

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
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Opening Statement
Ranking Member Elijah E. Cummings

H.R. 1009, the OIRA Insight, Reform, and Accountability Act

February 14, 2017

Mr. Chairman, I oppose this bill. I am willing to work with you on a bill to improve the rulemaking process particularly with regard to increasing transparency of OIRA's role in the process. This bill, unfortunately, makes significant changes to the rulemaking process and the approach to this bill was not collaborative or bipartisan.

I want to say this as clearly as I can, do not be fooled. This bill is NOT a codification of Executive Order 12866.

I ask unanimous consent to place in the record a letter sent to the Committee today by Robert Weissman, the President of Public Citizen. That letter urges the Committee to oppose this bill. It says, in part, and I quote, "The OIRA Insight, Reform, and Accountability Act is portrayed as a mere codification of previous Executive Orders, but in fact it further undermines the rulemaking process."

The bill we are considering would require independent agencies to submit rules to OIRA for review. Independent agencies do not currently have to get the approval of the White House for regulations they issue. Congress designed independent agencies to be just that – independent. This bill would change that.

Mr. Chairman, in February 2015, you sent four letters to the Chairman of the Federal Communications Commission alleging that the White House had, and I quote, "an improper influence" on the FCC's net neutrality plan and that the FCC, quote, "failed to establish the appearance that this rulemaking is independent, fair, and transparent."

The bill we are considering would enshrine in law the very allegation you were concerned about - political interference by the White House with the FCC and other independent agencies.

This bill omits critical phrases from Executive Order 12866 that ensure that OIRA reviews do not contradict existing laws. For example, the Executive Order requires agencies to provide the estimated costs and benefits of a rule, quote, "unless prohibited by law."

The bill we are considering requires agencies, before they issue a significant regulatory action, to submit to OIRA an assessment of potential costs and benefits of the action. The bill includes no exemption where such information is prohibited by law.

There are a number of laws that prohibit agencies from considering costs when setting public health standards. For example, the Clean Air Act prohibits the consideration of costs when setting national emissions standards for hazardous air pollutants.

Mr. Chairman, is it your intent to override these existing statutes?

The conflict with those existing statutes demonstrates that this bill has not been adequately vetted. This bill also would give OIRA the ability to endlessly hold up rulemakings.

Under E.O. 12866, the Administrator of OIRA has 45 days to review a rule and that period can be extended one time.

Under this bill, OIRA may extend its review, and I quote, “for any number of additional 30-day periods upon written request by the Administrator or the head of the agency.” The bill gives the rulemaking agency the ability to deny OIRA’s request but it is unrealistic to think that an agency would actually refuse the White House’s request to extend the review period.

This provision would allow the White House to engage in political interference and hold up an agency rulemaking indefinitely.

I oppose this bill and I urge every Member of this Committee to oppose it.

Contact: Jennifer Werner, Communications Director, (202) 226-5181.