Opening Statement of Chairman Rand Paul, M.D.
Subcommittee on Federal Spending Oversight and Emergency Management

"Federally Incurred Cost of Regulator Changes and How Such Changes Are Made"
July 17, 2019

I call this hearing of the Federal Spending Oversight Subcommittee to order.

A great deal of attention has been devoted to the cost of federal regulations as applied to the private sector. I'm glad that we recognize there are negative effects of regulation and I commend President Trump for his efforts in rolling back job killing regulations.

However, today I want to examine an aspect of regulations that has gotten little attention, regulations that impose cost on the federal government and ultimately the taxpayer. How does this happen?

Well, Congress has and continues to create programs and agencies to promulgate regulations to implement programs. We often give broad definitions of who gets what benefit; leaving it up to the agency to fine tune through regulation. Worse still, Congress gives agencies a blank check appropriation - "such sums as are necessary."

So the problem that arises here, is that without any congressional involvement, an agency can expand eligibility for a program and in effect increasing government spending without a proper appropriation. Similarly, regulations could be used to alter programs and processes to reduce spending but that doesn't appear to happen very often.

A flagrant example of a government agency expanding its mission and spending billions of dollars without Congressional approval occurred when the Social Security Administration expanded the disabled population to those who are obese. Also in the 1970s Disability insurance was extended to those who do not speak English, really it's a disability that requires government payments if you fail to speak English. Both of these expansions have since been partially rolled back, which I agree with, but whatever side you come down on, this causes government spending without Congress weighing in. Certainly such things were not envisioned when the Disability program was created in the 1930s.

Administrations publish some of the budgetary impact of regulation, but those are buried deep in the President's budgets. As we have looked at this we have found that during the past three administrations - Trump, Obama, and Bush – there have been billions of dollars in federal spending changes resulting from regulatory action. I'm told this might not even show the full scope of regulatory spending.

But this is also a question of checks and balances, in two regards. First, Congress makes laws and while we generally recognize that the executive will make certain regulations to execute those laws, what constraints exist to prevent regulation beyond the intent of Congress. Second, the Constitution reserves the right of appropriation to Congress.

I believe we are failing in our duties when we appropriate “such sums as are necessary;” but Congress does this, so what kind of checks exist or should exist to prevent unintended regulatory spending?

The Congressional Review Act, which in itself is an insufficient check, allows Congress to disapprove a significant regulation. However, many regulations fly under Congress’s radar and do not get reviewed.

The only other check I know of is the Senate’s advice and consent powers over nominees. At a minimum Senators can question and get commitments from would be regulators as to how they will execute their regulatory authority, and hold them accountable once in office. However, recent research indicates that an alarming number of regulations are finalized by career employees, not Senate-Confirmed principal officers.

In other words, it appears that unelected career bureaucrats, who enjoy civil service protections, have the capacity to make what amount to laws and appropriate funds, without any real accountability to Congress. That should trouble certainly members of congress, but more importantly the Americans they represent.

With that, I’ll recognize Ranking Member Hassan for her opening statement.