



July 11, 2023

Dear Members of the House Committee on Oversight and Accountability,

We write to you today ahead of the committee's markup on 07/12/23 to express our support for [H.R. 890](#), the Guidance Out of Darkness (GOOD) Act and [H.R. 3230](#), the Unfunded Mandates Accountability and Transparency Act (or UMATA). Both bills would do much to expose the true extent of regulatory intervention.

Relatedly we also support the recognition that guidance is non-binding as encapsulated in the Guidance Clarity Act ([H.R. 4428](#)), and steps to prevent the abuse of federal contracting to enforce complex and unnecessary greenhouse gas and other ESG disclosures as provided for in the Mission Not Emissions Act ([H.R. 3358](#)).

The GOOD Act in particular would help shine light on the "regulatory dark matter" that all these bills address directly or indirectly in their mission of restraining administrative state rulemaking zeal.

While agencies issue more than [3,000 new rules](#) each year, they also publish thousands of guidance documents and other forms of sub-regulatory dark matter. Traditionally, agency rules go through notice-and-comment as outlined by the Administrative Procedure Act before being finalized. However, agencies can and do at times circumvent that process and rely on guidance documents, interpretative rules, policy statements and other incarnations to implement its political and policy goals. While there can be many names, these "pen and phone" actions include circulars, memoranda, letters, advisory opinions, bulletins, FAQs, and more.

The complicated needs to be simplified. As the GOOD Act recognizes, the problem is made more severe by the fact there is no single place where the public or other interested parties can access these documents. Many are not publicly available at all, in the sense that agencies may use jawboning, press conferences, or other tactics.

The dark matter problem has worsened in recent years. Cognizant of the problem and hoping to fix it, President Trump issued [Executive Order 13891](#) in October 2019 that required that executive agencies create a single, searchable, indexed database to contain or link all guidance documents. However, on his first day in office, President Biden repealed the order and instead issued his own directives implementing an ambitious regulatory agenda.

Congressional actions like those of the committee's July 12 markup session are necessary to permanently address regulatory overreach and restore oversight and accountability over the administrative state. The Unfunded Mandates Accountability and Transparency Act, for example, would ensure stricter and more clearly defined requirements for how and when federal

agencies must disclose the cost of federal mandates affecting business, consumers, and lower-level governments via more formal preparation of regulatory impact analyses.

With unprecedented levels of federal spending during COVID and after via the Infrastructure Investment and Jobs Act, Inflation Reduction Act, and the CHIPS and Science Act, small businesses, states, and localities are now vulnerable to large increases in federal regulatory burdens. In the [Fall 2022 Unified Agenda of Regulatory and Deregulatory Actions](#), 325 of the 3,777 rules in the regulatory pipeline (pre-rule, proposed, final, and recently completed stages) affected local governments. That was an increase of 26 percent over President Trump's final count of 258, of which 46 had been deemed deregulatory in nature. There were also 514 affecting state governments, also a 26 percent increase over Trump's 409 state actions, of which 72 had been deemed deregulatory. While it may be too early to call these developments a trend, Congress must keep a watchful eye in the wake of a legislative spending bonanza that is also highly regulatory in character.

While the original and overwhelmingly bipartisan Unfunded Mandates Reform Act helped to reform executive agencies when it became law nearly three decades ago, agencies have learned to work around it.

Together, the GOOD Act, UMATA, the Guidance Clarity Act, and the Mission Not Emissions Act would help promote disclosure, accountability, and more sound regulatory policy generally. We encourage members of the committee to advance this slate of commonsense legislation at this unique opportunity. In the mid-90s, the parties worked together closely to advance, paperwork reduction, small business regulatory relief, unfunded mandate restraint, and other reforms advancing accountability and disclosure. The recent rise in spending with which Congress must grapple will be accompanied by a surge in regulatory activity, making today, in this 118<sup>th</sup> Congress, the opportune moment to get ahead of that new tide.

*Clyde Wayne Crews Jr.*

Fred L. Smith Fellow in Regulatory Studies  
Competitive Enterprise Institute

*Matthew Adams*

Senior Government Affairs and Coalitions Manager  
Competitive Enterprise Institute