



September 20, 2012

The Honorable Lamar Smith  
Chairman  
Committee on Judiciary  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable John Conyers, Jr.  
Ranking Member  
Committee on Judiciary  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Chairman Smith and Ranking Member Conyers:

On behalf of Associated Builders and Contractors (ABC), a national association with 74 chapters representing 22,000 merit shop construction and construction-related firms, I am writing in regard to today's Judiciary Committee hearing titled, "Regulation Nation: The Obama Administration's Regulatory Expansion vs. Jobs and Economic Recovery." The Obama administration has issued numerous regulations that impact the construction industry, which create an environment of uncertainty that has made it difficult for firms to adequately plan for the future.

For the last four years, the White House has encouraged federal regulatory agencies to assert their power through rulemaking. These agencies operate relatively unchecked and unsupervised, especially during the early stages of the regulatory process. Many rulemakings are accompanied by poor or incomplete economic cost-benefit forecasting and other data analysis that could have helped to create practical, sustainable rules and regulations. At times, even the will of Congress and the American public are disregarded in order to issue regulations.

For the construction industry, excessive regulations translate into higher costs, some of which must be passed along to the consumer. Ultimately, these costs impact our industry's recovery and our businesses' ability to expand and hire more workers. It is particularly alarming that small businesses, which comprise the vast majority of the industry, are disproportionately affected by the administration's irresponsible approach to regulation.

As builders of our communities and infrastructure, ABC members understand the value of standards and regulations based on solid evidence, with appropriate consideration paid to implementation costs and input from affected stakeholders. ABC strongly supports comprehensive regulatory reform, including across-the-board requirements for departments and agencies to appropriately evaluate risks, weigh costs and assess the benefits of all regulations. We believe several pieces of legislation that have passed the House of Representatives this Congress are especially positive steps in reforming the regulatory system to create greater accountability and transparency. If implemented, these policies would make it easier for our members to comply with regulatory requirements, allowing them more time and resources to put toward winning and performing work, and creating jobs in the process.

**Regulatory Accountability Act of 2011(H.R. 3010):**

In our current economic environment, steps must be taken to reform the increasingly outdated federal rulemaking process in order to improve government accountability, transparency and regulatory quality. The government should only issue regulations that are supported by adequate data and created in the most practical, well-reasoned and sustainable manner possible.

This legislation enhances public transparency and government accountability when agencies develop regulations. Earlier public outreach and access to information (including supporting data) on upcoming regulatory plans will give

stakeholders a vastly improved picture of agencies' plans before regulations are fully developed. It will also include greater stakeholder input, along with mandatory public hearings on the most costly regulatory proposals.

For the first time, agencies will be required to look at potential *indirect* and *cumulative* economic impacts (including the impact on jobs and the economy). Agencies will be held accountable if the data or analyses used to write regulations are deficient or unsound. Finally, agencies will be required to adopt the least burdensome regulatory option—unless it can provide a strong reason otherwise—to ensure only the most necessary burdens are imposed on businesses and the public.

**Regulatory Flexibility Improvements Act of 2011 (H.R. 527):**

Small businesses are the backbone of our nation's economy, and their ability to operate efficiently and free of unnecessary regulatory burdens is critical for our country's economic recovery. Proposed and existing regulations need to be thoroughly examined from cost standpoints to ensure they do not encumber our country's primary job creators.

This legislation requires federal agencies to more closely examine regulatory impacts on small businesses. It gives the Small Business Administration's (SBA) Office of Advocacy additional authority and requires the office to establish more in-depth "regulatory flexibility" analyses during the federal rulemaking process. In addition, the legislation's provisions on periodic review of rules are in line with President Obama's Executive Order 13563, which requires agencies to conduct a retrospective analysis of existing rules to identify and modify rules in need of reform.

**Midnight Rule Relief Act of 2012 (H.R. 4078, Title II):**

For decades, outgoing administrations from both parties have engaged in the practice of issuing so-called "midnight" regulations—rules, guidance and other policies that are often too controversial or problematic to be implemented earlier in the presidential term. Many soon-to-be proposed and final rules from a multitude of federal agencies are currently awaiting publication. Political and policy experts are in general agreement that the Obama administration is holding many of these back in order to issue them with either a new election mandate or during the "lame duck" period after an election defeat, but prior to leaving the White House.

This legislation prohibits any future lame-duck administration from issuing midnight regulations with economic impacts of \$100 million or more in the transition period between Election Day and Inauguration Day. This would ensure that businesses are not slammed with a torrent of costly, burdensome regulations each time control of the Executive Branch changes.

**Sunshine for Regulatory Decrees and Settlements Act of 2012 (H.R.4078, Title III):**

The practice of regulation through litigation (or "sue and settle" as it is sometimes described) is used and often abused by advocacy groups in order to initiate rulemakings when they feel federal agencies are not moving quickly enough to draft and issue these policies. Organizations routinely file lawsuits against federal agencies claiming they have not satisfied particular regulatory requirements, at which point agencies can opt to settle. When settlements are agreed upon, they often mandate that rulemakings go forward and frequently establish arbitrary timeframes for completion—without stakeholder review or public comment. These settlements are agreed to behind closed doors and their details are kept confidential. Agencies release such rulemaking proposals for public comment only after the settlement has been agreed upon, which is often too late for adequate, meaningful feedback.

This legislation promotes enhanced openness and transparency in the regulatory process by requiring early disclosure of proposed consent decrees and regulatory settlements. In addition, this bill would require agencies to solicit public comment prior to entering into consent decrees with courts, which would provide affected parties proper notice of proposed regulatory settlements and make it possible for affected industries to participate in the actual settlement negotiations.

At a time when the construction industry faces an unemployment rate greater than 11 percent, the need to create jobs is imperative, and so is the need for regulatory reform. We applaud the committee for addressing these regulations and the environment of uncertainty they create for America's job builders.

Sincerely,

A handwritten signature in black ink, appearing to read "K Swearingen". The signature is fluid and cursive, with the first letter of the first name being a large, stylized capital 'K'.

Kristen Swearingen  
Senior Director, Legislative Affairs