

**Congress of the United States**  
**Washington, DC 20515**

November 16, 2020

Mr. Thomas H. Armstrong  
General Counsel  
Government Accountability Office  
441 G Street, N.W.  
Washington, D.C. 20548

Dear Mr. Armstrong:

We are writing to request that the Government Accountability Office (GAO) closely monitor federal agencies for potential last-minute roll-backs of health, safety, and environmental protections by the outgoing Trump Administration. We are concerned that these “midnight rules” may be rushed through without providing Congress adequate time to review these rules, as required by law. These rules could include significant actions that have the potential to weaken air quality standards, lift protections for endangered species, or jeopardize national security.<sup>1</sup>

GAO has found that agencies publish more final regulations at the end of presidential administrations.<sup>2</sup> The Congressional Research Service has explained that during presidential transitions when control of the executive branch shifts, agencies may have increased incentives to engage in “midnight rulemaking” in order to implement policies before the end of the president’s term.<sup>3</sup>

The Congressional Review Act requires Federal agencies to submit reports of new rules to each House of Congress and GAO before any rule may take effect.<sup>4</sup> Congress enacted the CRA “to better ensure that Congress has an opportunity to review and possibly disapprove regulations, in certain cases, before they become effective.”<sup>5</sup> GAO is required under the CRA to report to Congress on whether any rule that is designated by the Office of Information and Regulatory Affairs (OIRA) as a major rule complies with the CRA.<sup>6</sup>

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<sup>1</sup> See, e.g., *White House Races to Complete Regulations Before Trump Exits*, Science (Nov. 10, 2020) (online at [www.sciencemag.org/news/2020/11/white-house-races-complete-regulations-trump-exits](http://www.sciencemag.org/news/2020/11/white-house-races-complete-regulations-trump-exits)).

<sup>2</sup> Gov’t Accountability Off., GAO-18-18, *Federal Rulemaking: OMB Should Work with Agencies to Improve Congressional Review Act Compliance during and at the End of Presidents’ Terms 7* (2018) (online at <https://www.gao.gov/assets/700/690624.pdf>).

<sup>3</sup> See Cong. Research Serv., R42612, *Midnight Rulemaking: Background and Options for Congress 1* (2016) (online at <https://crsreports.congress.gov/product/pdf/R/R42612>).

<sup>4</sup> Pub. L. No. 104-121, § 251, 110 Stat. 847, 868–874 (1996), codified at 5 U.S.C. §§ 801–808.

<sup>5</sup> Gov’t Accountability Off., GAO-18-18, *Federal Rulemaking: OMB Should Work with Agencies to Improve Congressional Review Act Compliance during and at the End of Presidents’ Terms 7* (2018) (online at <https://www.gao.gov/assets/700/690624.pdf>).

<sup>6</sup> 5 U.S.C. § 804 (defining a major rule as:

[A]ny rule that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds has resulted in or is likely to result in—(A) an annual effect on the economy of \$100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local

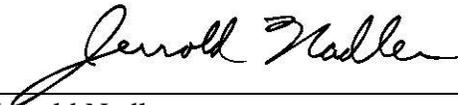
In 2018, GAO found that during the transition periods in 2000, 2008, and 2016, 25% of economically significant rules did not comply with the procedural requirements of the CRA. GAO found that the failure of agencies to comply with the CRA “has the overall effect of making it more difficult for Congress to exercise its oversight role under CRA” and “can potentially create legal uncertainty for agencies and regulated parties.”<sup>7</sup>

At the end of the Obama Administration, OIRA Administrator Howard Shelanski cautioned agencies “to avoid an end-of-year scramble that has the potential to lower the quality of regulations” and “to tax the resources available for interagency review.”<sup>8</sup>

The American people recently elected President-Elect Joseph R. Biden and Vice President-Elect Kamala Harris, which will result in a transition to a new Administration. We therefore request that GAO carefully monitor agency activity during this transition period to ensure that all rules issued during the final months of the Trump Administration comply with the CRA. We also request that you inform our Committees of any major rules issued during this period that do not fully comply with the requirements of the CRA.

Thank you for your attention to this matter.

Sincerely,



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Jerrold Nadler  
Chairman  
Committee on the Judiciary



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Carolyn B. Maloney  
Chairwoman  
Committee on Oversight and Reform

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government agencies, or geographic regions; or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.).

<sup>7</sup> Gov’t Accountability Off., GAO-18-183, Federal Rulemaking: OMB Should Work with Agencies to Improve Congressional Review Act Compliance during and at the End of Presidents’ Terms, Government Accountability Office 20-27 (2018) (online at [www.gao.gov/assets/700/690624.pdf](http://www.gao.gov/assets/700/690624.pdf)).

<sup>8</sup> See Memorandum from Howard Shelanski, Administrator, Office of Information and Regulatory Affairs, to Deputy Secretaries 1-2 (Dec. 17, 2015) (online at [https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/agencyinformation\\_circulars\\_memoranda\\_2015\\_pdf/regulatory\\_review\\_at\\_the\\_end\\_of\\_the\\_administration.pdf](https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/agencyinformation_circulars_memoranda_2015_pdf/regulatory_review_at_the_end_of_the_administration.pdf)).