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## United States Senate

WASHINGTON, DC 20510

January 23, 2013

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The Honorable Lisa Jackson  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20004

Dear Administrator Jackson:

I am concerned that the Obama Administration is not meeting its legal obligations to inform Congress and the public of its anticipated regulatory agenda through timely publication of the Unified Agenda. The purpose of the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda) is to inform Congress and the public of anticipated agency regulation. This information is invaluable to all parties as it provides insight into upcoming federal regulation. As you are aware, Executive Order 12866 requires the Unified Agenda to be issued biannually, once in the spring and again in the fall.<sup>1</sup> According to the Environmental Protection Agency (EPA) website, the spring issue is published in April or May, and the fall issue is published between October and December.<sup>2</sup> In addition, the Regulatory Flexibility Act (RFA) mandates that federal agencies publish a regulatory flexibility agenda in the Federal Register every April and October.<sup>3</sup> Specifically, Section 602 of the RFA instructs, “[d]uring the months of October and April of each year, each agency shall publish in the Federal Register a regulatory flexibility agenda.”<sup>4</sup> As you are aware, agencies meet their statutory RFA obligations by combining their regulatory flexibility agendas with their submission to the Office of Information and Regulatory Affairs (OIRA) for the Unified Agenda.<sup>5</sup>

The prompt publication of the Unified Agenda has become a cornerstone of federal transparency. Yet despite questions raised by multiple congressional committees, including the Committee on Environment and Public Works under Ranking Member Inhofe, the Obama Administration did not publish the Spring 2012 Unified Agenda until December 21, 2012, and it has so far failed to publish the Fall 2012 Unified Agenda.<sup>6</sup> OIRA notified federal agencies on March 12, 2012, of their obligation to submit their individual Spring 2012 agendas by April 13, 2012, and on June 13, 2012, OIRA notified federal agencies of their obligation to submit their individual Fall 2012 agendas by September 7, 2012.<sup>7</sup> Despite these deadlines, in October 2012

<sup>1</sup> See Exec. Order No. 12866, 58 Fed. Reg. 51735 (Sept. 30, 1993).

<sup>2</sup> See <http://www.epa.gov/lawsregs/regulations/regagenda.html> (last accessed January 22, 2013).

<sup>3</sup> 5 U.S.C. § 602.

<sup>4</sup> *Id.*

<sup>5</sup> See [http://www.reginfo.gov/public/jsp/eAgenda/StaticContent/UA\\_About.jsp](http://www.reginfo.gov/public/jsp/eAgenda/StaticContent/UA_About.jsp) (last accessed January 22, 2013).

<sup>6</sup> See <http://www.reginfo.gov/public/#> (last accessed January 22, 2013).

<sup>7</sup> See <http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/agenda-data-call-and-guidelines-spring-2012.pdf> (last accessed January 22, 2013); see also <http://www.whitehouse.gov/sites/default/files/omb/inforeg/for->

OIRA stated that, “[a]gencies [were] currently compiling the most updated information about their anticipated regulatory actions.”<sup>8</sup> This statement indicates that as of October 2012, at least some agencies had failed to meet the April 13, 2012, and September 7, 2012, agenda deadlines.

Moreover, the Committee has learned that when OIRA was asked to provide a specific list of all agencies that met the specified deadlines and the dates on which they submitted their agendas, OIRA failed to respond. As OIRA has yet to provide Congress a satisfactory explanation for the unprecedented ten-month delay of the Spring 2012 Unified Agenda and the outstanding status of the Fall 2012 Unified Agenda, I am seeking answers directly from the EPA on when its 2012 regulatory agendas were submitted. Accordingly, I request that you answer the following questions by February 6, 2013:

1. When did the EPA submit its Spring 2012 regulatory agenda to OIRA? If EPA submitted its agenda after the April 13, 2012 deadline, please explain why EPA failed to meet the deadline.
2. Has the EPA submitted its Fall 2012 regulatory agenda to OIRA?
  - a. If so, did the EPA meet the September 7, 2012 deadline?
  - b. If EPA has submitted its agenda, but after the deadline, please explain the basis for EPA’s delay in submitting its Fall 2012 regulatory agenda.
  - c. If EPA has not yet submitted its Fall 2012 agenda to OIRA, when does the agency plan to submit its agenda to OIRA? Please explain the basis for the delay.
3. In light of the delayed publication of the Fall 2012 Unified Agenda, what is EPA’s plan to satisfy its legal obligations under the RFA?
4. Was the EPA ever instructed not to submit the Spring 2012 regulatory agenda or instructed to delay its submission? If so, by whom?
5. Was the EPA ever instructed not to submit its Fall 2012 regulatory agenda or instructed to delay its submission? If so, by whom?
6. Please describe any instruction or direction that EPA received from OIRA regarding submission of the Spring 2012 agenda. This description should include the date upon which the instruction was received, whether it was communicated verbally or via correspondence, and a detailed description of the guidance given.
7. Please describe any instruction or direction that EPA received from OIRA regarding submission of the Fall 2012 agenda. This description should include the date upon which the instruction was received, whether it was communicated verbally or via correspondence, and a detailed description of the guidance given.

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[agencies/fall-2012-regulatory-plan-and-unified-agenda-of-federal-regulatory-and-deregulatory-actions.pdf](#) (last accessed January 22, 2013).

<sup>8</sup> Letter, Kristen J. Sarri, Assoc. Dir. For Legis. Affairs., Office of Management and Budget, to the Honorable Lamar Smith, Chairman, H. Comm. On Judiciary, et al. (October 12, 2012).

Thank you for your prompt attention to this matter. If you have any questions, please contact Kristina Moore with the Committee on Environment and Public Works at (202) 224-6176.

Sincerely,

A handwritten signature in blue ink, appearing to read "David Vitter". The signature is fluid and cursive, with a long horizontal stroke at the end.

David Vitter  
Ranking Member  
Committee on Environment and Public Works