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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

B-302705

June 7, 2006

The Honorable Tom Davis
Chairman
Committee on Government Reform
House of Representatives

Dear Mr. Chairman:

The Truth in Regulating Act of 2000 (TIRA), Pub. L. No. 106-312, 114 Stat. 1248 (Oct. 17, 2000), became effective on January 15, 2001 (codified at 5 U.S.C. § 801 note). TIRA contemplated a 3-year pilot project during which GAO would perform independent evaluations of “economically significant” agency rules when requested by a Chairman or ranking member of a committee of jurisdiction of either House of Congress. The independent evaluation¹ would include an evaluation of the agency’s analysis of the potential benefits, potential costs, and alternative approaches considered during the rulemaking proceeding. Under TIRA, GAO was required to report on our evaluations within 180 calendar days after we received a committee request.

Section 6(b) of the Act, however, provided that the pilot project would continue only if, in each fiscal year, “a specific annual appropriation not less than \$5,200,000 or the pro-rated equivalent thereof shall have been made for the pilot project.” Section 6(c) of the Act directed GAO to submit to Congress, before the conclusion of the 3-year period, “a report reviewing the effectiveness of the pilot project and recommending whether or not Congress should permanently authorize the pilot project.” During the 3-year period contemplated for the pilot project, Congress did not enact any specific appropriation to cover TIRA evaluations, and the authority for the 3-year pilot project expired on January 15, 2004.

¹ TIRA defines an “independent evaluation” as a “substantive evaluation of the agency’s data, methodology, and assumptions used in developing the economically significant rule, including - - (A) an explanation of how any strengths or weaknesses in those data, methodology, and assumptions support or detract from conclusions reached by the agency; and (B) the implications, if any, of those strengths or weaknesses for the rulemaking.” Section 3(3) of Pub. L. No. 106-312.

During the 108th Congress, Representative Ose introduced H.R. 2432 that, in section 5, would make GAO responsible for conducting TIRA evaluations on a permanent basis. We provided draft language to clarify that our work under TIRA would be contingent upon receiving a specific appropriation enacted by Congress, and on May 11, 2004, we provided our views to you and the Ranking Minority Member of this Committee prior to markup of H.R. 2432 (letter reprinted in 150 *Cong. Rec.* H3154, daily ed. May 18, 2004). While this language in H.R. 2432 regarding TIRA was passed by the House of Representatives and subsequently incorporated in H.R. 2728 for consideration by the Senate, the latter bill was not enacted during the 108th Congress.

In the 109th Congress, two bills have been introduced, H.R. 725, introduced by Representative Mike Rogers, and H.R. 1167, introduced by Representative Sue Kelly, and both bills would, like H.R. 2432 from the 108th Congress, make GAO responsible for conducting TIRA evaluations on a permanent basis. As we stated in 2004, an amendment to these bills is necessary to recognize that GAO could not conduct any TIRA evaluations without a specific appropriation enacted by Congress.

Importantly, GAO has not conducted any TIRA evaluations to date. Therefore, in our view, if Congress wants TIRA to continue, we believe it should do so as a pilot project rather than as a permanent authority. Moreover, we cannot support any proposal to make TIRA permanent without the inclusion of language that makes clear that a specific appropriation must be enacted before GAO can conduct TIRA reviews. In a GAO report issued in 2003², we noted that the Office of Information and Regulatory Analysis within the Office of Management and Budget (OMB) has reviewed approximately 600 “economically significant” rules a year since 1994.³ While realistically GAO would only be asked to review selected rules, any expansion of GAO’s current lines of business without additional dedicated resources would pose a serious problem for us, especially in light of what will likely be increasing budgetary constraints in the years ahead. It would also likely serve to adversely affect our

² U.S. General Accounting Office: Rulemaking, OMB’s Role in Reviews of Agencies’ Draft Rules and the Transparency of Those Reviews, GAO-03-929, at 24 (Washington, D.C.: September 2003).

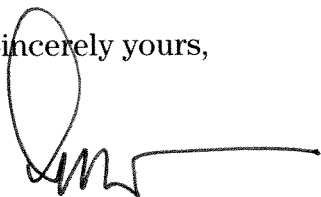
³ Under Exec. Order No. 12866, *Regulatory Planning and Review*, 58 Fed. Reg. 51735 (Oct. 4, 1993), OMB only reviews “economically significant” rules of agencies as defined in 44 U.S.C. § 3502(1) but not including independent regulatory agencies as defined in 44 U.S.C. § 3502(5). Under TIRA, however, GAO could review rules of both executive branch agencies subject to OMB review as well as independent regulatory agencies, and therefore, the number of rules for our potential evaluation could be greater than 600 rules. Section 3(1) of Pub. L. No. 106-312. This is consistent with our responsibilities under the Congressional Review Act, 5 U.S.C. §§ 801-808.

ability to provide the same level of service to the Congress in connection with our existing statutory authorities.

TIRA evaluations will require a significant amount of resources that cannot be absorbed within, for example, GAO's likely fiscal 2007 appropriation, given the substantial present workload at GAO, our current backlog of pending requests, and the anticipated need for contracting for specialized expertise to assist us in our evaluations of particular rules. Accordingly, we respectfully request that any bill seeking to authorize TIRA evaluations by GAO be amended to condition our work on the enactment of a separate and specific annual appropriation. To cover the cost of such work, we propose an amendment to either H.R. 725 or H.R. 1167 authorizing an annual appropriation of \$5,000,000 for fiscal year 2007.⁴

This letter is also being sent to Representatives Stephen Lynch, Sue Kelly, Candice Miller, Mike Rogers, and Henry Waxman. Thank you for your consideration of this important matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'DMW', with a long horizontal line extending to the right.

David M. Walker
Comptroller General
of the United States

Enclosure

⁴This amount would be indexed to the Consumer Price Index.

AMENDMENTS TO THE TRUTH IN REGULATING ACT

Section 5 of Public Law 106-312 is amended by striking everything after the heading and inserting the following:

- (a) There are authorized to be appropriated to the Government Accountability Office to carry out this Act \$5,000,000 for fiscal year 2007.
- (b) For each fiscal year thereafter, there are authorized to be appropriated an amount equal to the prior fiscal year's authorization plus an amount calculated by multiplying the prior year's authorization by the change in the Consumer Price Index as prepared by the Department of Labor for that fiscal year.

Section 6 of Public Law 106-312 is amended by striking subsection (b) and inserting the following new subsection (b):

- (b)(1) Absent a specific annual line item appropriation in the Government Accountability Office's appropriation for fiscal year 2007 of not less than \$5,000,000 for this purpose, the Government Accountability Office shall not conduct in fiscal year 2007 any independent evaluations as authorized by this Act.
- (2) Absent a specific annual line item appropriation in the Government Accountability Office's appropriation for each fiscal year thereafter of not less than the amount authorized for that fiscal year by section 5(b) for that purpose, the Government Accountability Office shall not conduct in that fiscal year any independent evaluations as authorized by this Act.