



Submitted Via the Regulatory Portal at: <http://www.regulations.gov>

Office of Information and Regulatory Affairs
Office of Management and Budget
Attention: Darcel D. Gayle, NEOB
Room 10202
725 17th Street, NW
Washington, D.C. 20503

Re: Draft 2010 Report to Congress on the Benefits and Costs of Federal Regulations
Docket ID OMB-2010-0008

Dear Sir or Madam:

America's Health Insurance Plans (AHIP) is writing to offer comments in response to the notice that was issued in the *Federal Register* on April 29, 2010 (75 Fed. Reg. 22630). The notice requests public comments on the "Draft 2010 Report to Congress on the Benefits and Costs of Federal Regulations."¹

America's Health Insurance Plans (AHIP) is a national association, which represents approximately 1,300 health insurance plans that provide coverage to more than 200 million Americans. Our members offer a broad range of health insurance products in the commercial marketplace and have demonstrated a strong commitment to participation in public programs.

AHIP is committed to working with the Administration on health care regulatory and policy initiatives that will positively affect consumers. This ongoing work will involve the development and implementation of federal regulatory requirements in a number of areas as required by the Patient Protection and Affordable Care Act,² the Health Information Technology for Economic and Clinical Health Act,³ and other federal activities addressed in the draft report such as the: modifications to medical data code set standards to adopt ICD-10-CM and ICD-10-PCS under the Health Insurance Portability and Accountability Act (HIPAA) administrative simplification requirements; modifications to the HIPAA electronic transaction standards; and the revisions to the Medicare Advantage and prescription drug benefit programs. We remain committed to federal health reform efforts, and we look forward to continued dialog on these issues.

¹ As indicated in the notice, the draft report is publicly available at:
http://www.whitehouse.gov/omb/inforg/regpol_reports_congress/.

² Pub. L. No. 111-148, as amended by Pub. L. No. 111-152.

³ As included in the American Recovery and Reinvestment Act, Pub. L. No. 111-5.

Our current comments are focused on two issues: (1) the role of the Office of Management and Budget (OMB) in reviewing federal regulations; and (2) increasing transparency of the status of regulatory reviews.

OMB Review of Federal Regulations

Page 47 of the draft report solicits public comments “[t]o promote public engagement . . . about regulatory changes that might serve to promote economic growth, with a particular reference to increasing employment, innovation, and competitiveness.” We appreciate the agency’s willingness to solicit public input on this issue.

The Administrative Procedures Act⁴ has served as the framework for federal agencies to promulgate regulations and enumerates the processes and procedures that federal agencies should use when developing and establishing regulatory requirements that bind individuals and entities under an agency’s jurisdiction. A key component is that federal rulemaking best occurs following the issuance of proposed regulations in the *Federal Register* and an adequate opportunity for the public to submit comments and participate in the rulemaking process.

We recognize that the statute exempts certain “interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice” from the public notice-and-comment procedures, and also creates an exception for situations where an agency finds “good cause” for foregoing the proposed regulation process (e.g., when following the public notice and comments procedures are impracticable, unnecessary, or contrary to the public interest⁵). However, we believe federal agencies benefit from information offered by the public, particularly when federal agencies receive information about proposed policies and requirements that could result in unintended consequences. Such information can be critical in understanding when regulatory changes might serve to promote economic growth or have a positive effect on increasing employment, innovation, or competitiveness. We encourage OMB to exercise its authority in the regulatory review process to ensure that federal agencies, whenever possible, provide the public with the opportunity to offer comments in the rulemaking process through notices of proposed rulemaking so that federal agencies receive information on these important issues. Thus, we encourage OMB and the federal agencies to use interim final regulations when expressly required by statute or in limited situations where using the APA “good cause” exception is clearly warranted.

Increasing Transparency

A second key theme noted in the report is that federal agencies strive to be transparent with respect to regulatory activities through an “open government” approach. We support this

⁴ 5 U.S.C. §553.

⁵ 5 U.S.C. §553(d).

objective and believe the current efforts to use the Internet⁶ to communicate and receive information are positive and innovative ways to accomplish this goal.

We suggest that the OMB consider improving the information that is available to the public detailing the status of regulations under review. Specifically, completed regulatory reviews are made available via the Office of Information and Regulatory Affairs (OIRA) website, but these postings do not contain information about the outcome of the review process (e.g., whether or not a regulation has been approved for publication in the *Federal Register*). We recommend that the OMB evaluate whether more specific information can be made available on the OIRA website for the public detailing the status and completion of regulatory reviews.

In addition, in some cases information describing the regulations under OMB review has not been made available to the public until the OMB review is completed (i.e., a pending regulation does not appear in the “regulations under EO 12866 review” section of the OIRA website,⁷ but later appears in the section labeled “regulatory review completed in last 30 days”). We encourage the agency to: (1) post information related to the regulatory review processes from the time a regulation is received for review until the review is completed; and (2) evaluate how to make this information available to the public in a timely fashion so that affected entities can monitor and prepare for important regulatory developments. Part of this evaluation should assess whether automatic notifications can be sent to interested individuals (e.g., using an automatic list-service or electronic mail message) when a pending regulation or notice has received OMB approval.

We appreciate the opportunity to comment on the draft report and the regulatory processes.

Sincerely,



Marilyn Zigmund Luke
Senior Regulatory Counsel

⁶ E.g., the regulatory portal and information that is available on the Internet at www.regulations.gov.

⁷ The webpage can be located on the Internet at: <http://www.reginfo.gov/public/do/eoPackageMain>.