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NOMINATION OF HOWARD A. SHELANSKI

HEARING

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

NOMINATION OF HOWARD A. SHELANSKI, TO BE ADMINISTRATOR OF THE OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET

JUNE 12, 2013

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NOMINATION OF HOWARD A. SHELANSKI, TO BE ADMINISTRATOR, OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET

JUNE 12, 2013

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:03 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Thomas R. Carper, presiding.

Present: Senators Carper, Levin, Coburn, Johnson, and Portman.

OPENING STATEMENT OF CHAIRMAN CARPER

Chairman CARPER. Well, good morning, everyone. The hearing will come to order.

Today, we welcome the President's nominee for the position of Administrator of the Office of Information and Regulatory Affairs (OIRA), an important job, and we are happy to be able to welcome you today, and we are happy that your family is here and especially want to welcome your parents, welcome your son, Isaac, and all these other folks that have joined you. It is a pretty good turnout.

It is always encouraging to me when you have a lot of people sitting out behind you for a confirmation hearing and not many people sitting up here, because when you have a lot of people sitting up here, it is not always a good sign. We are not always here to warmly welcome you.

Today, we meet to consider the nomination of Howard Shelanski, President Obama's choice to serve as Administrator of the Office of Information and Regulatory Affairs. This is an important office within the Office of Management and Budget (OMB). It has been without a Senate-confirmed leader since, I think, last August, when Cass Sunstein left us for other parts.

I am pleased the President has nominated someone who is, I think, highly qualified. I intend to work with my colleagues on this Committee, certainly with Dr. Coburn, to complete our review and report the nomination for action by the full Senate as soon as we can.

Although OIRA is not well known outside of Washington, it has a very important role across the government and in our daily lives. Congress passes laws that draw lines between what is acceptable

and unacceptable in our society, whether it is to protect our public health, the economy, or the natural environment. But we in Congress cannot cover every situation in the legislation we pass, so we leave many of the particulars to the regulatory process, as you know.

For many years, Presidents have asked OIRA to help oversee and coordinate our regulatory process and review the most important proposed rules. Americans are impacted by the decisions and actions of OIRA every time we take a drink of water or go to the bank. Although some people think we need to choose between regulation and having a robust growing economy, I disagree. I believe that Federal regulations should only be issued when there is a real need, when they are cost effective, and when they make sense.

When these conditions are satisfied, Federal regulations serve an essential purpose in protecting our environment, our health, our safety, consumers, and our financial system.

For example, by advocating a common sense, cost effective approach to our Nation's environment and energy challenges, we can reduce harmful pollutants, lead healthier lives, lower our energy costs, and help put Americans to work manufacturing new products.

OIRA has also been tasked with coordinating agencies' reviews of their existing regulations in order to explore whether any should be modified or streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome. That is something that Cass was very much involved in, as you know.

Furthermore, OIRA, together with the Office of E-Government and OMB as a whole, has important responsibilities in managing the government's immense information resources. The OIRA Administrator also has responsibility for implementing the Privacy Act of 1974, which governs the collection, maintenance, use, and the dissemination of information about individuals maintained by several Federal agencies, including the Department of Veterans Affairs (VA), Social Security Administration (SSA), the Centers for Medicare and Medicare Services (CMS), and the Office of Personnel Management (OPM). The head of OIRA thus has a number of critical roles in terms of determining how our citizens will interact with our government.

I am pleased the President has presented us with a nominee with the training and the experience to take on these important challenges. Mr. Shelanski has earned both a law degree and a Ph.D. in economics from the University of California-Berkeley. His combined training and expertise in law and economics should be especially valuable in a role of leading OIRA and helping to ensure that our Federal regulatory programs both conform to law and achieve the best practical results for the American people.

Mr. Shelanski comes well prepared to take on the challenges of this position from his extensive government service, first as Senior Economist for President Clinton's Council of Economic Advisers, then as Chief Economist at the Federal Communications Commission (FCC), and more recently as Manager within the Federal Trade Commission's Bureau of Economics, which he has headed for about a year now.

While not serving in the government, Mr. Shelanski has also had a distinguished career in academia, first as a professor at the University of California at Berkeley, his alma mater, and later at the Georgetown University Law Center. And as another indication of both Mr. Shelanski's intellect and breadth of experience, he began his legal career clerking for, among others, Supreme Court Justice Scalia.

Not surprisingly, Mr. Shelanski has earned a reputation among those he has worked with of not only being smart, but also being articulate, highly collegial, qualities of character that would serve him well here in the Senate but will also serve him well at a place like OIRA, the heart of government.

My recommendation to my colleagues on this Committee is that we listen to him, ask him a bunch of questions, and if we like him, support his nomination and promptly report him to the full Senate.

Mr. Shelanski, we welcome you before this Committee and look forward to your testimony.

And I think I am supposed to introduce you, but let me just yield first to Dr. Coburn.

OPENING STATEMENT OF SENATOR COBURN

Senator COBURN. Well, Mr. Chairman, thanks for having this hearing. We have an excellent candidate before us. I have a statement for the record that I would like to have be submitted, and I just want to followup on a couple of things you said.

One of the things Senator Carper said is common sense. Where do you get that? How do you develop it? You do not unless you have had a broad base of experience, and so my worry at OIRA is that the intent is good, the heart, the compassion is right, but the background reference for having knowledge on how regulations will truly impact an industry, an area, or whatever is missing. And your experience is great to a limited extent.

So I guess my worry, for anybody in that position, is how do you develop the context of getting that common sense brought forth as you look at regulations? I do not care which Administration it has been. We have lacked that, in my opinion.

And so one of the things I hope to work with our nominee on, and our head of OIRA, is how do you develop a process where you get great input so that you add to your already breadth of knowledge the expertise, and I am not talking about from the agency or the comments, but a cadre of people that you can rely on that will give you that extra bit of insight, because, really, OIRA, in terms of the economics out there, $1.8 trillion is the cost of our regulation right now, $1.8 trillion. If you break it down, that is $14,678 per family in this country, and most of it is well intended, but a lot of it has a ton of unintended consequences.

So my real goal with you, Howard, is to develop the kind of relationship so that when you are fulfilling your job, that you actually can bring in to give context on the areas where you really do not have any experience and you do not have anybody around you with experience so that you can see it in the whole, not to bias it in a conservative, liberal, or moderate way, but just really based on what a cogent, well thinking person of experience would do to accomplish both the goal but also do the least harm. And, you know,

most people in business, in the economy out there, you are their last hope to not burden more than the $1.8 trillion, not add more to the economy that does not buy us something substantive to it.

I have looked at your qualifications. There is no question you are there. And I welcome you to the Committee and will have limited questions, but I hope to develop the relationship and just give you the admonition from my gray hair to you is I have been in business, I have been in medicine, I have been in government, and I still rely on a lot of people who have a whole heck of a lot more experience in a lot of other areas besides my staff to help me make judgments. And that is the one key area that I hope we can get to at OIRA so that we are making the best decision for the country as a whole.

So I thank you for being here and look forward to your testimony.

Chairman CARPER. Thank you, Dr. Coburn.

I just want to followup on one thing that Dr. Coburn said, and that is the common sense thing. You can look at a person's resume and it tells you a lot about their education, about the work that they have done, but it does not tell you necessarily about the values that are imparted to us growing up by our families. And I think it is wonderful that your parents are here today.

But I remember, Tom, something that—my father was a Chief Petty Officer in the Navy, World War II, tough as nails, and he was always saying to my sister and me growing up, if a job is worth doing, it is worth doing well. We would have chores to do and did not do them very well. He was always saying, if a job is worth doing, it is worth doing well. He said it a million times. And out of all that, I took away the idea of doing things well, to focus on excellence in everything we do, and one of the things we do in this Committee is we really work on the culture in the Federal Government to try to get better results from less money and how can we do things better.

The other thing my dad always said to my sister and me, when we would pull some boneheaded stunt he would always say, just use some common sense. He said it a lot. He did not say it so nicely. But he must have said it a million times. And one of the things, when I left home to go off to be a Navy rising midshipman at Ohio State and then in the Navy, I thought a lot about common sense. I still do.

And so that is not something that shows up on my resume, probably not yours, as well. We will ask your Mom and Dad later if you have any and they can tell us. Hopefully, they will say yes.

Senator Johnson, normally, I would not call on you to make remarks, but you are a good man, you are here, and just if you would like to make some brief comments, that would be fine.

OPENING STATEMENT OF SENATOR JOHNSON

Senator JOHNSON. Well, thank you, Mr. Chairman. I will pipe in on basically two points.

Senator Coburn certainly talked about unintended consequences, and I know at OIRA, one of your missions is certainly doing a cost-benefit analysis. I have not found in my short time here that the Federal Government is particularly good at measuring the intended

results of what they are trying to accomplish, so they are not even really concerned, or they certainly do not consider the unintended consequences of some of these regulations. I think it would be enormously helpful if the OIRA would start paying attention to and at least try and consider the unintended consequences of a lot of these rules and regulations.

And I think the last point—I do not think anybody has mentioned this one yet—is the law of diminishing returns. I think we see that all the time. Again, I agree with Senator Coburn. These regulations are well intended. I think all of government is well intended. But as we continue to throw more and more government at problems, you do reach that point of diminishing returns, and I think that is also something that OIRA could really be taking a look at, is each layer of these regulations.

I mean, I will throw one out there: Ozone regulation. We get it down to 75 parts per million. I guess there must be an Office of Ozone Regulation in EPA and they must be sitting around their office going, well, now what do we do? I am afraid the reaction is, let us knock it down to 65 parts per million at a cost of maybe a trillion dollars, and I do not know what the benefit of that would be.

So I think you really need to take a look at unintended consequences and the law of diminishing returns as you are doing your analysis, should you be confirmed for this position.

Thank you, Mr. Chairman.

Chairman CARPER. Thank you, sir.

Howard Shelanski has filed responses to a biographical and financial questionnaire, answered prehearing questions submitted by our Committee, had his financial statements reviewed by the Office of Government Ethics, and without objection, this information will be made part of the hearing record, with the exception of the financial data, which are on file and are available for public inspection in the Committee's office. Hearing no objection.

Our Committee rules require that all witnesses at nomination hearings give their testimony under oath, so I am going to ask you, Mr. Shelanski, if you would please stand and raise your right hand.

Do you swear that the testimony you are about to give to the Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. SHELANSKI. I do.

Chairman CARPER. Very well. Please be seated.

You may proceed with your statement. Feel free to introduce your family, any friends that you have here with you today, and then we will jump into the questions. But welcome. We are glad that you are here and happy that your family is here, too.

TESTIMONY OF HOWARD A. SHELANSKI, NOMINATED TO BE ADMINISTRATOR, OFFICE OF INFORMATION AND REGULATORY AFFAIRS, U.S. OFFICE OF MANAGEMENT AND BUDGET

Mr. SHELANSKI. Well, thank you. Thank you very much, Chairman Carper, Dr. Coburn, and Members of the Committee, for welcoming me today. It is an honor to be considered by this Committee

as the President's nominee to be Administrator of the Office of Information and Regulatory Affairs.

I would like to start off this morning by thanking my family for their support in taking on this challenge. I am glad to have Nicole Soulanille and our son, Isaac Shelanski, and my parents, Vivien and Michael Shelanski, who this week are celebrating their 50th wedding anniversary, here with me today.

I also want to thank the Members of the Committee and their staffs for meeting with me over the last few weeks. I appreciate the time many of you took from your busy schedules and thank you for sharing your insights and views as I prepared for this hearing. For those of you I have not yet had the opportunity to meet, I look forward to doing so in the future.

If confirmed, I look forward to working with you and maintaining open communications. I would welcome your perspectives on the matters of concern to OIRA.

The Office of Information and Regulatory Affairs plays an essential role in developing and overseeing the implementation of governmentwide policies on regulation, information collection, information quality, statistical standards, scientific evidence, and privacy. I am humbled by my nomination to lead such an important organization.

I would like to begin by speaking briefly about my background and about the training and experience that have helped me to prepare for the job of OIRA Administrator, should I be confirmed.

I have a Ph.D. in economics and a law degree and have spent my career combining both disciplines. I joined the faculty of Georgetown University Law School in 2011 after having previously been a professor at the University of California at Berkeley since 1997. At Berkeley, I also served 3 years as Associate Dean of the law school and was Co-Director of the Berkeley Center for Law and Technology.

Most of my teaching and research have focused on regulation, particularly in the telecommunications sector, and on antitrust policy. In this work, I have had the opportunity to analyze complex issues and their effects upon society, ranging from the virtues of switching to a less rule-based model of telecommunications regulation to how antitrust enforcement can better accommodate and promote technological innovation.

I have also served in several government positions. Currently, I am the Director of the Federal Trade Commission's Bureau of Economics, where I previously served as Deputy Director from 2009 to 2011. Other government positions I have held include Chief Economist at the Federal Communications Commission and Senior Economist at the Council of Economic Advisors. In these roles, I successfully worked with other agencies, the Congress, and the public in an effort to serve the American people.

I have also practiced law, focusing on regulatory and antitrust matters. And at the start of my career, I spent time in the Judicial Branch of government as a law clerk to judges appointed by Presidents of both parties. I had the honor of clerking for the late Judge Louis Pollak, for Judge Stephen Williams, and for Justice Antonin Scalia.

From my past experience in government and from having worked for judges across the ideological spectrum, I learned the importance of relying on sound evidence and rigorous analysis to make decisions and of developing good working relationships with people of varying viewpoints and backgrounds to achieve collective goals.

If confirmed as Administrator, I would draw from my own experiences and rely on the expertise and insights of career staff at OIRA and the agencies, others in the Administration, the Congress, and public participants in the regulatory process to fulfill OIRA's mandates. I believe that public involvement and transparency in regulation is critically important as we tackle the complex issues that our country faces today.

If confirmed as Administrator, I would look forward to working with this Committee and the Congress on these important matters.

Thank you for your time this morning, and I look forward to answering your questions.

Chairman CARPER. All right. Thanks for that statement.

As you may know, we start our questioning by asking the same three questions of all of our nominees, and I will just run through these and if you would respond, I would be grateful. We would be grateful.

Is there anything you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Mr. SHELANSKI. No, sir.

Chairman CARPER. All right. No. 2: Do you know of anything, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Mr. SHELANSKI. No, I do not.

Chairman CARPER. And finally, do you agree, without reservation, to respond to any reasonable summons to appear and testify before any duly constituted Committee of Congress if you are confirmed?

Mr. SHELANSKI. Yes, Chairman Carper, I do.

Chairman CARPER. Before we get into the questions, if your Mom and Dad were at the witness table, I would ask them what is the secret for being married 50 years. It is a question, whenever I talk to people who have been married 50, 60, or 70 years, I love asking, what is the secret. I get some hilarious answers and I get some really poignant ones, as well.

A couple of weeks ago, I met a couple who had been married 54 years and I said to the wife standing next to her husband, I said, what is the secret for being married 54 years, and she said, "He will tell you he can either be right or he can be happy, but he cannot be both." [Laughter.]

The best answer I ever heard in all these years I have been asking people, the best answer I have ever heard is the two Cs, not Coburn and Carper, but the two Cs, communicate and compromise. As it turns out, that is not only the secret for a long lasting union between two people, it is also the secret for a vibrant democracy. We have a couple of guys up here, I hope the three of us are pretty good at the two Cs, and you will probably need to be pretty good at them, as well.

Let me get more serious, if I can. But let us just talk about priorities if you are confirmed, and I hope you will be. But if you are confirmed, what might be some of your top few priorities, please?

Mr. SHELANSKI. Thank you, Chairman Carper. Should I be confirmed at OIRA Administrator, my top priorities would really be three. First, I would like to ensure that regulatory review at OIRA occurs in as timely a manner as possible, that the quality of review remains high, and that timeliness and the notice to regulated parties and to the public of what the regulatory regime will be will become finalized as effectively and efficiently as possible.

Second, I would view it as a very high priority to form good and respectful working relationships with the agency heads, with Members of Congress, with others in government, and, indeed, with public stakeholders so that should I be confirmed as Administrator of OIRA, I will have the trust and positive working relationships that are essential to accomplish OIRA's objectives.

Third, I think it is extremely important to continue the good work that OIRA and the Administration have already been working on to further retrospective review of regulations and of our administrative system. I think it is extremely important to ensure that even as we move forward as a country with new regulations, achieving new objectives or furthering old objectives, that we look back at regulations on the books to ensure that there are no longer burdens in place that are not achieving their objectives.

Chairman CARPER. That was something that Cass Sunstein was asked by the President to do, and by most people's judgment, he and OIRA did a pretty good job at that. But what I think you are saying is this should be an ongoing process, not just something we do every 5, 10, or 15 years, but do on an ongoing basis. Is that what you are saying?

Mr. SHELANSKI. I look forward, Chairman Carper, should I be confirmed, in learning more about how the retrospective review process has, in fact, been implemented in the agencies and what OIRA can do to further institutionalize and enable this valuable function.

Chairman CARPER. OK. Well, that is good. Good to hear that.

What is your understanding of the Obama Administration's goals in the area of regulation? How would those goals relate to your work, if confirmed?

Mr. SHELANSKI. Thank you. I think the Obama Administration's goals for regulation involve ensuring that Americans are protected in their health, their workplaces, their safety and welfare, and in the environment in which they live. But I think it is important to ensure that regulation takes place consistently with the paramount importance of job creation, economic growth, and ensuring that our country's prosperity continues along with achieving these vital protections for Americans.

Chairman CARPER. Talk to us about the, I do not know if "conflict" is the right word or "tension," between a cleaner environment and economic growth. That is something I suspect you had a chance, given your other jobs, to think about. Just talk to us about the tension that exists between trying to continue to clean up our environment, whether it is air, water, whatever, and to at the same time foster stronger economic growth.

Mr. SHELANSKI. Thank you. I think it is important that the agencies be able to carry out their statutory mandates and their objectives of ensuring a sound environment. But it is also necessary to ensure that, with all regulations, that where costs and benefits can both be taken into account, that these objectives are not achieved at any higher cost than is absolutely necessary.

There was some discussion earlier in your opening statements about common sense. I could not agree more with the remarks that I heard. A common sense balance between achieving regulatory objectives and recognizing the very real costs that those regulations might impose is, I think, essential to the regulatory policy of this and other Administrations and to the kind of regulatory review that OIRA engages in.

Chairman CARPER. I think when I showed up in college in undergraduate or graduate school, I never saw a course listed for common sense. It is not the sort of thing you can sign up for and either audit or get a grade in. But just talk to us about your own life growing up and how you might have picked up some common sense along the way.

Mr. SHELANSKI. Well, I think I need to give a lot of credit to the people sitting behind me to my left here. I think I had a lot of the same lessons that you described that you had growing up, Senator Carper. I was given the independence to make mistakes, but I was also reminded to ask questions about whether what I was doing made sense, to question myself on why I was taking the steps I was taking. I think the opportunity to grow up, to make mistakes, to chart my own course with a steady hand behind me helped me to develop some common sense.

And in my work life, having to balance different perspectives, having to manage a substantial size staff, and in private law practice, understanding the real burdens that the legal process or the regulations that real companies were facing, or clients that I served, helped me to develop what I would call a common sense perspective and a balanced perspective.

Chairman CARPER. All right. Good. Thanks. I am going to stop here for now. Dr. Coburn stepped out of the room, and when he comes back, we will recognize him, but Senator Johnson——

Senator JOHNSON. So it is my turn. Some day, Mr. Chairman, I want you listing all those secrets for 50 years of marriage. And, by the way, congratulations to both of you.

Chairman CARPER. Let me tell you another good one. This guy said to me, it had been 47 years and I said, where did you guys get married? and he said, "We got married in Las Vegas." I said, where, and he said, "One of those Chapels of Love." I said, you are kidding. Somebody got married there and stayed married for 47 years? He said, "Yes." and I said, what is the secret? He said, "When you know you are wrong, admit it. When you know you are right, let it go." [Laughter.]

Senator JOHNSON. Well, it looks like you have the basis of a book. [Laughter.]

Mr. Shelanski, the preparation materials that I have show that when we started actually keeping track of the number of rules the Federal Government has issued since 1976, we are up to 182,000 rules. As you approach this position, I mean, where would you even

start? How would you go about prioritizing your actions in trying to get your arms around this regulatory burden, as Dr. Coburn talked about, $1.8 trillion? I mean, as we are all wrestling with how do we get economic growth, what might be causing a sluggish economy, I certainly look at that $1.8 trillion regulatory burden—I come from a manufacturing background—to understand how harmful it can be. I realize there are benefits. There is also real harm. Where do you start?

Mr. SHELANSKI. Well, thank you, Senator Johnson. First of all, I think it is very important for the agencies and for OIRA, to the extent that it plays a role reviewing agency regulation, to listen carefully and to hear what the different stakeholders have to say.

There are high costs to regulation, but I think there is only so much one can learn from looking at the cost side. The question is always whether the benefits that the regulations achieve are justified by those costs.

In terms of where to start on the long list of regulations that are on the books and thinking about those rules, for example, in the process of retrospective review, I think that the prioritization and the approach would, in the first sense, be the primary responsibility of the relevant agency head. They are the ones who know best how the rules they have on the books fit with new rules they are putting in place and the whole body of rules that they have in achieving the objectives of their departments.

But I think OIRA can help suggest methods for retrospective review, and one of the things I would look forward to doing, should I be confirmed as Administrator, is learning more about what role OIRA can play cooperatively with the agencies to get them to look at that body of regulation and—to the extent possible, while preserving the benefits that regulation brings—reducing its costs.

Senator JOHNSON. You used the word "listen," and I am sure in my excellent prepared material here from my staff, I am sure the statistic is in here. I do not have it at my hand. But, I think, over the years, we have actually reduced the number of instances where businesses are actually given the opportunity to comment on regulations. Would you be committed to make sure that businesses and affected stakeholders on any regulation are given that opportunity to comment on the proposed rules and regulations?

Mr. SHELANSKI. Thank you, Senator Johnson. I share your viewpoint that transparency and the opportunity for the public to have notice and to comment on rulemaking procedures is extremely important, and the public, of course, includes all stakeholders, including businesses small and large. And it would be a priority of mine, should I be confirmed as Administrator, to ensure that insofar as possible, that opportunity was preserved and public participation took place.

Senator JOHNSON. OK. I really want to encourage that, because it is extremely important. As Dr. Coburn was saying, we all have limited information, limited experience, and the people affected by regulations—certainly, I have come to realize that as a United States Senator to listen to the businesses coming in. I mean, I have no idea of the number of ways the Federal Government is harming businesses. Businesses do know that, so it is extremely important, not only to businesses, but, again, any stakeholder, that they are

listened to very carefully before we go forward with regulations, and where we do not have all the input, maybe delay the implementation of those regulations.

You talked earlier about retrospective reviews. I have proposed things like a Sunset Committee, whose only mandate would be to reduce—identify and actually eliminate laws that are harmful or no longer useful. The same with regulations and rules. We have had proposals for types of commissions to take a look at that, something like a Base Realignment and Closure (BRAC) Commission. We have had a hearing on a one in/one out rule like they had in Britain. I would tend more toward one in and about 10 out. Can you just comment on what of those approaches you might find interesting, that you might support?

Mr. SHELANSKI. I think that I would look forward to understanding what specific proposals were on the table and to working with you and others in Congress in understanding what the concerns are and how various proposals might address those. So without commenting on any particular proposal that might be out there, I think this is an important area for the OIRA Administrator to focus on, to understand, and should I be that person, I would look forward to working with you and others on the Committee to understand your concerns and to make progress on these issues.

Senator JOHNSON. Can you just speak a little bit to the point that both Dr. Coburn and I made in our opening statements, just about unintended consequences and how do you view those, how would you try and identify and quantify the unintended consequences of regulations.

Mr. SHELANSKI. Thank you. Unintended consequences are critically important because regulation is often a very predictive exercise. And so it is important insofar as possible to think in advance about what the possible outcomes of regulation are and to think about what might be the possibility for unintended consequences that could be costly. So I think this would be an important thing to come out in the notice and comment period and in the agency rulemaking process, but I also think that retrospective review can play a very important role here. One of the valuable things that retrospective review could accomplish would be to identify rules that are having consequences other than those that were intended and might be having costs that are much higher than were anticipated.

Senator JOHNSON. How do you view your relationship between OIRA and the Government Accountability Office (GAO)? We had Gene Dodaro here, and when we were talking about sequestration, for example, I asked Mr. Dodaro how many of the agencies are actually taking a look at all the good work that the GAO is doing in terms of duplication, and unfortunately, the answer was they do not look at it. How would you plan on interacting with all the good work, all the good information that GAO has actually produced in terms of trying to make the Federal Government more efficient?

Mr. SHELANSKI. The GAO performs very important functions and adds a lot of value through the work that it does, and should I become OIRA Administrator, I would welcome the opportunity to work closely with GAO, and to the extent that they are producing valuable things that can help improve the regulatory process, I

want to help those reports and those studies and the other functions that GAO is involved in have the broadest effect possible.

Senator JOHNSON. Well, thank you, Mr. Shelanski and Mr. Chairman.

Chairman CARPER. Thank you.

We have been joined by Senator Levin, one of the two strongest Detroit Tigers fans that you will find on Capitol Hill——

Senator LEVIN. Second strongest, the Chairman being the strongest.

Chairman CARPER. They had a good night last night. Max Scherzer goes nine-and-oh. That is pretty good.

Senator LEVIN. Yes, they won three-to-two.

Chairman CARPER. And on the softball side, we have these softball teams here. Most Senate offices have softball teams. Last night, we played Senator Coons, my colleague from Delaware. We are the Fighting Blue Hens in Delaware and the name of his team is the Angry Hens, and when they left, they lost 34 to 18, so they were really angry. [Laughter.]

Senator LEVIN. Is this softball or football?

Chairman CARPER. It sounded like football, but it was softball.

OPENING STATEMENT OF SENATOR LEVIN

Senator LEVIN. Thank you, Mr. Chairman, and welcome to you, Mr. Shelanski.

My first question has to do with the delays in rules coming out of OIRA. We have now a situation where delays of agencies are chronic. They fundamentally undermine the agencies' abilities to effectively execute the responsibilities that those agencies have. Under the Executive Order (E.O.) Number 12866, which is in effect, OIRA has 90 days to review a draft of a proposed or final rule. There is one 30-day extension that is available. As of May 14, 87 rules had been under review for more than 90 days. Fifty-one had been under review for more than a year. What is your plan to change that situation?

Mr. SHELANSKI. Thank you, Senator Levin, because I absolutely share the concern that you have just raised about timeliness. Not yet having been at OMB or in OIRA, I cannot comment on what might have led to extended review of any particular rule or what might have led to the number of rules that are under an extended review period. But I recognize that Executive Order 12866 establishes the initial 90-day review process and it would be one of my highest priorities, should I be confirmed as Administrator, to try to improve the timeliness and the notice and certainty that lends to the regulatory environment.

Senator LEVIN. Do you agree with the OMB Director Burwell that there is a long tradition and unique role of independent agencies and that the importance of their continued independence cannot be exaggerated?

Mr. SHELANSKI. Senator Levin, I currently work at an independent agency. In fact, it is the second independent agency that I have worked at in my career. And I certainly value and recognize the importance of that independence. Should I be confirmed as Administrator, I would look forward to understanding the concerns regarding administrative agencies that various Members of the Com-

mittee have and to working with you and your office on those concerns.

Senator LEVIN. And you are talking about independent agencies?

Mr. SHELANSKI. Yes, sir, I am.

Senator LEVIN. The Administration has expressed its opposition to being directed to pass judgment on the quality of the independent agencies' cost-benefit analyses. Do you agree with that?

Mr. SHELANSKI. I look forward to understanding more about what might lie behind efforts to give the Administration that authority to review independent agencies. It is something that I think I would have a better ability to comment on after some experience with the OIRA review process. But coming as I do now from an independent agency, I very firmly value that independence and the variety of approaches that emerge from the independence that those agencies have.

Senator LEVIN. If you have any additional thoughts about the response to that question in the next week or so, will you give us an expansion for the record?[1]

Mr. SHELANSKI. Yes, Senator Levin.

Senator LEVIN. Cass Sunstein, during his confirmation hearing before this Committee, said that, quote, "Cost-benefit analysis is a tool meant to inform decisions. It should not be used to place regulatory decisions in an arithmetic straightjacket," close quote. Do you agree with that?

Mr. SHELANSKI. Yes, sir, I agree with Cass Sunstein's remarks in that regard.

Senator LEVIN. Thank you very much, and thank you very much, Mr. Chairman.

Chairman CARPER. Thanks, Senator Levin.

Going back to the backlog that we talked about, and you said it would be one of your top priorities, I am reminded of a meeting I had early in my time in the Senate. I think I had been in the Senate a couple of years. I had been working on Clean Air legislation and multi-pollutant legislation and had a number of utility Chief Executive Officers (CEOs) in to see me and my staff. We were talking about the legislation we were trying to do, whether legislation was appropriate, whether we should rely on regulations.

Anyway, at the end of about a 1-hour meeting, one of the utility CEOs—I forget where he was from, he was from someplace down south, sort of a curmudgeonly old guy, and he said to me, "Look, Senator, here is what you should do. You should tell us what the rules are going to be, give us a little flexibility, a reasonable amount of time, and get out of the way." That is really what he said. "Tell us what the rules are going to be, give us a reasonable amount of time, some flexibility, and get out of the way." I thought that was pretty good advice for us and might be pretty good advice for you as you lead OIRA.

Dr. Coburn is back. I am going to go make a phone call and will be right back. Dr. Coburn.

Senator COBURN. Thank you. I want to spend a minute with you talking about reviewing certain—there is a regulation called the Renewable Fuel Standards. It is a pretty controversial thing. But

[1] Mr. Shelanski response to Senator Levin's question appears in the Appendix on page 88.

what is getting ready to happen in our country is all our refiners are going to go broke because mileage is going up. We have now seen fuel credits become a market-traded item. So what we are going to see is two refineries in Oklahoma close within a year, year and a half, because they cannot afford to buy the Renewable Fuel Credits.

So we have a regulation out there that is actually going to kill our ability to provide gasoline to the country, even with an ethanol blend, but yet we are going to lose thousands and thousands and thousands of jobs because we have not adjusted that or given a waiver to it and we have allowed a market, because they see a shortage of those credits now, to bid the price up.

So, for example, we have two refineries in Oklahoma that will close within a year, because they are losing $20, $30 million a year now, not on processing gasoline, on buying Renewable Fuel Credits because they are just refiners. They are not fully integrated down to where they have a retail thing. So what is going to happen is we are going to be losing jobs, losing refineries, which we have not built a new refinery in this country in years, and these are small refineries, but yet they employ a lot of people and have a great job, and then we are going to end up with a higher price.

Now, some in the pro-environmental community would love to see that, but what are we going to supply transportation with in this country when we run the refineries out of business? We do not have an electric vehicle. You are still going to use some type of carbon-based fuel. But the disjointment of having this standard without adjusting it, because we have issued regulations that now the marketplace, because there is a shortage, has bid up the price way high and we have not adjusted that to blow the bottom out of it.

So that is the kind of thing I am worried about, the things that we have a regulation and we are not looking at, we are not re-looking at it——

Mr. SHELANSKI. Yes.

Senator COBURN. And we have had hearings in the House this last week. There are going to be hearings in the Senate. But the fact is, all it would take is tomorrow to gut that speculation based on a government-created problem that is going to kill jobs. It would take one adjustment to that regulation by Environmental Protection Agency (EPA) and all that would go away, and it will not make any difference in the long term in terms of our environmental consequences because we are still going to have ethanol blended into our fuel. But yet we have created a regulation that creates a problem that is going to eliminate jobs. Any thoughts about that?

Mr. SHELANSKI. Senator Coburn, I think you raise an issue that is a vitally important one. One of the things that OIRA is charged with doing under the Executive Order is to ensure that the regulations that are brought to it for review have looked carefully, where permissible under the statute, at the costs and benefits, and where alternative approaches and regulatory flexibility can play a role in reducing those burdens without overly compromising the benefits and the objectives. Those are things that, under the Executive Order, are to be taken into account and that OIRA is charged with ensuring have been adequately taken into account.

Senator COBURN. Well, there is a good one for you to look at as soon as you get confirmed.

Mr. SHELANSKI. Thank you.

Senator COBURN. Will you commit to ensuring that significant policy and guidance documents undergo interagency review as directed by E.O. 12866 and E.O. 13563, including interagency review, before documents are released to the public?

Mr. SHELANSKI. Senator Coburn, it is my view that substance rather than labels should dictate OIRA's review. And where there is something that is labeled a guidance document or Frequently Asked Questions or whatever that document might be labeled, even if it is not labeled a regulation, should it impose burdens and have regulatory effect, I believe that is an appropriate area for OIRA to play a role.

Senator COBURN. So you will demand that it has the interagency reviews before we shoot that stuff out there?

Mr. SHELANSKI. Should I be confirmed as Administrator, I will look at how OIRA handles things like guidance documents and will look to ensure that where those guidance documents create regulatory burdens, they go through the same kinds of processes that regulations would go through—cost-benefit analysis, other types of review that OIRA does, and ensuring that there is not conflict, tension, or duplication with other agencies through the interagency review process.

Senator COBURN. OK. Will you ensure that the agencies follow the minimal standards described in the OMB Bulletin for peer review when developing and finalizing influential scientific information that will be used to support rulemakings?

Mr. SHELANSKI. Thank you, Dr. Coburn. Clearly, OIRA has a cooperative role, and scientific determinations, regulatory priorities, issues like that are, in the first and main instance, the province of the agency heads. Under the Executive Orders, OIRA does play a role in ensuring that the agencies have observed prior proper process and that the evidence they have relied on is sound and meets applicable data quality standards. Should I be confirmed as Administrator, I would continue that review work.

Senator COBURN. So OMB has issued guidance on rulemaking, that it should go under peer review, and what I am wanting you to say is, yes, you will make sure it goes under peer review.

Mr. SHELANSKI. I will make sure that the OMB and Executive Order rules are followed to the best of my ability, should I be confirmed.

Senator COBURN. OK. The President reaffirmed the principle of sound regulations with Executive Order 13563. Our regulatory system must protect public health, welfare, and safety, and our environment, while promoting economic growth, innovation, competitiveness, and job creation. How do we strike that balance? That is your job. I mean, he put it in a nutshell. The question is, how do you do that?

Mr. SHELANSKI. Yes. So that is, I think, at the heart of what the Executive Order is aimed to achieve, and in the first order, through the rulemaking processes that the agencies undertake, these are principles that the agencies are directed to follow and that OIRA in its review of the agency regulations will try to ensure.

I think that the way that this gets implemented in practice is through a number of functions that OIRA undertakes. The first is the cost-benefit analysis, where legally permissible, and OIRA will ensure that has been done as well as possible.

Second, through ensuring that regulatory flexibility and regulatory alternatives have been properly considered, to the extent that they are consistent with the statutory objectives.

And, finally, through the retrospective review process, by further institutionalizing and fostering that practice to make sure there are not undue burdens.

Senator COBURN. OK. In an ideal world, we would pass laws. The agencies would endeavor to implement the legislation, looking at congressional intent, by promulgating regulations based on the authority given to them. The problem is, we do not live in an ideal world. So as the Administrator of OIRA, how will you handle regulations that seem to rise not out of new statutory authority, but out of preferences at agencies?

Mr. SHELANSKI. I think it is always important for the agency heads to be able to set their priorities consistent with the statute. Certainly, were I to be confirmed as Administrator of OIRA, I would look forward to working with the relevant agencies and with the staff at OMB to understanding what kind of legal review is relevant to the OIRA analysis and to ensuring certainly that the laws and regulation related to regulatory process to which the agencies are bound have been observed.

Senator COBURN. I will submit the rest of my questions for the record.

Chairman CARPER. All right. We have been joined by Senator Portman. I will just say to Isaac—Isaac, your Dad has been nominated for this job in the Office of Management and Budget and there are a number of senior positions there, but the person who runs it is the Director of OMB. Currently, it is a woman named Sylvia Mathews Burwell, who is brand new but we think she is going to be really good.

I am going to say 8 years or so ago, President George W. Bush nominated a Congressman from Ohio named Rob Portman to be the OMB Director and later Trade Representative, and he did well enough at those jobs that the people of his State let him be a Senator. So now he has the privilege of serving here with Tom Coburn and I, Ron Johnson, Carl Levin and others.

But he brings a lot of value to this Committee and to the Senate. He would probably be a good guy to go to for some advice, if you are lucky enough to get confirmed. Rob.

OPENING STATEMENT OF SENATOR PORTMAN

Senator PORTMAN. Thank you, Mr. Chairman. Thank you for having the hearing. You and Senator Coburn have been focused on these issues long before you were Chair and Ranking Member and it is an important responsibility.

I would say to your son who is here, your Dad has been nominated for the most important job in Washington that nobody has ever heard of, and you have probably found that when you talked to your classmates about it. They are, like, "What? Oh-what?" [Laughter.]

But it is a really important job. So to Professor Shelanski, thank you for your willingness to step up and be considered for this job.

In my view, again, it is a job that is much more important than most people realize because it affects the economy in very fundamental ways. It affects all of us as citizens. The job is to ensure there is a really rigorous cost-benefit analysis applied and that we use the least burdensome alternatives and to bring as many agencies as possible into that, and a number of us are working, including the Chair and Ranking Member, on trying to ensure that independent agencies are brought into more discipline in terms of the cost-benefit analysis, as well. But even on existing Executive Branch agencies, there is much more work to be done.

Sometimes, the OIRA role is viewed as very technical, and I agree that it is, but ultimately, it is about ensuring that these big rules do have a positive rather than negative impact on our economy and that they do derive benefits.

Let me get into a couple of questions, if I could. One is about regulatory burden generally. The White House has repeatedly stated it is working hard to, and I quote, "minimize regulatory burdens and avoid unjustified regulatory costs." That has certainly been a common refrain, going back to the Reagan Administration, for OIRA. But I would say on a real measure of regulatory output, which would be economically significant rules—those are rules, as you know, with over $100 million of impact on the economy—if you look at President Obama's first term, he was significantly more aggressive with regard to, again, economically significant rules than any predecessor since we have kept records.

In fact, according to the Administration's own estimates, the cost of rules issued in 2012 alone exceeded the costs of all rules in the entire first terms of Presidents Bush and Clinton combined. So 2012 alone, major rules had more impact than the entire first term of President Bush and President Clinton combined.

So I would start by asking a very simple question. Can we do better than that? And if confirmed, can you improve on that record in terms of minimizing the burden of regulations on our economy?

Mr. SHELANSKI. Thank you very much, Senator Portman. Should I be confirmed as Administrator, it would be one of my highest priorities to ensure that OIRA fully conducted the kinds of cost-benefit analysis that the Executive Orders refer to, and where permissible under the statute, to ensure that regulations are no more burdensome than essential to achieve their benefits. And it would be my hope that through that process, regulatory burdens could be reduced.

Senator PORTMAN. My second question would be about the look-backs. As you know, back in January 2011, the White House announced they were going to do a look-back. I strongly supported that. I think it is a good idea. It is a house-cleaning exercise. I would say it is required by law and has been since 1981.

But I have also followed the results. Out of roughly 90 rule changes undertaken so far as part of this regulatory look-back, the estimated compliance cost savings is $3.3 billion, and that is according to analysis by the American Action Forum of Agency Data that was published in the Federal Register. That is a lot, and that is good.

However, if you put that figure in context, it is less encouraging. According to this data, last year alone, one year, the Administration finalized new regulations with costs of $236 billion, again, based on numbers reported by the agencies themselves. So last year alone, we added more than 70 times the reported cost savings from all of the regulatory look-back.

The same report, by the way, said that even if you look at those 90 rules undertaken by agencies as part of regulatory look-back, the new costs imposed totaled $11 billion. In other words, the costs of regulations attributed to look-back actually exceeded the cost savings by nearly $8 billion. I do not think that is eliminating red tape.

These estimates are based, by the way, on timeframes provided by the agencies themselves. Some of the costs are annualized, some for a 5- or 10-year period, and that has not been standardized. We do need more uniform cost reporting standards, in my view, to be able to really understand an apples-to-apples comparison.

Anyway, you had said in your prehearing questions you intended to emphasize this important effort of retrospective review. How do you plan to encourage agencies to focus more on making sure existing regulations are working and paring back those that are unnecessary? I think this area is one where we could really benefit from more transparency. Again, would you be willing to commit to clearly report and track on reginfo.gov the actual results of the regulatory look-back initiative, proposed and the final, including quantified cost savings from it and maybe a regulatory look-back dashboard that tracks annualized savings so, again, we can have a comparison on an annual basis?

Mr. SHELANSKI. Senator Portman, we come from a common viewpoint on the importance of retrospective review and trying to reduce the costs of regulation. And should I be confirmed as Administrator, a very high priority for me would be developing working relationships with the agency heads and working closely with the staffs of OIRA and the agencies to understand how the regulatory look-back could be further institutionalized, and I would be very interested in understanding ways that the progress of the regulatory look-back and of retrospective review could be better tracked and understood for you and for the public.

Senator PORTMAN. And, specifically, would you be willing to commit to track on reginfo.gov the results of the look-back so there is more transparency?

Mr. SHELANSKI. Should I be confirmed as Administrator, I would commit to looking into what the possibilities are for using reginfo.gov in relation to the retrospective review process. It is something that I will need to learn more about.

Senator PORTMAN. All right. If you have further thoughts on that prior to your confirmation,[1] though, we would appreciate hearing from you, if you do not mind looking into that further, because I do think that would be very helpful to those of us trying to figure out whether it is working or not.

[1] Mr. Shelanski response to Senator Portman's question appears in the Appendix on page 88.

Do you believe that regulatory cost-benefit analysis with review by OIRA is important, and if so, do you think independent agencies ought to be brought under the cost-benefit analysis?

Mr. SHELANSKI. Thank you, Senator Portman. I think the question of independent agencies is a very important one. I would start by saying that I think cost-benefit analysis is an extremely important, valuable tool that could be used by any entity that is engaged in regulation. Should I be confirmed as Administrator, I would look forward to understanding better and working with you and other Members of the Committee on the specific concerns involving independent agencies and what the, indeed, costs and benefits of bringing independent agencies under OIRA types of mandates would be.

Senator PORTMAN. Would you be willing to commit today to work with those of us in Congress who are proposing legislation in this area to try to improve the economic analysis by independent agencies?

Mr. SHELANSKI. One of my priorities, should I be confirmed as Administrator, would be to have open communication with you in Congress and would always be available to discuss matters of concern to you and OIRA.

Senator PORTMAN. One thing, and my time is ending here and I appreciate the Chairman giving me a little extra, but the legislation that this Committee is looking at extends requirements to independent agencies as the President has proposed, but it makes clear that OIRA would not have the power to stop or do the return of regulations in that they are independent agencies. So transparency and public scrutiny would be the main source of accountability to ensure that independent agencies comply. Just so you understand, that is the legislation that we are putting forward. We think it is consistent with what the President has proposed in his Executive Order and certainly what he has said publicly. Increasingly, again, so many of these major rules are coming from independent agencies, it seems to us that makes sense to include them within a basic cost-benefit analysis and least burdensome alternative.

Thank you, Professor, and I look forward to working with you.

Mr. SHELANSKI. Thank you, Senator Portman.

Senator PORTMAN. Thank you, Mr. Chairman.

Chairman CARPER. Senator Portman, thanks for all those different hats you have worn and especially for wearing this one with us today.

Senator PORTMAN. You have got it.

Chairman CARPER. A couple more questions, if I could. In some instances, there is robust science, as you know, identifying a public health need for a regulation, but it is difficult to quantify the benefits in economic terms. I mentioned earlier my comments with those utility CEOs about air emissions, and one of the emissions that we discussed that day was mercury emissions from coal-fired utility plants. The science is very clear that mercury pollution impairs children's brain development and we need to act to clean it up and we have to a good extent. But it is difficult to quantify the long-term economic benefits of healthier, smarter kids, like your son.

Let me just ask you if you believe that OIRA should give deference to the regulatory agency in a case like this when the health benefits are clear, but the economic data not so clear.

Mr. SHELANSKI. Thank you, Chairman Carper. This is, obviously, a central question. I do not believe that it is the role of OIRA, or, should I be confirmed, the OIRA Administrator, to substitute its judgment about science and regulatory priorities for those of the expert agency staff and the agency heads. I do believe that it is the job of OIRA to ask hard questions and to make sure that the evidence relied on is sound and meets applicable standards.

With regard to the cost-benefit analysis itself, as I stated before in response to a question from Senator Levin, cost-benefit analysis is critical. As much as can be quantified in the analysis of a regulation should be quantified. But there are certainly some things that cannot be quantified. Indeed, sometimes the major cost or the major benefit of a regulation may be not easily quantifiable, yet it may be the major effect. And in those cases, I think that the regulatory review needs to recognize those effects, explain what can be quantified and what cannot, and where the judgment of the benefits is based on sound science, sound analysis, it should pass review.

Chairman CARPER. All right. Thank you. I am going to ask a related question, and you have already answered it in part, but I am going to ask it anyway. Maybe you can add something to what you have said.

As you know, some agencies have been directed by Congress to ignore economic impacts. One such example is Congress' direction to EPA under the Clean Air Act to establish air pollution health standards. We call them the National Ambient Air Quality Standards. In your earlier answers to the Committee, I think you stated that in such situations, you believe that—and this is a quote—"the statute requires a different way of making regulatory decisions. OIRA would adhere to those criteria when reviewing rules," close quote. Could you just explain just a bit more your answer, and do you believe that OIRA should give deference to an agency in these circumstances?

Mr. SHELANSKI. Thank you. That quote, I believe, is a quote. It certainly should be. It sounds like it certainly is exactly my view, that should I be confirmed as Administrator, I and OIRA would follow the law in terms of the applicable analysis.

Of course, OIRA review is not limited to cost-benefit analysis. There are other parts of review. There is the interagency review process to ensure that a rule is not duplicative, to ensure that a rule is not in conflict with another agency's rule. So there would still be grounds for OIRA review and a role in the process for the office even if cost-benefit analysis as applied to other kinds of rules might be a lesser part of that.

I would also add that ensuring that data quality, peer review, and other applicable standards have been met would be part of the OIRA review process.

Chairman CARPER. OK. Thank you. Let us talk a little bit about information management and privacy. I want to focus for a minute or two on the responsibilities of the OIRA Administrator with regards to information.

Federal agencies are producing, as you know, collecting, and storing more information than ever before. This deluge of information allows agencies to better meet their missions in many respects, but also comes with significant costs and challenges. What do you see as the biggest challenges that agencies face in managing the vast amounts of information they now have? And, if confirmed, what would be your priorities in helping agencies to manage their information?

Mr. SHELANSKI. Chairman Carper, I think that the "I" in OIRA is vitally important. We have been talking a lot this morning about regulation, but should I be confirmed as Administrator, the "I" will certainly receive its full measure of attention because of what you just said.

Agencies across the Federal Government are wrestling with a variety of challenges and issues related to data. Those would include how to balance making data available in usable form to the public with privacy considerations and needs for confidentiality where those apply. Indeed, in my current role at the Federal Trade Commission, we often deal with challenges in cases that we review, mergers that we might review, investigations we undertake, on how to ensure parties that sensitive data that they are handing over to the agency will be protected. But at the same time, there is the balance of deciding what information can and should be released to the public so that the enforcement process is as transparent as possible, and what information can and should be shared with other agencies that may have an interest in the process.

These are the kinds of challenges that government agencies face, and should I be confirmed as Administrator, I would look forward to working with the Director of OMB and other agencies in the intergovernmental process that is contemplated under the Privacy Act for balancing sound privacy policy with public transparency and making data available insofar as possible to the American public.

Chairman CARPER. OK. Thank you. I will stop there for now. I have a couple more questions I want to ask, but let me yield back to Senator Portman, if he has some more questions, and then I will close it down. Thank you. Senator Portman.

Senator PORTMAN. Thank you, Mr. Chairman.

Let me just follow on. My ears perked up when you were talking about information, and I do think that we can do better. As you know, for nearly three decades now, OIRA Directors and OMB Directors of both parties have published their plans for new regulations. They do so twice a year, and it is an incredibly important opportunity for citizens to see what is coming up and prepare for it. That transparency measure, by the way, is required under President Clinton's Executive Order and also by the Regulatory Flexibility Act, so both by E.O. 12866 and the Regulatory Flexibility Act. And it calls for a publication of a regulatory agenda in the spring and one in the fall and it lets people know what is in the pipeline, which, I think, is incredibly important, including knowing what the potential compliance costs might be on small business.

As its title suggests, the spring regulatory agenda is typically published in the spring. That is April or May. The fall is usually October or November. Last year, the spring agenda was never re-

leased. There was no spring agenda, and it was the first time in decades, to my knowledge. I wrote two letters to the President about this, never heard back. I did not even get the courtesy of a response. Instead, during the election year, the regulatory agenda was released, but not in the spring, not in the fall, but in the winter, after the election, on Friday, December 22, a day when people were concerned about other things, like the holidays.

In your briefing for this hearing, have you learned why OMB decided to skip the spring regulatory agenda and push back the fall regulatory agenda? Does this represent a policy change? Are we seeing less transparency from an Administration that has claimed that it is the most transparent in history?

Mr. SHELANSKI. Thank you, Senator Portman. I share your concerns with transparency and the need to publish the regulatory agenda. In my preparation for these hearings, being outside of OMB, I have not learned about why one agenda was not published and about the timing of other agendas.

But I can much more easily answer your other question, about a policy change. Should I be confirmed as Administrator, I think it is vitally important that Americans, businesses, those who would benefit from regulation, and those who would bear its costs, have notice of what is in the regulatory pipeline. It will be among my highest priorities to ensure that the regulatory agenda is published insofar as possible twice a year and in a timely fashion.

Senator PORTMAN. OK. I would just make the point, again, it is required by law. It is required by Executive Order. And insofar as possible is better than saying we are going to do what we did last year, but what this Committee, I think, would like is a commitment that you will, in fact, follow the law, and in the spring publish an agenda and in the fall publish an agenda. If you are prepared to make that commitment today, that would be very helpful to me and, I know, other Members of this Committee. If not, then I would ask you to think a little about this prior to your confirmation vote and give us an answer.

Mr. SHELANSKI. Thank you, Senator Portman. Should I be confirmed as Administrator, I look forward to understanding the legal obligations with regard to the regulatory agenda and to following the law on the regulatory agenda and would look forward to working with you and others on the Committee, hearing your concerns if there are concerns that those legal obligations are not being lived up to.

Senator PORTMAN. OK. Thank you. Thank you, Mr. Chairman.

Chairman CARPER. Let me ask you, have you ever worked with Sylvia Burwell, the OMB Director? How do you know her?

Mr. SHELANSKI. Chairman Carper, I have not yet had the opportunity to work with her. We had a brief meeting some time ago. We ran into each other in the hallway the other day and had a wonderful chat and she gave me a hearty "good luck" shout out this morning as I was leaving the building. [Laughter.]

She strikes me as very impressive and I look forward to working with her.

Chairman CARPER. I once called Erskine Bowles, who is an old friend, when she was nominated by the President for this job and I said, Erskine, what can you tell me about Sylvia Burwell? He

said, "You mean Sylvia Mathews Burwell?" I said, yes. And he said, "I have known a lot of people who have good interpersonal skills, who are just really good at working with people." He said, "She is really exceptional." He said, "I have known a lot of smart people, a lot of really bright people in my life, and," he said, "she is scary smart. And," he said, "I have known people who are good at getting things done. You give them a job, they get it done. And," he said, "she is the best."

She was his deputy when he was Chief of Staff to President Clinton, and later, she was the Deputy OMB Director for, I think, the last 2 years of the Clinton Administration. But, he said, "I have known people good at one of those three things." He said, "I have never known anybody who was as good at all three."

So we are encouraged that the President has nominated her. We got her confirmed 96 to zip and we are working on getting a deputy in there now. I think we have hotlined it. I do not know if Senator Portman is aware of that. I think we hotlined Brian Deese's name yesterday or the day before and we hope to get him cleared, as well.

Let me ask another question or two and then we will call it quits. But as Administrator of OIRA, you would play a significant role, as you may know, in the protection of personal privacy by the Federal Government and oversee numerous regulations that protect the privacy rights of millions of Americans. I believe that more can be done to protect personal information. I hope that privacy protection will be a priority of OIRA under your leadership.

Let me just ask, as OIRA Administrator, how would you approach the challenge of privacy and how would you balance the need to protect personal information with the need to ensure government transparency?

Mr. SHELANSKI. Thank you, Senator Carper. Mr. Chairman, this is one of the most important balances that I think a lot of Federal agencies are facing today. As I mentioned before, I think that balancing privacy, data security, and public access and transparency is quite important. I would look forward to working with Director Burwell and others in the government in the formulation of privacy under the Privacy Act, and it would certainly be, should I be confirmed as Administrator, a very high area of policy priority for me, given how vital it is for Americans both to have access to government data so they understand what their government is doing, but also to be confident that in submitting data to their government, that which should be kept private is kept private.

Chairman CARPER. All right. OIRA also plays a role in coordinating and overseeing policies and practices across agencies that allow greater public access to information. What will be your priority in fulfilling these functions of the office, and generally, what role do you believe OIRA should play in promoting greater transparency governmentwide and what approaches would you take to improve government transparency?

Mr. SHELANSKI. Chairman Carper, I would look forward to working with the Chief Information Officers (CIOs) of the different agencies, and with the Chief Technology Officer in the Administration, to try to ensure that when the public seeks access to information and to data, as, for example, they can do from their home com-

puter with the work of OIRA and other agencies, that they obtain data that is clear, understandable, and in usable form, to the extent possible. There is still a lot of coordination and progress to be made in this area and it is an area in which I would look forward to working with others in the relevant agencies and with the Director of OMB and the CIO Council to make progress on.

Chairman CARPER. OK. Two more and we are done.

In your answers to prehearing policy questions from our Committee, you said you would seek to have a collaborative and a consultative relationship with the agencies, including informal consultation with agencies earlier in the rulemaking process when it would be useful. I commend you for that. What will you do, if confirmed, to ensure that OIRA is taking the appropriate role during these early consultations with agencies and to ensure transparency prior to formal review?

Mr. SHELANSKI. Thank you, Chairman Carper. One of the things that I look forward to understanding and learning more about, should I be confirmed as Administrator, is exactly how interactions with the agencies work and where and when it might be appropriate for informal and early review to take place. But what I mean by that is where informal and early review would make the regulatory process more efficient and would be of benefit to the agencies.

It is not, in my view, and should I be confirmed as Administrator would not be my view, a place for the OIRA Administrator to put the OIRA Administrator's policy preferences and agenda in the place of those of the agency heads. So I think it is extremely important that kind of consultation and review be, as I said, collaborative and be something that is desired by and found to be helpful by the agency heads, and is not a vehicle for supplanting agency policy priorities.

Chairman CARPER. OK. The E-Government Act required the development of a system for finding, for viewing, and for commenting on Federal regulations. The goal was not just transparency, but to also give individual citizens the opportunity to easily comment on proposed regulations that would affect their own daily lives. What are your thoughts, if you have some, on regulations.gov, and what will you do as OIRA Administrator—what would you do as OIRA Administrator to enhance the ability of citizens to view and to actually comment on regulations?

Mr. SHELANSKI. Thank you, Chairman Carper. Through reginfo.gov and through regulations.gov, there is a lot of opportunity for every American to learn a lot about the regulatory process, what is in the pipeline, and what is going on. I look forward, should I be confirmed as Administrator, to ensuring that these systems remain as useful and as helpful to Americans as possible because I agree completely that American citizens must be able to comment on regulations, both those who would benefit and those who would bear the costs.

I would add that, in a similar vein, under Executive Order 12866, anybody can request meetings with OIRA in order to express their views, and again to make clear that means anybody on all sides of the debates, and that is another vehicle through which transparency can be brought into the review process.

Chairman CARPER. Senator Portman, anything else you would like to bring to the table?

Senator PORTMAN. Thank you, Chairman.

Chairman CARPER. OK. Thanks. Thanks so much for being here.

As you go forward, if you are confirmed, and I hope you will be, I would urge you to take advantage of his counsel from time to time. He will not steer you wrong, at least not too often, so——

Mr. SHELANSKI. It would be an honor.

Chairman CARPER. The last thing I want to ask you, this is just sort of an informal question, but when you think about this job and you think about the kind of not just qualifications on a resume but think of the kind of qualities that we should look for—personal attributes and leadership skills that we ought to look for, the President should look for and we should look for, for someone who is going to be serving in this post—what might be some of those?

Mr. SHELANSKI. Well, I will tell you, I think one of the most important things is the ability to lead a staff and to work well with a variety of constituencies. There is a lot of analytic work and a lot of technical work that goes into what OIRA does. But this is a hard job and it is a small office that tries to do a lot. And the way that a small office does a lot is when there is good leadership and the leadership has the confidence of the staff so the staff feels that their incredibly hard work is going toward a productive direction.

And it is very important that those who are affected by and part of the process feel like the process is one that is working well, and when they are told something, it is the truth and that they can have confidence in who is running that process, because without that, there are slowdowns, there is reservation, there is circumvention of the process. And OIRA has to coordinate so many moving parts, I think that there is a risk that the machine could simply break down.

So as important as it is that the Administrator of OIRA has the analytic skills to be sure that review is being undertaken according to high quality standards, I think it is also important to make sure that they will be able to build the relationships and manage the office and those offices' relationships in a way that it will be successful in its many missions.

Chairman CARPER. I just want to say on a personal note, Senator Portman and I have, in our personal lives, we have children. They are a little bit older than your son, but we love being dads and are looking forward to Sunday, Father's Day. You have a young son here who is, what, 14? Is that what you said? Tell us a little bit about him.

Mr. SHELANSKI. Well, he is a remarkable kid, but I guess most dads would say that. We talked about common sense. For a 14-year-old, I think he is doing pretty well on the common sense front. But he is a smart kid, a lot smarter than I am. Were he a little older, I think he would certainly be in this seat instead of me. And when I talk about a kid who gets along with folks and can build those kinds of relationships that get people moving in the same direction, he is that kid. And he is a heck of a good athlete, a lot better than I ever was.

Chairman CARPER. What sports?

Mr. SHELANSKI. What sports? Well, he is mostly a competitive fencer——

Chairman CARPER. Whoa.

Mr. SHELANSKI. And he is a pretty darn good soccer player.

Chairman CARPER. No kidding. You do not meet many competitive fencers these days.

Mr. SHELANSKI. You do not want to try to steal anything off of his plate. [Laughter.]

Chairman CARPER. All right. Well, I just want to say, Isaac, thanks for your willingness to share your Dad with us. Nicole, thank you for your willingness to share him with the people of our country. And to Mom and Dad, thank you for raising him, educating him, and imparting in him some of the values that we have talked about here today.

The hearing record will remain open until noon tomorrow—that will be June 13, at 12 p.m.—for the submission of statements and questions for the record.

If there is nothing else to be said, and hearing nothing else, we are going to adjourn this hearing. Thank you so much.

Mr. SHELANSKI. Thank you.

[Whereupon, at 11:25 a.m., the Committee was adjourned.]

APPENDIX

Opening Statement of Chairman Thomas R. Carper

Nomination of Howard A. Shelanski to be Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget
June 12, 2013

As prepared for delivery:

Today we meet to consider the nomination of Howard Shelanski, President's Obama's choice to serve as Administrator of the Office of Information and Regulatory Affairs (-- an office that we usually call by its acronym, "OIRA").

This important office within the Office of Management and Budget has been without a Senate-confirmed leader since last August, when then Administrator Cass Sunstein left government service. I am therefore very pleased that the President has nominated someone who I believe is highly qualified, and I intend to work with my colleagues on this Committee to complete our review and to report the nomination for action by the full Senate as soon as we can.

Although OIRA is not well known outside of Washington, it has a very important role across the government and in our daily lives.

Congress passes laws that draw lines between what is acceptable and unacceptable in our society, whether it's to protect our public health, the economy, or the natural environment.

But we in Congress cannot cover every situation in the legislation we pass, so we leave many of the particulars to the regulatory process.

For many years, Presidents have asked OIRA to help oversee and coordinate our regulatory process and to review the most important proposed rules. Americans are impacted by the decisions and actions of OIRA every time they take a drink of water or go to the bank.

Although some people think we need to choose between regulation and having a robust, growing economy, I disagree. I believe that federal regulations should only be issued when there is a real need, when they are cost-effective, and when they make sense. When these conditions are satisfied, federal regulation serves an essential purpose in protecting the environment, health, safety, consumers, and our financial system.

For example, by advocating a common-sense, cost-effective approach to our nation's environmental and energy challenges, we can reduce harmful pollutants, lead healthier lives, lower our energy costs, and help put Americans to work manufacturing new products.

OIRA has also been tasked with coordinating agencies' reviews of their existing regulations, in order to explore whether any should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome.

Furthermore, OIRA, together with the Office of E-Government and OMB as a whole, has important responsibility in managing the government's immense information resources. The OIRA Administrator also has responsibility for implementing the Privacy Act of 1974, which

governs the collection, maintenance, use, and dissemination of information about individuals maintained by federal agencies, such as the Department of Veterans Affairs, the Social Security Administration, the Centers for Medicare and Medicaid Services, and the Office of Personnel Management.

The head of OIRA thus has several critical roles in determining how citizens will interact with their government.

I am pleased that the President as presented us with a nominee with the training and experience to take on these important challenges.

Mr. Shelanski has earned both a law degree and a Ph.D. in economics from the University of California at Berkeley. This combined training and expertise in law and economics should be especially valuable in his role at OIRA of helping ensure that our federal regulatory programs both conform to law and achieve the best practical results for the American people.

Mr. Shelanski comes well prepared to take on the challenges of this position from his extensive government service – first as Senior Economist for President Clinton's council of Economic Advisors, then as Chief Economist at the Federal Communications Commission, and more recently as a manager within the Federal Trade Commission's bureau of Economics, which he has headed since May of 2012.

While not serving in the government, Mr. Shelanski has also had a distinguished career in academia, first as a professor at the University of California at Berkeley – his alma mater – and later at Georgetown University Law Center. And – as another indication of both Mr. Shelanski's intellect and breadth of experience – he began his legal career as a law clerk for Supreme Court Justice Antonin Scalia.

Not surprisingly, Mr. Shelanski has earned a reputation among those he's worked with of being not only very smart, but also articulate and highly collegial – qualities of character that will serve him well at a place like OIRA at the heart of government.

So my recommendation to my colleagues on this Committee is that we support this nomination and promptly report it to the full Senate.

Mr. Shelanski, we welcome you before this Committee and look forward to your testimony.

Opening Statement of Senator Tom Coburn

Nomination of Howard A. Shelanski to be Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget
June 12, 2013

Thank you, Chairman Carper.

Mr. Shelanski, thank you for being here today. I think you realize already, that being the Administrator of OIRA is tough job, a job that requires balancing the interests of Congress, of the Administration, and most importantly, of the men and women who will be affected by the regulations you approve. It's a challenging assignment, and my hat is off to you for being up for it.

We here in Washington often get lost in process discussions – we could talk until everyone here is blue in the face about notice and comment periods, about the intricacies involved in building cost estimates for new rules, and so on. But sometimes we do not spend enough time thinking about the real world implications of expanding the regulatory state.

Make no mistake, there will be pressure on you to rush regulations out, to eliminate a so-called backlog and to publish rules that OIRA has seemed to hold up for years. But sometimes being the country's top regulator means you have to be the bad guy and say no – tell the agencies if they are taking too many liberties with their statutory authority. Tell the agencies that they have to follow the proper process or their rules will not be published. Question their cost estimates, hold them accountable for accuracy.

Some of my colleagues see OIRA as the last step in a rigid process by which a rule is drafted and implemented. But it isn't always so rigid. Many job creators, the people who these regulations disproportionately affect, see OIRA as their last line of defense. When a bad, or unnecessary regulation is coming, OIRA is the last place where someone can say "No." And if you don't say no when you should, these situations end in court, waste time and money and cause unnecessary heartache. Remember that we have 7.6 percent unemployment out there, we have a $1.1 trillion deficit. People are having a rough time of it.

According to a recent analysis, the total costs for Americans to comply with the current federal regulatory regime **exceeded $1.8 trillion last year.** This comes down to $14,678 per family – 23 percent of the average family's annual income. And over the last two decades, 81,883 final rules have been issued. Not to mention, many agencies have been issuing

"guidance," things like bulletins and FAQs, which they say are just advisory, but really they change and narrow rules, having the equivalent of the force of law.

My constituents tell me that the process has some serious flaws. What guarantee do they have that regulators will take their comments seriously? What are the consequences for an agency that does not do a meaningful look back at old regulations, that does not make serious efforts to lessen the burden? How can the regulated community trust some of these cost estimates that just don't seem to make much sense?

Something definitely needs to be done to improve the process, and I hope the Administration will be a partner to me, and to the Chairman, as we work on legislation to help ensure more accountability, more realistic cost estimates, and more focus on protecting small businesses – most of which do not have an army of lobbyists to help them affect, and then lawyers to help them comply with, a maze of complicated regulations.

I am eager to hear your testimony, and to work with you going forward to make sure that OIRA lives up to its extensive, but extremely important, responsibilities. Thank you Mr. Shelanski, and Mr. Chairman.

STATEMENT OF HOWARD SHELANSKI

Nominee to Serve As Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget

UNITED STATES SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENT AFFAIRS
June 12, 2013

Thank you Chairman Carper, Ranking Member Coburn, and Members of the Committee for welcoming me today. It is an honor to be considered by this committee as the President's nominee to be Administrator of the Office of Information and Regulatory Affairs.

I would like to start off this morning by thanking my family for their support in taking on this challenge. I am glad to have Nicole Soulanille, our son Isaac Shelanski, and my parents Vivien and Michael Shelanski here with me today.

I also want to thank the Members of the Committee and their staffs for meeting with me over the last few weeks. I appreciate the time many of you took from your busy schedules and thank you for sharing your insights and views as I prepared for this hearing. For those of you I have not yet had the opportunity to meet, I look forward to doing so in the future. If confirmed, I look forward to working with you and maintaining open communications. I would welcome your perspectives on the matters with which OIRA is concerned.

The Office of Information and Regulatory Affairs, often referred to as OIRA, plays an essential role in developing and overseeing the implementation of Government-wide policies on regulation, information collection, information quality and technology, statistical standards, scientific evidence, and privacy. I am humbled by my nomination to lead such an important organization.

I would like to begin by speaking briefly about my background, and about the training and experience that have helped to prepare me for the job of OIRA Administrator, should I be confirmed. I have a Ph.D in economics and a law degree, and have spent my career combining both disciplines. I joined the faculty of Georgetown University Law School in 2011, after having previously been a professor at the University of California at Berkeley since 1997. At Berkeley I also served three years as Associate Dean of the law school and was co-director of the Berkeley Center for Law and Technology. Most of my teaching and research have focused on regulation, particularly in the telecommunications sector, and on antitrust policy. In this work I have had the opportunity to analyze complex issues and their effects upon society, ranging from the virtues of switching to a less rule-based model of telecommunications regulation, to how antitrust enforcement can better accommodate and promote technological innovation.

I have also served in several Government positions. Currently, I am the Director of the Federal Trade Commission's Bureau of Economics, where I previously served as Deputy Director from 2009 to 2011. Other Government positions I have held include Chief Economist

of the Federal Communications Commission and Senior Economist at the Council of Economic Advisers. In these roles, I successfully worked with other agencies, the Congress, and the public in an effort to serve the American people.

I have also practiced law, focusing on regulatory and antitrust matters, and at the start of my career I spent time in the Judicial Branch of Government as a law clerk to Judges appointed by Presidents of both parties. I had the honor of clerking for the late Judge Louis Pollak, for Judge Stephen Williams, and for Justice Antonin Scalia.

From my past experience in Government, and from having worked for judges across the ideological spectrum, I learned the importance relying on sound evidence and rigorous analysis to make decisions, and of developing good working relationships with people of varying viewpoints and backgrounds to achieve collective goals. If confirmed as Administrator, I would draw from my own experiences and rely on the expertise and insights of the career staff at OIRA and the Agencies, others in the Administration, the Congress, and public participants in the regulatory process to fulfill OIRA's mandates. I believe that public involvement and transparency in regulation is critically important as we tackle the complex issues that our country and world face today.

If confirmed, I would look forward to working with this Committee and the Congress on these important matters. Thank you for your time this morning, and I look forward to answering your questions.

COMMON QUESTIONS FOR EXECUTIVE NOMINEES

1. Basic Biographical Information

Please provide the following information.

Position to Which You Have Been Nominated	
Name of Position	Date of Nomination
Administrator, Office of Information and Regulatory Affairs	April 25, 2013

Current Legal Name			
First Name	Middle Name	Last Name	Suffix
Howard	Adam	Shelanski	

Addresses					
Residential Address (do not include street address)			Office Address (include street address)		
			Street: 600 Pennsylvania Avenue NW		
City: Washington	**State:** D.C.	**Zip:** 20016	City: Washington	**State:** D.C.	**Zip:** 20580

Other Names Used						
First Name	Middle Name	Last Name	Suffix	Used as Middle Name	Name Used From (Month/Year) (Check box if estimate)	Name Used To (Month/Year) (Check box if estimate)
N/A					Est ☐	Est ☐

Birth Year and Place	
Year of Birth (Do not include month and day.)	Place of Birth
1964	Philadelphia, PA

Marital Status					
Check All That Describe Your Current Situation:					
Never Married	Married	Separated	Annulled	Divorced	Widowed
X	☐	☐	☐	☐	☐

Spouse's Name (current spouse only)			
Spouse's First Name	Spouse's Middle Name	Spouse's Last Name	Spouse's Suffix
N/A			

Spouse's Other Names Used (current spouse only)						
First Name	Middle Name	Last Name	Suffix	Check if Maiden Name	Name Used From (Month/Year) (Check box if estimate)	Name Used To (Month/Year) (Check box if estimate)
N/A					Est ☐	Est ☐

Children's Names (if over 18)			
First Name	Middle Name	Last Name	Suffix
N/A			

2. Education

List all post-secondary schools attended.

Name of School	Type of School (vocational/technical/trade school, college/university/military college, correspondence/distance/extension/online school)	Date Began School (month/year) (check box if estimate)	Date Ended School (month/year) (check box if estimate) (check "present" box if still in school)	Degree	Date Awarded
Haverford College	College	08/1982 Est ☐	05/1986 Est ☐ Present ☐	B.A.	May 1986
University of California at Berkeley	University	08/1987 Est ☐	05/1993 Est ☐ Present ☐	Ph.D.	May 1993
University of California at Berkeley, School of Law	Law School	08/1989 Est ☐	05/1992 Est ☐ Present ☐	J.D.	May 1992

3. Employment

(A) List all of your employment activities, including unemployment and self-employment. If the employment activity was military duty, list separate employment activity periods to show each change of military duty station. Do not list employment before your 18th birthday unless to provide a minimum of two years of employment history.

Type of Employment (Active Military Duty Station, National Guard/Reserve, USPHS Commissioned Corps, Other Federal employment, State Government (Non-Federal Employment), Self-employment, Unemployment, Federal Contractor, Non-Government Employment (excluding self-employment), Other	Name of Your Employer/ Assigned Duty Station	Most Recent Position Title/Rank	Location (City and State only)	Date Employment Began (month/year) (check box if estimate)	Date Employment Ended (month/year) (check box if estimate) (check "present" box if still employed)
Federal government employment	Federal Trade Commission	Director, Bureau of Economics	Washington, D.C.	7/2012 Est ☐	Present Est ☐
Non-government employment	Georgetown University Law Center	Professor	Washington, D.C.	7/2011 Est ☐	6/2012 Est ☐
Non-government employment	Davis Polk & Wardwell	Of counsel (part time)	Washington, D.C.	8/2011 Est ☐	6/2012 Est ☐

Non-government employment	TDS Corporation	Economic Consultant (part time)	Chicago, IL	7/2011		9/2011	
Federal government employment	Federal Trade Commission	Deputy Director, Bureau of Economics	Washington, D.C.	6/2009	Est ☐	6/2011	Est ☐
Non-government employment	New York University Law School	Visiting Professor	New York, NY	1/2009	Est ☐	5/2009	Est ☐
Non-government employment	Kasowitz, Benson, Torres and Friedman	Economic Consultant (part time)	New York, NY	1/2009		4/2009	
Non-government employment	Georgetown University Law Center	Visiting Professor	Washington, D.C.	8/2008	Est ☐	12/2008	Est ☐
Non-government employment	University of California at Berkeley, School of Law	Professor	Berkeley, CA	7/2000	Est ☐	7/2008	Est ☐
Federal government employment	Federal Communications Commission	Chief Economist	Washington, D.C.	7/1999	Est ☐	6/2000	Est ☐
Federal government employment	Council of Economic Advisers	Senior Economist	Washington, D.C.	7/1998	Est X	6/1999	Est ☐
Non-government employment	University of California at Berkeley, School of Law	Assistant Professor	Berkeley, CA	7/1997	Est X	6/1998	Est X
Non-government employment	Kellogg, Huber, Hansen, Todd & Evans	Associate (attorney)	Washington, D.C.	9/1995	Est ☐	5/1997	Est ☐
Federal government employment	U.S. Supreme Court	Law Clerk to Justice Scalia	Washington, D.C.	7/1994	Est ☐	7/1995	Est X
Federal government employment	U.S. District Court, E.D. PA	Law Clerk to Judge Louis Pollak	Philadelphia, PA	7/1993	Est ☐	7/1994	Est ☐
Federal government employment	U.S. Court of Appeals, D.C. Circuit	Law Clerk to Judge Stephen Williams	Washington, D.C.	7/1992	Est X	7/1993	Est ☐
Non-government employment	Wachtell, Lipton, Rosen & Katz	Summer Associate	New York, NY	6/1991	Est ☐	8/1991	Est ☐
Non-government employment	Price Waterhouse Consulting	Summer Associate	New York, NY	6/1989	Est ☐	8/1989	Est ☐
Federal government employment	Federal Reserve Bank of New York	Research Assistant	New York, NY	6/1986	Est ☐	7/1987	Est ☐

(B) List any advisory, consultative, honorary or other part-time service or positions with federal, state, or local governments, not listed elsewhere.

Name of Government Entity	Name of Position	Date Service Began (month/year) (check box if estimate)	Date Service Ended (month/year) (check box if estimate) (check "present" box if still serving)
Federal Trade Commission	Consultant, part time	7/2011 Est ☐	6/2012 Est ☐ Present ☐

4. Potential Conflict of Interest

(A) Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

In connection with the nomination process, I consulted with the Office of Government Ethics and the Office of Management and Budget's designated agency ethics official to identify potential conflicts of interest. I will resolve any potential conflicts of interest in accordance with the terms of an ethics agreement that I entered into with OMB's designated agency ethics official and that has been provided to this Committee.

(B) Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration or execution of law or public policy, other than while in a federal government capacity.

In 2011, I represented two companies, Blackbaud and Convio, in their merger. That merger was reviewed as a routine matter by the U.S. Department of Justice (DOJ), which entailed meeting with DOJ staff as part of that review. DOJ concluded its investigation and allowed the merger to proceed.

5. Honors and Awards

List all scholarships, fellowships, honorary degrees, civilian service citations, military medals, academic or professional honors, honorary society memberships and any other special recognition for outstanding service or achievement.

- Distinguished Service Award, Federal Trade Commission
- Concurrences Antitrust Writing Award
- Burton Award for Legal Writing
- Rutter Award for Distinguished Teaching
- Order of the Coif
- Phi Beta Kappa
- Thelen Award for Legal Scholarship
- Pardee University Fellowship (for graduate study at U.C. Berkeley)

6. Memberships

List all memberships that you have held in professional, social, business, fraternal, scholarly, civic, or charitable organizations in the last 10 years.

Unless relevant to your nomination, you do NOT need to include memberships in charitable organizations available to the public as a result of a tax deductible donation of $1,000 or less, Parent-Teacher Associations or other organizations connected to schools attended by your children, athletic clubs or teams, automobile support organizations (such as AAA), discounts clubs (such as Groupon or Sam's Club), or affinity memberships/consumer clubs (such as frequent flyer memberships).

Name of Organization	Dates of Your Membership (You may approximate.)	Position(s) Held
American Bar Association	2000 to the present	Member
The District of Columbia Bar	1996 to the present	Member
The Pennsylvania Bar	1994 to the present	Member (currently "inactive" status)
American Economic Association	1997 to 2008	Member
Cleveland Park Club	2009 to 2012	Member

7. Political Activity

(A) Have you ever been a candidate for or been elected or appointed to a political office?

No.

(B) List any offices held in or services rendered to a political party or election committee during the last ten years that you have not listed elsewhere.

I participated on policy committees related to President Obama's 2008 election campaign.

(C) Itemize all individual political contributions of $200 or more that you have made in the past five years to any individual, campaign organization, political party, political action committee, or similar entity. Please list each individual contribution and not the total amount contributed to the person or entity during the year.

Name of Recipient	Amount	Year of Contribution
Obama Victory Fund 2012	$500	9/2012
Obama Victory Fund 2012	$1000	03/2012
Obama Victory Fund 2012	$500	12/2011
Obama Victory Fund	$252	10/2008
Obama Victory Fund	$652	10/2008
Obama Victory Fund	$300	10/2008
Obama Victory Fund	$400	10/2008
Obama For America	$500	9/2008
Obama For America	$300	9/2008
Obama For America	$250	7/2008

Obama For America	$300	3/2008
Obama Victory Fund	$200	1/2008
Obama For America	$1000	1/2008
Obama For America	$500	1/2008
Obama For America	$250	12/2007
Obama For America	$250	11/2007
Obama For America	$250	5/2007
Obama For America	$250	4/2007
Hilary Clinton for President	$500	2/2007
Hilary Clinton for President	$500	11/2007

8. Publications and Speeches

(A) List the titles, publishers and dates of books, articles, reports or other published materials that you have written, including articles published on the Internet. Please provide the Committee with copies of all listed publications. In lieu of hard copies, electronic copies can be provided via e-mail or other digital format.

I did my best to identify all books, articles, reports, speeches, testimony and other materials including a thorough review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials that I have been unable to identify, find or remember. I have located the following:

Title	Publisher	Date(s) of Publication
Information, Innovation, and Competition Policy for the Internet	University of Pennsylvania Law Review, Vol. 161	April 2013
Standard Setting Organizations Can Help Solve the Standard Essential Patents Licensing Problem	CPI Antitrust Chronicle	March 2013
Merger Enforcement across Political Administration in the United States	Concurrences	2012
Antitrust and Regulation in Research Handbook on the Economics of Antitrust Law	Edward Elgar	2012
Justice Breyer, Professor Kahn, Antitrust Enforcement in Regulated Industries	100 Cal. L. Rev. 487-517	April 2012
The Case for Rebalancing Antitrust and Regulation	109 Mich. L. Rev. 683-732	2011
Enforcing Competition During an Economic Crisis	77 Antitrust L.J. 229-245	2010
Economics at the FTC: Mergers, Dominant-Firm Conduct, and Consumer Behavior	Review of Industrial Organization 37:263-277	October 2010
Vertical Relations and 'Neutrality' in Broadband Communications: Neither Market nor Hierarchy? in Regulation, Deregulation, Reregulation: Institutional Perspectives 151-169 (Claude Ménard & Michel Ghertman eds.)	Edward Elgar	2009
Antitrust and Regulation in the E.U. and U.S.: Legal and Economic Perspectives (Howard A. Shelanski & François Lévêque eds.)	Edward Elgar	2009
Antitrust Law, Policy, and Procedure: Cases, Materials, Problems	Newark, N.J.: LexisNexis 6th ed.	2009
Unilateral Refusals to Deal in Intellectual and Other Property	76 Antitrust L.J. 369-395	2009
Adjusting Regulation to Competition: Toward a New Model for U.S. Telecommunications Policy	24 Yale J. on Reg. 55-105	Winter 2007
Resale Price Maintenance Comes Out of the Kloset	Berkeley Center for Law, Business, and the Economy	June 2007

Merger Analysis and the Treatment of Uncertainty: Should We Expect Better	74 Antitrust L.J. 537-574	2007
Mergers and Innovation	74 Antitrust L.J. 1-85	2007
Network Neutrality: Regulating with More Questions Than Answers	6 J. on Telecomm. & High Tech. L. 23-40	2007
Antitrust Law as Mass Media Regulation: Can Merger Standards Protect the Public Interest	94 Cal. L. Rev. 371-421	March 2006
Telecommunications Law and Policy	Carolina Academic Press 2d ed	2006
Merger Policy and Innovation: Must Enforcement Change to Account for Technological Change?	5 Innovation Pol'y & Econ. 109-165	2005
Inter-Modal Competition and Telecommunications Policy in the United States	International Journal of Digital Economic No. 60, Communications and Strategies 15-38	December 2005
Antitrust, Patents and Copyright: EU and US Perspectives (Howard A. Shelanski & François Lévêque eds.)	Edward Elgar	2005
Schumpeterian' Competition and Antitrust Policy in High-Tech Markets	14 Competition 47	2004
Competition Policy for Mobile Broadband Networks	3 J. on Telecomm. & High Tech. L. 97-119	2004
Transaction-Level Determinants of Transfer-Pricing Policy: Evidence from the High-Technology Sector	13 Indus. & Corp. Change 953-966	2004
Telecommunications Mergers in the EU and US: A Comparative Institutional Analysis, in Merger Remedies in American and European Union Competition Law 172-207 (Howard A. Shelanski & François Lévêque eds.)	Edward Elgar	2003
Merger Remedies in American and European Union Competition Law (Howard A. Shelanski & François Lévêque eds.)	Edward Elgar	2003
Telecommunications Law and Policy	Carolina Academic Press	2001, supp 2003
Reforming Spectrum Regulation to Accommodate New Wireless Technology	Caltech Undergraduate Research Journal	2003

Competition Policy for 3G Wireless Services	Competition for the Mobile Internet	2003
From Sector-Specific Regulation to Antitrust Law for U.S. Telecommunications: The Prospects for Transition	26 Telecomm. Pol'y 335-355	2002
Competition and Regulation in Broadband Communications, in Broadband: Should We Regulate High-Speed Internet Access? 157-196 (Robert W. Crandall & James H. Alleman eds.)	AEI-Brookings Joint Center for Regulatory Studies	2002
Antitrust Divestiture in Network Industries	68 U. Chi. L. Rev. 1-100	Winter 2001
Competition and Deployment of New Technology in U.S. Telecommunications	2000 U. Chi. Legal F. 85-118	2000
Speech: Regulating at the Technological Edge: New Challenges for the F.C.C.	2000 L. Rev. M.S.U.-D.C.L. 3-7	2000
Economic Welfare and Telecommunications Regulation: The E-Rate Policy for Universal-Service Subsidies	16 Yale J. on Reg. 19	Winter 1999
The Speed Gap: Broadband Infrastructure and Electronic Commerce	14 Berkeley Tech. L.J. 721-744	1999
A Comment on Competition and Controversy in Local Telecommunications	50 Hastings L.J. 1617	1998-1999
Video Competition and the Public Interest Debate, in Telephony, the Internet, and the Media (Jeffrey Mackie-Mason and David Waterman, eds.	Lawrence Earlbaum Associates, Inc.,	1998
Administrative Creation of Property Rights to Radio Spectrum	41 J.L.&Econ.	1998
The Bending Line Between Conventional "Broadcast" and Wireless "Carriage	97 Colum. L. Rev. 1048	May 1997
Transaction Cost Economics in Practice: Applications and Evidence	Journal of Market-Focused Management, Vol 1, Issue 4, 281-300	1996
Empirical Research in Transaction Cost Economics: A Review and Assessment	Journal of Law, Economics, and Organization	October 1995
Robinson-Patman Act Regulation of Intraenterprice Pricing	80 Calif. L. Rev. 247	January 1992

(B) List any formal speeches you have delivered during the last five years and provide the Committee with copies of those speeches relevant to the position for which you have been nominated. Include any testimony to Congress or any other legislative or administrative body. These items can be provided electronically via e-mail or other digital format.

I did my best to identify all formal speeches and testimony including a thorough review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials that I have been unable to identify, find, or remember. I have located the following:

Title/Topic	Place/Audience	Date(s) of Speech
Conference Title – Antitrust in the Obama Second Term: What to Expect? Panel Title: US Enforcement: Any Changes to the Menu?	George Washington University, Washington, DC	3/11/2013
Information, Innovation, and Competition Policy for the Internet	Speech at the University of Colorado at an academic conference, at the University of Florida as an invited lecturer, at the University of Mannheim (Germany), at an academic conference, at the University of Pennsylvania at an academic conference, and in New Zealand at a policy conference.	Boulder, CO: 2/11/2013 U. Florida: 11/16/2012 Mannheim: 10/25/2012 U. Penn: 10/20/2012 Auckland, NZ: 8/3/2012
GCR 2nd Annual Antitrust Leaders Forum Roundtable with Agency Heads of Economics.	Miami, FL.	2/8/2013
Conference Title – Competition Law and Intellectual Property Rights: Whose Balance of Innovation and Incentives? Panel Title – Dynamic efficiencies: the courts, competition authorities, and IP authorities	University College, London, England	1/14/2013
Searle Center Conference – Antitrust Economics and Competition Policy, Panel on Internet platform competition panel	Northwestern University, Evanston, IL	9/21/2012
Georgetown Global Antitrust Enforcement Symposium, IP and Antitrust Panel	Washington, DC	9/19/2012

ABA Antitrust Spring Meeting Panel on Challenges Facing Competitive Analysis of Intellectual Property Acquisitions	Washington, DC	3/20/2012
Conference – Silicon Flatirons Digital Broadband Migration. Panel on Competition Policy in the Internet Environment	University of Colorado, Boulder, CO	2/13/2012
Panel on A New Framework for Broadband and the FCC	Mercatus Center, George Mason University, VA	09/11/2012
CRA Annual Conference Panel on Market Power, Efficiency, and Remedy Offenses in Mergers. Presentation titled Conduct Remedies and Horizontal Mergers: Some Recent U.S. Experience.	Brussels, Belgium	12/7/2011
ABA Antitrust Spring Meetings Panel on Innovation and Mergers: Evaluating the Potential Benefits, Harms, & Remedies	Washington, DC	3/30/2011
Conference – Silicon Flatirons Digital Broadband Migration Conference. Panel on Governance Strategies for Innovation Policy	University of Colorado, Boulder, CO	2/13/2011
Searle Center Conference on Antitrust Economics and Competition Policy.	Northwestern University, Evanston, IL	9/23/2011
ABA Antitrust Fall Forum Panel on Behavior Relief in Mergers and other Enforcement	Washington, DC	11/17/2011
Georgetown Global Antitrust Enforcement Symposium Panel on Merger Guidelines Meet Merger Enforcement.	Washington, DC	9/22/2011
Conference Title – Antitrust in the Wider Economy Panel Title – Antitrust and Macroeconomic Fundamentals panel.	University of Michigan, Ann Arbor, MI	10/22/2010
The Relationship between Antitrust and Regulation in Light of Credit Suisse and Trinko	Keynote address, Annual Research Symposium on Antitrust Economics, Northwestern University, Chicago	9/25/2010

Is There Life After *Trinko* and *Credit Suisse*? The Role of Antitrust in Regulated Industries	United State House of Representatives Committee on the Judiciary, Subcommittee on Courts and Competition Policy	6/15/2010
ARCEP Conference on Network Neutrality Panel on What Form of Regulation in a Converged Environment. Video of speech is available at http://video.arcep.fr/arcep_13042010_en.html	Paris, France	4/13/2010
ABA Antitrust Spring Meetings The Impact of Economic Crises on Antitrust Policy–has economic turmoil around the world affected antitrust? The scholars debate.	Washington, D.C.	4/21/2010
Conference -- Silicon Flatirons Digital Broadband Migration Speech on regulatory jurisdiction over the Internet	University of Colorado, Boulder, CO	1/31/2010
AALS Annual Conference Antitrust Enforcement in Times of Economic Crisis	New Orleans, LA.	1/6/2010
ABA Antitrust Spring Meetings Panel on Standard Setting in the US and EU: Can we Bridge the Transatlantic Gap.	Washington, D.C.	3/25/2009

(C) List all speeches and testimony you have delivered in the past ten years, except for those the text of which you are providing to the Committee.

I did my best to identify all formal speeches and testimony including a thorough review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials that I have been unable to identify, find, or remember. I have located the following:

Title	Place/Audience	Date(s) of Speech
CCP Fourth Annual Conference -- Balancing Regulation and Competition Panel on Balancing Regulation and Competition	University of East Anglia, Norwich, UK	7/7/2008
Conference -- Remedies for Dominant Firm Misconduct Presentation title: Unilateral Refusals to Deal by Dominant Firms	University of Virginia, Virginia.	6/4/2008
Internet Policy for the Next Administration	Robert Strauss Center, University of Texas, Austin, TX	4/21/2008

Conference – The Enduring Lessons of the Breakup of AT&T: A Twenty-Five Year Retrospective After Trinko, Could a Little Regulation be a Dangerous Thing?	University of Pennsylvania Law School, Pennsylvania.	4/18/2008
Conference – Merger Analysis in High Technology Markets Technological Change and Merger Policy's Third Era.	George Mason University, Virginia.	2/2/2008
Conference -- Basic Methods in Radio Spectrum Planning and Management Presentation on U.S. radio spectrum policy.	Cha-Am, Thailand.	8/20/2007
Conference -- International telecommunications policy, sponsored by Thai National Telecommunications Commission Presentation title: Benefits of Moving to a More Open and Competitive Telecommunications Market.	Bangkok, Thailand.	8/19/2007
Kobe University CDAMS International Symposium Panel on Basis Report	Awaji Island, Japan.	8/18/2007
Conference – Silicon Flatirons Digital Broadband Migration Presented paper titled: Network Neutrality: Regulating with More Questions than Answers.	University of Colorado, Boulder, CO	2/11/2007
AALS Annual Conference Panel on Will the Internet Restructure Telephony?	Washington, D.C.	1/5/2007
Conference -- Thai NTC International Telecommunications Conference U.S. telecommunications regulation and development of broadband in the U.S.	Bangkok, Thailand.	9/25/2006
Conference -- Antitrust and Regulation in the EU and the US	Paris, France.	January 2006
AALS Annual Conference Evolving Antitrust Treatment of Dominant Firms	San Francisco, CA	1/7/2005
Conference Title – Antitrust, Patent, and Copyright in the EU and US.	Paris, France.	January 2004

9. Criminal History

Since (and including) your 18th birthday, has any of the following happened?

- Have you been issued a summons, citation, or ticket to appear in court in a criminal proceeding against you? (Exclude citations involving traffic infractions where the fine was less than $300 and did not include alcohol or drugs.)
  No.
- Have you been arrested by any police officer, sheriff, marshal or any other type of law enforcement official?
  No.
- Have you been charged, convicted, or sentenced of a crime in any court?
  No.
- Have you been or are you currently on probation or parole?
  No.
- Are you currently on trial or awaiting a trial on criminal charges?
  No.
- To your knowledge, have you ever been the subject or target of a federal, state or local criminal investigation?
  No.

If the answer to any of the questions above is yes, please answer the questions below for each criminal event (citation, arrest, investigation, etc.). If the event was an investigation, where the question below asks for information about the offense, please offer information about the offense under investigation (if known).

A) Date of offense:

   a. Is this an estimate (Yes/No):

B) Description of the specific nature of the offense:

C) Did the offense involve any of the following?
   1) Domestic violence or a crime of violence (such as battery or assault) against your child, dependent, cohabitant, spouse, former spouse, or someone with whom you share a child in common: **Yes / No**
   2) Firearms or explosives: **Yes / No**
   3) Alcohol or drugs: **Yes / No**

D) Location where the offense occurred (city, county, state, zip code, country):

E) Were you arrested, summoned, cited or did you receive a ticket to appear as a result of this offense by any police officer, sheriff, marshal or any other type of law enforcement official: **Yes / No**

   1) Name of the law enforcement agency that arrested/cited/summoned you:

   2) Location of the law enforcement agency (city, county, state, zip code, country):

F) As a result of this offense were you charged, convicted, currently awaiting trial, and/or ordered to appear in court in a criminal proceeding against you: **Yes / No**

1) If yes, provide the name of the court and the location of the court (city, county, state, zip code, country):

2) If yes, provide all the charges brought against you for this offense, and the outcome of each charged offense (such as found guilty, found not-guilty, charge dropped or "nolle pros," etc). If you were found guilty of or pleaded guilty to a lesser offense, list separately both the original charge and the lesser offense:

3) If no, provide explanation:

G) Were you sentenced as a result of this offense: **Yes / No**

H) Provide a description of the sentence:

I) Were you sentenced to imprisonment for a term exceeding one year: **Yes / No**

J) Were you incarcerated as a result of that sentence for not less than one year: **Yes / No**

K) If the conviction resulted in imprisonment, provide the dates that you actually were incarcerated:

L) If conviction resulted in probation or parole, provide the dates of probation or parole:

M) Are you currently on trial, awaiting a trial, or awaiting sentencing on criminal charges for this offense: **Yes / No**

N) Provide explanation:

10. Civil Litigation and Administrative or Legislative Proceedings

(A) Since (and including) your 18th birthday, have you been a party to any public record civil court action or administrative or legislative proceeding of any kind that resulted in (1) a finding of wrongdoing against you, or (2) a settlement agreement for you, or some other person or entity, to make a payment to settle allegations against you, or for you to take, or refrain from taking, some action. Do NOT include small claims proceedings.

I have not.

(B) In addition to those listed above, have you or any business of which you were an officer, director or owner ever been involved as a party of interest in any administrative agency proceeding or civil litigation? Please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

I have not.

(C) For responses to the previous question, please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

None

11. Breach of Professional Ethics

(A) Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, professional association, disciplinary committee, or other professional group? Exclude cases and proceedings already listed.

No

(B) Have you ever been fired from a job, quit a job after being told you would be fired, left a job by mutual agreement following charges or allegations of misconduct, left a job by mutual agreement following notice of unsatisfactory performance, or received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as violation of a security policy?

No

12. Tax Compliance

(This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

REDACTED

REDACTED

13. Lobbying

In the past ten years, have you registered as a lobbyist? If so, please indicate the state, federal, or local bodies with which you have registered (e.g., House, Senate, California Secretary of State).

No

14. Outside Positions

X See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

For the preceding ten calendar years and the current calendar year, report any positions held, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

Name of Organization	Address of Organization	Type of Organization (corporation, firm, partnership, other business enterprise, other non-profit organization, educational institution)	Position Held	Position Held From (month/year)	Position Held To (month/year)

15. Agreements or Arrangements

X See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

As of the date of filing your OGE Form 278, report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment.

Provide information regarding any agreements or arrangements you have concerning (1) future employment; (2) a leave of absence during your period of Government service; (3) continuation of payments by a former employer other than the United States Government; and (4) continuing participation in an employee welfare or benefit plan maintained by a former employer other than United States Government retirement benefits.

Status and Terms of Any Agreement or Arrangement	Parties	Date (month/year)

16. Additional Financial Data

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

REDACTED

REDACTED

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SIGNATURE AND DATE

I hereby state that I have read the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

Howard A. Shelanski

This 20th **day of** May, 2013

United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

JUN - 6 2013

The Honorable Thomas R. Carper
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Howard A. Shelanski, who has been nominated by President Obama for the position of Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Walter M. Shaub, Jr.
Director

Enclosures - REDACTED

May 1, 2013

Jonathan E. Rackoff
Assistant General Counsel and
Designated Agency Ethics Official
Office of Management and Budget
725 17th Street, NW, Room 5001
Washington, Dc 20503

Dear Mr. Rackoff:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter that has a direct and predictable effect on my financial interests or those of any person whose interests are imputed to me, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I am currently on an unpaid leave of absence from Georgetown University. If confirmed, I will remain on an unpaid leave of absence. I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of Georgetown University, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for either the exemption at 5 C.F.R. § 2640.203(b) or another regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

I resigned from my position as an attorney of counsel with the law firm of Davis Polk and Wardwell in June 2012. For a period of one year after my resignation, I will not participate personally and substantially in any particular matter involving specific parties in which this firm is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d). In addition, I will not participate personally and substantially in any particular matter involving specific parties in which a former client of mine is a party or represents a party for a period of one year after I last provided service to that client, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

I will divest my interests in Excelon, within 90 days of my confirmation. I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of this entity until I have divested it, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

I have been advised that the duties of the position of Administrator may involve particular matters affecting the financial interests of the New York Distilling Company. The agency has determined that it is not necessary at this time for me to divest my interests in this entity because the likelihood that my duties will involve any such matter is remote. Accordingly, I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of this entity, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

I understand that as an appointee I am required to sign the Ethics Pledge (Exec. Order No. 13490) and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this and any other ethics agreement.

Finally, I have been advised that this ethics agreement will be posted publicly, consistent with 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with other ethics agreements of Presidential nominees who file public financial disclosure reports.

Sincerely,

Howard A. Shelanski

Howard A. Shelanski

U.S. Senate Committee on Homeland Security and Governmental Affairs
Pre-hearing Questionnaire
For the Nomination of Howard Shelanski
to be Administrator of the Office of Information and Regulatory Affairs

I. Nomination Process and Conflicts of Interest

1. Why do you believe the President nominated you to serve as Administrator of the Office of Information and Regulatory Affairs (OIRA)?

   I believe the President nominated me because of my training in economics and law, as well as my experience serving in the government and as a professor at Berkeley and Georgetown. My professional experience is well suited to the analytical and managerial tasks required of the OIRA Administrator.

2. Were any conditions, express or implied, attached to your nomination? If so, please explain.

   No

3. What specific background and experience affirmatively qualify you to be Administrator of OIRA?

   Important components of regulatory review by OIRA are the economic analysis of the costs and benefits of regulation and the resolution of legal issues related to the statutes and executive orders that affect information and regulation. I have written many articles that apply rigorous legal and economic analysis to problems related to competition, telecommunications, and intellectual property. The kinds of analyses underlying this research are similar to those that I think will be essential to the work of the OIRA Administrator.

   As an economist at the Council of Economic Advisers, the Federal Communications Commission, and, more recently, the Federal Trade Commission, I have worked on a range of regulatory and enforcement matters. A significant part of my work in government involves understanding the relevant legal requirements and, within the applicable legal framework, choosing among alternative courses of action and designing effective remedies. Much of this work involves analysis of the empirical data and assumptions underlying proposals for regulation or enforcement actions. I believe this experience will be relevant to the role of OIRA Administrator, if confirmed.

   Finally, a critical part of the OIRA Administrator's job is to manage the office. I spent three years, from 2005 to 2008, as Associate Dean of the law school at Berkeley, a job that required significant management of staff and resources. As Director of the Bureau of

Economics at the Federal Trade Commission, I manage a staff of roughly 110 economists, accountants, and support staff in conducting the investigation and analysis that supports the agency's competition and consumer protection missions. Both of these experiences should prove helpful, should I be confirmed, in the management of OIRA.

4. Have you made any commitments with respect to the policies and principles you will attempt to implement as Administrator of OIRA? If so, what are they and to whom have commitments been made?

No

5. If confirmed, are there any issues from which you may have to recuse or disqualify yourself because of a conflict of interest or the appearance of a conflict of interest? If so, please explain what procedures you will use to carry out such a recusal or disqualification.

In connection with the nomination process, I consulted with the Office of Government Ethics and OMB's designated agency ethics official to identify potential conflicts of interest. I would resolve any potential conflicts of interest in accordance with the terms of an ethics agreement that I entered into with OMB's designated agency ethics official and provided to this Committee. I am not aware of any other potential conflicts of interest.

II. Background of the Nominee

6. What specific background and experience do you bring to the various roles that you would assume as Administrator of OIRA?

Please see my answers to Questions 1 and 3 above.

7. You have served as Director and Deputy Director of the Federal Trade Commission's Bureau of Economics and as Chief Economist of the Federal Communications Commission, and as Senior Economist for the President's Council of Economic Advisors. How do you believe that experience has prepared you for the postion of Administrator of OIRA, and how will it inform your approach to this position?

My experience working in government to date would inform my approach as Administrator, if confirmed. First, my approach to the job of Administrator would always begin with adherence to the applicable law as it pertains to specific regulations and to the work of OIRA as a whole. Second, if confirmed, I would seek to ensure OIRA maintains its coordinating and analytical role in working with other executive branch departments, agencies, and offices. Finally, within the constraints of applicable law, I

would strive to reach and to communicate the most independent, objective conclusions possible given available facts and analytical methods.

II. Role and Responsibilities of the Administrator of OIRA

8. How do you envision your functions and responsibilities as Administrator of OIRA? Have you and Director Sylvia Burwell and Deputy Director-[nominee] Brian Deese discussed what your and their respective roles with respect to the functions of OIRA would be? Have you and OMB Director Sylvia Burwell discussed what your role would be? If so, please describe how you view your role in light of those discussions.

   If confirmed, I envision that my role will be to work together with the agencies, the staff of OIRA, and others within OMB and the Executive Office of the President to ensure that proposed and final regulations adhere to the principles embodied in Executive Orders 12866 and 13563. I believe it is important for OIRA to maintain a close working relationship with the heads of the regulating agencies that have the lead in producing regulations and accompanying impact analyses.

9. What do you anticipate would be your greatest challenges as Administrator of OIRA? Please identify your top three (or more) priorities and how you would plan to address them.

   If confirmed, one of my priorities would be to work diligently, and in a timely fashion, on the review of regulations and the production of regulatory information, such as the Regulatory Agenda. Second, I would work with agencies to further institutionalize and improve the retrospective review of regulations. Third, I would work to ensure that OIRA is acting in a transparent manner and that it works with agencies to ensure an opportunity for public comment and involvement in the rulemaking process. I believe that balancing these priorities and the many responsibilities that OIRA has will be challenging, particulary under current OMB budget constraints, but I look forward to the opportunity should I be confirmed.

10. What are your views on the organization of OIRA and the allocation of resources among the various activities undertaken by the office? Do you have any plans to reorganize or reallocate resources of the office?

    Although I have a good general knowledge of the responsibilities of OIRA, including its many statutory and Executive Order functions, I am not in a position to comment on the internal organization or resource allocations of the office. If confirmed, I certainly would be mindful of the current budget constraints when managing OIRA.

11. OIRA is a relatively small office within OMB, but it has many responsibilities under various statutes and executive orders. Do you believe OIRA has sufficient staff to carry out all of these tasks effectively? Do you believe any of these tasks can or should be eliminated, reduced, or delegated to other federal officials?

In my current capacity, I am not in a position to comment on OIRA's resources, or the possibility to eliminate, reduce, or delegate tasks to other Federal officials. If confirmed, I would be particularly attentive to the current challenging resource environment in establishing OIRA's priorities.

III. Policy Questions

A. Regulatory Matters

12. How do you believe you and OIRA can add the greatest value to the public interest through oversight of agencies' rulemaking?

Executive Orders 12866 and 13563 establish that Executive agencies and OIRA must work together on regulations to advance the public interest. I believe that the OIRA Administrator must have strong working relationships with the heads of agencies, and that OIRA should work collaboratively with the agencies to ensure that the priorities of the Administration are implemented in the best way possible, consistent with relevant laws and Executive Orders.

13. What is your understanding of the Obama Administration's goals and agenda in the area of regulation, and how would you, if confirmed as Administrator of OIRA, help the Administration to fulfill that agenda?

My understanding is that the Administration is committed to a regulatory system that protects public health, safety, welfare, and the environment while promoting economic growth, innovation, competitiveness, and job creation. As part of that effort, as required by Executive Orders 12866 and 13563, OIRA plays a crucial role in ensuring that the benefits of regulations justify the costs; that regulations adopt flexible, burden-reducing approaches where possible; that regulations are coordinated and harmonized across agencies; that rules reflect public input as well as the input of other agencies in the Federal government; and that regulations are consistent with applicable law. If confirmed, I look forward to working to ensure that OIRA continues to play this important role.

B. Regulatory Review

14. At different periods in the history of OIRA, its Administrators have shifted back and forth between maintaining a more collaborative and consultative relationship with the agencies, with reviewers working with rule writers as partners or counselors, or exercising more of a "gatekeeper" role, relying more on return letters to ensure that agencies are responsive. How would you describe your approach to the working relationship that you would want to establish between OIRA and agencies?

    If confirmed, I would seek a collaborative and consultative relationship with the agencies.

15. OIRA has also shifted its emphasis, from time to time, between waiting until a proposed rule is presented to OIRA, at which point the interaction between OIRA and the agency is somewhat more formalized and transparent, or becoming involved earlier in the rulemaking process. What are your views about the stage in the development of a rulemaking at which OIRA should become involved?

    If confirmed, I would seek to collaborate and consult with agencies insofar as it is helpful to achieving the Administration's regulatory objectives. I believe there are times when early discussions and consultation may be helpful as agencies develop their regulations, particularly if useful to the relevant agency.

16. E.O. 12866 states that one of its goals is to "reaffirm the primacy of Federal agencies in the decision-making process." How do you understand this goal? In developing regulations, considering alternatives, designing and conducting related analysis, and ascertaining whether the benefits justify the costs, what generally should be the agencies' responsibility and what generally should be OIRA's responsibility?

    I believe the agencies should have the primary responsibility for compliance with Executive Orders and related OMB guidance, including the responsibility for the production of the actual analyses called for by various Executive Orders, and for choosing the regulatory option that maximizes net benefits, both quantitative and qualitative, consistent with statutory requirements. I believe OIRA's responsibility is primarily the review of agency-drafted regulations and analysis of those regulations for compliance with the principles set forth in relevant Executive Orders.

17. Some have criticized the length of time it has taken OIRA to review certain proposed rules. For example, concerns have been raised about several agency rules that (as of the date these questions are submitted) have been in review at OIRA for over two years, including OSHA's rule on Occupational Exposure to Crystalline Silica (RIN: 1218-AB70), in review by OIRA since February 14, 2011, and a list of chemicals from EPA that may present an unreasonable risk of injury to human health or the environment (RIN: 2070-AJ70), in review by OIRA since May 12, 2010. Similar concerns have been

expressed about the eight energy-efficiency rules developed by the Department of Energy (RIN: 1904-AC19, 1904-AC15, 1904-AC00, 1904-AC11, 1904-AC60, 1904-AB86, 1904-AB96, 1904-AC13) that have been under review by OIRA for over a year. (Dates when rules were received by OIRA are stated at www.reginfo.gov.) What is your reaction to such criticism?

I believe that it is important for the public to be able to have confidence in the regulatory system. If confirmed, I would make it a priority to understand why these rules have been under review for an extended period and to work toward reducing the length of time for review overall, while ensuring that reviews continue to be thoughtful and careful.

18. Some have also criticized the extent of the backlog. More than 150 actions are currently (as of the date these questions are submitted) pending OIRA review, including nearly 75 pending over 120 days, which is the review period allowed under E.O. 12866 unless a longer period is requested by the agency head. What is your reaction to this criticism?

    I believe that it is important for the public to be able to have confidence in the regulatory system. If confirmed, I would make it a priority to understand why these rules have been under review for an extended period and to work toward reducing the length of time for review overall, while ensuring that reviews continue to be thoughtful and careful.

19. What is your opinion of OIRA's and the regulatory agencies' track records regarding disclosure of information about OIRA's and agencies' activities and actions associated with regulatory review? How do you believe the appropriate balance should be struck between protecting the deliberative process and fostering public participation and accountability of the rulemaking process through transparency?

    Transparency and disclosure are important components of an effective regulatory system. The public must receive the information it needs meaningfully to comment and participate in the rule-making process. On the other hand, posting every conversation and deliberation in which agency personnel are involved would be enormously costly, would significantly slow regulatory review, and could deter useful discussion and clarification by relevant staff. It is therefore important for rule-making and regulatory review by OIRA to strike a balance between transparency and room for the deliberative process. I believe this balance should be in favor of transparency, and if confirmed, I would look forward to learning more about this issue and how best to strike the important balance highlighted in your question.

20. Under requirements of the Regulatory Flexibility Act and related executive orders, agencies must consider the impact of their regulatory proposals on small entities (including small businesses and small non-profit and governmental entities) and make their analyses available for public comment. What do you understand to be the reasons

for such requirements, and what do you believe to be OIRA's role and responsibility with respect to them?

As the Regulatory Flexibility Act (RFA) emphasizes, it is important to recognize "differences in the scale and resources of regulated entities" and to consider "alternative regulatory approaches... which minimize the significant economic impact of rules on small businesses, small organizations, and small governmental jurisdictions." Small businesses are critical to our economic growth and job creation, and small entities of all kinds, including small businesses, small organizations and government bodies may have more difficulty complying with certain regulatory provisions than larger entities. This is why President Obama issued a memorandum the same day he issued EO 13563, directing Federal agencies to consider ways to reduce regulatory burdens on small entities and to provide justifications when such flexibility is not included in proposed regulations. If confirmed, I would look forward to working with agencies to reduce burdens on small businesses, small non-profits, and small governmental entities where possible.

21. Small business advocacy review panels, authorized by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), are convened by certain agencies to review draft regulatory proposals, collect comments from small business representatives, and make findings with respect to projected impacts on small businesses and with respect to alternatives that would reduce the impacts on small businesses while still achieving the goals of the rule or action. Under current statutes, these small business panels (often referred to as SBREFA panels) are convened during the rulemaking process by the Environmental Protection Agency, the Consumer Financial Protection Bureau, and the Occupational Safety and Health Administration. What do you believe has been the impact of SBREFA panels on these agencies' rulemakings? How do you view the role of OIRA in ensuring that SBREFA panels are used effectively and appropriately by these agencies, and do you believe this model should be extended to other agencies?

As I mentioned above, I believe that small businesses are critical to our economic growth and job creation, and it is important to ensure that regulations are crafted so as to minimize unjustified burdens on small businesses. SBREFA panels are one mechanism to ensure that small business viewpoints are taken into consideration during rulemaking. My understanding is that the OIRA Administrator serves on all SBREFA panels and that over the years the rule-writing agencies have adopted many of the panel's recommendations for reducing impacts on small businesses. If confirmed, I would like to observe first-hand how SBREFA panels are utilized before coming to any conclusions about whether the model should be extended to other agencies.

22. Executive Order 12866 requires that each agency take into account, to the extent practicable, the cost of cumulative regulations (sec 1(b)(11)). What is your opinion of this principle, and, insofar as you believe it is valuable, how do you believe agencies should apply it?

I believe this is a very important principle. I think it is essential that new regulations be considered not only in isolation, but in relation to their interactions with existing regulations. If confirmed, I would work with agencies to ensure implementation of Executive Orders 12866 and 13563 in this regard, as well as the March 2012 guidance issued by then-Administrator Cass Sunstein.

C. Analysis of Costs and Benefits

23. E.O. 12866 requires: "Each agency shall assess both the costs and the benefits of the intended regulations and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs." How would you implement this requirement, especially in situations where costs and benefits cannot be easily reduced to monitary equivalents or quantified at all?

    I believe that it is important to quantify as many of a regulation's key effects as possible. As Executive Orders 13563 discusses, it is also appropriate for agencies, to the extent permitted by law, to consider regulatory effects and objectives that are impossible or difficult to quantify, such as human dignity or fairness. It is appropriate for agencies to identify such values and to discuss in qualitative terms how the regulation at issue will affect them and on what evidence the agency is relying. I believe the quantified effects should help inform the judgment of agency policymakers, along with an understanding of any unquantified effects that the agency identifies and explains.

24. To what extent do you believe that agencies should consider the likely or foreseeable indirect economic effects of proposed regulation? Should such consideration of indirect impacts be required? Please explain, including what you believe would be the advantages and disadvantages.

    I believe that a properly conducted regulatory impact analysis should attempt to estimate all of the likely, substantive effects of a rulemaking. I understand that agencies often estimate the impacts not only on those directly regulated, but also on entities substantially impacted by the rule that are not necessarily directly subject to the regulation. The advantages of an analysis of indirect impacts would be that an agency would not inadvertently overlook important effects when conducting an analysis or making regulatory decisions, while a potential difficulty may be how to define whether an indirect effect is large enough and sufficiently predictable that it can be credibly estimated and included in an analysis.

25. Some have expressed concerns that when cost-benefit analysis is relied upon in making decisions about regulation, unquantifiable or other unmonetized values can sometimes get drowned out by monetized or other quantified factors. How would you respond to those concerns?

I believe that in cases where important effects are not quantifiable, the quantified effects should not, by themselves, determine whether a regulation's benefits justify its costs. In these cases, the agency decisionmakers should rely upon the range of evidence available, including evidence regarding the significance or importance of non-quantified effects.

26. Some statutes authorize agencies to adopt regulations to protect health, safety, the environment, consumers, or the integrity of the market without having conducted a full analysis of costs and benefits showing that the benefits justifying the costs. Often, statutes require agencies to issue such regulations, sometimes under tight deadlines. How do you believe OIRA should implement its regulatory-review functions, including under E.O. 12866, in the case of rules authorized under such statutes?

    E.O. 12866 makes it clear that the decision principles are only to be followed to the extent permitted by law. If confirmed, I would make sure that if a statute required a different way of making regulatory decisions, OIRA would adhere to those criteria when reviewing rules.

27. A decision to discount the value of future benefits can very significantly reduce the estimated benefits of certain regulations, such as certain environmental, health and safety regulations, that prevent harm or provide benefit long in the future. What are your views about whether and when to discount the benefits of such regulation, and what discount rate to use? Do you believe that it is appropriate for different agencies to employ different approaches to whether and how to discount the value of future benefits, or should a uniform approach be applied by all agencies implementing all regulatory statutes?

    The practice of discounting to be able to compare effects that occur at different points in time is well-established. OMB Circular A-4 provides guidance on discounting, and allows for agency discretion to use lower rates in instances where the effects span generations. I believe this approach is reasonable.

28. Certain regulatory actions, or decisions not to take regulatory action, may affect wage levels, employment opportunities, or other factors affecting workers. When agencies conduct cost-benefit analyses regarding such proposed regulations, should they take into account research and studies that consider the potential impact on worker health and standard of living – either beneficial or adverse – of such economic effects?

    Executive Orders 12866 and 13653 establish that one of the goals of the regulatory system is to promote competitiveness and job creation. I believe that factors such as whether a regulation significantly improves worker productivity through health improvements, or whether a rulemaking option leads to measurable changes in employment in the regulated industry, are certainly factors agencies should consider when choosing among regulatory approaches.

29. Especially in these times of tight budgets, the imposition of excessive analytic requirements on regulatory agencies can burden an agency and paralyze its efforts to do its job. How would you as OIRA Administrator seek to protect regulatory agencies against excessive obligations to perform regulatory analysis, which can lead to paralysis? Generally, how can OIRA help assure that analytic and scientific expectations on agencies' rulemaking will add value without contributing to the paralysis of the rulemaking process?

There is no "one-size-fits-all" when it comes to analytical requirements. Agencies must exercise judgement with regard to the appropriate level of analysis on a case-by-case basis. In general, however, I do not believe the relevant Executive Orders impose excessive analytic requirements on the agencies.

30. To meet a tight statutory or judicial deadline for the issuance of a regulation or for other reasons, an agency may feel the need to rush through the necessary research, analysis, evaluation of alternatives, and consideration of public comments. In other cases, a variety of factors may cause an agency to take far too long to complete a regulatory action. In situations such as these, what would you do as OIRA Administrator to help ensure compliance with the law, fulfillment of applicable rulemaking requirements, and the production of needed and often mandated regulations on a reasonable time table?

As a general matter, I believe that it is very important that agencies conduct thorough analyses of their rules, including the evaluation of alternatives, and the consideration of public comment. At the same time, as your question points out, there are sometimes legal deadlines that may dictate the amount of time an agency can spend on a rulemaking. If confirmed, whenever possible, I will work with agencies to understand the deadlines they face and to reach a common understanding on a timetable for rulemaking that provides the agency with enough time to conduct the necessary analysis, OIRA with enough time to conduct its review where applicable, and the public ample opportunity to comment.

31. One of the greatest challenges in regulating to address environmental health and safety risks is deciding how to proceed in the face of scientific uncertainty about the causes or nature of those risks. What principles do you believe should be applied to guide government decisionmaking when there is reason to be concerned that a human activity risks causing severe or irreversible harm, but when uncertainty remains about the nature and extent of the risk? For example, how should an agency balance relatively certain economic costs to businesses and workers from a proposed regulation against relatively uncertain but potentially severe risks to the environment, safety, or human health?

All regulatory decisions are made in the face of some uncertainty, with respect to both costs and benefits. Whether a particular risk is severe or irreversible is certainly a legitimate factor to consider when designing a regulation. I believe, however, that a well-

designed regulatory impact analysis consistent with Executive Order principles and OMB guidance can adequately inform decisionmaking even in the face of such uncertainty. Such analysis can and should also make clear the uncertainty involved in the agency decision, the assumptions the agency is making in addressing the uncertainty, and the basis for those assumptions.

D. Other Aspects of OIRA's Regulatory Program

32. Under several requirements of statute and executive order, agencies conduct retrospective reviews of their existing rules in order to modify, expand, or repeal rules found to be insufficient, excessively burdensome, or outmoded. How can agencies achieve the best results for the public through conducting retrospective reviews, considering that such reviews inevitably consume agency resources that might otherwise be deployed to enactment of essential new protections or to promote compliance. What role would you play, as OIRA Administrator, to help optimize the program of retrospective review across the government?

    Executive Orders 13563 and 13610 stress the importance of retrospective review of existing significant regulations. In particular, Executive Order 13610 emphasizes that agencies should prioritize "initiatives that will produce significant quantifiable monetary savings or significant quantifiable reductions in paperwork burdens" and shall "give priority to reforms that would make significant progress in reducing those burdens while protecting public health, welfare, safety, and our environment." Executive Order 13610 also requires agencies to "give special consideration to initiatives that would reduce unjustified regulatory burdens or simplify or harmonize regulatory requirements imposed on small businesses." In response to Executive Order 13563, I understand that agencies developed and made available to the public retrospective review plans that identified hundreds of initiatives. Through periodic updates to the plans, agencies can optimize the program of retrospective review by prioritizing and continuing to seek public feedback on key reform efforts. If confirmed, I would emphasize this important effort and would work with agencies to help them prioritize resources appropriately.

33. What consequences, if any, should there be for agencies that do not conduct retrospective reviews as directed by statutes or executive orders? What tools does OIRA have – or should Congress make available – to enforce these requirements?

    My understanding is that Federal agencies, both executive and independent, have complied with retrospective review requirements and produced a long list of initiatives that will reduce costs, simplify the system, and reduce redundancy and inconsistency. I believe the retrospective review effort is extremely important. If confirmed, it would be a priority for me to further institutionalize this effort and get a better sense of how agencies plan to comply with the retrospective review requirements moving forward.

34. Regulatory agencies frequently issue guidance documents (including bulletins, FAQs, and other non-regulatory publications) to inform the public and to provide direction to agency staff. However, some have argued that the increasing use of guidance documents may be a way for agencies to do an end-run around the rulemaking process, to change requirements without proper notice and comment. What do you believe is the value and the proper and appropriate use of guidance documents in a regulatory program? In what ways to you believe guidance documents can be improperly developed and used by agencies? What do you see as OIRA's role in ensuring that agencies issue and use guidance documents in an effective and appropriate, and not in an inappropriate, manner?

Federal agencies use guidance documents to inform the public and provide direction to their staffs. These documents can help to interpret existing laws and can provide the public with clear notice of permissible and impermissible conduct. However, guidance documents are not legally binding and should not substitute for notice and comment rulemaking under the Administrative Procedure Act. I believe that OIRA can play an important role in facilitating interagency coordination and promoting good regulatory practices, including good guidance practices, to help ensure guidance documents are not used in an inappropriate manner.

E. E-Government and Management of Information and Technology Resources

35. Regarding information technology policy, how do you understand the respective roles of the Administrator of OIRA and Chief Information Officer who heads up the Office of E-Government and Information Technology? How should they effectively coordinate their efforts to avoid duplication of effort and to encourage agencies to use information technology to accomplish their mission? What is the contribution each should make to OMB's mission?

I understand that the OIRA Administrator and the E-Government Administrator work together to provide direction for information policy, the Federal collection of information, and the investment in information technology. If confirmed, I would continue this effort, in accordance with the Clinger-Cohen Act and the E-Government Act, and would support the Administration's objectives in these areas.

36. What is your understanding of OIRA's responsibilities for management of information technology (IT), as set forth in 44 U.S.C. 3504(h), and of the extent to which OIRA has fulfilled this mandate; and what are your plans for ensuring that it will be fulfilled under your direction?

My understanding is that the Clinger-Cohen Act mandates that the Director of OMB fulfill certain roles and responsibilities under the law. If confirmed, I would work with the Administrator of the Office of E-Government and Information Technology (the Federal Chief Information Officer, as described by the E-Government Act) to oversee and set policy for Federal Information technology where needed.

37. What are your views on the importance of IT and enterprise architectures?

Information technology is a strategic asset that allows the Federal government to provide services, information, and improve the efficiency of Federal operations. Enterprise architecture is an important management tool for accomplishing these objectives. If confirmed, I look forward to learning more about the government's work in these areas.

38. What are your views on the role of the National Institute of Standards and Technology (NIST) in establishing standards and guidelines for federal IT functions and OIRA's oversight of that role?

If confirmed, I would learn more about NIST's role in establishing standards and guidelines for Federal IT functions and OIRA's oversight of that role. I would expect to work closely with NIST to set sound policy and requirements for agencies in the area of information policy and technology.

39. What are your views on the use of the budget process to improve IT management? What other incentives does OMB have at its disposal to encourage good management practices? How would you enhance coordination between OIRA and other offices in OMB in order to improve the adoption of OMB policies and guidance across government?

In my opinion, the budget process is an important tool in improving Federal IT management, specifically to push agencies to pull from low value investment and drive savings into necessary innovation, efficiency gaining initiatives, and modernization of legacy IT. I believe OMB is well positioned to set policy that best promotes solid management of information technology assets and to help agencies exchange best practices on implementation of policies and practices. For example, I understand that OMB has played an important leadership role in the Administration's Open Government Initiative, which has fostered interagency collaboration on the use of IT to promote government transparency and public participation.

40. How do you believe you and the E-Government Administrator should work with the federal Chief Information Officers (CIO) Council?

As prescribed by E-Government Act of 2002, the OIRA Administrator is a member of the CIO Council; if confirmed, I would look forward to joining the CIO Council. In addition, I understand that the OIRA Administrator has significant interactions with CIOs in their role as the senior officials responsible for agency compliance with the Paperwork Reduction Act, among other information-related responsibilities.

41. What do you see as the primary role of the agency Chief Information Officer (CIO) positions established under the Clinger-Cohen Act? What do you see as the CIOs additional responsibilities under the Paperwork Reduction Act? Generally, how well do you believe they are fulfilling their statutory functions?

I believe that the agency CIOs should have roles and responsibilities that align with the Clinger-Cohen Act, the E-Government Act, the Paperwork Reduction Act, as well as other relevant legislation and OMB policy. Under this legal and policy framework, CIOs should manage information resources to reduce information collection burdens on the public; increase program efficiency and effectiveness; and improve the integrity, quality, and practical utility of information to all users within and outside the agency, including capabilities for ensuring dissemination of public information, public access to government information, and protections for privacy, confidentiality, and security. I am not in a position to speculate about the fulfillment of the CIO's statutory responsibilities over time, but look forward to learning more about this issue if confirmed.

42. What is your understanding of OIRA's records management function as set forth in 44 U.S.C. § 3504(f), the extent to which OIRA has fulfilled this mandate, and your plans for ensuring that OIRA will fulfill this mandate under your direction?

Government transparency and accountability depend in large part on records management. An effective approach to records management helps ensure that agencies adequately and properly document their activities, as well as provide reasonable access to records. My understanding is that OIRA fulfills its records management responsibilities under the Paperwork Reduction Act through its review, under Executive Orders 12866 and 13563, of records management regulations issued by the National Archives and Records Administration (NARA). OIRA also provides advice and guidance to NARA on the effective implementation of records management programs. If confirmed, I plan to learn more about OIRA's activities in this area.

43. The federal government is faced with complicated goals that require improved management and integration of information assets within agencies. What guidance do you believe OIRA should provide to agencies regarding the integration of information processes, such as information collection, records management, and information dissemination?

I understand that OIRA provides guidance to agencies on their compliance with the Paperwork Reduction Act. If confirmed, I would look forward to leading OIRA's efforts to review agency information resources management programs, and to determine whether additional OIRA guidance would be useful.

44. What is your understanding of OIRA's responsibility with respect to statistical policy, and what are your plans for fulfilling that responsibility?

Federal statistics are a public good that serve as the foundation for evidence-based decisions in both the public and private sectors, and are also an important component of innovation in the private sector (such as mobile phone applications that rely on government data). It is my understanding that OIRA's statistical policy responsibilities include coordinating the decentralized Federal statistical system; ensuring that data providers can continue to rely on pledges to protect the confidentiality of their data; minimizing burden on respondents, most of whom provide statistical information to the government on a voluntary basis; and fostering data users' confidence in the quality, utility, and integrity of Federal statistical products. If confirmed, I would strive to sustain and enhance public trust in these key elements of Federal data stewardship.

F. Paperwork Reduction

45. What are your views on the major purposes of the Paperwork Reduction Act (PRA)?

The PRA plays an important role in reducing burdens imposed by government reporting requirements on the public, improving the quality and usefulness of the information that the Federal government collects, and improving the management of agency information resource activities.

46. What are your views on the adequacy of policies and guidance issued by OMB to implement the PRA, and do you believe there is a need to revise them?

I understand OMB has released several PRA guidances over the past few years in areas such as scientific research and collecting service delivery feedback. If confirmed, I will examine the state of OMB's current guidance on the PRA in these and other areas, and determine whether there are other areas that could benefit from further guidance.

47. Under the PRA, OIRA determines whether agency information collection activities are "necessary for the proper performance of the functions of the agency, including whether the information will have practical utility." What are your views on the meaning of these terms and the manner in which OIRA should perform this paperwork clearance function? How do you believe that OIRA, in fulfilling its functions under the PRA, should take account of the benefits to be gained from an information collection activity?

I read these terms to suggest that government agencies need information to serve the American public, but that it is also necessary to minimize burdens by collecting only information that is actually useful. I believe that OIRA should work with agencies to determine and weigh the benefits of an information collection activity – whether to the government, business, or the public – and that this should be a crucial element of determining whether an information collection has practical utility.

48. What are your views on activities, other than form-by-form review of information collection proposals, which might be undertaken by OIRA to eliminate duplicative information collection activities among agencies, and otherwise improve coordination among agencies with regard to common or overlapping information collections?

I do not yet have any specific views on how to address duplicative information collections. That said, I am interested in learning more about this issue, if I am confirmed, and would welcome ideas from the Committee. In particular, given the breadth of information collections across the government, I would be interested in specific examples of potentally duplicative information.

49. To what extent do you believe the PRA, and OIRA's implementation of it, strike an appropriate balance between the benefits to the public and the burdens on the public that flow from data collection by federal agencies, and to what extent should the PRA or OIRA's implementation be changed?

I believe OIRA should work with agencies to strike a balance between meeting their need for information and minimizing reporting burdens imposed on the public. The PRA should not prevent agencies from collecting the information they need in order to perform the work necessary to fufill their mission. At the same time, agencies should not impose unnecessary requests on the public.

G. Privacy and Disclosure

50. What are your views on the role of OIRA in addressing privacy concerns? Specifically, what is your understanding of OIRA's responsibilities for privacy, confidentiality, security, disclosure, and sharing of information, as set forth in 44 U.S.C. 3504(g), and of the extent to which OIRA has fulfilled this mandate; and what are your plans for ensuring that it would be fulfilled under your direction?

I believe OIRA has an important role to play in coordinating privacy, confidentiality, and other information policies across the Federal government. I understand that OIRA performs these functions under the Privacy Act, the E-Government Act, including the Federal Information Security Management Act (FISMA), the Paperwork Reduction Act (PRA), and other authorities. I also understand that in addition to regular communications with agency officials, OMB provides guidance and oversight to agencies in a number of ways – through formal guidance, program reviews, regulatory reviews, and the budget process. If confirmed, I would continue this important work to ensure that privacy, confidentiality, and security are protected.

51. The E-Government Act of 2002 requires agencies to conduct privacy impact assessments (PIAs) whenever they develop or buy new information technology systems and whenever

they initiate new collections of personal information. How would you ensure that agencies comply with this mandate? How would you ensure that PIAs are promptly made available to the public, as required by the E-Government Act?

My understanding is that OMB requires agencies to publicly display the required privacy impact assessments (PIAs) in a central location on agency websites. I also understand that OMB monitors agency compliance through annual reporting requirements (e.g., FISMA and E-Government Act reporting), the budget process, and by ensuring that agency regulations cite the appropriate PIA.

52. The Privacy Act was passed in 1974 and has not since been substantially amended. What, if any, provisions of the Act or OMB's Privacy Act guidance do you believe need to be updated to reflect changes in the way the federal government collects, stores, and uses personal information over the past three decades?

I have not had the opportunity to examine in detail the protections afforded by the Privacy Act and exactly how the Federal government collects, stores, and uses personal information. However, I do believe these are important issues and, if confirmed, I would review the Privacy Act and its implementation, and would welcome suggestions for improvement from Congress.

53. Given technological advances that make it easy to mine databases for personal information, aggregate that information, and make it widely available to government personnel, what are your views on whether the Privacy Act's provisions remain adequate to protect the privacy interests of the public?

I have not had the opportunity to examine this issue in detail but would look forward to learning more and would welcome input from Congress, if confirmed.

54. President Clinton appointed a Chief Counselor for Privacy at OMB (and within OIRA) during his second term; however, that position was eliminated at the outset of the Bush Administration. In fact, since January 2001, there has not been any senior federal official devoted to privacy issues notwithstanding a growing set of challenges posed by technological and policy developments and a growing cadre of privacy officers within key government agencies. Do you believe that OMB should restore the position of Chief Counselor for Privacy? What other organizational, resource or other changes are required to address what is widely considered a leadership vacuum on privacy issues at the government-wide level?

I believe that protecting privacy across the Federal government is essential. However, I do not have an opinion at this time on the need for a Chief Counselor for Privacy or whether other organizational changes are advisable. If confirmed, I would work to

ensure that privacy remains a top priority and would welcome input from Congress on this important issue.

H. Information Dissemination

55. What is your understanding of OIRA's information dissemination function as set forth in 44 U.S.C. § 3504(d), and of the extent to which OIRA has fulfilled this mandate, and what are your plans for ensuring that it would be fulfilled under your direction?

It is my understanding that OIRA fulfills this responsibility by playing a lead role in setting the direction for major policies that deal with information dissemination, such as the recently released OMB memorandum M-13-13 "Open Data Policy-Managing Information as an Asset." If confirmed, I would continue with this role while looking for ways to improve how the public can access Federal government information.

56. What steps would you take at OIRA to develop improved guidance for ensuring the "quality, objectivity, utility, and integrity" of information disseminated by federal agencies?

I am aware that OIRA has a variety of tools available for ensuring the quality, objectivity, utility, and integrity of information disseminated by Federal agencies. If confirmed, I would first want to assess OIRA's activities associated with implementing the government-wide Information Quality Guidelines, as well as related other guidance issued pursuant to the Information Quality Act, the Paperwork Reduction Act of 1995, and relevant Executive Orders. If confirmed, I would be interested in determining whether additional guidance is necessary to ensure the quality, objectivity, utility, and integrity of information disseminated by Federal agencies.

57. What are your views on the need to develop policies beyond those provided in 44 U.S.C. §§ 3504(d) and 3506(d) to govern federal agency information dissemination decisions?

I believe that the Administration places a significant and positive emphasis on a transparent and open government. If confirmed, I would work to understand where there are gaps in current information dissemination policy and opportunities for improvement, and then consider how best to address them.

58. What are your views on steps OIRA can take to improve public access to government information, whether through traditional dissemination functions or through more advanced information access and disclosure means?

In my understanding, there are efforts underway to release more information and to make that information more usable to the public by, for example, providing it in an accessible machine-readable format, as decribed in OMB memorandum M-13-13, "Open Data

Policy-Managing Information as an Asset." If confirmed, I would work with the Chief Information Officer and the Chief Technology Officer, to ensure that in addition to disseminating more government information, we are focused on improving the quality and usefulness of the information.

I. Records Management

59. OIRA's records management function, as set forth in 44 U.S.C. 3504(f), requires the Administrator of OIRA to provide advice to the Archivist and the Administrator of the General Services Administration on "information resources management policies, principles, standards, and guidelines established under this subchapter," to review agency compliance, and to "oversee the application of records management policies, principles, standards, and guidelines, including requirements for archiving information maintained in electronic format, in the planning and design of information systems."

    a. If confirmed, how would you address these responsibilities?

    b. What are your views on the management of e-mail records, website records, as well as other records created using new technologies?

    I believe that records management provides accountability and transparency by documenting agency activities and preserving historical records for the future. If confirmed, I would work closely with the National Archives and Records Administration (NARA), the Director of OMB, and Congress on effective implementation of records management programs, including determining whether improvements or changes are needed.

    It is my understanding that currently records management policies apply regardless of the form or medium of the underlying record, which can sometimes be a challenge with evolving technologies. Last year the President issued a memorandum, "Managing Government Records," that emphasizes, among other things, improving the process for how electronic records are managed. If confirmed, I look forward to working with NARA on effective implementation of this effort.

IV. Relations with Congress

60. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed?

    Yes

61. Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress if you are confirmed?

    Yes

V. Assistance

62. Are these answers your own? Have you consulted with OPM or any interested parties? If so, please indicate which entities.

These answers are my own. I consulted with staff from OMB.

I, Howard Shelanski, hereby state that I have read the foregoing Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

Howard A. Shelanski
(Signature)

This 3 day of June, 2013

Responses to Questions for the Record
Nomination of Howard A. Shelanski to be Administrator, Office of Information and Regulatory Affairs, at the Office of Management and Budget
Committee on Homeland Security and Governmental Affairs
June 20, 2013

Senator McCaskill

1. **During your confirmation hearing, you identified timeliness in OIRA review as one of your top priorities. As Senator Levin mentioned and you are no doubt aware, according to Executive Order 12866, OIRA has 90 days to review a draft proposed or final rule, with one 30 day extension possible. Yet, according to a recent CRS Report, the average time it takes for OIRA to review rules increased dramatically in 2012, and is now longer than at any time since 1994. As of May 14, 2013, 87 rules have been under review for more than 90 days, and 51 have been under review for more than a year. However, you failed to discuss concrete actions that you will take to reduce delays. If confirmed, what specific steps will you take to address these unprecedented delays and return to reviewing rules within 90 days?**

If I am confirmed, it would be one of my top priorities to make sure OIRA reviews regulations in a timely fashion. The first step I would take to address this issue would be to sit down with OIRA staff to understand why these rules have been under review for long periods of time and resolve any outstanding issues. I would then work with staff on reducing the length of time for review overall, with a particular emphasis on finishing up the review of rules that have been at OIRA for long periods of time, while ensuring that reviews continue to be conducted in a thoughtful way that upholds the principles of relevant Executive Orders.

2. **Agencies are required to disclose the changes made to draft proposed and final rules during OIRA review, yet very few agencies actually disclose this information. Will you commit to at least encouraging agencies to disclose this information if confirmed?**

If confirmed, I would discuss the issue with agencies.

3. **In your opinion, what is OIRA's role in promoting government transparency and coordination of information across agencies?**

OIRA plays an important role in coordinating Executive Branch information policy, and in the Administration's Open Government Initiative, which fosters interagency collaboration on the use of technology to promote Government transparency and public participation. For example, OIRA reviews agency information collections under the Paperwork Reduction Act, agency Statement of Records Notices under the Privacy Act, and joined the Chief Information Officer and Chief Technology Officer in developing the Administration's recently released Open Data Policy: Managing Information as an Asset. I understand that OIRA performs these functions under the Privacy Act, the E-Government Act, the Federal Information Security Management Act, the Paperwork Reduction Act, and other authorities.

Senator Enzi

1. **The OMB Administrator must ensure that departments and agencies are in compliance with rules and guidance. In particular, rules submitted to OIRA should be in compliance with Executive Order 12866 – Regulatory Planning and Review and OMB's Circular A-4 on Regulatory Analysis. As you are aware, EO12866 provides for the regulatory philosophy and principles and spell out the role that the Office of Information and Regulatory Affairs (OIRA) takes on as part of the regulatory review, while Circular A-4 provides more detail on the Regulatory Analysis.**

   What would be your approach when OIRA receives a regulation to review, specifically would you use Circular A-4 as a guide for that review?

I understand that Circular A-4 represents the latest guidance to agencies on conducting sound and informative regulatory analyses for economically significant rules under Executive Orders 12866 and 13563. If confirmed, I would use Circular A-4 as a guide for OIRA reviews of such analyses.

2. **What would be your response when a regulatory analysis is sent to OIRA that fails to properly incorporate the Circular specifics?**

Circular A-4 states that regulatory analysis is "a tool regulatory agencies use to anticipate and evaluate the likely consequences of rules." If confirmed, pursuant to OIRA's role as described in Executive Orders 12866 and 13563 and Circular A-4, should an agency's regulatory analysis not represent an effective tool in this regard, I would work with the agency to improve the analysis submitted for OIRA review.

3. **In a recent rulemaking, the Proposed Revisions to the National Ambient Air Quality Standards for Particulate Matter, Docket ID No. EPA-HQ-OAR-2010-0955, OIRA was informed of a number of significant procedural inconsistencies and miscalculations in EPA's Regulatory Impact Assessment (RIA).**

   Were you to receive this sort of information on a future rule, how seriously would you take this information and can you foresee an instance where the RIA variations are severe enough to warrant rejection of the RIA back to the sending Agency, such as EPA?

If confirmed, I would look forward to working with agencies to ensure high quality RIAs. As a general matter, under Executive Order 12866, the OIRA Administrator may return a rule to an agency "for further consideration of some or all of its provisions."

4. **Can you assure the panel that you will look into this recent rulemaking, and at a minimum, be prepared to evaluate the next RIA you receive from EPA on a NAAQS rule for the sort of inconsistencies with information quality guidelines for data management previously highlighted to OIRA?**

If confirmed, I believe that it would be my job to work with agencies across the Government, and other offices within the Executive Office of the President, to review all aspects of a rulemaking that is under review at OIRA, including the quality, utility, and objectivity of the data used to generate the benefits and costs of the rule.

5. **Can you confirm you will review any future EPA RIA regarding the methods associated with the calculation of mortality benefits including the value of a statistical life (VSL) as well as the treatment of uncertainties as indicated in Circular A-4?**

If confirmed, I would work with the OIRA staff to review future rulemakings, including EPA rulemakings, with regard to whether the agency was following the guidance provided in Circular A-4 on the treatment of uncertainty and the value of a statistical life.

6. **One of the main reasons that the Department of Labor's (DOL) 2010 proposed regulation regarding the definition of who constitutes a "fiduciary" for purposes of providing investment advice to retirement plans (such as 401(k) plans) and individual retirement accounts (IRAs) had to be withdrawn was that the economic analysis of the proposed regulation, which OMB approved, was clearly deficient. For example, even though the proposal applied to IRAs, there was no economic analysis at all of the effect on IRAs, yet OMB still approved the proposed regulation. I would like to know what steps you would take to prevent that from happening again.**

I believe that sound analysis of rules is extremely important. If confirmed, I would work to ensure that regulations reviewed by OMB are issued in accordance with the President's Executive Orders 12866 and 13563, and that regulatory analyses are prepared in accordance with the guidance set forth in OMB Circular A-4.

7. **There were very disturbing reports, including one widely publicized study, that concluded that the effect of the 2010 proposal would be to cut off many small investors from access to an investment professional and result in far less retirement savings. Again there was nothing in the DOL's economic analysis on this issue, but OMB still approved the proposal. What steps will you take to ensure this issue will be evaluated with respect to the new proposal that is anticipated to be issued this summer?**

If I am confirmed and a new DOL fiduciary proposed rule comes to OMB for review, I will work to ensure the regulatory analysis is prepared in accordance with the guidance set forth in OMB Circular A-4.

8. **A key responsibility for OMB is to ensure that the rulemaking process is coordinated across agencies. The Dodd-Frank Act specifically directed the Securities and Exchange Commission (SEC) to examine the effect of subjecting broker-dealers to the fiduciary rules that currently apply to investment advisers and authorized the SEC to issue regulations to that effect. The SEC staff study in response to that Congressional direction recommended that broker-dealers be subjected to a fiduciary standard of care under the securities laws. Yet, the Labor Department has sought to finalize its**

own closely interrelated fiduciary regulation before it even knows how the SEC will proceed. Moreover, the SEC and the Department have made it clear that their rules will not be uniform, so that an investor seeking help with a regular retail brokerage account and an IRA will be subject to two entirely different rules, one governing help on the retail account and one governing help on the IRA. That makes little sense, especially in light of the fact that one of the bases for Congress' direction to the SEC and for the SEC's actions is that having multiple rules governing advisors is confusing to investors. Shouldn't there be a greater effort to coordinate and harmonize the two efforts? What steps will you take to ensure that these two agencies are not pursuing separate agendas that are clearly not coordinated?

I believe that understanding the way in which rules work together is important to a successful regulatory system. I recognize that the Securities and Exchange Commission (SEC) is an independent agency. If confirmed, I would seek ways to coordinate and harmonize rulemakings among all agencies as appropriate, objectives that the President emphasized in Executive Order 13563.

9. **The SEC seems to be working on a different schedule than the DOL. This will likely mean that the investment brokerage community will have to be restructured twice in the course of a few years – once to conform to the DOL rules and a second time to conform to the SEC rules. Do you believe this is problematic? Would you anticipate that would cause large costs that investors will eventually have to bear? What steps would you take to prevent this clearly inappropriate result that again reflects no coordination between the agencies?**

As noted above, Executive Order 13563 highlights the importance of coordinating and harmonizing rules; if confirmed, I would look into this issue further, and seek ways to achieve such coordination as appropriate.

10. **The DOL's uncertainty about the effect of its proposed fiduciary regulation, and the widespread view that the rule will produce major disruption, is inconsistent with the goals of Administration requirements that regulations should be cost-effective and consistent with the goals of promoting competitiveness and job creation. How would you recommend the DOL to proceed in accordance with these requirements?**

I believe that sound economic analyses of regulations are extremely important, and that regulatory analysis must be done in accordance with OMB Circular A-4, including careful estimation of all reasonably foreseeable effects of the rule. If confirmed, I would work to ensure that these principles are followed in all regulations that OMB reviews.

Senator Begich

1. **The President in Executive Order 13563 emphasized the importance of harmonizing rules. There are several Federal agencies working on fiduciary rules that could end up in conflict and confusing investors. OMB did not adequately scrutinize a fiduciary proposal issued by the Department of Labor (DOL) and it was subsequently withdrawn last year. What steps will you take to ensure the revised DOL fiduciary proposal is properly vetted and is harmonized with our agency fiduciary proposals?**

As a general matter, I believe that understanding the way in which rules work together is important to a successful regulatory system. If confirmed, I would seek ways to coordinate and harmonize rulemakings among all agencies as appropriate, objectives the President emphasized in Executive Order 13563. I would also work to ensure that regulations reviewed by OMB are issued in accordance with the President's Executive Orders 12866 and 13563, and that regulatory analyses are prepared in accordance with the guidance set forth in OMB Circular A-4. I also believe that sound economic analyses of regulations are extremely important, including careful estimation of all reasonably foreseeable effects of the rule. If confirmed, I would work to ensure that these principles are followed in all regulations that OMB reviews.

2. **In their 2011 report on the Benefits and Costs of the Clean Air Act, EPA claims that reducing particulate matter will result in economic benefits on the order of $2 trillion per year in 2020 as a central estimate or $5.7 trillion per year as an upper bound estimate. According to a report by Goldman Sachs, however, the Gross Domestic Product (GDP) of the entire United States will be about $18 trillion in 2020.**

   Clearly there are concrete benefits to human health and wellbeing that arise from cleaner air. At the same time, these estimated benefits are very high relative to the overall value of the economy. Can you please elaborate on the methodologies or techniques OIRA uses to evaluate the validity of estimates like these?

As I am not yet at OIRA, I am not aware of the specific details of the methodologies OIRA would use to evaluate estimates such as these. If confirmed, I would review all individual regulatory analysis for adherence to the principles of the Executive Orders and OMB Circular A-4.

Senator Coburn

1. **The Regulatory Flexibility Act (RFA) requires agencies to consider the impact on small businesses of their rulemakings. Procedural requirements of the law mandate that agencies consider less costly alternatives to small businesses and in some cases empanel a group of small business representatives to help them think about the rule before it is proposed. Currently, only a small number of regulations require this additional analysis under the Act and the small business panel process only applies to three agencies. Some argue that, because obvious "indirect effects" of regulations often are not considered, agencies are able to simply rubber stamp a proposed rule as not having a significant impact on small entities.**

   Will you work with us to reform the RFA so that more agencies are sensitive to small business impacts, as Congress intended?

I believe small businesses are critical to our economic growth and job creation. The President issued a memorandum directing Federal agencies to consider ways to reduce regulatory burdens on small businesses. If confirmed, I would learn more about how agencies are currently implementing the RFA and the President's memorandum on small businesses, as well as how agencies make the determination of whether a regulatory effect would constitute a direct effect as defined by the RFA and how small business panels are being utilized under the RFA. I would look forward to working with agencies on that effort.

2. **Meaningful regulatory review is a significant element of the President's Executive order outlining his regulatory policy and affirming that agencies employ sound rulemaking principles. OIRA has played an important role in guiding the retrospective reviews conducted by agencies.**

   Without regard to the Administration's claims that this is sufficiently being carried out and is effective, what are your thoughts on how agencies can be incentivized to conduct meaningful regulatory reviews that will actually improve their existing regulations, and reduce the burdens imposed on regulated entities?

I believe it is extremely important for the retrospective review process to lead to meaningful regulatory reforms. My understanding is that Federal agencies, both executive and independent, have produced a list of initiatives that will reduce costs, simplify the system, and reduce redundancy and inconsistency. If confirmed, it would be a priority for me to continue to make strides in this effort. I would want to gain a better sense of how the agencies are complying with the retrospective review requirements of the President's Executive Orders in order to determine whether further incentives are necessary and, if they are, how they should be designed. I would also look forward to working with Congress on this issue.

3. **The President's Council on Jobs and Competitiveness made a variety of recommendations to improve the federal regulatory process. Among those, the Council recommended that Congress should require independent regulatory commissions and agencies to conduct cost-benefit analysis for economically significant rules and that those rules should be subject to third-party review by OIRA or another independent**

body. This type of regulatory reform is supported by several Senators, including members of this committee.

Are you supportive of this approach? You come from an independent regulatory agency and would be more qualified than most to speak on this issue. Would it be of value to require sound rulemaking principles of those regulatory bodies and provide third-party review or an objective perspective on rules they promulgate?

I appreciate and thoroughly understand the importance of the independence of independent agencies. Both Republican and Democratic Administrations have acknowledged and recognized this importance as well. I also believe in the regulatory principles, including the analytical principles and cost-benefit principles embodied in EO 13563, and, further, believe that they can improve rulemaking. In July 2011, the President issued Executive Order 13579, which called on independent agencies to follow many of the same principles that executive agencies must follow and I support this approach.

4. **One of the most well-known regulatory policy decisions made last term was the rejection of the ozone rule.**

   If a similar fact-pattern presents itself, would you be comfortable sending back an agency rule that is inconsistent with the President's policies and Executive Orders? What about when an agency's proposed rule may not be the best approach to resolve the problem at hand or the analysis used to support a regulatory approach can be questioned? How would you respond to political pressure to simply let the rule go through?

If confirmed, I would seek a collaborative and consultative relationship with the agencies. That said, I would not rule out returning a rule to an agency for further work if the rule is inconsistent with the law, the relevant Executive Orders, or OMB Circular A-4.

5. **In many cases, the goals of a regulation may be achieved by using less restrictive alternatives. This could include reducing notice or paperwork requirements in a new rule, allowing numerous ways to perform a required calculation, or requiring information disclosure rather than prohibiting activity or products.**

   What actions could OIRA take to encourage agencies not to unnecessarily burden job creators, or restrict consumer choice?

Under Executive Order 13563, an agency must "identify and assess available alternatives to direct regulation" and "tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives." If confirmed, I would work to ensure rules comply with these and other mandates of the relevant Executive Orders as part of the OIRA review process.

Senator Ayotte

1. **OIRA plays a critical role to ensure all the information, risks, costs and benefits have been adequately reviewed by an agency conducting a rulemaking. One example is a potential rule the Department of Labor is expected to submit to OIRA in the near future. It would change the definition of fiduciary under ERISA, and it is likely to have a very dramatic impact on employee stock ownership plans, IRAs, and small businesses trying to provide retirement benefits to their employees. This is a rule that DOL previously issued and withdrew because of the harm it would have imposed on Main Street America.**

   As OIRA Administrator, how would you view your role in analyzing rules' costs and benefits and how will you review these types of regulations to make sure you're fulfilling your function at OIRA so that the government is not issuing regulations that are more harmful than helpful?

In general, I believe that sound economic analysis of rules is extremely important, and that the benefits of regulations issued should justify their costs to the extent permitted by law. If confirmed, I would work to ensure that regulations reviewed by OMB are issued in accordance with the President's Executive Orders 12866 and 13563, and that regulatory analyses are prepared in accordance with the guidance set forth in OMB Circular A-4.

Senator Landrieu

1. **Over the next few years, the EPA is poised to promulgate some very costly regulations that will have a significant impact on businesses in Louisiana and across the nation. One regulation alone, the upcoming ozone National Ambient Air Quality Standard (NAAQS), will potentially put every economic center in Louisiana in non-attainment. This will provide a significant disincentive for existing businesses to expand and new business to locate in Louisiana.**

   Last month, OMB asked for comments on a draft report to Congress summarizing the benefits and costs of federal regulations. The report concluded that 58 to 80 percent of the monetized benefits from *all* federal regulations are due to EPA regulations that have the primary or secondary effect of reducing fine particulate matter known as PM2.5.

   Given the extraordinary role this one pollutant (PM2.5) plays in justifying the costs of *all* federal regulations, including the pending ozone standard review, the government should carefully scrutinize the reliability and credibility of this benefit claim.

   At current levels of air pollution, are the benefits of reducing PM2.5 emissions real and are the economic claims being used to justify these regulations being realized by the American public in a meaningful way?

If confirmed, I would use OMB Circular A-4 as a guide to conduct reviews of rulemakings submitted to OMB, including rules that included reductions of PM2.5. Circular A-4 includes a section on how agencies should treat uncertainty, and I would expect all analysis of benefits and costs to follow this guidance and consider all the significant sources of uncertainty in their estimates.

OMB has a history of relying on EPA's high benefit estimates in conducting its own analysis of the benefit and costs of federal regulations without providing rigorous independent review of the validity of these estimates. If the country will truly realize $2 to $5 trillion in benefits in 2020, this is clearly a major achievement for the American public. If, however, the *most likely* estimate of benefits, when considering all major sources of uncertainty, is far less, than the public deserves to understand this important fact. Regulations must be based on a transparent and rigorous assessment of benefits and costs.

Recently, significant questions have been raised concerning the validity of the PM benefit estimates. Many of these questions are linked to the assumptions and scientific uncertainties that OMB itself notes in the draft 2013 report on page 17. Given that such a high percentage of the benefits from all federal regulations cited in OMB's draft 2013 report is based on PM2.5 reductions, will you commit to:

1. **Undertake within in six months, an independent and rigorous review of the assumptions outlined in the draft OMB Report to Congress on page 17, including assumptions around causality and the linear impact function of benefits, and respond to the attached questions?**

2. **Assess how EPA's claimed economic benefits of its rulemakings enter the economy and impact GDP, jobs and taxes?**

3. **Meet with outside experts who are now questioning the validity of these estimates?**

4. **Conduct an integrated uncertainty analysis of the potential benefits from reducing PM2.5 at current ambient exposure levels considering all major sources of uncertainty noted on page 17 of the report?**

5. **Develop and release for public comment the conclusions of your review and recommendations for how these benefit estimates can be improved to accurately reflect the true risk and benefits from further reductions in PM2.5 when considering all major sources of uncertainty?**

6. **Release a final report based on the public comments that includes recommendations on how EPA should modify its benefit estimates?**

If confirmed, I would use OMB Circular A-4 as a guide to conduct reviews of rulemakings submitted to OMB, including rules that included reductions of PM2.5. Circular A-4 includes a section on how agencies should treat uncertainty, and I would expect all analysis of benefits and costs to follow this guidance and consider all the significant sources of uncertainty in their estimates. In addition, I believe that significant indirect effects of rulemakings, such as the impact on jobs, are legitimate subjects of analysis and OIRA review. Finally, upon request, I would be happy to meet with outside experts on these and other issues, as appropriate, consistent with the requirements set forth in the relevant Executive Orders.

Responses for the Record
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Committee on Homeland Security and Governmental Affairs
June 20, 2013

At the Hearing, Senator Levin asked for an expanded response to the following question:

The Administration expressed its opposition to being directed to pass judgment on the quality of the independent agencies' cost benefit analysis. Do you agree with that?

Mr. Shelanski's expanded response is as follows:

I value the independence of independent agencies, and have seen that value personally in my work at two independent agencies. I am not in a position to speak to the overall quality of cost-benefit analyses conducted by independent agencies. These analyses cover a wide range of subject matters, and are the result of varying cost-benefit requirements, many of which are statutorily defined. I understand the Administration has taken some constructive steps working in cooperation with independent agencies, and if confirmed, I would want to continue this work.

At the Hearing, Senator Portman asked for an expanded response on the following question:

Would you be willing to commit to clearly report and track on reginfo.gov the actual results of the regulatory lookback initiative, including a regulatory lookback dashboard that tracks annualized savings so we can have a comparison on an annual basis?

Mr. Shelanski's expanded response is as follows:

I believe that the retrospective review effort is extremely important, and, if confirmed, I would be interested in exploring additional ways to institutionalize and track progress on this effort. I think the idea you raise of reporting and tracking retrospective review on reginfo.gov is promising, and consistent with the broader goal I share of involving the public in the rulemaking process. If confirmed, I would look into this further, and would look forward to working with Congress on the issue of regulatory lookback generally.

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