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**TESTIMONY OF HOWARD SHELANSKI
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BEFORE THE HOUSE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON REGULATORY REFORM, COMMERCIAL AND ANTITRUST LAW
UNITED STATES HOUSE OF REPRESENTATIVES**

July 15, 2015

Chairman Marino, Ranking Member Johnson, and members of the Subcommittee:

Thank you for the invitation to appear before you today. I am pleased to have this opportunity to discuss the role of the Office of Information and Regulatory Affairs (OIRA) in regulatory review.

As the Administrator of OIRA, it is my privilege to work with the skilled and dedicated OIRA staff, the first-rate leadership team at the Office of Management and Budget under Director Shaun Donovan, and our excellent colleagues throughout the Federal Government. We are all working to continue the Nation's economic recovery and employment growth while protecting the health, safety, and welfare of Americans, now and into the future.

OIRA has a broad portfolio. For example, under the Paperwork Reduction Act, OIRA is responsible for reviewing collections of information by the Federal Government to ensure that those collections are not unnecessarily burdensome. OIRA also develops and oversees the implementation of Government-wide statistical standards and policies, facilitates efficient and effective data sharing, and provides guidance on privacy and confidentiality policy to Federal agencies.

The largest area of OIRA's work, however, is the review of regulations promulgated by Executive Branch departments and agencies. A set of Executive Orders (E.O.s), most significantly E.O. 12866 and E.O. 13563, provide the principles and procedures for OIRA's regulatory reviews. Executive Order 12866 is long established, and has been implemented across several Administrations of both parties. Both E.O. 12866 and E.O. 13563 set forth standards and analytic requirements for rulemaking by departments and agencies, and call for agencies to regulate only when the benefits of a rule justify its costs, to the extent permitted by law.

OIRA works with agencies to continually improve the review process and the quality of Government regulation. First and foremost, OIRA upholds the standards of review that the Executive Orders establish, while remaining mindful that unnecessary delays in review are harmful across the board: to those wishing to comment on proposed rules, to those who must

make plans to comply with rules, and to those denied the benefits of regulation. Both rigor and efficiency in regulatory review are essential to improving the clarity and quality of our regulatory environment.

Another important objective of the Executive Orders under which OIRA operates is the introduction of flexibility into, and removal of unnecessary burdens from, Federal rules. Ensuring regulatory flexibility for small businesses and reducing regulatory burdens for everyone through the retrospective review process are high priorities for OIRA. We have worked successfully with the Office of Advocacy, the Small Business Administration and agencies across the Executive Branch to minimize the particular burdens that regulation might disproportionately impose on small and new businesses, especially in areas where emerging technologies have the potential to greatly enhance public welfare. This is an area that OIRA continues to emphasize as we review new regulations.

OIRA does not review all Executive Branch regulations, and nor would it be efficient for the office to do so. Each year agencies issue thousands of rules, many of which are minor and technical. OIRA review applies only to “significant” regulatory actions, which may include guidance documents, notices, or other actions in addition to rules that have regulatory effect. The most fundamental category of significant regulations are those that are “economically significant,” the threshold for which under E.O. 12866 is “an annual effect on the economy of \$100 million or more.” That threshold is the same one Congress has used to define rules as “major” under the Congressional Review Act.

There are other factors that may lead a rule to be deemed significant beyond economic impact. Under E.O. 12866, rules are significant and subject to interagency review if they:

1. Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
4. Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the relevant Executive Orders.

Once a rule is under review, OIRA plays two basic roles. The first role is to coordinate interagency review of regulations. OIRA circulates the rule to other agencies around the Federal Government whose own policies and responsibilities may in some way interrelate with the rule under review. The second principal role that OIRA plays is to ensure that the rule complies with the principles of sound regulation laid out in E.O.s 12866 and 13563 and to review the analysis underlying the rule that is called for in these E.O.s. OIRA has longstanding guidelines for how

agencies should conduct their Regulatory Impact Analysis (RIAs) for economically significant rules, and OIRA reviews those analyses for consistency with these guidelines as a standard part of our review. In their RIA's, agencies need to discuss the market failure or other problem a regulation is designed to address, the reason a Federal Regulation is an effective way of addressing the identified problem, the costs and benefits of the proposed regulatory approach, the costs and benefits of feasible alternative approaches (such as different levels of stringency, or scope), and the uncertainty of these estimates. To the extent feasible, agencies should attempt to quantify and monetize estimated impacts; however, both the E.O.s and OIRA guidance recognize that qualitative impacts may be important decision criteria.

When reviewing a rule and the underlying RIA, OIRA's job is to review the reasonableness of the underlying analysis and to identify to the agency areas where the regulation potentially could be improved or be more consistent with the principles set forth in E.O. 13563. Often, the focus of a regulatory review is to help the agency hone and sharpen their arguments, and to identify areas where more evidence or discussion will strengthen or clarify a regulation. Additionally, the scope of OIRA review is not limited to regulations. Agencies' guidance documents, for example, can be brought in for review, especially if they are being issued pursuant to a regulation or have clear interagency equities.

Existing rules, too, warrant scrutiny to ensure that they achieve their benefits and goals without imposing unnecessary costs. Retrospective review, which the President has advanced through E.O. 13563 and E.O. 13610, is a crucial way to ensure that our regulatory system is modern, streamlined, and does not impose unnecessary burdens on the American public. Even regulations that were well crafted when first promulgated can become unnecessary or excessively burdensome over time and with changing conditions. The Administration's retrospective review efforts to date will yield savings of over \$20 billion over the next five years. Moving forward, and as President Obama made clear in remarks at the Business Roundtable this past December, it is a critical part of this Administration's regulatory agenda that we do an even better job of finding and reforming regulations that are unduly burdensome or missing their mark.

To that end, OMB has convened a series of meetings with various stakeholders, including State and local government officials, community groups, and representatives from numerous industries to better understand what approaches, cross-cutting themes, and particular areas of regulation could most usefully inform agencies' retrospective review efforts. Input from those meetings has been shared with agencies, which are concurrently engaging in their own stakeholder outreach efforts on retrospective review. E.O. 13610 directs agencies to submit biannual reports on the status of their retrospective review efforts to OIRA, and agencies will be filing their next round of retrospective review plans with OIRA this week. OIRA intends to complete its review of those plans within the coming weeks, after which time they will be released. As agencies move forward, OIRA will continue to work closely with them to make additional progress in the plans the agencies will file this month, and throughout the next two years.

Finally, under E.O. 13609 OIRA has important responsibilities related to international regulatory cooperation. We have made progress in a number of areas with our international partners through the Canada-United States Regulatory Cooperation Council and the Mexico-United States

High Level Regulatory Cooperation Council. OIRA has also furthered its international regulatory cooperation mission through work in coordination with the Department of State and through activities in support of the U.S. Trade Representative's trade negotiations. Regulatory cooperation benefits both businesses and consumers by promoting consistent standards and procedures across borders, and by preserving safety and welfare while promoting competitiveness here and abroad. While the international role of OIRA is modest compared to its key missions of regulatory review and implementing Federal information policy, it is nonetheless an increasingly important part of our agenda going forward.

In conclusion, regulation activities can bring great benefits to Americans but also carries costs. It is critical to ensure that Federal agencies base their regulatory actions on high-quality evidence and sound analysis. Beneficial regulation must remain consistent with the overarching goals of job creation, economic growth, and public safety. We look forward to continuing our efforts to meet these challenges.

Thank you for your time and attention. I would be happy to answer any questions you may have.