

**ELIMINATING JOB-SAPPING FEDERAL RULES
THROUGH RETROSPECTIVE REVIEWS—OVER-
SIGHT OF THE PRESIDENT'S EFFORTS**

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BEFORE THE
COMMITTEE ON SMALL BUSINESS
UNITED STATES
HOUSE OF REPRESENTATIVES
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ELIMINATING JOB-SAPPING FEDERAL RULES THROUGH RETROSPECTIVE REVIEWS— OVERSIGHT OF THE PRESIDENT’S EFFORTS

WEDNESDAY, SEPTEMBER 21, 2011

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The Committee met, pursuant to call, at 1 p.m., in room 2360, Rayburn House Office Building. Hon. Sam Graves (chairman of the Committee) presiding.

Present: Representatives Graves, Bartlett, Tipton, West, Herrera Beutler, Ellmers, Hanna, Velázquez, Clarke, and Owens.

Chairman GRAVES. Good afternoon. We’ll call the hearing to order. And I appreciate everyone being here.

On January 18, 2011, the President issued Executive Order No. 13,563 mandating that agencies review the economic consequences of their existing rules. In this regard, President Obama follows a very well-trodden path that started with President Carter and has been followed by each succeeding president. President Obama, like his predecessors when calling for a review of regulations, noted the special importance of small businesses in the economy and the potential adverse consequences of imposing unnecessary and unduly burdensome rules on small businesses. At the same time he issued that Executive Order, the President also released a memorandum reminding agencies of the importance of assessing the impact of regulations on small businesses through compliance with the Regulatory Flexibility Act. Despite these reviews, the Code of Federal Regulations now extends to about 26 linear feet. Of course, this excludes the potentially hundreds of thousands of pages of guidance documents interpreting those 26 feet of regulations.

This complexity imposes serious strains on small businesses. They have to divert limited management resources from running their business to understanding how they must comply with federal regulations. And once they figure out how to comply, they must expend scarce capital on the cost of compliance, be it modifications to facilities or new data systems to maintain those records. Since small businesses represent the bulk of entities subject to regulation and generate the most new jobs, I believe that it is very appropriate to focus the regulatory review on small businesses.

I will close with the admonition from Albert Einstein that it is easy to make things bigger and more complex, but it takes a touch of genius and courage to move in the opposite direction. I hope that the Administrator can provide that touch of genius and courage to

reduce the complexity of federal regulation and eliminate unnecessary burdens on small businesses so that they can create jobs and put Americans back to work.

With that I will recognize the ranking member for her opening statement.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman.

Small businesses are critical to the economy, creating nearly 70 percent of new jobs, generating more than 50 percent of GDP. The contributions are needed now more than ever but rising regulatory costs threaten to undermine this important role. With the total cost of regulations equal to an estimated \$1.75 trillion, this has become a real headwind that small businesses face day-to-day.

Over time, this burden has grown, regardless of the political stripes of the White House. Recent research shows that between 2004 and 2008, the cost of regulation rose from \$12,000 per U.S. household to \$16,000. Many of these costs have come from major regulations and there were 72 between 2001 and 2008, while there were 32 in 2008–2009. While benefits far exceeded costs each year for these major rules, this is no excuse to avoid reducing this cost further. With the weight of compliance continuing to rise, it will take substantial efforts from all those involved to ease this impact.

One such way to minimize this burden is to ensure that regulations are reviewed after they have been in force for several years. This makes sense because it is nearly impossible to understand how a particular rule will fully impact society at the time it becomes final. Such retrospective examinations are critical to reducing compliance costs, while ensuring that a regulations benefit is still realized.

Over the last 30 years, the efforts have been far and wide to impose a workable and successful regulatory look back process. Presidents from Carter through Bush have called for reviews of existing regulations. At the same time, Congress passed the Regulatory Flexibility Act in 1980, giving small businesses greater influence in the regulatory process. In Section 610, the RFA also included its own periodic review process.

While these efforts have produced some positive results, regulatory costs have continued to grow annually. This year an additional tool was put forth to deal with this issue. Executive Order 13,563 required agencies to produce a plan to review existing regulations with a particular focus on promoting economic growth, innovation, competitiveness, and job creation. For many agencies, the level of public engagement in the development of these strategies was impressive, culminating in their release last month.

Many of these plans were far-reaching and include noble approaches to reducing regulatory burden. However, it is important for everyone in the room to realize that many of these suggestions require investment from the government to implement a technology-based system or change complex reporting processes. That means reducing the compliance burden for the private sector entails higher costs for the public sector and the taxpayers who foot the bill.

In addition, a plan is only as good as its execution. Given past failures and loopholes in the review of existing regulations, I think we are all interested in how it will be different this time. With no

real consequences for agency inaction, many of these plans may end up being pipedreams that do little but collect dust on the shelves. Irrespective of these concerns, reducing burden is a laudable, if elusive, goal. It is something that we all must work toward and constantly improve as the regulatory environment evolves. With this in mind, I look forward to hearing from the OIRA administrator and I thank him for being here today.

I yield back, Mr. Chairman.

Chairman GRAVES. I will now introduce the Honorable Cass Sunstein, who is the administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget. He is the official responsible for oversight of the President's regulatory agenda and agency compliance with Executive Order 13,563.

Mr. Sunstein, your written statement will be entered into the record and you may proceed. And you have all the time you want.

STATEMENT OF CASS SUNSTEIN, ADMINISTRATOR, OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET

Mr. SUNSTEIN. Thank you very much, Mr. Chairman.

Ms. VELÁZQUEZ. Mr. Chairman, I just would like to make an inquiry.

Chairman GRAVES. Sure.

Ms. VELÁZQUEZ. I feel that part of the agreement for him to be here today was that you will sing him Happy Birthday.

Chairman GRAVES. Is today his birthday?

Ms. VELÁZQUEZ. Yes.

Chairman GRAVES. Do you want to lead that?

Ms. VELÁZQUEZ. No.

Chairman GRAVES. Administrator, I'll tell you what, we'll wish you an official Happy Birthday and enter that into the record as well.

STATEMENT OF CASS SUNSTEIN

Mr. SUNSTEIN. Thank you very much for that. I had almost forgotten myself that it was my birthday and I'm grateful to be reminded that 29 years ago today something happened. Maybe not my birthday.

It is, birthday or no birthday, an honor to be here. And this is the perfect occasion for this. I have been looking forward to this discussion greatly because of the current economic situation and the opportunities that we have.

In light of the Executive Order to which both of you referred, we have been able to make a lot of progress in a relatively short time to eliminate unjustified regulatory costs imposed on small businesses. In the future we are hoping to do a great deal more and we are expecting to be able to achieve that.

Section 6 of the new Executive Order calls for the development of agency plans to reduce burdens in general. And one of our particular emphases has been on small business in the last months. Last May, agencies released over two dozen preliminary plans, and this is the first time that a president has actually had the plans go out to the public, including to the business community for their scrutiny and review. What the agencies did in releasing the plans

was very publicly to ask small business, large business individuals about existing burdens and to help identify ways to ratchet up the burden reduction effort.

As noted by the ranking member, last month over 2,000 agencies released their preliminary plans. They span over 805 pages. This could be a book, though we will not publish it in order to ensure compliance with the Paperwork Reduction Act. We are keeping it online. They include over 500 initiatives that will simplify the system and eliminate redundancy and inconsistency.

What I would like to emphasize is that as the plans demonstrate, a lot has already been achieved. These are not just promissory notes. They are initiatives that have been finalized or publicly proposed from just a handful of agencies that are expected to save over \$6 billion over the next five years. That is a down payment. It is not enough but it is very far from trivial.

A final ruling from the Department of Health and Human Services reduces costs and improves access to care in rural areas by permitting hospitals to use telemedicine to obtain services from practitioners credentialed at distant hospitals. This is going to save money, including for small businesses that depend on or actually operate hospitals, and it is also going to help patients.

The Department of Labor in an initiative that was particularly welcomed by the business community—in fact in my own communications with people in the business community there was a degree of astonishment that this actually happened—the Department of Labor finalized, didn't propose, finalized a rule eliminating nearly two million annual burden hours imposed on employers. It is going to save hundreds of millions of dollars over the next five years.

The EPA finalized, finally—the small business community had been urging this for a long time—finalized, finally, a rule excluding all milk and milk product containers from its oil spill rules. This is going to save \$700 million over the next five years.

The relevant reforms, as even a glance at the plan suggests, span a wide range. What we heard in our outreach to the small business community is that many are burdened by paperwork and reporting requirements that turn out in theory to be innocuous and helpful, but on the ground in practice, as the ranking member suggested, to be a hardship and sometimes incomprehensible. Many of our other initiatives are eliminating redundancy or regulatory burdens that just aren't justified anymore.

The Department of Defense recently issued—this is finalizing a new rule to accelerate payments on contracts to as many as 60,000 small businesses, improving their cash flow in an economically difficult time, to help small business borrowers who are struggling, many of them. The Small Business Administration is adopting a new electronic application to reduce the paperwork burden now imposed on certain lenders. That is going to help borrowers who seek small amounts of capital to grow and to succeed.

I would like to draw attention in particular to the plan of the Department of Transportation, which lists over two dozen reforms specifically tailored to impositions on small business with an effort to relieve them of existing burdens. Every single one of the plans recognizes that this lookback enterprise is not a one-shot endeavor.

What I am particularly excited about is that the plans encode the creation of teams or frameworks or working groups ensuring that there is a listening process that is ongoing. If the plans do not have initiatives that should be included, then we are all ears. We want to see what would be a good way of reducing burdens now, and the agencies are available to hear the concerns. I would like to be cc'd on any suggestions for additions.

Many people have expressed concern with the flow of new rules, not just the existing stock of rules. And I can give you some details about things we have done in the recent past to get a good control on the stock. There was a reference both the chairman and the ranking member made to the President's January 18th memo on small business, which not only reflects the Regulatory Flexibility Act. In important ways it goes beyond it and imposes requirements that are supplemental that are already helping to reduce the flow of new rules.

What the President said in January of this year is, " We can make our economy stronger and more competitive while meeting our fundamental responsibilities to one another." We are going to continue to eliminate unjustified regulatory costs—this process has just started—and thus strengthen our economy in an economically challenging time.

Thank you so much, and I am much looking forward to your questions.

[The statement of Mr. Sunstein follows on page 24.]

Chairman GRAVES. Thank you, Administrator. I am going to open up with Representative West.

Mr. WEST. Thank you, Mr. Chairman, and also Madam Ranking Member and Honorable Cass Sunstein. It is a pleasure to have you here today.

One of my concerns is we have had many people come here, especially from the Office of Advocacy, and testify that their greatest concern is that they are getting backdoored by the federal government as far as implementing a lot of new regulations. One of the things that I am concerned about is there are approximately 4,300 regulatory actions that are waiting in the pipeline right now, and 219 of those are considered economically significant, meaning they can have more than \$100 million of impact on our private sector, especially on small businesses.

The number one thing when we go back and we talk to the people down on the ground is the regulatory environment and especially when you talk to small banks, community banks with Dodd-Frank and a lot of the means by which they have been caught in there, can you really tell us and give us an understanding of what the federal government is doing to not allow the agencies to do—I call it behavior modification through regulation. What they could not get through the legislative process it seems they are doing through the regulatory process. So can you kind of lay out the plan that you all have?

Mr. SUNSTEIN. Great. The first point is that anything that is done by the Executive Branch has to comply with the law and within the boundaries that you set out. Article 1, that is legislative power in the Congress of the United States. That is the first substantive sentence in the Constitution. The executive—

Mr. WEST. But let me interrupt you. I will give you a great example. Numeric nutrient criteria, which is something that the EPA sent down, I don't think anyone up here, you know, there is no law that, you know, complies with that. And that is something that the EPA has instituted. And as a matter of fact, in the state of Florida there is a lawsuit that is being brought against the state when it comes to that. So.

Mr. SUNSTEIN [continuing]. Okay. The big numeric criteria rule from EPA was numeric limits for stormwater. And that—I don't know if you saw EPA actually withdrew it in a way that produced a great deal of applause from the National Homebuilders saying this is a great thing for the economy, for people who want to buy homes, and for people who build homes. It was completely withdrawn.

Mr. WEST. But not for farmers.

Mr. SUNSTEIN. No, it was completely withdrawn for everybody. The stormwater rule was completely withdrawn.

Mr. WEST. Okay.

Mr. SUNSTEIN. I can give you a bunch of other examples of cases where we are all working together to address the problem that you mentioned. Winslow Sargeant, who is the chief consulate of the SBA, is a close partner. His February 2010 report emphasizes the big impact and the growing impact that SBA has been having on federal rule-making. It applauds the trend line. And since then, or contemporaneous to then, a number of things have happened. You may have noticed just a few days ago the Department of Labor withdrew its very controversial fiduciary rule. That was a rule that got a lot of concern from members of the House and also from the small business community. That has been withdrawn. They are going to re-propose that.

The Department of Labor also had a rule involving musculoskeletal disorders, a new reporting rule, where the Office of Advocacy and the small business community were both very troubled. They did not know what it meant. What is a musculoskeletal disorder? And they thought that it would be burdensome. Are they going to have to hire doctors to test all of their employees who have back pain? That one was withdrawn. And the Department of Labor is working well with SBA. There was a noise interpretation from OSHA that the small business community was very concerned about just this year. OSHA withdrew that one also.

So the number of rules that are being carefully reconsidered by—I have given you four examples just now. I could multiply that by three if you like. In response to the current economic situation and the very clear direction the president has given me and all of us to make sure that what we are doing on the regulatory side is consistent with the economic recovery. If there are other areas where we are not being sufficiently responsive, gosh, I would love to hear it because this is the time.

Mr. WEST. Okay. The last question that follows along with that, you know, right now it looks like we are on a track to have full-time regulatory employees expected to reach a level of 291,676. Is there a way that we can freeze the hiring of new regulatory employees?

Mr. SUNSTEIN. Well, that is your lane and mine is the implementation job. I work at the Office of Management and Budget but the budget, the B-side, is not something that I am directly involved in. I can tell you, you referred to the 219 economically significant rules so called in the pipeline. The number is a little confusing because these are things that are under general contemplation by the agencies. They are not in the pipeline. They are not pending. They are not proposed. They are kind of like—as if there is a law that one of you is thinking about and you give a heads-up to the public. It does not mean it is going to come. And I can assure you those 219 are not going to see the light of day unless they can pass very careful scrutiny in terms of the new direction the president is giving us this year.

Mr. WEST. Thank you very much. And I yield back, Mr. Chairman.

Chairman GRAVES. Ms. Velázquez.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman. And welcome, Administrator.

We have been here before and from Carter on, everyone has checked that list on regulation and impact on small businesses. What would you tell the Committee this time it is going to be different? And how would you get the 26 federal agencies to get with this issue in a way that produced the results that are expected, especially at this time when we are facing this economic downturn?

Mr. SUNSTEIN. Okay. The first thing that we have done that no previous president did was to have public plans that actually have concrete details with schedules and timelines in many cases for taking action. So I actually had the privilege of working in the Reagan Administration. I was six years old at the time, as you can tell from earlier. But in the Reagan Administration there was a very firm effort to discipline regulatory burdens. And he deserves a lot of credit for that. He did not have a sustained lookback effort to this sort. President Bush had an effort in the domain of manufacturing, but the agencies did not come up with plans.

So the fact that there are plans with timelines promotes accountability. What we are doing on our side is not just having, you know, plans and aspirations but trying actually to take action. So there are things that have been done by the Department of Transportation, taking hundreds of millions of costs away and a proposed rule just a while ago. The Department of Health and Human Services is going to try to free up hospitals and doctors from regulatory requirements that have not been revisited. That is a \$600 million annual savings that is well beyond the planned stage. That is actually a rule under review and that is no secret here. That is a rule under review at OIRA today.

The Environmental Protection Agency has finalized rules. This is not just a wish list. And what we are trying to develop is fast track procedures for the cost reduction initiatives that we see on the plans. So some of them have actually been proposed, some of these things, which means they are going to be finalized in the relatively near future. Others already have been finalized. And if you see things that you really like on the plans—maybe they are the export initiatives, some of which have been finalized proposed—please let

us know if they really have an impact. And then we can see if we can do them quickly.

Ms. VELÁZQUEZ. Would you have a mechanism in place to evaluate the work of the federal agencies?

Mr. SUNSTEIN. Yeah. We do. We have an informal process in my office where we are very alert to the 500 reforms on the plans and looking carefully at what stage each of them is at. And so the ones that are proposed, like the Department of Transportation rule which eliminates hundreds of millions of dollars and costs, we are looking to see how quickly that can go. There is an OSHA rule that is going to eliminate over \$500 million in annual costs. That one has been proposed. We are looking to see if we can finalize that pretty quickly.

And for everything on the 800 pages that looks really promising, we are engaged in an ongoing monitoring exercise. It is a little lonely, so if you would like to join us and help monitor and expedite, that would be very welcome.

Ms. VELÁZQUEZ. Thank you.

Agencies reach out to the public in particularly innovative ways. And you mentioned some of those like EPA held 20 public meetings, as well as participating in the Department of Transportation's meeting where participants could attend those meetings over the Internet. The Department of Labor designed a website that permitted participants to post suggestions, respond to other posts, and agree or disagree with submissions. It seems that those agencies that had low public participation rates could benefit from those ideas. And so are you considering sharing these outreach strategies across agencies?

Mr. SUNSTEIN. Yes. What we encourage them all to do—we had some guidance documents during the initial phases of the lookback process where we encouraged everyone to engage the public because as you said, often the people who are faced by rules and burdened by them have the best insights about how they are adversely affecting operations. So we have encouraged public outreach. We have tended to the fact that a number of agencies—and this also is new. For all their good work, prior presidents did nothing like this—have websites that are specifically dedicated to business outreach to see how we can simplify and streamline the regulatory process. Those are ongoing. And we have encouraged agencies to follow the model that several agencies, including the Department of Transportation and EPA, have.

What I am very hopeful about is that there is a cultural change, which was started within the agencies, where each of them has either a formal or an incipient institution that is particularly dedicated to eliminating regulatory burdens. And they might be burdens that have been in place for 30 years. They might be burdens that have been in place for a couple of months and that just are causing unintended or unexpected harm. And maybe that can be fixed quickly.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman.

Chairman GRAVES. Mr. Bartlett.

Mr. BARTLETT. Thank you very much.

In a former life as a small business person and now nearly 20 years in the Congress, I have been watching the creation and the

application of these rules and regulations. And I have noted a phenomenon that results in increased regulations, and I am wondering if you have a solution to this problem.

Initially, very rational, simple rules and regulations are enacted, and then when they are used, applied, some modest deviation from the intended response of the regulated is observed. And the usual response to that is more regulations. We do not want that to happen again, do we? And frequently these increased regulations pass over the line of the rationable and/or reasonable, and there appears to be no attempt to do a cost benefit analysis. Is the benefit we might get from these increased regulations really going to be justified by the economic effects and just the harassment of the poor business trying to succeed in a tough economic environment? How can we get our people to do a rational cost benefit analysis? The old farmer says why would you do it if the juice is not worth the squeezing? For many of these increased regulations, the juice is not worth the squeezing.

Mr. SUNSTEIN. Great. What President Reagan inaugurated in the early '80s was cost benefit analysis as a test for regulatory proposals and final rules. President Obama had a very clear embrace of cost benefit analysis in his executive order this past January. And we are taking cost benefit analysis extremely seriously. I do not believe you will see a single rule issued in the last eight months that fails cost benefit analysis, and you will see very few in the last two and a half years. I think there is only one that clearly fails cost benefit analysis and that one was a congressional mandate on safety on trains. And we did the best we could to reduce costs. As noted, you could have a rule that survives cost benefit analysis but still the costs are too high. It could have higher net benefit if you scaled the costs back. But basically, the president has given us extremely clear guidance on following cost benefit analysis, and we are responding to his direction.

You may have noticed—this has got a lot of attention—the president directed me to issue a return letter on the EPA's draft ozone rule. The bulk of that return letter was emphasizing some very specific points that bore on the rule in particular, but the next to last paragraph emphasized more generally apart from the ozone rule. The president has directed me to take strong steps to diminish regulatory costs and to make sure they were really justified going forward.

And that commitment to cost benefit analysis you will see in every rule we have issued so far. You will see it in the reconsideration of certain rules. The fiduciary rule, which was of very grave concern to a number of businesses, would expand the definition of fiduciary. It had some—well, I think what everyone agrees are some strong, well motivated arguments in it. But it was not really ready yet and the Department of Labor said we are going to do a new analysis, analyze the costs and benefits, and see what really the best proposal would be. And it is not identical to what they originally proposed.

But the examples I gave are rules that have been taken back, are frequently taken back in order to get the analysis of costs and benefits as accurate as possible. And one of the most important parts of the new executive order says agencies are not supposed to pro-

ceed unless there is a reasoned determination that the benefits justify the costs.

Mr. BARTLETT. How could you have even in the back of your mind this notion that there ought to be a cost benefit analysis and the side that spilled milk was an oil spill? Is that an anomaly that will not happen again?

Mr. SUNSTEIN. Well, that was not the—I am pleased to say that that was not a government regulation. That was a statute and it was an old statute.

Mr. BARTLETT. It was our fault? We did that?

Mr. SUNSTEIN. No one in this room had anything to do with it.

Mr. BARTLETT. But we, the Congress, did that?

Mr. SUNSTEIN. Yes. That is correct.

Mr. BARTLETT. Oh, my.

Mr. SUNSTEIN. It was——

Mr. BARTLETT. Please help us to keep from doing dumb things.

Mr. Chairman, thank you very much.

Mr. SUNSTEIN [continuing]. I don't think anyone intended to include milk. It was an artifact of the definition.

Well, there is some fat in milk and that is in oil.

Mr. BARTLETT. You got it.

Mr. SUNSTEIN. It was a stretch, isn't it?

Mr. BARTLETT. Exactly. But you gave us a chance to fix it and we did.

Chairman GRAVES. Ms. Clarke.

Ms. CLARKE. Thank you, Mr. Chairman and Ranking Member Velázquez.

I want to thank you, Administrator Sunstein—Sunstein or Stine?

Mr. SUNSTEIN. Sunstein.

Ms. CLARKE. Got it.

We are from New York. Well, I am from New York. So is the ranking member, so we just wanted to get that correct.

Clearly, we recognize the need to streamline regulatory obligations, especially when and if they interfere with the viability of the small business community.

And just sort of picking up on Mr. Bartlett's train of thought, I wanted to ask could you briefly explain or distil, if you will, your cost benefit—excuse me, the rubric, the general rubric used to—through your cost benefit analysis to determine what costs, whatever they may be, outweigh the benefits or the benefits outweigh the burdens?

Mr. SUNSTEIN. Okay. Thank you for that. That is fundamental to what we are trying to do. Sometimes we will have a rule that will impose costs, let's say, on companies that have to adopt certain management practices to ensure that people are not going to get salmonella from their eggs. Okay? And that maybe we will be able to have a cost estimate that industry will be informative on. And we might find that it is going to cost, let's suppose, \$100,000 a year, in which case it is economically significant.

If it is going to cost \$100 million a year, we need a full-born regulatory impact analysis as it is called, which gets a full account of the costs and the benefits.

Now, if it is going to involve salmonella, let's say, it is going to prevent a certain number of diseases in a case of one rule we had,

which incidentally exempted small business because they were not the problem.

It is going to cause a certain—prevent a certain number of deaths from salmonella food poisoning, and it is going to cause a certain number of diseases averted. Economists have some tools for giving an economic value to the diseases averted and the mortalities avoided. And there is something a little, you know, a little mechanical, maybe, about turning diseases and lives into dollar amounts. But if you do not do that then you might be spending a zillion dollars for something that is actually a low level risk. So these are tools that are used.

In cases that are sometimes a bit easier we will have a rule, like the milk rule, which will eliminate costs or save people money, and then you don't have to do any translation of health problem into dollar equivalents; you will just have dollars. And so for some of our deregulatory initiatives, some of our initiatives that involve saving consumers money from various rules that reduce the costs they face, then it is dollars. And what we try to do is do our best techniques for turning all the benefits into dollar equivalents. The president has called for quantification in ways that have gone beyond even what President Reagan did. If we have something where the costs are higher than the benefits, let's say it is going to cost \$100 million and the best account of the benefits is it is \$50 million, that is a really serious problem. And we are going to try to work on that rule to get those \$100 million costs down to \$40 million. Then the benefits will justify the costs. But as the ranking member suggested, it may be that that \$40 million is too high and you can get the same, let's say, health benefit for \$30 million or \$10 million.

And so a lot of our time is spent seeing ways to achieve the same goal less expensively. And you have seen in the last eight months a number of rules where the agencies have gone forward but the final rule was far less burdensome than the proposed rule. And one reason is typically that the small business community will say, "What are you doing here?" So there was an EPA rule involving lead renovation for homes where kids can get, you know, sick if the lead levels are high. The small business community, including the Office of Advocacy, said you have some—it is called a "dust white" procedure, which is really expensive and it is not worth it given the relatively marginal, as the EPA ultimately concluded, health benefits of that procedure. So the EPA took it away. And the small business community said now you have something that we can work with. And that is an example of where cost reduction, as part of cost benefit analysis, can lead to a rule that's economically maybe more rational.

Chairman GRAVES. Mr. Hanna. Mr. Tipton.

Mr. TIPTON. Thank you, Mr. Chairman, Ranking Member. Appreciate you being here.

Mr. SUNSTEIN. Thank you.

Mr. TIPTON. You know, I was just out in Colorado. We held a Small Business Subcommittee Hearing, and the constant rejoinder that we heard through that was government regulation. It was not a stepping stone to success and to be able to create jobs but it was a stumbling block. In fact, you may have seen this report just came

out, recent study, and it's showing that the regulatory burden on the American people cost approximately \$1.75 trillion annually. That's with full knowledge. We need some regulations. But the overreach of this, when we get this down to actual dollars, when we're talking about creating jobs which is something that the president has indicated that he is in favor of—I am certainly in favor of doing—is we are seeing \$160,000 each year that businesses are having to pay for regulatory costs. When we distill that down to small businesses according to this report, each employee—each employee of the business is having to pay \$10,585 for regulatory costs per employee. This must stop. We are, and I truly respect your comment of trying to clean it up and maybe we really need some legislation because when you're talking about President Reagan, you're talking about President Obama, we're actually looking at executive orders as opposed to legislative direction that is coming out.

But I do have a question. Reading through your testimony, I want to go back actually to the milk regulations that you had brought up. I am very curious because you state that, and this perplexes me, that the EPA estimates—you noted this was a law and you just clarified with the regulation—but you further stated that this milk exemption will actually save our economy over \$700 million over the next five years. How can we save what we never spent, what was never incorporated?

Mr. SUNSTEIN. Okay. There are a lot of great points there so let me say a little bit.

In terms of the report, the \$1.75 trillion report, the general concern that regulatory costs on small business and the economy are too high and that we should be doing a lot to reduce those costs, I agree with completely. That \$1.75 trillion figure is in the nature of an urban legend as a report by the Congressional Research Service recently laid out. It is based on an assumption, some analysis of a World Bank study that confuses regulatory quality and regulatory stringency. And if the study is right, then the U.S. GDP would be higher if we had a regulatory system like Sweden and Canada. I do not think anybody thinks that is true. So the \$1.75 trillion probably to say it should be treated with a grain of salt is too weak; it should be treated as, you know, not a reliable number.

Having said that, the general thrust of your question I completely agree with. On the milk rule, what happened was there was a formal requirement in the law that the milk producers be subject to this oil spill rule. And we had heard, as the Bush Administration had heard from the agricultural community, this is a looming, serious problem for us. Enforcement, as I understand it, of the requirements of the milk producers was weak for understandable reasons. It just didn't make much sense. But no one had taken care of the problem, and this was a very significant cost.

Mr. TIPTON. How does that still save \$700 million? It was never spent. That is the claim that you were making.

Mr. SUNSTEIN. Because it was a regulatory requirement imposed on them that would have imposed burdens.

Mr. TIPTON. Would have, but it was not. So how are we claiming \$700 million in savings?

Mr. SUNSTEIN. No, it would have in the sense that the formal law required it. And if we had not done anything about it, under the formal law——

Mr. TIPTON. So it is really—and when we are talking about an urban legend, the \$700 million in savings is actually a mute point.

Mr. SUNSTEIN [continuing]. No. That is an accurate number. And the agricultural community, which celebrated with great enthusiasm, what the EPA did to take away that cost——

Mr. TIPTON. No. I applaud it.

Mr. SUNSTEIN [continuing]. Did not deny that the cost was taken away. They had worked for years to get the cost taken away. You are right in one sense. The cost—the requirement of the law was not being enforced. So what it was meaning on the ground is a reasonable question to ask. Nonetheless, the industry's own plea, and ultimately very enthusiastic reaction, is suggestive that there was a problem that needed to be solved. I can say while the Bush Administration commendably started the effort that we completed, our final rule is actually significantly more deregulatory than the Bush proposal.

Mr. TIPTON. We are running out of time but I know you have a complex job but we are looking at 3,573 new final rules and you are talking about the complexity of you and it is your job keeping up with it. How in the world can small business keep up with this? Because we are creating uncertainty.

Mr. SUNSTEIN. I completely agree that is the problem. Three thousand, five hundred seventy-three new final rules. I wonder where that comes from. In the last two and a half years the rules that have been through my office are not that numerous. In fact, we have finalized fewer rules in our first two years than the Bush Administration did on average in its eight. Nonetheless, the concern that there should be great care and a reduction in regulatory complexity uncertainty, that is something the president has directed us to do. And I would love to get your ideas about how we can make the lookback process as effective and full as it can possibly be.

Mr. TIPTON. Mr. Chairman, I yield back time I do not have.

Chairman GRAVES. Mr. Owens.

Mr. OWENS. Thank you, Mr. Chairman. Mr. Sunstein, thank you for testifying today.

If you could just walk through with me the process that a small business goes through in communicating to your office an issue related to a regulation, I think that would be very helpful.

Mr. SUNSTEIN. Okay, great. What we have available now, this is actually one of the first things we did, was to create on a website called reginfo.gov, complete visibility into what rules are now before the Office of Information and Regulatory Affairs. So this to my dismay is not the most popular website on the Internet, reginfo.gov, but I wish it would be very popular for small businesses because if there is any rule that is with us, they can see immediately.

Now, that gives two opportunities for them to communicate with us. One is a letter to Yours Truly is going to be read very carefully. And if it refers to concerns that the small business community has about a rule under review, I can assure you it is going to be read

very carefully in view of the fact that small businesses are the principal job creators in the country. In fact, in our data call as it is described to the agencies asking them to tell us what they are contemplating for the next year, we, this past summer, asked them specifically to call out and list separately whatever they are doing that would have an effect on small business. So we are available by letter with respect to anything.

But we are doing better than that actually in availability, and I do not think this is widely known. I wish it would be. If any member of the small business community wants to talk to us about a rule under review, our doors are open. We have 100 percent availability. If people want to come and tell us that this rule is trouble, maybe it has been proposed and there are concerns about it, maybe people do not want it to be proposed because they think the very proposal will create uncertainty, to the congressman's point just a moment ago, we are available. And my staff is—in these meetings they are called not so charmingly, 12866 meetings under the executive order that makes them possible. People can come in. And if there is a legitimate concern as there not infrequently is, it is really going to be given attention. And that mechanism of face-to-face contact, I think it is insufficiently understood that it is there. The agency, by the way that is in support of the rule, will be there, too. And not infrequently the agency will say, oh, this is going to have this adverse effect; maybe we can change the rule so that it achieves its goal without having that adverse effect.

Mr. OWENS. Thanks. You indicated that your website may not be the most popular on the Internet. Do you have an approximation of the number of hits you get on a weekly or monthly basis?

Mr. SUNSTEIN. It is a lot. I do not have it in my head but we would be happy to get that to you. I can tell you one thing we noticed was when we went to a somewhat technical presentation to this very clear graphical presentation where you just see colors and it says EPA and it will have the number. HHS, it will have the number. Small Business Administration has a number. You can click on it and see every rule that they have before my office. The numbers spiked. We saw a very significant spike in usage.

Mr. OWENS. Is there an average lag time between the enactment of legislation and the enactment of a rule interpreting the legislation?

Mr. SUNSTEIN. I am sure there is. It would vary depending on whether there is a statutory deadline. So when there is legislation that says we have to do something by a certain date, that is taken really seriously. Every time we have a rule that comes before us that has a statutory deadline, that is one of the first questions we ask.

Mr. OWENS. Understand.

Mr. SUNSTEIN. So our average review time is about 51 days, roughly. That is part of the lag but because rules typically are proposed and then finalized, a number of months. Of course, the urgency of the problem really matters. So if it is something where life is at stake, then the likelihood of a relatively prompt rule increases.

Mr. OWENS. Thank you very much. I yield back.

Chairman GRAVES. I am going to jump in here for a second because you are painting a picture that we are seeing less and less regulations actually being passed. But to get very parochial for just a second, when it comes to the FAA, and some of this has security aspects, but you have got the Large Aircraft Security Proposal being put out there; you have got the BART Program being eliminated by the Department of Transportation; you have got security badges in general aviation at airports that security is not an issue; you have got aircraft certification standards that are changing all the time; you have got airworthiness standards that are changing for aircraft or being proposed to be changed considerably which will hamper operators and air shows in a big way; you have got letter of authorization changes for certification for pilots to be able to fly these aircraft; you have got fuel issue changes that are happening from the EPA. And that is coming down hard and fast and there are lots and lots of regulations out there. And I see nothing but proliferation of regulations when it comes to aircraft and flying. And it is concerning the aviation community in a huge way because it can cripple that industry in a huge way. And that is one area that the United States is blowing everybody else around the world out when it comes to exports and when it comes to production, when it comes to an entire industry, but I would be real interested on your comments there.

Mr. SUNSTEIN. I do agree that there are some sectors that are facing cumulative burdens that are not welcome, and there are other sectors that are facing overlapping redundant or inconsistent burdens which can cause a real hardship. And in the area you are describing in particular, I do not know what the trendline is for the volume of rules over, let's say, the last eight years, but I do know that there is an acute concern about what you exactly said. And we are working really hard to try to make sure that the problem of cumulative burdens inconsistency is addressed.

If there are particular rules that you think have been issued in the recent or even distant past that are not worth it, that is a terrific candidate for inclusion in DOT's lookback plan. And in fact, if you look at DOT's plan you will see the FAA has some very promising candidates. And if you see rules coming down the pike that ought not to be issued in your view or that ought to be issued in a way that meshes better with other rules or ought to be harmonized to use the word of the president's executive order, we would love some help on that.

I would not want to say that the, you know, anything general about a diminution of rulemaking on the airline industry. Every single one has to pass a series of filters. All I wanted to say with respect to the volume of rules is that the number of final economically significant rules in the first years of the Obama Administration—this is not widely known—but it is actually lower than the preceding two years and lower than the average under President Bush. That is not to say that we have the right level of rules. And one of our principal goals these days is to reduce regulatory costs. So the \$6 billion over the next five years is a down payment but we hope to be able to do a lot better than that in reducing regulatory costs. And on the airline industry in particular, that is something we are looking very carefully at.

Chairman GRAVES. Well, all of these aspects that—or these areas that I put out do not have anything to do with the airline industry; it is all about general aviation, which is going to have a huge—again, a huge impact. And what we are finding from, whether it is the Department of Transportation or it is the FAA, which is a division of the Department of Transportation or even the EPA, we are not getting any interest in listening to our concerns. They are moving forward and not going to take the concerns into account and that is very frustrating for me. And it is not just this Administration; it has happened in other administrations. And they are not interested in listening. And that is very frustrating, particularly when you have an industry that could be impacted as greatly as general aviation. And again, that is—every bit of this has to do with GA. And when I say GA, I am talking about business aviation all the way down to your weekend flyer. And every business that is associated with that around the airport and in those companies that are in those business parks and everything else, it is going to have huge impacts.

Mr. SUNSTEIN. Okay. I hear you, Mr. Chairman. If you would write me or write the FAA and cc me, I promise you, you are going to get our attention. You know, the EPA withdrew its stormwater rule. It decided it had to reconsider it. The Labor Department withdrew its fiduciary rule. We have a bunch of things that have been rethought in the recent past and if there is something that is not thought through very well we will get a handle on it.

Chairman GRAVES. Ms. Herrera Beutler.

Ms. HERRERA BEUTLER. Thank you, Mr. Sunstein. I appreciate your time. I have a couple things I want to get to so we will have to be a little brief.

Generally, what rule does congressional review play in your decision-making process? For instance, Congressman Schrader and I, a congressman from Oregon, introduced a bill that exempts certain force activities from being regulated essentially like an industrial type. You have a private forest, we do not believe you should have to get the same permits that an industrial site would have to get to operate. Right? In the Pacific Northwest we have lots of water rules.

So for 35 years that is how EPA has looked at this. They are now moving to regulate it, and rules like that cost jobs, especially, again, in the Pacific Northwest where we have hundreds of thousands of dollars in jobs on the line when it comes to our forest economy. Will legislation like this and the tremendous amount of support it has received from labor, from business, be taken into consideration in your review process?

Mr. SUNSTEIN. The law is authoritative. So if that law is enacted, that is it. New trumps everything. So the legal constraints on regulatory action, that is a trump card.

Ms. HERRERA BEUTLER. So would your office be willing to help promote this or at least be favorable as we work it through the process?

Mr. SUNSTEIN. When the lane—the Office of Information Regulatory Affairs has a narrow lane which is implementation, we do not get involved in what legislation the administration supports, or

if we do it is—we play a very modest role in that. So there are others at OMB who would have the lead on that.

Ms. HERRERA BEUTLER. Okay. Well, we would like the chance to submit for your consideration and possibly if you need to move it up or down or laterally we would love to have your help in that.

Mr. SUNSTEIN. I can get you in touch with the right people.

Ms. HERRERA BEUTLER. With that, and I do applaud the president's decision to again—he said it in the State of the Union, he made the case about a week ago, two weeks ago now—that he wants to review and I think it is incredibly important. One of the things I would like to have you consider, it is not just not implementing a rule. In many cases it is the indefinite delay that is causing a problem. You know, I think of certain things. I think of Boilermate. I think of others. Yes, we are glad that the job-killing rule did not go into place, that is good. But then sitting on it for three years, or what have you, causes business to continue to constrict. I mean, the uncertainty is just as deadly as the rule itself would be. And you said—we were talking about general contemplation. When you kind of put out there that you are thinking of something, it has that same paralytic effect. We do not actually float that we are going to release bills that we really do not have the intention, or at least the more cautious legislators do not do that because we know it will have an impact just floating the idea. And so I would ask as you are considering these things, do not float something that you—just because it is not in the pipeline does not mean that it is not going to add to the uncertainty that our small business owners are feeling.

Mr. SUNSTEIN. You are clearly right that there is a tradeoff between transparency—this is under consideration—and adverse effect.

Ms. HERRERA BEUTLER. Now, if you are going to be taking action, it is different than general contemplation. Like, there is an issue we would like to consider versus, hey, maybe we will add another, you know, person on—like you do not have enough to do.

Mr. SUNSTEIN. I appreciate the concern and we are—we are going to see what we can do on this.

Ms. HERRERA BEUTLER. With that, a couple more things. You know, I know the executive order requires agencies to review regulations. What is their timeframe or required reporting process? Do they report back to you at a certain time? Is this a general ongoing thing?

Mr. SUNSTEIN. Okay, great. So what the executive order required was within 120 days they had to submit to the public really preliminary plans. And as noted, before they did that actually with our encouragement, they had public meetings, websites, engagement, or what should be on the preliminary plans. That happened in May. Then they had another 80 days to finalize the plans. And so in late August, August 22nd, I think it was, they issued final plans to the public. Every single one of the plans says that this is an ongoing process and that the plans can be supplemented if there are new ideas. What we are focused on now is taking those of the 500 reforms that are particularly promising and well enough along that we can expedite them and get them out and deliver some relief.

We calculate up to \$10 billion in monetizable savings over the next five years from a small subset of the reforms where monetization is possible. We would like to see progress on those, finalization of those in the near future.

Ms. HERRERA BEUTLER. Great. And one final parting thought. As you are doing that we want to help. You offered several times. If you want help, go ahead and kick those things to Congress for an up or down vote and we will let you know whether you think moving forward you are on track.

Mr. SUNSTEIN. And thank you for that.

Ms. HERRERA BEUTLER. You asked, so we are offering.

Thank you, Mr. Chairman.

Chairman GRAVES. Ms. Ellmers.

Ms. ELLMERS. Thank you, Mr. Chairman. And thank you, Mr. Sunstein, for being here today.

I would like to follow up on one of the comments. You had mentioned that if any small business, small business owners, would like to sit down with you, that your door is open to them. You know, right now in our economy, with our unemployment rate where it is and it is sustained, one of the things that I have heard consistently in talking with my constituents, and I know this goes across the country, you know, in North Carolina and throughout, regulations are killing us is the number one issue. Does that call to action—do you hear that? Are you aware of that? And is that promoting you to move forward on more things?

Mr. SUNSTEIN. Yes. I hear that every day, not just on my birthday, that regulations are causing problems. That is—I think killing us is the strongest phrasing but I have heard that a lot also. I would say if I hear that only once a day it is an unusual day.

And because of the historic role of the Office of Information and Regulatory Affairs created in its current form by President Reagan, that is something that we are intensely focused on. So there are two ways that we focus on that. One is this unprecedentedly ambitious lookback process where we are trying to go forward with 500 reforms that will be helpful in eliminating regulatory burdens. And the Occupational Safety and Health Administration elimination of nearly two million burden hours, when I've talked to the business communities, is regulation killing us, the reaction I have gotten to that one is you are kidding. You actually did that? You took away reporting and paperwork burdens? That was greeted enthusiastically. So a lot of what we are trying to do is take away justified burdens.

The other thing we are trying to do is to make sure that regulations going forward, which in some cases are the bulk of the concern, have—if they are going to go forward they better have commensurate benefits. They better be saving lives or doing something great. And even if they are, maybe they can accomplish the same goal more cheaply and in some cases maybe they ought not to go forward at all.

So the fact that you have seen many of the rules, not all to be sure, but many of the rules that have been of particular concern to the small business community being withdrawn for further engagement with the small business community, the most prominent of these was the Labor Department's musculoskeletal disorder re-

porting rule where the Office of Advocacy of the SBA and the small business community in general found it confusing. And what happened to that is it was withdrawn. There was an EEOC rule implementing the statute that enacted the Americans with Disabilities Act amendments which when proposed encountered a great deal of concern from the business community saying this is confusing, regulatory uncertainty, and overreach. As it was finalized after a great deal of engagement under the—with reference to the president's executive order on regulation, the Chamber of Commerce said you heard us. It is good. This is very reasonable. We applaud this final rule. And that is a model where the disability community thought this was a good implementation and the business community thought it is okay. It is fine. That is a model that would be nice to follow.

Ms. HERRERA BEUTLER. I have one more specific question. One of the issues that has been brought to my attention are on private right of actions in the regulatory agencies being forced to overregulate for fear of lawsuits. If this were something that were removed, do you see that this would decrease the amount of regulation moving forward?

Mr. SUNSTEIN. I think the answer to that is clearly yes. Sometimes Congress likes private rights of action as a supplement to federal regulatory actions. Sometimes Congress hates private rights of action as a recipe for overregulation. And sometimes Congress is neutral. So fundamentally it is in your hands.

Ms. HERRERA BEUTLER. Well, thank you very much. I appreciate that. And I yield back the remainder of my time.

Chairman GRAVES. Ms. Velázquez.

Ms. VELÁZQUEZ. No, I do not have any more questions. Thank you.

Chairman GRAVES. Mr. Tipton.

Mr. TIPTON. Thank you, Mr. Chairman.

Just a couple of other questions. As I was listening to your comments in terms of inviting us, and it goes back to Congressman Beutler's statement as well, in terms of the lookback that is going on, does it really—when we are hearing about all the challenges that small businesses, in particular, are facing, very shallow pools of money to be able to pay in and they are paying it out for regulations, does it really make sense to you that the only real lookback going on right now is the same agency that created the rules?

Mr. SUNSTEIN. Well, I take your point. The way the process works is a little better than that, I think. The agency that is doing the lookback per OIRA guidance actually, is strongly encouraged to make sure that the rulemaking officials are not the ones looking at the rules for your reason that within the agency there is a kind of separation between the rule makers and the rule evaluators. That is the first point.

The second point is that the lookback process has been greatly informed, not by the agency's own soul searching but by engagement with the public that is subject to the rules. So there is a process you may know about called Start Up America, and I have actually traveled myself to ask members of the small business community what is causing problems. And a lot of the ideas on the rules and in a number of cases this is specifically called out, they do not

come from the agencies themselves; they come from members of the public who have said this is causing a problem for us.

The milk one to which you referred, the source of the concern was the agricultural industry. We have a rule eliminating redundant air pollution control requirements imposed on local gas stations, and the gas stations have said this is a very good thing. So it is not just the agency's own internal mechanism; it is also a process within the executive branch. In some cases members of Congress have said this is something you should look back at; this is a cause for concern. The fiduciary rule, which has been revisited, it does not look back in the same sense of eliminating rules on the books but it is a lookback in the sense of reassessing a proposal. And many members of Congress said to the Department of Labor, we are worried about cost and benefits and unintended adverse consequences.

Mr. TIPTON. You know, I certainly went after the thought if you want to try on something experimentally before you go active with rules, bring them back to the Committee, and we would take a look.

One other point that I would—we did hold a Subcommittee hearing that I had the privilege of being able to chair and it was in regards to the GIPSA rule. There have been three recent studies that have been conducted showing that the costs on the GIPSA rule will well exceed \$100 million, which crosses the threshold to have this re-examined by the agency. Are you looking back at the GIPSA rule now?

Mr. SUNSTEIN. Not the slightest. And the Department of Agriculture is very much engaged in assessing costs and benefits.

Mr. TIPTON. Okay. Great. Thank you, Mr. Chairman. I yield back.

Chairman GRAVES. Mr. Hanna.

Mr. HANNA. Thank you, Mr. Chairman.

I am generally curious. It has been widely stated here that rules and regulations are killing us. How do you personally feel about that? Do you think that is a fair estimate, a fair interpretation?

In coupling with that, how much of what is done in your office is subjective? What type of people do this?

Mr. SUNSTEIN. Those are great questions. Thank you.

I generally do not talk in the terms of regulations killing us. That just would not be my preferred phrasing, but it is extremely important in an economically hard time to reduce unjustified regulatory costs and to make sure benefits justify costs. Absolutely. So the fact that we are able to save billions of dollars in regulatory costs, that is a very good thing.

In the SBA's report in February 2010, what they said was their own interventions have contributed to the elimination of \$14 billion in regulatory costs. That is a very good thing. So the fact that certain rules are being reconsidered to engage with the cost issue is really important. The President said just a few nights ago that regulations should be issued only if they are necessary, and that is phrasing that is orienting all of our efforts.

So the idea of getting a hold of the regulatory process to make sure the benefits justify the costs to scale back on justified requirements, that is a very high priority. To get a hold of the problem

of regulatory uncertainty for small business in particular, that is something the President has directed all of us to pay very careful attention to.

In terms of the people at the office, there is an extraordinary staff at the Office of Information and Regulatory Affairs. They are not political. Many of them have been there for a number of years going back across administrations. They are typically first-rate technical analysts whose basic job is to think what are the impacts of this rule going to be? How much does it cost? What are the benefits? Are the costs real? Are the benefits real? How can we do it in a way that is as cost effective as possible? And they have been doing this work in some cases for a couple of years and in some cases for a lot longer than that. And they are highly professional.

Mr. HANNA. Which way would you describe the subjective momentum of what they do in terms of regulation? Would you suggest that—would you say that it is generally more or less or—

Mr. SUNSTEIN. Well, I think the goal is to be as objective as possible. And with respect to regulation where the anticipated cost is between let's say \$100 million and \$500 million, we want to get as close as we can to the objective account. And it would not be shocking for a random regulation, if those who were excited about it, let's say in a community outside government think the costs are going to be lower than we expect, and if those who are nervous about it think the costs are going to be bigger and we work really closely with the Council of Economic Advisors, which is an indispensable partner in getting the economic analysis right, so I would say that really our goal is to get the numbers right. Subjectivity is hard to eliminate from human life but objectivity is our goal.

Mr. HANNA. And do you think that at the end of the day it is a pretty balanced approach and that that would be your opinion?

Mr. SUNSTEIN. Well, I am honored to serve with a staff of professionals at this office, who have been under multiple administrations, and I think they are really good.

Mr. HANNA. You said it took a couple of years to withdraw the milk rule?

Mr. SUNSTEIN. Well, this rule, there was—the EPA proposed it, I believe it was in the last couple of weeks of the Bush Administration. There were a series of public comments. Agencies have a lot of activity, some deregulatory, some regulatory. We work very hard to make the deregulation as expansive as possible, and yeah, it took a while. Sometimes the fact that rulemaking takes a while is not ideal, either because it would deliver excellent public protections or because it would produce big savings. But sometimes the machinery works pretty quickly.

Mr. HANNA. Thank you. I yield back.

Chairman GRAVES. A couple of last questions. Do you think that the agencies are going to have problems with the current budgetary issues that we have when it comes to doing their retrospective review?

Mr. SUNSTEIN. Oh, on the retrospective review? I am very optimistic that even in the current budgetary environment we are going to be able to see a lot of progress in a short time.

Chairman GRAVES. And my next question deals with the guidance documents, which can be just as big a problem as the proposed rule itself.

Mr. SUNSTEIN. Yeah.

Chairman GRAVES. Is anything being done about that?

Mr. SUNSTEIN. Yes. I agree completely with the concern as some of the Courts of Appeal have said that a guidance document is actually a rule. And a few things have been done. The former head of OMB, Peter Orszag, in a very short but really important document said that significant guidance documents just like rules should come into the Office of Information and Regulatory Affairs for review. And we have worked very hard to make sure that guidance documents when they go out are not rules in sheep's clothing, and to make sure that they are really styled as, and going to operate as, non-binding. And in cases where that cannot be done, the best course is to make it a real rule.

Chairman GRAVES. Okay. And last question. What about the outside independent agencies, like the SEC? Is there anything you can do there?

Mr. SUNSTEIN. Yes. The President issued actually an historic executive order. I think it is 13,579, which says that the independent agencies should follow the cost saving burden reducing requirements of his January executive order and should engage within 120 days in the retrospective review. So that no president had done before. It is an executive order. We have already seen some activity from the Federal Communications Commission in particular, which has announced, I believe, 83 burden-reducing initiatives. They finally got rid, by the way, of the Fairness Doctrine formally under the impetus of or in parallel certainly with the President's actions. And with your help, there is limited presidential authority over the independent agencies. We think that there is real opportunity for cost saving initiatives from the independents.

Chairman GRAVES. I want to thank you for coming in. I appreciate it. And I would ask that you maintain contact with the Committee to update us on the progress of the retrospective reviews.

And with that I would ask unanimous consent that all members have five legislative days to review and extend their remarks. Without objection—

Ms. VELAZQUEZ. Mr. Chairman, I would like to ask unanimous consent that—to submit for the record a report on two surveys conducted by FIB and the Chamber of Commerce that shows that regulation is not the number one issue impacting or facing small businesses, but consumer spending, economic uncertainty, and taxes. And since some members have continued to state that this is the number one issue, I just would like to ask unanimous consent to enter that into the record.

Chairman GRAVES. Without objection, so ordered on both consents.

With that, the hearing is adjourned. Thank you very much.

[Whereupon, at 2:19 p.m., the Committee hearing was adjourned.]

SAM GRAVES, MISSOURI
CHAIRMAN

NYDIA M. VELAZQUEZ, NEW YORK
RANKING MEMBER

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2301 Rayburn House Office Building
Washington, DC 20515-6111

House Committee on Small Business
*Eliminating Job-Sapping Federal Rules through Retrospective Reviews – Oversight of the
President's Efforts*
Wednesday, September 21, 2011, 1:00 P.M.
2360 Rayburn House Office Building

Witness List

The Honorable Cass Sunstein, Administrator, Office of Information and Regulatory
Affairs, Office of Management and Budget, Washington, DC

**TESTIMONY OF CASS R. SUNSTEIN
ADMINISTRATOR,
OFFICE OF INFORMATION AND REGULATORY AFFAIRS
OFFICE OF MANAGEMENT AND BUDGET
SEPTEMBER 21, 2011
HOUSE SMALL BUSINESS COMMITTEE
UNITED STATES HOUSE OF REPRESENTATIVES**

Mr. Chairman and Members of the Committee:

I am grateful and honored to have the opportunity to appear before you today to discuss issues relating to regulation, small business, and Executive Order 13563, Improving Regulation and Regulatory Review. In the recent past, and in the implementation of that Executive Order, we have made significant progress in eliminating unjustified regulatory costs. Much of the progress involves reduction of burdens on small business. In the future, we expect to be able to do a great deal more.

I will begin by focusing on retrospective review of existing rules, or less formally, the “regulatory lookback.”

In section 6 of Executive Order 13563, the President ordered executive agencies to undertake an ambitious review of existing federal regulations. Emphasizing that we must “measure, and seek to improve, the actual results of regulatory requirements,” he directed such agencies to produce, within 120 days, preliminary plans to reassess those requirements and to improve, streamline, or eliminate them where appropriate.

Last May, agencies released over two dozen preliminary plans, identifying reforms that will save billions of dollars in the coming years. At the same time, agencies asked members of the public to evaluate their preliminary plans, to identify new reforms, and to participate in the creation of an improved regulatory system, reducing costs and promoting economic growth and job creation.

Last month, twenty-six agencies released their final regulatory review plans. The plans span 805 pages. They include over 500 initiatives that will reduce costs, simplify the regulatory system, and eliminate redundancy and inconsistency. Many of those initiatives will help small business.

As the plans demonstrate, a great deal has already been achieved. Significant burden-reducing initiatives have been finalized or publicly proposed from the Department of Labor, the Environmental Protection Agency, the Department of Transportation, and the Department of Health and Human Services. These initiatives are expected to save more than \$6 billion over the next five years.

Consider just three examples of already-completed reforms:

- A final rule of the Department of Health and Human Services reduces costs and improves access to care in rural areas by permitting hospitals to use telemedicine to obtain services from a practitioner credentialed at a distant hospital (so long as that hospital is also a Medicare-participating entity and there is a written telemedicine agreement in place between the hospitals). This rule is estimated to save approximately \$65 million over the next five years; it will also facilitate access to a broader range of care and services for patients.
- The Department of Labor has finalized a rule eliminating 1.9 million burden hours formerly imposed on employers; in monetary terms, that rule is expected to save over \$200 million in the next five years.
- The Environmental Protection Agency finalized a rule excluding all milk and milk product containers from its oil spill regulations. EPA estimates that the savings will be more than \$700 million over the next five years.

Estimates of the monetized five-year savings from just a small fraction of the plans' initiatives range up to \$10 billion or more. This figure includes initiatives that are completed, formally proposed to the public, or well beyond the planning stages. We hope and expect that ultimately, the savings from the numerous initiatives will greatly exceed that \$10 billion figure.

The relevant reforms span a wide range. A number of them involve reducing paperwork and reporting burdens, which members of the public, and small businesses in particular, have asked us to address. As we have heard from public consultation, many small businesses are burdened by paperwork requirements that turn out, in practice, to be quite challenging. Many other reforms involve eliminating redundant or excess regulatory requirements. Consider just a few examples:

- The Department of Health and Human Services will soon propose to remove unnecessary regulatory and reporting requirements now imposed on hospitals and other healthcare providers, potentially saving an anticipated \$4 billion over the next five years.
- The Department of Labor is finalizing a rule to simplify and to improve hazard warnings for workers, likely saving employers over \$2.5 billion over the next five years while, at the same time, improving worker safety.
- The Department of Transportation is proposing a rule, announced last month, that will eliminate unnecessary regulation of the railroad industry, saving up to \$340 million in the near future, and avoiding the risk that regulatory costs will be passed onto consumers.

Many of the new reforms focus specifically on small business. For example, the Department of Defense recently issued a new rule to accelerate payments on contracts to as many as 60,000 small businesses, thus improving their cash flow in an economically difficult time. To help small business borrowers, the Small Business Administration is adopting a single electronic

application to reduce the paperwork burden now imposed on certain lenders, which will in turn benefit borrowers who seek relatively small amounts of capital to grow and succeed. Over two dozen reforms from the Department of Transportation involve small business in particular.

All of the plans explicitly recognize that the regulatory lookback is not a one-time endeavor. Agencies will continue to revisit existing rules, asking whether they should be updated, streamlined, or repealed. And they will do so in close consultation with the public in general and with small business in particular. Ideas are welcome at any time.

We are aware that many people have suggested that independent regulatory agencies should participate in the lookback process. In Executive Order 13579, the President said that they should do exactly that, and asked them to produce their own plans within 120 days. We are hopeful that significant savings will result from these efforts as well. We are also hopeful that reform initiatives from independent agencies will reduce burdens on small business.

Many people have also expressed concern with the “flow” of new rules, not merely with the “stock” of existing rules. The Regulatory Flexibility Act, emphasized and reinforced by a Presidential Memorandum on January 18, 2011, is an important constraint on excessive regulation of small business. With respect to new rules, Executive Order 13563 provides a series of directives and requirements. The Executive Order makes explicit reference to “economic growth, innovation, competitiveness, and job creation,” and it states that our regulatory system “must promote predictability and reduce uncertainty.” Among other things, and to the extent permitted by law, the Executive Order:

- Requires agencies to consider costs and benefits, to ensure that the benefits justify the costs, and to select the least burdensome alternatives.
- Requires increased public participation. The order directs agencies to promote an open exchange with State, local, and tribal officials; experts in relevant disciplines; affected stakeholders; and the public in general. Attempting to bring rulemaking into the twenty-first century, the order requires use of the Internet to promote such an exchange. It also directs agencies to act, even in advance of rulemaking, to seek the views of those, including small business, who are likely to be affected.
- Directs agencies to take steps to harmonize, simplify, and coordinate rules. The order emphasizes that some sectors and industries face redundant, inconsistent, or overlapping requirements. In order to reduce costs and to promote simplicity, it calls for greater coordination within and across agencies.
- Directs agencies to consider flexible approaches that reduce burdens and maintain freedom of choice for the public.

As President Obama has said, “We can make our economy stronger and more competitive, while meeting our fundamental responsibilities to one another.” We will continue to eliminate unjustified regulatory costs, and thus strengthen our economy, in an economically challenging time.