

**Prepared Statement of Cass R. Sunstein**  
**May 12, 2009**

Mr. Chairman and Members of the Committee:

I am most grateful, and immensely honored, to appear before you today.

I am thankful to the Committee, to its staff, and to the Chairman for wise counsel, generosity, and multiple kindnesses. As a citizen, I thank the Committee for its leadership role in keeping our country safe and in ensuring that the executive branch is faithfully executing the law. If I am confirmed, I will look forward to working closely with the Committee to ensure that the job of the OIRA Administrator is done well.

Mr. Chairman, let me say a few words about my own background and my understanding of the role of OIRA.

I have taught constitutional law, administrative law, and regulatory policy for more than twenty-five years; I have also taught environmental law and labor law. Much of my writing is in these fields. I have spent most of my career at the University of Chicago Law School. Recently I moved to Harvard Law School, where I founded the Program on Risk Regulation, which explores a wide range of issues relating to risk reduction, ranging from national security to environmental protection to the financial crisis. I have also done a great deal of work on behavioral economics, on transparency and information disclosure, and on uses of the Internet to obtain and aggregate information.

As you are aware, OIRA has a number of functions, including information policy, statistical policy, and regulatory policy. The first two are of course exceedingly important, because sound statistical policy provides a foundation for much private and public action, and because the Federal government obtains, generates, and disseminates so much information. In accordance with the Paperwork Reduction Act, reducing paperwork burdens on the American public is a high priority. Information must be compiled and disseminated in a way that respects privacy, protects national security, and promotes clarity rather than confusion.

Of the three functions, review of regulatory policy has proved the most controversial, but when it is working well, it promotes several goals.

First, regulatory review helps to ensure that regulations are consistent with the law as enacted by Congress and also with the president's principles and priorities. In this respect, regulatory review is a close cousin of budgetary review by the Office of Management and Budget.

Second, regulatory review promotes coordination among different parts of the executive branch. Often the positions of one agency are usefully informed by the views of other agencies. For example, a regulation from the Department of Transportation might have environmental consequences, and it is valuable for a coordinating institution to ensure a degree of input from the Department of Interior and the Environmental Protection Agency.

Third, regulatory review ensures a kind of “second look” at agency decisions and supporting analyses, with particular reference to anticipated consequences. Both Congress and the President have imposed important analytic requirements on those agencies. OIRA review helps to ensure that such requirements are respected. Under Executive Order 12866, issued by President Clinton in 1993 and in effect since that time, the President has required a regulatory impact analysis, drawing attention to the likely consequences of regulations and of possible alternatives.

It is important to see that when it is working well, regulatory review is sharply disciplined. Such review must always respect the authority given to agencies by law. I believe that of the many words in Executive Order 12866, the most important words are these six: “to the extent permitted by law.” Both the substance and the structure of regulatory review are limited and guided by Congress. Statutory constraints, time limits, and deadlines must be honored. When Congress has required an agency to go forward, then OIRA review must respect that requirement. Any process of regulatory review must be consistent with legislative enactments.

It is also important to underline the fact that within the executive branch, agencies, and not OIRA, have been delegated rulemaking authority by law. Under the Constitution and relevant statutes, the President does have a degree of supervisory power over those who implement federal law. It follows that OIRA review must be conducted with close reference both to the law and to the President’s own commitments.

These are unusually challenging times, and Congress and the President have embarked on many important initiatives. These include restoring the financial system and ensuring a better regulatory framework for the future; promoting energy security; reforming health care; and improving education.

In each of these areas, the President is committed to transparency, to pragmatism, and to respect for science. One of OIRA’s central jobs is to help to ensure that his commitments are honored, especially when difficult tradeoffs must be made.

I know that members of the Committee are exercising important leadership in all of those domains. OIRA should play a constructive role in these efforts. If confirmed, I will work with you to ensure that we make good progress in the coming years.

I look forward to answering your questions.