

THE UNIFIED AGENDA: PROMOTING REGULATORY TRANSPARENCY, PLANNING, AND PUBLIC PARTICIPATION

Background: For more than 35 years, federal agencies have been required to notify the public about upcoming regulatory actions.¹ Since 1983, the Regulatory Information Service Center within the General Services Administration has published a semiannual Unified Agenda of Federal Regulatory and Deregulatory Actions that compiles the individual agencies' agendas.² Publication of entries in the Agenda helps agencies fulfill several rulemaking requirements, including provisions in the Regulatory Flexibility Act (5 U.S.C. § 602) and Section 4 of Executive Order 12866.

The active regulatory actions included in the Unified Agenda are those that the agencies expect to act on within the next 12 months. Agenda entries are organized by agency, and each entry is associated with one of five rulemaking stages, including: (1) "proposed rule stage" (indicating that the agency plans to issue a notice of proposed rulemaking or to close an existing comment period), and (2) "final rule stage" (indicating that the agency plans to issue a final rule). Each agenda entry provides a variety of information, including an indication of whether the rule is expected to be "economically significant" or "significant" under Executive Order 12866; whether the rule is expected to be "major" under the Congressional Review Act; and the dates and citations (if available) for all past steps and a projected date for at least the next step for the regulatory action.³ The Unified Agenda has been available online since 1995.⁴

Congress, interest groups, regulated entities, and the general public rely on the Unified Agenda to understand which rules federal agencies plan to issue in the coming year, often within particular policy areas. However, little is known about how well the Unified Agenda predicts the issuance of proposed or final rules, or the accuracy of the information contained in individual agenda entries.

Proposal. This project will examine the Unified Agenda to determine the extent to which it accurately provides the public with useful information about forthcoming "significant" regulatory actions and make appropriate recommendations for improvements. The project would address the following questions:

- To what extent were significant proposed and final rules published during the first six months of 2014 preceded by a "proposed rule stage" or "final rule stage" notice in one or more editions of the Unified Agenda during the previous 12

¹ The first of these requirements was in Executive Order 12044, "Improving Government Regulations," 43 *Federal Register* 12661, March 24, 1978. Subsequent executive orders have repeated this requirement.

² These agendas are generally published in the Spring and the Fall of each year, but only one agenda was published in 2012.

³ For more information, see http://www.reginfo.gov/public/jsp/eAgenda/StaticContent/201404/Preamble_8888.html.

⁴ See <http://www.reginfo.gov/public/do/eAgendaMain#> to access the current and previous editions of the Unified Agenda. The Spring 2014 edition of the agenda included 2,389 active entries (consisting of 98 "prerule" actions, 1,291 "proposed rule" actions, and 1,000 "final rule" actions); 518 completed actions; and 441 long-term actions.

months? If no previous Unified Agenda notice was published, why did this occur?

- To what extent were significant “proposed rule stage” and “final rule stage” notices in recent Unified Agendas followed up by a proposed or final rule published within the succeeding 12 months? If no proposed or final rule was published within the succeeding 12 months, why did this occur?
- How predictive is the information in the Unified Agenda about subsequently published significant proposed and final rules (e.g., when the rules would be published, whether they were accurately identified in the Unified Agenda as “significant” or “economically significant” rules, and whether they identified the need for regulatory flexibility analysis)? If agenda entries are not accurate, why did this occur?
- Are there ways that the Unified Agenda could be improved to provide more timely and predictive information to the public about forthcoming significant rules or to improve regulatory planning? For example, is it possible to have a Unified Agenda that is constantly updated (instead of being issued only twice each year), providing more “real-time” information about agencies’ forthcoming rules? What are the advantages and disadvantages of this and other possible changes?

As indicated in its preamble, the Unified Agenda “does not create a legal obligation on agencies to adhere to schedules in this publication or to confine their regulatory activities to those regulations that appear within it.”⁵ Nevertheless, the study is an opportunity to explore the extent to which the Unified Agenda can be relied upon to provide an indication of agencies’ forthcoming rulemaking activities and offer recommendations on how the Agenda can be improved to promote greater rulemaking transparency, planning, and public participation.

⁵ See http://www.reginfo.gov/public/jsp/eAgenda/StaticContent/201404/Preamble_8888.html.