

June 6, 2023

The Honorable Richard L. Revesz
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Filed at Regulations.gov

Re: **Draft 12866 Meeting Guidance**

88 Fed. Reg. 20916 (April 7, 2023), Docket No. OMB-2022-0011

Dear Mr. Revesz:

Business Roundtable appreciates this opportunity to submit comments on the “Draft Guidance Implementing Section 2(e) of the Executive Order of April 6, 2023 (Modernizing Regulatory Review),” addressing the process used by the Office of Information and Regulatory Affairs (OIRA) in setting meetings on regulatory actions under review by OIRA pursuant to Executive Order (EO) 12866.

Business Roundtable is an association of more than 200 chief executive officers (CEOs) of America’s leading companies, representing every sector of the U.S. economy. Business Roundtable CEOs lead U.S.-based companies that support one in four American jobs and almost a quarter of U.S. GDP. Through CEO-led policy committees, Business Roundtable members develop and advocate directly for policies to promote a thriving U.S. economy and expanded opportunity for all Americans.

As discussed below, Business Roundtable is pleased that the draft Guidance recognizes the important purposes that EO 12866 meetings serve and largely maintains the current processes for these meetings. Business Roundtable has no objections to OIRA seeking to expand participation in such meetings. In so doing, however, OIRA must be careful not to disadvantage any other groups of stakeholders. All stakeholders are legally entitled to participate in these meetings on an equal footing.

A. EO 12866 Meetings Serve Important Purposes in the Rulemaking Process

EO 12866, which governs the vitally important process of federal regulatory planning and review, has remained largely unchanged for almost 30 years. This remarkable longevity reflects the wisdom of the many balances struck by that document. Business Roundtable was thus encouraged to see the Biden Administration “reaffirm[] the principles, structures, and definitions governing contemporary regulatory review established in [the EO].”¹

One of the wise balances struck by EO 12866 is allowing stakeholders external to the federal government to meet with OIRA staff regarding regulatory actions under review, notwithstanding their impact on OIRA staff and resources. The EO states that the procedures it establishes for these meetings “ensure[s] greater openness, accessibility, and accountability in the regulatory review process.”² Business Roundtable submits that this phrase does not refer merely to the EO’s requirements for disclosure, but also signals that the 12866 meeting process itself represents valuable openness and accessibility on the part of OIRA, which otherwise operates in isolation from the public. We trust that the key reason that presidents from George W. Bush to Biden have retained the 12866 meeting process is that OIRA benefits from the information and views that public stakeholders provide it regarding the regulatory action under review. Individuals working for the Roundtable, member companies or consultants who have participated in 12866 meetings confirm that information provided in 12866 meetings has often resulted in changes to rules that made them more effective or less unnecessarily burdensome.

The meeting process also provides accountability in the regulatory review process by providing a potential check on agencies. Meeting participants have the ability to rebut or qualify claims made by agencies in rulemaking documents or in oral statements. The net result is the regulatory review process is better informed than if it were a purely intra-governmental exercise.

Business Roundtable thus appreciates that the draft guidance preserves OIRA’s “open door” policy with respect to EO12866 meetings,³ affirms that “OIRA endeavors to grant all EO 12866 meeting requests,”⁴ and adds that, “[f]or the majority of regulatory actions, OIRA is able to accommodate all E.O. 12866 meeting requests and will continue to do so.”⁵ The final guidance should reaffirm those commitments.

¹ E.O. 14094, § 1(a).

² See E.O. 12866, § 6(b)(4).

³ Draft Guidance at 3.

⁴ *Id.*

⁵ *Id.* at 6.

B. Promoting Access by Groups That Have Not Historically Requested Meetings

The predominant theme of the Guidance is to “facilitate . . . meeting requests . . . from potential participants . . . who have not historically requested such meetings . . .”⁶ Business Roundtable welcomes OIRA conducting outreach to such groups to alert them to the existence of the meeting process, explain how to request a meeting, and otherwise encourage meeting requests from them. The Roundtable is concerned, however, by the draft guidance’s statement that, “[f]or the limited number of regulatory actions that strain OIRA resources and ability to accommodate all meeting requests, OIRA may seek to prioritize the scheduling of requests that come from those that have not historically requested meetings.”⁷

We submit that OIRA is legally required to treat meeting requestors equally and cannot prioritize some groups at the expense of others based on their identity. This obligation has its roots in the Due Process Clause of the Fifth Amendment. It also reflects the fact that the rulemaking process that underlies the regulatory review process is a creature of the Administrative Procedure Act, which provides public participation rights to “interested persons,”⁸ without any indication that agencies can favor some interested persons over others. Elsewhere, the Guidance declares that OIRA’s goals include “treating all members of the public — no matter their resources or viewpoints — consistently and fairly.” OIRA should adhere to that policy. Meetings should be scheduled as requests are received, without regard to what group a requester represents.

B. Consolidating Groups With Similar Perspectives

EO 14094 states that OIRA’s “reforms . . . may include . . . consolidation of meetings by requester, subject matter, or any other consistently applied factors deemed appropriate to improve efficiency and effectiveness.”⁹ Implementing that direction, the Guidance states:

Should the volume of meeting requests increase substantially beyond what is feasible to accommodate under current resource constraints, OIRA may have to consider the consolidation of E.O. 12866 meetings even in the absence of specific requests. If necessary, this would likely apply to a very narrow subset of rules, and be undertaken so as to avoid as much as possible having to turn meeting requests down. OIRA particularly invites public comment and input on sensible and consistently-applied factors it may use to do so.¹⁰

⁶ E.O. 14094, § 2(e)(i).

⁷ *Id.* at 6.

⁸ See 5 U.S.C. §§ 553(c), 553(e).

⁹ EO 14094, §2(e)(ii)(C).

¹⁰ Guidance at 7.

At the outset, the Roundtable believes that OIRA should be sufficiently resourced and managed to avert the need for involuntary consolidation. The Roundtable also supports the Guidance's idea of incentivizing consolidation by prioritizing meetings for requesters who submit joint requests.¹¹ Experienced practitioners are sensitive to OIRA's resource constraints and already seek consolidated meetings where groups are aligned on issues and not all participants need to speak up individually. The Roundtable thus supports prioritizing joint meeting requests. (Doing so is permissible as it does not discriminate on the basis of the identity of the group(s) represented.)

Former OIRA Administrator Sally Katzen, author of EO 12866, regularly emphasizes in public remarks that when she ran OIRA, she participated actively in every EO 12866 meeting. The experience of Roundtable staff, members and consultants who participated in those meetings was that they were much more productive, for both OIRA and participants, than current practice, in which desk officers conduct seriatim 30-minute meetings and rarely ask questions. OIRA would dramatically increase joint meeting requests if it specified that the Administrator him or herself would participate, and that the meeting would last an hour, rather than 30 minutes.

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Business Roundtable appreciates this opportunity to provide comments on the draft 12866 Meeting Guidance. Please contact me with any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Corey Astill', with a stylized, cursive script.

Corey Astill
Vice President, Health and Retirement
Business Roundtable

¹¹ *Id.*