



Credit Union National Association

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VIA E-MAIL: [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov)

March 16, 2009

Office of Information and Regulatory Affairs  
Records Management Center  
Office of Management and Budget  
Attn: Mabel Echols  
Room 10102, NEOB  
725 17th Street, NW  
Washington, D.C. 20503  
[oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov)

Re: New Executive Order on Federal Regulatory Review

Dear Ms. Echols:

The Credit Union National Association (CUNA) appreciates the opportunity to comment on President Obama's potential new executive order regarding regulatory review of administrative rulemakings and guidance by the Office of Management and Budget (OMB) and Office of Information and Regulatory Oversight (OIRA). CUNA represents approximately 90 percent of our nation's 8,000 state and federal credit unions, which serve approximately 92 million members.

CUNA believes that centralized, systematic review of agency issuances by OMB and OIRA is important to maintaining good governance and federal government policy uniformity, when appropriate. OMB and OIRA, however, should encourage broader public participation in the regulatory review process by establishing a formal process for receiving, reviewing, and responding to public comments regarding specific agency rulemakings or guidance documents. In addition, OIRA review should be expanded to cover more agencies within the executive branch, such as the Internal Revenue Service (IRS), and OIRA's agency capacity should be increased so that its ability to review administrative issuances in a critical manner is commensurate with its agency mission.

CUNA's past efforts to work with OIRA with respect to regulatory review have sometimes been frustrating because the present OMB/OIRA system established by Executive Orders 12,866 and 13,422 is flawed. Under the current OMB/OIRA regulatory review system, opportunities for public participation are limited. Further, OIRA has apparently not had sufficient personnel to evaluate some administrative issuances in a critical manner, even when CUNA wrote to OIRA to express its concerns about specific, seriously deficient issuances under review.



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For example, CUNA wrote to then-OMB Director Rob Portman in 2007 to request OIRA review of several IRS informal guidance issuances in the form of Technical Advice Memoranda (TAMs) that concerned state-chartered credit union Unrelated Business Income Taxation (UBIT) liability. OMB informed CUNA that IRS guidance is exempt from OIRA review—notwithstanding Executive Order 13,422—because of a side agreement between OMB and IRS to exclude IRS issuances from OIRA review.

Over the last 30 years, IRS had issued little guidance about the activities of state-chartered credit unions that it considers subject to UBIT. Although the credit union industry had requested that IRS issue comprehensive, formal guidance in the form of a revenue ruling, IRS ultimately opted for informal, case-by-case guidance in the form of TAMs. These boiler-plate TAMs take an arbitrary and extremely restrictive view of credit unions' exempt purpose that threatens to upset the dual federal and state chartering system for credit unions and is negatively impacting the U.S. credit markets. Every dollar that a credit union pays in questionably-assessed federal taxes is a dollar that would otherwise be allocated to consumer and small business lending.

The IRS's use of TAMs to expand credit union taxation is just one example of a major policy decision that has been decided without centralized review or meaningful public participation. CUNA believes that centralized OIRA review of administrative issuances and a formal process for public participation therein is paramount because major policy decisions, such as expansion of credit union UBIT liability, should be made in a manner that is consistent with the Administration's priorities. OIRA's staff should be expanded if it currently does not have sufficient personnel to review the issuances of IRS and other non-independent executive branch agencies.

A formal process for public participation in OIRA review is vital to good governance because members of the public can contribute facts and perspectives to the regulatory review process of which OMB and OIRA may not otherwise be aware. OMB/OIRA has received such information from members of the public in the past, usually via insider connections. This insider influence has sometimes resulted in OMB delaying or revising pending agency policies that would not have otherwise been delayed or revised.

Without a formal system for public participation in place, the ability of the members of the public to make their concerns known to OMB and OIRA has depended upon who knows whom in Washington. Ad hoc procedures for receiving, reviewing, and responding to public comments are inherently opaque and favor insiders and the well-connected. Policy uniformity across U.S. government agencies, in a manner consistent with the Administration's priorities of democratic and transparent governance, cannot be achieved without a formal OIRA regulatory review comment procedure. Without a formal public comment process, members of the public who lack personal connections with key OMB officials during a particular administration are—and will continue to be—shut out from the regulatory review process while insiders are not.

Further, CUNA believes that OIRA regulatory review will not produce undue delay of regulations and guidance, even with a formal system for public comments, so long as OIRA establishes timelines for review of administrative issuances and has sufficient personnel to review administrative issuances within those timelines.

In addition, CUNA believes that the Administration should consider expanding the function of OMB/OIRA so that it performs an advisory role with respect to federal agency administrative law and procedure comparable to the now defunct Administrative Conference of the United States (ACUS). Until 1995, ACUS performed the important role within the United States government of recommending improvements to federal administrative law and the policies and procedures of federal agencies, especially in terms of how those agencies could be more fair and efficient.

CUNA believes that many federal agencies, including independent agencies not subject to Executive Orders 12,866 and 13,422, would benefit from guidance similar to that formerly provided by ACUS. OMB (and by extension OIRA), because it already plays a role in reviewing the issuances of myriad federal agencies, is the agency best positioned to fill the intellectual void created when Congress dissolved ACUS in 1995.

Thank you for the opportunity to comment President Obama's potential new executive order regarding OMB and OIRA regulatory review. If you or other agency staff have questions about our comments, please contact me at (202) 638-5777.

Sincerely,

Michael S. Edwards  
Counsel for Special Projects