



United States Senate

Committee on Homeland Security and Governmental Affairs

Senator Susan M. Collins

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Statement of
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As Prepared for Delivery
“Federal Regulation: A Review of Legislative Proposals”

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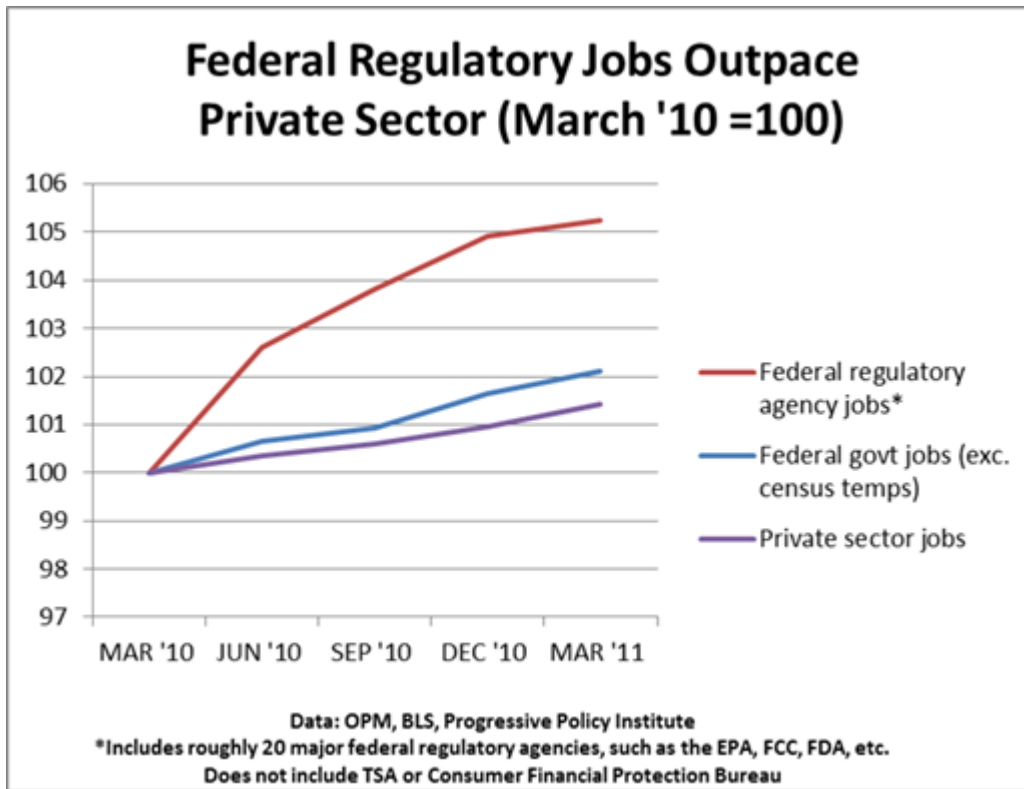
Mr. Chairman, at the outset, I want to thank you for agreeing to hold this hearing today to allow Members to describe their legislative proposals for regulatory reform.

We began our review of the federal regulatory process two months ago, with an excellent hearing featuring OIRA Administrator Cass Sunstein, whom we will welcome back later this morning.

April’s hearing laid the groundwork for a thoughtful examination of how the regulatory burdens on our economy—especially on job creation and productivity—might be lightened or simplified, without diminishing important safety and health protections.

I believe we can build a bipartisan consensus for reasonable action to achieve this goal. Earlier this year, for example, President Obama wrote an op-ed piece in the Wall Street Journal, in which he said that federal regulations have “sometimes ... gotten out of balance, placing unreasonable burdens on business—burdens that have stifled innovation and have had a chilling effect on growth and jobs.”

Notwithstanding the President’s intentions, however, the growth of the federal regulatory state, as measured in terms of employment by regulatory agencies, continues unabated. As the chart I have on display illustrates, since March of 2010, job growth in the federal regulatory agencies has far outstripped job growth in the rest of the federal government. More significant, it has far outpaced job growth in the private sector.



All too often it seems federal agencies do not take into account the impact on small businesses and job growth before imposing new rules and regulations. In my view, there are three keys to changing this reality: *first*, we should require regulatory agencies to analyze the costs and benefits of their proposed regulations on job creation; *second*, we should ensure that these agencies do not attempt to avoid that obligation by imposing unofficial rules masked as “guidance;” and *third*, we should provide relief from onerous penalties for small businesses facing first-time paperwork violations that do not result in any harm.

I have introduced legislation called the “CURB Act” – which stands for “Clearing Unnecessary Regulatory Burdens” – which combines the three points I just summarized. Let me take a few minutes to describe it in a little more detail.

First, the CURB Act requires federal agencies to analyze the costs and benefits of regulations, including indirect costs, such as the impact on job creation, the cost of energy, and consumer prices. Currently, most federal agencies are not required by statute to analyze these costs and benefits.

The idea of using cost-benefit analysis is not new, of course. In 1981, President Reagan issued an Executive Order prohibiting agencies from issuing regulations unless the potential benefits to society from the regulation outweigh the potential costs to society. President Clinton revised this Executive Order in 1993, obligating agencies to provide OIRA with an assessment of the costs and benefits of proposed regulations. The focus of the Clinton Executive Order was on regulations that are “significant” – meaning those which can reasonably be expected to have an impact of \$100 million or more on the economy. My bill would essentially codify this provision of President Clinton’s Executive Order.

Second, the CURB Act obligates federal agencies to comply with public notice and comment requirements and prohibits them from circumventing these requirements by issuing unofficial rules as “guidance documents.”

Let me explain why this is needed: After President Clinton issued his Executive Order in 1993, federal agencies found it easier to issue so-called “guidance documents,” rather than formal rules. Although these guidance documents are merely an agency's interpretation of how the public can comply with a particular rule, and are not enforceable in court, as a practical matter they operate as if they were legally binding. Thus, they have been used by agencies to circumvent OIRA regulatory review as well as public notice and comment requirements.

In 2007, under the leadership of then OMB Director Rob Portman, OMB tried to close this loophole by imposing “Good Guidance Practices” on federal agencies. The Bulletin requires agencies to follow standard procedures when issuing guidance documents, and to provide public notice and comment for “economically significant guidance documents” – proposed guidance documents which would impose costs of \$100 million per year, or adversely affect the economy.

The CURB Act would give the force of law to the Good Guidance Practices in the Bulletin.

Third, the CURB Act helps out the “little guy” trying to navigate our incredibly complex and burdensome regulatory environment. When a small business inadvertently runs afoul of a federal regulation, that first penalty could sink the business and all the jobs it supports. The CURB Act would provide access to SBA assistance to small businesses in a situation where they face a first-time, non-harmful paperwork violation. It simply doesn't make sense to me to punish small businesses the first time they accidentally fail to comply with paperwork requirements, so long as no harm comes from that failure.

Each of these provisions has been endorsed by the National Federation of Independent Business (NFIB), and the Small Business & Entrepreneurship Council.

I urge my colleagues to support the CURB Act, which contains these important reforms to our regulatory system. I look forward to learning more about the other regulatory reform proposals before the Committee, and I again thank the Chairman for scheduling today's hearing.