EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
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MEMORANDUM FOR: REGULATORY POLICY OFFICERS AT DEPARTMENTS AND AGENCIES AND MANAGING AND EXECUTIVE DIRECTORS OF COMMISSIONS AND BOARDS

FROM: Jeffrey Bossert Clark, Sr., Acting Administrator
Office of Information and Regulatory Affairs

SUBJECT: Guidance Implementing the President's Memorandum Directing the Repeal of Unlawful Regulations

I. Introduction

The following guidance is provided to explain the factors and considerations that agencies should prioritize when reviewing a regulation for compliance with each case listed in the Presidential Memorandum (PM), *Directing the Repeal of Unlawful Regulations* (April 9, 2025). The PM provides additional direction for how agencies should comply with Executive Order 14219, *Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative*.

Section 2(c) of EO 14219 directed agencies to provide OIRA, by April 21, 2025, with a list of all regulations that fit into the classes listed in section 2(a) as unlawful or potentially unlawful regulations. OIRA will use this information to develop a Unified Regulatory Agenda that seeks to repeal or modify these regulations, as appropriate and in consultation with the agency. Of particular note, the PM requires that, by May 21, 2025, agencies shall submit to OIRA a one-page summary of each regulation that was initially identified as unlawful or potentially unlawful, but which has not yet been targeted for repeal, explaining the basis for the decision not to repeal that regulation.

This guidance further expands on what factors agencies should consider when assessing the list of regulations for modification or repeal and when providing one-page summaries to OIRA of any rules yet to be repealed, pursuant to EO 14219 and the PM.

If you have questions about this guidance, please reach out to your OIRA desk officer.

II. General Requirements

In making these assessments, each agency should explain how it has considered whether there were "legitimate reliance" interests on the regulation under reexamination. *See Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 30 (2020). But because it is the President's duty to see that the laws are faithfully executed, in all but the most unusual cases, reliance interests likely will be outweighed by the interest in repealing regulations that are unlawful under Supreme Court precedent. *See id.* at 30-32. Consequently, an agency may "conclude that reliance interests" on such unlawful regulations "are entitled to no . . . weight," *id.* at 32. Analysis of reliance interests should accordingly be conducted expeditiously.

In most cases, the method of repeal will be through publication in the *Federal Register* explaining that the agency has found the regulation (or a portion of the regulation) unlawful on its face. That publication document should explain the legal insufficiencies of the repealed regulation, address whether and why its repeal falls within the Administrative Procedure Act's good-cause exception from notice-and-comment requirements, and effectuate the repeal. As a general matter, agencies shall immediately take steps in coordination with OIRA to effectuate the repeal of any regulation, or the portion of any regulation, identified as unlawful or potentially unlawful unless the agency intends to submit to OIRA a one-page summary explaining the basis for the decision not to repeal that regulation.

III. Compliance Factors

Agencies are instructed to consider the following factors when identifying regulations for repeal:

1. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024): Whether a regulation is consonant with the "single, best meaning" of the statute authorizing it, *id.* at 400, with particular focus on any regulation that was promulgated in reliance on *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), and that could be defended only by relying on *Chevron* deference.
2. *West Virginia v. EPA*, 597 U.S. 697 (2022): Whether a regulation implicates the "major question doctrine" and is unsupported by statutory text that meets the clear-statement canon imposed with respect to major questions in *West Virginia. Id*. at 722-24.
3. *SEC v. Jarkesy*, 603 U.S. 109 (2024): Whether a regulation authorizing enforcement or adjudicatory proceedings enabling the agency to impose judgments or penalties that are constitutionally suitable only for resolution via jury trial in Article III Courts.
4. *Michigan v. EPA*, 576 U.S. 743 (2015): Whether the costs imposed by a regulation are not justified by the public benefits or where such an analysis was never conducted to begin with except in those cases where the consideration of cost is expressly precluded by statute. *See also EO 14219 § 2(a)(v)-(vii).*
5. *Sackett v. EPA*, 598 U.S. 651 (2023): Whether a regulation asserting Federal jurisdiction is inconsistent with a properly bounded interpretation of "waters of the United States," Particularly whether it "significantly alter[s] the balance between federal and state power and the power of the Government over private property" without "exceedingly clear"

statutory authorization, such as Federal regulations of "land and water use," which "lies at the core of traditional state authority," does not describe "what conduct is prohibited" "with sufficient definiteness that ordinary people can understand," or "encourage[s] arbitrary and discriminatory enforcement."

6. *Ohio v. EPA*, 603 U.S. 279 (2024): Whether a regulation does not sufficiently account for the costs it imposes, or for which foundational assumptions have changed and are no longer defensible.

7. *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021): Whether a regulation is inconsistent with a proper understanding of the Takings Clause.

8. *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023) ("*SFFA*"): Whether a regulation imposes racially discriminatory rules or preferences, including ensure that an agency's understanding and application of older cases, such as *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200 (1995), complies with the holdings in SFFA. "Eliminating racial discrimination means eliminating all of it." 600 U.S. at 206.

9. *Carson v. Makin*, 596 U.S. 767 (2022): Each agency should review its regulations to ensure equal treatment of religious institutions vis-à-vis secular institutions for purposes of funding and access to public benefits. *See id*. at 778-80.

10. *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14 (2020): Each agency should review its regulations to ensure at least equal treatment of religious institutions vis-à-vis secular institutions for other regulatory purposes. *See id.* at 16-17.