

# Congress of the United States

Washington, DC 20510

April 11, 2012

The Honorable Barack Obama  
The President  
The White House  
1600 Pennsylvania Avenue  
Washington, D.C. 20500-0005

Dear Mr. President:

It has come to our attention that statements you made in your 2012 State of the Union address with respect to federal regulations administered during your presidency were misleading. Although you may have promulgated slightly fewer rules in your first 33 months than the previous Administration, the number of economically significant federal rules, defined as those having an annual effect on the economy of \$100 million or more, has increased significantly. Your Administration has also promulgated controversial rules which are designed to circumvent the express will of the Congress.

We are deeply concerned about the effect these regulations are having on economic growth and job creation in the country. Small businesses in particular are suffering because of these rules. Nearly half of small-business owners blame potential health care costs and government regulations as reasons why they are not hiring new workers. These concerns were echoed in a 2011 report on the impact of regulations by your Office of Management & Budget, which acknowledged that “[r]egulations can also impose significant costs on businesses, dampening economic competition and capital investment.”

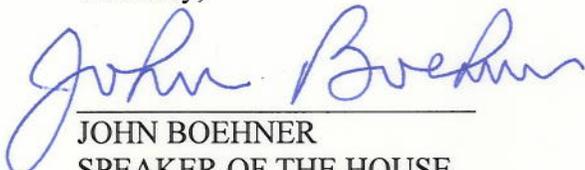
In a memorandum published in the Federal Register on January 26, 2009, you stated that your Administration is “committed to an unprecedented level of openness in Government.” You further promised to “ensure the public trust and establish a system of transparency, public participation, and collaboration.” This memorandum also extolled the virtue of accountability. Despite this purported commitment to transparency, openness, and accountability, your Administration has not adhered to these principles while issuing regulations. Moreover, we are concerned that as we approach the end of your current term, this commitment will be further undermined by a final push to issue a set of “midnight regulations,” with little opportunity for oversight.

“Midnight regulations” refers to the practice of finalizing rules, guidance, findings or other directives that influence the rulemaking process during the final months of a presidency. Often times, these new rules are too controversial to have been adopted earlier and result in last minute giveaways to special interests or intentionally ties the hands of a newly-elected president. In addition, such regulations may not be subject to the normal political checks and balances of the electorate and timely Congressional oversight.

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We believe that issuing a raft of midnight regulations would be inconsistent with your January 2009 commitment to transparency and accountability in the rulemaking process. Moreover, with the nation facing continued economic challenges, it would be ill-advised to issue a series of last minute controversial or economically significant regulations that would distract a new Congress and potentially a new administration from focusing on jobs and the economy. We ask, therefore, that you reaffirm your pledge to transparency, openness, and accountability by committing to withhold from issuing any economically significant or controversial "midnight regulations" after the current fiscal year ends on September 30, 2012.

Sincerely,

  
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JOHN BOEHNER  
SPEAKER OF THE HOUSE

  
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MITCH McCONNELL  
SENATE REPUBLICAN LEADER