

**Mrs. Barbara F. Kahlow**

April 22, 2005

The Honorable Joshua B. Bolten  
Director  
Office of Management and Budget  
Washington, DC 20503

Dear Director Bolten:

As the former Staff Director of the House Government Reform Subcommittee on Regulatory Affairs, I am writing to state my views on the Office of Management and Budget's (OMB's) March 9, 2005 draft eighth regulatory accounting report. OMB was required by law to submit the final version of its eighth report with the President's fiscal Budget on February 7th. OMB's over 30-day late release and its untimely March 23rd Notice of availability and request for comments (70 FR 14735) undermined the utility of this reporting requirement. Congress will, once again, be unable to simultaneously review both the on-budget and off-budget costs associated with each Federal agency and each Federal agency program imposing regulatory or paperwork burdens on the public. In addition, OMB's late submission again prevented Congressional Subcommittees from preparing fully informed recommendations for this year's Budget Resolution.

From May 2001 to April 2004, the Honorable Doug Ose, the last Government Reform Subcommittee Chairman responsible for oversight over OMB's regulatory functions, submitted seven letters to OMB on its draft and final regulatory accounting reports. The last of these (dated April 22, 2004) stated, "I regret to report to you that OMB's draft not only again fails to respond to many of the concerns raised in my previous comment letters but also again fails to meet some of the specific statutory requirements."

I. Statutory Requirements

The law requires OMB to annually submit with the President's fiscal Budget: (a) a regulatory accounting statement, (b) an associated report on impacts of Federal rules and paperwork, and (c) recommendations for regulatory reform. OMB's draft report includes limited regulatory accounting information and an inadequate associated report on impacts.

For the accounting statement, the law requires OMB to estimate the total annual costs and benefits of all Federal rules and paperwork (1) in the aggregate, (2) by agency, (3) by agency program, and (4) by major rule. OMB's 2005 draft report is still not presented as an accounting statement and includes information on only nine agencies (p. 8) and only seven agency regulatory programs (p. 9). In addition, OMB's draft includes only aggregate data on major rules issued in a rolling 10-year period instead of for all Federal rules and paperwork, as required

by law. Furthermore, it excludes many categories of rules from its aggregation, e.g., all “transfer” rules that implement Federal budgetary programs. Many of these rules impose huge costs on State and local governments. Nothing in the statute authorizes OMB to exclude any category of rules. The bottom line is that OMB’s estimates cover a small fraction of Federal regulation. In fact, non-OMB estimates of the aggregate costs of all Federal rules and paperwork far exceed OMB’s estimates.

## II. Historical Progress

In his last comment letter, Chairman Ose attached a chart that summarized 1997 to 2004 comments submitted to OMB by the Subcommittee’s first two Chairmen. The chart included six areas relating to OMB’s regulatory accounting reports and OMB’s progress in addressing each of them: (1) the statutorily-required annual associated report on impacts of Federal rules and paperwork; (2) the statutorily-required annual estimates of the total annual costs and benefits of all Federal rules and paperwork by agency; (3) the statutorily-required annual estimates of the total annual costs and benefits of all Federal rules and paperwork by agency program; (4) Chairman Ose’s request for OMB to issue an annual OMB Bulletin to the agencies calling for all available cost-benefit data to be submitted to OMB; (5) Chairman Ose’s recommendation for OMB’s annual report to be submitted “as part of” the Budget instead of “with” the Budget; and (6) and the need for standardized agency estimation so that OMB is aggregating comparable numbers.

### A. Associated Report on Impacts

OMB’s draft “brief” report on the impacts on small business is essentially only one page (pp. 27-8). OMB did not present an analysis of impacts; instead, the one page discusses process, including the work of one office in the Small Business Administration (SBA). In fact, this mandatory element is extremely important to the regulated community and I believe deserves a more concerted effort by OMB. Why can’t OMB systematically seek input from the agencies and outside groups and include data from agency Regulatory Flexibility Analyses, as previously recommended by Chairman Ose?

### B. Agency Detail

OMB’s draft report includes only partial data for eight departments (Agriculture, Education, Energy, Health and Human Services (HHS), Homeland Security (one component only), Housing and Urban Development, Labor, and Transportation) and one independent agency (Environmental Protection Agency (EPA)). In fact, data are missing for several key regulatory agencies, such as for three key independent regulatory commissions: the Federal Communications Commission, the Federal Trade Commission, and the Securities and Exchange Commission. Why doesn’t OMB yearly seek agency input for this report, as previously requested by Chairman Ose?

### C. Program Detail

OMB’s draft report includes only partial data for seven agency programs: one in the Energy Department, two in HHS, the Occupational Safety and Health Administration (OSHA) in the Labor Department, one in the Transportation Department, and two in EPA.

For the last three Budgets, OMB used a Program Assessment Rating Tool (PART) to review 60 percent of all agency programs. OMB characterized many agency programs as “regulatory based” programs. Why can’t OMB expand the database for its eighth final report and its future reports to include the regulatory based programs already reviewed under the PART, as previously recommended by Chairman Ose?

### III. Other Comments

In this year’s draft, OMB initially states, “OMB believes, however, that the costs and benefits of major rules capture the vast majority of the total costs and benefits of all rules subject to OMB review” (i.e., excluding costly rules issued by the independent regulatory commissions) (p. 6). Later, OMB states, “Based on the information contained in this and previous reports, the total costs and benefits of all Federal rules now in effect (major and non-major, including those adopted more than 10 years ago) could easily be a factor of ten or more larger than the sum of the costs and benefits reported in Table 1-2” (p. 9).

As stated earlier, non-OMB estimates of the aggregate costs of all Federal rules and paperwork far exceed OMB’s estimates. OMB’s draft report estimates that annual costs of the major rules issued in its rolling 10-period range from \$34.8 billion to \$39.4 billion, which pales in comparison to SBA’s estimate that, in 2000, Americans spent \$843 billion to comply with Federal regulations, including both major and non-major rules. The cumulative impact of all rules in the aggregate, by agency, and by agency program is critical for informed Congressional and public debate.

OMB poses various questions for public input (p. 40). Question 1 asked, “We have tentatively decided to limit the studies in our review to those that would enable an assessment of the validity of the ex-ante benefit and/or cost estimates of one or more individual rules. Is this the appropriate scope?” My answer is unequivocally “no.” Since each rule adds an incremental effect, resulting in a larger cumulative impact, the overall burden of a body of rules on an affected segment of the public needs to be measured. Some non-governmental groups have prepared such estimates, e.g., for the manufacturing sector, and for labor regulations. OMB should factor this work into its future regulatory accounting reports, especially its associated report on the impacts of Federal rules and paperwork. Besides systematically seeking agency input, I also recommend that OMB seek data from a full range of non-governmental organizations and experts.

Thank you for your attention to my concerns.

Sincerely,

/s/ Barbara F. Kahlow