

May 15, 2017

The Honorable Mick Mulvaney
Director
Office of Management and Budget
Executive Office of the President
Eisenhower Executive Office Building
1650 Pennsylvania Avenue, NW
Washington, DC 20503

Jamie Dimon
JPMorgan Chase & Co.
Chairman

Mark Costa
Eastman Chemical Company

Joshua Bolten
President & CEO

Dear Director Mulvaney:

Thank you again for speaking to Business Roundtable about the Administration's regulatory reform efforts. One of the important initiatives you described is the President's March 13 Executive Order (EO 13781) directing the Office of Management and Budget to develop a comprehensive plan for reorganizing the Executive Branch. I am writing to offer several suggestions for your consideration as you develop a proposed reorganization plan and implement the President's regulatory reform agenda. We believe strongly that a smarter and clearer allocation of responsibilities among agencies would produce greater regulatory certainty, reduce delay, and enable our members to promote economic growth and create jobs.

As we discussed, businesses commonly find themselves subject to two or more regulatory agencies exercising concurrent jurisdiction over a single issue. This problem is prevalent throughout government, as we document in the attached, which identifies specific examples of problematic agency duplication.

Fragmented, overlapping or duplicative regulations and oversight do not simply increase compliance burdens. They increase the likelihood of inconsistency between agencies in how certain products or transactions are viewed, adding complexity and in some instances, conflict, that can undermine the regulatory objectives each agency is trying to achieve. Additionally, the pursuit of enforcement actions by multiple agencies for the same action has become more frequent. Absent adequate coordination, this can lead to duplicative actions or penalties disproportionate to the alleged wrongdoing.

As agencies seek to comply with the President's Executive Orders to reduce the regulatory burden, we would also note that overlapping and duplicative regulations from different agencies limit the ability for any single regulator to

have an accurate view of the cumulative regulatory burden imposed on the regulated community. The ideal way to produce a more rational regulatory framework in any area is for Congress to pass legislation that streamlines and simplifies the regulatory process and eliminates redundancy. Statutory clarification of the roles and responsibilities of various agencies might be the only viable option where complicated jurisdictional issues arise, particularly as a consequence of judicial precedent. We are hopeful that recommendations received as a result of the President's Executive Order on reorganizing the Executive Branch will provide useful specifics on legislative changes that could be effective over the longer term. We urge the Administration to propose changes that would accomplish these objectives as part of its comprehensive plan for reorganizing the Executive Branch.

But we also believe there is much the President can accomplish without waiting for Congress to act. The President can use EO 13771 (*Reducing Regulation and Controlling Regulatory Costs*) and EO 13777 (*Enforcing the Regulatory Reform Agenda*) to focus needed attention on redundancy and waste. While these Executive Orders do not apply to independent regulatory agencies, they can be useful in highlighting areas in need of reform. Turning to specific areas of overlap or duplication, while there is no simple or generic solution, the Administration has a suite of options that it can choose from for particular situations. For example:

1. Negotiated memoranda of understanding between various regulatory agencies or *ad hoc* interagency working groups could be useful with respect to overlap involving multiple regulatory agencies, particularly independent regulatory agencies;
2. Designation of a lead agency, with other agencies having a cooperative or participating role, might be the best solution in some cases; and
3. With respect to new rulemakings touching the jurisdiction of multiple agencies, joint rulemakings that ensure government-wide internal consistency should be considered as the default approach.
4. With respect to enforcement actions, while businesses should be held to account for wrongdoing, greater inter-agency coordination where there are overlapping enforcement jurisdictions will reduce the possibility of duplicative actions or penalties that are disproportionate to the alleged wrongdoing. OMB should consider mechanisms for fostering greater coordination among agencies with regard to enforcement actions and penalty determinations.

Good government requires the elimination of wasteful and duplicative arrangements wherever possible. We realize that Congress will need to rationalize the regulatory framework that has built up over many decades in order to accomplish complete reform, but we believe you can do much administratively to improve the process and encourage and facilitate collaboration.

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Thank you for your interest in this issue. We applaud your efforts to simplify and streamline government while continuing to provide the services and protections all Americans expect and deserve. We look forward to the upcoming public consultation on reorganizing the Executive Branch and BRT would welcome the opportunity to continue to work with you as you implement the President's agenda to reduce regulatory burdens and rationalize the regulatory process.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark J. Costa", with a long horizontal flourish extending to the right.

Mark J. Costa
Chairman and Chief Executive Officer
Eastman Chemical Company
Chair, Smart Regulation Committee
Business Roundtable

Attachment (1)