

Testimony of Neomi Rao

Administrator of the Office of Information and Regulatory Affairs

Before the Senate Committee on Homeland Security and Governmental Affairs,

Subcommittee on Regulatory Affairs and Federal Management

April 12, 2018

Chairman Lankford, Ranking Member Heitkamp, and Members of the Committee, thank you for the opportunity to appear before you to discuss the activities of the Office of Information and Regulatory Affairs (OIRA) in implementing the regulatory reform efforts of this Administration.

The Administration's reform efforts focus on developing a lawful, fair, and limited regulatory system that allows the economy to grow and innovation to flourish. We look first to private market solutions and trust ordinary Americans to make decisions that will result in greater prosperity through ingenuity and hard work. The success of our economy depends, at least in part, on a regulatory system that does not stand in the way of progress.

As President Trump explained, "We've begun the most far-reaching regulatory reform in American history." Pursuant to a series of executive orders, OIRA has worked closely with agencies to achieve meaningful reform and to implement a regulatory budget resulting in significant regulatory cost savings in fiscal year 2017. In addition to revising and repealing unnecessary regulatory actions, OIRA continues to work on structural reforms related to eliminating the inappropriate use of sub-regulatory guidance, improving transparency, and promoting good regulatory practices.

Regulatory Reform and Executive Orders 13771 and 13777

At OIRA, we start with longstanding principles for regulatory review, ideas rooted in Executive Order (EO) 12866.¹ We respect private markets and look to regulate only when necessary, such as due to a substantial market failure. Regulation should not be a solution in search of a problem. In our already highly regulated society, the public can often realize substantial benefits when the federal government lifts unnecessary burdens from ineffective and outdated regulations, guidance documents, and paperwork requirements.

Soon after taking office President Trump initiated significant regulatory reform through a series of executive orders directing agencies to tackle regulatory burdens and to reconsider and revise regulations in specific sectors such as energy, the environment, tax, and labor. As noted in Executive Order 13771,² "[I]t is essential to manage the costs

¹ "Regulatory Planning and Review," Exec. Order No. 12866, 58 Fed. Reg. 51735 (Oct. 4, 1993).

² "Reducing Regulation and Controlling Regulatory Costs," Exec. Order No. 13771, 82 Fed. Reg. 9339 (Feb. 3, 2017).

associated with the governmental imposition of private expenditures required to comply with Federal regulations.”³

Executive Order 13771 focused attention on the problem of accumulated regulatory burdens by requiring agencies to eliminate two regulations for each new one and, for fiscal year 2017, to keep the net costs of new regulations to zero. These two simple directives pushed against the inertia favoring more regulation by requiring agencies to consider the revision or repeal of unnecessary regulatory actions. As the Administration’s central regulatory office, OIRA works closely with agencies to implement EO 13771 and to achieve the President’s ambitious goals in a manner consistent with legal requirements.

Across the government, we achieved substantial success. Through the end of fiscal year 2017, agencies issued 67 deregulatory actions and 3 significant regulatory actions, a ratio of 22 to 1. In guidance issued in April 2017, OIRA indicated that it would count as deregulatory a range of different actions, such as the repeal of regulations, guidance documents, and paperwork burdens.⁴ This guidance sought to incentivize agencies to eliminate regulatory burdens of all types, and it used lessons learned in the United Kingdom and Canada, which have successfully implemented similar deregulatory requirements.

Moreover, these deregulatory actions led to meaningful cost savings of \$8.1 billion dollars in fiscal year 2017, substantially exceeding EO 13771’s requirement to keep net regulatory costs to zero. This also represents the first time an administration imposed any type of regulatory budget. The regulatory budget provides an important backstop to make sure deregulatory actions are not just paper revisions and repeals, but actions that generate real regulatory cost savings for the American public. In a memorandum, OIRA explained the process of setting cost allocations and called on agencies to set a negative cost allocation for fiscal year 2018.

The success of these reforms is reflected in the Fall 2017 *Unified Agenda of Regulatory and Deregulatory Actions*. In the *Unified Agenda*, OIRA publishes rulemakings anticipated by agencies for the upcoming year. For fiscal year 2018, agencies project a ratio of at least three to one, deregulatory to regulatory actions, and cost savings of over \$10 billion. In the spring update to the *Unified Agenda*, currently being compiled, OIRA continues to work with agencies to ensure they are on track to meet their regulatory reform goals. Agencies have identified potential reforms through the regulatory reform task forces established by EO 13777,⁵ regular public engagement, requests for information, public listening sessions, and meetings with stakeholders.

The process of implementing these new requirements has represented a tremendous effort for OIRA, which has used existing staff to encourage serious and systematic reform,

³ *Id.* § 1.

⁴ Office of Mgmt. & Budget, “Guidance Implementing Executive Order 13771” (Apr. 5, 2017).

⁵ “Enforcing the Regulatory Reform Agenda,” Exec. Order No. 13777, 82 Fed. Reg. 12285 (Mar. 1, 2017).

set new cost allocations, track agency progress, and make publicly available the results of these developments. The career policy officials and economists at OIRA have done an excellent job thinking through the complexity of these tasks, solving problems of measurement and analysis, and promoting transparency, all in a short period of time. For the spring update to the *Agenda*, OIRA continues to advance improvements such as enhanced transparency and search capabilities. For example, the *Agenda* now is searchable by whether an action is regulatory or deregulatory; and agencies have withdrawn or postponed hundreds of rules, providing a more accurate depiction of rules likely to be issued in the coming year.

OIRA also remains committed to longstanding principles and requirements of EO 12866 and OMB Circular A-4. Executive Order 12866 states that “The American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves their health, safety, environment, and well-being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for economic growth.”⁶ OIRA helps to promote and develop such a regulatory system.

Through the process of centralized review, OIRA ensures that regulatory and deregulatory actions are consistent with law, have benefits that outweigh the costs, and are promoting the President’s priorities. Importantly, all deregulatory actions have to meet the same standards as regulatory actions, which means that agencies must demonstrate that a proposed deregulatory action produces more benefits than costs. Deregulatory actions must result in net benefits for the public, and so agencies are eliminating only those regulations that are not working.

Requiring agencies to generate regulatory cost savings has also placed greater emphasis on retrospective review of regulations. Previous administrations have consistently advocated for more systematic retrospective review. When a regulation is issued an agency can only predict the likely costs and benefits, but after the rule is in place, agencies can gather information about the actual costs and benefits, and such analysis might suggest the need to revise or repeal the rule. By requiring the elimination of two regulatory actions for each new regulation and also the offsetting of regulatory costs, EO 13771 provides a strong incentive for retrospective review to identify regulations that impose unnecessary and unjustified burdens.

Guidance and the Rule of Law

OIRA’s regulatory reform initiatives have also focused on promoting the rule of law through improving fair notice, public participation, and due process. In coordination with the White House Counsel’s Office, OIRA has directed a regulatory policy that emphasizes

⁶ Exec. Order No. 12866 prmb1.

the rule of law in several ways. At the outset, we carefully consider whether an agency has authority for a proposed action—we ensure that regulatory and deregulatory actions are consistent with the best reading of the law. This respects the lawmaking power of Congress to set parameters for regulatory action.

In addition, OIRA ensures that agencies follow the correct statutory procedures for rulemaking. Much of the legitimacy of administrative action derives from notice and comment rulemaking that allows for meaningful participation by stakeholders. Agencies rarely have the information they need to understand the effects of regulation without input from the public and stakeholders.

In light of these principles, we have cabined the inappropriate use of guidance and stressed that agencies should not use guidance to impose new obligations on the public. Guidance can play an important role when it truly provides guidance about an existing regulatory or statutory obligation. Agencies, however, have sometimes used guidance to impose new legal obligations. When reviewing a guidance document that purports to impose new obligations, OIRA counsels agencies to follow the appropriate process, for instance, by issuing a notice of proposed rulemaking. This allows the public an opportunity to comment and ensures that agencies are taking regulatory action with a fuller understanding of the consequences. Proper administrative procedures protect values of fair notice and provide essential due process.

As part of our reform efforts, OIRA encourages and incentivizes agencies to identify guidance that can be repealed, modified, or reissued through a rulemaking. We have also prompted agencies to begin identifying existing guidance documents and to start making such documents more readily available to the public, such as on agency websites. The identification process can be a first step to eliminating outdated or unnecessary guidance and streamlining existing requirements.

Department of the Treasury and Executive Order 13789

Under Executive Order 13789,⁷ President Trump directed the Office of Management and Budget and the Department of the Treasury to “review, and if appropriate, reconsider the scope and implementation of the existing exemption for certain tax regulations from the review process set forth in Executive Order 12866 and any successor order.” Those exemptions were initially set forth in a Memorandum of Agreement of April 29, 1983, and reaffirmed in a letter exchange in November and December of 1993. OMB and Treasury continue to work together on a new process for review of tax regulations.

As the President recognized in EO 13789, “Immediate action is necessary to reduce the burden existing tax regulations impose on American taxpayers and thereby to provide tax

⁷ “Identifying and Reducing Tax Regulatory Burdens,” Exec. Order No. 13789, 82 Fed. Reg. 19317 (Apr. 21, 2017).

relief and useful, simplified tax guidance.”⁸ In this Administration, OIRA has led the charge to eliminate unnecessary regulatory burdens. The process of centralized regulatory review provides an important check to ensure that agencies take actions that yield meaningful benefits to the American people and impose the least burdens. Even regulations that have a deregulatory focus may be improved by a consideration of the costs and benefits of alternatives. The OIRA process is well-suited to help promote a tax system that is “simple, fair, efficient, and pro-growth.”⁹

The Administration remains committed to responsible and comprehensive regulatory reform that benefits the American people by promoting individual liberty and by encouraging economic growth, job creation, and innovation. Thank you for the opportunity to testify here today.

⁸ *Id.* § 1.

⁹ *Id.*