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NOMINATION OF PAUL J. RAY

HEARING

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

NOMINATION OF PAUL J. RAY TO BE ADMINISTRATOR OF THE OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET

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NOMINATION OF PAUL J. RAY

WEDNESDAY, DECEMBER 4, 2019

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

The Committee met, pursuant to notice, at 2:43 p.m., in room SD–342, Dirksen Senate Office Building, Hon. Ron Johnson, Chairman of the Committee, presiding.

Present: Senators Johnson, Lankford, Scott, Hawley, Peters, Carper, Hassan, Sinema, and Rosen.

OPENING STATEMENT OF CHAIRMAN JOHNSON

Chairman JOHNSON. Good afternoon. I want to welcome Mr. Ray, your family, your friends, and your supporters here. I want to thank you for your previous service. Thank you for your willingness to serve again.

In our conversations, I have always been impressed, first of all, with your education background, your work experience, but even more so, your zeal for regulations. [Laughter.]

Senator PETERS. We all got zeal.

Chairman JOHNSON. So from my standpoint, so American, I am in support of the confirmation.

We have a messy process here with five votes. We have done two. We have three more. I may just keep the thing going. I may miss a vote, if they do not need my vote, just to keep the thing going.

But I encourage you in your opening statement to introduce your family members and your friends, and with that, I will quickly turn it over to Senator Peters and just ask that my written statement be entered in the record.[1]

OPENING STATEMENT OF SENATOR PETERS[2]

Senator PETERS. Well, thank you, Mr. Chairman, and thank you, Mr. Ray, for being here today and for your willingness to serve as well.

The Office of Information and Regulatory Affairs (OIRA), is a small, relatively unknown office in the Federal Government that has an enormous amount of power.

For nearly four decades, OIRA has managed Federal rules and regulations that impact Americans' daily lives in countless ways.

Federal regulations cover everything from protecting clean air and clean water, to safeguarding our health, and ensuring that the

[1] The prepared statement of Senator Johnson appears in the Appendix on page 29.
[2] The prepared statement of Senator Peters appears in the Appendix on page 30.

cars we drive are, indeed, safe. While Federal agencies are responsible for proposing and issuing regulations, they all go through OIRA for review before they are finalized to take effect. In short, it is OIRA's job to ensure that each of these regulations does what it is supposed to do, whether that purpose is to promote economic growth, public health or student safety, or to safeguard against discrimination, worker exploitation, or harmful chemicals.

Not many people outside of Washington have heard of this agency, but individuals across the Country know that government regulations can have a dramatic impact on their families, businesses, and communities.

Many people also know too well the impact of halted or delayed regulatory efforts. Right now, critical protections for lead in drinking water and polyfluoroalkyl substances (PFAS) contamination are being weakened or remain stalled in the regulatory review process. Meanwhile, Americans in communities like Flint, Oscoda, and Parchment in my home State of Michigan cannot drink the water from their own faucets without fear of ingesting toxins like lead or PFAS.

People in Michigan and across the Country depend on OIRA to work with agencies to efficiently and effectively finalize important safeguards that will help protect the health and safety of all Americans.

OIRA also works with agencies to promote public participation in the rulemaking process and provide transparency into regulatory process.

Mr. Ray, in many of your questionnaire responses, you have acknowledged the critical importance of transparency and accountability in the regulatory process. Unfortunately, those statements stand in stark contrast to your actions after your nomination in October when this Committee requested relevant information to evaluate your qualifications. We have asked you multiple times to provide this Committee with information regarding your tenure as the Associate and Acting Administrator, and you have failed to provide us with sufficient response.

In order for this Committee to do its job and to thoroughly and meaningfully consider your nomination, we need to have your full cooperation in providing us with the information we have requested.

As the Senate's primary oversight committee, we are also charged with ensuring that OIRA is operated in the best interests of the American people.

Given the lack of cooperation that we have received from you, OIRA, and the Office of Management and Budget (OMB) during your confirmation process, I have very serious concerns about how this critical agency will comply with this Committee's requests, if you are confirmed.

My constituents in Michigan and people across the Country are dependent on OIRA to put politics aside and make decisions that are in the best interest of the American people.

So I look forward to hearing from you today about how you will prioritize the health and safety of Americans if you are confirmed to this vital agency.

Thank you, Mr. Chairman.

Chairman JOHNSON. Thank you, Senator Peters.

Again, I would love to have your and the Minority support on this. I will work with you and the nominee to get information that falls outside of executive privilege and deliberative process which is, from my standpoint, a very important concept and one that I believe the executive should be protecting.

But I do want to say we are very honored to have Senator Marsha Blackburn here. I probably should have gone right to you, but I was hurried. But you are here to introduce or certainly talk about Mr. Ray, and you have the floor.

OPENING STATEMENT OF THE HONORABLE MARSHA BLACKBURN, A UNITED STATES SENATOR FROM THE STATE OF TENNESSEE

Senator BLACKBURN. Thank you, Mr. Chairman, and yes, indeed, it is such an honor for me to be here and to introduce, to the Committee, Paul Ray who is the President's nominee and is commonly referred to as the Regulatory Czar.

He is a native of Chattanooga. He is a lifelong Tennessean. He received his BA from Hillsdale College and his JD, *magna cum laude*, from Harvard Law School. After graduating from law school, Paul clerked for Judge Debra Livingston on the Second Circuit and then for Associate Justice Samuel Alito on the U.S. Supreme Court. He specialized in administrative law while in private practice at Sidley Austin here in our Nation's Capital.

In 2017, he became counselor to the Secretary of Labor. Last year, he moved over to the Office of Management and Budget to become Associate Administrator of OIRA. Last month, President Trump nominated Paul to become the permanent head of the office that he oversaw for most of the last year. It was a wise nomination.

Paul learned the importance of hard work from his parents. He grew up the oldest of three children. Paul's father was a college professor who taught public speaking. Paul's mom, who is here with us today, raised not only Paul but also his sister and his brother, and she is now a proud grandmama, the best job in the whole wide world. And she resides in Chattanooga. While his father has since passed, I know he would be so very honored to see his son here today.

Paul will make an excellent leader as the first Tennessean to head OIRA. In my conversations with him, it is clear that he has the leadership ability and the judgment to both manage and lead the agency of 60 public servants.

We can witness the results of OIRA's regulatory reform and current success of the American economy. President Trump's cost-cutting to regulatory efforts have fostered booming job growth and new stock market records. Last month, the Dow Jones hit a record high of 28,000. Entrepreneurs and business owners enjoy confidence in the markets because they know that they can innovate and expand without fear of overregulation. Paul's nomination is going to keep that ball rolling in fulfilling President Trump's promises of prosperity.

I trust that he will work to ensure that American taxpayers and businesses do not bear the brunt of cost from overregulation, burdening the economy.

Under Paul's leadership, we can expect that OIRA will rigorously apply cost benefit analysis to every single rule, something that is not done in Washington, DC, often enough, as we look at regulation.

I look forward to his permanent leadership at the agency, and I am so pleased to congratulate him and present him to you today.

Chairman JOHNSON. Well, thanks, Senator Blackburn. I appreciate that.

I will point out that being a grandpa is pretty nice too. [Laughter.]

So it is the tradition of this Committee to swear in witnesses. Mr. Ray, if you will please stand and raise your right hand. Do you swear the testimony you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. RAY. I do.

Chairman JOHNSON. Please be seated.

Mr. Ray is the senior advisor to the Director of Regulatory Affairs of the Office of Management and Budget. Prior to him being nominated, Mr. Ray served as the Acting Administrator and Associate Administrator of OIRA and before that was counselor to the Secretary of Labor.

Mr. Ray was the law clerk to Supreme Court Justice Samuel Alito and U.S. Court of Appeals for the Second Circuit, Judge Debra Livingston.

He graduated magna cum laude from Hillsdale College and Harvard Law School. Not a bad record. Mr. Ray.

TESTIMONY OF PAUL J. RAY,[1] NOMINEE TO BE ADMINISTRATOR, OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET

Mr. RAY. Thank you very much, Mr. Chairman, Ranking Member Peters, and Members of the Committee. It is a great honor to be with you today.

I would like to thank Senator Blackburn for her kind words. It is an honor to be introduced by someone whom I and my family in Chattanooga hold in such high regard.

I would like to thank the Members of the Committee and their staff for taking the time to meet with me over the course of this process. I would like to thank the Chair for his longstanding leadership on regulatory reform issues, which has inspired so many. If confirmed, I look forward to working closely with Members of the Committee on regulatory and information policy.

I would like to thank my family, some of whom are here with me in the room today. My mother, DeLora Ray, has always been a model of sacrifice. Her determination and grit in raising three children, including a decade as a single mother, continues to amaze me. Likewise, my Uncle Roger Ray is here, he has taught me much of what I know about service and pursuing excellence in private and public life.

I often remember my father, Dr. Joe Ray. Born nearly blind and growing up amid great difficulties, his career as a teacher proved

[1] The prepared statement of Mr. Ray appears in the Appendix on page 32.

to many that hard work can overcome any adversity, and his legacy as a loving father and husband and a faithful friend and mentor continues to teach me what it means to live a good life.

Last, I would like to thank President Trump and Acting Director Russell Vought for the confidence they have reposed in me.

I am greatly honored to be considered for the position of Administrator of the Office of Information and Regulatory Affairs. OIRA is an American success story. My appreciation for OIRA's vital mission has been enhanced by serving at the office's helm as Acting Administrator for most of this year.

During this time, I sought to promote cost-benefit analysis and the other analytic tools that OIRA uses to ensure that regulations rationally and transparently pursue the good of the American people. In fact, those are the values that underlie the new Executive Order (EO) on transparent guidance.

The order creates a level playing field for individuals and small businesses and gives them the tools they need to hold their government accountable for its policies. It is an instance of the Administration's commitment toward making the regulatory process more democratic and accessible.

I also worked, while at OIRA, to make the office a more effective coordinator of the Federal regulatory process. This process ensures that the government speaks with one voice and pursues the President's priorities. This unity of action is a prerequisite for rational regulation.

I also supported important initiatives with respect to Federal statistical and information policy, which is another of OIRA's vital responsibilities, and I advanced Congress' ability to monitor how agencies implement regulations that interpret statutes.

I cannot come before you without mentioning the outstanding quality of the men and women I was privileged to work with while at OIRA. I cannot imagine a more dedicated and knowledgeable group of public servants, and so, during my tenure, I tried to make OIRA a welcoming place where talented individuals dedicated to serving the United States of America would thrive.

Promoting cost-benefit analysis, making the regulatory process more democratic, facilitating interagency review, responsibly updating Federal statistical and information policy, vindicating Congress' right to review regulations, and leaving OIRA an even better place to work than I found it: these are the objectives I pursued while Acting Administrator, and they are the goals I would bring with me should the Senate choose to confirm me.

There is another objective I would pursue, one that undergirds all the others I have discussed up until now, and that is promoting the rule of law. OIRA has a vital role to play in ensuring a process that results in regulations that are lawful. Every Federal official swears to bear true faith to the Constitution and, thus, to the laws enacted pursuant to it. That has always been the cornerstone of my public service, and that too would continue if I am confirmed.

Thank you for your consideration. I look forward to answering your questions.

Chairman JOHNSON. Thank you, Mr. Ray.

Senator Hawley, I have just got three questions, and then I will turn it over to you so you can go vote as well.

There are three questions the Committee asks of every nominee for the record. So, first of all, Mr. Ray, 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. RAY. No, Mr. Chairman.

Chairman JOHNSON. Do you know of anything personal or otherwise that would in any way prevent you from fulling and honorably discharging the responsibilities of the Office to which you have been nominated?

Mr. RAY. I do not.

Chairman JOHNSON. Do you agree without reservation to comply with any request or summons to appear and testify before any duly constituted committee of Congress if you are confirmed?

Mr. RAY. I do.

Chairman JOHNSON. Thank you. Senator Hawley.

OPENING STATEMENT OF SENATOR HAWLEY

Senator HAWLEY. Thank you, Mr. Chairman.

Mr. Ray, good to see you. Thanks for being here. Congratulations on your nomination. I enjoyed getting to sit down with you whenever it was, a few weeks ago. Time flies. But I think that you are eminently qualified for this role. You have been doing a great job in an acting capacity, and I look forward to seeing you confirmed.

I will be brief here, but let me just ask you a question or two. Tell me, as OIRA Administrator, some of the most important decisions that you are going to make are about priorities, what you choose to prioritize, what you choose to focus on. Can you talk to us about what you see as the regulatory areas that would be your largest priorities as Administrator should you be confirmed?

Mr. RAY. Absolutely. And thank you, Senator.

There are many individual regulations that are very important, but I think the most important thing for the OIRA Administrator to focus on is systemic questions, ensuring that the regulatory process itself is working as it should for Americans to ensure they have the best regulations.

I think of three principal objectives there. One is to ensure that OIRA's long tradition of cost-benefit analysis and other analytic tools remains incredibly robust and, indeed, to built upon and ensure there is a strong continuation of that practice.

Second is, of course, pursuing the President's regulatory reform agenda with respect to individual regulations and systemic reforms, such as the recent Executive Order 13891 on transparency and the guidance process.

And third is to leave OIRA a better place than I found it. If OIRA is to do its job, it needs staff with the right training, the right skills, the right motivation, and the ability to work as a team and ensure that the regulations are reviewed properly.

Senator HAWLEY. You said a moment ago in your opening statement that OIRA is an American success story.

Mr. RAY. I did.

Senator HAWLEY. Tell us what you meant by that.

Mr. RAY. Absolutely. I think OIRA is really remarkable in that it is a commitment to rationality. It is actually not a—obviously, OIRA does have statutory powers, but this particular commitment

is in an Executive Order. It is remarkable that an Executive Order that commits the government to regulating rationally has been in place over the course of multiple administrations, over the course of multiple decades, and has achieved really a bipartisan consensus. It is a remarkable success.

Senator HAWLEY. The last thing that I want to raise with you that you and I discussed when we met is the impact, the severe impact that many Obama-era regulations had on farmers, in particular, in my State and in rural communities, things like the Waters of the United States (WOTUS) rule, the habitat rule, the stream protection rule, things that as Attorney General (AG) of my State, I went to court to fight.

The President has made major progress on revisiting, revising, eliminating those rules and eliminating or at least limiting their catastrophic effect on States like mine.

Can I get your commitment as Administrator, if confirmed, that you will continue to focus on these sorts of major environmental regulations that have such an outsized burden or place such an outsized burden on farmers in rural communities?

Mr. RAY. Yes, Senator. Absolutely, if confirmed, I would make that a very high priority, indeed.

Senator HAWLEY. Thank you, Mr. Ray.

Thank you, Mr. Chairman.

Chairman JOHNSON. Senator Lankford.

OPENING STATEMENT OF SENATOR LANKFORD

Senator LANKFORD. Mr. Chairman, thank you so much for continuing to hold the hearing. As people have to go back and forth to vote, I appreciate that very much.

It is good to see you again. You have a tough job in the interim. It is a tougher job, actually, once you take on the title. You have a role very similar to what Cass Sunstein had before he took that position in OIRA and kind of a temporary role in between as an advisor and counselor, but we are looking forward to you taking on the role. And we will see where that goes from here.

I have also been intrigued by the conversation of late about challenging you about any kind of conversations you have had with White House staff or with anyone within the White House. That kind of deliberatory process seems to be pretty normal. I do not often ask other Senators what their conversation was like with their staff, and before I answered a question from them, I wanted to know all of the conversation with their staff ahead of time. Neither do I go to their staff and ask for their staff to be able to tell me all of their conversation with that Senator or with that House Member. So it is kind of a fascinating conversation that is going on right now about deliberatory process and engagement, but I appreciate you giving us the straightforward answers as you can as you go through the process, still protecting the integrity of conversations that should be protected as we go through the process.

Mr. RAY. Well, thank you, Senator.

Senator LANKFORD. Let me ask you a little bit about the role of OIRA and what you see as that role.

You are not the absolute backstop, but we do count on OIRA to be a nonpartisan backdrop in the regulatory process. So tell me what you see as the role of OIRA.

Mr. RAY. Absolutely. Thank you, Senator, for that question.

Really, the role of OIRA is to ensure a process that results in regulations for which costs and benefits are accurately and transparency accounted that contain full and adequate legal rationales, explaining the agency action, and that are the result of a single executive voice, of a robust interagency process that ensures that the right hand knows what the left hand is doing, which is a prerequisite for rational regulating.

Senator LANKFORD. So previous administrations have allowed the agencies to be able to determine what is a significant regulation and what is not significant as they go through the process, what is guidance, what is not guidance. How can OIRA be more engaged in the process of being a second set of eyes, if I can say it that way, to an agency, to be able to say, "No. This one is going to need a cost-benefit analysis. You cannot just say that does not look significant to me and be able to move on," or what is a regulation or what is a guidance and when they can do a redefinition?

Mr. RAY. Yes, Senator. Certainly, on the issue of making significance determinations, I have always believed that Executive Order 12866 is very clear that the OIRA Administrator makes the final decision as to significance.

Of course, when I was Acting Administrator, I always welcomed the input and views of our agency colleagues on that question, but that was ultimately my decision to make as the Acting Administrator, and I exercised that authority.

On the question of guidance documents, one very helpful recent change is the Executive Order, EO 13891, of course, modeled on the Chair's Guidance Out of Darkness (GOOD ACT). Under that order, OIRA will be seeing many more guidance documents than it has heretofore and will have the authority to make significance determinations with respect to those documents as well.

So I do think there may have been a bit of a lacuna previously in the framework. Agencies may not have been entirely certain what OIRA's authorities were with respect to guidance documents, even though OIRA has reviewed guidance documents for decades, even before the Executive Order. But the Executive Order, once it is fully implemented in regulations over the course of the next few months will eliminate that.

Senator LANKFORD. So I am going to follow up on the next few months on that because I believe that has a February deadline to be fully implemented. Do you think that is going to be implemented by February and be done by the end of February and all agencies are compliant with that?

Mr. RAY. Senator, OIRA has already begun to review regulations from agencies, and OMB is certainly hurrying them along.

Senator LANKFORD. So are we going to make it?

Mr. RAY. There are a lot of agencies in the Federal Government. There may be one or two laggards, but we are going to push them as hard as we can.

Senator LANKFORD. So let me ask a deeper question. It is a philosophical questions. Several Presidents have been hesitant to be

able to take on the issue of independent agencies being on some kind of review. I have been one of those folks that said independent agencies are not independent of everyone. All of us have oversight at some level, and for an independent agency to say, "No, we are fine. We do not want you to check our homework," I think is inconsistent with just agencies having basic oversight in the structure. Do you have an opinion about independent agencies having some OIRA oversight when they are promulgating rules?

Mr. RAY. Senator, I certainly believe that every agency could use some additional eyes, as you put it a minute ago, on its cost-benefit analysis to ensure that the cost-benefit analysis is of the highest possible caliber.

Obviously, you and others on both sides of the aisle, have said that one useful way to achieve that result would be OIRA review. That would be, of course, a decision for the President, and no decision has been made in the Executive Branch on that subject. But, certainly, there is a compelling case that has been made by administrators and lawmakers on both sides of the aisle.

Senator LANKFORD. Right.

I have noticed in the past, that I have dealt with multiple heads of OIRA over the 9 years that I have been total in Congress, and I have noticed the most helpful conversations that I have had with the head of OIRA is right after they retire. And then they can give their most clear, straightforward answers, but regardless of party and background, everyone is protective. And I get that.

This last Monday, I released out an annual guide that I put out called "Federal Fumbles." It deals with just areas of waste and inefficiencies and put some recommendations how we can do some things more efficiently.

One of the things that drives me crazy is when an agency ends up in a lawsuit because they did not follow the Administrative Procedures Act (APA). It is a pretty straightforward guideline of what has to be done from start to finish, and when all the boxes have not been checked and we end up in lots of litigation over the promulgation of a rule or working through a guidance, then the taxpayer spends a ton of money in court trying to be able to process through this.

What are you going to do to be able to make sure that for every regulation that goes through, all the boxes have been checked, that the taxpayer is not spending more money on a court case where they win or lose it just because the Administrative Procedure Act was not followed?

Mr. RAY. Thank you, Senator, for that question.

One of OIRA's central roles is to survey regulations across the Government and develop expertise in that central foundation of the regulatory process, the Administrative Procedure Act.

While I was Acting Administrator, I would review regulations and work with my staff to review regulations to ensure that those regulations were compliant with the Administrative Procedure Act. When they were not, I would direct that agencies be informed of that conclusion and that changes would be proposed to those regulations.

Of course, OIRA also circulates rules to the Department of Justice (DOJ) and other legal offices across the government for their

expertise on that question as well. I think keeping OIRA's cross-government expertise in the Administrative Procedure Act strong is very important.

Senator LANKFORD. Yes. We cannot stop lawsuits, but we can make sure that when lawsuits are carried out, they are not carried out and everything is overturned on a regulation based on a mistake that everyone should have been in that basic oversight.

I appreciate you stepping up to be able to do that.

Mr. Chairman, thank you.

Mr. RAY. Thank you, Senator.

Chairman JOHNSON. Thank you, Senator Lankford.

I think you missed my opening when I described Mr. Ray's zeal for regulation. Right now, we have three Senators joining me that have probably not as large a zeal for certainly a zeal for regulation.

I also want to quickly point out, I went to a No Labels bipartisan group today, and I talked about the Preventing Government Shutdown Act that you two are lead cosponsors of. There is a great deal of interest in it.

I know you are discussing and maybe come to some agreements. There is, I really think, a growing possibility of getting result on that. Again, I just want to encourage you to continue to stay engaged on that and just let you know on a bicameral, bipartisan basis, when I mention that, there are a lot of nodding heads.

Senator LANKFORD. Mr. Chairman, we have moved from talking together and cosponsors.

Chairman JOHNSON. Well, excellent. Senator Hassan.

OPENING STATEMENT OF SENATOR HASSAN

Senator HASSAN. Thank you, Mr. Chair, and I want to thank you and the Ranking Member for this hearing, and I want to thank the nominee for not only being here today but for being willing to step up and serve. It is a special thing to do, and we are grateful for your interest in it.

I want to follow up a little bit on where Senator Lankford began. You were talking about the purpose of OIRA, why we need an office to review agency rulemaking and to coordinate information policy and set private policy across the government. So I appreciated the answer you gave Senator Lankford, and I appreciated the explanation and the principles you laid out.

But one of the things I am growingly concerned about is that time and again, nominees have come before the Senate promising to follow the law, to be accountable and transparent to the American people and their representatives, and in particular to stand up to political pressure.

One of the reasons we have regulations, one of the reasons we have OIRA is to make sure that the politics that sometimes swing us back and forth do not have too much sway on things that are critically important to the American people.

Sometimes the people who come here and say they will stand up to political pressure do not always follow through on that.

Last year, several of my colleagues and I wrote a letter, for example, to former OIRA Administrator, Neomi Rao, about the strengthening transparency and regulatory science rule. This rule was proposed by the Environmental Protection Agency (EPA) and

moved through OIRA review in less than a week. This suggested that the longstanding rulemaking processes that are the foundation of our regulatory system and that Ms. Rao made a commitment to uphold were being shortchanged.

Currently, the Food and Drug Administration (FDA) is scrambling to regulate e-cigarettes and vaping products amid fierce pressure from the vaping industry and now the White House. I am concerned that the scientists, researchers, and doctors at FDA working on these regulations are being ignored by political decisionmakers. As a result, their efforts to move forward with sound fact-based regulations to protect the American people are being compromised.

If you were truly committed to the rule of law and mission of OIRA, what is your plan to defend the important work of OIRA and agency regulators from political pressure and undue outside influence?

Mr. RAY. Senator, thank you for that question.

That the key to ensuring that OIRA is able to do that is rigorous adherence to the standards of Executive Order 12866; this is an Executive Order that has stood the test of time, achieving bipartisan consensus across administrations. OIRA ensures that agencies adhere to those standards and also that they include in their rulemakings or in their guidance documents a full adequate and robust legal explanation of their action.

When I was first interviewing for this nomination, the first thing I said to the folks I was interviewing with when they asked me if I had any questions for them, was "If I am selected to go forward with this, I would need to know that I am supported all the way to the top on preserving OIRA's analytic equities, no matter what the circumstances." And that assurance was given and was held. Individuals were true assurance to that the entire time that I was acting administrator.

Senator HASSAN. Well, that is helpful to hear and helpful that you are keeping your eye on that. I would suggest to you that others with important intentions to do the same have been tripped up, and so I will urge you, if you feel you are being pressured in some way that it is inconsistence with your guidance and regulations, that you will look to allies in both political parties to help preserve the process. That is what we all should be here to do, and that is the best way to make sure that—I always want to say it is 1286 as opposed to 12866—but to make sure that that is followed.

Let me actually follow up on that now. I truly believe in evidence-based policymaking, and so I think it is critically important that facts, data, stakeholder input, and public comment are really considered in the development of regulations. We rely on agencies obviously to gather that information and analyze it and use it to provide support for their regulatory activities.

OIRA plays a key role in ensuring that agencies develop a robust evidence-based, cost-benefit analysis to justify their rulemaking. In doing so, OIRA must consider whose benefits and whose costs were incorporated into an agency's analysis as well as those who were left out.

In early 2018, the Department of Labor (DOL) attempted to push through a rule on tip sharing that left out analysis stating that

tipped workers would lose $600 million in gratuities as a result of the proposed rule.

In addition to prompting an Inspector General (IG) investigation into the agency's rulemaking procedures, this attempt to leave out critical information neglected the very group that would be most impacted by the rule.

As Administrator, how will you make sure that agencies contemplate all relevant stakeholders in their cost-benefit analysis, not just those with the most political clout or who seem the most obvious, but all people or industries that may be affected by a regulation.

Mr. RAY. Yes, Senator. Thank you for that question. It was incredibly important to me when I was Acting Administrator and would be important to me should I be confirmed to ensure that the cost-benefit analysis attached to a regulation or proposed regulation fully and accurately reflects the benefits or costs to all individuals or entities of all parts of America that are affected by the rule.

The touchstone that I have, I would presume with that question, is what are the costs and benefits that are reasonably anticipated by this regulation; if they can be reasonably anticipated, then they should be discussed.

Ideally, they should be quantified, and to the point you made with regard to that regulation, certainly, when I was Acting Administrator, I insisted that everything that could be quantified should be quantified.

It is the case that sometimes there are costs and benefits that cannot be quantified, and those are real costs and benefits. And so the agency should be transparent and forthcoming about the fact that costs and benefits cannot be quantified but the key, I believe, is that the agency must be completely truthful and transparent about all the costs and all the benefits of every regulation.

Senator HASSAN. Thank you.

I only have a few seconds left. I will follow up with you because I believe it is today that the U.S. Department of Agriculture (USDA) announced a change in regulation that will kick a lot of Americans off of food stamps, and one of the things I am curious about is what kind of analysis was done, because their eligibility depends on unemployment rate. But we know unemployment rates in different parts of the country can be vastly different, and that when people do not get food stamps, they have less disposable income to support the local economy.

So I would very much look forward to following up to find out what kind of involvement OIRA has, if any, in that new regulation because that also strikes me as an area where we need to make sure that we are considering the impact on not only recipients but local economies.

Thank you very much.

Mr. RAY. Thank you, Senator.

Chairman JOHNSON. Senator Carper.

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. Thanks, Mr. Chairman.

Mr. Ray, welcome. Thank you for joining us.

Mr. RAY. Thank you, Senator.

Senator CARPER. We have five votes here in a row. So we are in and out. I apologize for that.

I understand you have some family members here.

Mr. RAY. I do.

Senator CARPER. Your mother?

Mr. RAY. Yes. My mother and my uncle are both here.

Senator CARPER. It is great to see you all. Thank you, and welcome. Welcome to our hearing, your hearing as well.

Let me just start off by saying, Mr. Ray, I have learned since we spoke that you may have asserted some type of privilege as part of a refusal to answer Senators' questions or defer to OMB General Counsel (GC) more frequently than any past OIRA nominee who has appeared before that Committee. That is pretty stunning.

In fact, I am told that you have asserted privilege to defer to counsel some 19 times in your prehearing questionnaire and the questionnaire responses.

While I would be the first to acknowledge that it may well be appropriate to withhold or redact particular content in some circumstances, you apparently have applied, maybe misapplied, overly broad privilege to avoid providing Congress with critical information and documents related to your work at OIRA as Associate Administrator and Acting Administrator.

Ultimately, should the full Senate vote to confirm you, your general approach of nonresponse to the Committee vetting process, we believe, sets a concerning precedent, both for future nominees and subsequent oversight efforts to hold the Executive Branch accountable, and this is especially true since you have presided over or I believe presided over, been involved in dozens of controversial rules in the past year and a half in which you worked at OIRA.

I have two questions. I am a senior Democrat on the Environment and Public Works (EPW) Committee, and we focus on surface transportation funds and, of course, a lot of infrastructure issues, and we focus a lot on clean air and clean water and climate issues and so forth.

In EPA's proposal—I am not talking about the mercury and air toxic rule, but in EPA's proposal to remove the illegal unpinning of rules to reduce emissions of mercury and other air toxics from power plants, OIRA allowed EPA to use the agency's old projected costs of compliance that were three times higher than what the industry actually spent to comply with the rules and ignore the full benefits of the rule.

I am told that you declined to provide a specific description of your role in the development of the proposed rule, which is opposed by all public health and environmental organizations, opposed by the Chamber of Commerce, opposed by all electric utilities, opposed by the Evangelical Environmental Network.

I do not ask a lot of yes-or-no questions, but I want to get just a straight answer here. But, yes or no, will you provide the Committee with a complete description of your involvement in the development of this proposed rule, including copies of your calendar and other requested documents?

Mr. RAY. Senator, I can tell you now I was not involved in it because I was not Acting Administrator at the time.

Senator CARPER. A second yes-or-no question, and that would be, Do you commit to ensure that the final mercury rule uses updated, accurate information about the costs and benefits of compliance with the original rules?

Mr. RAY. Senator, I am not very familiar with that rule because the proposal was reviewed while before I was Acting Administrator.

I will tell you that, generally speaking, if there is more current data available, that is the data that should be used, if there is reason to believe it is accurate. I do commit to you that I would operate under that general principle, and I am going to look very carefully at that rule if it is under review when I am confirmed.

Senator CARPER. I just remind you and those that if you are confirmed, you will be leading this particular rule. It not only enjoys the support of environmental groups but the utilities, the business community, a wide range of folks who in the industry have spent money, complied with the rule, and now they are going to be asked to walk away from it. They do not want to do that, and I would just ask you to keep that in mind. I always say ask your customers. Will you be—just listen? I would urge you to listen to all of them, and use accurate information about the costs and benefits of compliance.

Next question, my second, I guess it will be my last question, but this deals with the vehicle fuel standards rollback. The largest source of carbon emissions on our planet is not coal-fired plants. It is not other utilities. It is our mobile sources. It is the cars, trucks, and vans that we drive.

But OIRA is supposed to be an honest broker when resolving interagency disputes and during the interagency review to join EPA and the Transportation Department proposal to roll back vehicle fuel economy and greenhouse gas standards. EPA described the Transportation Department's analysis used to justify the rollback as being—and I am going to quote it, their word—"unusable," and it went on to say it had fundamental flaws.

EPA even asked to have its logo removed from the proposal's documentation because it felt the proposal did not include any of its input, EPA's input.

One last question I have is a follow-on to that, and again, I am just looking for a yes or no. Will you provide the Committee with a complete description of your involvement in the development of this proposed rule, including copies of your calendar and other requested documents?

Mr. RAY. Senator, for that rule as well, the proposal was reviewed before I was Acting Administrator. I had extremely limited involvement, and I had no knowledge of the fact that you just said until this process.

Senator CARPER. Then do you commit to ensure that the final car rule uses technical assumptions and cost-benefit analysis that do not include the same problems EPA identified with the proposed rule?

Mr. RAY. Senator, I absolutely commit to ensuring that rules are based on the best science, the best data, and the best analysis, including that rule, if I am confirmed.

Senator CARPER. Thanks very much.

Chairman JOHNSON. Senator Peters.

Senator CARPER. Can I have a couple seconds. I would just like to say, Mr. Chairman, I just remind this of my colleagues. I said this to Mr. Ray yesterday. We are an oversight committee, and we do oversight over the whole Federal Government. That is the responsibility of this Committee, and the only way we can be effective doing our job is to make sure that folks like you, if you are confirmed, are forthcoming and not asking for privilege and not declining to provide information.

Eventually, we are going to have an election. Who knows who is going to win next time, who is going to be in the majority, who is going to be in the Administration? But this is one that could come back to bite folks on both sides of the aisle.

I know my Chairman cares a lot about oversight, and let us make sure that this Committee gets the information that they need.

I said to Mr. Ray yesterday, one of my concerns when you have a nominee who is not being especially forthcoming and cites privilege like 19 times, which I think is more than anybody ever, the idea will that nominee, if confirmed, be any more forthcoming once they are confirmed in that position? That is a matter of grave concern for me, and I think it should be for all of us.

Chairman JOHNSON. So Ranking Member Peters raised the same issue in his opening statement, and what I committed is to work—because I would like your support because I think he is an exceptional nominee. So I am willing to work with the Minority to try and get the answers you want, you need, respecting executive privilege and deliberative process.

Senator CARPER. Right.

Chairman JOHNSON. So I think regardless, whether it is Republican or Democratic President, I think those are important concepts that do need protection.

Senator CARPER. Great. That is great.

Chairman JOHNSON. So we are willing to work with you on that because, again, I think Mr. Ray is a good, solid nominee and highly qualified, and I certainly support the nomination. I would like all of you to support it as well.

Senator CARPER. Thank you.

Chairman JOHNSON. Senator Peters.

Senator PETERS. Well, I appreciate that, Mr. Chairman, but I just want to say, as we are going through this, having deliberative process privileges, it is not a magic word that you can just use that in a broad brush. So we need to have a process where we are involved in that, and we will do that. So I appreciate that.

With that, though, I will defer to Senator Scott, doing the votes.

OPENING STATEMENT OF SENATOR SCOTT

Senator SCOTT. Did you already vote?

Senator PETERS. I did the fourth vote. Have you done the fourth?

Senator SCOTT. I did not.

Senator PETERS. Would you like to go now, or I will go? I will be happy to defer to you, and then I will follow you.

Senator SCOTT. So when I became Governor, we had lost 800,000 jobs, and probably the biggest thing we did to change the environment was—we talked about this. I cut, I think, 5,500 regulations,

and I streamlined the permitting process. As a result, businesses came in and added 1.7 million jobs.

One thing I watched in State government is when something is on the books, it never gets revisited. You appoint these wonderful people to be agency heads, and they got all these little fires they put out every day, working every day, and nobody ever goes back and says, "This does not make any sense anymore."

So what is your process to go back and look at regulations that might have made sense 20 years ago, 30 years ago, or 10 years ago, but do not make any sense anymore?

Mr. RAY. Thank you, Senator, for that question.

There are a few different approaches that have been tried over the years. Obviously, the previous Administration tried Executive Order 13563, which tried to build in a retrospective review for major regulations, and there was some success with that approach, although it seems that agencies did not all internalize the mandate to do that.

This administration's approach has been Executive Order 13771, which calls for deregulatory initiatives, calls on agencies to be innovative and find regulations that are no longer working as they are intended to work or are not working at all, and we have seen tremendous success with that.

I think there is absolutely room to build on that success, and I would look forward, if confirmed, to working with this Committee to find ways to build on that success, to make retrospective review really a part of the life cycle of regulation.

Often agencies regulate based on data that is somewhat hypothetical, for lack of a better word. They use the best data they can find, but there is a little bit of guess work at the end, based on how the data would apply to the scenario in which they are regulating.

Often agencies can use the data they collect in actually administering the program to evaluate whether the regulation is effective, and I think we should do more of that.

Senator SCOTT. Thank you.

First of all, on 13771, does Congress need to do anything to help implement that, or is it going fine and you do not need us to do anything?

Mr. RAY. It is going pretty well, in my judgment. We found very widespread compliance with the order. I think agencies have achieved some very important changes.

Senator SCOTT. So, in business, what you find out is that as things get bigger, everybody just sort of goes along. If you are not a pain in the rear, nothing is going to happen. What are you going to do differently to get rid of regulations that just do not make any sense anymore?

And it is not Republican or Democrat regulations. How are you going to change the process? Because it is hard. It is a pain in the rear to get people to focus on this.

Mr. RAY. Yes. I think the President's real insight here has been to make it a major Presidential priority, so the Cabinet Secretaries know that something that he cares a lot about is making the regulatory system better, rescinding regulations that no longer work and revising those that need to be revised. And that has been a tremendous help.

Something else that has been done and could be done even more is getting the input of the affected industry. It is often hard to know here in Washington what is working and not working out in other locations in America and so something that OMB has done and has encouraged the agencies to do is to issue a request for information to have folks send in their suggestions and identifications of regulations that are no longer working. We have seen some good success there, and that could be a reiterative process that can focus on particular industries and sectors to find out where there are regulations that are not working as well as they could.

Senator SCOTT. And you are receptive to—we had a nice conversation yesterday. You are receptive to having a conversation with everybody, whether Republican, Democrat, anybody?

Mr. RAY. Absolutely, Senator.

Senator SCOTT. Thanks.

Thanks, Senator Peters.

Chairman JOHNSON. Senator Peters.

Senator PETERS. Thank you, Mr. Chairman.

A recent report in USA Today suggests that OMB and OIRA are holding up the progress on Federal assessment of human health effects in drinking water, exposure to PFAS, in this article.

So, Mr. Chairman, if I may, I would like to introduce this article into the record,[1] please.

Chairman JOHNSON. Without objection.

Senator PETERS. Thank you.

This project is especially important for Michiganders because the townships of Parchment and Cooper as well as North Kent County—all of them dealing with very significant PFAS contamination were selected to participate in the study. And the results will inform efforts to address drinking water contamination not just in Michigan but contamination all across the Country.

So I am concerned that OMB and OIRA are—or the agency's nontransparent review has unnecessarily delayed this study. So my question to you, Mr. Ray is when the Centers of Disease Control (CDC) resubmits the study, will you commit, if confirmed, to an expedited review so that we can quickly move forward and give the urgency that the PFAS contamination crisis deserves?

Mr. RAY. Senator, certainly, if confirmed, I would certainly be happy to do that, yes.

Senator PETERS. So you will be committed, and we will be able to reach out to you and get your full support?

Mr. RAY. Senator, when anything is submitted to OMB for review, when I was Acting Administrator, I tried to ensure that there was a thorough but expeditious process. Certainly, if there was a public health need for a particular regulatory item to move forward quickly I would ensure that it move forward quickly, consistent with a thorough review, absolutely.

Senator PETERS. I fought for provisions in the annual defense bill to require the EPA to issue drinking water standards for PFAS, and yesterday the White House received EPA's proposed regulatory determination for review, which the agency needs to issue before finalizing clean drinking water standards.

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[1] The article referenced by Senator Peters appear in the Appendix on page 156.

So another question about commitment here, Mr. Ray. Will you commit to an expedited review of this proposal, given the immediate need to address PFAS contamination, as similar to the first question?

Mr. RAY. Again, Senator, if I am confirmed, I would commit to appropriately expedited review of that regulation, consistent with a thorough review.

Senator PETERS. Earlier this year, I sent a letter asking for information about EPA's groundwater cleanup guidelines for PFAS, which are critical to helping Federal agencies make cleanup decisions for the contamination. This issue impacts once again, I am repeating myself over and over again, but this is really very important. This impacts the health of millions of Americans, including Michiganders, but folks all across the Country.

Will you commit to providing the Committee with the documents that I requested in that letter earlier this year, if confirmed?

Mr. RAY. Senator, I have turned the request over to the Office of Management and Budget's Office of General Counsel. They are the point of contact for document requests, and I believe they are working with Committee staff on the request.

Senator PETERS. You will make sure they are working in an expeditious manner?

Mr. RAY. I am happy to commit to checking with them on that.

Senator PETERS. You have heard we have issues with that. This is kind of an ongoing thing that has become very frustrating to our Committee and our ability to provide the oversight that we need to provide.

Mr. RAY. Thank you, Senator. I am happy to check in with the Office of General Counsel.

Senator PETERS. In 2017, then Veterans Affairs (VA) Secretary David Shulkin made a recommendation based on the best available science to add three new health conditions to the VA's list of presumptive illnesses for Vietnam War veterans suffering from Agent Orange exposure. Adding the diseases to the list would provide veterans, including many in Michigan, access to key health care benefits, but publicly reported documents indicate that OIRA and OMB blocked the VA from expanding this presumptive illness list, resulting in the denial of critical access to disability compensation and health care to veterans.

Given the VA's decision was based on clear scientific evidence, why would your agency move to block these health benefits for 83,000 Vietnam veterans?

Mr. RAY. Senator, I do not believe I had any involvement in that decision whatsoever. I am not familiar with the facts of the decision.

Senator PETERS. You are not?

Mr. RAY. I am not.

Senator PETERS. So, if confirmed, will you revisit that decision?

Mr. RAY. Senator, if confirmed, I would certainly be happy to look at that decision and become familiar with the context there, absolutely.

Senator PETERS. Do you believe that the—well, I guess it is difficult because you had nothing to do with it. Are you familiar with

the issue? Could you comment on whether or not you thought that it was a correct decision?

Mr. RAY. I am really not familiar at all with it, Senator.

Senator PETERS. Very well.

After the Flint water crisis, Michigan has worked to implement the strongest lead and copper rule in the Country. However, in October, EPA proposed a substantially weaker provision to the Federal lead and copper rule. What is more concerning is that EPA's proposal is subject to President Trump's two-out, one-in Executive Order. Did OIRA encourage EPA to choose a weaker lead and copper rule, or is it possible that the agency chose a weaker rule because of the President's Executive Order?

Mr. RAY. Senator, thank you for that question, and this is an important point for me to emphasize. Executive Order 13771 is very clear that it only applies to the extent consistent with law. So if an agency has a statutory mandate to protect the public health and safety, the agency must fulfill that mandate, and indeed, certainly, while I was Acting Administrator, I would have consistent with my authority, forbidden an agency to fail to do so. So, certainly, under my Administration, OIRA absolutely did not use 13771 to direct an agency not to pursue public health and safety.

Senator PETERS. Should EPA's efforts to ensure clean drinking water for children be tied in any way to rolling back other public health and environmental protections as required by the EPA?

Mr. RAY. No, Senator, they should not.

Senator PETERS. So, if confirmed, I certainly would urge you to allow agencies to move forward with critical health protections. Rules to protect children from lead in drinking water should stand on their own instead of being subjected to any arbitrary standards. I think from your previous answers, I hear that you would concur with that. Is that an accurate assessment?

Mr. RAY. Senator, again, Executive Order 13771 is very clear that it should never stand in the way of a statutory mandate to protect public health and safety. That is certainly how I interpreted the Executive Order when I was Acting Administrator and how I would continue to interpret it if I am confirmed.

Senator PETERS. Climate change is a driving force behind increasing severe weather events contributing to extreme flooding, wind damage, and other destruction. Communities in my State and around the Country have observed firsthand the impacts of climate change. These catastrophic weather events have resulted in a significant financial burden on American taxpayers as well as affecting the health and well-being of the American people.

A question: Do you believe that climate change is real?

Mr. RAY. Senator, there is a very strong scientific consensus that climate change is real and that it is caused in very substantial part by man's activity.

Senator PETERS. Under your leadership, how would you guarantee that agencies are adequately accounting for climate change in their regulatory actions?

Mr. RAY. Senator, agencies are already including an assessment of the cost of climate change in their regulations, and if I am confirmed, I would do nothing to change that.

Senator PETERS. In October, there were multiple reports of language about climate change being deleted during OIRA's review of proposals, including the review of the Safer Affordable Fuel-Efficient Vehicles Rule and EPA's proposal to regulate heat-trapping chemicals. Was the agency responsible for removing the references to climate change in either of these proposals, to your knowledge?

Mr. RAY. Senator, I am not familiar with those particular examples. I will tell you that I never directed such language to be removed.

Senator PETERS. So will you provide the Committee with information on how that happened, if confirmed?

Mr. RAY. Senator, I would have to discuss with the Office of General Counsel whether any documents that OMB has—and I will tell you, I do not know if OMB has such documents—but I have to discuss whether those could be disclosed.

Senator PETERS. So we will have your good-faith effort to work with us to try to determine what happened?

Mr. RAY. Absolutely, Senator.

Senator PETERS. Will you commit to me that you will not remove or cause the removal of references to climate change in regulatory proposals that are under OIRA review?

Mr. RAY. I do, Senator.

Senator PETERS. Very good. Thank you.

Thank you, Mr. Chairman.

Chairman JOHNSON. Thank you, Senator Peters.

We talked a little bit earlier about the Executive Order on guidance. Obviously, we were very pleased to see that. That would have been a nice time to be in session so I could have attended that signing ceremony.

My concern is an Executive Order can be reversed, again, with the stroke of a pen. I would imagine that you would support and encourage us actually passing the GOOD Act to codify that?

Mr. RAY. Senator, the Administration has not formally taken a position on that, so I cannot formally take one here.

I will certainly tell you that the Administration warmly espouses the principles in that act, as evidenced by the Executive Order.

Chairman JOHNSON. As you pointed out, it is actually pretty extraordinary that OIRA is really based on an Executive Order, and it stood the test of time. And no President has reversed it.

From my standpoint, the most significant thing this Administration has done to get better economic growth was the fact that we stopped adding to the regulatory burden. We actually reduced it somewhat, which allowed businesses to concentrate on their products and services, rather than a new government regulation that might put them out of business or cost them an awful lot of money in terms of compliance.

I know that you have the Executive Order two-in—or one-in, two-out.

Mr. RAY. Yes.

Chairman JOHNSON. I think the original goal was one-in, four-out, though, correct?

Mr. RAY. Senator, I am glad to report that agencies are exceeding both of those goals.

Chairman JOHNSON. I was going to ask you that next.

Mr. RAY. Yes.

Chairman JOHNSON. I think the first year, was it not like 22 regulatory——

Mr. RAY. I believe it was something like that. The current total for the—I should tell you that the numbers as of fiscal year (FY) 2019 have not yet been released. They are about to be released in a few days, but——

Chairman JOHNSON. So you are not willing to make news right here?

Mr. RAY. Exactly, Senator. But the numbers are very good.

Chairman JOHNSON. We are going to be smiling.

Again, I want to afford you the opportunity. Senator Scott was talking about these regulations as just outdated. They are just old. They are not working.

My guess, that is an awful lot of what you are talking about. The 22 to 1, you are looking at low-hanging fruit. Can you just kind of speak to, in general, what regulatory actions we did take? Obviously, I am saying it is a very positive effect on the economy, and I would probably argue that most of that was without harm.

Mr. RAY. Certainly, Senator.

At the beginning of the Administration, a number of the regulations that went into those very high numbers were smaller regulations, as you put it, low-hanging fruit, but that were, nevertheless, very impactful for the lives of individuals and small businesses in those industries who could now, as you said, spend their time actually running their business or raising their family and not worrying about whether they are going to be put out of business by regulations.

Now agencies are working on, to use your analogy, fruit a little higher up the tree, and there may be fewer of those regulations. But often the benefit of those reforms are actually larger. So, again, not to preview the numbers that will be rolled out shortly, but we are—in 2020, I fully expect that the savings from regulatory reforms will be quite large.

Chairman JOHNSON. Is the Executive Order—and I would not necessarily expect you to understand anything about the GOOD Act but is it tight enough so that these regulatory agencies—OK. We have rules. We have regulations. We have guidance. Are they going to create another creature to do an end-around to kind of weasel out of the Executive Order on guidance?

Mr. RAY. Senator, thank you for that question. It is a really important concern.

OMB issued an implementing memorandum just a few weeks after the EO was released, building on the—or interpreting the EO's definition of guidance, and it made very clear that it is an effects test. So even if a document bears the label "internal memorandum only," but it is released to the public and it is anticipated to have an impact on the public, well, that would be a guidance document.

So I believe that OMB in its implementing memorandum has stopped that hole, but, of course, if confirmed, I would be very keen to work with you and other Members of the Committee to make sure that the right formulation is achieved.

Chairman JOHNSON. Well, I think it is important to codify the GOOD Act, codify basically what you have done through Executive Order. I would like to work with this Administration, as you are implementing this, any kind of snags you are seeing, any kind of less than fully tight Executive Order or fully tight piece of legislation, and we tighten that up to get it before it actually passes. So I would like to work with you on that.

Mr. RAY. Senator, that would be a pleasure, absolutely.

Chairman JOHNSON. Senator Sinema.

OPENING STATEMENT OF SENATOR SINEMA

Senator SINEMA. Thank you so much, Mr. Chairman.

When I hear from Arizonans and Arizona business owners, they understand the need for regulation, but complex and burdensome rules coming out of Washington can make it very difficult for them to thrive. They want to comply with sensible rules. They want to know the government has carefully considered the cost of regulation, and they want to know the benefits, that these rules are real and outweigh the burdens.

So the mission of the Office of Information and Regulatory Affairs to review and improve agency regulatory actions is an important check on the rulemaking process. Arizonans need to know that the Federal Government is reviewing regulations, making sure that corners are not cut and that regulatory costs are justified.

The cost-benefit analysis has presented an Executive Order 12866. It is the framework that agencies have followed for the past quarter century. It dictates the analytical procedures an agency must follow to issue a regulation.

My first question for you is, Is Executive Order 12866 sufficient in its requirements for agency analysis of proposed rules, and do you believe that it needs an update?

Mr. RAY. Thank you, Senator, for that question.

Executive Order 12866 has really stood the test of time in a remarkable way. Indeed, it is an important contributor to what I called before a great American success story, which is OIRA's review of regulations, and not least valuable is the fact that EO 12866 has stood the test of time across multiple administrations. So I do believe there is really bipartisan support for the framework, both procedural and substantive, as articulated in that Executive Order.

Senator SINEMA. Thank you.

My second question, for significant rules, agencies are expected under Executive Order 12866 to maximize benefits to society while designing the regulation in the most cost-effective manner. Do you agree with that requirement of the Executive Order?

Mr. RAY. Certainly, Senator.

Senator SINEMA. And due to time and resource constraints, there are times that agencies will quantify enough benefits to justify the rulemaking and then describe additional qualitative benefits.

As Administrator, how will you encourage agencies to quantify all the benefits that are anticipated, while not needlessly lengthening the rulemaking timelines?

Mr. RAY. Senator, as I see it, what an agency should achieve in a cost-benefit analysis is really two goals. One is to ensure that the

regulation is beneficial, and two is full transparency with the public. So while it may be enough for the first goal just to show the benefits exceed costs, it is not enough for the second.

When I was Acting Administrator, I encouraged agencies, if at all possible, to quantify the full range of costs and benefits that are reasonably anticipated from any regulation, not just enough to show that benefits exceeded costs.

Now, if an agency finds itself in a situation where some of the benefits are simply not quantifiable, then that could be a different story, and occasionally, that situation is encountered. But, certainly, the gold standard is to quantify the full panoply of benefits and costs.

Senator SINEMA. Thank you.

Co-benefits and indirect costs are important to the rulemaking record, and because this information identifies the reach of regulation is likely to have by looking at impacts which can be reasonably anticipated, in the context of a cost-benefit analysis, what does adequate consideration of, "reasonable anticipated costs or benefits" look like to you?

Mr. RAY. Sure. I certainly agree, and OMB Circular A–4 makes clear that ancillary benefits should be taken into account.

The reasonably anticipated standard would apply actually in the same way to ancillary benefits or co-benefits as to non-ancillary benefits, really the test is that the agency should make clear what it believes the benefits and costs will be or could be. And it should make clear the degree of certainty.

It is really the disclosure of the certainty that the public needs to know to adequately respond to the agency's proposal.

Senator SINEMA. Thank you.

As part of this administration's deregulatory activities, Executive Order 13771 requires an annual report that details cost-cutting in agencies, but it does not require the accounting of foregone benefits as part of the report. However, information on foregone benefits determined in compliance with the cost-benefit analysis requirements of Executive Order 12866 should be easily accessible in each rule's regulatory impact analysis.

So to create a full picture of the results of this administration's deregulatory work, would you consider directing the inclusion of these loss benefits as part of Executive Orders 13771's annual reports?

Mr. RAY. Senator, thank you for the question.

I think that is a very interesting idea. It is not one that I had encountered before this process, but it is a very interesting one. And, if confirmed, I would give that serious consideration.

Senator SINEMA. Thank you. I would like to follow up with you.

Mr. RAY. Absolutely.

Senator SINEMA. The regulatory Right to Know Act requires an annual report on the benefits and costs of Federal regulations, and as we have discussed before, the administration has failed to publish the draft and final reports for FY 2017, the draft and final reports for FY 2018, and the draft report for FY 2019.

So, as the Associate Administrator and then later Acting Administrator, what led to these delays? And if confirmed, what will you do as Administrator to make sure that we see these reports come

through and in the future be on time, and when do we expect to see the past-due reports?

Mr. RAY. Senator, as you point out, the tardy status of the reports goes back several year to the previous—at least to the previous administration, perhaps the administration before that. I am not really certain, but it has, unfortunately, become a feature.

But, in my time at OMB, I have worked to catch OMB up on those reports, and so I am glad to say that I fully expect that all the past-due reports will be out before Christmas.

Senator SINEMA. And we expect that reports moving forward will all be on time?

Mr. RAY. Senator, if I am confirmed, certainly, yes.

Senator SINEMA. Thanks.

Under Executive Order 12866, the Administrator may exempt entire categories of rules from review. Are there currently any categorical exemptions that you believe should be rescinded, and are there any categories that are not exempted that you think should be exempted?

Mr. RAY. Senator, the memo in which the exemptions were established, shortly after the issuance of EO 12866, is a bit antiquated, and I do think that, if confirmed, one project I would be interested in undertaking is making changes to that memo.

There are categories of rules listed that are very rarely, if ever, issued, and so there has been a change in the kinds of regulations agencies issue. And I think the exemption framework very likely should change because of that.

Senator SINEMA. Thank you.

Thank you, Mr. Chairman.

Chairman JOHNSON. Senator Rosen.

OPENING STATEMENT OF SENATOR ROSEN

Senator ROSEN. Thank you, Mr. Chairman, and thank you for being here today and for your consideration of this position and your willingness to answer our questions.

I would like to get right into it. I would like to talk a little bit about political inference in immigration and environmental rulemaking, if you may.

In your written responses to this Committee's questionnaire, you wrote that the Federal administrative law prevents arbitrary government and provides the public with due process.

In many areas, however, including immigration and environmental issues decisionmaking, this administration can seem influenced by politics rather than scientific or legal principles.

I am the co-sponsor of the Scientific Integrity Act, which makes clear that Federal policies should be based on independent science and evidence, free from appropriate political interference or bias due to ideology or conflicts of interest.

I think it is crucial the EPA, the Department of Interior (DOI), the Department of Energy (DOE), other Federal agencies use the best science available in order to protect the public health and the environment.

So can you tell us specifically what you have done in your time in OIRA as Acting Administrator to ensure that the rulemaking process was focused on the accurate analysis of data and facts?

Mr. RAY. Senator, thank you for that question.

Yes, certainly. At a broad level, while Acting Administrator, I always directed my staff to achieve results that were accurate. The cost-benefit analyses should be accurate. The results and the content of those analyses should not, indeed must not, be driven by political considerations.

In particular, while I was Acting Administrator, I caused to be issued a memorandum on the Information Quality Act calling on agencies to update their information quality guidelines, and the reason that is important is that often the best way to see if the quantification of costs and benefits in a particular proposal or a final regulation is accurate is to allow the public to check our work. As Acting Administrator, I sought to encourage openness of agency data across the government, and in this memorandum that was issued at the very beginning of my tenure as Acting Administrator, we called on agencies to make the data underlying their cost-benefit analysis more broadly available to the public so that the public does not need to take the agency's word for it with respect to the cost-benefit analysis.

Senator ROSEN. You will commit to using reliable scientific information to base your assumptions, your proposals, your cost estimates, whatever they are going forward?

Mr. RAY. Of course, Senator, absolutely.

Senator ROSEN. Thank you.

I want to move on and say that I am also concerned about this administration's cruel immigration policies, including family separation. Those have been driven by political agenda aimed at deterring all immigration.

In many instances, these policies have skipped entirely the deliberative, reasoned rulemaking process.

Again, in your questionnaire responses, you stated that OIRA's role includes coordinating a robust interagency review process. So I am going to ask you a few questions about the agencies that may have participated. So, to the best of your knowledge, does the White House typically participate or have they participated in the immigration rulemaking process?

Mr. RAY. Yes, Senator.

Senator ROSEN. Yes, they have.

And so who from the White House has attended and participated in those meetings, and what kind of interactions have you been able to have with them?

Mr. RAY. Sure. So when OIRA receives a rule from an agency for review, it will circulate—in addition to subjecting it to OIRA's own analysis from economists and policy analysts and scientists, OIRA will circulate the rule to a variety of agencies and White House offices. Indeed, it is safe to say that every rule that OIRA reviews goes to both other agencies in the Executive Branch and——

Senator ROSEN. Could you name some of the agencies that also participate in the regulatory process with you with regards to immigration policy?

Mr. RAY. Certainly, Senator. The Department of Justice regularly receives rules to review. The Department of Health and Human Services (HHS) often receives rules to review. Other agencies may have equities that are affected as well.

Senator ROSEN. And then when you collect all of this, what happens to that going forward in your rulemaking process?

Mr. RAY. So the way the OIRA process works is that OIRA collects comments from other agencies, from other White House components, and from OIRA itself and sends those comments to the author agency or author agencies as a single package. And then the author agency or agencies will reply to those comments. They will make changes. They will explain why changes should not be made because the original text was accurate in some instances, and they will send what is called a "pass-back" back to OIRA. And then OIRA will share that pass-back with the agencies who submitted comments to see if the changes satisfied their concerns, and that can be an iterative process. it usually is an iterative process, sometimes over the course of several weeks or months.

Senator ROSEN. And so will you commit going forward, if you are fortunate enough to be confirmed, to letting us know who has been involved in the process, the transparency of that, and providing us reports on that information?

Mr. RAY. Senator, there are some limitations on my ability to disclose the deliberative process, obviously. I am happy to, as I did just now, tell you, generally speaking, who participates in reviews. Like I said, for immigration regulations, the Department of Justice, the Department of Homeland Security (DHS), and HHS often participate.

Whether I could specify which agencies received copies of individual rules is a question I would have to discuss with the Office of General Counsel at OMB.

Senator ROSEN. Thank you. I appreciate that.

I just have a quick question about Title IX about prohibiting sex discrimination in education settings. Earlier this year, a proposed rule, while significantly weakened existing protections for students, the proposed rule narrows the definition of sexual harassment and forces victims to be formally cross-examined in a trial-like setting, which is not appropriate for our universities. Can you talk about that in your role as Acting Administrator? What have you done to ensure that your analysis of the proposed rule is accurate and transparent and will protect, well, both victims and alleged perpetrators?

Mr. RAY. Senator, the final rule was submitted after I had ceased to be Acting Administrator. I have not reviewed the regulation.

Senator ROSEN. So we can revisit that with you going forward?

Mr. RAY. Certainly, Senator.

Senator ROSEN. Thank you.

Mr. RAY. Should I be confirmed, yes.

Senator ROSEN. Thank you.

Chairman JOHNSON. Thank you, Senator Rosen.

Again, I want to thank Mr. Ray for his prior service, for his willingness to serve in this capacity again. I particularly think you are well suited for this position. I certainly intend to strongly support your nomination.

I am happy to work with the minority Members to answer some of the questions. I know in your testimony, you made a number of commitments, if confirmed, to work with them on a number of

issues. Hopefully, that would satisfy them. I would love to see a strong bipartisan support in supporting your confirmation.

So, with that, I will just close out the hearing by saying the nominee has made financial disclosures and provided responses to biographical and prehearing questions submitted by the Committee. Without objection, this information will be made part of the hearing record,[1] with the exception of the financial data, which are on file and available for public inspection in the Committee offices.

The hearing record will remain open until 5 p.m. tomorrow, December 5th, for the submission of statements and questions for the record.

This hearing is adjourned.

[Whereupon, at 3:58 p.m., the Committee was adjourned.]

[1] The information of Mr. Ray appears in the Appendix on page 34.

APPENDIX

Opening Statement of Chairman Ron Johnson
Nominations Hearing for Mr. Paul J. Ray to be Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget
December 4, 2019

As prepared for delivery:

This hearing has been called to consider the nomination of Mr. Paul Ray to become the next Administrator of the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget. In my meetings with Mr. Ray, I have always been impressed with his knowledge, commitment, and suitability to this particular position. He uniquely enjoys the challenge of working with government regulations. To me, his enthusiasm for the position, combined with an exceptional education and career background make him the perfect candidate for this job. Record me as strongly supporting his confirmation.

The Role of the OIRA Administrator

While often referred to as the administration's "regulatory czar," the OIRA Administrator manages the Office's execution of a diverse set of statutorily-prescribed and presidentially-directed responsibilities related to the regulatory process. Congress established OIRA in 1980 as a part of the Paperwork Reduction Act, a law intended to reduce burdensome and duplicative paperwork requirements imposed by regulatory agencies on the public. OIRA responsibilities have evolved to include developing and overseeing the implementation of government-wide policies related to information, privacy, and statistical policy; conducting cost-benefit analysis of so-called "significant" proposed and final rules as well as "economically significant" rules—defined as regulatory actions that will result in an estimated $100 million or more annual impact on the economy; implementing the Information Quality Act; coordinating retrospective review of regulations; and improving regulatory cooperation with the United States' key trading partners.

The Nominee for OIRA Administrator—Mr. Paul Ray

Having led OIRA as its Acting Administrator as well as its Associate Administrator since May of 2018, Mr. Ray has demonstrated the ability to carry out the Office's multi-faceted mission. In addition to his direct leadership experience at OIRA, he currently serves as Senior Advisor to the Director of Regulatory Affairs where he advises on regulations and the regulatory process. He also previously served as Counselor to the Secretary of Labor where he advised on regulatory issues and the rulemaking process.

Prior to these public service roles, Mr. Ray was as an associate at Sidley Austin, LLP, and he served as a law clerk for Supreme Court Justice Samuel Alito and Judge Debra Livingston of the U.S. Court of Appeals for the Second Circuit. Mr. Ray graduated *magna cum laude* from Hillsdale College and Harvard Law School.

U.S. Senate Committee on Homeland Security and Governmental Affairs
Nomination of Paul J. Ray to be Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget

OPENING STATEMENT OF RANKING MEMBER GARY C. PETERS
DECEMBER 4, 2019
AS PREPARED FOR DELIVERY

Thank you, Mr. Chairman. And thank you Mr. Ray for being here and for your willingness to serve.

The Office of Information and Regulatory Affairs, or OIRA, is a small, relatively unknown office in the federal government that has an enormous amount of power.

For nearly four decades, OIRA has managed federal rules and regulations that impact Americans' daily lives in countless ways.

Federal regulations cover everything from protecting clean air and clean water to safeguarding our health and ensuring the cars we drive are safe.

While federal agencies are responsible for proposing and issuing regulations – they all go to OIRA for review before they are finalized and take effect.

In short, it is OIRA's job to ensure that each of those regulations does what it is supposed to, whether that purpose is to promote economic growth, public health or student safety or to safeguard against discrimination, worker exploitation, or harmful chemicals.

Not many people outside of Washington have heard of OIRA.

But individuals across the country know that government regulations can have a dramatic impact on their families, businesses, and communities.

Many people also know too well the impact of halted or delayed regulatory efforts.

Right now, critical protections for lead in drinking water and PFAS contamination are being weakened or remain stalled in the regulatory review process.

Meanwhile, Americans in communities like Flint, Oscoda and Parchment in my home state of Michigan, cannot drink the water from their own faucets without fear of ingesting toxins like lead or PFAS.

People in Michigan and across the country depend on OIRA to work with agencies to efficiently and effectively finalize important safeguards that will help protect the health and safety of all Americans.

OIRA also works with agencies to promote public participation in the rulemaking process, and to provide transparency into regulatory decisions.

Mr. Ray, in many of your questionnaire responses, you acknowledged the critical importance of transparency and accountability in the regulatory process.

Unfortunately, those statements stand in stark contrast to your actions after your nomination in October when this Committee requested relevant information to evaluate your qualifications.

We have asked you multiple times to provide this Committee with information regarding your tenure as the Associate and Acting Administrator, and you have failed to provide us with a sufficient response.

In order for the Committee to thoroughly and meaningfully consider your nomination, we need your full cooperation in providing us with the information we have requested.

As the Senate's primary oversight committee, we are also charged with ensuring that OIRA is operating in the best interests of the American people.

Given the lack of cooperation we have received from you, OIRA, and the Office of Management and Budget during your confirmation process, I have serious concerns about how this critical agency will comply with this Committee's requests if you are confirmed.

My constituents in Michigan, and people across the country, are depending on OIRA to put politics aside and make decisions that are in the best interest of the American people.

I look forward to hearing from you today about how you will prioritize the health and safety of Americans if you are confirmed to lead this vital agency.

Opening Statement of Paul J. Ray
Nomination Hearing – December 4, 2019

Thank you very much, Chairman Johnson, Ranking Member Peters, and Members of the Committee. It is a great honor to appear before you today.

I would like to thank the Members of this Committee and their staff for taking the time to meet with me. I would like to thank Chairman Johnson, whose leadership on regulatory reform has inspired many. If confirmed, I look forward to working closely with Members of the Committee on regulatory and information policy.

I would especially like to thank my family. My mother, DeLora Ray, has always been a model of sacrifice. Her determination and grit in raising three children, including a decade as a single mother, continue to amaze me. I am grateful for the companionship of my sister and brother, Hilary and David, throughout life's joys and sorrows.

Often, and especially today, I remember my father, Dr. Joe Ray. Born nearly blind and growing up amid great difficulties, his career as a teacher proved to many that hard work can overcome any adversity. Nearly two decades after his untimely death, his legacy as a loving father and husband, and as a faithful friend and mentor, continues to teach me what it means to live a good life.

Lastly, I would like to thank President Trump for his trust and confidence.

I am greatly honored to be considered for the position of Administrator of the Office of Information and Regulatory Affairs. OIRA is an American success story. It is a story of commitment to good government, rationality, accountability, and the rule of law.

My appreciation for OIRA's vital mission is enhanced by having served at the office's helm as Acting Administrator. During this time, I sought to promote cost-benefit analysis and the other analytic tools OIRA uses to ensure that regulations rationally and transparently pursue the good of the American people. Those are the values that underlie the President's new Executive Order on transparent guidance, which OMB recently issued a memorandum to implement.

The President's recent Executive Order creates a level playing field for individuals and small businesses and gives them the tools they need to hold their government accountable for its policies. The Order is an instance of the Administration's commitment to making the regulatory process more democratic and accessible, a commitment I sought to advance in my time at OIRA.

I also worked to make the office an effective coordinator of the Executive regulatory process. OIRA's facilitation of the interagency review of regulations ensures that the federal government speaks with one voice and pursues the President's priorities. This unity of action is a prerequisite for rational regulation.

During my tenure I supported important initiatives with respect to federal statistical and information policy. For instance, in April, the Office of Management and Budget issued a memorandum directing agencies to update their Information Quality Guidelines, to bring greater openness and accuracy to data while rigorously protecting privacy and confidentiality.

I also sought to advance Congress's ability to monitor how agencies implement statutes through regulations. To that end, OMB issued a memorandum laying out a process for agencies to receive major determinations from OIRA under the Congressional Review Act. This policy will give Congress the tools it needs to hold agencies accountable.

I must mention something I observed during my time at OIRA: the outstanding quality of the men and women with whom I had the privilege of working. It is difficult to imagine a more dedicated and knowledgeable group of public servants. During my tenure, I tried to make OIRA a welcoming place where talented individuals dedicated to serving the United States would thrive.

Promoting cost-benefit analysis; making the regulatory process more democratic; facilitating interagency review; responsibly updating federal statistical and information policy; vindicating Congress's right to review regulations; and leaving OIRA an even better place to work than I found it: these are the objectives I pursued while Acting Administrator, and they are the goals I would bring with me to the position should the Senate choose to confirm me.

There is another, prime objective I would pursue, one that undergirds all the others I have mentioned, and that is promoting the rule of law. OIRA has a vital role in coordinating a process that results in regulations that comply with the law. Every federal official swears to bear true faith to the Constitution, and thus to the laws enacted pursuant to it; that oath has always been the touchstone of my public service. That, too, will continue if I am confirmed.

Thank you for your consideration. I look forward to answering your questions.

REDACTED

HSGAC BIOGRAPHICAL 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, Office of Management and Budget	October 15, 2019

Current Legal Name			
First Name	Middle Name	Last Name	Suffix
Paul	Joseph	Ray	

Addresses					
Residential Address (do not include street address)			Office Address (include street address)		
[redacted]			Street: 1650 Pennsylvania Ave., NW		
City: Washington	State: DC	Zip: 20002	City: Washington	State: DC	Zip: 20504

Other Names Used						
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)
					Est. ☐	Est. ☐
					Est. ☐	Est. ☐

Birth Year and Place	
Year of Birth (Do not include month and day.)	Place of Birth
1986	Chattanooga, TN

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

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)
					Est ☐	Est ☐
					Est ☐	Est ☐

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

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
Hillsdale College	College	August 2004 Est ☐	May 2008 Est ☐ Present ☐	B.A.	May 2008
Harvard Law School	Professional school	August 2008 Est X	May 2011 Est ☐ Present ☐	J.D.	May 2011
		Est ☐	Est ☐ Present ☐		
		Est ☐	Est ☐ Present ☐		

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)
Other Federal employment	Office of Management and Budget	Senior Advisor to the Director for Regulatory Affairs	Washington, DC	October 2019 Est ☐	Present Est ☐
Other Federal employment	Office of Management and Budget	Acting Administrator, Office of Information and Regulatory Affairs	Washington, DC	March 2019 Est ☐	October 2019 Est ☐
Other Federal employment	Office of Management and Budget	Associate Administrator, Office of Information and Regulatory Affairs	Washington, DC	June 2018 Est ☐	October 2019 Est ☐
Other Federal employment	U.S. Department of Labor	Counselor to the Secretary	Washington, DC	April 2017 Est ☐	June 2018 Est ☐
Non-government employment	Sidley Austin LLP	Associate	Washington, DC	October 2014 Est ☐	April 2017 Est ☐
Unemployment	Post-clerkship holiday		Washington, DC	July 2014 Est X	October 2014 Est ☐
Other Federal employment	U.S. Supreme Court	Law clerk	Washington, DC	July 2013 Est ☐	July 2014 Est X
Non-government employment	Sidley Austin LLP	Associate	Washington, DC	September 2012 Est X	July 2013 Est X

Other Federal employment	U.S. Court of Appeals for the Second Circuit	Law clerk	New York, New York	August 2011 Est ☐	August 2012 Est X
Unemployment	Law school		Cambridge, MA	December 2010 Est X	August 2011 Est ☐
Other Federal employment	U.S. Attorney's Office, Boston	Intern	Boston, MA	September 2010 Est X	December 2010 Est X
Non-government employment	Sidley Austin LLP	Summer associate	Washington, DC	June 2010 Est X	August 2010 Est X
Non-government employment	Harvard Law School	Teaching and research assistant	Cambridge, MA	September 2009 Est X	May 2010 Est X
Non-government employment	Harvard Law School	Intern	Cambridge, MA	January 2010 Est X	May 2010 Est X
Non-government employment	Massachusetts Citizens for Life	Intern	Boston, MA	June 2009 Est X	August 2009 Est X
Unemployment	Law school		Cambridge, MA	August 2008 Est ☐	May 2009 Est ☐
Non-government employment	Hillsdale College	Research Assistant	Hillsdale, MI	May 2008 Est X	August 2008 Est X
Non-government employment	Hillsdale Academy	Tutor	Hillsdale, MI	August 2007 Est X	May 2008 Est X
Non-government employment	Chattanooga Times-Free Press	Sales representative	Chattanooga, TN	June 2007 Est X	August 2007 Est X
Unemployment	College		Hillsdale, MI	July 2006 Est X	June 2007 Est X
Non-government employment	Tennessee Temple University	Library staffer	Chattanooga, TN	June 2006 Est X	July 2006 Est X
Unemployment	College		Hillsdale, MI	August 2005 Est X	May 2006 Est X
Non-government employment	Chattanooga Times-Free Press	Sales Representative	Chattanooga, TN	May 2005 Est X	August 2005 Est X
Unemployment	High school and college		Chattanooga, TN, and Hillsdale, MI	February 2004 Est ☐	May 2005 Est X

(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)
		Est ☐	Est ☐ Present ☐
		Est ☐	Est ☐ Present ☐
		Est ☐	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.

Answer: Please see answer to Question 4(B). None of the relationships or transactions described therein create a conflict of interest or possible conflict of interest with respect to the position to which I have been nominated.

(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.

Answer: While in private practice, I assisted in the preparation of public comments to be filed with the U.S. Department of Agriculture's Grain Inspection, Packers, and Stockyards Administration, and in the preparation of a brief to be filed in an administrative adjudicatory proceeding before the FCC. I also prepared and filed numerous briefs with respect to Executive action in federal courts, which I understand to fall outside the scope of this question.

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.

Graduation *magna cum laude* from Harvard Law School
Editor and Notes Editor, Harvard Law Review
Class Marshal, Harvard Law School
Hillsdale College Graduate of the Last Decade Award
Graduation *magna cum laude* from Hillsdale College
Hillsdale College Honors Program (now Collegiate Scholars Program)

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
Federalist Society	Periodically from appx. September 2008 to present	Member
Knights of Columbus	From appx. April 2016 to present	Member
American Bar Association	From appx. 2012 to Sept. 2017	Member
New York State Bar Association	2013	Member

7. Political Activity

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

Name of Office	Elected/Appointed/ Candidate Only	Year(s) Election Held or Appointment Made	Term of Service (if applicable)
Senior Advisor to the Director for Regulatory Affairs, Office of Management and Budget	Appointed	2019	
Acting Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget	Appointed	2019	
Associate Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget	Appointed	2018	
Counselor to the Secretary, United States Department of Labor	Appointed	2017	

(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.

Name of Party/Election Committee	Office/Services Rendered	Responsibilities	Dates of Service

(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
Marco Rubio for President	$500	2016

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.

Title	Publisher	Date(s) of Publication
A Friendship that Spans the Ages and Seas	Hillsdale College Alumni Magazine	August 2019
Constitutional Law – *Bivens* Actions – Second Circuit Holds that Alleged Victim of Extraordinary Rendition Did not State a *Bivens* Claim. – *Arar v. Ashcroft*, 585 F.3d 559 (2d Cir. 2009) (en banc).	Harvard Law Review	May 2010

(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.

Title/Topic	Place/Audience	Date(s) of Speech
U.S.-Canadian regulatory cooperation	Canadian embassy	September 24, 2019
The OIRA review process	Conference on the Future of White House Regulatory Oversight and Cost-Benefit Analysis, Scalia Law School, George Mason University, Arlington, VA	September 13, 2019
The OIRA review process	Guest lecture at administrative law class, George Washington University Law School, Washington, DC	June 2019
A Friendship that Spans the Ages and Seas	Hillsdale College, Hillsdale, MI	May 2019
The OIRA review process	Conference of Brazilian government officials on good regulatory practices in Brasilia, Brazil	December 2018
Lessons from Swiss apprenticeship system for America	Swiss Embassy, Washington, DC	Appx. February 2018
The Administration's apprenticeship initiative	Asian American Hotel Owners Association	Appx. April 2018

(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.

Title	Place/Audience	Date(s) of Speech
Lectures on constitutional interpretation	Hillsdale College, Hillsdale, MI	September 2014

9. Criminal History

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

Answer: No.

- 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.)
- Have you been arrested by any police officer, sheriff, marshal or any other type of law enforcement official?
- Have you been charged, convicted, or sentenced of a crime in any court?
- Have you been or are you currently on probation or parole?
- Are you currently on trial or awaiting a trial on criminal charges?
- To your knowledge, have you ever been the subject or target of a federal, state or local criminal investigation?

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.

Answer: No.

Date Claim/Suit Was Filed or Legislative Proceedings Began	Court Name	Name(s) of Principal Parties Involved in Action/Proceeding	Nature of Action/Proceeding	Results of Action/Proceeding

(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.

On April 3, 2019, I was substituted as a named party in my official capacity as Acting Administrator of OIRA in *National Women's Law Center v. Office of Management and Budget* (Case No. 17-2458) (listed in the table below), under Rule 25(d) of the Federal Rules of Civil Procedure (providing for substitution of a succeeding federal officer when the original named defendant officer resigns). The administrative actions that form the basis of this lawsuit occurred before my employment at the Office of Management and Budget.

Date Claim/Suit Was Filed	Court Name	Name(s) of Principal Parties Involved in Action/Proceeding	Nature of Action/Proceeding	Results of Action/Proceeding

11/15/2017	U.S. District Court for the District of Columbia	National Women's Law Center, Equal Employment Opportunity Commission, Office of Management and Budget	Challenge to OMB's stay of EEO-1 component 2 form approval	Injunction against EEO and OMB, currently on appeal to the U.S. Court of Appeals for the D.C. Circuit

(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.

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.

Answer: No.

Name of Agency/Association/ Committee/Group	Date Citation/Disciplinary Action/Complaint Issued/Initiated	Describe Citation/Disciplinary Action/Complaint	Results of Disciplinary Action/Complaint

(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?

Answer: 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).

Answer: 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

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.

Paul J. Ray

This 22nd day of Oct, 2017

REDACTED

UNITED STATES OFFICE OF
GOVERNMENT ETHICS

October 24, 2019

The Honorable Ron Johnson
Chairman
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 Paul J. Ray, who has been nominated by President Trump 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,

DAVID APOL Digitally signed by DAVID APOL Date: 2019.10.24 18:36:51 -04'00'

David J. Apol
General Counsel

Enclosures REDACTED

October 18, 2019

Mark Paoletta
General Counsel and Designated Agency Ethics Official
Office of Management and Budget
725 17th Street, NW
Washington, D.C. 20503

Dear Mr. Paoletta:

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 of the 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 in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, 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.

If I have a managed account or otherwise use the services of an investment professional during my appointment, I will ensure that the account manager or investment professional obtains my prior approval on a case-by-case basis for the purchase of any assets other than cash, cash equivalents, investment funds that qualify for the exemption at 5 C.F.R. § 2640.201(a), obligations of the United States, or municipal bonds.

I understand that as an appointee I must continue to abide by the Ethics Pledge (Exec. Order No. 13770) that I previously signed and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this ethics agreement.

I will meet in person with you during the first week of my service in the position of Administrator of the Office of Information and Regulatory Affairs in order to complete the initial ethics briefing required under 5 C.F.R. § 2638.305. Within 90 days of my confirmation, I will document my compliance with this ethics agreement by notifying you in writing when I have completed the steps described in this ethics agreement.

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 ethics agreements of other Presidential nominees who file public financial disclosure reports.

Sincerely,

Paul J. Ray

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

I. Nomination Process and Conflicts of Interest

1. Did the President or the Director of the Office of Management and Budget (OMB) give you specific reasons why you were nominated to be the next Administrator of the Office of Information and Regulatory Affairs (OIRA) at OMB, and if so, what were they?

Answer: No.

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

Answer: No.

3. Have you made any commitments with respect to the policies and principles you will attempt to implement as Administrator? If so, what are they, and to whom were the commitments made?

Answer: No.

4. Are you aware of any business relationship, dealing, or financial transaction that could result in a possible conflict of interest for you or the appearance of a conflict of interest? If so, please explain what procedures you will use to recuse yourself or otherwise address the conflict. And if you will recuse yourself, explain how you will ensure your responsibilities are not affected by your recusal.

Answer: No. I will not participate personally and substantially in any particular matter that to my knowledge has a predictable effect on my financial interests. I will work with OMB General Counsel and White House Counsel to ensure full compliance with ethics requirements. Should recusal be necessary, I would ensure that the Associate Administrator fulfill my responsibilities.

II. Background of the Nominee

5. What specific background, experience, and attributes qualify you to be Administrator?

Answer: For most of this year, I managed OIRA as Acting Administrator; before that, I served as Associate Administrator, in which position I was responsible for many regulatory reviews. This actual experience managing OIRA is the best possible preparation for serving as Administrator. My service as Counselor to the Secretary of Labor also gave me valuable on-the-ground experience of agency regulatory processes. Additionally, my specialization in administrative appellate law in the private sector, including participating in some of the leading

administrative law cases of the last several years, has given me a valuable understanding of the principles of the Administrative Procedure Act.

6. Please describe:

    a. Your leadership and management style.

Answer: First, I lead with integrity. I am committed to honesty, fairness, and doing the right thing, and I insist that anyone working for me follows these principles as well.

Second, I listen carefully to the views of subordinates while accepting for myself the responsibility of decision. While Acting Administrator, I ensured that OIRA staff had an opportunity to explain their views on particular regulations and on broader OIRA policy. I often agreed with those views; when I did not, I explained the reasons for my decision.

Third, I set a strong example. OIRA staff work long hours and achieve a very high quality of work; while Acting Administrator, I never asked someone to work harder than I did. I set a tone of integrity, respect, diligence, and amicability by demonstrating those qualities myself.

    b. Your experience managing personnel.

Answer: While Acting Administrator of OIRA, I managed the OIRA staff of about 60 (including detailees). While Associate Administrator, I managed many reviews, involving supervision of the branches involved in those reviews. While at the Department of Labor as Counselor to the Secretary, I managed the drafting of regulations involving agency personnel across various components. And while in private practice, I managed junior colleagues on a variety of cases.

    c. What is the largest number of people that have worked under you?

Answer: Approximately 60.

7. Please describe your experience working on matters relating to regulatory review, interagency cooperation, government collection of information, or other matters within the purview of the OIRA Administrator.

Answer: I have worked as Acting OIRA Administrator, in which I supervised the federal regulatory review process (including interagency review of regulations) and the information collection process. Before that I worked as Acting Administrator, as Counselor to the Secretary of Labor, and in private practice as an appellate litigator focusing on challenges to agency rulemakings.

III. Role of the Administrator of OIRA

8. What do you consider to be the mission of OIRA, and what would you consider to be your role and responsibilities if confirmed as the Administrator? Have you and OMB Director

Mick Mulvaney discussed what your role would be? If so, please describe how you view your role in light of those discussions.

Answer: OIRA's mission is to coordinate a review process resulting in regulations that are lawful, based on sound data and analysis, consistent with good regulatory principles, and reflective of presidential priorities, as well as to coordinate and improve federal information policy. Mr. Mulvaney has always expressed the strongest support for OIRA in its mission; we have not discussed my role specifically.

9. What do you anticipate will be your greatest challenges as Administrator, and what will be your top priorities? What do you hope to accomplish during your tenure?

Answer: OIRA faces the challenge and opportunity of implementing the President's recent Executive Order on transparent guidance, which represents an important extension of the principles of sound analysis. My priorities will include 1) ensuring a robust regulatory review process that results in regulations that are consistent with law and good regulatory principles as well as based on sound data and analysis, including especially analysis of costs and benefits; 2) promoting presidential priorities for the benefit of the American people; and 3) equipping OIRA with the practices and resources it needs to serve its mission effectively for years to come.

IV. Policy Questions

10. Do you believe OIRA has adequate resources to meet its mission? Are there organizational changes to OIRA and/or its place in OMB that you believe would help further its mission?

Answer: I believe OIRA has sufficient resources to meet its mission. During my time as Acting Administrator of OIRA, I worked with Acting Director Vought to bring additional resources to OIRA, resulting in an increase of OIRA staff positions of about 20%. These new staff will materially assist OIRA in executing its responsibilities. If confirmed, I would carefully consider whether organizational changes to OIRA are needed to help further its mission.

11. What actions will you take to ensure that regulatory impact analyses have integrity, are accurate, and that potential impacts of proposed regulations are properly estimated?

Answer: I will vigorously ensure compliance with longstanding principles of regulatory impact analysis found in executive orders and OMB guidance, and will work with agency colleagues to ensure they implement sound, up-to-date principles of information quality that reflect developments in data management and technology.

12. Do you support undertaking a retrospective review process? If so, what role do you believe OMB should play in this process and how can you ensure agencies properly prioritize their own review efforts?

Answer: Yes, I support and encourage retrospective review of regulations. A number of the regulatory reforms undertaken consistent with Executive Order 13771 are the result of a retrospective review that discovered unanticipated costs, inefficiencies, or opportunities for

improvement. If confirmed, I would work with agency colleagues to continue needed regulatory reforms, including those based on retrospective review.

a. In your view, have previous retrospective reviews of existing policies been successful? Please explain why or why not.

Answer: Several agencies have undertaken a thoughtful assessment of the realized costs and benefits of a number of their regulations. More work remains to be done, however, in ensuring uniform pursuit of regulatory reform, including through retrospective analysis, at agencies across the government, and in making retrospective analysis a routine agency practice. EO 13563 attempted the latter task, with moderate success.

b. Would you support, as a substitute or complement to retrospective review, establishing a task force outside the agencies to conduct a review and make recommendations for the repeal or improvement of old regulations? Please explain why or why not.

Answer: If confirmed, I would be open to consideration of a variety of institutional mechanisms for ensuring retrospective review. Any such mechanism should ensure that the views and suggestions of the public are adequately voiced and considered.

13. What steps will you take to ensure the Unified Agenda is both completed on time and contains the most accurate information with respect to agencies' prospective regulatory plans?

Answer: If confirmed, I would supervise a rigorous process for preparing the agenda that would solicit information from the agencies that is adequate to inform the public of agencies' intended regulatory measures and that would result in a Unified Agenda published in timely fashion in the spring and autumn of each year.

14. Are there any major reform proposals of the regulatory process for proposing, adopting, and reviewing federal regulations that you would like to see enacted by Congress or fulfilled through executive action or OMB guidance? Please explain.

Answer: The Administration has no specific recommendations for legislative reform of the regulatory process at this time. I strongly support greater transparency and accountability, as well as increased application of cost-benefit principles, in the regulatory process; those are the policy objectives underlying the President's recent executive orders on transparent guidance and enforcement, as well as enshrined in some of the legislative reform proposals that Congress has considered in recent years, such as the GOOD Act. If confirmed, I would continue to seek ways to achieve increased transparency, accountability, and application of cost-benefit analysis in the regulatory process.

15. If confirmed, what do you see as your specific responsibilities with respect to administering Executive Order 13771?

Answer: If confirmed, my responsibilities would include implementing presidential directives with regard to the regulatory review process, including EO 13771, insofar as they are consistent with legal requirements. In particular, my responsibilities would include ensuring that agencies and OMB transparently report the deregulatory cost savings and regulatory costs created by agency regulations.

a. Do you believe agencies are complying with the executive order? If not, what additional information or requirements are needed?

Answer: In my experience as Acting Administrator and Associate Administrator, I have seen very widespread implementation of EO 13771, insofar as agencies' statutory mandates permit.

16. The process for developing regulations is meant to be transparent and to ensure that those who will be affected by a proposed rule will have their needs and opinions heard and considered. As Administrator, what would you do to ensure the rulemaking process is transparent and accessible?

Answer: Transparency and accessibility are critical objectives for any fair and accountable regulatory process; they are the values underlying the President's recent Executive Orders 13891 and 13892, which direct agencies to make their guidance documents more transparent and to receive and respond to public comment on significant guidance documents. If confirmed, I would commit to continuing to pursue these vital objectives, including through maintaining the practice of offering to the public EO 12866 meetings on a first-come, first-served basis.

17. Protecting whistleblower confidentiality is of the utmost importance to this Committee.

a. How do you plan to implement policies within the office to encourage employees to bring constructive suggestions forward without the fear of reprisal?

Answer: As Acting Administrator, I encouraged OIRA staff to come to me with constructive suggestions, and I am glad to say that some of the staff provided very helpful suggestions in response to this encouragement. If confirmed, I would continue my commitment to soliciting suggestions for improvement or statements of concern without fear of reprisal and would analyze existing procedures to ensure they are consistent with that objective.

b. If confirmed, what avenues will be available to employees to report waste, fraud, or abuse within OIRA?

Answer: If confirmed, I would review OIRA's policies on reporting waste, fraud, or abuse and ensure that they are consistent with applicable law and wider departmental policies.

c. Do you commit without reservation to work to ensure that any whistleblower within OIRA does not face retaliation?

Answer: Yes.

d. Do you commit without reservation to take all appropriate action if notified about potential whistleblower retaliation?

Answer: Yes.

18. If confirmed, what do you see as your specific responsibilities with respect to implementing Executive Order 13892?

Answer: OIRA often consults on general administrative and regulatory policy; if confirmed, I would continue that practice, including by consulting as needed with agency and EOP colleagues on implementation of EO 13892. However, OIRA and OMB are given no specific implementing responsibilities in EO 13892. OIRA may review some or all regulations issued under Section 7 of EO 13892.

19. If confirmed, what do you see as your specific responsibilities with respect to administering the Guidance on Compliance with the Congressional Review Act memorandum?

Answer: Under the memorandum, OIRA continues to be responsible for making major designations under the Congressional Review Act. Additionally, OIRA has the responsibility to work with agency colleagues to ensure OIRA receives adequate information to make major designations accurately. If confirmed, I would continue to carry out these responsibilities.

a. Do you believe agencies are complying with the memorandum? If not, what additional information or requirements are needed?

Answer: While I was Acting Administrator of OIRA, a number of agencies revised their operating procedures to provide OIRA with information that enabled OIRA to make major designations with greater accuracy, including for non-rule actions that are covered by the Congressional Review Act memorandum. If confirmed, I would continue to work with agency colleagues to ensure that every agency provides sufficient information for OIRA to make major determinations in a timely and accurate manner.

V. Relations with Congress

20. Do you agree without reservation to comply with any request or summons to appear and testify before any duly constituted committee of Congress if you are confirmed?

Answer: Yes.

21. Do you agree without reservation to make any subordinate official or employee available to appear and testify before, or provide information to, any duly constituted committee of Congress if you are confirmed?

Answer: If confirmed, I will work to ensure that OIRA provides Congress with the information it needs to carry out its essential oversight functions.

22. Do you agree without reservation to comply fully, completely, and promptly to any request for documents, communications, or any other agency material or information from any duly constituted committee of the Congress if you are confirmed?

Answer: If confirmed, I will work to ensure that OIRA provides Congress with the information it needs to carry out its essential oversight functions.

VI. Assistance

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

Answer: Yes, these answers are my own. I have consulted with OMB staff in developing some of them.

Supplemental Minority Pre-hearing Questionnaire
For the Nomination of Paul J. Ray to be
Administrator, Office of Information and Regulatory Affairs

I. Nomination Process and Conflicts of Interest

1. Has the President or his staff asked you to sign a confidentiality or non-disclosure agreement?

Answer: No.

2. Has the President or his staff asked you to pledge loyalty to the President, Administration, or any other government official?

Answer: No.

3. Have you ever represented a party in a matter before or involving the Office of Information and Regulatory Affairs (OIRA)? If so, please describe the matter(s) and the nature of the representation.

Answer: No.

4. Please describe the process used to identify potential conflicts and evaluate the need for recusal with respect to your employment at OIRA from June 2018 – present.

Answer: Upon joining OMB, I consulted with OMB ethics counsel to determine potential conflicts and evaluate the need for recusal. I also completed an OGE Form 278 Financial

Disclosure Guide. Because no rules or rulemakings with respect to which I had performed work in the private sector were under review at OIRA, I was not required to recuse from any matters. Nevertheless, out of an abundance of caution, I recused from matters that were closely related to rules or rulemakings with respect to which I had performed work before joining the Executive branch.

5. Please identify any matters from which you have been recused since beginning your employment at OIRA, and describe the terms of your recusal.

Answer: Out of an abundance of caution, I recused from participating in the regulatory review of the following matters that were closely related to rules or rulemakings on which I had performed work before joining the Executive branch; I did not participate personally and substantially on these reviews:

a. The Affordable Clean Energy rulemaking
b. The Religious Exemptions and Accommodations for Coverage of Certain Preventive Services Under the Affordable Care Act rulemaking
c. The Department of Labor's Definition of the Term "Fiduciary"; Conflict of Interest Rule-Retirement Investment Advice rulemaking

6. Please describe the extent to which you have communicated with otherwise interacted with any former clients in your capacity as Associate Administrator or Acting Administrator of OIRA.

Answer: I have complied with all ethical requirements, including the requirements of the ethics pledge required by Executive Order 13770. During the two year period required by the ethics pledge, I did not participate in any particular matter involving specific parties that was directly and substantially related to my former employer or former clients.

7. Are you aware of any regulatory proposals that have been reviewed by OIRA during your tenure as Associate Administrator or Acting Administrator, with respect to which any of your former clients has provided comments or otherwise taken a position? If so, please describe the proposals and your role in evaluating or reviewing them while at OIRA.

Answer: I am not aware of any comments provided by my former clients during my tenure as Associate Administrator or Acting Administrator, although it is possible that former clients have done so. I have never, to the best of my recollection, reviewed comments filed by a former client during my tenure at OIRA, or been informed of a position of a former client with respect to a regulatory proposal under review, or been informed that a former client has taken a position or filed comments on such a proposal.

8. Please provide a copies of any ethics waiver or agreement that you have signed in connection with your employment at the Department of Labor (DOL) or OIRA.

Answer: Please see attached.

II. Background of Nominee

9. Why do you want to serve as OIRA Administrator?

Answer: Willingness of citizens to engage in public service is necessary for a republic to thrive. My extensive background in the regulatory process, including as Acting Administrator of OIRA, makes me well-equipped to serve the United States in the capacity of OIRA Administrator. Further, many Americans' sole interactions with the federal government are with the various aspects of the regulatory process. This fact emphasizes the importance of a process that is transparent, accountable to the people, fair, efficient, and respectful of the rights of Americans. In my time at OIRA, I have worked to advance such a process, and it would be a privilege to continue that work as OIRA Administrator.

10. Please give examples of times in your career when you disagreed with your superiors and aggressively advocated your position. What were the outcome of your attempts to change a superior's position? Were you ever successful?

Answer: I believe that a subordinate owes a duty of candid counsel to superiors, including disagreement when necessary; indeed, that is a hallmark of a healthy professional relationship. In accord with that principle, I have advised superiors of disagreements at all stages of my professional career; my advice has often been accepted.

11. Do you seek out dissenting views and encourage constructive critical dialogue with subordinates? Please provide examples of times in your career when you have done so.

Answer: Yes; please see response to Committee Question 17 above, which details my efforts to solicit and receive constructive suggestions, including critical suggestions, from OIRA staff.

12. Please list and describe examples of when you made politically difficult choices that you thought were in the best interest of the country.

Answer: I have made politically difficult choices that I believed were in the best interest of the country. I cannot discuss the details of those choices due to, e.g., the attorney-client privilege, the deliberative process privilege, and various duties of confidentiality.

13. What would you consider your greatest successes as a leader?

Answer: As Acting Administrator of OIRA, and before that as Associate Administrator, I worked to supervise regulatory reviews resulting in rules that are well-reasoned and founded on sound data and analysis with benefits that exceed costs. I also worked to extend the principles of transparency, accountability, and reasoned decisionmaking for which the OIRA review process stands.

14. What do you consider your greatest failure as a leader? What lessons did you take away from that experience?

Answer: In previous jobs I have sometimes been too focused on details, diverting time from higher-level strategic objectives. From this experience I learned to focus on both details and the strategic vision.

15. Please describe how you build credibility and trust among staff as a leader.

Answer: It is very important to me to be honest with staff and to give them a full opportunity to express their views. While Acting Administrator, I listened carefully and respectfully to the views of staff, while accepting for myself the responsibility of decision.

16. During your career, has your conduct as a federal employee ever been subject to an investigation or audit by Council of Inspectors General on Integrity and Efficiency (CIGIE), Office of Special Counsel, Department of Justice, agency Equal Employment Opportunity office or investigator, or any other federal investigative entity? If so, please describe the nature of the allegations/conduct and the outcome(s) of the investigation(s) or audit(s).

Answer: No.

17. In your biographical questionnaire you state that you were employed by Sidley Austin LLP from September 2012- July 2013 and October 2014 – April 2017, each position/title you held at Sidley Austin, please provide the following:

    a. Position title;
    b. Start and end dates for that position;
    c. A brief summary of your responsibilities;
    d. Number of direct reports, if any; and
    e. Reason for leaving or changing position/title.

Answer: I worked as an associate at Sidley Austin LLP from September 2012 through July 2013 and from October 2014 through April 2017. I wrote legal briefs, motions, and other litigation documents; supervised and undertook legal research; and advised clients with respect to legal strategy and compliance. I do not recall the number of individuals whom I managed on various cases over the course of my employment at Sidley Austin. I left Sidley Austin in July 2013 to serve as a law clerk at the Supreme Court of the United States for Justice Alito. I left Sidley Austin in April 2017 to serve as Counselor to the Secretary of Labor.

18. In your biographical questionnaire you state that you were employed by the Department of Labor (DOL) from April 2017 – June 2018 and by OIRA from June 2018 – present. For each position/title you held at DOL or OIRA, please provide the following:

    a. Position title;
    b. Start and end dates for that position;
    c. Type of appointment (e.g. Schedule C, Noncareer SES);
    d. A brief summary of your responsibilities;
    e. Number of direct reports, if any;

f. The title/position of your direct supervisor(s); and
g. Reason for leaving or changing position/title.

Answer: I served as Counselor to the Secretary at the Department of Labor, a Schedule C position, from April 2017 to June 2018. I advised on the preparation of certain regulations; advised the Secretary on policy and legal matters; and represented the Secretary's views in interactions with other Executive departments and offices. I had no direct reports in this role; I reported to the Secretary of Labor. I left the position to become Associate Administrator of OIRA.

I served as Associate Administrator of OIRA, a non-career SES position, from June 2018 to October 2019. I managed the review of regulations, represented OIRA and OMB in policy processes, and coordinated Administration policy with respect to the regulatory process. As Associate Administrator I advised the Administrator and worked with OIRA staff engaged on reviewing rules in my portfolio; at some point I believe I worked with most or all OIRA staff (approximately 60 people, including detailees) in one review or another. From June 2018 until March 2019 I reported to OIRA Administrator Neomi Rao; upon her resignation, I became Acting Administrator and reported to Acting OMB Director Russ Vought. I left my position as Acting Administrator to become Senior Advisor to the OMB Director for Regulatory Affairs upon my nomination to become OIRA Administrator.

I served as Acting Administrator of OIRA from March 2019 to October 2019. The position is a Senate-confirmed position; I was eligible to fill it on an acting basis as a non-career SES appointee working at OIRA. As Acting Administrator, I supervised the review of all regulations submitted to the OIRA review process, except for those on which I recused myself; formulated Executive policy on the regulatory process; and managed OIRA. I supervised approximately 60 individuals at OIRA and reported to the Acting OMB Director. I resigned as Acting Administrator upon the President's nomination to serve as OIRA Administrator.

I have served as Senior Advisor to the OMB Director for Regulatory Affairs, a non-career SES position, from October 2019 to the present. In that position, I advise the Acting OMB Director on various matters relating to regulation, including reforms to the regulatory process and particular regulations. I do not supervise anyone as Senior Advisor to the OMB Director; I report to the Acting OMB Director.

19. Please describe the extent to which your work at the Department of Labor involved the formal rulemaking process, the issuance of agency guidance, or other related regulatory issues.

Answer: My work at the Department of Labor involved significant work in the formal rulemaking process and other regulatory issues. I worked with regulatory lawyers, economists, and subject-matter experts from across the Department in the preparation of regulatory actions that complied with applicable law and executed Secretarial directives. I did not participate in the release of any guidance documents.

20. Please describe the nature and extent of your interactions with OMB or OIRA during your tenure at DOL.

Answer: I interacted briefly and on a few occasions with OIRA policy staff during the review of regulations. I also had limited interactions with OMB budget staff on DOL program spending.

21. Please describe any pro bono or volunteer activities you engaged in during your employment with Sidley Austin, and identify any pro bono matters you worked on directly related to federal agency rulemaking or the regulatory process.

Answer: While at Sidley Austin LLP, my principal pro bono activity consisted of an appeal in the D.C. Circuit of an employment discrimination claim on behalf of Theodore Wilson, a military veteran, against his former employer. The appeal was successful, resulting in reversal of the district court's decision against Mr. Wilson. I subsequently represented him in the district court against his former employer, resulting in a successful settlement. I did not undertake any pro bono matters directly related to federal agency rulemaking or the regulatory process.

22. Please identify any amicus briefs directly related to federal agency rulemaking or the regulatory process that you have signed onto or helped draft, other than in your capacity as a federal employee.

Answer: In my administrative appellate practice, I was generally retained by parties rather than amici. I recall filing one amicus brief related to federal agency rulemaking or the regulatory process, in *In re Murray Energy Corporation*, No. 14-1112 (D.C. Cir. 2014).

23. Please provide your official calendar – including each day's scheduled appointments and the list of attendees (and their affiliations) – for all dates since beginning your employment with OIRA in June 2018.

Answer: I have referred this request to the Office of Management and Budget's Office of General Counsel.

III. Role of the Administrator of OIRA

24. In your biographical questionnaire you state that you held the positions of Associate Administrator of OIRA from June 2018 – October 2019; Acting Administrator of OIRA from March 2019 – October 2019; and Senior Advisor to the Director for Regulatory Affairs from October 2019 – present.

    a. How have your responsibilities and authorities changed since beginning to serve as Senior Advisor to the Director for Regulatory Affairs in October 2019?

Answer: While Acting Administrator, I was responsible for managing OIRA' review of regulations, and had authority to manage that review. I also was responsible for managing, and had authority to manage, OIRA staff. Since becoming Senior Advisor to the Director for

Regulatory Affairs, I have ceased to have those responsibilities and authorities, and have ceased to manage regulatory reviews and OIRA staff. Instead, I now advise the Acting Director with respect to a range of issues pertaining to regulation.

b. Have you received any guidance regarding compliance with the Federal Vacancies Reform Act? If so, please describe that guidance.

Answer: Yes. I was advised that I may not exercise the functions of the Administrator during the pendency of my nomination, or perform the duties of that office.

c. Please describe any challenges you encountered with respect to serving simultaneously as Associate Administrator and Acting Administrator.

Answer: None.

25. Please provide a copy of any formal delegation of authority or similar document(s) issued by the President, OMB, or OIRA, in connection with your official responsibilities while employed by OIRA.

Answer: Please see attached.

IV. Policy Questions

Regulatory Review/Rulemaking

26. What is your opinion of the rulemaking process? What are some changes to the process, if any, you would like to see?

Answer: The Administrative Procedure Act has served the nation well as a foundational structure for the rulemaking process. The principles embedded within the notice and comment process and opportunities for judicial review have served to prevent arbitrary government and to provide the public with due process. The Administration has offered views on legislative proposals and offered technical assistance.

27. Are there any major reform proposals of the regulatory process for proposing, adopting, and reviewing federal regulations that you would like to see enacted by Congress or fulfilled through executive action or OMB guidance?

Answer: OMB has provided technical assistance on a number of legislative proposals and offered formal positions on legislation.

28. OMB is tasked with review of agency work-product, but does not have the subject matter expertise agencies have. When should OMB officials rely on their own expertise and when should they defer to the expertise at agencies?

Answer: OMB staff often review the work of particular agencies over many years; they often have substantial expertise in the subject matter with which those agencies deal. OMB staff work with their agency colleagues to understand the rules the agencies submit for review; their agency colleagues explain any concepts and studies with which OMB staff are unfamiliar.

29. What has your approach been to the interagency review process during your time as Acting Administrator? If confirmed, would change your approach in any way?

Answer: The interagency review process is a vital part of the regulatory process; it promotes reasoned decisionmaking and ensures that the Executive speaks with one voice. If confirmed, I would continue to support and promote that process.

30. What are the main principles that you think should be taken into consideration in promulgating and issuing new regulations?

Answer: Of first and greatest importance are the legal requirements of the Constitution, followed by those Congress has created in statute. Next, agencies should consider the principles laid out in Executive Order 12866.

31. What are the main principles that you think should be taken into consideration when considering repealing or modifying an existing regulation?

Answer: Please see answer to question 30.

32. Do you believe OIRA should serve as a "gatekeeper" or as a "consultant" to administrative agencies during the rulemaking process? Please explain.

Answer: I would not use either of those words. "Gatekeeper" suggests that the OIRA Administrator's policy choices should replace those of the agency heads to whom Congress has entrusted decisionmaking authority in statute, but I believe that those statutory authorities must remain where Congress placed them. "Consultant" suggests that OIRA gives advice to agencies during the rulemaking process, but it overlooks the fact that OIRA does not merely give advice, but upholds the standards the President has directed agencies to follow in EO 12866; it also overlooks the fact that much of the input that an author agency receives during the rulemaking process is not from OIRA at all, but from other agencies with relevant expertise or responsibilities, who provide input through the OIRA process. OIRA's role during the rulemaking process is to ensure that the agency's analysis is accurate and transparent, and to coordinate a robust interagency review process.

33. How have you been carrying out your duties in the regulatory review process to ensure that fair and balanced consideration is given to the public interest vis-à-vis regulated industry interests?

Answer: In my roles as Associate Administrator and Acting Administrator, I have always served the interests of the United States and its citizens rather than of any particular stakeholder.

a. How would your experience inform your approach if confirmed as OIRA Administrator?

Answer: My experience as Acting Administrator and Associate Administrator has given me excellent preparation for serving as OIRA Administrator, if confirmed, by acquainting me with the duties of the role and providing practical experience in meeting them.

34. Please describe how in your roles as Associate Administrator and Acting Administrator you have ensured that the benefits, economic and otherwise, are accounted for when reviewing regulations for repeal.

Answer: While Acting Administrator and Associate Administrator, I directed, consistent with OMB guidance, that agencies comply with EO 12866.

35. If confirmed, how do you plan to adequately account for the unique concerns of small businesses in the regulatory review process compared to that of major companies?

Answer: It is vital that the concerns of small businesses be fully considered in the regulatory process. Indeed, the President's recent Executive Orders on transparent guidance and enforcement are designed to benefit small businesses, by making guidance easier to access for small businesses who lack the legal representation of their larger competitors. If confirmed, I would continue to ensure that analysis of small entity impacts are performed where appropriate or required by law, and would ensure that the unique concerns of small businesses with respect to the regulatory process are addressed.

36. Regulatory analysis represents a fundamental and important tool in the regulatory process to help agencies determine the best path forward, and OIRA plays a critical role in reviewing and helping agencies develop good regulatory analysis. What are the critical factors that you believe must be part of quality regulatory analysis?

Answer: A quality regulatory analysis should seek to account for all costs and benefits that can be reasonably anticipated; it should quantify those costs and benefits where possible and include a qualitative discussion where quantification is impossible; it should explain the data underlying its analysis; and it should acknowledge the limits of its own certitude and predictive value.

37. What are your thoughts on including economic, pricing, or other models used during OIRA's evaluation of a proposed rule as part of the public rulemaking record?

Answer: Consistent with federal open data policy, OIRA has encouraged agencies to make as much of their data and models available to the public as is consistent with law and confidentiality and privacy protections.

38. Do you believe that OIRA must maintain complete analytic integrity and rely on evidence-based methodologically excellent analysis notwithstanding any competing objectives sought by other elements of the Executive Office of the President? Why or why not?

Answer: In EO 12866, the President has directed OIRA to ensure cost-benefit analysis of regulations. If confirmed, I would zealously continue to pursue that presidential directive.

39. Do you believe that the previous administration failed to follow the law when promulgating regulations? If so, can you provide specific examples, including identifying any the legal requirements that were not followed?

Answer: I do believe that the previous administration sometimes acted inconsistent with its statutory authorities when promulgating regulations. For instance, when the previous Administration set the salary threshold below which hard-working Americans are eligible for overtime, the agency exceeded its statutory authority, as the courts quickly determined.

40. Has OIRA issued any Review or Return Letters during your time as Associate Administrator or Acting Administrator? If so, please provide copies of each letter.

Answer: No.

41. Since June 2018, has OIRA either formally or informally requested an agency withdraw a rulemaking from consideration? If so, please identify the regulatory action in which this has occurred.

Answer: In July 2019, OIRA asked that HHS withdraw the following rule from review: "Fraud and Abuse; Removal of Safe Harbor Protection for Rebates Involving Prescription Pharmaceuticals and Creation of New Safe Harbor Protection for Certain Point-of-Sale Reductions in Price on Prescription Pharmaceuticals and Certain Pharmacy Benefit Manager Service Fees," RIN 0936–AA08. This withdrawal request was made pursuant to a determination by the President not to proceed with the rulemaking. Please see the White House press release on this transaction.

42. In the Memorandum of Agreement between the Department of Treasury and the Office of Management and Budget regarding Executive Order 12,866 review of tax regulatory actions, the agreement states that OIRA will conclude reviews of tax regulatory actions within 45 days. However, all other rules reviewed by OIRA are subject to a 90-day review timeframe as set forth in Executive Order 12,866.

    a. Should other agencies also receive shorter timelines for OIRA reviews? If so, which agencies?

Answer: No. The 45-day review period is in recognition of the unusual need to issue a large number of regulations implementing the Tax Cuts and Jobs Act.

    b. In your opinion, should tax regulatory actions receive shorter timelines for OIRA review than all other rules reviewed by OIRA?

Answer: Please see answer to question 42(a).

c. In order to harmonize OIRA review timelines, should all regulatory actions reviewed by OIRA be subject to the same 45-day limit as tax regulatory actions? Please explain why or why not.

Answer: No. Please see answer to question 42(a).

d. The agreement also provides for an expedited release of not more than ten business days for tax regulatory actions under the Tax Cuts and Jobs Act of 2017. Are there other regulatory actions authorized by certain statutes that should also receive expedited release from OIRA review? If so, please identify those statutes and regulatory actions. If not, please discuss why not.

Answer: The 10-day review provision is in recognition of the unusual need to issue a large number of regulations implementing the Tax Cuts and Jobs Act. Other agencies are not similarly situated to Treasury at this time. However, OIRA does conduct expeditious reviews of other agencies' rulemakings to the extent consistent with a thorough review process.

43. If confirmed, what will you do to ensure executive branch agencies comply with OMB Circular A-4?

Answer: Circular A-4 is a critical part of the OIRA review process that has stood the test of time. If confirmed, I would continue my policy from my service as Acting Administrator by directing that staff hold agency rulemakings to the standards articulated in A-4 and work with agency colleagues to improve the analysis of regulations that do not comply with A-4.

44. If agency guidance is, by definition, non-binding and therefore not legally enforceable, can you explain how guidance documents have an impact on the economy?

Answer: Agencies issue guidance documents in significant part because they believe that the public will alter its behavior based on the content of the guidance documents, even though regulated entities are not legally obligated to comply. Thus, guidance documents, although non-binding, have a real effect on regulated entities and thus an impact on the economy.

a. How can agencies conduct cost-benefit analyses on guidance documents, given that they are legally non-binding?

Answer: Please see Question 5 of OMB's memorandum implementing EO 13891: https://www.whitehouse.gov/wp-content/uploads/2019/10/M-20-02-Guidance-Memo.pdf

b. How will OIRA review cost-benefit analyses on agency guidance documents, given that they are legally non-binding?

Answer: Please see Question 5 of OMB's memorandum implementing EO 13891: https://www.whitehouse.gov/wp-content/uploads/2019/10/M-20-02-Guidance-Memo.pdf

45. OIRA's review of regulatory proposals provides an additional check on the legality of agency actions. However, the current administration has had a poor track record defending its rulemakings in court, losing an estimated 90 percent of cases. Many of these cases have turned on procedural matters – issues in which OIRA is supposed to have unique expertise.

    a. Please provide an explanation for this administration's high rate of failure in defending regulatory actions in court.

Answer: Regulations from every administration are subjected to legal challenge. I have no reason to believe that this Administration's regulations have fared or will fare worse than regulations from previous administrations.

    b. If confirmed, what specific actions would you take to ensure that agency actions are legally and procedurally sound?

Answer: I would continue the longstanding OIRA practice of requiring agencies to set forth a full and adequate legal rationale for their actions, as well as by circulating regulations to legal offices, including the Department of Justice and the White House Counsel's Office, and ensuring that the author agencies address legal concerns raised during review.

46. In an April 2019 Bloomberg Government article,[1] you said that you intend to set a new, higher bar for new regulations. Can you explain how you plan to accomplish this?

Answer: The referenced article states that I intended to "set the bar high for any new regulation," not that I intended "to set a new, higher bar." As Acting Administrator, I set the bar high for regulations by requiring robust analysis, and if confirmed I would continue to do so.

Based on OIRA's implementation of EO 12,866 and according to policy stated on its website, it will "meet with any party interested in discussing issues or a rule under review...."[2] During your time as Associate Administrator or Acting Administrator at OIRA, has the office rejected or failed to respond to a meeting request from a non-governmental entity about a regulatory action under review? If so, please identify every non-governmental entity whose meeting request was declined or not responded to, the date the request was made, the date the request was denied (if responded to), and the regulatory action that was the subject of the meeting request.

Answer: When I was Acting OIRA Administrator, OIRA followed a policy of scheduling EO 12866 meetings promptly on a first-come, first-served basis, without regard to the entity requesting a meeting or the viewpoint represented. If confirmed, I would continue the same policy. I note, however, that if an entity requests an EO 12866 meeting immediately before a rule review concludes or after review has concluded, OIRA declines such a meeting request,

[1] Bloomberg Government, *Trump's New Regulation's Chief to Oversee Major Rule Rollbacks* (Apr. 15, 2019) (https://about.bgov.com/news/trumps-new-regulations-chief-oversee-major-rule-rollbacks/).
[2] Office of Information and Regulatory Affairs, "Regulations and the Rulemaking Process," https://www.reginfo.gov/public/jsp/Utilities/faq.myjsp.

because the rule at issue is no longer under review or because it would cease to be under review by the time the meeting occurred.

47. For each regulatory action or rulemaking proceeding identified below, please describe with specificity your involvement, if any, in the development or decision-making process associated with the action or proceeding.

Answer: I supervised the review of all regulations submitted to OIRA while I served as Acting Administrator, with the exception of those from which I recused myself. The review process I supervised involved a robust assessment of costs and benefits and a thorough interagency review process, resulting in changes to rules reflecting the input of OIRA analysts, economists, and scientists, as well as agency colleagues across the government. Please see also the responses to Question 48.

Regulatory Identification Numbers: 2050-ZA15; 2060-AU28; 2060-ZA29; 2060-AT99; 2060-ZA28; 2050-AG95; 2050-AH07; 2040-AF77; 2050-AH10; 2060-AU09; 2040-AF74; 2040-AF75; 2040-AF86; 2040-ZA28; 2060-AT90; 2070-AK07; 2070-AK48; 2060-AT56; 2060-AM75; 2060-AT54; 2060-AP80; 2060-AT89; 2060-AT99; 2060-AU07; 2060-AU33; 2060-AT92; 2060-AT67; 2060-AT81; 2060-AU33; 2010-AA12; 2040-AF15; 2050-AH00; 2040-AF28; 2050-AG88; 2050-AG98; 2050-AH03; 0648-BH42; 1018-BC88; 1018-BC97; 0648-BH41; 1018-BC87; 1018-BD76; 0331-AA03; and 0596-AD31.

48. For each regulatory action or rulemaking proceeding identified in Question 47 above, please provide the following:

a. A list of all meetings or appointments you participated in while employed by OIRA and a description of any substantive or procedural changes to regulatory actions or other agreements resulting from each meeting or appointment; and

Answer: Please see reginfo.gov for a list of meetings in which I participated as a part of EO 12866 review.

b. Copies of any written materials provided by any non-governmental attendees or participants in those meetings or appointments.

Answer: Please see reginfo.gov for all such documents provided to OIRA as a part of EO 12866 review.

Executive Orders

49. Do you believe that OIRA has an obligation to review regulations within 90 days in order to comply with Executive Order 12,866?

Answer: No. While I was Acting Administrator, I directed OIRA staff to complete all reviews as expeditiously as possible. Common practice across Democratic and Republican administrations includes reviews that sometimes require additional time for review by mutual consent. See also,

e.g., EO 12866 section 6.

50. EO 12,866 states, "OIRA shall make available to the public all documents exchanged between OIRA and the agency during the review by OIRA." In your view, does this include written communications between OIRA and the agency? If not, why not?

Answer: Yes, it includes exchanged written communications of an appropriate degree of seniority, consistent with longstanding OMB policy.

a. Should written communication documents between OIRA and the agency be made public? If not, why not?

Answer: Please see response to Question 50.

51. EO 12,866 requires regulations be adopted "only upon a reasoned determination that the benefits of the intended regulation justify its costs," but recognizes that some costs and benefits are very difficult to quantify. As Acting Administrator, how have you implemented this requirement, especially in situations where costs and/or benefits cannot be easily reduced to monetary equivalents or cannot be quantified at all?

Answer: As Acting Administrator, I complied with this requirement by directing that staff hold agency rulemakings to the standards articulated in OMB Circular A-4.

a. How would your experience inform your approach if confirmed as OIRA Administrator?

Answer: If confirmed, I would continue my policy of directing that staff hold agency rulemakings to the standards articulated in OMB Circular A-4.

52. During your tenure at OIRA, what has OIRA's role been in implementing Executive Order 13,771?

Answer: During my tenure at OIRA, OIRA has implemented EO 13771 by working with agencies to assess the regulatory costs or cost savings of each agency's regulations and by preparing annual reports on agency achievements and cost allocations with respect to EO 13771.

53. Should regulations that are mandated by statute, including those that are required by statute to be promulgated once a scientific or other determination by an Executive branch agency is made, be exempt from Executive Order 13,771? Please explain why or why not.

Answer: This question is related to issues subject to pending litigation or otherwise relevant to pending litigation.

54. Do you believe that EO 13,771 creates incentives to discourage certain agencies from carrying out their statutory missions to protect public health and the environment? Please explain why or why not.

Answer: This question is related to issues subject to pending litigation or otherwise relevant to pending litigation.

a. Does EO 13,771 discourage agencies from issuing strong public health, safety, consumer, worker, and environmental protections? Please explain why or why not.

Answer: Please see answer to Question 54.

b. Drawing on your experience since joining OIRA, how has EO 13,771 impacted the ability of agencies to promulgate regulations?

Answer: Please see answer to Question 54.

c. If confirmed, how would you guard against agencies choosing to issue weaker public health, safety, consumer, worker, and environmental safeguards required by statute in order to satisfy the requirements of EO 13,771?

Answer: Please see answer to Question 54.

55. Under EO 13,771, agencies are not required to consider the benefits of regulations they are promulgating because the EO only requires agencies to offset the cost of any new regulations with cost savings from the repeal of existing regulations.

a. In instances in which agencies do not have enough cost savings available to offset a regulatory alternative that may impose higher costs but also consists of greater benefits, do you believe that under EO 13,771, agencies are potentially required to pick a regulatory alternative that is less costly but also provides fewer benefits rather than an alternative that provides higher benefits but also imposes higher costs? Please explain why or why not.

Answer: This question is related to issues subject to pending litigation or otherwise relevant to pending litigation.

b. Do you believe that agencies should be prevented from adopting regulatory alternatives that maximize net benefits, as required under EO 12,866, if agencies are unable to offset the costs of the alternative that maximizes net benefits under Executive Order 13,771? Please explain why or why not.

Answer: Please see answer to Question 55(a).

56. Please provide examples of cost figures or estimates agencies have used to repeal guidance due to the requirements of EO 13,771, if such examples exist. If no such examples exist, does that mean agencies have not repealed any guidance to meet the requirements of EO 13,771?

Answer: I do not have such examples; I am unaware if agencies have them.

57. What role has OIRA had in implementing EO 13,777 during your time as Associate Administrator or Acting Administrator? Please describe any specific actions you have been involved in to implement this Executive Order.

Answer: During my tenure at OIRA, OIRA has hosted meetings and calls of regulatory reform officers to coordinate regulatory reform efforts, announce new initiatives, seek feedback, etc. EO 13777 places implementation responsibility with the head of each agency and the agency-designated Regulatory Reform Officer.

58. Executive Order 13,891 requires agencies to submit "significant guidance documents" for review by OIRA using the procedures of EO 12,866. Why are guidance documents being treated the same as regulations?

Answer: While non-binding, guidance documents can prompt changes to regulated-party behavior, as noted above in response to Question 44. They also present important interagency coordination concerns similar to rulemaking. EO 12866 has consistently been interpreted to cover guidance documents. President Obama's OMB Director, Peter Orszag, reaffirmed this long-held definition in *Guidance for Regulatory Review*, M-09-13 (March 4, 2009).

a. Should guidance documents be able to move quicker than regulations under OIRA review?

Answer: I anticipate that some guidance documents will be able to move more quickly through OIRA review than most regulations, because some guidance documents will be simpler than most regulations.

b. When implementing EO 13,891, will OIRA prevent agencies from moving forward with guidance if it disagrees with any accompanying analyses?

Answer: OIRA would have the same authorities with respect to guidance reviewed under EO 13891 that it has with respect to regulations under EO 12866.

59. Section 3 of EO 13,891 requires agencies to maintain a database that "contains or links to all guidance documents in effect." In addition, the EO states that agencies should "rescind those guidance documents that it determines should no longer be in effect."

a. Please explain what reasons would be considered sufficient in order to waive compliance with the requirements in (a) and (b) of Section 3 of the EO.

Answer: Please see Question 17 of OMB's memorandum implementing EO 13891: https://www.whitehouse.gov/wp-content/uploads/2019/10/M-20-02-Guidance-Memo.pdf

b. What kind of transparency will there be for guidance that agencies rescind? If confirmed, will you commit to requiring agencies to maintain on their websites a list of and a link to all guidance documents that have been rescinded?

Answer: Transparency is critically important to the regulatory process, including in the context of guidance. If confirmed, I would commit to working with agency colleagues to consider carefully whether agencies should maintain on their websites a list of and a link to all guidance documents that have been rescinded. I note that EO 13891 does not expressly address this question.

60. For the purposes of implementing EO 13,891, what can be considered a guidance document?

a. Would any of the following be considered a guidance document? Please answer by simply stating yes or no – Press releases? Email or letter from an agency to a member of the public? Blog post? No-action letter? Speeches delivered by agency officials? Tweet?

Answer: Please see Question 2 of OMB's memorandum implementing EO 13891: https://www.whitehouse.gov/wp-content/uploads/2019/10/M-20-02-Guidance-Memo.pdf

b. If any of the preceding items are considered guidance, would they be required to be submitted to OIRA for review? Please explain why or why not.

Answer: Regardless whether any of the items above would be considered guidance in a particular instance, that fact alone would not require their submission for OIRA review; the item in question would also have to qualify as significant under EO 13891.

c. If any of the preceding items are considered guidance, would they be required to go through notice and comment as prescribed under EO 13,891?

Answer: Regardless whether any of the items above would be considered guidance in a particular instance, that fact alone would not require them to go through notice and comment; the item in question would also have to qualify as significant under EO 13891.

d. If any of the preceding items are considered guidance, would they be required to be posted online per the requirements of EO 13,891?

Answer: Yes, if any of the preceding items meet the EO definition of guidance, they would be required to be posted online (unless an exemption were granted under the terms of EO 13891).

e. What are the main principles that you think should be taken into consideration when considering repealing or modifying an existing guidance?

Answer: While considerations will vary agency to agency, all agencies should consider statutory or other legal mandates, as well as principles such as reliance interests, consistency, efficiency, fairness, democratic accountability, and proven effectiveness (or lack thereof).

61. If confirmed, when implementing EO 13,891, will you commit to issuing Review and Return Letters to agencies regarding any comments on guidance documents?

Answer: If confirmed, I intend to issue a Return Letter to an agency when OIRA returns a guidance document to an agency for reconsideration.

a. Will you commit to publicly disclosing all Review and Return Letters to agencies regarding any comments on guidance documents?

Answer: If confirmed, I intend to disclose to the public all Return Letters regarding guidance documents.

62. Will agencies be required to conduct draft Regulatory Impact Analyses for guidance documents submitted for OIRA review under EO 13,891? Please explain why or why not.

Answer: Please see Question 5 of OMB's memorandum implementing EO 13,891: https://www.whitehouse.gov/wp-content/uploads/2019/10/M-20-02-Guidance-Memo.pdf

63. Please explain what role, if any, will OIRA have in implementing Executive Order 13,892?

Answer: Please see answer to Committee Question 18.

64. In your roles as Associate Administrator and Acting Administrator at OIRA, how have you ensured that the various Executive Orders dealing with regulatory policy do not interfere with laws passed by Congress or court decisions that require establishing rules that protect the health and safety of all Americans?

Answer: All the EOs dealing with regulatory policy make clear that agencies should comply with them only to the extent consistent with applicable law. As Associate Administrator and Acting Administrator, I upheld this principle of the primacy of constitutional and statutory law, and would continue to do so if confirmed.

65. Complying with EOs 13,771, 13,777, 13,891, and 13,892, in addition to the multitude of regulatory policy memorandums that have been issued by this administration, could be extremely time consuming and labor intensive for agencies. Please outline specific steps you will take or have taken as Acting Administrator to streamline processes and reduce burdens on the agencies.

Answer: Clear procedures implementing these EOs is one means of making compliance by the agencies efficient; I would commit to providing needed clarity on the requirements of these EOs,

if confirmed. Heretofore, implementation guidance has provided flexibilities where needed to help agencies accomplish these tasks efficiently; I would continue that practice if confirmed.

66. Of the existing EOs concerning OIRA's responsibilities and operations, are there any you believe should be repealed or replaced? Are there any that have certain sections or provisions that should be repealed or replaced?

Answer: The EOs concerning OIRA's responsibilities and operations have served a valuable role in providing clarity and certainty to the regulatory process. In particular, EO 12866 has served a critical role; its stability is a success story of the American regulatory process. I would consider all questions regarding the EOs concerning OIRA's responsibilities and operations as needed with colleagues in OIRA and across the government should I be confirmed.

a. If so, describe which EOs and your reasoning.

Answer: Please see answer to Question 66.

b. Are there any EOs or provisions of EOs concerning OIRA's responsibilities and operations that should be codified?

Answer: The Administration has no specific recommendations for codification of EOs concerning OIRA at this time, although I should note that the President's recent EO 13891 was inspired in part by the GOOD Act.

c. Are there any EOs or provisions of EOs concerning OIRA's responsibilities and operations that should not be codified?

Answer: Please see answer to Question 66(b).

d. Do you see any conflict between the rulemaking requirements established by any of the EOs issued by President Trump that address the rulemaking process and previously existing obligations on agencies? If so, how would you propose to resolve those conflicts?

Answer: No.

Cost-Benefit Analysis

67. Do you believe that the previous administration imposed regulations without adequate regard to costs? If so, can you provide specific examples in which that happened, including identifying which costs were not incorporated into the underlying analyses?

Answer: I do believe that the previous administration sometimes acted based on flawed assessment of costs and benefits. For instance, the regulatory impact analysis for the FAR Council Fair Pay rule and accompanying guidance overvalued benefits and failed to account for certain costs.

68. When developing a new rule, should federal agencies always have to pick the least-costly regulatory option? Why or why not?

Answer: No; a variety of reasons may warrant an agency to decide, in some circumstances, to issue a regulation with an option other than the least costly. Certain statutes require agencies to regulate without regard to cost, for instance. In other instances, an additional modicum of costs may result in greater benefits than the additional costs.

69. What actions have you taken in your role as Associate Administrator and Acting Administrator to ensure that cost benefit analyses have integrity, are accurate, and that costs and benefits of proposed regulations are properly estimated?

Answer: As Acting Administrator, I directed staff to evaluate and work with agencies to ensure regulatory analyses were consistent with the framework articulated in OMB Circular A-4, which contains time-tested principles for ensuring that cost-benefit analyses have integrity, are accurate, and are properly estimated.

a. If confirmed, do you intend to take any further actions to ensure that cost benefit analyses have integrity, are accurate, and that costs and benefits of proposed regulations are properly estimated?

Answer: If confirmed, I will continue practices outlined in the answer to Question 69.

70. How should OIRA consider cost-benefit analyses performed by non-governmental entities?

Answer: In my view, OIRA's consideration of cost-benefit analyses should not be informed by the entity that performed it or by the nature of that entity, but by the quality of the analysis.

71. How should OIRA consider costs and benefits that are "non-monetizable" or difficult to quantify?

Answer: EO 12866 emphasizes providing quantified and monetized impacts when feasible. Non-monetizable or otherwise non-quantifiable benefits, if adequately substantiated and explained, can provide a sound basis for regulation. When confronted with non-quantifiable costs and benefits, in my experience OIRA typically attempts to quantify the costs and benefits. Where either costs or benefits (but not both) are quantifiable, one useful technique is a "threshold" or "break-even" analysis. If none of these attempts succeed, OIRA may consider non-quantifiable costs and benefits in a purely qualitative manner, but in all cases would try to make sure such costs and benefits are adequately disclosed and explained.

72. What is the appropriate scope for considering indirect costs and benefits of a proposed rule?

Answer: OIRA typically works with our agency colleagues to assess and discuss all costs and benefits that can be reasonably anticipated, with some degree of predictability, to result from a particular regulatory action.

73. Do you believe that cost-benefit analysis can help promote effective regulatory policymaking? Please explain.

Answer: Yes. Cost-benefit analysis is foundational to effective regulatory policymaking, because it can inform decision-makers as to whether society will be better or worse off as a result of a contemplated action.

74. Do you believe that a regulatory action should be abandoned if a cost-benefit analysis shows that a rule will generate huge net costs? Please explain.

Answer: That would often be an appropriate response. Significant net costs, however, would not automatically disqualify a rule from consideration. Statutory requirements, significant distributive impacts, or other important considerations might justify such a rule. Net costs might also be addressed through review of less burdensome alternatives before abandonment of the rule.

75. How should the regulatory analysis process -- including cost benefit analysis, examination of regulatory alternatives, and outreach to stakeholders – be different when an agency is working to repeal or modify an existing regulation rather than issuing a new one?

Answer: Generally, the process and analytical considerations are the same when an agency repeals or modifies an existing regulation as when it issues a new one. One difference that sometimes arises is that, for repeal or modification of an existing regulation, an agency may have better data on the regulation's effectiveness than at its issuance, due to actual experience implementing the regulation.

a. Should the cost benefit analysis consider indirect and non-monetizable costs and benefits in the same way they are considered in issuing a new rule?

Answer: Yes, except that the agency's knowledge of these costs and benefits may be more accurate in light of actual experience implementing the existing regulation.

76. What role should qualitative analysis play in the rulemaking process? Do you consider a qualitative analysis equal to that of a quantitative analysis in the rulemaking analysis? Why or why not?

Answer: Please see the answer to Question 71.

77. Please provide an example of when you believed a regulation was necessary even though its cost benefit analysis showed that the costs would outweigh the benefits.

Answer: A regulation that has the effect of reducing federal expenditures may generate more costs than benefits. OIRA would generally classify the reduction of federal expenditures as a transfer, rather than a cost or a benefit; accordingly, a regulation that saved very substantial federal expenditures may qualify as net costly due, for instance, to even a small additional

paperwork burden on the public. Such a regulation, while technically net costly, may be justified by the need to conserve public funds.

78. Is there ever a time when it is inappropriate to conduct a cost benefit analysis?

Answer: Congress has enacted certain statutes that require agencies to regulate without respect to costs. Nevertheless, even in such situations, an agency should conduct a cost-benefit analysis to document for the public the impacts of its rule, even though it may not consider those impacts in determining how to regulate.

79. Do you believe that this administration has consistently applied cost-benefit analysis to regulatory actions? If not, what steps would you take to ensure that cost-benefit analysis is consistently applied to regulatory actions undertaken by the administration?

Answer: Yes. While I was Acting Administrator, I sought to ensure that the Administration consistently applied cost-benefit analysis. If confirmed, I would prioritize the same policy.

80. OIRA has long supported agency use and consideration of co-benefits when advising agencies on how to conduct cost-benefit analysis of its regulations. For example, OMB Circular A-4 explicitly states that agencies "should look beyond the direct benefits and direct costs of [their] rulemaking and consider any important ancillary benefits and countervailing risks." Yet, in EPA's proposal to reconsider the Mercury and Air Toxics Standard, EPA has argued that it is appropriate to ignore and exclude the co-benefits of regulating mercury when determining whether such regulations are "appropriate and necessary."

    a. In general, do you believe that it is appropriate for EPA to exclude or ignore co-benefits when determining the benefits of its regulations to public health and the environment?
    b. If so, do you disagree with the stated policy in OMB Circular A-4 that agencies should consider co-benefits when conducting cost-benefit analysis?

    c. If not, do you believe EPA's refusal to consider the co-benefits of regulating mercury a violation of OMB Circular A-4?

Answer a-c: OIRA continues to consider ancillary benefits and costs in rulemaking consistent with Circular A-4 to the extent consistent with statute. In the NPRM discussed above, EPA proposed that with regard to one specific statutory finding under Section 112 of the Clean Air Act, the agency should consider only the benefits and costs of the targeted pollutant. EPA did not propose that such a limitation would apply to the standard set in a regulation issued pursuant to such a finding. I cannot discuss the draft final rule, which is under review at OIRA.

81. An examination of documents in the rulemaking docket for the Mercury and Air Toxics rule indicates that OIRA repeatedly asked EPA to conduct an updated cost-benefit analysis, rather than simply revisiting the 2011 economic analysis for the rule. EPA refused to do so and simply relied on the original, outdated analysis. Was it appropriate for EPA to

reject OIRA's request that the agency produce an updated cost-benefit analysis rather than simply relying on the 2011 version?

Answer: The final rule is currently under EO 12866 review at OIRA. As a result, I am unable to comment further on the matter.

a. Now that the final rule to reconsider the Mercury and Air Toxics Standard is under OIRA review, should OIRA require EPA to conduct an updated cost-benefit analysis before OIRA allows EPA to move ahead with the final rule? Why or why not?

Answer: The final rule is currently under EO 12866 review at OIRA. As a result, I am unable to comment further on the matter.

82. Do you believe that agencies should include co-benefits in their regulatory impact analyses? Please explain why or why not.

Answer: Agencies should include ancillary benefits and costs consistent with Circular A-4 in RIAs to the extent consistent with statute.

83. President Trump has declared that his deregulatory agenda is providing cost savings to the public, rather than imposing new costs from regulations. However, certain regulatory actions appear to be in direct conflict with this sentiment.

a. OIRA has reviewed and cleared the "public charge" rule from DHS, the "title X" rule from HHS, and the "Protecting Statutory Conscience Rights in Health Care; Delegations of Authority" rule from HHS. All three rules impose significant costs while being justified on the basis of "non-quantifiable" benefits. Should these rules have been allowed to move forward when the costs of each rule heavily outweigh the benefits?

Answer: OIRA's decision to conclude review on these rules was proper; the reviews were conducted consistent with EO 12866.

b. Is the imposition of new costs on immigrants, LGBTQ individuals, and women who seek reproductive health care in contradiction with President Trump's goals to reduce regulatory costs to the public? Please explain why or why not.

Answer: See answer to Question 83(a).

84. Please provide copies of the reports to Congress on the benefits and costs of federal regulations and agency compliance with the Unfunded Mandates Reform Act for the following fiscal years as required by the Regulatory Right-to-Know Act.

- Final Fiscal Year 2016
- Draft and Final Fiscal Year 2017
- Draft and Final Fiscal Year 2018

- Draft Fiscal Year 2019

Answer: During my tenure as Acting Administrator and now during my tenure as Senior Advisor to the Director for Regulatory Affairs, OMB has proceeded to prepare the reports; OMB expects to release the reports soon.

Independent Agencies

85. Should OIRA have increased authority over rulemakings and other regulatory actions by independent agencies?

Answer: OIRA review, other than with regard to the Paperwork Reduction Act and the Congressional Review Act, is determined by executive order. Such a determination would be made by the President.

86. Please describe the role you believe OIRA should play with regard to regulations promulgated by independent agencies (i.e. Securities and Exchange Commission or the Nuclear Regulatory Commission).

Answer: Please see answer to Question 85.

a. Do you believe that Congress has delegated authority to OIRA to review rulemakings of independent agencies? If so, please specify under which law. If not, do you believe that OIRA has the authority to review rulemakings of independent agencies?

Answer: Please see response to Question 85.

87. Does OIRA have adequate expertise to review rules from independent agencies?

Answer: If confirmed, I would carefully consider this question in consultation with other colleagues at OIRA and OMB, as well as others, as needed.

88. Please explain whether OIRA has the legal authority to require independent agencies to follow EO 12,866.

Answer: Please see answer to Question 85.

a. If confirmed, do you intend to require independent agencies to follow the requirements of EO 12,866? Please explain why or why not.

Answer: Please see answer to Question 85.

89. Under OMB Memorandum M-19-14, all agencies, including independent agencies, are required to submit their regulations to OIRA with sufficient analysis for the office to determine whether a rule is major. Has OIRA provided guidance to agencies on what makes an analysis sufficient for OIRA's purposes in making that determination? If so,

please provide that to the committee. If not, what in your view would be sufficient analysis for OIRA to make that determination?

Answer: OIRA has provided, in M-19-14 itself, guidance to agencies describing what makes an analysis sufficient for OIRA's purposes in making a major determination. Please see pages 6-8 of M-19-14.

90. Under OMB Memorandum M-19-14, can OIRA tell an independent agency that it may not publish a regulation in the *Federal Register*? If yes, please explain why.

Answer: Under the Congressional Review Act, OIRA must make a major determination. OIRA can advise an agency, independent or otherwise, that in OIRA's view it has not complied with Congress's requirements in the Congressional Review Act, because OIRA has insufficient information to determine whether a particular regulation is major.

a. If no, can OIRA tell an independent agency using any authority not to publish a regulation in the Federal Register?

Answer: Please see answer to Question 90.

b. Please identify the specific authority under which OIRA may tell an independent agency not to publish a regulation in the Federal Register.

Answer: Please see answer to Question 90.

c. Please identify any instance this has happened while you have been Associate Administrator or Acting Administrator of OIRA.

Answer: I am unaware of any instance of OIRA directing an independent agency not to publish a document in the Federal Register while I was Associate or Acting Administrator of OIRA.

Transparency

91. OIRA has often had significant contact with agencies regarding proposed regulations early in the rulemaking process, including before the formal OIRA review.

a. Do you think OIRA should consult with agencies prior to the formal review process?

Answer: Advance consultation with OIRA is a consistent practice across Democratic and Republican administrations. Such consultation gives agencies the benefit of OIRA's expertise in administrative process issues as well as in policy and cost-benefit analysis and can be an effective means of achieving regulations that are lawful and effective.

b. If confirmed, what would you do to ensure transparency in that early consultative process prior to formal review?

Answer: While I was Acting Administrator, I did not allow advance consultation to supplant the role of review under EO 12866. Maintaining that distinction, and the rigorous transparency requirements that attend review under EO 12866, is critical, and if confirmed I would continue to follow that policy.

Have there been any instances of OIRA coordinating with agencies regarding proposed regulatory actions prior to the formal OIRA review during your tenure as Associate Administrator or Acting Administrator? If so, please provide a list of regulatory matters in which that has occurred and a description of OIRA's engagement with the agency. In addition, please describe any specific involvement you had in the process.

Answer: During my tenure as Associate and Acting Administrator, OIRA, like other agencies, consulted with other federal agencies and components when early engagement was warranted. Providing information about the contents of interagency communications would implicate the Executive Branch's longstanding interests in protecting the confidentiality in the deliberative process.

a. Will you commit to providing any relevant correspondence or written materials with respect to these instances prior to your confirmation hearing?

Answer: Please see answer above.

92. Federal agencies are producing, collecting and storing more information than ever before. This flood of information allows agencies to better meet their missions, but it also comes with significant costs and challenges.

a. What do you see as the biggest challenges that agencies face in managing information?

Answer: One of agencies' greatest challenges in managing information is to maximize effective use of the great wealth of information they maintain. That is why, while I was Acting Administrator, OMB published a memorandum on updates to agency Information Quality Guidelines, in which OMB called on agencies to design information collections, especially in the program administration context, with downstream use in mind (for instance, evaluating program effectiveness). If confirmed, I would continue to pursue similar policies to help agencies properly use the information they produce, collect, and store, while protecting privacy and confidentiality, as well as to comply with the Foundations for Evidence-Based Policymaking Act of 2018.

b. If confirmed, what would be your priorities in helping agencies manage their information?

Answer: Please see answer to Question 92(a).

93. As Administrator of OIRA, you would play a role in the protection of personal privacy by the federal government and oversee numerous regulations that protect the privacy rights of millions of Americans. If confirmed, 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?

Answer: OIRA's role in protecting privacy is a critical one. If confirmed, I would work with OIRA's excellent staff dedicated to privacy and statistical policy to formulate effective policies that protect personal information while promoting government transparency. While I was Acting Administrator, OMB issued a memorandum on updates to agency Information Quality Guidelines, in which we discussed the importance of agencies maintaining adequate privacy protections at the same time as they pursue the federal open data policy.

94. 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 priorities in fulfilling these functions of the office? Generally, what role do you believe OIRA should play in promoting greater transparency government-wide and what approach would you take to improving government transparency?

Answer: Transparency is vital for a functioning democracy. While I was Acting Administrator, OMB issued a memorandum on agency Information Quality Guidelines that emphasized agency obligations to increase transparency and data access. If confirmed, I would continue to pursue policies that promote transparency in government.

95. Do you agree that agencies whose mandate is to collect data in support of providing statistical and other data-dependent analyses must continue to be permitted to independently propose and obtain access to information needed to perform their mission?

Answer: Yes.

96. Will you commit to ensure that statistical agencies such as the Census Bureau have the resources, support, and independence needed to perform their mission?

Answer: Yes, to the extent within my authority.

Retrospective Review

97. What role should OIRA play in the retrospective review process?

Answer: Retrospective review is critical; often retrospective review can bring to bear much better data on a regulation's effectiveness than existed when that regulation was proposed or finalized. OIRA has an important role to play in promoting retrospective review, given its view of the administrative system as a whole.

98. If confirmed, how would you ensure that retrospective reviews become an integral part of agencies' culture, and embedded as a regular part of the rulemaking process? Have you done anything during your time as Associate Administrator or Acting Administrator to accomplish this?

Answer: Many of the reforms agencies have successfully undertaken under President Trump have been rooted in new insights yielded by retrospective analysis of regulations. OIRA has been central to the regulatory reform effort, including during my tenure as Associate Administrator and Acting Administrator. However, more work remains to be done, especially with regard to embedding retrospective review as a regular part of a rule's lifecycle. If confirmed, I commit to considering carefully how to achieve that objective.

99. In your view, have previous retrospective reviews of existing policies been successful? Please explain why or why not.

Answer: Continued Congressional and stakeholder interest in reforms to encourage retrospective review suggests that there is more work to be done to institutionalize this process.

100. If an agency proposes to weaken or eliminate a regulation designed to protect public health and safety, in your role as Administrator of OIRA, how would you work with the agency to ensure these existing public safeguard and/or standards remain protected?

Answer: If confirmed, I would supervise a review process for all regulations that transparently and accurately assesses costs and benefits, including non-quantifiable costs and benefits, and that incorporates a robust interagency review process.

a. Should agencies be required to incorporate retrospective reviews for any regulation that it chooses to weaken or eliminate? Please explain.

Answer: If an agency has or can obtain data regarding the costs and benefits actually imposed and achieved, respectively, by a regulation it proposes to amend or rescind, such data would in many instances be highly relevant to the rulemaking, and OIRA would urge the agency to consider it.

Staffing

101. Now that OIRA is reviewing guidance documents as well as regulations, does OIRA need to hire more economists and policy advisors to accommodate this increase in workload?

Answer: OIRA has recently increased staffing, which will, e.g., provide sufficient resources to handle additional reviews of guidance documents.

102. If confirmed, how would you balance OIRA's responsibilities under the Paperwork Reduction Act and under the various regulatory review functions?

Answer: If confirmed, I would maintain the balance that has existed across administrations by appropriately organizing staff portfolios and using technology to efficiently achieve our objectives.

Congressional Review Act

103. The Congressional Review Act's definition of a rule includes interpretive rules and general statements of policy (frequently referred to as guidance). In your view, should agencies required to submit interpretive rules and general statements of policy to OIRA for review? Please explain.

Answer: While I was Acting Administrator, OMB issued a memorandum to formalize OIRA's issuance of major determinations, including for guidance. That memorandum establishes a system for OIRA to obtain sufficient information to make major determinations; the information submitted to OIRA need not include the text of the guidance itself.

a. In your view, should independent agencies be required to submit interpretive rules and general statements of policy to OIRA for review? Please explain.

Answer: As OMB made clear in Memorandum M-19-14, independent agencies must submit to OIRA adequate information to make major determinations for rules, including guidance documents that qualify as rules under the Congressional Review Act. Such a submission need not, and often will not, include the text of the rule itself.

104. How do you interpret the "substantially the same" clause in the Congressional Review Act? What threshold does an agency need to clear in order to repromulgate a regulation that has been repealed under the Congressional Review Act?

Answer: If confirmed, I would consult with OMB's Office of the General Counsel and other relevant legal offices if called upon to interpret that clause.

Climate Change

105. Do you believe that climate change is real?

106. Do you believe that humans contribute to the causes of climate change?

107. Do you believe that the impacts of climate change are worse for vulnerable populations, such as children, the elderly, and the poor?

Answers 105-107: My understanding is that a substantial majority of scientists agree that the climate is changing and that humans contribute to the causes of climate change. However, my views on this question, as on all scientific questions, is not relevant to the position for which I have been nominated, because the role of the OIRA Administrator is not to interject his or her personal views into the policy process, but to respect the authority given by Congress to relevant agency heads, to ensure agencies account adequately for costs and benefits, and to coordinate a

robust interagency review process. On this issue, as on all others, agency activity must be bounded by the constraints of the Constitution and the statutes enacted by Congress.

108. There have been instances in which language referring to climate change in EPA rules reviewed by OIRA was deleted during the regulatory review process. Are you aware of any such instances during your time as Associate Administrator or Acting Administrator of OIRA? If yes, please describe your involvement, if any, in deleting references to climate change.

Answer: I have not removed or caused to be removed any such references during my tenure as Associate Administrator or Acting Administrator of OIRA.

a. If confirmed, will you commit that under your leadership, OIRA will never remove references to climate change from any regulatory proposals that it reviews, including references to climate change impacts on public health and the environment?

Answer: If confirmed, I have no intention of removing or causing to be removed any such references from regulations under review.

109. Should agency cost-benefit or any other economic analyses for regulatory actions include the impacts of climate change? Why or why not?

Answer: Agencies in this Administration have assessed the impacts of climate change. If confirmed, I will not change that practice or cause it to be changed.

Vaping

110. The FDA's proposed actions to address the vaping addiction epidemic in this country has been sent to OIRA for review and will not be enforced until it is cleared.

a. Have you met with any representatives from the tobacco, e-cigarette, or vaping industry during your tenure at OIRA, including as Associate Administrator or Acting Administrator, to discuss any regulatory action to address the vaping addiction epidemic?

Answer: No, to the best of my recollection.

b. If not, do you plan to?

Answer: If confirmed, I would continue to maintain OIRA's open-door policy of meeting with stakeholders who request EO 12866 meetings. My personal participation would depend on schedule and ability to meet with stakeholders from a variety of perspectives.

111. Considering that President Trump's proposed action to ban flavored e-cigarettes is going to be a guidance, do you believe that the administration's recent EOs (13,891 and 13,892) on guidance and enforcement actions should apply to this policy?

Answer: Section 4 of EO 13891 contains requirements for regulations that agencies are directed to issue; those regulations do not yet exist, so the requirements of any such regulations cannot be applied to this guidance document. The restrictions with respect to enforcement based on unpublished guidance documents in EO 13892 would presumably apply to the guidance document in question were it not to be published.

a. If so, please explain why. If not, why not?

Answer: Please see response to Question 111.

b. Will the application of EO 13,891 and/or 13,892 slow down the ability of this administration to finalize and implement a ban on flavored e-cigarettes?

Answer: No.

Immigration

112. Politico recently reported that you "watered down" and "delayed" certain immigration regulations, such as the public charge rule.[3] Is this accurate?

a. The same report states that your aides "began to search for the people who had criticized" you. Is this accurate?

b. The same report suggests that your aides also asked people to send unsolicited compliments about you to the media outlet. Is this accurate? If so, why were these steps taken?

Answer to 112, 112(a), and 112(b): The referenced story is filled with inaccuracies.

113. Did OIRA commit to completing its review of the public charge rule within 19 days? What was your role, if any, in making this commitment? Were you aware of this agreement?

Answer: OIRA did not commit to completing its review of the public charge rule within 19 days.

114. Recent tweets by USCIS Acting Director Ken Cuccinelli compliment your work and responsiveness on the public charge rule.

a. How many times did you meet or discuss the public charge rule with Mr. Cuccinelli? Please provide specific dates for any meetings or conversations, including any that may have occurred prior to Mr. Cuccinelli joining the Administration.

[3] Politico, *Playbook PM: No, a shutdown won't stop impeachment* (Oct. 25, 2019) (https://www.politico.com/newsletters/playbook-pm/2019/10/25/no-a-shutdown-wont-stop-impeachment-487518).

Answer: Providing information about the existence or contents of interagency communications would implicate the Executive Branch's longstanding interests in protecting the confidentiality in the deliberative process.

b. Please describe your conversations with Mr. Cuccinelli regarding the public charge rule.

Answer: Please see answer to 114(a).

c. Please provide any documents or communications between you and Mr. Cuccinelli regarding the public charge rule or any other immigration regulations.

Answer: I have referred this request to OMB's Office of General Counsel.

PFAS

115. What agency identified EPA's proposed guidelines to address groundwater contaminated with perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS) as a "significant regulatory action" such that a review by OIRA was appropriate under EO 12,866? (RIN 2050-ZA15)

a. When was that determination made?
b. Who made that determination?
c. What was the substance of the determination?
d. Please specifically describe your involvement in the development or decision-making associated with EPA's proposed guidelines to address groundwater contaminated with PFOA and PFOS.
e. Please provide all substantive documents and communications exchanged between OIRA, OMB, DOD, EPA, SBA, or NASA related to the EO 12,866 review of the proposed groundwater cleanup standards for PFOA and PFOS?
f. Was there ever a request made to extend the OIRA review deadline from EPA? If so, who made that request, and when?
g. What was OIRA's justification and rationale for continuing to review the guidance beyond the 120 days allotted under EO 12,866?
h. What steps did OIRA take to resolve any interagency conflicts with respect to the draft guidance?
i. Please explain why OIRA decided to review this agency guidance. Is it common for OIRA to review agency guidance?

Answers a-i: OIRA makes all significance determinations under EO 12866. A significance determination was made prior to my service as Acting Administrator, but review was completed during my tenure. OIRA review is often extended by mutual agreement of the agency and OIRA. Under OMB Memorandum M-09-13 and longstanding practice, OIRA has over the course of many years reviewed various guidance documents.

116. Have you had any involvement in the review of ATSDR's toxicological profile of perfluoroalkyls? If so, please describe the nature of your involvement.

Answer: I have not had any involvement in such a review.

117. Please provide the Committee copies of all documents exchanged between OMB and EPA, OMB and DOD, and OMB and HHS, regarding the EPA PFAS Plan or groundwater cleanup guidelines for PFOA and PFOS.

Answer: I have referred this request to the OMB Office of the General Counsel.

118. On April 25, 2019, the EPA Inspector General sent a letter to OMB Director Mick Mulvaney stating that OMB had not been responsive to four specific questions it asked related to a request for an EPA IG investigation made by Senators Carper and Udall.[4] Please provide the Committee with a complete response, including any requested documents, to each question that the EPA IG asked OMB on April 25, 2019.

Answer: OMB provided sufficient information to EPA's IG to complete its review. OMB does not provide deliberative information in response to such requests and explained those limitations.

119. Please provide copies of all substantive documents and communications exchanged between OMB and DOD, EPA, SBA, or NASA, related to the EO 12,866 review of the proposed groundwater cleanup standards for PFOA and PFOS.

Answer: Please see answer to Question 117.

Paperwork Reduction Act

120. The Paperwork Reduction Act requires OMB to review proposed information collections and ensure that agencies are minimizing the burden on the public. It requires OMB to ensure that the information collection maximizes practical utility and public benefit and protects the integrity, objectivity, impartiality, utility and confidentiality of collected statistical information.

   a. If confirmed, what is your vision for OIRA's role in implementing the Paperwork Reduction Act?

Answer: The Paperwork Reduction Act plays a vital role in minimizing the burden of information collections on the American people and in ensuring that federal agencies use high-quality data in making decisions. While Acting Administrator, I directed the staff to address unnecessary paperwork burden, solicit input from the public, and explore technological innovation. If confirmed, I would continue these and other initiatives.

[4] Letter available at https://www.epw.senate.gov/public/_cache/files/2/6/266a361d-4812-4cf6-b0c9-67ed4ace3a4d/998C6AF5626F5126F045C423F5C538AA.epa-acting-ig-to-director-mulvaney-04-25-19-002-.pdf.

b. If confirmed as Administrator, will you commit to implementing the law and ensuring that all data collections subject to the Act across the government meet the law?

Answer: Yes.

121. If confirmed, how will you ensure that information collection requests by federal agencies:

a. Maximize practical utility and public benefit?

Answer: Maximization of practical utility and public benefit is crucial to the efforts of the federal government to steward its vast information resources well. During my tenure as Acting Administrator, OMB issued a memorandum on updates to agency Information Quality Guidelines, in which OMB emphasized the importance of maximizing practical utility and public benefit, including designing information collections with downstream use in mind. If confirmed, I would continue to pursue this and similar initiatives.

b. Protect the integrity, objectivity, impartiality, and utility of collected statistical information?

Answer: During my tenure as Acting Administrator, I supported and worked with the Office of the Chief Statistician, who resides within OIRA, to promote the integrity, objectivity, impartiality, and utility of collected statistical information. If confirmed, I would continue to pursue these objectives.

c. Protect the confidentiality of collected statistical information, especially personally identifiable information?

Answer: Please see answer to Question 93.

Oversight

122. Do you believe that OIRA must cooperate with agency inspectors general investigations? Please explain why or why not.

Answer: Yes, OIRA regularly cooperates with agency inspector general investigations.

123. Do you believe that OIRA must be responsive to document or any other requests from agency inspectors general in the course of an investigation? Please explain why or why not.

Answer: Please see answer to Question 122.

124. If confirmed, will you commit to complying with any inspectors general that request cooperation from OIRA, including but not limited to requests for documents and/or materials from OIRA in order to carry out an investigation?

Answer: Please see answer to Question 122.

125. Do you believe that OIRA must cooperate with GAO investigations? Please explain why or why not.

Answer: Yes, OIRA regularly cooperates with GAO investigations.

126. Do you believe that OIRA must be responsive to document or any other requests from GAO in the course of an evaluation, investigation, or audit? Please explain why or why not.

Answer: Please see answer to Question 125. OIRA has and will continue to cooperate with GAO, to the extent consistent with the Executive Branch's longstanding interests in protecting the confidentiality in the deliberative process.

127. If confirmed, will you commit to complying with any GAO requests for OIRA, including but not limited to requests for documents and/or materials from OIRA in order to carry out their work?

Answer: Please see answers to Questions 125 and 126.

128. Please provide a list of each instance, since January 21, 2017, in which OMB refused to provide a complete response to any Inspector General or Government Accountability Office request for information. For each such instance, please include the date of the request, the identity of the requestor, the topic of the request, and a specific explanation for why the requested information was not provided.

Answer: OMB regularly cooperates with GAO and agency inspectors general requests.

129. A May 2019 Breitbart article reported that in a meeting with President Donald J. Trump, you shared a list of things you want to accomplish.[5] Can you share or describe what items were on that list and describe what progress you have made in accomplishing them?

Answer: Information about the existence or contents of communications with the President goes to the very heart of the Executive Privilege embedded in the Constitution.

V. Relations with Congress and the Public

130. If confirmed, how will you make certain that you will respond in a timely manner to Member requests for information?

Answer: If confirmed, I would work with OIRA staff to ensure timely responses to requests for information.

[5] Breitbart, *Mick Mulvaney Talks Trump Record, Tiger Woods, and Chickens at the Federalist Society* (May 8, 2019) (https://www.breitbart.com/politics/2019/05/08/mick-mulvaney-talks-trump-record-tiger-woods-and-chickens-at-the-federalist-society/).

131. If confirmed, do you agree without reservation to reply to any reasonable request for information from the Ranking Member of any duly constituted committee of the Congress?

Answer: Yes, consistent with advice from OMB General Counsel.

132. If confirmed, do you commit to take all reasonable steps to ensure that you and your agency comply with deadlines established for requested information?

Answer: Yes.

133. If confirmed, do you commit to protect subordinate officials or employees from reprisal or retaliation for any testimony, briefings or communications with members of Congress?

Answer: Yes.

134. If confirmed, will you ensure that your staff will fully and promptly provide information and access to appropriate documents and officials in response to requests made by the Government Accountability Office (GAO) and the Congressional Research Service?

Answer: Yes, consistent with advice from OMB General Counsel.

135. If confirmed, will you agree to work with representatives from this Committee and the GAO to promptly implement recommendations for improving your office's operations and effectiveness?

Answer: Yes.

136. If confirmed, will you direct your staff to fully and promptly respond to Freedom of Information Act requests submitted by the American people?

Answer: Yes, consistent with advice from OMB General Counsel.

137. If confirmed, will you ensure that political appointees are not inappropriately involved in the review and release of Freedom of Information Act requests?

Answer: Yes.

VI. Assistance

138. Are these answers completely your own? If not, who has provided you with assistance?

Answer: These answers are my own; I have consulted with OMB staff in the preparation of some of them.

139. Have you consulted with OMB, OIRA, or any other interested parties? If so, please indicate which entities.

Answer: Yes, I have consulted with OMB and OIRA staff in the preparation of some of these answers.

I, Paul Joseph Ray, hereby state that I have read the foregoing Pre-Hearing Questionnaire and Supplemental Minority Questionnaire and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

(Signature)

This 8th day of November, 2019

Ranking Member Gary C. Peters
Post-Hearing Questions for the Record
Submitted to Paul J. Ray

Nomination of Paul J. Ray to be Administrator,
Office of Information and Regulatory Affairs, Office of Management and Budget
December 4, 2019

1. In the course of this Committee's consideration of your nomination, we have made several requests for information related to your recent tenure as the Associate Administrator, and then Acting Administrator, of the Office of Information and Regulatory Affairs (OIRA). In your November 8, 2019 responses to the Committee's Supplemental Minority Pre-hearing Questionnaire, you indicated that you had referred many requests to the Office of General Counsel (OGC) for the Office of Management and Budget (OMB) and that certain requests "implicate the Executive Branch's longstanding interests in protecting confidentially in the deliberative process."

   As my colleagues and I explained in our November 26, 2019 letter to you and Acting OMB Director Vought, we recognize that there may be instances where it is appropriate to withhold or redact particular content. However, we have not received any explanation of what specific information you or OMB believe to be covered by privilege.

   a. Do you commit to providing the requested information and documents in a complete and un-redacted manner to the maximum extent permitted by law?

Answer: I commit to providing the requested information and documents to the extent permitted by law and consistent with the Executive Branch's longstanding interests in protecting the confidentiality of the deliberative process.

   b. If any of the requested information or documents are withheld (including partial redactions), do you commit to providing this Committee with an explanation that includes the specific legal authority relied upon and the specific office or official responsible for the decision to withhold the requested document(s) or information?

Answer: When requested information or documents are withheld, I commit to providing the reasons for such withholding, including, when appropriate, the applicable office.

2. On November 26, 2019, Members of this Committee sent a letter to you and Acting OMB Director Vought in which we reiterated the relevance of our previous requests to the Committee's full and fair consideration of your nomination. We have still not received a direct response to this letter from OMB. However, shortly after we sent this letter, a Bloomberg Law article reported the following:

   > It's the Senate Democrats that are breaking longstanding precedent in hopes to use Paul Ray's nomination as a bargaining chip to do

backdoor oversight, an OMB official said. OMB has worked with the Democrats every step of this process, this letter is simply disingenuous. If anyone is changing history here, it's the Democrats.[1]

a. Were you aware of the comments described in this article?

Answer: No. I note, in the interests of accuracy, that I was not an addressee of the letter. I was cc'ed on the letter, as was Chairman Johnson.

b. Do you agree with the characterization made by this OMB official? Please explain why or why not.

Answer: I would not have described the situation that way. I believe that my responses to requests for information and documentation, and the process by which OMB has engaged with staff on those requests, are consistent with longstanding Executive practice across Administrations of both parties.

3. During your Committee staff interview you were asked to provide specific examples of OIRA's cooperation with congressional oversight during your tenure as Associate Administrator or Acting Administrator of OIRA. In written follow-up responses you provide on December 2, 2019, you identified several briefings OIRA provided to congressional committees, and cooperation with the Government Accountability Office (GAO).

   a. During your tenure, did OIRA ever provide substantive written responses to requests for information made by Congressional committees or Members of Congress (including responses to requests addressed to OMB)? If so, please identify specific examples.

   Answer: To the best of my recollection, OIRA's substantive feedback during these months was oral rather than written.

   b. During your tenure, did OIRA ever provide non-public documents in response to requests made by Congressional committees or Members of Congress (including responses to requests addressed to OMB)? If so, please identify specific examples.

   Answer: To the best of my recollection, OIRA did not, during my tenure, so provide non-public documents.

4. During your staff interview, you referenced the accommodation process between the Executive Branch and Congress with respect to congressional requests for information. Please describe your personal experience with and understanding of this process.

   Answer: As I understand it, the branches engage in an accommodations process to balance the branches' equities. As you know, the Executive Branch has longstanding interests in

[1] Cheryl Bolen, *Democratic Senators Demand Documents from Regulatory Chief*, BLOOMBERG LAW (Nov. 26, 2019), https://news.bloomberglaw.com/daily-labor-report/democratic-senators-demand-documents-from-regulatory-chief.

maintaining confidentiality in the deliberative process to prevent a chilling effect on future deliberations. But I also recognize Congress has oversight interests, especially to assist it with its legislation. Therefore, the branches must work together to reach mutually acceptable solutions that respect each branch's interests. In my experience, the process consists in a dialogue, often carried on by and through counsel, that seeks to identify potential agreement with respect to a mutually acceptable disclosure.

5. In your view, what is the OIRA Administrator's role with respect to ensuring that OIRA and OMB are appropriately engaging with Congress regarding any requests related to OIRA's activities?

   Answer: I recognize the importance of congressional oversight and, if confirmed as OIRA Administrator, I would be committed to engaging with the relevant committees to facilitate such oversight. In addition to appearing before committees to testify, this engagement involves responding to requests for information. If confirmed, I would see my role as ensuring that OIRA fully cooperates with its oversight committees and responds to information requests in a timely manner. In addition, I would ensure that OIRA provided all the documents and information requested, consistent with protecting the integrity of the deliberations within OIRA and the Executive Branch and with other applicable law.

6. In your Pre-hearing Questionnaire responses, you were asked whether you would "agree without reservation to reply to any reasonable request for information from the Ranking Member of any duly constituted committee of the Congress." You answered: "Yes, consistent with advice from OMB General Counsel."

   a. If confirmed, will you commit to notifying the relevant Committee Ranking Member if you are advised not to reply to a reasonable request for information?

   Answer: Yes.

   b. If confirmed, will you commit to providing the relevant Committee Ranking Member with an explanation of any decision to withhold requested documents or information that includes the specific legal authority relied upon and the specific office or official responsible for the decision?

   Answer: Yes.

7. When asked about transparency with respect to informal, or "advance" consultation between agencies and OIRA prior to the review process established in E.O. 12866, you stated that "providing information about the contents of interagency communications would implicate the Executive Branch's longstanding interests in protecting the confidentiality in the deliberative process" (Supplemental Pre-Hearing Questionnaire, Question 91).

a. Is your view that any information regarding the practice of advance consultation is exempt from congressional oversight? Please explain why or why not.

Answer: My initial response does not indicate that interagency communications are exempt from congressional oversight, but that these communications are part of the interagency deliberative process. The practice of advance consultation is not exempt, but again, part of the interagency deliberative process, the confidentiality of which the Executive Branch has longstanding interests in protecting.

b. In response to a similar question regarding transparency with respect to OIRA's consultation with agencies outside of the formal review period, former OIRA Administrator Cass Sunstein stated that "a balance must be achieved between protecting deliberative processes and ensuring transparency."[2] Professor Sunstein also noted the importance of considering the views and interests of both the Executive Branch and Congress.[3] Do you agree that it is important to strike a balance between protecting deliberative process and ensuring transparency? Please explain why or why not.

Answer: Yes. As I note in Question 4, Congress and the Executive Branch each have their longstanding interests in oversight and protecting deliberative processes, respectively. The branches must work together to reach mutually acceptable solutions that respect each branch's interests. This is the balance to which former Administrator Sunstein referred.

8. As you have noted, E.O. 12866 requires the disclosure of certain documents "after the regulatory action has been published" or "after the agency has announced its decision not to publish or issue the regulatory action." However, the regulatory review process often takes much longer than the 90-day period established under E.O. 12866. In your view, are there any circumstances under which it would be appropriate for OIRA to disclose information or documents relating to the review process in the absence of publication or agency announcement triggering disclosure under E.O. 12866? Please explain.

Answer: EO 12866 is clear that disclosure under section 6(4)(D) occurs only after publication or the agency has announced its decision not to publish or issue the regulatory action; it does not provide for disclosure in additional circumstances.

9. If OIRA has completed its review under E.O. 12866, but the agency has neither published the relevant regulatory action nor announced a decision not to move forward, do you believe it is ever appropriate for OIRA or the agency to provide Congress with an explanation? Please explain.

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[2] *Nomination of Cass R. Sunstein to be Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget*, Senate Committee on Homeland Security and Governmental Affairs (S. Hrg. 111-463) (May 12, 2009) (Response to Pre-Hearing Q.31).

[3] *Id.* (Responses to Pre-Hearing Questions 28, 31).

Answer: EO 12866 does not contemplate disclosure in such a situation.

10. Is OIRA or OMB hosting, leading, or participating in a PFAS working group? If so, please provide a list of participants and how long the group has been active.

    Answer: Interagency working groups and collaboration are constantly taking place on a range of issues across the federal government including PFAS. Such coordination is crucial for awareness, communication, and consistency.

11. If an OIRA or OMB PFAS working group exists (or if both exist), can you generally describe what the working groups are tasked with doing, how frequently they meet, and how a determination is made about which matters are delegated to each working group?

    Answer: See response to Question 10.

12. Can you please list the specific steps that you would take if confirmed to ensure transparency into OIRA's review of any assessment or regulation regarding PFAS contamination?

Answer: OIRA would provide the same transparency assurances required by EO 12866 for any significant regulatory action under review. The EO 12866 process requires transparency in several ways. First, the *Unified Regulatory Agenda* provides the public with advanced notice of any agency's anticipated regulations over a 12-month period. Any member of the public may access these anticipated actions, as well as a list of regulations under review and concluded reviews via reginfo.gov. Next, EO 12866 provides members of the public opportunities to provide comments to OMB and the regulating agency. EO 12866 also requires agencies to provide the public with meaningful opportunity to comment on proposed regulations through a 60-day comment period. Finally, once a rule has been issued, members of the public may request a copy of the draft regulation submitted to OIRA.

13. When did OMB and OIRA begin its unofficial review of CDC and ATSDR's study on the human health effects of drinking water exposure to PFAS?

    Answer: OIRA has not begun a review (unofficial or official) of the PFAS multi-site study. Rather, OIRA conducted a review of ATSDR's Human Health Effects of Drinking Water Exposures to Per- and Polyfluoroalkyl Substances (PFAS) at Pease International Tradeport, Portsmouth, NH (The Pease Study) under the authority of the Paperwork Reduction Act of 1995 (PRA) approved in August 2019 (OMB Control Number 0923-0061). That study was designed as a "proof of concept" for the multi-site study. ATSDR approached OIRA a few weeks after the approval of this "proof of concept" study to request guidance regarding the submission of the protocol for the multi-site study. The protocol has not yet been submitted for review.

14. Under what authority is OMB and OIRA providing comments on CDC and ATSDR's study on human health effects of drinking water exposure to PFAS?

Answer: OMB reviewed the Pease Study under the Paperwork Reduction Act of 1995.

15. Who at OMB and OIRA specifically participated in the review of CDC and ATSDR's study on the human health effects of drinking water exposure to PFAS?

Answer: As indicated above, ATSDR has not yet submitted the multi-site study to OMB. OIRA did review the Pease study/proof of concept. During that review, OIRA scientists and desk officers provided comments to ATSDR.

16. Please describe the nature of the comments returned to CDC and ATSDR regarding their study on the human health effects of drinking water exposure to PFAS.

Answer: Providing information about the contents of interagency communications would implicate the Executive Branch's longstanding interests in protecting the confidentiality in the deliberative process.

17. In 2017, then-VA Secretary Shulkin made a recommendation based on the best available science to add three conditions – bladder cancer, Parkinson's-like symptons, and hypothyroidism – to VA's list of presumptive illnesses for Vietnam War veterans suffering from Agent Orange exposure. But documents show that OMB and OIRA ignored the recommendation and blocked the VA from expanding the presumptive illnesses list.

    a. Can you please describe why OMB and OIRA moved to block the health benefits for 83,000 Vietnam veterans who are suffering from Agent Orange exposure?

    b. Do you believe that OIRA's recommendation to block these healthcare beneifts for veterans was the correct one?

    c. Will you revisit this decision if confirmed?

    d. Will you commit to providing the committee with information about OMB and OIRA's involvement in the stalling of this action?

Answer: OIRA's engagement on this issue preceded my employment at OMB; I do not know the nature of communications between OIRA and the agency on this issue, and I have not had occasion to study the medical, scientific, legal, and regulatory questions presented for myself. On November 1, 2017—before my time at OMB—then-VA Secretary Shulkin announced the following: "After thoroughly reviewing the National Academy of Medicine (NAM)'s latest report regarding Veterans and Agent Orange, and associated data and recommendations from the NAM Task Force, I have made a decision to further explore new presumptive conditions for service connection that may ultimately qualify for disability compensation." In response to a recent Congressional inquiry on this same topic, VA advised that it was still deliberating over this policy. If confirmed as OIRA Administrator, I

will ensure that OIRA thoroughly but expeditiously reviews all aspects of any VA proposal that is submitted.

18. During your confirmation hearing on December 4, 2019, when asked if EPA's efforts to ensure clean drinking water for children should be tied in any way to rolling back other public health and environmental protections, you said, "[n]o, they should not." Given your response, if confirmed, will you commit to exempting EPA's proposed Lead and Copper rule from the requirements of Executive Order 13771?

Answer: As I stated at the hearing, EO 13771 and OMB implementation of that Order are very clear that the Order does not direct or authorize agencies to deviate from their statutory mandates to protect the public health and safety. Because the EO does not in the first place direct or authorize EPA to forbear from a regulation required by its statutory mandate, no exemption is needed to ensure that EPA finalizes the rule. Should EPA apply for an exemption, and were I confirmed, I would apply the framework articulated in OMB guidance M-17-21, *Guidance Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs,"* to consideration of that request.

19. During your confirmation hearing on December 4, 2019, you committed to making a good faith effort to determining what happened with the deletion of climate change references during OIRA review.

    a. While you were Acting Administrator, language referring to climate change was deleted from the Safer Affordable Fuel-Efficient Vehicles Rule (RIN 2060-AU09) during OIRA review. Can you provide the committee with information on who was responsible for deleting the references to climate change and why there were deleted in this regulatory proposal?

       Answer: Per my commitment at the hearing, I have referred this question to the Office of General Counsel at OMB, and have been advised that this information implicates the Executive Branch's longstanding interests in protecting confidentiality in the deliberative process. As I also noted at the hearing, I had no personal involvement in or knowledge of those deletions.

    b. While you were Associate Administrator, language referring to climate change was deleted from EPA's proposal to regulate heat-trapping chemicals (RIN 2060-AT81) during OIRA review. Can you provide the committee with information on who was responsible for deleting the references to climate change and why they were deleted in this regulatory proposal?

       Answer: Please see response above.

20. While you were Acting Administrator, OIRA declined to meet with two groups of state regulators regarding Safer Affordable Fuel-Efficient Vehicles Rule (RIN 2060-AU09). Please explain why OIRA declined these specific meetings.

    Answer: Consistent with longstanding practice, OIRA does not continue to hold EO 12866 meetings once OIRA has concluded on a rule. Under that practice, any meetings that either had not been scheduled by the date of conclusion or were scheduled for after the date of conclusion would have been canceled. In the review of the rulemaking to which the question refers, OIRA received a high volume of meeting requests, and a number of meetings—from stakeholders of all types and all perspectives—unfortunately had meetings canceled upon conclusion of the rule.

21. Given that OIRA concluded its E.O. 12866 review of FDA's proposed action to address the vaping addiction epidemic "consistent with change," does that mean OIRA is supportive of the proposal?

    a. If this does not indicate that OIRA is supportive, then why did the agency conclude its review "consistent with change?"

Answer: In the main, OIRA may conclude a review "consistent with change" or "consistent without change." Conclusion "consistent with change" means that the text of the regulatory action has changed in some way during the course of review, in response to prompting from the interagency process or on the agency's own initiative. "Consistent without change" means that OIRA concluded review on the text of the regulatory action exactly as it was originally submitted to OIRA. Neither instance indicates that OIRA "supports" a particular proposal. Indeed, OIRA's role is principally to supervise a policy process that results in rules that accurately and transparently account for costs and benefits, that fully and adequately explain their legal rationales, and that issue from a single, coordinated Executive voice, rather than to interject its own policy views into the policy process.

22. At a hearing held by the House Committee on Oversight and Reform on December 4, 2019, Mitch Zeller, Director of the Center for Tobacco Products at the FDA, said that there are ongoing discussions between the agency and the White House about the proposed ban.

    a. Are you participating in these discussions that are independent of OIRA review?

Answer: As Senior Advisor to the OMB Director for Regulatory Affairs, I have participated in this policy process.

    b. Who is participating in these discussions?

Answer: Various White House and agency policy, legal, and political staff are involved in the process; I do not know all participants in the process. I know that, a few days ago, the President led a public discussion with representatives of various viewpoints.

23. If confirmed, will you commit to not concluding review of the Department of Education's new Title IX proposal until OIRA has held all meetings that have been requested?

Answer: If confirmed, I commit, for review of the Title IX draft final rule and all other OIRA reviews, to direct staff to continue OIRA's longstanding policy, to which I directed adherence while Acting Administrator, to offer meetings on a first-come, first-served basis, without regard to the nature or perspective of the entity requesting a meeting, and to cancel meetings only when review of a rule terminates.

24. NIST's cybersecurity standards have become essential to help protect government agencies and other organizations. Delays in promulgating these standards have a direct impact on the security of US government systems. Recent reports have suggested that OIRA has become a bottleneck for the release of these standards. What will you do to ensure that these essential cybersecurity standards (particularly SP 800-53 Revision 5) are prioritized for review and release?

Answer: I agree that NIST's information security standards are essential. While I am no longer Acting Administrator, I am informed that OIRA is working diligently with partners at NIST to ensure that federal cybersecurity standards have the quality and rigor that is needed to protect our nation's information systems. I am committed to continuing this important work to help develop standards that are fully implementable and issued in a timely manner; if confirmed, I commit to investigating assertions that OIRA has become a bottleneck and determining whether changes are needed to remedy any problems.

25. Have you participated in any discussions regarding extending OIRA review to independent agencies?

Answer: Disclosing the content of potential discussions within the Executive Branch would implicate the Executive Branch's longstanding interests in protecting confidentiality in the deliberative process.

26. Has OMB or OIRA developed or are they currently developing proposals to extend OIRA review to independent agencies?

Answer: Please see answer to Question 25.

27. Please specifically discuss your personal opinion about whether independent agencies should submit regulatory proposals to OIRA for E.O. 12866 (or some similar) review.

Answer: That would be a decision for the President. In my judgment, and as I stated at my hearing, some regulatory review process for independent agency rulemakings would likely improve independent agency cost-benefit analysis, in turn leading to better and more transparent policy outcomes for the American people.

28. When OIRA concludes review of a rule consistent with change, does that indicate to an agency that OIRA is supportive of the agency moving forward with the proposed or final regulatory action?

Answer: No. Please see answer to Question 21.

29. If confirmed, how would you ensure that you will receive comments from members of impacted communities that are underserved and have historically had challenges to accessing the regulatory process?

Answer: Ensuring greater participation in the rulemaking process is essential to making our regulatory system more democratic. If confirmed, I would consider means to increase agency receipt of comments from members of impacted communities that are underserved and have historically had challenges to accessing the regulatory process, including community outreach programs and plain-language summaries.

30. In your opinion, what steps can OIRA take to eliminate language barriers in the notice-and-comment process?

Answer: I have not had an opportunity to study or form views on this issue. If confirmed, I would do so.

31. What specific steps would you take to increase the accessibility of public comment forums?

Answer: I have not had an opportunity to study or form views on this issue. If confirmed, I would do so.

32. How would you seek comments from vulnerable communities who may fear or be discouraged from attending public comment forums or lack the ability to set up a formal E.O. 12866 meeting?

Answer: I have not had an opportunity to study or form views on this issue. If confirmed, I would do so.

33. In response to Question 48 in the Committee's pre-hearing questionnaire, you said that we should "see reginfo.gov for a list of meetings" that you participated in as part of EO 12866 review. However, our ability to identify the meetings that you have attended using reginfo.gov has been impeded by several meetings that appear to have occurred but do not include information regarding who participated and what documents were left behind.

    a. When does OIRA plan to update information regarding attendees and documents for all the meetings on reginfo.gov that have occurred to date?

Answer: OIRA takes seriously its responsibilities under EO 12866 to 1) provide the public with the opportunity to be heard and 2) ensure transparency by making attendance logs/documents available for public viewing. Indeed, during this Administration OIRA has taken the unprecedented step of providing access to its meetings calendar in advance. Traditionally this was only provided after the fact, time-dependent on the volume of meetings and staff resources. The list of meeting participants and documents submitted are still done by hand and depend upon resources available. OIRA is working diligently to update the attendee logs/document uploads for meetings that have already occurred; I expect it will finish updates in the next few weeks.

b. Given the delay, can you provide this Committee the full list of attendees and any documents that were left behind from any EO 12866 meetings you attended during your time at OMB and OIRA?

Answer: Based on a review of my records, I recall the following EO 12866 meetings. I have attached a spreadsheet with attendees, and I also have attached materials left behind.

1. Agricultural Trade Promotion Program and Market Facilitation Program, RINs 0551-AA92 and 0560-AI42 (August 14, 2018). Please note that, because two rules were discussed, the spreadsheet reflects two rosters of attendees.

2. Format and Content of Reports Intended to Demonstrate Substantial Equivalence, RIN 0910-AH89 (November 9, 2018).

3. Rules Relating to Section 965 Transition Tax, RIN 1545-BO51 (two meetings: July 20, 2018, and December 12, 2018).

4. Non-Energy Solid Leasable Minerals Royalty Rate Reduction Process, RIN 1004-AE58 (June 21, 2019).

5. Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents, RIN 0584-AE57 (November 12, 2019).

34. In your staff interview, you claimed that you have not met with any of your former clients as Associate Administrator or Acting Administrator of OIRA except when staffing Acting OMB Director Vought and Director Mulvaney for high-level meetings not addressing specific matters. However, according to White House Visitor logs, you met with representatives from the American Forest and Paper Association, one of your former clients, on May 22, 2019. Please provide the Committee with all information regarding the meeting, including who arranged the meeting, the calendar appointment for the meeting, why it was arranged, and what specific matters were discussed.

Answer: This was a very brief "stop-by" meeting which I had forgotten. The meeting was with the Environmental Policy Committee of the American Forest and Paper Association, and persons affiliated with the broader American Forest and Paper Association, including Paul Noe. The Association attendees briefly explained their perspective on regulatory reform, which was the purpose of the meeting. It did not include discussion of rules under review. The Association

requested the meeting. I left before the meeting concluded. Brief attendance at this meeting was fully consistent with my commitments in the *Ethics Commitments by Executive Branch Appointees* pledge signed at the beginning of my service in this Administration, and all other ethics obligations.

0584-AE57 Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Depend

Ms. Eryn Hurley - National Association of Counties
Dr. Antonia Jimenez - County of Los Angeles
Ms. Gabriela Herrera - County of Los Angeles
Mr. Greg Campbell - County of Los Angeles
Mr. Jose Chew - County of Los Angeles
Ms. Rachel Merker - National Association of Counties
Ms. Parjack Ghaderi - County of Los Angeles
Ms. Elise Weinberg - County of Los Angeles
Ms. Samara Ashley - County of Los Angeles
Mr. Randy Davis - County of Los Angeles
Ms. LaShonda Diggs - County of Los Angeles
Ms. RJ Lyerly - County of Los Angeles
Ms. Roxana Molina - County of Los Angeles
Paul Ray - OMB
Elizabeth Ashley - OMB/OIRA
Brenda Aguilar - OMB/OIRA
James Crowe - OMB/OIRA

Participation
Teleconference
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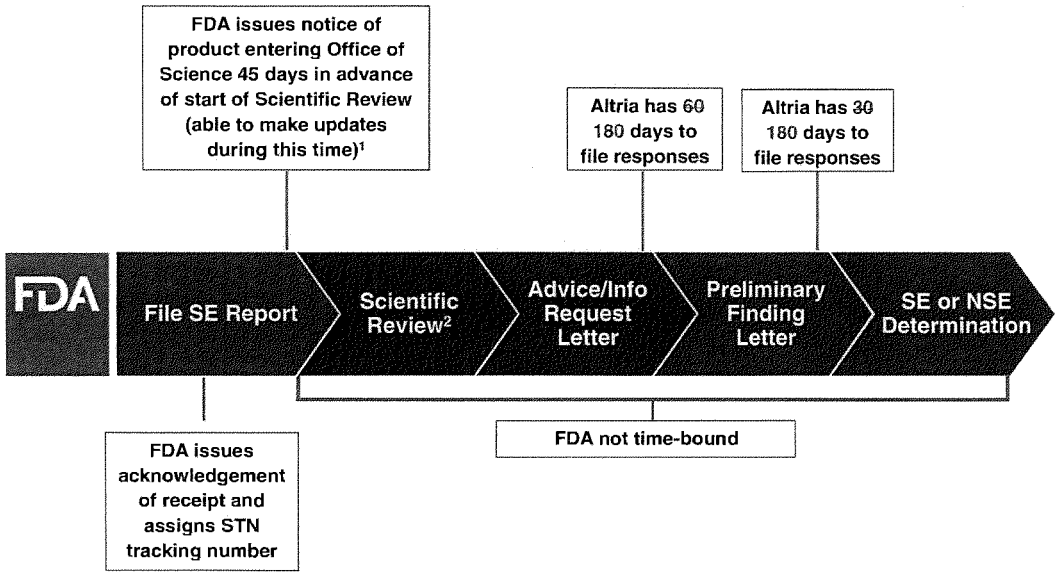
In Person

FDA Substantial Equivalence Process



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[1] Applicable to Provisional filings only, not Regular filings
[2] FDA may issue Administrative Advice/Info Request and Preliminary Finding letters once filings enter scientific review

Meeting with the Office of Management and Budget

Joe Murillo
Sr. Vice President, Regulatory Affairs

Altria
Altria Client Services

November 9, 2018

Altria's Tobacco Operating Companies

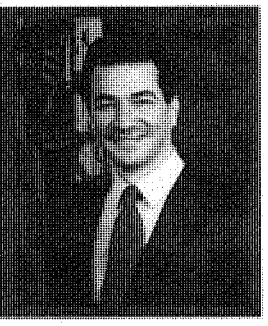
Rules of the Road

"We all need to be on the same page regarding the basic "rules of the road," especially when it comes to what's expected in premarket applications."

...

"Establishing a rigorous, predictable, science-based framework for the premarket review of tobacco products is a key element of our program."

– Scott Gottlieb, M.D., and Mitch Zeller, J.D.



Source: Gottlieb, Scott and Zeller, Mitch, "Advancing Tobacco Regulation to Protect Children and Families: Updates and New Initiatives from the FDA on the Anniversary of the Tobacco Control Act and FDA's Comprehensive Plan for Nicotine," Aug. 2, 2018, *at* https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm619118.htm

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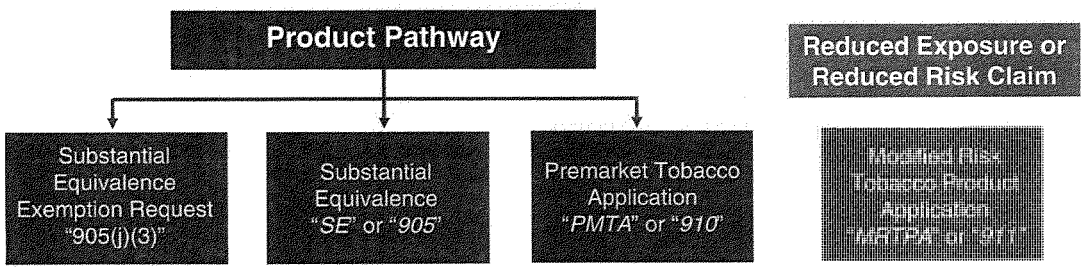
FDA Market Pathways



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Two Prongs of Substantial Equivalence

The TCA requires FDA to issue a marketing order for a new tobacco product if it:

- (i) has the *same characteristics* as a predicate tobacco product;

or

- (ii) has *different characteristics* and the information submitted contains information . . . that demonstrates that… the product does not raise *different questions of public health*."*

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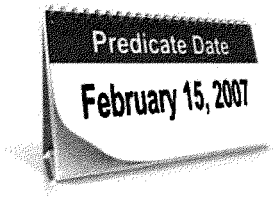
* TCA §§ 910(a)(3)(A)(i)–(ii)(emphasis added).

SE Key Issues

- Still lacking foundational rules
  - Definitions for "same" vs. "different" characteristics
  - Standards for "does not raise different questions of public health"
- Lack of consistency across reviewers and over time
- Limitations on changing predicate
- EA categorical exclusion for all SE submissions



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Definitions

- **Same Characteristics** - means that the products being compared have similar, but not identical, materials, ingredients, design, composition, heating source or other features; and the differences are not material to a public health risk assessment of the new product

- **Different Characteristics** - means the products being compared have material differences in materials, ingredients, design, composition, heating source or other features, such that there is potential to raise different questions of public health.

- **Different Question of Public Health** - a risk to public health not already presented by products in the same category that were on the market as of February 15, 2017.

Meeting with the Office of Management and Budget

Joe Murillo
Sr. Vice President, Regulatory Affairs

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Altria Client Services

November 9, 2018

Docket ID: FNS-2018-0004

April 2, 2019

Administrator Brandon Lipps
Food and Nutrition Service
U.S. Department of Agriculture
3101 Park Center Drive
Alexandria, VA 22302

Re: Supplemental Nutrition Assistance Program: Requirements for Able-Bodies Adults Without Dependents

Dear Administrator Lipps,

The National Association of Counties (NACo) appreciates the opportunity to comment on the U.S. Department of Agriculture's (USDA) Notice of Proposed Rulemaking (NPRM), titled "Supplemental Nutrition Assistance Program: Requirements and Services for Able-Bodied Adults Without Dependents," published February 1, 2019. NACo is the only national organization representing America's 3,069 county governments; collectively, counties play a pivotal role in providing our residents with critical health and human services, including nutrition assistance.

One of the many aspects of health and human services that counties address is the nutrition of our residents. Counties operate healthy eating, school nutrition and senior nutrition programs across the country. In every county, SNAP is an important aspect for healthy eating, especially for areas lacking access to sustainable and fresh food supplies.

Counties in every state are concerned with the nutritional wellness of their constituents, but there are 10 states that delegate SNAP administration to county agencies, including California, Colorado, Minnesota, New Jersey, New York, North Carolina, North Dakota, Ohio, Virginia and Wisconsin. Although SNAP is primarily a partnership between the federal government and states, counties in these ten states contribute significant local funds to the administrative and supplemental costs of running the program. In fact, in 2016, $63 billion in SNAP funding was administered by these counties, covering services for 32 percent of all SNAP recipients.

We appreciate USDA's goals of providing access to healthy food for residents and helping those on the program obtain and maintain employment and commend the agency on its outreach to our staff and county officials on the proposal since its publication. Moving forward, we encourage the agency to continue to fully involve state and local government partners throughout the decision-making process.

However, while we understand the goal of USDA's proposal, counties are concerned the proposed rule may have unintended consequences for our residents and communities. After careful consideration and

numerous discussions with local elected officials, county health and human services directors, and with other local and state organizations, NACo urges USDA to consider the following when finalizing a new rule:

- Counties are concerned that expanding stricter work requirements would create new financial and administrative burdens – a potentially new unfunded mandate for local governments with no additional federal resources.

- Counties encourage USDA to maintain existing carry-over waiver exemptions for ABAWDs, which are flexible and ensure counties can respond to economic downturns.

Counties are concerned that expanding stricter work requirements would place new financial and administrative burdens on counties – potentially resulting in a new unfunded mandate for local governments.

Counties support USDA's goal of helping ABAWD SNAP recipients obtain and maintain employment. However, as USDA considers stricter time limits and work requirements for ABAWDs, counties hope to have the opportunity to discuss how USDA's proposed changes may impact our residents and unintentionally increase administrative costs for counties in county-administered states.

Under the current ABAWD time limit rule, ABAWDs physically or mentally fit for work and not caring for a minor are eligible for SNAP benefits only if they work at least 20 hours a week. If an ABAWD is not working 20 hours a week for three months during a sustained 36-month period, that individual is no longer eligible for SNAP benefits. However, states have the option to request a waiver for the ABAWD time limit if a given geographic area has an insufficient number of jobs (also known as Labor Surplus Areas, or LSAs), or has an unemployment rate over 10 percent. If the time limit is waived, individuals are not required to meet the ABAWD work requirement to receive SNAP.

Under the proposed rule, the Labor Surplus Areas (LSAs) designation would be eliminated and replaced by a new threshold, which would require eligible areas to have had at least 7 percent unemployment rate for two-years to qualify for an ABAWD waiver. According to USDA estimates, there are currently 775,000 ABAWD recipients that could lose the waivers if the proposal is enacted. Given this possibility, counties are concerned that more stringent time limit and work requirements may create an additional financial burden on county agencies who may see an increase in time spent screening and tracking beneficiaries as they move on and off SNAP.

Additionally, individuals no longer receiving federal benefits may become more dependent on county programs and services, further straining our nation's county service providers.

Counties are also concerned that the proposal to limit the duration of ABAWD waiver approvals may create even more costs for counties. If the ABAWD waiver duration is reduced from two-years to one-year, states would rely more heavily on counties for information on the number of unemployed residents in their communities. To respond to these requests, counties would have to increase our administrative capacity in the form of personnel or data systems, while receiving no new federal resources.

While this proposal would impact all counties, we are particularly concerned about the potential impacts on rural counties, who face limited flexibility, staff and resources to comply with new unfunded mandates or reporting requirements.

Nearly all of these changes would have the unintended consequences of shifting costs to counties. This comes at a time when counties are already facing increased federal, state and local demands as well as a growing number of restraints on revenue generation from states. In fact, nearly every state places some type of cap on property taxes, the main source of revenue for counties in most states. Additional financial strain from this proposal could hinder our ability to provide crucial services to our residents and communities.

Finally, to address USDA's concern that too many states continue to apply for state ABAWD waivers despite the nation's declining unemployment rate, counties encourage USDA to consider extending the ABAWD waiver authority to the county level, which would put these decisions in the hands of local policymakers who best understand the unique local workforce needs of our constituents and economies. **As outlined in our comments in response to USDA's Advanced Notice of Proposed Rulemaking (ANPRM) released in February 2018, NACo supports allowing counties to apply for ABAWD waivers to ensure more effective use of waivers for targeted population centers.**

According to the Bureau of Labor Statistics, in 2016, no state had an unemployment rate above 6.7 percent. However, 60 counties had unemployment rates over 10 percent – the qualifying rate at a state level for an ABAWD waiver. In fact, 515 counties in 37 states had unemployment rates above 6.7 percent in 2016. Though the economy is improving, these figures demonstrate unemployment remains a local issue best addressed when federal and state governments partner with counties and other municipal governments.

That being said, counties are in the unique position to accurately understand the realities of local economies and job opportunities, and are best suited to determine when a waiver is necessary and can be most beneficial to the community.

Counties encourage USDA to maintain existing carry-over waiver exemptions for ABAWDs, which are flexible and ensure counties can respond to economic downturns.

Across the country, the strength of local economies and labor supplies can vary widely. Unemployment or underemployment is the most common challenge across our nation's counties. Maintaining a strong economy with a diversified and competitive business environment is also a significant concern for counties. Counties are most vulnerable when it comes to future economic downturns, and flexibility under specific USDA waiver programs is a key component of supporting our communities and residents.

Under the proposed rule, counties are concerned about our ability to respond to a possible future economic downturn if the carry-over allowance is limited to just one year. Under current law, states can exempt up to 15 percent of their ABAWD population from work requirements each year. If these exemptions are not used, they can be "rolled over" for future years, which has allowed states the flexibility to save exemptions for periods of extreme economic hardship. Under the proposed rule, states' ability to use these exemptions would be curtailed, and counties would be limited in assisting our residents during potential economic downturns.

Even as the nation's economy has recovered, general revenue recovery from the recession remains uneven across counties. For example, while counties in the western region saw the most improvement

through 2013, with 59 percent of the counties bouncing back to pre-recession levels, southern counties were still reeling from the effect of the recession in 2013, with almost half of them below 2007 levels. Finally, for urban counties, which have populations higher than 500,000 residents, more than two thirds still have not recovered to pre-recession levels.

Thus, counties remain concerned that the elimination of the ability to carry over ABAWD exemptions may place counties and our residents in vulnerable positions if confronted by future economic recessions.

Conclusion

SNAP is an important public assistance program offering nutrition support to millions of eligible, low-income individuals and families. Serving as the front-line social safety net, counties operate healthy eating, school nutrition and senior programs across the country. In every county, SNAP is a crucial aspect of healthy eating, especially for areas lacking access to sustainable and fresh food supplies.

In sum, counties are concerned that, if implemented, this proposal would create unintended consequences for local governments as we work to serve our communities. That said, we remain committed to engaging with our federal partners towards a common goal of improving federal programs while also protecting the health and well-being of our residents.

We look forward to further substantives discussion with USDA leadership and staff regarding this proposal's suitability for advancing our shared goal.

Thank you for this opportunity to present the local perspective on USDA's proposal.

Sincerely,

Matt Chase
Executive Director
National Association of Counties

Board of County Commissioners

April 10, 2019

Certification Policy Branch
Program Development Division
Food and Nutrition Service, USDA
3101 Park Center Drive
Alexandria, Virginia 22302

RE: Proposed Rule: Supplemental Nutrition Assistance Program (SNAP): Requirements for Able-Bodied Adults Without Dependents RIN 0584-AE57

To the Certification Policy Branch:

The Boulder County Board of County Commissioners submits these comments in response to the U.S. Department of Agriculture's (USDA) Notice of Proposed Rulemaking regarding Able-Bodied Adults Without Dependents (ABAWDs) in the Supplemental Nutrition Assistance Program (SNAP). We write to express our strong opposition to the proposed changes and urge the USDA to withdraw the proposed rule in its entirety.

Boulder County currently provides SNAP benefits to about 27,000 people, out of an overall population of 320,000. SNAP is one of the most important resources we can provide to individuals who are struggling to make ends meet and being forced to make daily choices about which basic necessities to forego. Even so, there are many in our community living on the edge who are choosing not to claim SNAP benefits for which they are eligible due to existing program restrictions and policies that discourage participation. The proposed rule would only make this situation worse. If anything, we should be finding ways to encourage eligible individuals to participate in SNAP, not discourage them.

The proposed rule runs counter to Boulder County's experience that the vast majority of individuals participating in SNAP want to work and want to be self-sufficient. The reasons for which they might require ongoing assistance are complex and varied and cannot be solved through a simple ratcheting up of work requirements. Issues such as a lack of training or education, lack of access to reliable transportation, and past criminal convictions all present obstacles to self-sufficiency that the proposed rule fails to address. Indeed, the most likely effect of the proposed rule would be to compound these challenges and lead to worse outcomes for participants and the community alike. Current requirements for establishment of ongoing eligibility to receive SNAP benefits already provide significant disincentives for all but the truly needy to participate in the program.

Lastly, Boulder County is concerned that under the proposed rule, administrative costs will increase. At a time of increasing need but limited funding, every effort should be made to maximize the share of resources that are targeted at direct benefits and services, as opposed to paying for new administrative requirements that won't improve outcomes for individuals or the community at large.

Deb Gardner *County Commissioner* **Elise Jones** *County Commissioner* **Matt Jones** *County Commissioner*

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In summary, the proposed rule presents a significant threat to the health and well-being of some of the most vulnerable members of our population, while failing to demonstrate any benefit. For those reasons, we oppose the rule and respectfully ask that it be withdrawn.

Thank you for your consideration of these comments.

Sincerely,

Elise Jones
Chair

Deb Gardner

Matt Jones

LOS ANGELES COUNTY'S RESPONSE TO THE ABLE-BODIED ADULTS WITHOUT DEPENDENTS (ABAWD) PROPOSED RULE

The proposed ABAWD rule will cause serious harm to low-income residents of Los Angeles County. For the reasons discussed below, the Los Angeles County Department of Public Social Services strongly opposes this rule.

- **Significant negative impact to Los Angeles (LA) County's ABAWD population:**
  - Food insecurity remains a major threat to health and wellbeing of millions of low-income households. This rule will have a significant impact in LA County where the ABAWD population is approximately 300,000.
  - Homelessness is a major crisis in LA County, with over 58,000 individuals living on the street, and even more living in precarious housing. The rule will increase homelessness in LA County since individuals who lose CalFresh benefits will have to use resources normally used for housing to purchase food.
  - Employed CalFresh recipients have difficulty securing 80 hours per month of employment. CalFresh recipients are finding low-paying jobs, mostly as part-time employees making it difficult to guarantee 20 hours a week on a regular basis. 269,394 of the 300,000 ABAWDs in LA County are either unemployed or employed less than 20 hours a week.
  - Racial and ethnic minorities, women, homeless individuals, and former incarcerated individuals would be disproportionately impacted by the proposed rule as they face discrimination that contributes to a higher rate of unemployment regardless of education level or criminal history[1]. 190,870 ABAWDs in LA County fall into these groups.
  - Youth in foster care and unaccompanied homeless youth disproportionately experience significant barriers to obtaining steady employment. In LA County, we have 26,224 individuals who are former foster youth and homeless youth (ages 18 – 24) and who will be directly impacted by this rule.

- **The new rule may create a new unfunded mandate for the County with no additional federal resources:**
  - **Health Care Costs**: A national study revealed that low-income adults receiving CalFresh benefits have lower health care costs than that of low-income adults not receiving CalFresh[2]. Changes to the rule for the ABAWD population will drive medical cost up over time and the purported "savings" from CalFresh will result in additional funds being spent per capita on Medicaid.

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[1] Center on Budget and Policy Priorities. "Waivers Add Key State Flexibility to SNAP's Three-Month Time Limit". Retrieved from https://www.cbpp.org/research/food-assistance/waivers-add-key-state-flexibility-to-snaps-three-month-time-limit

[2] Berkowitz, S. A., Seligman, H. K., Rigdon, J., Meigs, J. B., & Basu, S. (2017), Supplemental Nutrition Assistance Program (SNAP) participation and health care expenditures among low-income adults, *JAMA Internal Medicine*, 177(11), 1642-1649

- **Administrative Costs**: LA County will need to spend additional funds on screening and tracking beneficiaries as they move on and off CalFresh benefits, training staff, and increasing administrative capacity in the form of personnel and data systems to collect information required by the federal government.
- **Economic Shock:** With reducing the exemptions to 12% and not allowing carryovers from preceding years, LA County will lose the ability to respond to economic shocks and also leaves the County vulnerable in the event of a sudden emergency.
- **Child Support:** Because of California's law which requires an adjustment to an order to allow for the costs of the non-custodial parent's basic needs, the loss of CalFresh to these non-custodial parents will: (a) require the county to adjust child support orders; (b) reduce the amount of child support we collect, the passthrough to CalWORKs clients, and funds kept by the State, County, and federal government; and (c) increase child poverty.

Senator Thomas R. Carper
Post-Hearing Questions for the Record
Submitted to Paul J. Ray

Nomination of Paul J. Ray to be Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget
Wednesday, December 4, 2019

Mercury and Air Toxics Rule

In December 2018, EPA issued a proposed revised Supplemental Cost Finding for the Mercury and Air Toxics Standards. These important standards aim to reduce emissions of mercury and other air toxics from power plants. OIRA allowed EPA to use outdated projected costs of compliance that projected costs three times higher than what the industry actually spent to comply with rule. Additionally, EPA ignored the full benefits of the rule in its proposal. The proposed rule is opposed by public health and environmental organizations, the Chamber of Commerce, electrical utilities, and the Evangelical Environmental Network.

During the hearing on December 4, 2019, I asked you to provide a complete description of your involvement in this proposed rule, including copies of your calendar and previously requested documents. I also asked for your commitment to ensuring that the final mercury rule uses updated, accurate information to calculate the costs and benefits of compliance with the original regulation. You responded, "I was not Acting Administrator at the time," and continued, "I'm not very familiar with that rule because the proposal was before I was Acting Administrator." You also qualified your commitment to requiring that EPA, and agencies in general, use accurate cost-benefit data, only if "there is reason to believe it is accurate."

1. Based on your response, are you stating that you had no involvement in the proposed mercury rule at any stage of the regulatory process, either as Associate Administrator or Acting Administrator?

    a. If this is the case, please explain why you were not involved in the process at all.

Answer: To the best of my recollection, I had no involvement in the mercury proposal at any stage of the regulatory process, either as Associate Administrator or Acting Administrator. The proposal was issued before I became Acting Administrator. I had no involvement while Associate Administrator because this regulation fell outside the portfolio of regulations with regard to which I, as Associate Administrator, advised the OIRA Administrator.

2. You became Acting Administrator in March 2019. In May 2019, OIRA released its biannual report tracking agencies' regulatory goals. By this time, the proposed mercury rule had received nearly 500,000 comments since its release in December 2018. Are you claiming that you had no involvement or knowledge of such a controversial rule, especially given the number of comments submitted?

Answer: The regulatory agenda contains information about thousands of rules across the federal government. I do not recall receiving a briefing on this regulation, which was not under review, during the preparation of the unified agenda, and such a briefing in the course of the agenda preparation process would have been unusual.

3. Please further explain your statement that you would require agencies to use accurate cost-benefit data only if "there is reason to believe it is accurate"?

    a. Is it your general approach when analyzing agencies' cost-benefit analyses to begin with the assumption that the underlying data is bad unless somehow proven otherwise?

Answer: If confirmed, I would direct OIRA staff to ensure that the data agencies use to inform their cost-benefit analysis is accurate. An agency should show to the satisfaction of OIRA and the public that the data it uses is accurate.

Vehicle Fuel Standards Rule

In August 2018, EPA and the U.S. Department of Transportation's National Highway Traffic Safety Administration released a notice of proposed rulemaking to roll back vehicle fuel economy and greenhouse gas standards. EPA described the Transportation Department's analysis justifying the proposal as "unusable" due to "fundamental flaws." EPA felt that the proposal did not reflect any of its own input, and asked to remove the agency's logo from the proposal's documentation.

During the hearing on December 4, 2019, I asked you to provide a complete description of your involvement in this proposed rule, including copies of your calendar and previously requested documents. I also asked for your commitment to ensuring that the final car rule uses sound technical assumptions and accurate cost-benefit analysis that avoids the problems EPA identified with the proposed rule. You responded, again, by noting that the agencies submitted the proposal to OIRA before you were Acting Administrator, and you "had extremely, extremely limited involvement or knowledge of the fact you just said until this process."

1. You joined OIRA in June 2018 as Associate Administrator; EPA and the Department of Transportation published their notice of proposed rulemaking in August 2018. Based on your response, are you stating that you had "extremely limited involvement" in the proposed rule as Associate Administrator, Acting Administrator, or both?

Answer: I made that statement with respect to my time as Associate Administrator. I had no involvement with review of the proposed rulemaking as Acting Administrator because the review of the proposed rulemaking concluded before I became Acting Administrator.

    a. If so, please explain why your involvement was so limited given that you were part of senior leadership at OIRA when the proposed rule was noticed.

Answer: This regulation principally fell outside the portfolio of regulations with regard to which I, as Associate Administrator, advised the OIRA Administrator.

2. On September 19, 2019, EPA and the Department of Transportation issued a final action on the proposed rule, entitled "One National Program Rule." To what extent have you been involved in this rulemaking since becoming Acting Administrator and later Senior Advisor to OMB for Regulatory Affairs, upon your formal nomination?

    a. If you were not involved, please explain why not.

Answer: As Acting Administrator, I supervised the review of this regulation.

3. Do you find it unusual or troubling that you first learned about EPA's concerns with the Transportation Department's underlying analysis through this confirmation process?

    a. If not, why not?

    b. If you had been aware about EPA's concerns prior to this confirmation process, what actions would you have taken to address the agency's concerns?

Answer: As EPA's concern was with a proposed regulation that principally fell outside the portfolio of regulations with regard to which I, as Associate Administrator, advised the OIRA Administrator, it is unsurprising that I would not have learned of the concern on such a regulation. If I had been aware of the concern with respect to the proposed regulation, I would have advised the OIRA Administrator of it.

Citizenship Question on the 2020 Census

On May 23rd, 2018 I led a bicameral letter with 34 of my colleagues to Secretary Ross and Former Administrator Rao regarding the Administration's plans to comply with the Paperwork Reduction Act with respect to the addition of a question on citizenship to the 2020 Census. To date, no response has been provided.

1. Please provide a response to the May 23rd, 2018 letter.

Answer: As noted in the question and in the letter itself, the letter's questions are "about how the Trump Administration plans to comply with the Paperwork Reduction Act ... with respect to the addition of a question on citizenship to the 2020 Decennial Census." Ultimately, the Census Bureau requested that OMB approve a census questionnaire without a question about citizenship; thus, OMB never had to make a decision under the Paperwork Reduction Act with respect to the addition of such a question.

The Paperwork Reduction Act requires the Office of Management and Budget to review proposed information collections and ensure that agencies are minimizing burden on the public. It requires OMB to ensure that the information collection maximizes practical utility and public benefit and protects the integrity, objectivity, impartiality, utility, and confidentiality of collected statistical information.

1. Please specifically describe your role in reviewing the Commerce Department's request under the Paperwork Reduction Act to add a question on citizenship to the 2020 Census.

    a. Did you have to make, or contribute to, a decision as to whether to review the Commerce Department's request under the Paperwork Reduction Act while the matter was under consideration in the courts?

        i. If so, please describe how you arrived at the decision to consider or not consider the request to add the question to the 2020 Decennial while it was being debated in the courts.

Answer: No.

    b. The Census Bureau's Chief Scientist warned that adding a question on citizenship to the 2020 Census would decrease the quality of the count while also increasing its cost. Further, six former Census Directors wrote to Secretary Ross noting that "adding an untested question on citizenship status…would put the accuracy of the enumeration and success of the census in all communities at grave risk." And that the "effect of adding a citizenship question to the 2020 Census on data quality and census accuracy, therefore, is completely unknown."

        i. If confirmed, will you commit to ensure that OIRA will insist that any information collection request related to collecting information from the public by the Census Bureau is supported by an efficient statistical survey methodology appropriate to the purpose for which the information is to be collected?

Answer: Yes.

Making Politically Difficult Decisions

Nearly two years before submitting his resignation, General Mattis said during his confirmation hearing that he would resign as a matter of principle if the President ignored his best advice as Secretary and still directed him to do something that he believed was wrong. When the General resigned in December 2018, he included the following statement in his powerful resignation letter to the President: "Because you have the right to have a Secretary of Defense whose views

are better aligned with yours on these and other subjects, I believe it is right for me to step down from my position."

Although the OIRA Administrator is not a Cabinet-level position, the individual who occupies this role has the important responsibility of ensuring that agencies support their rulemaking and information collection requests with rigorous and evidence-based cost-benefit analysis and sound statistical survey methodology.

1. In your opinion, what constitutes a "politically difficult" decision?

Answer: One type of politically difficult decision could be a decision that will be unpopular with influential individuals in public life.

2. Building from your response to the previous question, how would describe your general approach when faced with having to make a difficult decision—political or otherwise—that will inevitably cause discord regardless of the manner in which you decide?

Answer: When faced with a difficult decision, political or otherwise, I determine the right thing to do, and then the best means to achieve it. (The means must themselves also be right; ends do not justify means.) In making these determinations, I often seek counsel from individuals I respect and pray for clarity and probity of judgment. I then pursue the means I have identified to achieve the end. Often, I will try to explain to those who disagree with my decision the basis for that decision, even if I know they will continue to disagree, because I believe that such conversations are important for promoting civic harmony.

3. During your tenure at OIRA, have you had to make politically difficult decisions? If so, please share a specific decision as an example.

Answer: Yes. For instance, despite knowing that the regulation was strongly favored by some in public life, I advised against issuing a rule entitled "Fraud and Abuse; Removal of Safe Harbor Protection for Rebates Involving Prescription Pharmaceuticals and Creation of New Safe Harbor Protection for Certain Point-of-Sale Reductions in Price on Prescription Pharmaceuticals and Certain Pharmacy Benefit Manager Service Fees," RIN 0936-AA08. The President ultimately decided not to proceed with this regulation. Please see the White House press release on this transaction.

4. During your tenure at OIRA, has the President ever clearly indicated, directly to you or indirectly, that he wants you to take an action that you believe is wrong or against the best interest of the country? If so, please describe how you resolved the situation. If not, what would you do in a scenario where the President asks you to do something that you believe is wrong or against the best interest of the country?

Answer: He has not, and I am confident that he will not. I would never do something that I believe is wrong or against the best interest of the country.

Health Care Plans

1. In August 2018, the Departments of Health and Human Services, Labor, and Treasury issued a final rule that extended the duration of short-term plans from three months to 12 months and allowed insurers to renew short-term plans for up to 36 months.

    a. Before approving the rule, did OIRA ask the three departments for an estimate of this rule's effect on the individual and small group insurance markets, health insurance premiums and out-of-pocket costs for consumers, and federal government expenditures?

    b. Did OIRA ask for the average and median medical loss ratios of short term plans to ensure these plans are fair to consumers?

    c. Did OIRA ask for and receive an analysis of how short-term plans would affect the availability and cost of health insurance for Americans with preexisting conditions?

Answer: I was not Acting Administrator in August 2018. I do not know if OIRA asked the agencies for this information.

2. In October 2018, the HHS and Treasury Departments released new guidance on Affordable Care Act Sec. 1332 waivers that supports state efforts to increase the availability of association health plans and short-term plans.

    a. Since these types of health plans do not cover essential health benefits or protect patients with preexisting conditions, and therefore do not meet current law requirements, what was OIRA's legal and regulatory justification for approving this guidance?

Answer: While I was not Acting Administrator in October 2018, in the ordinary course OIRA's legal and regulatory justification for concluding review of a regulatory action would be the justification reflected in the text of the regulatory action itself on which OIRA concludes review.

3. In January 2018, the Centers for Medicare and Medicaid Services (CMS) released a new policy encouraging states to establish work requirements for Medicaid enrollees. This policy has led many states to create complex and expensive systems to track work participation rates for their Medicaid enrollees, many of whom already have a job or take care of family members full time. In states that have implemented these work requirements, thousands of low-income Americans have lost their Medicaid coverage.

a. Did OIRA receive a cost-benefit analysis from CMS before approving this new work requirement policy? If such an analysis was provided to OIRA, please answer the following questions:

   i. How much will CMS spend to implement this work requirement policy over the next 5 years?

   ii. How much will states spend to set up and manage the work requirements system over the next 5 years?

   iii. How many Americans are expected to meet the new work requirements?

   iv. How many Americans will gain access to Medicaid and affordable health care through this new policy?

   v. What is the effect of this policy on rates of medical debt and personal bankruptcy attributed to medical debt?

Answer: While I was not employed by the Office of Management and Budget in January 2018, I am informed that this policy was submitted to OIRA without a cost-benefit analysis.

Migratory Bird Treaty Act

In December 2017, the Department of the Interior (DOI) issued a Solicitor's Opinion, or M-Opinion, on the Migratory Bird Treaty Act (MBTA), which for the first time provided an interpretation of the MBTA that it does not prohibit the incidental take of birds. The M-Opinion reversed the position of every previous Republican and Democratic administration since at least the Nixon administration, and ended the enforcement of longstanding bird protections. This Opinion was opposed by numerous key stakeholders, including the Central Flyway Council, Mississippi Flyway Council, and Atlantic Flyway Council. These Flyway Councils wrote to DOI asking to suspend the M-Opinion, as did 17 former senior DOI officials representing every Republican and Democratic administration since the early 1970s. In addition, numerous states and hundreds of nongovernmental organizations have opposed the M-Opinion.

As you know, DOI is in the process of promulgating a new rule as a follow up to its 2017 M-opinion. The MBTA has international treaty obligations and implications, as it implements treaties with Canada, Mexico, Japan, and Russia. As such, have other agencies raised concerns or commented during this rulemaking process and/or in recent trade negotiation discussions,

such as those involving the U.S.-Mexico-Canada Agreement? If so, what are the nature of those comments and how are they being considered?

Answer: This rulemaking is under review at OIRA. EO 12866 directs any publication of exchanged documents to occur after publication of the regulatory action at issue or after the agency announces a decision not to publish the regulatory action. Accordingly, consistent with OMB's longstanding interpretation across Administrations, OIRA makes such documents available only after one of these circumstances has occurred. Neither has occurred to date.

EPA OIG Investigation into Proposed Repeal of Glider Rule

In your pre-hearing questionnaire, the Committee inquired about information related to the Environmental Protection Agency (EPA) Office of Inspector General (OIG) audit of the proposed rulemaking, "Repeal of Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits." We requested:

" 118. On April 25, 2019, the EPA Inspector General sent a letter to 0MB Director Mick Mulvaney stating that OMB had not been responsive to four specific questions it asked related to a request for an EPA IG investigation made by Senators Carper and Udall. Please provide the Committee with a complete response, including any requested documents, to each question that the EPA IG asked OMB on April 25, 2019. [*sic.* The four questions at issue were originally communicated to OMB Assistant General Counsel on March 7, 2019]."

In response, you stated:

"Answer: OMB provided sufficient information to EPA's IG to complete its review. OMB does not provide deliberative information in response to such requests and explained those limitations."

On December 5, 2019, EPA OIG released its audit report on the proposed repeal of the Glider Rule, which documents the falsity of your response to the Committee's Question. In its report OIG states, "The OMB refused to provide the OIG with specific responses or documentation related to OIF questions regarding OIRA's involvement in this rulemaking and the decision made...", and that this refusal "constitutes a clear impediment to our audit."

In subsequent communications with Senate staff, OIG reaffirmed its conclusion that OMB has not to date provided OIG with responsive answers or documentation to its letter of March 7, 2019, and that this refusal to provide materials impeded its ability to conduct its audit.

By refusing to provide information to OIG, OMB violated the Inspector General Act of 1978, as amended. The Acts states, ""the head of any Federal agency involved shall, insofar as is practicable and not in contravention of any existing statutory restriction or regulation of the Federal agency from which the information is requested, furnish to such Inspector General . . . such information or assistance." Significantly, Section 12(5) of the IG Act defines "Federal

agency" by reference to 5 U.S.C. § 552(f), which states that "'agency' as defined in section 551(1) includes the Executive Office of the President."

In its communications with Senate staff, OIG concurred with the assessment that neither the Inspector General Act, nor any other federal statute, nor any common law legal principle recognized by U.S. Courts that provides federal agencies, including OMB, with a legal basis to withhold information requested as part of an Office of Inspector General audit or investigation on the grounds that disclosing such information would impair the agency's deliberative process.

Similarly, there is no deliberative process privilege in U.S. law that provides a legal basis for withholding information from Congress.

Further, Executive Order 12866 provides that the federal agency promulgating the action and OMB make available to the public the documents exchanged between them during the review. Any substantive changes between the draft submitted to OMB and the published rule must be identified, as well as changes made at the suggestion or recommendation of OMB.

By refusing comply with OIG's request for information, which was submitted to OMB on March 7, 2019 while you were Acting Administrator, and by refusing to provide answers the Committee's question as the nominee to be OIRA Administrator, and by failing to furnish information required under 12866, you and the Office of Management and Budget are failing to fulfill multiple affirmative duties assigned to you.

To correct this violation, please provide the Committee with a complete response, including any requested documents, to each question that the EPA IG asked OMB on March 7, 2019.

Answer: OMB did not violate the Inspector General Act of 1978. OMB cooperated with this request. OMB responded to the EPA IG on February 28, 2019, with sufficient information to complete the inquiry. Upon receiving a set of follow-up questions, OMB responded on April 24, 2019, again with sufficient information to complete the inquiry. Much of the information was already available in EPA's regulatory docket on the rule and in public answers to your previous questions for the record to former Administrator Rao from the Subcommittee on Regulatory Affairs and Federal Management hearing of April 12, 2018.

Furthermore, I was not the Acting Administrator or Associate Administrator at the time of the review of the glider kits rule. The first round of answers to the EPA IG was provided before I became Acting Administrator. All responses were coordinated by the OMB Office of General Counsel which manages all engagements with agency inspectors general. Indeed, in light of these responses, OMB's prior responses to the Subcommittee, and EPA's docketing of communications pursuant to the Clean Air Act, this review process was highly transparent. The EPA IG report released on December 5, 2019 contains a detailed timeline in Table 4 (page 12) describing OIRA's communication with the agency and EPA decisions. OMB did not impede the IG investigation and provided sufficient information for the completion of the inquiry as evidenced by the report.

Senator Kamala Harris
Post-Hearing Questions for the Record
Submitted to Paul J. Ray

Nomination of Paul J. Ray to be Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget
Wednesday, December 4, 2019

USCIS Proposed Rule

On November 14, 2019, the Department of Homeland Security (DHS) published a notice of proposed rulemaking seeking to revise the U.S. Citizenship and Immigration Services (USCIS) fee schedule. Among other things, this rule proposes to establish a new fee for asylum applicants, increase the fee for renewing status under the Deferred Action for Childhood Arrivals (DACA) program, and increase the fees associated with naturalization. It also eliminates the ability to seek fee waivers for many immigration benefits and proposes the transfer of $207.6 million in USCIS funds to Immigration and Customs Enforcement (ICE).

The proposed fee increases would have a significant, adverse impact on individuals seeking immigration benefits, wide-ranging policy implications, and unanticipated consequences.

Executive Order 12866, which governs the regulatory planning and review process, states that agencies should allow "not less than 60 days" for public comment in most cases to "afford the public a meaningful opportunity to comment on any proposed regulation." Accordingly, on May 4, 2016, USCIS published a notice of proposed rulemaking inviting public comment for 60 days on the proposed USCIS Fee Schedule.

In stark contrast to the general standard, USCIS is only accepting public comments on the current proposed rulemaking for 30 days.

1. **Why was the public comment period set for 30 days instead of at least 60 days?**

Answer: This rule was reviewed almost entirely after I had resigned as Acting Administrator. I do not know why the comment period was set for 30 days rather than 60 days.

In your prepared opening statement, you stated that you support "making the regulatory process more democratic" and "vindicating Congress's right to review regulations," among other objectives. On November 13, 2019, I joined my colleagues in sending a letter to you and Acting Director Cuccinelli requesting a standard 60-day review period for this proposed rule in order to allow for adequate time for public review and comment.

2. **Did you receive any other requests, from members of Congress or the public, requesting a longer comment period? Please provide a list of any such requests and the length of time requested.**

Answer: Yes, OMB received one additional request, from the Catholic Legal Immigration Network, Inc., on behalf of 150+ signatories, requesting 60 days.

3. **Will you commit to extending the comment period for this proposed rule from 30 days to at least 60 days?**

Answer: If confirmed, I would first learn why the proposed rule included a comment period of 30 days, rather than 60 days. If, upon studying the issue, I were to conclude that a comment period of 60 days is warranted, I would encourage the agency to use a comment period of 60 days. I note that the agency has already extended the period of review to 45 days.

4. **Moving forward, will you commit to complying with the general standard of a 60-day comment period in future rulemakings?**

Answer: While many rulemakings do indeed allow comment for 60 days, the law does not require it. If confirmed, I commit to encouraging agencies to use a 60-day comment period unless substantial basis (such as, e.g., an impending public health emergency) warrants a shorter period.

Executive Order 13771

On January 30, 2017, President Trump signed Executive Order 13771 titled "Reducing Regulation and Controlling Regulatory Costs." The order states that "[d]uring the Presidential budget process, the Director [of OMB] shall identify to agencies a total amount of incremental costs that will be allowed for each agency in issuing new regulations and repealing regulations for the next fiscal year." This practice is commonly referred to as "regulatory budgeting."

The order also requires that "for every one new regulation issued, at least two prior regulations be identified for elimination." This is commonly referred to as the "2-for-1" requirement. Under this requirement, "any new incremental costs associated with new regulations shall . . . be offset by the elimination of existing costs associated with at least two prior regulations."

The order cites two statutes as sources of authority. First, it cites 31 U.S.C. § 1105, which specifies the elements of the President's budget that must be submitted to Congress. Second, it cites 3 U.S.C. § 301, which allows the President to delegate "(1) any function which is vested in the President by law, or (2) any function which such officer is required or authorized by law to perform only with or subject to the approval, ratification, or other action of the President."

5. **Do you believe that 3 U.S.C. § 301 permits the President to delegate authorities that are authorized by some other law (in this case, as stated in the order, 31 U.S.C. § 1105)?**

Answer: The Office of Legal Counsel, within the Department of Justice, provides legal review to Executive Orders of the President; while I was not an appointee of this Administration at the time EO 13771 was issued, I believe that regular procedures would have been followed, and that the Office would have formed views of the cited statutory provision. I am not privy to the Office's understanding of the cited statutory provision. Nor have I had an opportunity to form views on the meaning of that provision myself. If confirmed, and if called upon to do so, I would study the provision and consult with appropriate counsel to determine its meaning.

6. **Which text within 31 U.S.C. § 1105 authorizes conditioning agencies' ability to promulgate regulations on the agencies' adherence to specified limits on their annual net incremental regulatory cost impacts?**

Answer: Please see answer to question 5.

a. **Are you aware of any regulatory agency that operates under a statute that conditions the agency's regulatory authority on the agency's adherence to specified limits on its annual net incremental regulatory cost impacts?**

Answer: I have not reviewed such a statute.

b. **How does the Director of the Office of Management and Budget (OMB) determine the appropriate incremental cost an agency will be permitted to impose in a given fiscal year? Please provide any written guidance or documentation relating to this analysis.**

Answer: Each year, the Office of Management and Budget requests each agency to submit its projected costs or cost savings for the forthcoming year. (The most recent example of such a request may be found here: https://www.whitehouse.gov/wp-content/uploads/2019/06/2019-Fall-Agenda.pdf) OMB staff, working with OMB leadership, analyze those submissions in light of the rules each agency intends to complete within the forthcoming year. The final projected costs or cost savings for each agency are based on that analysis.

c. **Are you aware of any instance in which an agency was advised that it cannot move forward with a particular regulation due to its regulatory budget? Please provide examples in your response.**

Answer: No.

d. **Are you aware of any instance in which an agency was permitted to move forward with a regulation despite the imposition of associated costs in excess of its regulatory budget? Please provide examples in your response.**

Answer: Yes. There are numerous cases in which agencies moved forward with regulations despite those regulations imposing costs in excess of the relevant agency's regulatory budget. In FY2017 the Department of Energy exceeded its regulatory budget, and in FY2019 the Treasury Department, the Department of Veterans Affairs, and the Environmental Protection Agency all issued regulations that caused them to exceed their budgets.

7. **Which text within 31 U.S.C. § 1105 authorizes conditioning agencies' ability to promulgate regulations on their elimination of other regulations?**

Answer: Please see answer to question 5.

a. **Are you aware of any regulatory agency that operates under a statute that conditions the agency's regulatory authority on the elimination of prior regulations?**

Answer: I have not reviewed such a statute.

b. **When two rules are "identified for elimination" in order to enact a proposed regulation under the order, do the two identified rules have to be eliminated before the proposed regulation can be enacted, or does the process by which they will be eliminated simply need to have been commenced?**

Answer: The Executive Order does not address the timing, within a particular fiscal year, of offsetting regulations.

c. **Must the new regulation being proposed and the prior regulations proposed for elimination be associated with the same agency?**

Answer: Please see M-19-14, *Guidance Implementing Executive Order 13771, Titled "Reducing Regulation and Controlling Regulatory Costs,"* Question and Answer 31 and 37.

d. **Must the new regulation being proposed and the prior regulations proposed for elimination relate to the same issue area or subject matter?**

Answer: The Executive Order does not address the subject matter of offsetting regulations.

e. **Can you provide a specific example where any agency was permitted to promulgate a regulation specifically because it had successfully eliminated two other regulations with an equal or greater aggregate cost?**

Answer: No.

f. **Can you provide a specific example of an instance where an agency was not permitted to promulgate a regulation because it had not proposed two regulations for elimination?**

Answer: No.

8. **Has the Department of Justice ever assessed the legality of Executive Order 13771, including "regulatory budgeting" and the "2-for-1" requirement? If so, please provide a copy of that analysis with your response.**

Answer: The Office of Legal Counsel, within the Department of Justice, provides legal review to Executive Orders of the President; while I was not an appointee of this Administration at the time EO 13771 was issued, I believe that regular procedures would have been followed. I am not privy to the Office's assessment of the Order's legality, however, and do not have a copy of any analysis by it.

Regulatory Cost/Benefit Analyses

Executive Order 12866 requires that the Office of Information and Regulatory Affairs (OIRA) conduct a benefit-cost analysis for any "significant regulatory action." "Significant regulatory action" is defined as including regulations that have "an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities." Regulations that "[c]reate a serious inconsistency or otherwise interfere with an action taken or planned by another agency" are also defined as significant.

9. **How has OIRA ensured compliance with Executive Order 12866's requirement to consider the benefits in addition to the costs of a proposed regulation during its implementation of 13771? Please provide any relevant documents or guidance.**

Answer: In its memorandum implementing EO 13771, OIRA made clear that "EO 12866 remains the primary governing EO regarding regulatory planning and review. Accordingly, among other requirements, except where prohibited by law, agencies must continue to assess and consider both the benefits and costs of regulatory actions, including deregulatory actions, when making regulatory decisions, and issue regulations only upon a reasoned determination that benefits justify costs." M-17-21, p. 2. As Acting Administrator, I directed staff to comply with EO 12866's directive to consider the benefits in addition to the costs of a proposed regulation; if confirmed, I would continue that policy.

10. **If an agency proposes a regulation with a highly favorable benefit-cost ratio, but the incremental cost exceeds its "regulatory budget," what happens?**

Answer: This question is related to issues subject to pending litigation or otherwise relevant to pending litigation.

11. **If an agency proposes two regulations for elimination that provide public and environmental health benefits, how are the potential lost benefits determined and restored under Executive Order 13771?**

Answer: The framework under which those foregone benefits would be assessed would be EO 12866, which requires a comparison of costs and benefits and a determination that benefits justify costs. The foregone benefits to which the question refers would be considered a cost or disbenefit under EO 12866.

12. How is the social cost of carbon accounted for in the benefit-cost analysis under Executive Order 12866 when regulations are eliminated under Executive Order 13771?

Answer: Under EO 12866, regulatory analysis should evaluate all of the likely effects, including benefits, costs and other impacts, reasonably anticipated, regardless of whether rules are regulatory or deregulatory in nature. Any impacts associated with change in emissions of carbon dioxide are monetized using a domestic social cost of carbon estimate, as directed in Executive Order 13783, *Promoting Energy Independence and Economic Growth.* As an example of this approach, see the Department of Energy's rulemaking titled *Amendments to Streamline the Test Procedure Interim Waiver Process.*

Clean Car Standards

As indicated in a published draft,[1] during the OIRA review of the Safer Affordable Fuel-Efficient Vehicles Rule, references to climate change were deleted from the Environmental Protection Agency (EPA) draft final rule that includes revoking the California waiver under the Clean Air Act.

13. When was the draft in question written and what was your role at OIRA at that time?

Answer: I do not know when the agency wrote the draft at issue; I was Acting Administrator when the Safer Affordable Fuel-Efficient Vehicles final draft rule was submitted for review.

14. Did you have any knowledge of efforts to remove references to climate change from the draft?

Answer: No.

On page 147 of the draft rule, the EPA qualified that "global climate change is a serious challenge," and cited the 2018 Fourth National Climate Assessment,[2] a federal government report. The statement and citation were among the climate change references deleted during OIRA review.

15. Were you aware of this edit?

Answer: No.

16. Why was this text deleted?

Answer: I do not know.

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[1] https://www.eenews.net/assets/2019/10/03/document_gw_06.pdf
[2] https://nca2018.globalchange.gov/

17. Do you accept the findings of the Fourth National Climate Assessment?

Answer: I have not had occasion to study those findings and the basis for them.

18. Is climate change a serious challenge?

Answer: There is scientific consensus that climate change poses a serious challenge.

19. Does the serious challenge of climate change merit acknowledgement in a rule involving greenhouse gas emissions given the recent federal government report indicating that climate change is a serious challenge?

Answer: I was unaware of this edit when it was made and do not know the reason for it; I would not have directed to have the passage in question deleted.

In July 2019, Ford, Honda, Volkswagen, and BMW publically joined California in supporting higher standards than those in the draft Safer Affordable Fuel-Efficient Vehicles Rule. As the rule was still in review at OIRA, the administration reportedly pressured other automakers to support the administration's draft rule. In October 2019, General Motors and Toyota, came out in public support of the administration's draft rule.

20. Have you or anyone at OIRA met with automakers since July 2019?

Answer: I have not met with automakers in that time period. To the best of my knowledge, the following meeting represents the only meeting of OIRA staff with automakers since July 2019: an EO 12866 meeting on October 21, 2019, with the Alliance of Automobile Manufacturers regarding the draft final rule entitled "Light-duty Vehicle GHG Program Technical Amendments," RIN 2060-AT75.

21. Have you or anyone at OIRA engaged in efforts to get automakers to support the administration's Safer Affordable Fuel-Efficient Vehicles Rule?

Answer: I have not engaged in efforts to get automakers to support the administration's Safer Affordable Fuel-Efficient Vehicles Rule. I am unaware of anyone at OIRA having done so.

22. If so, what did these efforts entail?

Answer: Please see answer to question 21.

Senator Kyrsten Sinema
Post-Hearing Questions for the Record
Submitted to Paul J. Ray

Nomination of Paul J. Ray to be Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget
Wednesday, December 4, 2019

1. In your nomination hearing. I asked you about the Regulatory Right-to-Know Act. This legislation requires an annual report be submitted to Congress on the costs and benefits of regulation during the previous year. Your response, in part, follows:

   "The tardy status of the reports goes back several years, at least to the previous administration perhaps the administration before that, I am not really certain. It's unfortunately become a feature. In my time at OMB, I have worked to catch OMB up on those reports."

   According to the White House's own website, the Obama Administration released the 2008 Report in January, 2009; the 2009 Report on January 27, 2010; the 2010 Report in July, 2010; the 2011 Report in June, 2011; the 2012 Report in April 2013; the 2013 Report in May 2014; the 2014 Report on June 15, 2015; the 2015 Report on March 10, 2016; and the Draft 2016 Report on December 23, 2016. Since President Trump took office, only the 2017 Draft Report has been published, which occurred on February 23, 2018.

   The Administration has failed to submit the 2016 Final Report, the 2017 Final Report, the 2018 Draft and Final Report and the 2019 Draft Report. Most of these failures happened while you were Associate or Acting Administrator.

   a. What impeded OIRA's ability to submit these reports?
   b. Did you receive push back from agencies in collecting the information necessary to submit these reports?
   c. Did you receive push back regarding the publication of any of the reports, which may have been drafted, due to the contents of those reports?
   d. What specific steps will you take, if confirmed, to ensure we begin to see the Administration comply with the requirements of the Regulatory Right-To-Know Act?
   e. If confirmed, will you commit to meeting with me within 60 calendar days and present your plan to ensure future compliance with the Regulatory Right-To-Know Act?

Answer: Reports under the Regulatory Right-to-Know Act are due "on the first Monday in February of each year." Section 4(a). Since becoming Acting Administrator in March 2019 and then Senior Advisor in October 2019, I have made it my goal to remedy the pre-existing tardiness of the cost-benefit reports. Under my prompting, OMB has prepared the tardy final and draft reports and is on track to release them before Christmas; in fact, yesterday, OMB published the 2017 Final Report. Also as part of that effort, I have prepared a draft work plan to ensure that future cost-benefit reports are timely. That work plan is now in internal OMB circulation; I would be happy to meet with you, if confirmed, within 60 calendar days to present the final work plan.

During the time I have been Acting Administrator and then Senior Advisor, OMB's ability to prepare the cost-benefit reports was impeded, not by push back from agencies in collecting the information necessary to submit the reports or regarding the publication of any of the reports due to the contents of those reports, but by resource constraints and lack of an internal work plan to ensure timely preparation and internal clearance, which, to the best of my knowledge, has never existed at OMB. I have successfully worked with Acting Director Vought to increase OIRA staff positions and, as noted above, I am preparing a new work plan which, when finalized, will ensure timely preparation, clearance, and publication for years to come.

2. Paperwork Reduction Act of 1995 requires the Office of Management and Budget to report to Congress on the paperwork burden imposed on the public and the Federal Government's efforts to reduce such burden, the "Information Collection Budget". While Executive Order 13771 focuses on efforts to reduce the burden of paperwork hours and regulatory costs, it does not include reporting requirements on total burden hours. Staff has been able to identify all reports from 1999 to 2016. No "Information Collection Budget" has been published, with the others, since that time. However, on July 21, 2017 and August 6, 2018, former Administrator Rao published memos titled "Memorandum for Chief Information Officers". Both of these memos were data calls for the "Information Collection Budget".
    a. Why did OMB not publish these reports, as required by law?
    b. Are there efforts under way to publish these past-due reports?
    c. On what specific dates, can we expect these reports?
    d. Is there a failure of leadership within this Administration that prohibits the successful completion of the most basic tasks assigned to OMB and OIRA? If so, how will you overcome this institutional malaise?
    e. For some time there have been conversations regarding the political placement of OIRA. Seeing as the current Administration has not been able to comply with reporting requirements, ones passed by the Congress and signed into law by previous presidents, should OIRA be moved out of the Executive Office of the President, so that it can better fulfill its most basic directives?

Answer: During my time as Acting Administrator and Senior Advisor, OMB's ability to issue the annual Information Collection Budget in a timely fashion has been affected, not by leadership or by OIRA's placement within OMB, but by resource constraints and lack of a work plan to ensure timely preparation, internal clearance, and publication. As noted above, I have successfully worked with Acting Director Vought to increase OIRA staff positions, and in the next weeks, I intend to prepare and submit to the OMB Director a work plan to ensure that the Information Collection Budget is issued in a timely fashion each year.

While Acting Administrator and now Senior Advisor, I have worked with others at OMB to prepare the tardy Information Collection Budgets for publication. I expect that the 2017 Information Collection Budget will publish as early as January, with the 2018 Information Collection Budget following soon thereafter. I expect the data call for the 2019 and 2020 Information Collection Budgets to issue shortly as well, likely in January.

3. Independent regulatory agencies are unique institutions, born of individual statutory origins. These agencies were created to address specific problems identified by the Congress, and have been mandated to address these concerns in specific manners. However, during the creation of each new agency, Congress determined that it was necessary to insulate these agencies from excessive partisan influence from the Executive.

   During your nomination hearing, you responded to a question related to an absence of review of cost-benefit analysis of the independent regulatory agency rulemakings. Your response included the following statement: "I certainly believe that every agency could use some additional eyes… to ensure cost benefit analysis of the highest possible caliber… one useful way to achieve that result would be the OIRA review process." Additionally, you noted that any effort to create a policy of OIRA review of the cost-benefit analysis of Independent Regulatory Agency rulemaking would be the President's decision, not your own. However, if you are confirmed, you will be the leading official on issues of regulatory procedure and practice, and your input and work would be needed in crafting, implementing, and enforcing any order related to this subject.

   a. Many Independent Regulatory Agencies have specific rulemaking authorities and procedures contained in their authorizing statutes. Do you believe that a one-size-fits-all regulatory review policy would give adequate direction to agencies while respecting the differing requirements dictated by the Congress?

Answer: OIRA does not review independent agency regulations under EO 12866, and no decision has been made to subject independent agency rulemakings to OIRA review. As a

matter of regulatory policy, I do not believe that a one-size-fits-all regulatory review policy is appropriate for the wide array of independent agencies, but I also would note that OIRA review is not a one-size-fits-all approach. Rather, OIRA review operates within the statutory framework of each agency, taking as a given the objectives that Congress has set for each agency and ensuring that agency rulemakings effectively and lawfully achieve those objectives. Non-independent agencies also operate under a variety of statutory mandates, procedures, structures, and grants of authority, and OIRA review respects this statutory diversity.

b. Executive Order 12866 does not impact Independent Regulatory Agencies. In order to streamline an OIRA review process across these agencies, would any theoretical executive order on this topic require their compliance with the directives of Executive Order 12866, and could the Executive enforce such a mandate?

Answer: Whether any Executive Order establishing regulatory review of independent agencies would follow the framework laid out in EO 12866, or establish a new framework, would be a decision for the President. If called upon to do so, I would evaluate this question if confirmed, keeping in mind that EO 12866's review process has well withstood the test of time. Any Executive Order on this subject would, under standard practice, be reviewed thoroughly by the Department of Justice and other legal offices prior to issuance.

c. Independent Regulatory Agencies are already required to submit certain documents for OIRA review. If confirmed, what steps will you take to ensure that all OIRA interactions with Independent Regulatory Agencies does not interfere with the intent of the Congress to insulate these agencies from improper political pressure?

Answer: The touchstone of agency independence is typically for-cause removal protections for the agency head or heads. OIRA has never had anything to do with Executive personnel decisions at other agencies; if confirmed, I would continue that policy. I would also continue to ensure that OIRA's interactions with independent agencies, to the extent required by statutes such as the Paperwork Reduction Act or by Executive Orders, respect the policymaking authority of the agency heads. The role of OIRA, even with respect to agencies presently subject to OIRA review, is not to displace agency head authority, but to ensure a review process resulting in rules that transparently and accurately account for costs and benefits and that include full and adequate legal rationales.

4. 5 U.S.C. 801(b)(1) provides that "[a] rule shall not take effect (or continue) if the Congress enacts a joint resolution of disapproval, described under section 802, of the rule. §801(b)(2) directs that "[a] rule that does not take effect (or does not continue)

under paragraph (1) may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule." However, the Congress did not define what constitutes "substantially the same".

In your opening statement, you discussed the need for OIRA to ensure regulations are legally sound. As part of this commitment, it seems that agency compliance with §801(b)(2) of the Congressional Review Act would strike at the core of the soundness of a proposed regulation.

a. If confirmed, and in the event that an agency submits a "reissued or new rule" that has not been "specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule", how will you direct OIRA personnel to interpret 5 U.S.C 801(b)(2) as part of the review of the proposed rule?

Answer: OMB has already had occasion to review this question in the context of a rule subject to a CRA resolution of disapproval. The Department of Labor published a rule on October 4, 2019, on Federal-State Unemployment Compensation Program drug testing requirements. DOL and OMB worked with OMB's Office of General Counsel and the Department of Justice to ensure that the rule interpreted that phrase in such a manner as to be faithful to the statutory text Congress enacted. The October rule interpreted the "substantially the same" bar to permit rules that have "substantially different scope and [a] fundamentally different approach" to the rule subject to previous adverse action under the Congressional Review Act. 84 Fed. Reg. 53037.

5. The Congressional Review Act utilizes the definition of a rule found in 5 U.S.C. 551(4), with some notable exceptions. General statements of policy and interpretative rules – colloquially referred to as guidance – are not included. Considering the newly cemented role of OIRA in Executive Order 13891, how will you direct agency personnel to treat a "reissued or new" guidance documents in the context of the "substantially the same" prohibition?

Answer: As OMB explained in its April 2019 memo on the Congressional Review Act, the term "rule" as used in the Act encompasses some forms of guidance documents, including general statements of policy and interpretative rules. That is consistent with conclusions by the Government Accountability Office. If confirmed, I would direct OIRA personnel to apply the bar in 5 U.S.C. 801(b)(2) to guidance documents covered by the Act in the same way as OIRA applies the bar to covered regulations.

6. If a guidance document has been removed through the process created by the Congressional Review Act, the regulation on which the guidance document is based remains effective.
    a. If an agency is required to pursue an enforcement action concerning the same regulatory directive on which the rescinded guidance document was based, is it your opinion that the agency could utilize an interpretation of the regulation, in the course of litigation, that is "substantially the same"?

Answer: That is an important but novel question on which I have not had occasion to form views. If confirmed, I would work closely with OMB's Office of General Counsel and with the Department of Justice to ensure that, if a guidance document is subject to an adverse congressional decision under the Congressional Review Act, agencies adopt appropriate and lawful enforcement practices in light of that decision. As on all matters, if confirmed, I would value the opportunity to work with Members of the Committee with regard to this question.

7. Guidance documents are an important sub-regulatory tool for agencies and regulated parties. They provide an opportunity to explain ambiguous and complex regulatory language while avoiding time consuming, and costly, rulemaking procedures. Often, these documents are presented as FAQ's and Best Practices. While they do not have the force and effect of law, they provide safe harbors – allowing businesses certainty in their dealings with the Federal government.
    a. As the implementation of Executive Order 13891 continues, how will you make sure that review of guidance documents does not hinder the ability of regulatory agencies to take part in these important communications?
    b. While only the most impactful guidance documents will go through the arduous procedures required by Executive Order 13891, all guidance documents will now be subjected to an impact determination by OIRA. How will you ensure that needed agency guidance documents will not languish while waiting for a determination from OIRA?
    c. Under Chapter 6 of Title 5, United States Code, each rule or group of related rules that require analysis compliance with 5 U.S.C. 604 is required to be accompanied by a small entity compliance guide. §601 directs agencies to "publish one or more guides to assist small entities in complying with the rule… The guides shall explain the actions a small entity is required to take to comply with a rule or group of rules."
        i. Do you consider small entity compliance guides to be guidance documents?
        ii. If yes, how will you ensure that these important aides for small businesses are not slowed down by the requirements of Executive Order 13891?

Answer: If confirmed, I commit to ensuring that guidance documents are not unduly delayed by the process laid out in EO 13891, especially in light of the important clarity they can provide to the regulated community. One measure I would take, if confirmed, would be to direct the prompt preparation of a memorandum of exemptions and categorical presumptions of non-significance under EO 13891 section 4(b); these exemptions and categorical presumptions would ensure that guidance for which there is no need for OIRA review does not distract resources from more important guidance, thus accelerating OIRA review of important guidance and also accelerating issuance of the guidance to which the exemptions and categorical presumptions apply.

Small entity compliance guides do seem to qualify as guidance under the definition of that term in EO 13891. Such guides seem unlikely, except in rare circumstances, to qualify as significant guidance, and thus, I would expect, would generally not be subject to OIRA review. Small entity compliance guides seem to present a strong case for a categorical presumption of non-significance under EO 13891 section 4(b); if confirmed, I would consider that question with OIRA staff and other relevant officials.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

MATTHEW LEE WIENER
Acting Chairman
Vice Chairman

December 3, 2019

The Honorable Ron Johnson
Chairman
Committee on Homeland Security
and Governmental Affairs
United States Senate
340 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Gary C. Peters
Ranking Member
Committee on Homeland Security
and Governmental Affairs
United States Senate
340 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Johnson and Ranking Member Peters:

I write in strong support of Paul J. Ray's nomination to be the next administrator of the Office of Information and Regulatory Affairs (OIRA). Although my support is informed by my work as the acting chair of the Administrative Conference of the United States, it necessarily reflects only my own views and not those of the Conference.

Few people are as well-suited as Mr. Ray to lead OIRA during the current Administration. Mr. Ray would bring to OIRA formidable expertise in administrative procedure, superior legal acumen, and strong commitment to the rule of law. These are indeed important traits for the administrator of OIRA, whose work is as much technical and legal as it is policy oriented and political. *See* Cass R. Sunstein, *The Office of Information and Regulatory Affairs: Myths and Realities*, 126 Harv. L. Rev. 1838 (2013).

Just as importantly, Mr. Ray has a well-earned reputation for even-handedness, integrity, civility, and respect for divergent viewpoints. These, too, are important traits in an OIRA administrator given OIRA's critical—and sometimes underappreciated—role in facilitating communications among agencies and bringing them to consensus.

I respectfully urge the Committee to report Mr. Ray's nomination favorably as soon as its schedule permits.

Sincerely yours,

Matthew Lee Wiener

Matthew Lee Wiener

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NATION

White House, CDC feuding over study of toxic chemicals in drinking water

Kyle Bagenstose USA TODAY Network

Published 9:54 p.m. ET Nov. 29, 2019 | **Updated 3:58 p.m. ET Nov. 30, 2019**

A multimillion-dollar federal study on toxic chemicals in drinking water across the country is facing delays because of a dispute within the Trump administration, according to several people involved in the study or who have knowledge of the process.

The dispute has implications for more than half a dozen communities where drinking water has been heavily contaminated with per- and polyfluoroalkyl substances (PFAS). Concerns about the chemicals have exploded nationally in recent years, following decades of PFAS use in products including non-stick cookware, water-resistant clothing, food packaging, carpets and military firefighting foams. Scientists say significant delays could limit the effectiveness of the study.

The unregulated chemicals are known to exist at some level in the drinking water of tens of millions of Americans, with one estimate placing the number as high as 110 million. The chemicals are also the subject of "Dark Waters," a film released in November starring Mark Ruffalo and Anne Hathaway.

Some prior studies on PFAS have linked the chemicals to health problems, including high cholesterol, reproductive issues and testicular and kidney cancer. Other studies have failed to replicate some of those results, and some PFAS are better researched than others, leaving the exact implications of exposure unknown.

Can you get cancer from tap water?: New study says even 'safe' drinking water poses risk

With public concern rising, congressional lawmakers in 2018 appropriated $10 million for a nationwide study to offer more definitive answers about health effects. The money was budgeted for the Department of Defense, which is also facing at least $2 billion in PFAS cleanup liabilities. The money then flowed to the U.S. Centers for Disease Control and Prevention.

This summer, the U.S. Agency for Toxic Substances and Disease Registry, an arm of the CDC, announced that it would use the funds to study highly exposed communities in California, Colorado, Massachusetts, Michigan, New Jersey, New York and Pennsylvania. The design of the study shops out the actual research to academic or government partners in each state and provides grant funding to conduct the work.

But the study is off to a slow start, with a dispute between the CDC and White House Office of Management and Budget playing a role, sources say.

The issue was first referenced publicly on Tuesday by Robert Laumbach, an environmental health researcher at Rutgers University, during a press conference held by U.S. Rep. Frank Pallone, D-N.J. Laumbach is the lead investigator for the New Jersey portion of the study, which will focus on PFAS-impacted communities in Gloucester County, near Philadelphia.

"Unfortunately, the study is being held up by the Office of Management and Budget, with no clear timeline for approval," Laumbach said.

In au interview with USA TODAY Network, Laumbach said he heard from federal partners that the CDC had asked the White House to review a draft design of the national study. Under the federal Paperwork Reduction Act, studies such as the CDC's must go to the Office of Management and Budget for a formal review and cannot be started until approved.

Laumbach said he was told that OMB "didn't pick up the review." Instead, the White House referenced an ongoing CDC pilot study on PFAS at the Pease International Tradeport in Portsmouth, New Hampshire. According to Laumbach, OMB said that the Pease study should be completed before the review of the national study could begin.

"They sort of sent it back and said, 'We thought you were going to wait for the Pease study,'" Laumbach said.

Health advisory: Contaminated jugs of water remain in New England supermarkets

Laumbach said he understands that the CDC is arguing that the Pease study, which started in October, can be done concurrently with a White House review of the larger national study.

"Whether or not the OMB sort of accepts that reasoning is an open question," Laumbach said.

Asked about the study, the CDC in an email offered no indication anything is amiss, adding the agency is "in the process of finalizing" the study design so it can be sent to OMB.

"This is a normal process that all federal agencies go through," the CDC wrote. "We expect to send the protocol to OMB for review in early 2020."

The CDC said state partners in the national study have already begun some level of work and are developing strategies to recruit participants, collect data and further involve the public.

An OMB spokesperson did not answer questions Tuesday or Wednesday, including direct inquiries about any conflict between the agencies.

Despite the CDC's assurances, other sources familiar with the review process said they are aware of friction.

Linda Birnbaum, who recently retired as director of the National Institute of Environmental Health Sciences, said she heard about delays from former federal colleagues.

"I've heard others speak about frustration, that it's being held up at OMB," Birnbaum said. "And I know the CDC and (Agency for Toxic Substances and Disease Registry) are pushing back on that."

Given the study's size – the CDC has said it aims to study 6,000 adults and 2,000 children across the seven states, by looking for unusual correlations between PFAS blood levels and medical issues – an OMB review is required.

But Birnbaum said the review process itself can cause delays even without formal disputes. It also creates a dynamic where only a few on-staff scientists at the White House are tasked with reviewing a study developed by numerous counterparts in other agencies. In this case, the draft study was also already peer-reviewed by a trio of independent scientists.

"I've always found it problematic," Birnbaum said of the White House review process. "Things in general always take a long time if you have to take it to OMB, because they don't have the staff."

Ticking away in the background is the fact that the most well-known PFAS chemicals decrease in human blood by half every three to five years. With many impacted communities having stopped or curbed drinking water exposure by 2017, would-be study participants may already have less than half of the blood levels they did when exposure was first discovered. But without research to better identify safe levels in the blood, scientists don't know what any decreases would mean.

Kyle Steenland, an Emory University professor who served as an epidemiologist in a landmark PFAS health study in West Virginia, says there are some scientific techniques that can "reconstruct" past exposures and blood levels. But he says it's still an exercise in estimation, and getting actual data more quickly can only help.

"It's an iffy product if you don't have good data," Steenland said. "I'd be a little concerned if it drags on and on."

Laumbach said his understanding is that an OMB review can take a year or more, a timeline that Birnbaum also said is possible.

The original funding of the PFAS health study was hailed as a bipartisan victory in Congress. Key senators this week offered continuing support. Sen. Pat Toomey, R-Pa., "has reached out to OMB regarding this matter," his office said.

Sens. Tom Carper, D-Del., and Bob Casey, D-Pa., said communities that face PFAS contamination deserve to know the results of the study as soon as possible.

"In this administration, OMB has consistently been the quicksand into which all rules designed to protect health and the environment sink," Carper said. "This executive branch agency moves with the utmost haste when it comes to deregulation, but when it comes to basic protections for public health, time and again, OMB creates a standstill."

Those familiar with the process say an OMB review already led to some delay for the Pease pilot study. Meeting minutes from the CDC show researchers originally hoped to start the project last summer but were unsure how quickly OMB would move.

An official in February offered a conservative estimate that blood draws would begin in August. But the project wasn't approved by OMB until that month, and the CDC didn't begin recruiting study participants until October.

"There definitely have been delays in the OMB process," said Mindi Messmer, a former New Hampshire state representative. "We're happy that it's getting started."

Tainted water: EPA plans to regulate cancer-causing chemicals found in America's drinking water

Other states are now waiting for the start of the larger federal study. Spokesman Nate Wardle said the Pennsylvania Department of Health is "awaiting additional guidance and information from the CDC" to get started but has begun other aspects of planning.

"Part of that planning requires knowing the study protocol," Wardle added.

It's typical for a review to take time, said Betsy Southerland, a former director of science in the EPA's Office of Water who worked on PFAS prior to leaving the agency in 2017, but she criticized the budget office for not prioritizing PFAS.

"It seems like these kinds of studies should get really expedited reviews because of the concerns these communities have," Southerland said.

Southerland also said the OMB process can serve as a "black box," where other federal agencies are able to exert influence away from the public eye. Emails obtained by the nonprofit Union of Concerned Scientists last year showed the White House previously communicated with the Department of Defense and EPA in an apparent effort to curb the findings of a prior CDC study on PFAS.

"The question would be, is it just hasically a bureaucratic delay," Southerland said. "Or is one of those agencies, such as DoD, feeling like these kinds of studies unmask ... issues that they don't want unmasked?"