

## Sen. Levin

**In April 2013, OMB Director Burwell testified before this Committee as part of her nomination process. She testified that Congress had spoken to the matter of independent agencies, and that she would work to support the implementation of Congress' intent for independence. Director Burwell also testified that she had not yet reached a conclusion on the adequacy of cost-benefit analyses performed by independent agencies, and that she needed to gain a better understanding of what may be appropriate for independent agencies. Do you support the concept of independent agencies, meaning agencies that by statute have a measure of independence from the President? Do you agree that agencies involved in financial regulation and enforcement, and consumer product safety, need to have that measure of independence? Is it your view that the cost-benefit analyses conducted by independent agencies now are generally adequate?**

I appreciate the long tradition and unique roles of the independent agencies and believe in the importance of their continued independence. Both Republican and Democratic Administrations have acknowledged and recognized this importance over the years. I am not in a position to make a general judgment about the adequacy of independent agency analyses, because OIRA generally does not review the rules of independent agencies.

## Sen. Levin

**During his confirmation hearing before this Committee, your predecessor Cass Sunstein, stated, “[C]ost-benefit analysis shouldn't put regulation in an arithmetic straitjacket, that there are values, moral, distributional, aesthetic, and otherwise that have to play a part in the overall judgment about what's to be done. And I would emphasize even more than those things that I've stressed as a scholar, which are the limits of purely economic approaches to evaluation of cost and benefits.” Can you please explain how your views of cost-benefit analysis differ or are similar to the view given by Mr. Sunstein? Please also comment on your view of the appropriate role, use, and review of cost-benefit analysis in major rulemakings.**

I support the framework for cost-benefit analysis laid out in Executive Order 13563, which explicitly states that each agency must “select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; *distributive impacts*; and *equity*)... Where appropriate and permitted by law, each agency may consider (and discuss qualitatively) values that are difficult or impossible to quantify, *including equity, human dignity, fairness, and distributive impacts*” (emphasis added). I agree that cost-benefit analysis is a critical tool for the evaluation of regulations but it is neither the only tool nor a tool that is sufficient or appropriate in all circumstances.

## **Sen. Levin**

**In 2001, Cass Sunstein authored a working paper, “The Arithmetic of Arsenic,” where he concluded that an analysis of the benefits of EPA’s rules to prohibit arsenic in drinking water gave only broad ranges, and that such an analysis failed to provide a clear path forward for regulatory agencies. What is your view of that paper? How do OIRA’s regulatory reviews capture social goals or so-called “soft variables,” like preventing water from being polluted, that may be difficult, if not impossible, to accurately quantify?**

I am not familiar with the specific paper in question. As mentioned above, I support the framework for cost-benefit analysis laid out in Executive Order 13563, which explicitly contemplates that some values may be difficult or impossible to quantify yet still be important and valid regulatory objectives

## **Sen. Levin**

**What do you think are the legal implications for requiring the same cost-benefit analysis for independent agencies as for other major rules? Do you think that requiring a specific type of cost-benefit analysis will increase the likelihood that a rule will be approved by a Court?**

In July 2011, the President issued Executive Order 13579, which encouraged independent agencies to follow the same regulatory principles that executive agencies must follow. I am not in a position to weigh in on the legal implications of requiring independent agencies to do cost-benefit analysis, nor am I able to say whether a certain type of cost-benefit analysis is more or less likely to withstand a legal challenge. As a general matter, I think it is important for both policy reasons and legal defensibility that agencies clearly justify their rules and explain why they are undertaking rulemaking.

## Sen. Levin

**OIRA and OMB have been criticized for a lack of transparency and timeliness in conducting regulatory reviews, with some reviews taking far longer than the 90- or 120-day expected timetable. Further, there is usually little or no information available on the reason for the delay, or on the changes OIRA required to the rulemaking in order to clear it for publication. In a January 15, 2014 interview with *Bloomberg BNA* you indicated that it is not OIRA's job to comment on a rule's policy, but rather to ensure that the required analytical elements are present when reviewing a rule. What is your response to concerns that OIRA reviews lack transparency and timeliness? What kinds of changes does OIRA make to proposed regulations after they leave an agency but before they are officially proposed? Do you believe that the public has a right to information about why changes were made to a rule after it leaves an agency but before it is published in the *Federal Register*?**

The Federal rulemaking process has a strong foundation in transparency as evidenced by the notice and comment process set forth in the Administrative Procedure Act. In addition, the Administration's Open Government efforts have focused on increasing the openness of the rulemaking process. For example, the Administration launched a regulatory review dashboard at [www.reginfo.gov](http://www.reginfo.gov) and OIRA has issued memoranda in recent years, such as [Increasing Openness in the Rulemaking Process – Improving Electronic Dockets](#) and [Increasing Openness in the Rulemaking Process – Use of Regulation Identification Number](#).

Agencies may make changes to a rule while it is under review at OIRA in response to comments or information from a wide range of stakeholders, not just OIRA. This includes the public and agencies across the U.S. government (including the agency that drafted the rule). Changes to a rule during OIRA's interagency review process can be seen after the rule is published by comparing the published version to the draft that was submitted to OIRA for review.

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**With regard to the retrospective review that has been undertaken by the Obama administration, the same January 15 *Bloomberg BNA* interview quotes you as saying that, “It’s certainly going to be an area of priority for me and for OIRA over the next, I’d say, several months to a year, to try to come up with some more concrete ways to deepen and strengthen retrospective review.” Please elaborate on this statement, and how you intend for OIRA to be transparent as it reviews and potentially alters existing proposed regulations?**

Executive Order 13610 established retrospective review as an agency priority, and the agencies are reporting on their progress meeting their regulatory look-back obligations twice per year. If an agency conducts a retrospective review of their regulations, and concludes that a regulation should be modified, streamlined, or eliminated, it would follow the same rulemaking process it uses to issue a new regulation. For example, OIRA reviewed under Executive Order 12866 a proposed Department of Transportation regulation to rescind the requirement that truck drivers submit and retain driver-vehicle inspection reports when the driver has neither found nor been made aware of any vehicle defects or deficiencies. This change would save tens of millions of hours in paperwork burden per year, for approximately \$1.5 billion in annual paperwork time savings.