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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 6, 2016

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 recent developments at the Office of Information and Regulatory Affairs (OIRA) and report on the progress OIRA has made on the key priorities I outlined when I first appeared before this Committee shortly after my confirmation in July 2013.

OIRA has a broad portfolio, but one of our main areas of focus is coordinating the review of significant regulations. The basic principles of regulatory development and centralized review have evolved in a bipartisan way over the course of the last few decades. The structure of regulatory review that we follow today was established by Executive Order 12866, which is quite simple and straightforward: regulations should be based on a sound analysis of their impacts, they should be developed with public input and subjected to public scrutiny before they are finalized, and they should be reviewed by a central office to ensure consistency with sound regulatory practice and Administration priorities.

OIRA does not review all Executive Branch regulations, nor would it be efficient for the office to do so. Each year, agencies issue a substantial number of new rules and update hundreds of existing rules. Many of these actions are minor or technical. OIRA review applies only to “significant” regulatory actions. 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.” Congress uses a similar threshold to define rules as “major” under the Congressional Review Act.

Typically, an agency sends a draft of a significant proposed or final rule to OIRA, after which OIRA coordinates an interagency review process. OIRA sends the draft rule to other OMB offices, to components of the Executive Office of the President, and to relevant agencies and departments, which in turn offer comments and suggestions on the draft rule. The usual practice is for OIRA to summarize those comments, together with our own, and to transmit them back to the rulemaking agency. Typically, the agency will agree with some, but not all, of the comments that it receives. Often, the focus of a regulatory review is to help the agency hone and sharpen the rule’s rationale and to identify areas where more evidence or discussion will strengthen or clarify a regulation. Discussion and deliberation ultimately produce a proposed or final rule to be published in the Federal Register. If it is a proposed rule, the regulation is published for public comment.

OIRA works to ensure that the costs of new regulations that come to the office for review are justified by the benefits. To date, the net benefits of regulations issued through the sixth fiscal year of the Obama Administration are about \$215 billion. The benefits of these rules are not mere abstractions. They are helping American families every day by saving lives, preventing illness and injury, and protecting consumers.

As this Administration comes to a close, we intend to maintain the strong regulatory review principles that have guided OIRA’s review of regulations throughout the Administration. In December of 2015, I issued a memorandum to Deputy Secretaries outlining these expectations. The memo asked agencies to adhere to dates established in their fall 2015 Regulatory Plan and Agenda, and update OIRA about necessary changes. The memo acknowledged that agencies will issue many needed regulations throughout 2016, but requested that agencies strive to complete their highest-priority rulemakings by this summer to avoid an end-of-the-year rush. Furthermore, throughout the year, we have continued to remind agencies that OIRA remains committed to thoroughly reviewing all regulations in compliance with applicable statutes, governing Executive

Orders, and OMB Circulars, and have advised agencies to submit draft regulations in a manner that gives OIRA time to circulate them for interagency review accordingly.

When I became OIRA Administrator in 2013, one of my goals was to increase the predictability of the regulatory review process by improving the timeliness and transparency of OIRA's key functions. Toward that end, and as I committed to the first time I appeared before this committee, during my term as OIRA Administrator we have published the regulatory plan every year, most recently on November 16, 2015, and the agenda in a timely manner twice a year, most recently on May 18, 2016. We are committed to putting out another regulatory plan and agenda this fall.

OIRA has also worked to improve the transparency of regulatory review. Under OIRA's existing process, when an agency formally submits a rule to OIRA for review, the submission appears publicly the next day on OIRA's website, reginfo.gov. This posting provides stakeholders with notice that OIRA is initiating review of a regulation. This type of notice is important because, pursuant to E.O. 12866, OIRA meets with any party interested in providing input on a regulation under review. The entities with which OIRA typically meets include Members of Congress and their staff, State and local governments, businesses, trade associations, unions, and advocates from environmental, health, and safety organizations. OIRA posts a log of all such meetings on its website detailing the participants in each meeting, the organizational affiliation of the participant, and posting any materials provided to OIRA at the meeting. In April 2014, OIRA updated its website to make its database of E.O. 12866 meetings publicly searchable. We also recently expanded our disclosure policy to 1) post on our website not only meetings that have already taken place, but also upcoming meetings, and 2) collect more up-front and detailed information about parties requesting a meeting, including any client or other entity that organization represents, if applicable. Since I have become Administrator, OIRA has conducted over 1,000 such meetings at the request of various stakeholders.

Finally, a hallmark of this Administration's commitment to transparency and accountability is our retrospective review effort. 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 remains modern and streamlined, and does not impose unnecessary burdens on the American public. The

essential idea is to scrutinize existing rules and assess whether in practice they are achieving their objectives without imposing unnecessary costs. E.O. 13610 directs agencies to submit reports on the status of their retrospective review efforts to OIRA every six months. Agencies released their most recent reports on March 4, 2016, and will submit their next set to OIRA this July. To date, this Administration's retrospective review efforts are expected to yield an estimated net five-year savings of \$28 billion.

During my time as Administrator, OIRA has worked to make the retrospective review process more open and accountable. Over the past three years, in addition to the ongoing agency efforts, OMB has conducted numerous meetings with stakeholders—including State and local government officials, community groups, and representatives from numerous industries—to get ideas for retrospective review. We are trying to work with the public to identify areas where cumulative regulatory burden can be reduced or streamlined, and whether we have the optimal regulatory structure to encourage emerging industries to expand, mature, and generate benefits for the American people. Through these meetings, OMB has become better able to understand what approaches, themes, and specific areas of regulation should be part of agencies' retrospective reviews. OMB has shared input from those meetings with agencies, which also engage in their own, ongoing stakeholder outreach on retrospective review. Even regulations that were well crafted when first promulgated can become unnecessary or excessively burdensome over time and with changing conditions. Retrospective review of regulations on the books helps to ensure that those regulations are continuing to help promote the safety, health, welfare, and well-being of Americans without imposing unnecessary costs.

In conclusion, regulations can and do bring great benefits to Americans, but they also carry costs. OIRA works every day to achieve the goals outlined in Executive Order 13563, to “protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation.” 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. It is also crucial that a culture of retrospective review is sustained at the agencies, as any healthy organization should scrutinize its current approaches to see if they are still relevant and

effective in a rapidly evolving economy. All of this must be done in an environment of transparency so that the American people can have confidence in the process used to develop these rules. 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.