



NATIONAL ASSOCIATION
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Al Mansell, CRB
President

April 26, 2005

Dr. John D. Graham
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, DC, 20503

RE: NAR Comments on the Draft 2005 Report to Congress on the Costs and Benefits of Federal Regulations

Dear Dr. Graham:

The NATIONAL ASSOCIATION OF REALTORS® is pleased to submit comments to the Office of Management and Budget (OMB) on their *Draft 2005 Report to Congress on the Costs and Benefits of Federal Regulations*. The NATIONAL ASSOCIATION OF REALTORS® (NAR), with more than 1.2 million members, is the largest professional trade association in the country. NAR members participate in all aspects of the real estate industry, including selling commercial and residential property, and property management.

A variety of regulations adversely impact the real estate industry, including the Real Estate Settlement Procedures Act (RESPA), the "Do-Not" rules (Do-Not-Fax, Do-Not-Call, Do-Not-Email), the Lead-Based Paint Disclosure rules, and others. Taken together, these regulations impose significant costs on REALTORS® and other real estate professionals, result in higher prices to consumers, and reduce the efficiency of the overall economy.

NAR Comments on the Costs of Federal Regulation

NAR is pleased that the OMB, and especially the Office of Information and Regulatory Affairs (OIRA), has taken a leadership role in quantifying the costs and benefits of federal regulations, developing a more rigorous analytic approach to evaluating them, and compelling agencies to do the same. These efforts are desperately needed because, by any measure, federal regulations and the burdens they impose on the private sector and small business are out of control.

Regulations impose social, economic and compliance costs on the individuals and businesses that are forced to fulfill their requirements. One recent estimate of these costs is a 2001 report for the Small Business Administration (SBA) by Professors Crain and Hopkins. They estimated that in 2000



Americans spent \$843 billion, or over \$8,000 per household, to comply with federal regulations. That is almost half the amount collected in federal taxes, and nearly as much as Americans paid in personal income taxes (\$999 billion). Placed in another perspective, the total is about 10 percent of America's gross domestic product – and more than half the output of the U.S. manufacturing sector. Furthermore, these estimates are at the lower end of the actual costs of these regulations because they do not include indirect burdens. For instance, the cost of energy would also increase the cost of products that require energy to produce. These indirect costs are not included in the Crain and Hopkins report.

The OMB report, *The Draft 2005 Report to Congress on the Costs and Benefits of Federal Regulation*, estimates that the costs of major federal regulations reviewed by OMB over the last ten years range from \$34.8 billion to \$39.4 billion. NAR is concerned that these cost figures are far lower than they should be because they include far fewer regulations (only major regulations issued over the last decade for which agencies themselves have provided estimates are analyzed) and they exclude certain costs. Research conducted by the Mercatus Center, a regulatory research institute associated with George Mason University, estimates that workplace and water quality regulations alone cost the economy \$189 billion per year. NAR agrees with the OMB that more research is needed to provide a stronger analytic foundation for comprehensive estimates of total costs and benefits by agency and program. To the extent possible, OMB should encourage and provide technical assistance to agencies to develop a standardized methodology that would more accurately account for all substantial effects of regulatory actions across agencies and regulations.

NAR Comments on Prospective (Ex Ante) Cost-Benefit Regulatory Estimates

The OMB Report describes the steps that were taken to estimate the costs and benefits of each major rule prior to its issuance. These so-called *ex ante* estimates are pre-regulation forecasts of the impact the rule will have on society when it takes effect. However, as the report states, these prospective estimates may be mere approximations of the actual costs of the regulation once it is implemented. The inaccuracy of these prospective estimates is an inherent weakness of the country's current regulatory structure, for it calls into question the basic rationale and purpose for a particular regulation. For example, the U.S. Fish and Wildlife Service reported that from 1989 to 2000, a little over \$3.5 billion of taxpayer dollars was spent on activities related to the Endangered Species Act. However, according to the Property and Environment Research Center (PERC), many of the actual costs of saving endangered species are either understated or not reported at all. In a recent report, PERC analyzed several limitations and inaccuracies in estimating the overall costs of ESA regulations, including: (1) not all appropriate federal government entities reported ESA-related expenditures, although many agencies are involved in implementing the ESA and are incurring costs; (2) costs incurred by state and local governments and private entities are not included in the overall cost estimate; and (3) overall financial costs to society when people lose their jobs or are forced to pay higher prices for products they need. Furthermore, fifty percent of reported ESA expenditures are for seven species, just 0.6 percent of the ESA list. If all these costs are being incurred by government and society, and with very few targeted species saved, is it worth saving the species the regulations are supposed to be saving?

NAR Comments on Implementation of the Information Quality Act

The Information Quality Act (IQA) requires the OMB to develop government-wide standards for "ensuring and maximizing" the quality of information disseminated by federal agencies. Quality information includes the concepts of "utility", "integrity" and "objectivity". Agencies must apply quality standards before the information is disseminated, and agencies are required to develop procedures that allow interested parties to correct erroneous information.

NAR is generally pleased with how the IQA has been implemented throughout the federal government. Federal agencies have developed and incorporated the information quality standards and principles elucidated by the OMB, and have applied them to their own information dissemination and evaluation procedures. Federal agencies have developed information correction and appeal procedures, and interested parties have requested information corrections.

NAR offers three suggestions to make the IQA even more efficient and useful:

(1) OMB should explain more clearly that the IQA can be used for more than scientific or environmental data. The IQA process can be used for all information disseminated by the federal government, including statistical, financial and numerical data.

(2) According to a report released by the OMB in April, 2004 (*The Information Quality Report To Congress FY03*), which provided a summary and highlights of the implementation of the IQA in FY 03, FEMA received 24,433 correction requests in 2003. This is many more requests than any other agency, because FEMA treats requests to make changes to their flood maps as IQA correction requests. These types of requests have been made as long as the National Flood Insurance Program has been in existence. This figure leads to confusion regarding the exact number of information requests. OMB should direct FEMA to make a distinction between corrections to the maps and corrections requested under the IQA, and report only the relevant IQA correction requests to the OMB.

(3) While all federal agencies responded reasonably well to OMB's requirements to implement the IQA, agencies have been inconsistent in allowing easy public access to IQA-related information. OMB should require agencies to make all IQA-related information web-accessible.

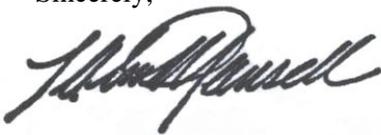
NAR Recommendations for Regulatory Reform

- **Congress should require Ex Post Regulatory Analysis** - While federal agencies are required under the Small Business Regulatory Enforcement Fairness Act (SBREFA) to conduct prospective analyses of regulations prior to implementation, there is no similar requirement to conduct *ex post* (retrospective) analyses after rules have been promulgated. However, retrospective analysis of a regulation is arguably more important than prospective estimates because of the hard data on actual costs and benefits that can be collected. This information can then be compared with the *ex ante* estimations, and the regulation can be modified in areas where the costs far exceed the benefits.
- **Revive the Congressional Review Act** – The Congressional Review Act (CRA) was passed in 1996 to allow Congress a brief time to review every new federal regulation issued by the government agencies and, by passage of a joint resolution, overrule a regulation. This authority has only been used once by Congress since the passage of the CRA. This Congressional authority should be improved so that Congress has a chance to review major new regulations to ensure that regulators have stayed within the legal parameters of the original law that passed Congress. In addition, members of Congress should be educated about the CRA and the authority that is given to them under the Act.
- **Improve the Regulatory Flexibility Act** – The Regulatory Flexibility Act (RFA) requires agencies to conduct an evaluation of how a regulation may impact the regulated community. An RFA analysis is triggered if there is a significant economic impact on a substantial number of small businesses. However, agencies have proven adept at avoiding these evaluation trigger points. As a result, fewer agencies are conducting RFA analyses, and the analyses that are done are less rigorous than they could be. NAR would

- recommend several improvements to the RFA that would strengthen the regulatory evaluation process, including: (1) expanding the number of agencies required to conduct Advocacy review panels on proposed rules; (2) improving the quality of regulatory flexibility analyses; (3) requiring agencies to consider indirect impacts of regulations; (4) closing loopholes used by the Internal Revenue Service (IRS) to avoid complying with the RFA; and (5) making judicial review more effective.
- **Establish an Independent Office of Regulatory Analysis** – This office would evaluate regulations independent of both Congress and the agencies. It would provide Congress and the agencies with objective information on the costs and benefits of regulation, the impacts on regulated communities, and alternatives to regulation.
 - **Place independent agencies under Executive Order 12866** – Executive Order 12866 requires each federal agency to determine whether a regulatory action is "significant" and therefore subject to review by the OMB and the analytical requirements of the executive order. However, the order exempted those agencies defined as "independent", such as the Federal Communications Commission or the Securities and Exchange Commission. Independent agencies finalize a substantial number of rules each year that are not subject to outside rule, nor are the proposed rules required to be rigorously analyzed from a cost/benefit perspective before they are promulgated. This problem could be resolved by putting independent agencies under the requirements of EO 12866. If that is not feasible, these agencies should at least be required to conduct a regulatory analysis of each planned significant regulation.

If you have any questions about these comments or need additional information, please contact Russell Riggs at 202-383-1259.

Sincerely,



Al Mansell
President