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June 11, 2012

The Honorable Cass R. Sunstein
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
1650 Pennsylvania Avenue, NW, Room 262
Washington, DC 20503

Re: Docket ID OMB-2010-0008; 77 Fed. Reg. 22003 (April 12, 2012)
Draft 2012 Report to Congress on the Benefits and Costs of Federal Regulations

Dear Administrator Sunstein:

Business Roundtable is an association of chief executive officers of leading U.S. companies with over $6 trillion in annual revenues and more than 14 million employees. Our members are concerned about the costs and benefits of regulations, and so we seek ways to improve the regulatory process. To that end, we recently published a report entitled "Achieving Smarter Regulation"[1] which notes that "even a non-significant regulation adds to the growing cumulative burden of regulation, and this cumulative burden has a negative impact on jobs and the economy." We urged that "[m]ethodologies should be continuously improved to assess the impact of significant regulations on productivity, wages and economic growth, as well as any adverse impact on jobs and international competitiveness in industries that bear the burden of regulation." Accordingly, we are pleased that OMB has highlighted this issue in its Draft 2012 Report to Congress.

OIRA's request for public comment asks "whether and how agencies should provide, for economically significant regulations, a quantitative or qualitative assessment of the impacts over time of proposed and final regulations on employment." (Draft 2012 Report p.81). The short answer is that agencies should certainly do so.

[1] http://businessroundtable.org/uploads/studies-reports/downloads/2011_09_BRT_Achieving_Smarter_Regulation.pdf

First, in our view, there should be little doubt "that certain kinds of regulations can have adverse effects on job creation," and we agree that "job creation is an important consideration in regulatory review." (Draft 2012 Report p.35).

Second, we agree that "agencies should attempt to quantify the adverse employment effects (if any) of regulations and turn those effects into monetary equivalents for purposes of cost-benefit analysis." (Draft 2012 Report p.81). Too often, employment impacts are considered in seemingly arbitrary ways and independently of other costs and benefits. Instead, employment impacts, including the costs associated with labor transitions, such as relocation and retraining costs, ought to be quantified whenever possible in an objective manner and accounting for any uncertainty. At a minimum, they should be quantified as part of the cost/benefit analysis of any significant regulation.

Third, a qualitative assessment of the job impacts over time of regulations ought to be required of agencies in all cases. For example, agencies could identify the types of jobs likely to be lost or gained, the locations of these jobs, and whether they are one-time or likely to be felt on a continuing basis. As OMB notes (p. 80), job losses can have particularly adverse consequences when the new jobs that a rule may create require significantly different skill sets and education levels than the jobs that a rule may eliminate, such that workers employed in the latter are not qualified for the former. Similarly, job losses are more persistent and consequential when the new jobs are located in very different parts of the country than the lost jobs – a point that the report does not note, but that OMB should emphasize to agencies. These types of adverse effects are important regardless of whether net jobs are decreased or increased.

Fourth, in considering the impacts of regulations on jobs and employment, it is important that reductions in productivity not be misevaluated as "benefits" nor misconstrued as "positive" for job creation. Many job creation claims merely represent an increase in transaction or compliance costs that reduce productivity. Cost-benefit analyses properly consider the wages of workers hired to help meet compliance obligations as costs, not benefits. The reductions in productivity that these costs represent are economically harmful, reducing societal welfare and ultimately employment levels. Rules that increase costs and burdens on employers need to be recognized as such, and not misjudged as positive for employment when productive activities are foregone.

Our most important recommendation is for agencies *to objectively and transparently determine* costs and benefits, including adverse employment impacts, while appropriately characterizing the uncertainty of their projections. We do not support qualitative or quantitative analysis (including monetization) that conveys a sense of accuracy or precision that is misleading or unwarranted based on the underlying data or our understanding of employment impacts.

Finally, to pursue any of these recommendations, OIRA must have adequate staffing. We are gravely concerned that OIRA staffing appears to be at an historic low, and has declined even as

regulatory agency staffing has increased noticeably, as shown on the graph linked below.[2] The decline in OIRA staff has occurred at the same time additional duties have been imposed upon OIRA (e.g., relating to retrospective review of existing regulations, international regulatory cooperation, "smart" disclosure, executive summaries for complex rules, etc.). The business community is increasingly concerned that OIRA doesn't have the resources to provide the expert review and coordination functions currently required of it – much less any new functions anticipated by the 2012 Draft Report.

We strongly recommend that OMB allocate additional resources for OIRA staff to ensure full consideration of employment and other factors in assessing regulation, particularly in view of the large impact that federal regulation has on our national economy. As we stated in "Achieving Smarter Regulation" in connection with regulatory review, it "is critical that OMB devote sufficient resources (i.e., the quantity and quality of its staff) to implement this mandate effectively."

Thank you for your consideration of these comments. We would of course be pleased to discuss them further to the extent that would be helpful.

Sincerely,

John Engler

[2] Also available at http://www.tspppa.gwu.edu/docs/20110720_testimony_dudley.pdf (Figure 3).