



**Chairman James Lankford (R-OK)**  
**Hearing Opening Statement**  
**“Reviewing the Office of Information and Regulatory Affairs”**  
Regulatory Affairs And Federal Management Subcommittee  
Thursday April 12, 10:00 AM

Good morning and welcome to today’s Subcommittee hearing entitled “Examining the Office of Information and Regulatory Affairs’ Role in Reviewing Agency Rulemaking.” Today we will review federal regulations, primarily through the eyes of the “ultimate regulator,” that is the Office of Information and Regulatory Affairs’ – or OIRA. In this hearing today, we hope to get a better understanding of OIRA’s accomplishments during the first year of this administration.

We also have with us today the Treasury Department, who is here to discuss their long-standing exemption from OIRA oversight and their obligations for basic regulatory practices.

Created by Congress in 1980, OIRA performs the essential role of reviewing proposed regulations before they bind the American people.

Over the years, OIRA’s responsibilities have grown to include implementing numerous executive orders to ensure all federal agencies comply with basic regulatory steps, such as cost-benefit analysis, consideration of regulatory alternatives, and fair public consultation.

OIRA’s role continues to expand under this administration.

10 days after the President took office, he issued an executive order directing executive branch agencies to remove at least two regulations for each newly issued regulation, and most importantly, the order directed any added regulatory cost must be offset by the removal of existing regulatory costs.

I look forward to hearing how agencies have fared during the first year of this executive order and the outlook going forward. Properly issued guidance is necessary and helpful in clarifying regulatory requirements. But when abused, agencies circumvent congressionally mandated procedure and pursue their agenda without the input of the American people.

Under both Republican and Democrat administrations, OIRA has proven to be a neutral gatekeeper and check on executive branch agencies; however, under a long-standing agreement, IRS regulations have not gone through centralized review like every other executive branch agency.

In 1983, when this agreement was signed, OIRA was a new office with a limited scope. Since then, the nature of both OIRA and the IRS has changed.

OIRA’s mission goes far beyond review of information collection under the Paperwork Reduction Act, and the IRS does more than simply apply the tax code – they determine issues such as who receives religious exemptions and implementation of the Affordable Care Act.

All Executive branch agencies must comply with OIRA review, Regulatory Flexibility Analysis, and the Congressional Review Act, but for decades the IRS exempted themselves from these checks put in place to protect the American people.

In 2016, the IRS proposed a rule regarding the valuation of interests in closely held partnerships or corporation for estate, gift, and generation-skipping transfer taxes.

As the Small Business Administration Office of Advocacy outlined in a comment letter, the IRS failed to perform an Initial Regulatory Flexibility Analysis and they certified the rule would not have a significant economic impact on small businesses despite applying almost exclusively to small businesses.

The rule was so deeply flawed, this administration withdrew the rule last fall. Absent a change in administrations, taxpayers would likely be bound by a regulation that did not receive economic analysis or input from those small businesses, whom would have been the most affected by the rule.

Another rule, issued in 2016, regarding corporate tax inversion was labeled as “temporary” and completely ignored the Administrative Procedure Act’s notice-and-comment requirement. Last year, a federal court found the rule to be “legislative” and struck it down for being “arbitrary and capricious.”

The point of the Administrative Procedure Act, the Regulatory Flexibility Act, and the Congressional Review Act is to ensure rules are thoroughly scrutinized and reviewed by a third-party and Congress before they bind the American people.

It is unacceptable for taxpayers to have to wait for a change in administration or judicial review to overturn flawed rules that should have been corrected by analysis every other agency is required to perform.

The Government Accountability Office, former OIRA Administrators, and administrative law experts have called on Treasury and OIRA to reconsider this agreement, and I am pleased that Treasury and OIRA have heard these pleas.

I understand an agreement has been reached to ensure IRS regulations are held to the same standard as other agencies. I look forward to hearing the details of the agreement. Particularly how the IRS plans to handle the requirements under the Regulatory Flexibility Act and the Congressional Review Act.

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

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