



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

June 29, 2018

GENERAL COUNSEL

R. James Valvo, III  
Cause of Action Institute  
1875 Eye Street, NW  
Suite 800  
Washington, DC  
20006

Dear Mr. Valvo:

This letter is in response to the Cause of Action Institute (“COA”) and Demand Progress’ letter, dated October 7, 2015, requesting that the Office of Management and Budget (“OMB”) “issue a rule ensuring the continuing force and effect of Executive Order (“EO”) 13457, *Protecting American Taxpayers From Government Spending on Wasteful Earmarks*.” OMB respectfully acknowledges COA and Demand Progress’ letter and provides this reply.<sup>1</sup>

For the reasons discussed below, OMB declines to adopt COA and Demand Progress’ proposal to issue new guidance regarding EO 13457.

**The Executive Order Does Not Require OMB to Issue Guidance**

Section 2 of EO 13457 states that OMB may issue instructions regarding the implementation of the EO. That same section instructs Federal agencies to comply with requests from OMB for additional information regarding compliance with EO 13457. At no point does the EO require that OMB issue guidance nor does it require that OMB regularly update any guidance that it does issue.

While OMB voluntarily issued guidance regarding compliance with EO 13457 on October 23, 2008, in addition to other matters related to budget planning and implementation, that guidance was not mandated by the EO. Rather, OMB issued that guidance as part of its role in managing the policies and programs of Executive Branch. But OMB’s issuance of the specific guidance to implement EO 13457 was not mandated by the EO or any source of statutory authority. If OMB issues any additional guidance in connection with EO 13457, such guidance will be issued solely at OMB’s discretion. Furthermore, OMB’s scarce resources would be better deployed elsewhere than drafting and issuing the proposed memorandum.

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<sup>1</sup> Although OMB has chosen to provide a reply to COA’s October 2015 letter, OMB does not believe that any guidance it has previously issued in response to EO 13457 is subject to the mandatory reply requirement of section 553(e) of the APA, because that guidance is a matter relating to agency management, which is exempt from the requirements of section 553 of the APA. *See* 5 U.S.C. 553(a)(2).

**The October 2015 Letter Does Not Support the  
Need for OMB to Issue Additional Guidance**

In its letter, Demand Progress and COA point to a handful of emails sent by OMB personnel in 2009 that indicate OMB personnel were providing advice on the best way for agencies to implement EO 13457. In the October 2015 letter, COA and Demand Progress argue that these emails are evidence that “OMB’s efforts to ensure discretionary grant decision-making is transparent and merit-based are ineffective” and “[i]nstead, federal agencies have struggled to combat abusive administrative earmarking practices.” This is not the case. These emails demonstrate a fairly routine activity that OMB engages in during the course of its normal business. The function of advising agencies is at the heart of OMB’s mission regarding formulation and implementation of the President’s budget. To that end, OMB regularly provides assistance to agencies regarding how best to implement budget policy and the emails cited to in your letter simply provides evidence of this fact.

**EO 13457 Remains In Force**

No Executive Order has been issued that displaces, alters, or withdraws EO 13457. OMB is also not aware of any judicial decision vacating EO 13457. Consequently, irrespective of any conclusions COA and Demand Progress may have drawn from emails sent in 2009, EO 13457 remains in effect.

For these reasons, OMB declines to adopt COA and Demand Progress’ proposal.

Sincerely,



Mark R. Paoletta  
General Counsel