American Lung Association.

June 6, 2023

The Honorable Richard L. Revesz
Administrator
Office of Information and Regulatory Affairs
White House Office of Management and Budget
Washington, DC 20503

Re: Comments on proposed EO 12866 Meetings Guidance[1] reforms under "Modernizing Regulatory Review"[2]; Document ID: OMB-2022-0011-0001; Federal Register Number: 2023-07360

Dear Administrator Revesz:

The American Lung Association strongly supports OMB's efforts to reform the Executive Order (EO) 12866 meetings process. Our organization's mission is to save lives by improving lung health and preventing lung disease, including by advocating for federal rules to reduce threats to lung health from tobacco, air pollution and climate change and to ensure quality and affordable healthcare for everyone. Our organization is a frequent requestor and participant in 12866 meetings. We also place a high value on ensuring affected communities have access to participate in federal decision-making, particularly with regard to regulations that affect health. We appreciate this opportunity to improve transparency, reduce excess industry influence and improve public participation in the regulatory review process.

We strongly support "efforts to ensure access for meeting requestors that have not historically requested such meetings." To improve public engagement, the regulatory process must be structured to alert the public about engagement opportunities and improve access to such opportunities. Towards this end, OMB should conduct proactive outreach to and educate various non-represented stakeholders about regulations currently under review at OIRA.

Federal Register notices about pending rulemakings are not accessed by everyone and the current process of informing public about EO 12866 meetings – requiring searching on the OMB/OIRA website using the regulation identifier number – is not adequate to engage the public. Since the public generally tracks regulations on the rulemaking agency websites (if at all), a link to request 12866 meetings should be posted on those websites too. Aligning OMB/OIRA processes with the regulatory agency processes would better inform stakeholders about engagement opportunities. In this context, every agency could post a calendar view of a

[1] Office of Management and Budget (OMB). (04/06/2023). Draft Guidance Implementing Section 2(e) of the Executive Order on Modernizing Regulatory Review. https://www.whitehouse.gov/wp-content/uploads/2023/04/ModernizingEOSection2eDraftGuidance.pdf

[2] President J. Biden. (04/06/2023). Executive Order on "Modernizing Regulatory Review" https://www.whitehouse.gov/omb/information-regulatory-affairs/modernizing-regulatory-review/#:~:text=The%20Presidential%20Memorandum%20of%20January,improve%20and%20modernize%20regulatory%20review.

proposed regulation on their respective websites including the dates of all submissions of a proposed rule to OMB and highlight opportunities for public engagement including the 12866 meetings with links to OMB/OIRA website. Easy access to the calendar and current status of a proposed regulation would ensure better public participation in decision making processes. OMB/OIRA should provide specific guidance for each review on when meeting request should be submitted. This would provide a timeline for organizations to request meetings. Too often we see industry or trade associations meet weeks after other 12866 meetings have been completed.

With regard to "discouraging meeting requests that are duplicative of earlier meetings with OIRA regarding the same regulatory action (at the same stage of the regulatory process) by the same meeting requestors," we agree with the spirit of avoiding undue delay and outsized influence by industry lobbyists or other similar actors. We do offer one caveat to this reform: The OIRA reviews of a proposed regulatory action occur at two distinctly different stages of the regulatory process – at the pre-Notice of Proposed Rulemaking stage, the version of the regulation could still be speculative about its scope or ambition whereas at the pre-final stage the draft regulation is expected to be very specific on the decisions, provisions, and impacts. As such, these two different stages of the same regulatory action cannot be construed as being the same, and they therefore warrant separate 12866 OIRA meetings even with the same stakeholders.

During this process, OMB must ensure inclusivity so that all groups are represented. Duplication could be subjective and needs to be balanced with timeliness of the rulemaking.

Regarding "encouraging groups that would like to present similar views on a regulatory action to submit joint meeting requests wherever possible," we agree with the goal of maximizing opportunities for a diversity of views to be heard, particularly as it relates to industry lobbyists scheduling multiple meetings to share the same views on behalf of different clients. Encouraging meeting requestors to coordinate their requests across like-minded organizations they work with makes sense, including doing so more proactively on the meeting request form.

We do again offer caveats to this reform. First, any joint meetings with like-minded stakeholders should be structured to reflect the number of stakeholders and ensure that representatives of each organization in the meeting are given ample time to articulate their views. The Lung Association has experienced multiple meeting requests with different stakeholders being consolidated by OMB into one 12866 meeting. In such cases, we ask that the scheduled meeting be extended longer than the customary 30 minutes. Second, if OMB does wish to consolidate meetings among multiple requesters, they must give groups the option and default to keeping meetings separate unless the request to consolidate is accepted. Third, OMB should be especially careful to avoid assuming the viewpoints of meeting requestors that are new to participating in the 12866 process or assume that organizations that have been aligned in the past share a common view on the specific pending regulation. And fourth, if meeting requests are consolidated, OMB should consider playing a more active facilitator rule during the conversation to ensure that all voices are heard.

With regard to "disclosure of additional information about E.O. 12866 meetings that may be helpful to OIRA, to agencies, and to the general public, such as providing information about E.O. 12866 meeting requests in an open, machine-readable and accessible format," we strongly support additional transparency around who is meeting with OIRA during these reviews. We recommend that for each regulation under its consideration, OMB/OIRA set up a calendar of available timeslots for the public to schedule 12866 meetings. That would automatically set

deadlines for such requests. Firm deadlines for these meetings with no extensions of the scheduling calendar to accommodate late requests are essential to avoid delaying the regulatory process and to ensure the timely finalization and implementation of the proposed regulations. For example, OIRA could, when practical and time permits, set deadlines for some meeting requests within 21 days of receipt of a rule (understanding that this sample timeline should not preclude a rule from clearing review earlier when needed.)

To ensure transparency of the 12866 meetings process, OMB/OIRA should make full public disclosure of any audio or video calls or other communications with OMB that are not scheduled and docketed as official meetings. All informal/semi-formal/formal interactions of the regulatory agency with OIRA related to the regulation under consideration should be disclosed to the public. Both OMB and the regulatory agency should also disclose the original draft of the regulation that the regulatory agency submitted for OIRA review, and any other subsequently revised "discussion drafts."

Finally, we offer the following general comments on the draft guidance:

First, to reduce the risk or the appearance of disparate and undue influence on regulatory development, OMB must clearly state (or develop) its revolving door policy prohibitions and related ethics rules as they apply to former employees of varying seniority within the executive branches. Information should be made public on the length of these prohibitions, on contacts (contacting current employees and agencies in the government through oral or written communications and appearances) and related communication with OIRA.

Second, we would like to see the format of 12866 meetings expanded to include on-video and in-person meetings in addition to the current audio-only format. To be able to see OIRA and the regulatory agency staff during the meetings adds to their transparency. Having a permanent virtual option that public participants can use is essential to increasing meeting requests from individuals and groups that have not historically requested such meetings, including those from underserved communities. Formalizing this practice in regulation would be preferred.

Third, to encourage robust engagement and foster thoughtful and substantive input from the public, documents from all federal agencies presented to the public on regulatory and non-regulatory matters published on agency websites or in the Federal Register should adopt a standardized user-friendly format to preview the document contents and their layout. Documents should be accessible and easily readable on a variety of devices, including smartphones. Also, in addition to having a summary, if the document is lengthy enough or substantive enough to warrant displaying in sections, then it should include a table of contents with all the sections and subsections hyperlinked to their respective locations (clickable.) Any PDFs must also include internal bookmarks to navigate between various sections and subsections.[3]

[3] Here are examples of two documents from different agencies missing some or all of these elements:

-In the other OMB docket (OMB-2022-0014-0001, on Circular A-4 "Regulatory Analysis") related to this Executive Order on Modernizing Regulatory Review, OMB's A-4 circular, a 91 page document, includes a table of contents which lists hyperlinked sections but subsections are absent. The PDF lacks internal bookmarks of the sections and subsections and also lacks a summary.
-EPA's recent 1146-page draft Policy Assessment on ozone NAAQS soliciting public comment with a 30-day deadline does not have any of the above elements, constraining public engagement in this regulatory process.

We thank you for the opportunity to offer comment on this important process. We encourage you to ensure, as your north star, that reforms to the 12866 process make meetings more accessible and more easily tracked by members of the public, and that you take every opportunity to reduce the outsized opportunities that industry-funded interests have to engage in the process at the expense of the public.