

Opening Statement of Ranking Member Heidi Heitkamp
RAFM Hearing: “Reviewing Independent Agency Rulemaking”
September 8, 2016

Thank you Mr. Chairman. Today’s hearing builds upon our Subcommittee’s thorough examination of the current state of Federal rulemaking. Together, we have explored virtually every aspect of the regulatory process in a comprehensive and bipartisan way. We have sought out views and opinions from individuals across the political spectrum in order to identify sensible steps Congress should be able to agree upon to make needed improvements to the regulatory system.

Our focus today is independent agencies -- which occupy a unique position in our national government. They were deliberately established by Congress to operate independently of the President. Among other things, they are charged with vital public health and safety functions, ensuring economic and financial stability, and serving as stewards and guardians of fairness and equity on a wide range of other public policies. Those are critical responsibilities – and those responsibilities will certainly require independent agencies to issue regulations when authorized or required by statute.

What I want to explore today is how Congress can ensure such rulemaking is of the highest quality. I remain committed to making the nation’s regulatory system more transparent, efficient, effective, and accountable. First, Congress cannot lessen its own authority through inaction on critical issues or by blurring the lines between legislative, judicial and executive. In some cases, through excessive delegation to the agencies, we have ceded power to create and define law. Simply stated, Congress must pass good laws by taking full responsibility for clearly articulating priorities and goals in legislation. If our statutory directives are unambiguous, we won’t see as many claims of agencies overreach. Second, while rulemaking is often mandated by statute, we must continue to understand the benefits and costs of regulation. That means that Congress must fulfill its obligation to the American people through oversight of the regulatory process. And this includes independent agencies whose rules are just as impactful as those coming from a traditional federal agency.

To be clear, independent agencies face significant challenges in quantifying costs and benefits in the same manner as Executive agencies. Nevertheless, in my opinion, their regulatory decisions should be based upon good regulatory analyses. It is not always easy to quantify costs and benefits. Decades of scholarship have revealed that it’s often far easier to tabulate costs for a regulation, but much harder to capture and quantify benefits. That just means that there will always be a role for qualitative costs and benefits in regulatory analysis. We should be wary of imposing one-size-fits-all requirements which often have serious unintended consequences. And we must also be mindful about regulatory resources if we expect agencies to complete regulations in a timely fashion.

Today, I want to hear from our witnesses about how to improve the regulatory process for independent agencies with a focus on how best to improve congressional oversight. I look forward to continuing to work with Sen. Lankford and the rest of my colleagues on these important issues.