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**TESTIMONY OF HOWARD SHELANSKI
ADMINISTRATOR FOR THE OFFICE OF INFORMATION AND REGULATORY AFFAIRS
OFFICE OF MANAGEMENT AND BUDGET
BEFORE THE HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON GOVERNMENT OPERATIONS
UNITED STATES HOUSE OF REPRESENTATIVES**

March 15, 2016

Chairman Meadows, Ranking Member Connolly, and members of the Subcommittee:

Thank you for the invitation to appear before you today. I am pleased to have this opportunity to discuss the role that the Office of Information and Regulatory Affairs (OIRA) plays in the transparency and accountability of the federal regulatory process.

As the Administrator of OIRA, it is my privilege to work with the dedicated OIRA staff, the first-rate leadership team at the Office of Management and Budget (OMB), and our excellent colleagues throughout the Government. We are all working to promote economic growth and job creation while protecting the health, safety, and welfare of Americans, now and into the future.

OIRA has a broad portfolio, but the largest area of OIRA's work is the review of regulations promulgated by Executive Branch departments and agencies. A set of Executive Orders (E.O.s)—most significantly E.O. 12866 and E.O. 13563—provides the principles and procedures for OIRA's regulatory reviews.

Regulatory process in the United States is premised to an unrivaled degree on two principles: transparency and accountability. One of my priorities as OIRA Administrator has been to increase the transparency of the regulatory process by improving notice and predictability for the

public. During my tenure we have timely published, each spring and fall, the Unified Agenda and Regulatory Plan that shows agency rulemaking activity for the year that follows.

In order to further promote transparency, OIRA maintains a rigorous process when it comes to the review of individual regulations. First and foremost, OIRA consistently upholds the established standards that draft rules and their accompanying analyses must meet under applicable executive orders, statutes, and published guidance. While OIRA takes the time necessary to ensure thorough inter-agency review of regulations, we are mindful that unnecessary delays in the publication of rules are potentially harmful across the board: harmful to stakeholders wishing to comment on proposed rules, to businesses and other entities that must make plans to comply with rules, and to parties denied the benefits of regulation.

Under the Administrative Procedure Act, agencies must generally provide the public with an opportunity to comment on proposed rules before the agency can finalize those rules. OIRA plays an important role in this process by ensuring that agencies' regulatory proposals contain sufficient detail, explanation, and underlying analysis for the public to provide meaningful comments in response. Such transparency is essential to the public's ability to influence the regulations with which they must eventually live.

Once an agency completes its review of the public comments on a proposed rule, the agency drafts a final rule for publication. OIRA again plays an important role by ensuring that the agency has addressed the public comments on the earlier proposal, that the final rule logically follows from the proposed rule and the public comments, and that the agency's final rule is well-grounded in the record evidence and meets applicable analytical requirements. Such accountability is essential to ensuring that agencies heed public comment and issue rules that are effective and efficient.

As the discussion above implies, when an agency submits a draft final or proposed rule to OIRA, the rule is not yet finished and may change during the review period. OIRA circulates the rule to other federal offices and agencies for comment and examines the rule for the quality of its underlying evidence and analysis. OIRA then transmits the comments from other federal

agencies as well as its own comments on the rule back to the rulemaking agency. A significant amount of back-and-forth discussion often ensues between OIRA staff and the agency staff as the agency responds to interagency comments. Once those discussions are complete and the agency makes any necessary changes to the rule, OIRA concludes review and the rule goes back to the agency for publication in the Federal Register. EO 12866 requires the agency upon request to make publicly available both the version of the rule the agency originally submitted to OIRA as well as the final, published version so that the public can see any changes that occurred during interagency review.

To further ensure accountability and transparency in the regulatory review process, when an agency submits a rule to OIRA the submission appears publicly the next day on OIRA's website, reginfo.gov. Stakeholders therefore have notice that OIRA is initiating review. This is important because pursuant to E.O. 12866, OIRA meets with any party interested in providing input on a regulation under review. The entities with which OIRA typically meets include State and local governments, businesses, trade associations, unions, and advocates from environmental, health, and safety organizations. As required in E.O. 12866, OIRA posts a log of all such meetings on its website. In April 2014, OIRA updated its website to make its database of E.O. 12866 meetings publicly searchable, and we recently expanded our disclosure policy to include not only meetings that have already taken place but also upcoming meetings. Over the past two years, OIRA has conducted nearly 900 such meetings at the request of various stakeholders.

Additionally, the Regulatory Right-to-Know Act, which calls for OMB to submit to Congress each year "an accounting statement and associated report," promotes further accountability. This report includes an estimate of the total annual benefits and costs of Federal rules and paperwork (1) in the aggregate; (2) by agency and agency program; and (3) by major rule. OIRA issued its final 2015 report on the costs and benefits of federal regulations earlier this month. The 2015 report shows that FY 2014 is one of the lowest cost years during the Obama Administration --the estimated annual costs were \$3.0 - \$4.4 billion and the estimated annual benefits are between \$9.8 -\$23 billion.

Finally, a hallmark of this Administration's commitment to transparency and accountability is our retrospective review effort. Retrospective review, which the President has advanced through E.O. 13563 and E.O. 13610, is a crucial way to ensure that our regulatory system remains modern, streamlined, and does not impose unnecessary burdens on the American public. The essential idea is to scrutinize existing rules and assess whether in practice they are achieving their objectives without imposing unnecessary costs. E.O. 13610 directs agencies to submit reports on the status of their retrospective review efforts to OIRA every six months. Agencies released their most recent reports on March 4 and will submit their next set to OIRA this summer. The agencies' regulatory lookback efforts to date are expected to yield estimated net five-year savings of \$28 billion.

To make the retrospective review process more open and accountable, OMB conducted numerous meetings with stakeholders—including State and local government officials, community groups, and representatives from numerous industries. Through these meetings, OMB has become better able to understand what approaches, themes, and specific areas of regulation should be part of agencies' retrospective review efforts. OMB has shared input from those meetings with agencies, which also engage in their own, ongoing stakeholder outreach on retrospective review.

In conclusion, the United States has perhaps the most transparent and accountable regulatory system in the world. OIRA's review of Executive Branch regulations plays an important role in that system. OIRA will therefore continue its efforts to remain accessible to the public during regulatory review, to work with agencies to provide the public with notice of planned regulatory activities, and to ensure that the government regulates as effectively and efficiently as possible to the net benefit of all Americans.

Thank you for your time and attention. I would be happy to answer any questions you may have.

Howard A. Shelanski

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Howard A. Shelanski was previously the Director of the Bureau of Economics at the Federal Trade Commission (FTC) and a professor at Georgetown University Law Center. From 2011 to 2012 he was Of Counsel to the law firm Davis, Polk & Wardwell. He was also the Deputy Director for Antitrust in the FTC's Bureau of Economics from 2009 to 2011. Mr. Shelanski was on the faculty at the University of California at Berkeley from 1997 to 2009. He served as Chief Economist of the Federal Communications Commission from 1999 to 2000 and as Senior Economist for the President's Council of Economic Advisers at the White House from 1998 to 1999. He was an associate with Kellogg, Huber, Hansen, Todd & Evans from 1995 to 1997. He served as a clerk for Justice Antonin G. Scalia of the United States Supreme Court, for Judge Louis H. Pollak of the U.S. District Court in Philadelphia, and for Judge Stephen F. Williams of the U.S. Court of Appeals for the D.C. Circuit. Mr. Shelanski received a B.A. from Haverford College, and a J.D. and Ph.D. from the University of California at Berkeley.