

U.S. House of Representatives

Committee on the Judiciary

Washington, DC 20515-6216
One Hundred Sixteenth Congress

June 5, 2020

The Honorable Russell T. Vought
Acting Director
Office of Management and Budget
725 17th Street NW
Washington, DC 20503

Dear Acting Director Vought:

We write to express our serious concern with Trump Administration's apparent efforts to exploit the COVID-19 pandemic to push this Administration's reckless deregulatory agenda, and to request information regarding the same.

On May 19, 2020, the Administration announced an Executive Order requiring agencies to respond to the economic crisis by "rescinding, modifying, waiving, or providing exemptions from regulations and other requirements that may inhibit economic recovery," along with decreasing the enforcement of rules required by Congress to protect public health and safety.¹ Instead of adopting a broader strategy to reopen our economy safely and restore economic security for millions of unemployed Americans, the Order may actually make our communities less safe. Furthermore, it is essential that agencies focus on responding to the ongoing national emergency and economic recovery by taking regulatory action that is necessary to the pandemic response, rather than prioritizing harmful deregulation that undermines public health and safety.

As of June 3, 2020, the Centers for Disease Control and Prevention reports more than 1.83 million cases of COVID-19 have been diagnosed in the United States and that the outbreak has claimed more than 106,000 American lives.² The economic harms that have already resulted from of the COVID-19 pandemic have been severe and are projected to grow significantly. Millions of Americans have lost their jobs and now worry how they will house and feed their families. The current pace of unemployment claims in the wake of the pandemic is unmatched in our history. More than 42 million Americans have filed unemployment claims since March –more than a quarter

¹ Exec. Order No. 13,924, 85 Fed. Reg. 31,353 (May 19, 2020), <https://www.whitehouse.gov/presidential-actions/executive-order-regulatory-relief-support-economic-recovery/>

² Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19), www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html.

of the labor force,³ and economic forecasts predict that unemployment will exceed its historic peak of 25% during the Great Depression.⁴

Instead of addressing this crisis head-on, the Trump Administration appears to be exploiting the chaos of the pandemic by rolling back critical civil rights regulatory protections and environmental safeguards. On May 6, for example, the Department of Education released new Title IX regulations that narrow the definition of sexual harassment, making students less safe.⁵ In other instances, the EPA slashed vital environmental regulation on everything from mercury emissions to fuel efficiency standards.⁶ Additionally, the Department of Transportation is in the final stages of a rulemaking that would establish unnecessary procedural barriers to limit the Department's authority to enforce consumer protections and safeguard the flying public from unfair and deceptive practices by airlines.⁷

Controversial in ordinary times, these measures have come as part of a concerted effort by the Administration to ram through a reckless deregulatory agenda while the country copes with a pandemic. As Robert Weissman, the President of Public Citizen, recently commented, “[t]he corruption of this administration is on full display as it uses this crisis as an excuse to further its corporate agenda while distracting the public from its utter failure to fight the virus.”⁸

Furthermore, we are concerned that the Trump Administration has not taken adequate steps to protect the public's right to participate in the rulemaking process. During this time of national emergency, tens of millions of Americans will find it impossible to meaningfully participate in ongoing federal agency rulemaking proceedings. Thousands of agency comment periods have closed since President Trump's emergency declaration, and more than 1,000 federal agency comment periods will close in the next month, all the while health care providers, first responders, and state and local officials are on the frontlines helping their communities respond to the COVID-19 pandemic. Disruptions caused by COVID-19 will also deprive citizens, state and local

³ Jeff Cox, *Jobless claims, total unemployment level worse than expected*, CNBC (June 4, 2020), <https://www.cnbc.com/2020/06/04/weekly-jobless-claims.html>; Anneken Tappe, *Nearly 43 million Americans have filed for unemployment benefits during the pandemic*, CNN (June 4, 2020), <https://www.cnn.com/2020/06/04/economy/unemployment-benefits-coronavirus/index.html>.

⁴ Victoria Guida, *Fed's Powell warns unemployment could reach Depression-level 25 percent*, POLITICO (May 17, 2020), <https://www.politico.com/news/2020/05/17/powell-unemployment-depression-25-percent-264500>.

⁵ See *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 85 Fed. Reg. 30026 (May 19, 2020) (to be codified at 34 C.F.R. § 106), <https://www.govinfo.gov/content/pkg/FR-2020-05-19/pdf/2020-10512.pdf>.

⁶ See e.g., *National Emission Standards for Hazardous Air Pollutants: Coal-and-Oil-Fired Electric Utility Steam Generating Units—Reconsideration of Supplemental Finding and Residual Risk and Technology Review*, 85 Fed. Reg. 31286 (May 22, 2020) (codified at 40 C.F.R. § 63), <https://www.govinfo.gov/content/pkg/FR-2020-05-22/pdf/2020-08607.pdf>; *The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks*, 85 Fed. Reg. 24174 (Apr. 30, 2020) (to be codified at 40 C.F.R. §§ 86, 600; 49 C.F.R. §§ 523, 531, 533, 536-37), <https://www.govinfo.gov/content/pkg/FR-2020-04-30/pdf/2020-06967.pdf>.

⁷ See *Defining Unfair or Deceptive Practices*, 85 Fed. Reg. 11,881 (Feb. 28, 2020), <https://www.regulations.gov/contentStreamer?documentId=DOT-OST-2019-0182-0016&contentType=pdf>.

⁸ Press Release, President Robert Weissman, Pub. Citizen, *Trump's Latest Deregulatory Order Is More Corruption, Distracts From Fighting the Pandemic* (May 19, 2020), <https://www.citizen.org/news/trumps-latest-deregulatory-order-is-more-corruption-distracts-from-fighting-the-pandemic/>.

communities, and other stakeholders the opportunity to engage with agencies on major policy decisions that affect public health and safety, environmental protection, education, and numerous other important issues. Moreover, as federal agencies have moved their operations almost exclusively online, tens of millions of Americans without access to broadband are effectively denied even the opportunity to comment in agency rulemaking proceedings.⁹

In response to this concern, numerous Members of Congress have requested that federal agencies conserve their efforts and resources, including by delaying non-essential rulemaking activity. In April, the Chairs of fourteen Committees in the House of Representatives requested that you extend all agency public comment periods for 45 days beyond the end of the declared national emergency, explaining failure to extend comment periods would deprive Americans of their rights to engage with agencies considering major changes to public policy.¹⁰ Rather than respond to these concerns with policies that would safeguard public participation in the rulemaking process, Mr. Paul Ray, the Administrator of the Office of Information and Regulatory Affairs, said that “a wholesale extension of the comment periods of pending notices of proposed rulemaking would be inappropriate.”¹¹

State and local government leaders have made similar requests to protect public participation in the rulemaking system. For example, in March, organizations representing America’s state and local governments requested a pause for all federal agency comment periods,¹² and a coalition of 21 state attorneys general called on the Trump Administration to “prioritize regulations that are responsive to the COVID-19 pandemic, including its economic impact, while generally freezing all new and pending regulations other than those that address emergency situations or other urgent circumstances relating to health, safety, financial, or national security

⁹ See e.g., Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, GN Docket No. 19-285, *2020 Broadband Deployment Report*, FCC-20-50 (rel. Apr. 24, 2020), <https://docs.fcc.gov/public/attachments/FCC-20-50A1.pdf> (*2020 Broadband Deployment Report*) (finding 18 million Americans lack broadband access); John Busby & Julia Tanberk, *FCC Reports Broadband Unavailable to 21.3 Million Americans, BroadbandNow Study Indicates 42 Million Do Not Have Access*, BROADBANDNOW RESEARCH (Feb. 3, 2020), <https://broadbandnow.com/research/fcc-underestimates-unserved-by-50-percent> (reporting approximately 42 million Americans do not have access to fixed broadband); JOHN B. HARRIGAN, NAT’L DIGITAL INCLUSION ALLIANCE, MEASURING THE GAP: WHAT’S THE RIGHT APPROACH TO EXPLORING WHY SOME AMERICANS DO NOT SUBSCRIBE TO BROADBAND? 2, 10 (2020), https://www.digitalinclusion.org/wp-content/uploads/2020/02/Harrigan_Measuring-the-Gap-v1.1.pdf. (explaining millions of Americans lack access to broadband because the cost of service or devices is too expensive).

¹⁰ Letter from Fourteen U.S. House of Representatives Committee Chairs to Russell T. Vought, Acting Director, Office of Management and Budget (Apr. 1, 2020), https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/OMB.2020.4.1.%20Letter%20re%20Comment%20Period%20Extension.OI_.pdf.

¹¹ Letter from Paul Ray, Administrator, Office of Information and Regulatory Affairs, to Heads of Departments and Agencies (Mar. 23, 2020), <https://aboutblaw.com/PWO>.

¹² Letter from National Governors Association, National Conference of State Legislatures, The Council of State Governments, National Association of Counties, National League of Cities, The United States Conference of Mayors, Government Finance Officers Association, International City/County Management Association, National Association of State Auditors, Comptrollers and Treasurers to Donald J. Trump, President of the United States (Mar. 20, 2020), <https://www.nga.org/letters-nga/state-and-local-government-organizations-seek-pause-on-public-comments-on-rulemaking-processes/>.

matters, or that are required by statutory or judicial deadlines.”¹³ As they note, this need is “self evident” and would “ensure that all appropriate federal resources are directed towards the present public health and national emergencies and that the federal Government does not unnecessarily take steps that would call for action by state or local governments, by businesses and other organizations affected by the current emergencies, or by our residents, whose ability to meet and communicate with each other has been limited by measures adopted in response to the emergencies.”¹⁴

We therefore request that you provide the House Judiciary Committee with all directives, guidance, or communications issued by OMB or OIRA since March 13, 2020 regarding prioritization of rulemaking proceedings and rulemaking comment periods by June 19, 2020. We also request a briefing for House Judiciary Committee staff on the implementation of Executive Order 13,924, along with the Trump Administration’s ongoing deregulatory efforts and adoption of harmful rules, unrelated to the COVID-19 pandemic. The briefing should cover matters including, but not limited to:

1. The extent to which you have urged federal agencies and OIRA to prioritize actions related to the pandemic response and economic recovery;
2. Whether rulemaking proceedings that were pending or not yet initiated as of March 13, 2020, and not directly related to the public health or economic response to the COVID-19 pandemic, can or have been classified as “non-essential;”
3. The extent to which OMB has instructed agencies to extend ongoing public comment periods beyond the end of the declared national emergency; and
4. Whether you have considered any such extensions, including reopening comment periods that closed between March 13, 2020—the date President Trump declared a national emergency—to present.

We request that you respond with possible dates for the briefing by no later than the close of business on June 19, 2020.

Sincerely,



Jerrold Nadler
Chairman
House Committee on the Judiciary



David N. Cicilline
Chairman
House Subcommittee on Antitrust,
Commercial and Administrative Law

¹³ Letter from 21 state attorneys general to Russell T. Vought, Acting Director, Office of Management and Budget (Mar. 31, 2020), <https://www.nj.gov/oag/newsreleases20/COVID-19-Rule-Delay-Letter-Final.pdf>.

¹⁴ *Id.*



Joe Neguse
House Subcommittee on Antitrust,
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Additional Cosigners:

Representative Jamie Raskin
Representative Pramila Jayapal
Representative Mary Gay Scanlon
Representative Sylvia R. Garcia
Representative Lucy McBath
Representative Ted Deutch
Representative Shelia Jackson Lee
Representative Steve Cohen
Representative Henry C. "Hank" Johnson, Jr.
Representative Madeline Dean