

Opening Statement of Ranking Member Tom Carper
“The Administrative State: An Examination of Federal Rulemaking.”

April 20, 2016

As submitted for the record:

Good morning. I want to thank Chairman Johnson for holding this hearing today. My thanks as well to our witnesses for joining us. As many of you have heard me say before, I believe that one of the most important jobs Congress has is to help create a nurturing environment for job growth. And one of the ways we can do that is to ensure the regulatory process results in common-sense regulations that provide businesses with the predictability they need.

Of course, the regulatory process can be cumbersome at times. And regulations often do impose some additional costs and requirements on those who must comply with them. But I disagree with those who think that we have to choose between regulation and having a robust, growing economy. When done in a smart way, regulations can help grow our economy. Regulations also serve a number of very important public purposes. They protect our public health and safety. They protect our environment. They play a role in our daily lives, and usually in very positive ways.

While discussions of regulatory issues often highlight disagreement among us, I believe everyone generally agrees that some regulation is necessary and good. Our job then is to help ensure the regulatory process is working, with a focus not just on reducing burdens, but also on ensuring transparency and efficiency. And we need to do this while achieving the greatest public benefit.

While there are certainly things about the regulatory process that can be improved, disagreements about the content of a particular rule don't necessarily mean the process isn't working. The process we have in place today gives businesses, individual citizens, and really anyone interested in participating in the process the opportunity to do so. Agencies are required to take their input into account. But as we all know, that doesn't mean everyone will be happy with the final product.

Over the past year, Chairman Johnson has made a number of inquiries related to several of the Administration's rulemakings, including the Department of Labor's Fiduciary Rule, the Environmental Protection Agency's Waters of the United States Rule, and the Federal Communications Commission's Open Internet Rule. As Ranking Member of this Committee, I directed my staff to participate in these inquiries. After reviewing the information we received, we found that the process the Administration used to develop these rules was careful and deliberative.

One example is the Department of Labor's Fiduciary Rule, which requires financial advisers to act in their clients' best interest when they give retirement investment advice. The rule is designed to address conflicts of interest in the industry that encourage some bad actors to push their customers into financial products that may generate higher fees and lower returns. My staff

found that the Department of Labor engaged in an extensive effort to solicit input from the public when developing the rule, including by receiving and reviewing hundreds of hours of testimony and thousands of comments. The Department also sought input from other agencies, which included high-level engagement between Secretary of Labor Tom Perez and Securities and Exchange Commission Chair Mary Jo White. As a result of these consultations, the Department of Labor was able to incorporate changes and improve the rule before it was finalized.

Another example is the Environmental Protection Agency's Waters of the United States Rule, which clarifies the wetlands and streams that must be protected under the Clean Water Act and seeks to maintain safe quality standards in our rivers, bays, and coastal waters. The process the Environmental Protection Agency used to finalize this rule was not hasty, and in fact involved a public comment that was held open for more than 200 days and attracted more than one million comments. In addition, the EPA and Army Corps of Engineers held more than 400 meetings with stakeholders across the country and visited farms in nine states. All of this helped to shape the final rule for the better.

Finally, the Federal Communications Commission also conducted a robust process to solicit input for its Open Internet Rule. Over a five month comment period, the Commission received approximately 3.7 million comments, which is the highest number of comments received on any rulemaking in the agency's history.

I understand not everyone will agree with these three rules the committee is examining today. But I think we can take comfort in knowing the process to develop them was thorough and thoughtful. Since these rules have only been recently finalized, I plan to continue monitoring them closely to ensure they are implemented well. After participating in Chairman Johnson's inquires, my staff prepared a set of materials, including a [memorandum](#) summarizing our findings on the Fiduciary Rule. Mr. Chairman, I ask for unanimous consent that these materials be placed in the hearing record.

Thank you, again, Mr. Chairman, for holding this hearing.