

September 20, 2012

The Honorable Lamar Smith
Chairman
Committee on Judiciary
U.S. House of Representatives

The Honorable John Conyers, Jr.
Ranking Member
Committee on Judiciary

stration's Regulatory Expansion vs. Jobs and Economic
covery." The Obama administration has issued numerous regulations that impact the construction industry, which
ate an environment of uncertainty that has made it difficult for firms to adequately plan for the future.

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 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—so that 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 too controversial or problematic to be implemented earlier in the presidential term. Many soon-to-be proposed 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 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 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 influence rulemakings when they feel federal agencies are not moving quickly enough to draft and issue these policies. Organizations frequently 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 be finalized and frequently establish arbitrary timeframes for

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 'KS', is positioned above a solid black rectangular redaction box.

Kristen Swearingen
Senior Director, Legislative Affairs