to the extent possible, to be responsible for implementing this section and to act as permanent chair of the agency’s review panels established pursuant to this section.”

#### § 610. Periodic review of rules

(a) Within one hundred and eighty days after the effective date of this chapter, each agency shall publish in the Federal Register a plan for the periodic review of the rules issued by the agency which have or will have a significant economic impact upon a substantial number of small entities. Such plan may be amended by the agency at any time by publishing the revision in the Federal Register. The purpose of the review shall be to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities. The plan shall provide for the review of all such agency rules existing on the effective date of this chapter within ten years of that date and for the review of such rules adopted after the effective date of this chapter within ten years of the publication of such rules as the final rule. If the head of the agency determines that completion of the review of existing rules is not feasible by the established date, he shall so certify in a statement published in the Federal Register and may extend the completion date by one year at a time for a total of not more than five years.

(b) In reviewing rules to minimize any significant economic impact of the rule on a substantial number of small entities in a manner consistent with the stated objectives of applicable statutes, the agency shall consider the following factors—

- (1) the continued need for the rule;
- (2) the nature of complaints or comments received concerning the rule from the public;

(3) the complexity of the rule;

(4) the extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and

(5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

(c) Each year, each agency shall publish in the Federal Register a list of the rules which have a significant economic impact on a substantial number of small entities, which are to be reviewed pursuant to this section during the succeeding twelve months. The list shall include a brief description of each rule and the need for and legal basis of such rule and shall invite public comment upon the rule.

(Added Pub. L. 96-354, §3(a), Sept. 19, 1980, 94 Stat. 1169.)

#### Editorial Notes

##### REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (a), is Jan. 1, 1981. See Effective Date note set out under section 601 of this title.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective Jan. 1, 1981, see section 4 of Pub. L. 96-354, set out as a note under section 601 of this title.

### § 611. Judicial review

(a)(1) For any rule subject to this chapter, a small entity that is adversely affected or aggrieved by final agency action is entitled to judicial review of agency compliance with the requirements of sections 601, 604, 605(b), 608(b), and 610 in accordance with chapter 7. Agency compliance with sections 607 and 609(a) shall be judicially reviewable in connection with judicial review of section 604.

(2) Each court having jurisdiction to review such rule for compliance with section 553, or under any other provision of law, shall have jurisdiction to review any claims of noncompliance with sections 601, 604, 605(b), 608(b), and 610 in accordance with chapter 7. Agency compliance with sections 607 and 609(a) shall be judicially reviewable in connection with judicial review of section 604.

(3)(A) A small entity may seek such review during the period beginning on the date of final agency action and ending one year later, except that where a provision of law requires that an action challenging a final agency action be commenced before the expiration of one year, such lesser period shall apply to an action for judicial review under this section.

(B) In the case where an agency delays the issuance of a final regulatory flexibility analysis pursuant to section 608(b) of this chapter, an action for judicial review under this section shall be filed not later than—

(i) one year after the date the analysis is made available to the public, or

(ii) where a provision of law requires that an action challenging a final agency regulation

be commenced before the expiration of the 1-year period, the number of days specified in such provision of law that is after the date the analysis is made available to the public.

(4) In granting any relief in an action under this section, the court shall order the agency to take corrective action consistent with this chapter and chapter 7, including, but not limited to—

(A) remanding the rule to the agency, and

(B) deferring the enforcement of the rule against small entities unless the court finds that continued enforcement of the rule is in the public interest.

(5) Nothing in this subsection shall be construed to limit the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law or to grant any other relief in addition to the requirements of this section.

(b) In an action for the judicial review of a rule, the regulatory flexibility analysis for such rule, including an analysis prepared or corrected pursuant to paragraph (a)(4), shall constitute part of the entire record of agency action in connection with such review.

(c) Compliance or noncompliance by an agency with the provisions of this chapter shall be subject to judicial review only in accordance with this section.

(d) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise permitted by law.

(Added Pub. L. 96-354, §3(a), Sept. 19, 1980, 94 Stat. 1169; amended Pub. L. 104-121, title II, §242, Mar. 29, 1996, 110 Stat. 865.)

#### Editorial Notes

##### AMENDMENTS

1996—Pub. L. 104-121 amended section generally. Prior to amendment, section read as follows:

“(a) Except as otherwise provided in subsection (b), any determination by an agency concerning the applicability of any of the provisions of this chapter to any action of the agency shall not be subject to judicial review.

“(b) Any regulatory flexibility analysis prepared under sections 603 and 604 of this title and the compliance or noncompliance of the agency with the provisions of this chapter shall not be subject to judicial review. When an action for judicial review of a rule is instituted, any regulatory flexibility analysis for such rule shall constitute part of the whole record of agency action in connection with the review.

“(c) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise provided by law.”

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-121 effective on expiration of 90 days after Mar. 29, 1996, but inapplicable to interpretative rules for which a notice of proposed rule-making was published prior to Mar. 29, 1996, see section 245 of Pub. L. 104-121, set out as a note under section 601 of this title.

##### EFFECTIVE DATE

Section effective Jan. 1, 1981, see section 4 of Pub. L. 96-354, set out as a note under section 601 of this title.

§ 612. Reports and intervention rights

(a) The Chief Counsel for Advocacy of the Small Business Administration shall monitor agency compliance with this chapter and shall report at least annually thereon to the President and to the Committees on the Judiciary and Small Business of the Senate and House of Representatives.

(b) The Chief Counsel for Advocacy of the Small Business Administration is authorized to appear as amicus curiae in any action brought in a court of the United States to review a rule. In any such action, the Chief Counsel is authorized to present his or her views with respect to compliance with this chapter, the adequacy of the rulemaking record with respect to small entities and the effect of the rule on small entities.

(c) A court of the United States shall grant the application of the Chief Counsel for Advocacy of the Small Business Administration to appear in any such action for the purposes described in subsection (b).

(Added Pub. L. 96-354, §3(a), Sept. 19, 1980, 94 Stat. 1170; amended Pub. L. 104-121, title II, §243(b), Mar. 29, 1996, 110 Stat. 866.)

Editorial Notes

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-121, §243(b)(1), which directed substitution of “the Committees on the Judiciary and Small Business of the Senate and House of Representatives” for “the committees on the Judiciary of the Senate and the House of Representatives, the Select Committee on Small Business of the Senate, and the Committee on Small Business of the House of Representatives”, was executed by making the substitution for “the Committees on the Judiciary of the Senate and House of Representatives, the Select Committee on Small Business of the Senate, and the Committee on Small Business of the House of Representatives” to reflect the probable intent of Congress.

Subsec. (b). Pub. L. 104-121, §243(b)(2), substituted “his or her views with respect to compliance with this chapter, the adequacy of the rulemaking record with respect to small entities and the” for “his views with respect to the”.

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-121 effective on expiration of 90 days after Mar. 29, 1996, but inapplicable to interpretative rules for which a notice of proposed rulemaking was published prior to Mar. 29, 1996, see section 245 of Pub. L. 104-121, set out as a note under section 601 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1981, see section 4 of Pub. L. 96-354, set out as a note under section 601 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of reporting provisions in subsec. (a) of this section, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 191 of House Document No. 103-7.

CHAPTER 7—JUDICIAL REVIEW

Sec.	
701.	Application; definitions.
702.	Right of review.
703.	Form and venue of proceeding.
704.	Actions reviewable.
705.	Relief pending review.
706.	Scope of review.

Statutory Notes and Related Subsidiaries

SHORT TITLE

The provisions of sections 551 to 559 of this title and this chapter were originally enacted by act June 11, 1946, ch. 324, 60 Stat. 237, popularly known as the “Administrative Procedure Act”. That Act was repealed as part of the general revision of this title by Pub. L. 89-554 and its provisions incorporated into sections 551 to 559 of this title and this chapter.

§ 701. Application; definitions

(a) This chapter applies, according to the provisions thereof, except to the extent that—

(1) statutes preclude judicial review; or

(2) agency action is committed to agency discretion by law.

(b) For the purpose of this chapter—

(1) “agency” means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

(A) the Congress;

(B) the courts of the United States;

(C) the governments of the territories or possessions of the United States;

(D) the government of the District of Columbia;

(E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;

(F) courts martial and military commissions;

(G) military authority exercised in the field in time of war or in occupied territory; or

(H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; subchapter II of chapter 471 of title 49; or sections 1884, 1891-1902, and former section 1641(b)(2), of title 50, appendix;<sup>1</sup> and

(2) “person”, “rule”, “order”, “license”, “sanction”, “relief”, and “agency action” have the meanings given them by section 551 of this title.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 392; Pub. L. 103-272, §5(a), July 5, 1994, 108 Stat. 1373; Pub. L. 111-350, §5(a)(3), Jan. 4, 2011, 124 Stat. 3841.)

HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
(a) .....	5 U.S.C. 1009 (introductory clause).	June 11, 1946, ch. 324, §10 (introductory clause), 60 Stat. 243.

In subsection (a), the words “This chapter applies, according to the provisions thereof,” are added to avoid the necessity of repeating the introductory clause of former section 1009 in sections 702-706.

<sup>1</sup> See References in Text note below.