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Chairman Lieberman, Ranking Member Collins, and distinguished members of the Committee, thank you for inviting me to testify today on federal regulations. I am Director of the George Washington University Regulatory Studies Center, and Research Professor in the Trachtenberg School of Public Policy and Public Administration.¹ From April 2007 to January 2009, I oversaw executive branch regulations of the federal government as Administrator of the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB). I have studied regulations and their effects for over three decades, from perspectives in government (as both a career civil servant and political appointee), the academy, the non-profit world, and consulting.

As a long-time student of regulation, I am pleased this Committee is interested in improving how the U.S. government develops regulatory policy. Though regulations affect every aspect of our lives, as a policy tool they rarely reach the attention of voters (and consequently of elected officials) because, unlike their spending counterparts, their effects are often not visible. Like the direct government spending that is supported by taxes, regulations are designed to achieve social goals, but the costs of regulations are hidden in higher prices paid for goods and services and in opportunities foregone.

Over the course of our history, concerns about the effect of regulations have occasionally reached a level of public discourse that led to meaningful efforts at regulatory reform (and even outright deregulation), and my testimony briefly reviews three such periods. It then evaluates the regulatory landscape today, and goes on to examine possible legislative approaches to regulatory reform initiatives.

I. Previous Efforts at Regulatory Reform

This first part of my testimony briefly reviews three historic periods of regulatory reform, and the conditions that led to them: (A) the Administrative Procedure Act (APA) of 1946, (B) the economic deregulation and increased role for regulatory analysis that began in the mid-1970s, and (C) the statutory regulatory reform efforts of the mid-1990s. It concludes with (D) a review of the pressures that have led the inexorable growth in regulation, despite these reforms.

¹ The George Washington University Regulatory Studies Center raises awareness of regulations' effects with the goal of improving regulatory policy through research, education, and outreach. This statement reflects my views, and does not represent an official position of the GW Regulatory Studies Center or the George Washington University.

A. The Administrative Procedure Act of 1946

Until the early part of the 20th century, courts interpreted the separation of powers implicit in Articles 1 through 3 of the U.S. Constitution as prohibiting the delegation of legislative powers to the executive. The Supreme Court expressed in 1892, “that Congress cannot delegate legislative power to the President is a principle universally recognized as vital to the integrity and maintenance of the system of government ordained by the Constitution.”² Yet, early cases did uphold delegations of legislative authority as long as the executive branch was merely “filling up the details.”³ And, in 1928, the Supreme Court moved away from a strict interpretation of the non-delegation doctrine when it found that a congressional delegation of power was constitutional because the statute included an “intelligible principle” to guide executive action.⁴ Seven years later, the Supreme Court returned to the question of delegation of legislative power when it ruled that the National Industrial Recovery Act (NIRA) was unconstitutional because it provided the President (and private industry associations) “virtually unfettered” decision making power.⁵

This decision led to extensive debate, culminating in the passage of the APA in 1946. According to one researcher, the APA reflected a “fierce compromise”:

The battle over the APA helped to resolve the conflict between bureaucratic efficiency and the rule of law, and permitted the continued growth of government regulation. The APA expressed the nation’s decision to permit extensive government, but to avoid dictatorship and central planning.⁶

The APA has guided executive branch rulemaking for 65 years, and is one of the most important pieces of legislation ever enacted. It established procedures an agency must follow to promulgate binding rules and regulations within the area delegated to it by statute. As long an agency acts within the rulemaking authority delegated to it by Congress, and follows the procedures in the APA, recent courts have found few constitutional limits on executive branch agencies’ writing and enforcing regulations.

B. Regulatory reform and deregulation in the 1970s and 1980s

Inflation fears in the 1970s raised awareness of the costs and unintended consequences of regulation, leading to bipartisan support for deregulation in traditionally-regulated industries,

² Field v. Clark, 143 U.S. 649 (1892)

³ Wayman v. Southard, 23 U.S. (10 Wheat) 1 (1825)

⁴ J.W. Hampton, Jr. & Co. v. United States, 276 U.S. 394 (1928)

⁵ Schechter Poultry Corp. v. United States, 39 295 U.S. 495 (1935)

⁶ George Shepard. *Fierce Compromise: The Administrative Procedure Act Emerges from New Deal Politics*. 90 Nw. U. L. Rev. 1557 (1996)

such as airlines and trucking. Scholars at the time were in general agreement that regulation of private sector prices, entry, and exit tended to keep prices higher than necessary, to the benefit of regulated industries, and at the expense of consumers. Policy entrepreneurs in the Ford, Carter, and Reagan Administrations, in Congress, and at think tanks were able to link this knowledge to the problem of inflation by showing that eliminating economic regulations and fostering competition would lead to reduced prices.⁷ This led to successful bipartisan efforts to abolish agencies such as the Civil Aeronautics Board and the Interstate Commerce Commission and remove unnecessary regulation in several previously-regulated industries, with resulting improvements in innovation and consumer welfare.

While the legislative and executive branches were eliminating economic regulations in the late 1970s, a new form of “social” regulation aimed at addressing environmental, health, and safety concerns was emerging. (Figures 1 and 2 below, which track the budgetary costs of running the federal regulatory agencies and the pages in the *Federal Register*, where proposed and final regulations are published, illustrate the dramatic increase in social regulatory activity during this period.) Concerns over the burden of these new regulations and other reporting requirements led President Carter (and Presidents Nixon and Ford before him) to create procedures for analyzing the impact of new regulations and minimizing their burdens.⁸ They also led to the passage of two significant pieces of legislation in 1980. The Regulatory Flexibility Act (RFA) required agencies to analyze the impact of their regulatory actions on small entities and consider effective alternatives that minimize small entity impacts. The Paperwork Reduction Act (PRA) established the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) to review and approve all new reporting requirements with an eye toward minimizing burdens associated with the government’s collection of information.

When President Reagan took office in 1981, he continued to pare back economic regulations, and also gave the newly created OIRA a role in reviewing draft regulations to ensure their benefits exceeded their costs. The growth in federal regulatory activity leveled off for a brief period in the 1980s, but as inflation fears subsided and the economy improved, concerns over excessive regulation faded and regulatory activity began to increase again. Each subsequent president has continued and expanded OIRA’s central regulatory oversight role, if not its budget.⁹

⁷ Susan E. Dudley, *Alfred Kahn 1917-2010*, REGULATION Vol. 34, No. 1 (Spring 2011), available at <http://www.cato.org/pubs/regulation/regv34n1/regv34n1-2.pdf>.

⁸ President Carter’s E.O. 12044 required agency heads to determine the need for a regulation, evaluate the direct and indirect effects of alternatives, and choose the least burdensome. Exec. Order No. 12044, 43 Fed. Reg. 12661 (Mar. 24, 1978).

⁹ Figure 3 compares OIRA staffing with regulatory agency staffing over time. See Kathryn Vesey, *OIRA Celebrates 30th Anniversary*, The George Washington University Regulatory Studies Center, Regulatory Policy

C. Regulatory reform in the 104th Congress

In 1995, a Republican majority took control of both houses of Congress, having run on a platform that included regulatory reform. By this time, the social regulations that had begun in the 1970s were the focus of concern. In contrast to the consensus on economic regulations, academics and policy makers did not generally support outright deregulation, but rather reforms to make regulations less burdensome and more cost-beneficial. The 104th Congress's ambitious agenda included efforts to codify regulatory impact analysis procedures similar to those required through executive order by Presidents Carter, Reagan, Bush and Clinton, to require compensation for regulatory actions that reduced the value of property rights, to cap the costs of new regulations through a regulatory budget, and to give Congress more control and accountability over the content of new regulations.

These efforts at comprehensive regulatory reform legislation in the 104th Congress were unsuccessful. Opponents of comprehensive reform at the time noted:

By overreaching on this issue, the Republicans were tagged as anti-environment (anti-clean air and water) and anti-safety (dirty meat) by the mainstream media and the electorate. Both the Administration and the Congressional Democrats benefited politically from their stand against extreme Republican reg reform initiatives.¹⁰

While comprehensive reform efforts failed to win a majority of votes, some targeted efforts became law, including:

- The Unfunded Mandates Reform Act (UMRA) of 1995, which required executive branch agencies to estimate and try to minimize burdens on state, local, and tribal governments, and private entities,
- The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, which reinforced RFA requirements for small business impact analyses and provided for judicial review of agencies' determinations as to whether regulations would have "a significant economic impact on a substantial number of small entities,"
- The Congressional Review Act (CRA) of 1996, contained in SBREFA, which required agencies to submit final regulations with supporting documentation to both houses of

Commentary. June 28, 2011, *available at*

http://www.regulatorystudies.gwu.edu/images/pdf/20110628_oira_staffing.pdf

¹⁰ White House Memorandum to Erskine Bowles from John Hilley and Sally Katzen, "Regulatory Reform" (Feb. 12, 1997), *available at* http://www.clintonlibrary.gov/_previous/KAGAN%20DPC/DPC%2051-57/3324_DOMESTIC%20POLICY%20COUNCIL%20BOXES%2051-57.pdf.

Congress, and established expedited procedures by which Congress could overturn regulations within a specified time using a Joint Resolution of Disapproval,

- 1995 Amendments to the Paperwork Reduction Act, which reauthorized OIRA and required further reductions in paperwork burdens, and
- Title II, Section 645, of the 1996 Omnibus Consolidated Appropriations Act, which directed OMB to submit a report to Congress estimating the costs and benefits of major regulations. The 1999 Regulatory Right to Know Act made permanent this requirement for OMB to report to Congress annually.¹¹

These efforts have had mixed results. Agencies generally meet UMRA requirements with reference to regulatory impact analyses prepared pursuant to Executive Order 12866¹² (issued by President Clinton in 1993 and still in effect today), but rarely do more.¹³ While pursuant to SBREFA, courts have overturned regulations that fail to consider impacts on small business,¹⁴ agencies have successfully defended regulations that ignore the RFA requirements if the regulation's effects on small entities are considered to be "indirect."^{15,16}

Congress has used the CRA to enact a resolution of disapproval only once, overturning an OSHA regulation addressing ergonomics in the workplace. Though resolutions of disapproval require only a simple majority in Congress (and several have passed one house), they face the threat of presidential veto, which would require a two-thirds majority to override. The conditions surrounding the ergonomics regulation were likely key to its disapproval. It was a "midnight regulation," issued amid much controversy at the end of the Clinton Administration. The resolution disapproving the rule came at the beginning of the Bush Administration (which did not support the rule), eliminating the veto threat.

¹¹ The 104th Congress also passed amendments to the Safe Drinking Water Act, directing the Environmental Protection Agency to set standards based on a balancing of costs and benefits. Safe Drinking Water Act Amendments of 1996, Pub. L. No. 104-182, 110 Stat. 1613 (1996).

¹² Exec. Order No. 12866, 58 Fed. Reg. 51,735 (Oct. 4, 1993), *available at* <http://www.archives.gov/federal-register/executive-orders/pdf/12866.pdf>.

¹³ See testimony of Susan Dudley and other witnesses before the House Subcommittee on Technology, Information Policy, Intergovernmental Relations and Procurement Reform, Committee on Oversight and Government Reform, February 15, 2011, *available at* http://oversight.house.gov/index.php?option=com_content&view=article&id=1129:qunfunded-mandates-and-regulatory-overreachq&catid=14:subcommittee-on-technology

¹⁴ Northwest Mining Association v. Babbitt, 5 F.Supp. 2nd 9 (D.D.C. 1998), and Southern Fishing Association vs. Daley, 995 F.Supp. 1411 (M.D. Fla. 1998).

¹⁵ American Trucking Assns v. EPA 175 F.3d 1027, 1043 (D.C. Cir 1999)

¹⁶ Jeffrey J. Polich, *Judicial Review and the Small Business Regulatory Enforcement Fairness Act: An Early Examination of When and Where Judges Are Using Their Newly Granted Power over Federal Regulatory Agencies*, 41 Wm. & Mary L. Rev. 1425 (2000).

OMB does report annually to Congress on the costs and benefits of major regulations, but a 2001 CRS report observed that OMB's reports, "have been incomplete, and its benefits estimates have been questioned."¹⁷

D. Despite these efforts, regulations are increasing

As the attached figures illustrate, despite these efforts at reform, the growth in new regulations continues. The executive and legislative requirements for analysis of new regulations appear to have been inadequate to counter the powerful motivations in favor of regulation. Politicians and policy officials face strong incentives to "do something," and passing legislation and issuing regulations demonstrate action. Whether the regulatory action ultimately produces the desired outcomes may get less attention, partly because those outcomes are not immediately apparent, but also because action simply appears more constructive than inaction. There is no public relations advantage to doing nothing or to averting policy mistakes before they occur.

Often businesses are portrayed as the main opponents of regulation, but the evidence suggests otherwise. For decades, economists who study regulation have observed that regulation can provide competitive advantage, so it is often in the self-interest of regulated parties to support it. During my tenure at OIRA, I saw tobacco companies supporting legislation requiring that cigarettes receive Food and Drug Administration pre-marketing approval, food and toy companies wanting more regulation to ensure their products' safety, and energy companies supporting cap-and-trade for greenhouse gas emissions. Particularly when regulatory demands appeal to popular interests, politicians and policy officials find pursuing them hard to resist.¹⁸

Thus, legislators and regulators face strong incentives to issue new legislation and regulations, all with noble goals, while requirements to evaluate the outcomes of those policies (the benefits, costs, and unintended consequences) tend to take a back seat.

II. The Regulatory Landscape in 2011

Like the periods that preceded past regulatory reform efforts, concerns over the burdens of regulations are once again on the minds of American citizens.¹⁹ The pace of new regulatory activity spiked after the terrorist attacks of September 2001, and has been increasing again recently.

¹⁷ ROGELIO GARCIA, CONG. RESEARCH SERV., IB95035, FEDERAL REGULATORY REFORM: AN OVERVIEW (2001), available at <http://www.thecre.com/pdf/2002-crs.pdf>.

¹⁸ Bruce Yandle, *Bootleggers and Baptists*, REGULATION, May/June 1983

¹⁹ Frank Newport, *Americans Leery of Too Much Gov't Regulation of Business*, GALLUP, Feb. 2, 2010, available at <http://www.gallup.com/poll/125468/Americans-Leery-Govt-Regulation-Business.aspx>.

Figure 4 shows that executive branch agencies published a record number of economically significant final regulations (defined as having impacts of \$100 million or more per year) between February 2008 and January 2009.²⁰ Since then, executive branch agencies continue to issue regulations at a higher pace than previously, publishing 59 major regulations per year on average between February 2009 and January 2011, compared to an average of 45 regulations published per year during the 8-year terms of the last two presidents.²¹ When one includes the independent agencies (over which presidents exercise less direct oversight) the comparisons are similar, with an average of 84 major regulations issued over the last 2 years, a 35 percent increase over the average of 62 per year in the Bush Administration and a 50 percent increase over the 56 per year average in the Clinton Administration.²²

The most recent *Unified Agenda of Regulatory and Deregulatory Actions* issued earlier this month does not indicate a slow-down in activity. The Agenda lists 4,257 regulatory actions under development by federal regulatory agencies, or over 300 more entries than last year at this time. The regulatory road ahead looks even more ambitious when one focuses on the largest regulations. The Agenda lists 219 economically significant regulations, 28 more than were listed at this time last year and 47 more than in 2009.²³

Some of this activity is required by new legislative mandates, most notably the Wall Street Reform and Consumer Protection Act (Dodd-Frank), and the Patient Protection and Affordable Care Act (PPACA). Others, including EPA's regulation of greenhouse gases under the Clean Air Act, are based on new judicial interpretations of statutes enacted 20 or more years ago, and do not necessarily reflect the priorities of any recent (or past) Congress. But some are discretionary actions, such as EPA's pending decision to tighten standards for ozone which will impede economic growth in thousands of counties across the United States and impose costs of \$20 billion to \$90 billion per year (according to EPA's estimates).²⁴

²⁰ Figure 4 also illustrates the "midnight regulation" phenomenon, where administrations issue significantly more regulations during their final year in office than during previous years.

²¹ Analysis of the published economically significant final regulations tracked by the General Services Administration's Regulatory Information Services Center at www.reginfo.gov.

²² Analysis of major regulations by month in the GAO database, available at www.gao.gov/fedrules.

²³ Office of Info. & Regulatory Affairs, Office of Mgmt. & Budget, Current Regulatory Plan and the Unified Agenda of Regulatory and Deregulatory Actions, <http://www.reginfo.gov/public/do/eAgendaMain> (last visited July 9, 2011).

²⁴ EPA submitted a draft final regulation to OMB on July 11, 2011. <http://www.reginfo.gov/public/do/eoReview>. See letter from Andrew Livers to William Daley, chief of Staff to the President. July 15, 2011, available at: <http://businessroundtable.org/news-center/letter-to-bill-daley-on-ozone-regulations/>

III. Legislative Efforts

This part of my testimony examines possible reforms and weighs their likely effects. I consider reforms in two categories: (A) changes to regulatory procedures and (B) changes to the decision criteria for selecting regulatory approaches.

A. Procedural reforms

Possible reforms to the procedures by which regulations are promulgated include (1) requiring a Congressional vote before major new regulations can become effective (the REINS Act), (2) establishing a “regulatory paygo” procedure by which agencies would be required to remove an outdated regulation for every new regulation issued, (3) making procedural amendments to the Administrative Procedure Act, (4) altering the rules for judicial review of agency actions, and (5) establishing a Congressional office to review and evaluate regulations.²⁵

1. REINS

The Regulations from the Executive In Need of Scrutiny, or REINS Act, has been introduced in the Senate (S. 299) and House of Representatives (H.R. 10) to “increase accountability for and transparency in the federal regulatory process.”²⁶ It is patterned after the 1996 CRA, providing expedited procedures for evaluating and voting on major regulations, but rather than requiring Congress to enact a “joint resolution of disapproval” to prevent a rule from going into effect, no major rule could go into effect until Congress enacted an affirmative “joint resolution of approval.”

Supporters hail the Act as way to “force Members to take responsibility for the laws they pass, and to force Administrations to be accountable for the laws they create through regulation.”²⁷ Opponents argue that current procedures, where Congress delegates regulatory decision-making to agencies, are “consistent with the Framers’ intention,”²⁸ and constrain agencies through (1) the statutes that delegated them power in the first place, (2) the APA public comment process, (3) executive branch review and oversight, (4) the threat of a resolution of disapproval under the

²⁵ The Administrative Conference of the United States has conducted studies and provided recommendations on several of these procedural issues that the Committee may find useful, including: 77-1 Congressional Control of Regulation: Legislative Vetoes; 74-4 Judicial Review of Informal Rulemaking; 85-1 Legislative Preclusion of Cost-Benefit Analysis; and 90-7 Responses to Congressional Demands for Information [60 Fed. Reg. 56312 (Nov 8, 1995)].

²⁶ Regulations from the Executive in Need of Scrutiny Act, H.R. 10, 112th Cong. § 2 (2011).

²⁷ Editorial, *The Congressional Accountability Act*, WALL ST. J., Jan. 14, 2011, available at <http://online.wsj.com/article/SB10001424052970203525404576049703586223080.html>.

²⁸ Posting of Sidney Shapiro to CPRBlog, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=84F5CF0B-E804-F8D1-7197786456C5DC4F> (Jan. 14, 2011).

CRA, and (5) judicial review.²⁹ They also argue that expert agencies are in a better position to make complex regulatory decisions than political officials.³⁰

Yet, many federal regulations being promulgated today depend on legislation passed decades ago by different congresses focused on different concerns. The REINS Act would ensure that major regulations based on authority delegated years ago could only be adopted with consent from the current Congress.³¹ Further, the Act may strengthen the President's ability to exercise his Constitutional responsibility, by giving him greater control over independent agencies.³²

While scholars defend the constitutionality of the Act,³³ no one denies that it will change legislators' behavior. How would legislators respond to the responsibility of voting on the 50 to 100 major rules promulgated each year? Would inertia lead to inaction, and the effective disapproval of popular regulations? Or would joint resolutions of approval become routine, with members voting for new regulations with little consideration? Defenders of the Act believe that the expedited procedures will encourage bipartisan debate and minimize opportunities for a minority of members to derail resolutions supported by the majority. If resolutions of approval become routine, at least members would no longer be able to blame agencies and avoid responsibility for regulatory outcomes.³⁴

REINS might also alter the incentives of agency staff and interested parties. Would agencies be more likely to chop a regulation into smaller actions to avoid the "major" designation, or might they bundle unpopular regulations with popular ones to compel an affirmative resolution? Would agency staff have incentives to negotiate deals with individual legislators and lobbyists,

²⁹ *The REINS Act: Promoting Jobs and Expanding Freedom by Reducing Needless Regulations: Hearing on H.R. 10 Before the Subcomm. on Courts, Commercial and Administrative Law of the H. Comm. on the Judiciary* [hereinafter *Hearing*], 112th Cong. (2011) (statement of Sally Katzen), available at <http://judiciary.house.gov/hearings/pdf/Katzen01242011.pdf>.

³⁰ SIDNEY SHAPIRO, CTR. FOR PROGRESSIVE REFORM, CPR BACKGROUNDER: THE REINS ACT: THE CONSERVATIVE PUSH TO UNDERCUT REGULATORY PROTECTIONS FOR HEALTH, SAFETY, AND THE ENVIRONMENT (2011), available at http://www.progressivereform.org/articles/CPR_Reins_Act_Backgrounder.pdf.

³¹ Jonathan Adler, The Federalist Soc'y for Regulatory & Pub. Policy Studies, The Regulations from the Executive in Need of Scrutiny (REINS) Act, http://www.fed-soc.org/publications/pubID.2074/pub_detail.asp (2011).

³² In testimony before the House Judiciary Committee, David McIntosh observed, "If the President disapproves of a rule, he can veto its authorizing resolution; if he endorses it, he can allow it to take effect. Either way, the President is forced to take ownership of the independent agency's action and will be held accountable by the people for his choice." *Hearing, supra* note 29, at 51-52 (statement of David McIntosh, Member of Congress, Retired), available at <http://judiciary.house.gov/hearings/pdf/McIntosh01242011.pdf>.

³³ Adler, *supra* note 31; *Hearing, supra* note 29 (statement of Jonathan H. Adler, Professor of Law and Director of the Center for Business Law and Regulation, Case Western Reserve University School of Law), available at <http://judiciary.house.gov/hearings/pdf/Adler01242011.pdf>; *id.* (statement of David McIntosh, Member of Congress, retired), available at <http://judiciary.house.gov/hearings/pdf/McIntosh01242011.pdf>.

³⁴ Press Release, Rep. Geoff Davis, REINS Act Reintroduced in the 112th Congress (Jan. 20, 2011), available at <http://www.geoffdavis.house.gov/News/DocumentSingle.aspx?DocumentID=220691>.

inserting special provisions in new regulations in exchange for an affirmative vote on a resolution of approval? How might that affect their willingness to alter proposed regulations in response to public comment, or the President's ability (through OIRA) to hold agencies accountable for selecting alternatives with broad net benefits? This fear is magnified by concerns that enactment of a resolution of approval would constitute a legislative action that might protect faults in the regulation from judicial review.

Cognizant of these potential perverse incentives, REINS Act drafters have included provisions that require agencies to justify their classifications of major and non-major, and to provide information on other related regulatory activities designed to implement the same statutory or regulatory objective. It also explicitly preserves challenges to federal rules in courts of law by clarifying that a joint resolution of approval "does not extinguish or affect any claim, whether substantive or procedural, against any alleged defect in a rule, and shall not form part of the record before the court in any judicial proceeding concerning a rule."³⁵

Supporters of the REINS Act recognize that it will make regulatory decisions more like legislative decisions, with the tradeoffs in transparency that involves, but they argue that, in the long run, increasing Congressional accountability for regulations will better serve the American public.

2. Examination and removal of unnecessary existing regulations – a regulatory paygo

Most legislative and executive branch reforms have focused on analyzing and improving new regulations, and agencies seldom look back to evaluate whether existing regulations are having their intended effects. Section 610 of the RFA provides for periodic review of regulations for their impact on small businesses, but researchers have found that most agencies "comply with the letter of the law for only a small percentage of their rules, and they rarely take action beyond publishing a brief notice in the *Federal Register*."^{36,37} S. 130 (the FREEDOM Act) would impose budgetary penalties on agencies that fail to conduct such requirements.³⁸

³⁵ Regulations from the Executive in Need of Scrutiny Act, S. 299, 112th Cong. § 802(g) (2011).

³⁶ Michael See, *Willful Blindness: Federal Agencies' Failure to Comply With the Regulatory Flexibility Act's Periodic Review Requirement—And Current Proposals to Invigorate the Act*, 33 FORDHAM URB. L.J. 1199 (2006), available at <http://law2.fordham.edu/publications/articles/400flspub16875.pdf>.

³⁷ Note that S. 474, the Small Business Regulatory Freedom Act of 2011, would reinforce the requirement for periodic review and sunset of existing rules that affect small entities.

³⁸ See statement of Senator Snowe before this Committee, June 23, 2011, available at http://hsgac.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=6cb07bbd-a858-4495-b820-0726ae7d769b.

Senator Warner is working with Senator Portman on legislation focused on altering regulatory agencies' incentives to issue new regulations and examine the effectiveness of existing regulations.³⁹ This legislation “would require federal agencies to identify and eliminate one existing regulation for each new regulation they want to add.”⁴⁰ Under a “regulatory paygo system,” regulatory agencies, with oversight from OIRA and either the Congressional Budget Office (CBO) or the GAO, would catalogue existing regulations and develop estimates of their economic impacts. Then, before issuing a new regulation, agencies would be required to eliminate one outdated or duplicative regulation of the same approximate economic impact.

A regulatory paygo shares similarities with a regulatory budget, a concept that attracted bipartisan interest in the 1970s and 1980s, but has not been championed in recent years. In 1980, President Carter's *Economic Report of the President* discussed proposals “to develop a ‘regulatory budget,’ similar to the expenditure budget, as a framework for looking at the total financial burden imposed by regulations, for setting some limits to this burden, and for making tradeoffs within those limits.” The Report noted analytical problems with developing a regulatory budget, but concluded that “tools like the regulatory budget may have to be developed” if governments are to “recognize that regulation to meet social goals competes for scarce resources with other national objectives,” and set priorities to achieve the “greatest social benefits.”⁴¹

The analytical problems identified with the regulatory budget are non-trivial, and to some degree would also apply to a regulatory paygo. Since the late 1990s, OMB has been compiling agency estimates of the costs (and benefits) of major regulations with mixed results, as noted above. Estimating the opportunity costs of regulations is not as straightforward as estimating fiscal budget outlays, where past outlays are known and future outlays can generally be predicted with some accuracy. Some regulatory impacts will be harder to estimate than others. What are the costs associated with homeland security measures that reduce airline travelers' privacy? What are the costs of regulations that prevent a promising, but yet unknown, product from reaching consumers? Even regulations whose costs appear to be straightforward, such as corporate average fuel economy standards that restrict the fleet of vehicles produced, depend on assumptions about consumer preferences and behaviors that may not reflect American diversity. EPA and DOT recently estimated that these rules will have large negative costs (even if benefits

³⁹ See statement of Senator Portman before this Committee, June 23, 2011, *available at* http://hsgac.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=6cb07bbd-a858-4495-b820-0726ae7d769b.

⁴⁰ Mark Warner, *To Revive the Economy, Pull Back the Red Tape*, WASH. POST, Dec. 13, 2010, *available at* http://www.washingtonpost.com/wp-dyn/content/article/2010/12/12/AR2010121202639_pf.html.

⁴¹ Chairman of the Council of Econ. Advisers, 1980 Economic Report of the President [hereinafter 1980 Economic Report], at 125 (1980), *available at* http://fraser.stlouisfed.org/publications/ERP/page/4569/download/46077/4569_ERP.pdf.

were zero), because, according to their calculations, the fuel savings consumers will derive from driving more fuel-efficient vehicles will outweigh the increased purchase price. This analysis begs the question of why consumers are not demanding (and manufacturers providing) the fuel-efficient vehicles absent regulation, and ignores other attributes consumers value. It also raises a question of how negative costs would be treated under a regulatory paygo system. Would agencies that estimate negative costs associated with their rules be able to issue even more?

Despite these analytical difficulties, a regulatory paygo has the potential to impose some needed discipline on regulatory agencies, and to generate a constructive debate on the real impacts of regulations. By focusing on the costs of regulations and allowing agencies to set priorities and make tradeoffs among regulatory programs, it might remove some of the contentiousness surrounding benefit-cost analysis. How it would affect agencies' incentives for estimating costs is uncertain. In developing a baseline estimate of the costs of existing regulations, they may have incentives to overstate costs, particularly for regulations they may want to trade in exchange for new initiatives. Furthermore, Congress would probably need to establish regulatory burden baselines in new authorizing legislation. Providing an entity outside of the executive branch (CBO or GAO) the resources and mandate to (1) estimate the regulatory costs associated with executing new legislation, and (2) evaluate and critique agency estimates of regulatory costs could be critical to a regulatory paygo's success. While it will never be possible to estimate the real social costs of regulations with any precision, a regulatory paygo should provide incentives for agencies, affected parties, academics, Congressional entities and non-governmental organizations to improve upon the rigor of regulatory impact estimates.

3. Procedural changes to the APA

The APA describes two types of rulemaking – formal and informal. Most executive branch regulation is conducted through informal, or notice-and-comment rulemaking. As long as an agency acts within the rulemaking authority delegated to it by Congress, and follows the procedures in the APA, courts have ruled that it can write and enforce regulations subject to an “arbitrary and capricious” standard of review.

Formal rulemaking is generally used only by agencies responsible for economic regulation of industries, and only when a statute other than the APA specifically states that rulemaking is to be done “on the record.”⁴² Formal rulemaking involves trial-like hearings, where rules of evidence apply, and parties may both subpoena and cross-examine witnesses. Decisions must address each of the findings presented and be supported by “substantial evidence.” Sections of the Occupational Safety and Health Act (OSHA) and Toxic Substances Control Act (TSCA) require a hybrid approach, in which the agencies propose rules and standards through notice and comment, but at the request of interested parties must hold a hearing.

⁴² United States v. Fla. E. Coast Ry., 410 U.S. 224 (1973).

To improve the empirical accuracy of factual determinations and the rigor of agencies' justifications for the most significant regulations they issue, legislators might consider amending the APA to expand the use of formal rulemaking procedures, and/or apply the substantial evidence test to informal rulemakings. Legal scholars argue that formal rulemaking procedures would be especially useful to ensure scientific integrity, and to address concerns that agencies sometimes do not take public comment seriously, but instead provide inadequate, perfunctory explanations for selecting one alternative over another, or for dismissing public concerns.⁴³ Critics are concerned that formal rulemaking procedures will slow down the issuance of new regulation, and impose unnecessary costs on regulating agencies,⁴⁴ but supporters offer examples of such rulemakings being completed expeditiously, and of notice-and-comment rulemakings that have taken more than a decade.⁴⁵

The substantial evidence standard directs a reviewing court to set aside an agency action unless the record provides "such relevant evidence as a reasonable person would accept as adequate to support a conclusion."⁴⁶ It is arguably a more exacting standard than "arbitrary and capricious," which grants considerable deference to agency expertise. Substituting a substantial evidence test could motivate agencies to develop and provide better scientific and technical data and analysis in support of regulations.⁴⁷ Some argue that the substantial evidence test used as part of an informal (or even hybrid) regulatory proceeding would differ very little from an arbitrary and capricious test, however.^{48,49}

⁴³ JEFF ROSEN, AM. BAR ASS'N, FORMAL AND HYBRID RULEMAKING: TIME FOR A REVIVAL (2010), available at <http://new.abanet.org/calendar/6th-annual-administrative-law-and-regulatory-practice-institute/Documents/Jeff%20Rosen%20PowerPoint.pdf>.

⁴⁴ *Hearing on Executive Order 13422*, 72 *Fed. Reg.* 2763 (January 23, 2007), *President Bush's recent amendments to Executive Order 12866, Before the Subcomm. on Investigations and Oversight of the H. Comm. on Science and Technology*, 110th Cong. (2007) (testimony of Peter L. Strauss, Betts Professor of Law, Columbia Law School), available at http://democrats.science.house.gov/Media/File/Commdocs/hearings/2007/oversight/26apr/strauss_testimony.pdf.

⁴⁵ ROSEN, *supra* note 43.

⁴⁶ *Mareno v. Apfel*, 1999 U.S. Dist. LEXIS 8575 (S.D. Ala. Apr. 8, 1999) ("more than a scintilla but less than preponderance").

⁴⁷ EE Bachrach, *Case for a Substantial Evidence Amendment to the Informal Rulemaking Provision of the Federal Food, Drug, and Cosmetic Act*, 55 *Food & Drug L.J.* 293 (2000).

⁴⁸ *Ass'n of Data Processing Serv. Orgs., Inc. v. Bd. of Governors of the Fed. Reserve Sys.*, 745 F.2d 677 (D.C. Cir. 1984) (Scalia, J., writing for the majority) ("In review of rules of general applicability made after 'notice and comment' rule-making, [substantial evidence and arbitrary or capricious] criteria converge into a test of reasonableness."), available at <http://openjurist.org/745/f2d/677/association-v-board>.

⁴⁹ Matthew J. McGrath, *Convergence of the Substantial Evidence and Arbitrary and Capricious Standards of Review During Informal Rulemaking*, 54 *GEO. WASH. L. REV.* 541 (1986).

4. Provide for judicial review of influential information

The Information Quality Act (IQA) attempts to ensure the “quality, objectivity, utility, and integrity” of information disseminated to the public, and provides procedures by which affected parties can petition agencies to correct information that does not meet those standards. The IQA does not explicitly provide for judicial review of agency denials of requests for correction, and to date, courts have chosen not to try cases that have been brought. Congress may consider amending the IQA to make agency decisions reviewable.⁵⁰

5. Create a Congressional regulatory oversight body

The Truth in Regulating Act of 2000⁵¹ required the GAO independently to evaluate agencies’ regulatory impact analyses supporting final regulations, but this requirement was contingent upon the GAO receiving yearly appropriations of \$5,200,000. These funds have never been appropriated.⁵²

A non-executive branch agency responsible for reviewing regulations would have several benefits.⁵³ Most importantly, it would serve as an independent check on the analysis and decisions of regulatory agencies and OMB. A 1999 GAO report evaluating OMB’s annual reports to Congress on the benefits and costs of regulation observed,

It is politically difficult for OMB to provide an independent assessment and analysis of the administration’s own estimates in a public report to Congress. If Congress wants an independent assessment of executive agencies’ regulatory costs and benefits, it may have to look outside of the executive branch or outside of the federal government.⁵⁴

⁵⁰ For different perspectives on this issue, see James W. Conrad, Jr., *The Information Quality Act—Antiregulatory Costs of Mythic Proportions?*, 12 KAN. J. L. & PUB. POL’Y 521 (2003), available at <http://www.law.ku.edu/publications/journal/pdf/v12n3/conrad.pdf>; Sidney A. Shapiro, RENA STEINZOR & MARGARET CLUNE, CTR. FOR PROGRESSIVE REFORM, *OSSIFYING OSSIFICATION: WHY THE INFORMATION QUALITY ACT SHOULD NOT PROVIDE FOR JUDICIAL REVIEW* (2006), available at http://www.progressivereform.org/articles/CPR_IQA_601.pdf.

⁵¹ P.L. 106-312, 114 Stat. 1248-1250 (2000).

⁵² Representative Donald Young introduced H.R. 214 on January 7, 2011 “to establish a Congressional Office of Regulatory Analysis, to require the periodic review and automatic termination of Federal regulations, and for other purposes.” H.R. 214, 112th Cong. (2011), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=112_cong_bills&docid=f:h214ih.txt.pdf.

⁵³ See Testimony of Robert W. Hahn and Robert E. Litan before the House Government Reform Committee, Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs, March 2003, available at: http://www.brookings.edu/testimony/1999/04_righttoknow_litan.aspx

⁵⁴ U.S. GEN. ACCOUNTING OFFICE, GAO/GGD-99-59, *ANALYSIS OF OMB’S REPORTS ON THE COSTS AND BENEFITS OF FEDERAL REGULATION* (1999), available at <http://www.gao.gov/archive/1999/gg99059.pdf>.

A Congressional office would be able to devote resources to areas OMB cannot, such as examining the effects of regulations issued by independent regulatory agencies. Just as the CBO provides independent estimates of the on-budget costs of legislation and federal programs, a Congressional regulatory office could provide Congress and the public independent analysis regarding the likely off-budget effects of legislation and regulation. This would be particularly important if Congress enacts some of the other procedural changes being discussed, such as the REINS Act or a Regulatory Paygo.

B. Decision Criteria

Members of both houses have introduced legislation designed to improve upon the decisional criteria by which regulatory alternatives are evaluated by (1) codifying the decision requirements currently embodied in executive order and extending them to independent agencies, (2) ensuring that significant guidance documents receive a similar level of analysis and public input as rulemaking, (3) expanding the coverage and effectiveness of UMRA, and (4) amending the RFA to require agencies to consider indirect effects of their regulations.

1. Codify Requirements for Regulatory Impact Analysis

The executive branch has generally taken the lead on decisional criteria for analyzing and developing new regulations. For over thirty years, presidents of both parties have issued executive orders articulating nearly identical regulatory analysis principles to guide regulatory decisions, and at least since 1980, there have been attempts to codify these executive requirements in statute.⁵⁵ Several such bills have been referred to this Committee this year.⁵⁶

Though the creation of a statutory obligation for meeting these regulatory impact analysis standards is probably not necessary to ensure future presidents continue to endorse them, codifying the requirements could have several advantages. First, such legislation would lend Congressional support to these nonpartisan principles and the philosophy that before issuing regulations agencies should identify a compelling public need, evaluate the likely effects of alternative regulatory approaches, and select the alternative that provides the greatest net benefit to Americans.⁵⁷ Second, legislation could apply these requirements to independent agencies

⁵⁵ See 1980 Economic Report, *supra* note 41, at 123.

⁵⁶ For example, S. 602 and S. 358.

⁵⁷ Section 1(a) of Executive Order 12866 states the regulatory philosophy as follows:

Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people. In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative

(which Administrations have been reluctant to do through executive order for fear of stirring up debate over the relationship between independent agencies and the President).⁵⁸ The former OIRA administrators of both parties gathered at the 30th Anniversary conference hosted by the GW Regulatory Studies Center agreed on the importance of engaging independent regulatory agencies in regulatory analysis and oversight.⁵⁹ Third, Congress could make compliance with them judicially reviewable. Judicial review could be valuable, not because the courts have a particular expertise in regulatory analysis, but because agencies tend to take more seriously aspects of their mission that are subject to litigation. Like executive and Congressional oversight, judicial oversight would likely make regulatory agencies more accountable for better decisions based on better analysis.

The 112th Congress could consider legislation that simply adopts Executive Order 12866 (first issued by President Clinton in 1993) or even President Obama's recent Executive Order 13563, which incorporates E.O. 12866 by reference.⁶⁰ In my view, Congress should not limit legislation to codifying the requirement for benefit-cost analysis, but rather should capture the broader philosophy and principles articulated in E.O. 12866. For example, legislation should require that regulatory decisions be based on the identification of a compelling public need, an objective review of alternatives (including the alternative of not regulating), and an understanding of the distributional impacts of different approaches.

Additionally, legislation might emphasize certain features that members have found lacking in regulatory analyses (such as indirect effects, impacts on employment, risk assessment, analysis of non-regulatory alternatives, etc.).⁶¹ It might also combine decisional criteria with procedural ones; for example, requiring that if certain decisional criteria are met (such as effects above a threshold), a rulemaking would follow a different procedural path (such as an advance notice of proposed rulemaking, or a formal hearing).⁶²

measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

⁵⁸ President Obama took an important step last week in an executive order that encouraged independent agencies to comply with the spirit of Executive Order 13563 and prepare public plans for evaluating existing regulations. However, this action did not require regulatory analysis, nor subject independent regulatory agencies to OIRA oversight. <http://www.whitehouse.gov/the-press-office/2011/07/11/executive-order-regulation-and-independent-regulatory-agencies>

⁵⁹ Information and videos from the conference are available at www.RegulatoryStudies.gwu.edu.

⁶⁰ Exec. Order No. 13563, 76 Fed. Reg. 3821 (Jan. 21, 2011).

⁶¹ For example, S. 1219 would require a "jobs impact statement," and Senator Roberts testified before this committee that his bill, S.358, would "strengthen and codify" Executive Order 13563. Statement available at http://hsgac.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=6cb07bbd-a858-4495-b820-0726ae7d769b.

⁶² For example, S. 1292 would require EPA to hold hearings on regulations that displace more than 100 jobs.

2. Subject significant guidance documents to regulatory review and notice requirements

The CURB Act (S. 602) would take codification of regulatory analysis requirements one step further and apply them to guidance documents that have the effect of regulation. It would codify the 2007 Good Guidance Practices Bulletin to ensure that significant guidance documents are subject to OIRA regulatory review as well as public notice and comment requirements. This could be an important reform, as various authorities have raised concerns that agency guidance practices are sometimes used to circumvent rulemaking procedures, and recommended that they should be more transparent, consistent and accountable.⁶³

3. Expand UMRA's coverage and accountability

The analytical requirements of Title II of UMRA are similar to those in Executive Order 12866. They both ask executive branch agencies to “assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector,” and “select the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule.” But UMRA's coverage is much more limited than that of the Executive Order, so that, according to a recent CRS report,⁶⁴ 72 percent of the economically significant rules covered by the Executive Order are not covered by UMRA.⁶⁵ This limited coverage is compounded by the fact that UMRA's requirements for analyzing the effects of proposed regulations are largely informational and judicial review does not impose meaningful consequences for noncompliance.

Several bills before Congress would broaden UMRA's coverage. For example, S. 817 would amend it to include independent regulatory agencies (which are not currently bound by those Executive Orders) and broaden its coverage to align with that of Executive Order 12866 and President Obama's recent Executive Order 13563. It would make compliance with these requirements judicially reviewable under the APA, so that an agency's failure to justify not selecting the “least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule,” could be grounds for staying, enjoining, invalidating or otherwise affecting such agency rule. To make the executive branch more accountable for the goals of

⁶³ Office of Management and Budget Bulletin No. 07-07, “Final Bulletin for Agency Good Guidance Practices.” Footnote 2. Available at: <http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2007/m07-07.pdf>

⁶⁴ US CONG RESEARCH SERVICE, UNFUNDED MANDATES REFORM ACT: HISTORY, IMPACT, AND ISSUES, Robert Jay Dilger and Richard S. Beth, 7-5700, R40957. (August 2010), *available at*: http://assets.opencrs.com/rpts/R40957_20100813.pdf

⁶⁵ Executive Order 13132, “Federalism,” also guides agencies to consider impacts on state and local governments in developing regulations, but the ADMINISTRATIVE CONFERENCE OF THE UNITED STATES recently found that “compliance with these provisions has been inconsistent, and difficulties have persisted across administrations of both political parties,” *available at*: <http://www.acus.gov/wp-content/uploads/downloads/2011/01/Final-Recommendation.pdf>

UMRA, Congress could provide OMB oversight authority beyond certifying and reporting on agencies' actions.

Another approach would be to make a procedural change, so that unfunded mandates in federal regulations would not be effective until they received a joint resolution of approval by Congress, or were adopted by the affected state, local, or tribal government. Just as on-budget programs typically require both authorization and a specific appropriation by the legislature before they can spend public funds, it would be reasonable to ask federal agencies, not just to cite some broad delegated regulatory authority, but also to secure specific legislative approval before they mandate a substantial expenditure of public funds.⁶⁶

4. Expanding the coverage of the RFA

The small business community has been frustrated that courts have interpreted the RFA's requirements to assess economic impact as applying only to direct compliance costs. They argue that agencies should consider reasonably foreseeable indirect economic impacts on small entities, such as increases in input prices (e.g., electricity or transportation) or state-level regulations issued pursuant to federal rules. This latter issue is particularly important for environmental regulations, where the "duty of regulating is passed on to the states without any corresponding analysis or requirements for states to consider less burdensome alternatives for small business."⁶⁷ Several current bills (including S. 1030) would amend the RFA to explicitly include indirect impacts.

S. 1030 would also require small business review panels for all agencies, rather than just EPA and the Occupational Safety and Health Administration, as required by SBREFA. It and S. 128 would provide penalty relief for small businesses under certain circumstances.

5. Should criteria supersede other statutes?

An important decision regarding all of these cross-cutting decisional criteria will be whether they supersede or are subordinate to the decision criteria expressed in individual authorizing statutes, such as Section 109 of the Clean Air Act, which has been interpreted as precluding the consideration of any factors other than human health in the setting of primary national ambient

⁶⁶ This concept, which applies REINS-like approval procedures to unfunded regulatory mandates, is explored further in a commentary by GW Regulatory Studies Center Visiting Scholar, Brian Mannix *available at* <http://www.regulatorystudies.gwu.edu>.

⁶⁷ *Hearing on Legislation to Improve the Regulatory Flexibility Act Before the H. Comm. on Small Business*, 110th Cong. (2007) (testimony of Thomas Sullivan, Chief Counsel for Advocacy, Small Business Administration), *available at* http://archive.sba.gov/advo/laws/test07_1206.html.

air quality standards.⁶⁸ Rather than creating a “supermandate,” which has detractors, Congress may want to amend statutes that ignore or explicitly prohibit analysis of tradeoffs and lead to regulations with questionable benefits that divert scarce resources from more pressing issues.

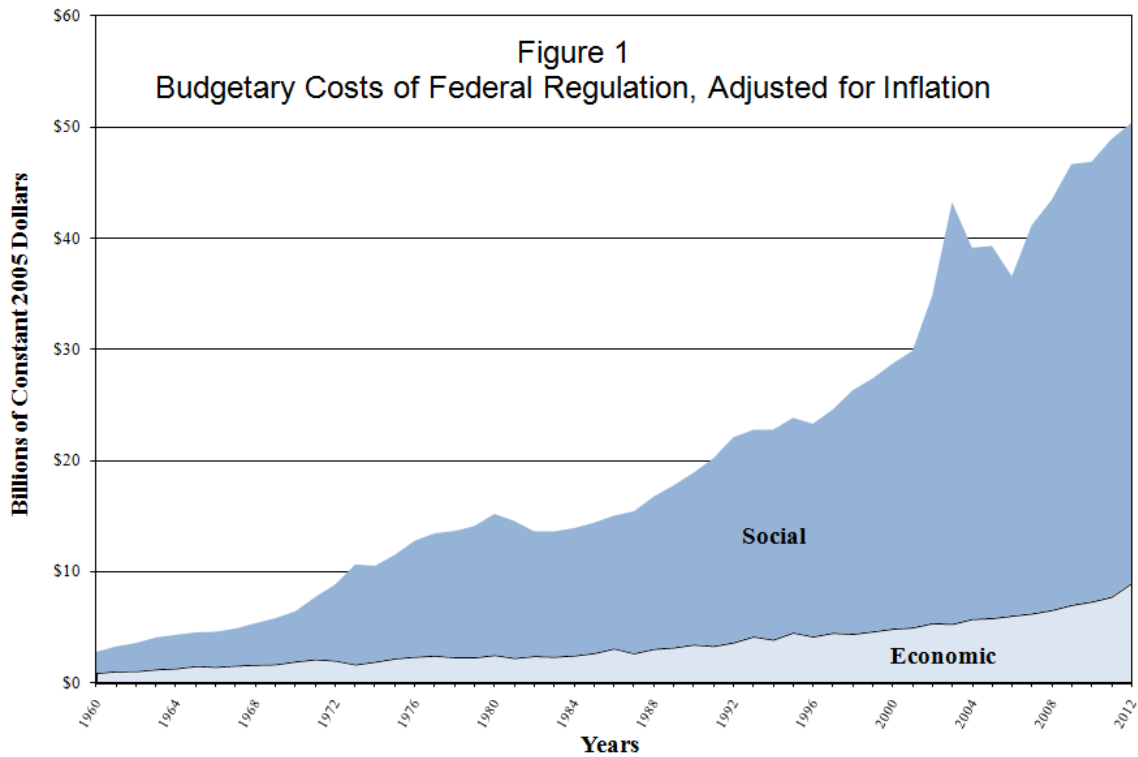
Only Congress can address aspects of legislation that preclude reliance on sound decisional criteria or hinder APA procedures (such as requirements that agencies issue interim final regulations that limit public comment).

IV. Conclusion

For over a century, legislators have delegated authority to executive branch agencies, and the volume and reach of regulation have grown. Like government spending programs, funded by taxes and deficits, regulations are designed to achieve popular social goals. However, there is no regulatory equivalent to the fiscal budget—no transparent accounting of spending priorities proposed by the President and appropriated by Congress. Americans are often unaware of regulations’ impacts because their costs are hidden in higher prices paid for goods and services, reduced competitiveness, and in jobs and other opportunities foregone.

From time to time, concerns about the cumulative impact of regulations have reached a level that led to meaningful regulatory reform. Now may be such a time. This Committee is considering several bills that would reform the procedures by which regulations are issued, clarify the decision criteria agencies use to develop regulations, and take responsibility for the content of individual regulations promulgated pursuant to statutes. I appreciate this Committee’s interest in measures to improve regulatory outcomes and respectfully encourage the Committee to treat these as nonpartisan. Like the bipartisan regulatory reform efforts of the 1970s and 1980s, which brought about unexpected innovation, higher quality and lower prices in previously regulated industries, bipartisan reforms today could spur economic growth and improve the welfare of American families, workers and entrepreneurs.

⁶⁸ The Administrative Conference of the United States has conducted studies and provided recommendations on applications of these decision criteria that the Committee may find useful, including: 79-4 Cost-Benefit Analysis in Regulatory Decision-Making; 85-2 Regulatory Analysis of Agency Rules; 88-9 Presidential Review of Agency Rulemaking [60 Fed. Reg. 56312 (Nov 8, 1995)]; and Paul Verkuil, *A Critical Guide to the Regulatory Flexibility Act*, Duke L.J. 213 (1982).



Source: Weidenbaum Center, Washington University and the George Washington University Regulatory Studies Center. Derived from the *Budget of the United States Government* and related documents, various fiscal years.

Figure 2. Federal Register Pages: 1940-2010

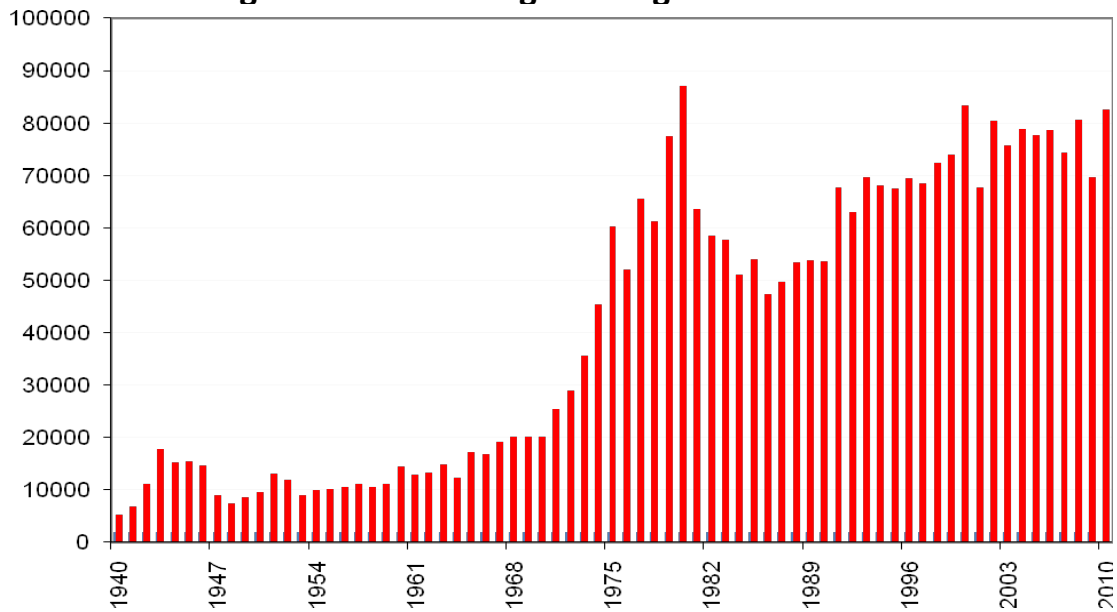
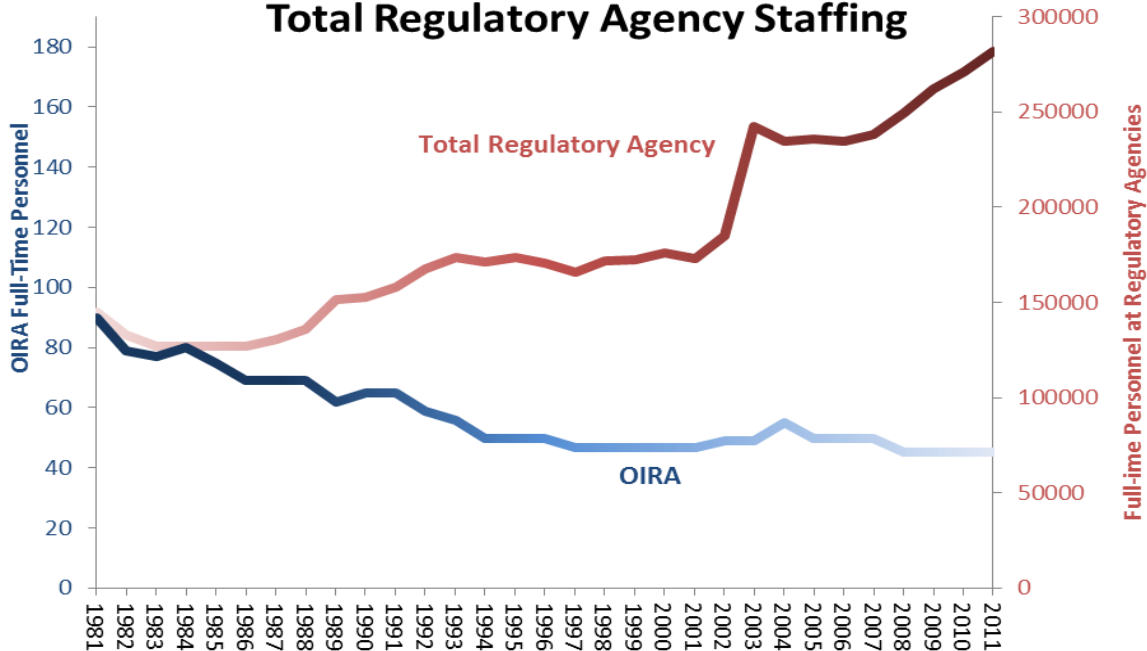
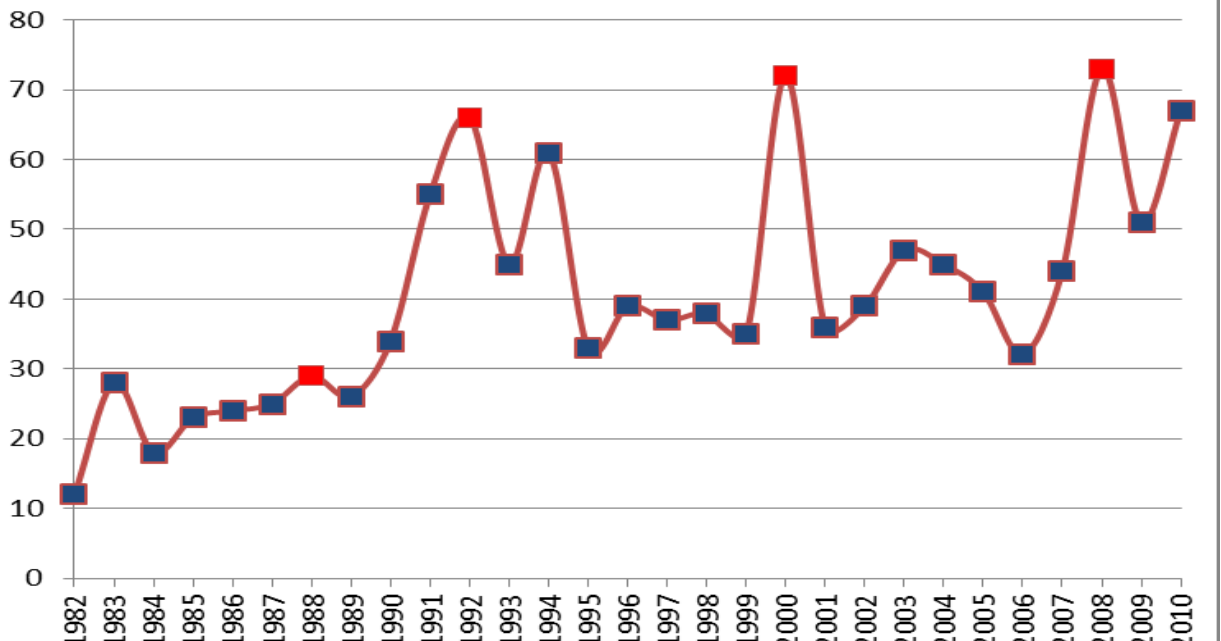


Figure 3. Comparison of OIRA Staffing to Total Regulatory Agency Staffing



The George Washington University Regulatory Studies Center and Weidenbaum Center, Washington University, derived from the *Budget of the United States Government*

Figure 4. Number of Economically Significant Final Regulations Published by Year (February-January)



Red points signify "midnight" years (the last year of a president's term). Source: www.RegInfo.gov