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## United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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November 25, 2008

The Honorable Michael Mukasey  
Attorney General  
United States Department of Justice  
950 Pennsylvania Ave., NW  
Washington, D.C. 20530

Dear Attorney General Mukasey:

Last week, the FBI provided an initial briefing to staff for the Senate Judiciary Committee and the Senate Select Committee on Intelligence on new FBI policies to implement the Attorney General Guidelines governing FBI criminal, national security and foreign intelligence investigations. Both the new Attorney General Guidelines and the FBI policies are intended to go into effect on December 1, 2008, a deadline that we have been told was set by you.

As you know, we have substantial concerns about the new Attorney General Guidelines and do not believe they should go into effect during this lame duck period, but rather should be reviewed by the new administration prior to implementation. Likewise, the FBI policies implementing those guidelines are hundreds of pages long, and would benefit from input not only from the new administration, but also from members of Congress, experts in the relevant fields, and affected communities. Yet they were provided to congressional staff for the first time last week, and have been made available for only a brief period of time; no one is permitted to keep a copy of the draft policies.

We understand that the FBI has been working hard to finish the policies prior to the December 1 implementation date, but it seems clear that this deadline is making it impossible for meaningful consultation to occur. We were told repeatedly when we raised concerns about the Attorney General Guidelines that the many unanswered questions raised by the guidelines would be addressed through FBI policies. Thus, while those policies appear to be critical to understanding the authorities and checks governing the FBI's domestic investigations and assessments, it would be impossible to review them thoroughly – never mind evaluate them and provide feedback to the FBI – in the limited time they are being made available. Unfortunately, this process is quite similar to how the Justice Department handled its interactions with Congress regarding the new Attorney General Guidelines earlier this year.

Accordingly, we urge you to delay the December 1 implementation date for both the Attorney Guidelines and the FBI policies.

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We also urge you to make the FBI policies public to the greatest degree possible so the American people can understand what rules govern FBI investigations and assessments. At a September Senate Judiciary Committee hearing, FBI Director Mueller committed to doing so. Likewise, Assistant Attorney General Beth Cook testified at a Senate Intelligence Committee hearing in September that “we would hope to make those [FBI] policies, to the extent that we can, public as well.” Given the importance of these FBI policies, providing a period of time for public comment would be a reasonable and responsible way to move forward and achieve the best possible end result.


Thank you for considering our request, and we look forward to your response.

Sincerely,

  
PATRICK LEAHY  
Chairman

  
RUSSELL D. FEINGOLD  
United States Senator

  
EDWARD M. KENNEDY  
United States Senator

  
RICHARD J. DURBIN  
United States Senator