

**Opening Statement**  
**Hearing before the Regulatory Affairs and**  
**Federal Management Subcommittee,**  
**Thursday September 8th at 10 AM**  
**“Reviewing Independent Agency Rulemaking”**

Good morning and welcome to today’s Subcommittee hearing titled “Reviewing Independent Agency Rulemaking.” This is the 13th hearing on the regulatory process that this Subcommittee has held this Congress. In all of our prior hearings this subcommittee has reviewed the regulatory actions of executive branch agencies, but today we turn to the rulemaking record of independent regulatory agencies.

First, I want to recognize Senator Portman for his work on this topic and as this subcommittee moves toward addressing shortcomings in how independent agencies regulate, we have Senator Portman to thank for his tireless work in this area and the foundation he has laid regarding common sense solutions to fixing problems associated with independent agency rulemaking.

Independent regulatory agencies were conceived to accomplish varied missions, but have one thing in common – they were structured to be somewhat independent from the influence of the President and the Administration.

However, Independent Agencies should not be exempt from oversight. When an agency is independent of the Executive Branch it does not require that they are also independent of Congress and the American people. Congress created each Independent Agency and Congress still has the authority to oversee the agency they created. No public entity should be exempt from oversight.

Independent agencies take regulatory action just like their Executive Branch counterparts. They promulgate rules, issue guidance, and take enforcement actions. Accordingly, independent regulatory agencies should be held to the same procedural standards as executive branch agencies.

I would actually argue that Independent regulatory agencies require a heightened level of oversight over their regulatory regimes because the Executive orders that have structured every aspect of the rulemaking process for Executive Branch agencies, and have been endorsed by both Democrat and Republican administrations for decades, do not apply to independent regulatory agencies.

According to OMB’s 2015 Report to Congress on the Benefits and Costs of Federal Regulations, from 2005 through 2014 federal agencies issued 549 major rules, independent regulatory agencies were responsible for 141 of these rules which equates to roughly 25 percent of rulemakings.

There is cause for concern when it comes to the analysis to support those rules. In the same report, OMB found that in 2014 only “Ten of the sixteen major rules issued by independent agencies provided some information on the benefits and costs of the regulation,” and that, “independent agencies continue to struggle in providing monetized estimates of benefits and costs of regulation.”

Another study published by the independent and well-respected Administrative Conference of the United States in 2013 found that no major rule issued by an independent agency in 2012 contained a complete cost-benefit analysis.

Many of these rules that are issued without a cost-benefit analysis are financial regulations issued by the CFPB, CFTC, SEC, and FDIC and have a direct impact on the small and community banks that small business owners and farmers depend.

Take, for example, the CFPB’s Qualified Mortgages rule. CFPB designed this in an attempt to extend credit only to those who can afford to repay a mortgage, preventing another mortgage crisis. Instead, the agency failed to monetize any costs and benefits and issued a one-size-fits-all rule that has crippled the ability of community banks to issue mortgages.

Rules like this show that when agencies are not required to conduct a full cost-benefit analysis before issuing a regulation, unintended consequences are likely to follow such as uncertainty among community banks that limits their ability to issue credit to farmers and small businesses.

Although community banks account for only 22 percent of all current loans, they hold three-quarters of all agricultural loans and half of all small business loans. Uncertainty for community banks means uncertainty for job creation.

This Administration has made efforts to urge independent regulatory agencies to improve some of their regulatory processes. In July 2011, the President issued Executive Order 13579, which urged independent regulatory agencies to comply with the analytical requirements that apply to Executive Branch agencies.

Requiring independent regulatory agencies to follow the analytical requirements of Executive Order 12866 and 13563 would be a reasonable and significant step toward achieving transparency and predictability for regulated entities.

We are pleased to have three witnesses today and I look forward to hearing from each of you what Congress can and should do to ensure that all agencies work for and are held accountable to the American people.

With that, I recognize Ranking Member Heitkamp for her opening remarks.