Congress of the United States
Washington, DC 20515

April 19, 2021

President Joseph R. Biden
The White House
1600 Pennsylvania Avenue
Washington, D.C.

Dear President Biden:

We urge your administration to engage in transparent and accountable rulemaking by prohibiting a practice known as "sue-and-settle," as it places special interest priorities above the public interest by allowing activist executive agency officials to circumvent the public rulemaking process, undermining the Administrative Procedure Act and costing taxpayers billions of dollars.

Sue-and-settle litigation begins with an interest group suing a federal agency, claiming the agency has failed to take regulatory action required by law. Through the lawsuit, the interest group seeks to compel the agency to take action by a new, often-rushed deadline. Instead of challenging the lawsuit, the agency and interest group enter into negotiations behind closed doors to produce either a settlement agreement or consent decree committing the agency to take regulatory action. Unlike the normal rulemaking process, potentially affected parties—such as businesses and state governments—are often kept completely in the dark about the negotiations, and the resulting regulations can come as a complete surprise.

Even once the privately-negotiated consent decrees or settlement agreements are disclosed, their terms often commit federal agencies to fulfill new regulatory mandates under accelerated timeframes, preventing any meaningful scrutiny or review—a practice which is contrary to the spirit of the Administrative Procedures Act by making the notice-and-comment process required under the Act a mere formality.

Sue-and-settle agreements cost taxpayers millions of dollars and create additional layers of red tape that continue to burden states and businesses. According to the American Action Forum, from 2005 to 2016, twenty-three sue and settle regulations resulted in a cost burden of $67.9 billion, with $26 billion in annual costs. Sixteen of the rules imposed paperwork burdens on American jobs creators of more than eight million hours.

These tactics have been abused by several agencies across administrations, but the American people deserve better. We hope your administration will prioritize transparent rulemaking and public input. To that end, we are currently working on legislation to ensure transparency and accountability in rulemaking that will ensure sue-and-settle tactics are no longer used by activist officials.

We urge you to proactively support our initiative and ensure agencies under your, and future administrations, operate with proper public input.

Sincerely,

Chuck Grassley
United States Senator

Victoria Spartz
United States Representative

PRINTED ON RECYCLED PAPER

\s\
John Cornyn
United States Senator

\s\
Ted Cruz
United States Senator

\s\
Joshua Hawley
United States Senator

\s\
Marsha Blackburn
United States Senator

\s\
Rick Crawford
United States Representative

\s\
Scott Perry
United States Representative

\s\
Chris Stewart
United States Representative

\s\
Ted Budd
United States Representative

\s\
Ken Buck
United States Representative

\s\
John Moolenaar
United States Representative

\s\
Debbie Lesko
United States Representative

\s\
Michael Cloud
United States Representative

\s\
Randy K. Weber
United States Representative

\s\
Doug Lamborn
United States Representative