

Business Roundtable Recommendations for Reform

Problem

There are too many permits issued by too many agencies, and obtaining permits is unduly difficult, time consuming and costly.

Recommended Solution

As a first step, OMB should issue a Budget Data Request to all agencies, requiring them to promptly submit information about the permitting processes they administer for each type of permit separately, including the purpose of each permit; the sectors most heavily affected; the volume of permit applications; the amount of time the agency takes to respond; the average number of regulatory and court challenges and the amount of time resolving such challenges takes; the total costs associated with the permitting process; and a summary and explanation of how the agency informs stakeholders and the general public of the status of projects and what standards the agency uses to make decisions. Agencies should catalog and work with the business community to develop best practices.

Problem

Agencies (and other approving authorities) do not have meaningful deadlines.

Recommended Solution

Congress should enact legislation requiring agencies to process permit applications within a definite time frame that is reasonable based on the industry, the project at issue and the phase of the process. Even the most complex permit applications should have their reviews completed within 180 days, and failure to do so should require a report and explanation to Congress and OMB. Delays of more than one year should trigger automatic investigations by the agency's inspector general, with a report to Congress by the inspector general.

Problem

Agencies have inadequate expertise and training.

Recommended Solution

After reviewing which types of permits create the greatest problems, agencies should devote agency resources to those areas most in need of reform.

Problem

Overlapping jurisdictions cause bottlenecks.

Recommended Solution

Congress should designate a single agency to have permitting responsibility for each project and should ensure that permits are processed by multiple agencies in parallel.

Problem

Permit delays often occur at the state level due to federally required permitting requirements.

Recommended Solution

After streamlining the permit process at the federal level, government agencies should work with state authorities to incorporate streamlining improvements into state permitting programs through State Implementation Plans. This will help fully capture the value of streamlining initiative throughout the permitting process.

Problem

Agencies do not prioritize.

Recommended Solution

Congress and OMB should require agencies to process permit applications on an expedited basis relative to other agency activities and with “the shortest existing applicable process.”

Problem

Agencies are not transparent.

Recommended Solution

The President should assign OMB to lead the creation of an online Internet permit tracking portal or dashboard that would track the dates and status of all federal permit applications across agencies.

Problem

Agencies are not accountable.

Recommended Solution

At a minimum, Congress and/or the President should direct permitting agencies to report twice per year to OMB on the status of all newly filed and completed permit applications, the date each was filed, and the expected or actual completion date. Then OMB should report a compilation of all such data to Congress and the public annually.

Problem

Citizen suits are too plentiful.

Recommended Solution

Congress should universalize the 180-day statute of limitations for judicial review that it created in SAFETEA-LU § 6002. Congress should also clarify that those challenging permits need to satisfy the same bond requirement as in all other suits — including in the NEPA context. OMB and the agencies should work to require greater upfront public engagement to ensure that all issues are raised in a timely manner.

Problem

Preliminary injunctions are too readily issued.

Recommended Solution

Congress should clearly state that economic harm and potential job losses should be given significant weight in all preliminary injunction cases. Those seeking a preliminary injunction, moreover, should also always be required to show a strong likelihood of success on the merits.

Problem

Permanent injunctions result in wasted resources.

Recommended Solution

Congress should establish that permanent injunctions are impermissible in all but the most extraordinary of circumstances when a federal agency has approved a regulatory permit.