Congress of the United States
Washington, DC 20515

November 15, 2016

Dear Secretaries, Administrators, Directors and Commissioners:

Earlier this year, President Obama's Chief of Staff stated that the Administration will "do audacious executive action throughout the course of the rest of the year."[1] As you are aware, such action often involves the exercise of substantial policymaking discretion and could have far-reaching impacts on the American people and economy. Considering these potential consequences, we write to caution you against finalizing pending rules or regulations in the Administration's last days. By refraining from acting with undue haste, you will ensure that agency staff may fully assess the costs and benefits of rules, making it less likely that unintended consequences will harm consumers and businesses.[2] Moreover, such forbearance is necessary to afford the recently elected Administration and Congress the opportunity to review and give direction concerning pending rulemakings.[3] Should you ignore this counsel, please be aware that we will work with our colleagues to ensure that Congress scrutinizes your actions – and, if appropriate, overturns them – pursuant to the Congressional Review Act.[4]

Sincerely,

Kevin McCarthy
House Majority Leader

Jeb Hensarling
Chairman
House Committee on Financial Services

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[1] David Cook, *White House chief of staff promises 'audacious executive action'*, CHRISTIAN SCIENCE MONITOR (Jan. 13, 2016), http://www.csmonitor.com/USA/Politics/monitor_breakfast/2016/0113/White-House-chief-of-staff-promises-audacious-executive-action (emphasis added).

[2] Other aspects of the rulemaking process are diminished when administrations issue "midnight" rules, lowering the quality of the final product. The Office of Information and Regulatory Affairs (OIRA) has limited opportunity to review "midnight" rules, "and neither agency nor OIRA personnel have sufficiently strong incentives or latitude to conduct searching analyses of whether the rules should or should not be issued or modified." H. COMM. ON THE JUDICIARY, MIDNIGHT RULES RELIEF ACT OF 2016, H. Rep. No. 114-782, pt. 1, at 2 (2016).

[3] On January 20, 2009, President Obama's Chief of Staff requested that the heads of executive departments and agencies refrain from finalizing new rules, writing that "[i]t is important that [the President's] appointees and designees have the opportunity to review and approve any new or pending regulations." We respectfully submit that the sentiment animating President Obama's guidance is as applicable today as it was almost eight years ago, and that democratic accountability requires that all agencies – even so-called independent agencies – temporarily refrain from finalizing rules.

[4] 5 U.S.C. §§ 601 *et seq.*

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CC: All Federal Executive and Independent Agencies