Statement of

Gary D. Bass
Executive Director
OMB Watch

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Subcommittee on Commercial and Administrative Law
of the
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on
Federal Rulemaking and the Regulatory Process

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Thank you for the opportunity to testify before you today. I am Gary Bass, Executive Director of OMB Watch. OMB Watch is a nonprofit, nonpartisan research and advocacy organization promoting an open, accountable government responsive to public needs. Founded in1983 to remove the veil of secrecy from the White House Office of Management and Budget (OMB), OMB Watch has since then expanded its focus beyond monitoring OMB itself. We currently address four issue areas: right to know and access to government information; advocacy rights of nonprofits; effective budget and tax policies; and the use of regulatory policy to protect the public. OMB Watch does not receive any government funding.

OMB Watch has monitored OMB's Office of Information and Regulatory Affairs (OIRA), rulemaking agencies, and their interactions for more than 25 years. Our efforts to advocate for changes to the regulatory process are colored by our impressions of the balance of power among the agencies, OIRA, the regulated community, and the public, and our belief that government can and should play a positive role in protecting public health, safety, and the environment.

The majority of my testimony focuses on assessing the Obama administration's record on regulatory issues to date. I address how President Obama and OIRA have sought to make much needed improvements to a badly broken regulatory process and provide a status update on reform efforts. I also discuss regulatory policy at the agency level, including challenges agencies face and the progress they have made in the rulemaking arena, with an emphasis on OIRA's role in their day-to-day activities.

1742 Connecticut Ave. NW
Washington, DC 20009
tel: 202.234.8494
fax: 202-234.8584
email: ombwatch@ombwatch.org
web: http://www.ombwatch.org

I. Developing Recommendations to Fix a Broken Regulatory Process

OIRA was created by the Paperwork Reduction Act (PRA) of 1980[1] to serve as the clearinghouse for federal information collection requirements and address other information resources management issues. OIRA reviews and approves any agency attempt to collect information from ten or more people. Since then, OIRA's responsibilities have expanded. Building on the centralized review frameworks of previous presidents, President Ronald Reagan was the first to require rulemaking agencies to submit all regulations to OIRA for review and approval, a power Congress did not give OIRA in the PRA.

The current regulatory review framework was established in 1993 when President Bill Clinton signed Executive Order 12,866.[2] E.O. 12,866 requires agencies to submit to OIRA drafts of proposed and final significant rules. By focusing only on significant rules, OIRA was able to dramatically cut its workload while maintaining its ability to oversee the most important of agencies' regulations.

President George W. Bush's administration continued to operate under E.O. 12,866; but under President Bush, OIRA took a more aggressive posture with respect to both the regulatory process at large and the individual, rule-by-rule review of agency draft proposed and final rules. Led by administrator John Graham, OIRA invented new ways to tighten its hold on agency regulation. Graham imposed rigorous guidelines for cost-benefit analyses and peer reviews, for example. Under Graham, OIRA also began commenting on agency drafts earlier in their development, before the agency had officially submitted them for review. These changes added a new level of political control over both regulatory information and the development of individual rules. They also biased the system toward the administration's policies and priorities, which in turn tilted the regulatory playing field in favor of the regulated interests.

In January 2007, President Bush amended E.O. 12,866 when he signed Executive Order 13,422.[3] The changes made by E.O. 13,422 were controversial: agencies' regulatory policy officers, who many feared could be easily influenced by OIRA, were imbued with the authority to quash new rulemakings through their unilateral power to initiate or kill regulations, a power that had formerly rested with appointed agency heads; and for the first time agency guidance documents (voluntary, often interpretive statements of an agency's stance on a particular issue) were systematically swept into OIRA's centralized review.[4]

Over time, other stipulations have been placed on rulemaking activities, some through law, some through administrative edicts. As a result, agencies must assess regulations' potential impacts on numerous different sectors and interests. Agencies are often required to perform analyses for impacts on small businesses, federalism, the energy supply, and environmental justice, just to name a few. This unwieldy development has created a process with competing, sometimes contradictory values and, just as importantly, one that takes far too long to navigate.

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[1] 44 U.S.C. § 3501 *et seq.* Available at: http://ombwatch.org/files/regs/library/pra.pdf.
[2] William J. Clinton, "Executive Order 12866 of September 30, 1993, Regulatory Planning and Review," The White House, Sept. 30, 1993. Available at: http://www.reginfo.gov/public/jsp/Utilities/EO_12866.pdf.
[3] George Bush, "Executive Order 13422 of January 18, 2007, Further Amendment to Executive Order 12866 on Regulatory Planning and Review," The White House, Jan. 18, 2007. Available at: http://edocket.access.gpo.gov/2007/pdf/07-293.pdf.
[4] For more information, see "A Failure to Govern: Bush's Attack on the Regulatory Process," OMB Watch, March 2007. Available at: http://ombwatch.org/node/3228.

From 2007 to 2008, anticipating the change in administration, OMB Watch convened a group of regulatory process experts to consider the administrative state and develop ideas for reform. The group's discussions and recommendations were informed not only by recent experiences with the Bush administration, but by the long-brewing troubles many observers had grown frustrated with: the complexity of the process, the length of the typical rulemaking, access by special interests, the difficulty the public faces in engaging in the process, and the integrity and quality of regulatory decisionmaking.

The group of 17 experts produced a final report, *Advancing the Public Interest through Regulatory Reform*.[5] The authors, of which I am one, presented this report to the Obama transition team and then the new administration. The report contains specific recommendations for five major issues: improving the quality of regulations, integrity and accountability, implementation and enforcement, transparency, and public participation. Additionally, the report recommended action that both the incoming administration and the 111th Congress could take within their first 100 days. A copy of the report is available at http://ombwatch.org/node/4196.

OMB Watch's assessment of the Obama administration and, in particular, OIRA, has largely been conducted in light of the *Advancing the Public Interest* report and its recommendations. My testimony will at times reflect the stances and recommendations of the report.

II. Reforming the Regulatory Process

The Obama administration waded into regulatory issues on its first day in office. On Jan. 20, 2009, White House Chief of Staff Rahm Emanuel issued a memo setting the Obama administration's strategy for reviewing regulations left over from the Bush administration. Emanuel targeted two categories of regulations: those still in the pipeline, which were to be halted until Obama administration appointees were in place, and those final but not yet in effect. The memo instructed agencies to "consider extending for 60 days the effective date" of those rules that were finalized but were not in effect as of Jan. 20.[6]

However, the Emanuel memo does not cover the majority of the so-called midnight regulations the Bush administration had completed in its final months in office. These regulations had drawn criticism from every corner of the public interest community. The midnight regulations had targeted environmental protections, workers' rights, and women's freedom to discuss contraception and abortion with their health care providers, among other issues.

All recent presidents have tried to enact regulations in the last days of their administrations, and newly elected presidents have issued memos reviewing those last minute regulations from the previous administration. Unfortunately, the Bush administration had shrewdly plotted their rulemakings to allow sufficient time for the rules to take effect, handcuffing the incoming administration from quickly undoing them. As a result, the only options that remained were congressional disapproval or rule-by-rule review, revision, and, if appropriate, rescission, by the Obama administration.

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[5] Gary D. Bass, Michael Byrd, Caroline Smith DeWaal, et al., "Advancing the Public Interest through Regulatory Reform: Recommendations for President-Elect Obama and the 111th Congress," OMB Watch, November 2008. Available at http://www.ombwatch.org/files/regulatoryreformrecs.pdf.

[6] Rahm Emanuel, "Memorandum for the Heads of Executive Departments and Agencies: Regulatory Review," The White House, Jan. 20, 2009. Available at: http://www.ombwatch.org/files/regs/midnightregfreezememo.pdf.

President Obama continued to attempt to right the regulatory ship on Jan. 30 when he revoked E.O. 13,422.[7] Revocation of E.O. 13,422 was an easy and welcome step which OMB Watch fully supported and which was recommended in the *Advancing the Public Interest* report. The president's action fully reinstated the Clinton executive order, E.O. 12,866.

However, OMB Director Peter Orszag maintained the requirement that OIRA was to continue to review agency guidance documents. On March 4, 2009, Orszag issued a memo that states, "[S]ignificant policy and guidance documents […] remain subject to OIRA's review."[8]

President Obama's most significant foray into regulatory reform also came on Jan. 30 when he called for a reconsideration of E.O. 12,866. In a memo, President Obama directed the OMB Director to produce within 100 days recommendations for a new executive order covering the regulatory review process.[9] President Obama identified eight issues he wanted addressed in the recommendations:

- The proper relationship for OIRA and rulemaking agencies;
- Disclosure and transparency;
- Participation;
- The role of cost-benefit analysis;
- The role of distributional considerations and fairness and the need to consider future generations;
- Methods for avoiding unnecessary delay;
- The role of behavioral sciences; and
- Methods for achieving public goals.

On Feb. 26, 2009, OIRA took the remarkable step of requesting public comment on the development of the recommendations for a new regulatory review order.[10] More than 160 organizations and individuals submitted comments. President Obama's willingness to tackle the revision of the regulatory review process and the issues he focused on were exactly the right approaches. Just as important was OIRA's call for public comments on ways to reform the process, a highly unusual step and one that had never been done when it comes to the regulatory review process. It proved to be a healthy exercise in democracy with thoughtful, but differing, perspectives presented.

Despite early indications that President Obama would make regulatory reform a high priority, progress on both major and minor regulatory process initiatives has slowed or not been started.

A. The New Regulatory Review Executive Order

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[7] Barack Obama, "Executive Order 13497 of January 30, 2009, Revocation of Certain Executive Orders Concerning Regulatory Planning and Review," The White House, Jan. 30, 2009. Available at: http://edocket.access.gpo.gov/2009/pdf/E9-2486.pdf.

[8] Peter R. Orszag, "Memorandum for the Heads and Acting Heads of Executive Departments and Agencies: Guidance for Regulatory Review," Office of Management and Budget, Executive Office of the President, March 4, 2009, M-09-13. Available at: http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-13.pdf.

[9] Barack Obama, "Memorandum of January 30, 2009, Regulatory Review, Memorandum for the Heads of Executive Departments and Agencies" The White House, Jan. 30, 2009. Available at: http://www.reginfo.gov/public/jsp/EO/fedRegReview/POTUS_Memo_on_Regulatory_Review.pdf.

[10] Kevin F. Neyland, "Federal Regulatory Review," Office of Management and Budget, Feb. 26, 2009. 74 FR 8819. Available at: http://www.reginfo.gov/public/jsp/EO/fedRegReview/OMB_FR_Notice_on_Regulatory_Review.pdf.

President Obama's new regulatory review order has yet to come to fruition. Presumably, OMB has developed a set of recommendations as instructed under the Jan. 30, 2009, memo, but these recommendations have not been released to the public. OMB has not publicly spoken of any progress on the recommendations or the order. For example, there has been no summary of the comments it has received. The Obama administration continues to operate under E.O. 12,866.[11]

OMB Watch had hoped that President Obama's order would mark the beginning of a new era for the regulatory process. OIRA has for too long been a lightning rod for criticism and controversy and needs to be reoriented. We have long believed that OIRA ought to end rule-by-rule, transactional review of regulations. Instead, OIRA should play a coordinating role in helping agencies with their regulatory work, including sharing comments from other agencies and raising questions for agencies to consider. But the OIRA yes/no authority on each rule should end.

Even for those who do believe OIRA should continue transactional review, there should be no doubt that OIRA has become *too* transactional. The office spends too much time and energy wading deep into the technical and scientific waters of agency drafts. Instead, OIRA should provide vision on major regulatory issues and guidance for agencies looking to improve their rulemaking practices. OIRA could also highlight unregulated risks that agencies may wish to prioritize.

While transforming the regulatory process is a daunting challenge, its implications for public health and welfare and economic stability make it a challenge worth addressing. In the *Advancing the Public Interest* report, we advocated for several significant changes, many of which could be reflected in a new executive order.

The current process is burdened with too many analytical requirements. Some of these requirements are statutorily imposed, but many others are a result of administrative directives. According to the recommendations, President Obama "should start by considering the removal of all such requirements from the process and then the addition of requirements deemed essential to efficient, effective, and timely rulemaking."

The balance of power between rulemaking agencies and OIRA has, over time, increasingly tilted in OIRA's favor. Particularly during the Bush administration, it appeared at times that OIRA authority superseded agency expertise and statutory intention. President Obama should work to restore agency primacy in part by ending the transactional, rule-by-rule review OIRA currently engages in. Agencies have the technical and scientific expertise to develop the complex rules Congress mandates, OIRA does not.

[11] Similarly, an effort to craft scientific integrity principles for federal agencies has also fallen by the wayside. President Obama directed the White House Office of Science and Technology Policy to present him with recommendations by July 2009. The White House has yet to release any recommendations or principles. See Barack Obama "Memorandum for the Heads of Executive Departments and Agencies: Scientific Integrity," The White House, March 9, 2009. Available at: http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-3-9-09/.

The recommendations from the regulatory experts also call for changes in the way the administration applies cost-benefit analysis. Critics, including OMB Watch, have long fought against cost-benefit analysis because it is inherently unable to properly value some of the most critical benefits of regulation, such as environmental preservation, injuries and illnesses avoided, and even lives saved, and because it has often been used as a tool of anti-regulatory special interests to smear agency proposals. A critical factor for OMB Watch is that cost-benefit analysis has increasingly become one of the most important considerations in determining whether to regulate, instead of just one tool to consider. Nonetheless, cost-benefit analysis can be appropriate if proper limits are placed on its use. For example, cost-benefit analysis should not be used as a determinative tool, it should be one of many sources of information, and it should include qualitative assessments of costs and benefits, not just monetized costs and benefits.

Current OIRA Administrator Cass Sunstein is a long-time proponent of the use of cost-benefit analysis in regulatory decisionmaking, but he has advocated for reforming the way it is applied. In public remarks, Sunstein has asserted that the Obama administration does indeed view cost-benefit analysis differently than its predecessors. Sunstein has emphasized the application of "humanized" cost-benefit analysis that places a premium on distributional considerations and impacts on future generations, in addition to more traditional factors.[12] He has also emphasized the relationship between cost-benefit analysis and transparency, calling cost-benefit analysis "part and parcel of open government."[13]

In a speech earlier this year at American University's Washington College of Law, Sunstein indicated agencies are beginning to implement his ideas for humanizing cost-benefit analysis. He described the Transportation Department Passenger Protection Rules that addressed trapping passengers on planes while waiting to take off. According to Sunstein: "there's an effort to be disciplined about everything we're gaining from that regulation, before we go forward with it, and its out there for the public to see." In the airplane rule:

> "The basic idea is if you're flying domestically, and you can't be kept on the tarmac for more than three hours, and you get food and water and medical care if you need it within two hours. That rule is accompanied by an extremely disciplined analysis of its cost and benefits. If we're imposing financial burdens on airlines, we want to catalog them as best we can, and make sure the benefits justify the action."

While few would dispute Sunstein's logic, it does raise a question about how agencies – or the public – know about changes from the Bush-era methods for doing cost-benefit analysis. If this "humanizing" approach is being implemented now, clarity about what the methods entail is needed.

Yet OIRA has not publicly issued to agencies any guidance detailing Sunstein's views on cost-benefit analysis or expectations for changes in the analyses agencies submit to OIRA for review. There have been no publicly available policies instructing agencies to consider equity factors or transparency although it appears OIRA has begun to assert these values in individual

[12] Cass Sunstein discussed cost-benefit analysis at American University's Washington College of Law on Feb. 16, 2010. An audio recording of his remarks is available at http://www.federalnewsradio.com/?nid=35&sid=1890426.

[13] Cass Sunstein discussed open government at the Brookings Institution on March 10, 2010. A transcript of his remarks is available at http://www.brookings.edu/events/2010/0310_open_government.aspx.

rulemakings. Agencies are still operating under the cost-benefit guidelines in OMB Circular A-4 written by John Graham.

B. Transparency and Public Participation

In addition to reforms that affect the speed and quality of regulatory decisionmaking, the *Advancing the Public Interest* report also calls for transparency and participation reforms. OMB Watch expected to see any number of transparency and participation initiatives early in President Obama's tenure, given his strong statements on those topics during the campaign and his first few weeks in office. Indeed, we have seen numerous efforts, including a FOIA policy that favors disclosure and an Open Government Initiative that is a long term effort to address transparency, participation, and collaboration in the agencies. Although OIRA has a leadership role in this openness agenda, its own actions often lag behind other agencies.

1. E-Rulemaking

On the participation front, the Obama administration has made only scant progress in reforming e-rulemaking – the term used to describe websites and systems that allow agencies to manage rulemaking dockets, allow users to access those dockets, and provide tools for the public to submit comments to agencies. The American Bar Association (ABA) has submitted to the administration a report calling for an overhaul of the current e-rulemaking system, both the "backend," the Federal Docket Management System (FDMS), and the online public portal, Regulations.gov. The report represents the consensus opinion and recommendations of a diverse group of e-rulemaking experts and advocates (chaired by former OIRA Administrator Sally Katzen and including myself). The report calls for dedicated funding for e-rulemaking, a distributed systems approach, and an improved public interface, among other recommendations.[14] To date, minor changes have been made to the functionality of Regulations.gov, some consistent with the report's recommendations, but significant change has yet to occur.

Funding for e-rulemaking efforts is a particular problem. E-rulemaking is currently funded through the equivalent of a pay-per-use system. The U.S. Environmental Protection Agency (EPA), which manages the system, asks agencies to contribute to e-rulemaking from their existing budgets. The fees go up the more an agency uses the services (e.g., more regulations and more public comments). Obviously, this can serve as an unintended disincentive for agency rulemaking or for encouraging public comments – thereby undermining a core tenet of our democratic framework. Additionally, the lack of a dedicated funding source discourages system improvements and innovation. The ABA report calls for the establishment of a line item appropriations for e-rulemaking. Yet, to my knowledge, the administration has not moved in that direction.

Although EPA manages FDMS and the Regulations.gov interface, OIRA, as the coordinator of regulatory policy for the federal government, must lead the way. Without White House support, a new direction for e-rulemaking is unlikely, particularly on the issue of funding.

OIRA has taken one discrete but significant step to improve e-rulemaking practices. On May 28, Sunstein issued a memo that urges federal agencies to make their paper-based and electronic

[14] Committee on the Status and Future of Federal e-Rulemaking, "Achieving the Potential: The Future of Federal E-Rulemaking," American Bar Association, November 2008. Available at: http://ceri.law.cornell.edu/documents/report-web-version.pdf.

rulemaking dockets consistent with each other.[15] To date, many agencies have had more complete paper dockets available to the public in agency reading rooms physically located at the agencies. The memo also says agencies should make their dockets more complete by including additional, supporting materials, not just copies of proposed and final rules, and should do so in "a timely manner."

But in the absence of a broader directive from the White House, agencies wishing to reform their own e-rulemaking practices have been left to chart their own courses. For example, the Department of Transportation (DOT) is piloting Regulation Room, an interactive website designed to inform and engage users on high-profile DOT rulemakings. Even EPA, the host or Regulations.gov, has launched its own agency-specific interface, called the Rulemaking Gateway. Efforts like these are innovative and hold the potential to generate more robust participation. However, it remains unclear whether or how they fit into a larger, government-wide e-rulemaking agenda.[16]

2. OIRA Transparency

It is uncertain how OIRA fits in to one of the White House's major transparency initiatives, the Open Government Directive (OGD), which OMB Director Peter Orszag issued Dec. 8, 2009.[17] OIRA has a leadership role in implementing the directive throughout the government, but as part of OMB, OIRA also is required as an agency to comply with the requirements. The OGD requires federal agencies to maintain open government webpages and open government plans. OMB's open government plan has not yielded significant gains as it relates to regulatory issues. The OGD requires agencies to release new, high-value data sets, but the data released on behalf of OIRA was already available and downloadable on a separate government website.

OIRA should take advantage of the opportunities presented by the OGD and create a new era in transparency. For example, neither OIRA nor agencies typically make available the communications or edits that occur during the review of a draft proposed or final regulation. Unless an agency chooses to disclose its dealings with OIRA in the online rulemaking docket, it is nearly impossible for the public to determine what impact OIRA, or other agencies participating in the interagency review, have had on the rule. We urge the administration to consider implementing the many transparency recommendations it has received.

OIRA has continued the Bush administration's practice of posting on the White House website a list of individuals with whom OIRA and rulemaking agencies have met while agencies' rules are under review. However, little information is provided about the substance of the meeting. This is another area ripe for increased disclosure.

Notwithstanding these criticisms, OIRA has taken a small but helpful step to improve public access and understanding of its activities. In February 2010, OIRA launched a regulatory review

[15] Cass R. Sunstein, "Memorandum for the President's Management Council: Increasing Openness in the Rulemaking Process – Improving Electronic Dockets," Office of Management and Budget, Executive Office of the President, May 28, 2010. http://www.whitehouse.gov/omb/assets/inforeg/edocket_final_5-28-2010.pdf

[16] For more information, see "At Agencies, Open Government and E-Rulemaking Go Hand in Hand," OMB Watch, April 20, 2010. Available at: http://ombwatch.org/node/10935.

[17] Peter R. Orszag, "Memorandum for the Heads of Executive Departments and Agencies: Open Government Directive," Office of Management and Budget, Executive Office of the President, Dec. 8, 2009, M-10-06. Available at: http://www.ombwatch.org/files/m10-06.pdf.

"dashboard" on RegInfo.gov, the site that displays information on current and past OIRA reviews. OMB Director Orszag billed the site as a tool that "democratizes the data."[18] The increased use of graphics and sort functions has expanded usability of the site, but no new data has been added. While these changes are helpful, they are not enough.

We are also unclear what makes the redesigned RegInfo.gov a "dashboard." In other areas, such as the IT dashboard (http://it.usaspending.gov/) dashboards include some measures or metrics of government's performance. Although we recognize that there is no standard definition for a dashboard, RegInfo.gov does not include performance information about OIRA's actions. This is not to say that the new graphics that are provided are not helpful – they are. They would be far more useful if they told the public whether OIRA was meeting its own standards for performance.

We acknowledge that this is an important step towards greater transparency. We also appreciate OIRA's willingness to listen to and respond to criticism. Yet we also would suggest this is but a small step. OIRA should also consider integrating regulatory information that currently resides on several different sites. OIRA could easily incorporate information on meetings held during review periods, mentioned above, and may consider linking the RegInfo.gov site with Regulations.gov so that RegInfo.gov visitors could more easily access rulemaking dockets and means of participation.

OIRA has acknowledged the integration issue. On April 7, Sunstein issued a memo asking agencies to more consistently use Regulatory Identifier Numbers, or RINs, to tag rulemaking documents.[19] The instruction may help agencies to better organize documents within their dockets and integrate documents across websites. The previously mentioned May 28 memo on rulemaking dockets furthers this goal by instructing the agencies that manage RegInfo.gov and Regulations.gov to consider integrating information between the two sites.

More generally, the OGD had required OIRA to review, by April 7, existing OMB policies "to identify impediments to open government." As of July 22, 2010, OIRA has issued at least six memos under this instruction, including the April 7 RIN memo and May 28 dockets memo previously mentioned, three memos related to the Paperwork Reduction Act, and a memo on disclosure and simplification in regulations, discussed later in my testimony.[20]

3. OIRA Review Meetings

OIRA has long engaged in the practice of meeting with outside stakeholders to discuss rules under review. OIRA has discretion over with whom it meets and when. Under E.O. 12,866, OIRA is required to invite a representative of the rulemaking agency to attend the meetings, though the agency is not obligated to accept. OIRA is to disclose all written communications exchanged during the meetings as well as a description of relevant information about oral communications. "Only the Administrator of OIRA (or a particular designee) shall receive oral

[18] Peter R. Orszag, "OIRA Dashboard Goes Live," Office of Management and Budget, Feb. 16, 2010. Available at: http://www.whitehouse.gov/omb/blog/10/02/16/OIRA-Dashboard-Goes-Live/.
[19] Cass R. Sunstein, "Memorandum for the President's Management Council: Increasing Openness in the Rulemaking Process – Use of the Regulation Identifier Number (RIN)," Office of Management and Budget, Executive Office of the President, April 7, 2010. http://www.whitehouse.gov/omb/assets/inforeg/IncreasingOpenness_04072010.pdf.
[20] For more information, see the White House Office of Information and Regulatory Affairs website at http://www.whitehouse.gov/omb/inforeg_default/.

communications," the order states. This last policy was first put forward in an agreement between Sen. Carl Levin and then-OIRA Administrator Wendy Gramm. Levin pushed for the policy to address criticism that career staff were involved in actions that should have involved political appointees.

Accelerating a pattern started during the Bush administration, the Obama White House has liberalized the requirement that the administrator be present for all meetings. John Graham and Susan Dudley, OIRA administrators under President Bush, did not personally attend many of the meetings held during their tenures, preferring to send a designee. Sunstein has gone even further: I am unaware of any meeting Administrator Sunstein has personally attended regarding a rule under review.

While the "or a particular designee" parenthetical grants a certain amount of latitude, forgoing most or all review meetings runs counter to the spirit behind the order's requirement. The ultimate authority for communicating with stakeholders should not lie with the career staff, it should lie with OIRA's sole Senate-confirmed appointee, the administrator. The administrator's presence at the review meetings ensures a level of accountability otherwise absent.

C. Paperwork Reduction Act

On Oct. 27, 2009, OIRA published a notice in the *Federal Register* asking for public comment on ways it could improve implementation of the Paperwork Reduction Act, the law that gives OIRA the authority to review agency information collection requests, as well as the responsibility for managing federal information policy more broadly, including information dissemination, information resource management, and statistical policies.[21]

OIRA's notice focuses almost solely on information collection request review and management with a decided emphasis on ways to reduce burdens imposed on the public, particularly small businesses. In comments, OMB Watch urged OIRA to expand its view and use its authority under the PRA to make more data and information available to the public, and to make it available in the most usable form. The PRA was written long before the development of the Internet and modern computer technologies, and its implementation, and the law itself, must be brought into the 21st century.[22] We urge Congress to consider a substantial revision of the PRA, refocusing it to be about managing information resources.

The information collection request review process carries significant implications for issues affecting the public in many ways. For example, the U.S. Election Assistance Commission (EAC), which oversees election administration and conducts audits on the use of funds distributed under the Help America Vote Act, among other activities, cannot easily conduct surveys to identify potential problems immediately after elections because it must first receive clearance from OIRA for its information collection activities. If the EAC wants election information from different states, it may need to have a different survey for each state, adding to the clearance hurdles.

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[21] Cass R. Sunstein, "Improving Implementation of the Paperwork Reduction Act," Office of Information and Regulatory Affairs, Office of Management and Budget, Oct. 27, 2009. 74 FR 55269. Available at: http://edocket.access.gpo.gov/2009/pdf/E9-25757.pdf.

[22] "OMB Watch Comments on Improving Implementation of the Paperwork Reduction Act," OMB Watch, Dec. 26, 2009. Available at: http://ombwatch.org/files/regs/PDFs/pracomments122609.pdf.

Scientists inside government have pointed to PRA issues that have implications for scientific integrity. A survey of federal scientists conducted by George Washington University's Project on Scientific Knowledge and Public Policy found that many government scientists consider the PRA clearance process to be "excessively burdensome."[23] The surveyed scientists believed there is not only political interference in their work but that they faced a series of obstacles that delay the study and dissemination of scientific information that affects the public everyday. The survey was completed as Obama took office, but a follow up survey was sent in the summer of 2009. The response to the survey indicated that not much had changed since Obama took office, and scientists thought it would be challenging to create meaningful change. Many of these delays come from OMB review of each information collection request as well as unclear policies within agencies on publication and media policies.

While OMB Watch urges OIRA to look at the PRA beyond simply the information collection review process, including its potential as a dissemination vehicle, OIRA can and should immediately reduce the number of information collection requests it requires agencies to submit for review. Under the PRA, OIRA has the authority to exempt certain classes of information collections from review. It should utilize this authority to streamline agencies' information collection efforts.

OIRA has taken small steps in that direction. On April 7, Sunstein issued a memo to agencies that relaxes agency obligations to seek White House approval for certain web-based technologies.[24] The memo says that voluntary social media and other web-based forums – for example, blogs, wikis, or message boards – will not be considered information collections under the PRA. The memo is intended to stem concern that agencies need to comply with the PRA before including comment sections on their websites or using online services like Facebook and Twitter. Sunstein issued another memo on May 28 reminding agencies that they may seek "generic clearances" from OIRA.[25] The use of generic clearances may expedite the clearance process for information collections that are voluntary, uncontroversial, or easy to produce, and may address the EAC example mentioned above.

D. Disclosure and Simplification

On June 18, Sunstein issued a memo to agencies titled, "Disclosure and Simplification as Regulatory Tools" reflecting some of his perspectives on rulemaking.[26] The memo does not appear to impose any concrete requirements on agencies. Like other Sunstein memos,

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[23] Susan F. Wood, Ruth W. Long, Liz Borkowski, et al., "Strengthening Science in Government: Advancing Science in the Public's Interest," The Project on Scientific Knowledge and Public Policy at The George Washington University School of Public Health and Health Services, March 2010. Available at: http://defendingscience.org/newsroom/upload/Scientists_in_Government_Report_030310.pdf.

[24] Cass R. Sunstein, "Memorandum for the Heads of Executive Departments and Agencies, and Independent Regulatory Agencies: Social Media, Web-Based Interactive Technologies, and the Paperwork Reduction Act," Office of Management and Budget, Executive Office of the President, April 7, 2010. http://www.whitehouse.gov/omb/assets/inforeg/SocialMediaGuidance_04072010.pdf.

[25] Cass R. Sunstein, "Memorandum for the Heads of Executive Departments and Agencies, and Independent Regulatory Agencies: Paperwork Reduction Act – Generic Clearances," Office of Management and Budget, Executive Office of the President, May 28, 2010. http://www.whitehouse.gov/omb/assets/inforeg/PRA_Gen_ICRs_5-28-2010.pdf.

[26] Cass R. Sunstein, "Memorandum for the Heads of Executive Departments and Agencies: Disclosure and Simplification as Regulatory Tools," Office of Management and Budget, Executive Office of the President, June 18, 2010. http://www.whitehouse.gov/omb/assets/inforeg/disclosure_principles.pdf.

including those on the PRA, it appears to leave agencies with an appropriate amount of flexibility and more than agencies had under the previous administration.

The first part of the memo encourages agencies to consider rules that use disclosure mechanisms as a complement to or replacement for more traditional regulatory options. By addressing market failures related to information access, disclosure can induce better decisionmaking among the public, the memo says. The memo provides examples of existing and salutary disclosure policies, including nutrition labels and cigarette warnings.

The second part of the memo, regarding simplification, encourages agencies to consider "default" rules, where affected citizens or sectors are opted into a regulatory option pre-determined to be most advantageous. Where default rules are inappropriate, the memo asks agencies to consider "active choosing" where the government does not set a default but does require consumers or other end users to make an explicit choice or state a preference among options.

The memo is Sunstein's most significant to date. It applies to all agencies, and, though it does not impose requirements, OIRA will likely check draft rules to ensure agencies are taking the memo under advisement. In this way, the memo marks the first change, albeit a subtle one, in the way OIRA reviews regulations under the Obama administration.

The memo may also signal the death of the revised regulatory executive order, discussed above. While the White House continues to remain quiet on the order's status, outside observers have commented that Sunstein's memo includes principles that were expected to be included in a new order.[27] It also seems unlikely that OIRA would issue a memo referencing E.O. 12,866, which Sunstein's does, if a new order was on the horizon.

III. Agency Challenges

In attempting to carry out a regulatory agenda, the Obama administration, like any administration, faces external events and internal pressures. To fully understand the regulatory process and the reforms necessary to improve its inner workings, one must look not only at OIRA and the cross-cutting policies that govern the system but at the agencies' ability to carry out the tasks asked of them. In this section, I will discuss four major issues rulemaking agencies have faced and continue to face under the Obama administration.

A. Crises

Over the past number of years, the government's ability to respond to and be reflective of public need has greatly diminished. Public protections were rolled back and new hazards went unaddressed. Agencies' capabilities to enforce regulations were strained. Presidents appointed agency leaders with ties to regulated industries, the proverbial foxes in the henhouse.

Early on, the Obama administration seemed willing to address some of these problems and attempt to right the regulatory ship. Just as experts were put in place in the agencies and they began to re-invigorate the rulemaking process, unforeseen disasters and events have dramatically impacted the Obama administration's regulatory agenda. The most significant of these events has been the BP-Deepwater Horizon oil spill disaster. Other crises, including the

[27] Gabriel Nelson, "Obama Overhaul of Regulatory Reviews Now Seen as Unlikely," *Greenwire*, July 14, 2010. Available at: http://www.nytimes.com/gwire/2010/07/14/14greenwire-obama-overhaul-of-regulatory-reviews-now-seen-45978.html.

explosion at Massey Energy's Upper Big Branch mine in West Virginia that killed 29 miners in April and the recall of millions of Toyota vehicles for various defects, have similarly budged the administration from its path. For better or for worse, the administration's responses to these events are shaping its record on regulation.

Links among these seemingly unrelated events begin to emerge when examined through a regulatory lens. In each of these cases, unscrupulous businesses outmaneuvered under-resourced regulators. Warning signs were missed, and improper relationships between regulators and those they regulate went uncorrected. It wasn't until after disaster struck that the President, Congress, and the public began to question the status quo and ask for reform.

These events also have similar impacts on agencies and highlight how regulation fits in to government's overall role in society. Consider, for example, the oil spill. The disaster has impacted numerous federal agencies. The Department of the Interior and its agencies, tasked with leasing, permitting, and overseeing drilling operations has been the most heavily scrutinized. Its failures, particularly in the areas of environmental and emergency-planning review, have been well chronicled. The U.S. Coast Guard has been the primary authority among government agencies in the clean-up of the spill. Other agencies have been involved as well, including the Occupational Safety and Health Administration, the U.S. Environmental Protection Agency, and the Centers for Disease Control and Prevention, to name only a few. The spill has forced these agencies to divert resources and attention from other priorities.

President Obama has been criticized for struggling to exhibit strong leadership in the wake of the spill. Agencies are addressing the spill and its effects within their respective jurisdictions and with the aid of their expertise, but the White House has not adequately portrayed itself to the public as coordinator, overseer, and leader.

While by no means the sole relevant player among White House offices, OIRA is the logical home for the coordination of regulatory responses to crises such as the oil spill. OIRA has established relationships with regulatory agencies and experience as interagency coordinator.

But OIRA has not been a public presence in the wake of the oil spill. To observers, it has maintained its day-to-day function as reviewer of agency draft regulations and information collection requests. While some of these agency submissions surely relate to the oil spill, OIRA appears to have remained myopically focused on the transaction, not on the opportunity to present regulation as a coordinated or unified front in the administration's battle against the spill and its effects. It is possible that OIRA does not have the resources, energy, or appetite to adapt and prioritize after a crisis.

Congress, too, must more thoughtfully consider its role in the wake of crises like the oil spill. Congress's typical pattern – regret, respond, repeat – is not serving the public well. Instead of being reactive, Congress must be proactive in identifying and preventing major risks.

B. Attacks on Regulation

Despite the tragedies in the Gulf and in West Virginia, as well as less publicized tragedies such as foodborne illness, unhealthy air and water, and other problems affecting Americans, the campaign *against* regulation is heating up. Industry leaders and lobbyists have been critical of the Obama administration for what they perceive to be too much regulation. Minority Leader John Boehner recently joined the chorus, endorsing a one-year moratorium on most new

regulations. They say that regulation is too much of a burden on the economy and hurts the job market, though they provide little or no evidence to support their claims.[28]

Representatives from the Business Roundtable, a coalition of U.S. corporate executives, have met with senior White House officials to air their grievances. They have provided OMB Director Orszag with a hit list of regulations, taxes, and other policies they want to see rolled back. The list leaves no stone in the regulatory field unturned: greenhouse gas emissions standards, worker rights, regulations implementing landmark financial and health care reform laws, pending food safety and auto safety legislation, government contractor responsibility measures, and even oil spill prevention rules are all targeted by the list.

The U.S. Chamber of Commerce issued its own list of rollbacks, threatening that U.S. businesses will move jobs offshore unless the Obama administration reduces regulation. We've seen these attacks before. During the Clinton administration, Speaker of the House Newt Gingrich made rolling back regulation a core component of his Contract with America. During the George W. Bush administration, the attacks came from within: political appointees perverted regulatory science, slashed existing protections, and undermined enforcement of the protections that remained.

The anti-regulatory progress has been significant enough to create a system that keeps the consumers, workers, the environment, and the economy in an endless cycle of risk and uncertainty. Whether it's an oil spill that affects a region or a lead-laced toy that affects just one child, the consequences of the anti-regulatory movement have been wrought, and they are very real.

Now, in a struggling economy, businesses are once again using regulation as a scapegoat, and political leaders like Boehner see an opportunity to score political points by mimicking business' stance. The Obama administration will be challenged to pursue a regulatory agenda in such a hostile environment.

C. Agency Resources

Regulatory agency budgets have been one casualty of the campaign against regulation. Budget shortfalls have left many agencies unable to adequately fulfill their missions. New regulations are left unfinished. Existing regulations go unenforced.[29]

Many have urged President Obama and OMB to make funding for regulatory agencies a high priority. The situation has improved in recent years, in part because of a renewed commitment to spending for domestic programs. However, much work remains.

Budgets at the Food and Drug Administration (FDA), EPA, and Consumer Product Safety Commission (CPSC) have enjoyed substantial increases in recent years. From FY 2008 to FY 2010, FDA received a 30 percent budget increase. EPA has seen similarly large increases over levels that persisted for most of the Bush administration. From FY 2007 to FY 2010, CPSC's budget approximately doubled, and is near its highest level in agency history.

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[28] For more information, see Gary D. Bass, "Another Shameful Attack on Our Public Protections," *The Huffington Post*, July 21, 2010. Available at: http://www.huffingtonpost.com/gary-d-bass-phd/another-shameful-attack-o_b_653975.html.

[29] For more information, see the OMB Watch article series "Bankrupting Government." Available at: http://www.ombwatch.org/node/4171.

Going forward, regulatory agency budgets are likely to remain tight. For the remainder of his term, President Obama has proposed freezing the overall level of non-defense, non-security discretionary spending. The freeze could hurt some agencies like EPA: President Obama proposed almost $300 million in cuts to EPA's budget for FY 2011 after an approximately $2.7 billion increase the year before.

However, because President Obama has proposed an overall freeze and not a line-item-by-line-item freeze, spending could be transferred to other areas to reflect administration priorities. For example, for FY 2011, President Obama proposed a $14.5 million, or 2.6 percent, increase for the Occupational Safety and Health Administration including a shift in funding from compliance assistance to rulemaking. The president's budget pledges to "[build] on the 2010 Budget policy of returning worker protection programs to the 2001 staffing levels, after years of decline."[30]

D. Bush Midnight Regulations

As mentioned earlier, Bush administration agencies attempted to leave an administrative legacy by finalizing during its waning days in office dozens of rules that reflected a conservative, sometimes anti-regulatory ideology. These midnight regulations favored regulated industries and conservative causes – they eliminated existing protections for the environment, workers, consumers, and patients. The Bush administration's success was largely a result of timing: agencies finalized many of these rules in November and December of 2008, leaving enough time for them to take effect before President Obama took office. Had these rules not yet taken effect, Obama administration agencies could have delayed their effective dates to buy themselves more time to address the substance of the rules.

The Obama administration did not shy away from this challenge, and it deserves great credit for simultaneously looking forward and looking back – credit that largely applies to new leadership at rulemaking agencies. Several Bush-era regulations have been rescinded or neutered, including a regulation that demoted scientists' role in endangered species decisionmaking and a regulation that limited Medicaid beneficiaries' access to outpatient services.

However, other midnight regulations remain on the books. Despite early pledges that it would change a controversial regulation allowing health care providers to refuse to discuss reproductive health issues with their patients, the Department of Health and Human Services has done nothing and now considers changes to the regulation a "long-term action." Other regulations, including ones that limit air and water quality protections at factory farms, remain in effect as well.[31]

IV. Reviving Agency Rulemaking

[30] For more information, see "For Regulatory Agencies, Intrigue in an Otherwise Bleak Budget," OMB Watch, Feb. 12, 2010. Available at: http://ombwatch.org/node/10762.

[31] For more information on the Bush administration's midnight regulations campaign, see Reece Rushing, Rick Melberth, and Matt Madia, "After Midnight: The Bush legacy of deregulation and what Obama can do," Center for American Progress and OMB Watch, January 2009. Available at: http://www.americanprogress.org/issues/2009/01/pdf/midnight_regulations.pdf. For more information on the Obama administration's efforts, see "Turning Back the Clock: The Obama Administration and the Legacy of Bush-era Midnight Regulations," OMB Watch, October 2009. Available at: http://ombwatch.org/files/regs/PDFs/turning_back_the_clock.pdf.

The day-to-day activities of both OIRA and rulemaking agencies also illustrate the Obama administration's attitude toward and record on regulatory issues thus far.

Based on both quantitative and qualitative information, OIRA has remained active in reviewing agency rulemakings, but has played a somewhat less interventionist role than in prior administrations.

OMB Watch analyzed the draft proposed and final rules and other notices OIRA reviewed during President Obama's first year in office, and compared them to those reviewed during President Bush's first year in office.[32] The results reveal a more industrious OIRA under President Obama.

OIRA has approved rules at an average rate of 37.2 days, compared to 44.4 days under President Bush. Economically significant rules, those expected to have economic costs or benefits exceeding $100 million per year, have been approved at a slightly slower rate – 30.5 days for President Obama's OIRA compared to 29.4 days under President Bush.

OIRA reviewed 14 percent more rules than President Bush's OIRA staff, and 56 percent more economically significant rules in its first year. OIRA under President Obama has reviewed 549 total rules, 111 of them economically significant. During President Bush's first year, OIRA reviewed 483 total rules and 71 economically significant rules.

What numbers cannot show is the substance and quality of the rules reviewed. Generally speaking, rules proposed and finalized under the Obama administration, regardless of agency or issue area, have reflected a renewed desire to use regulation as a tool to protect the public.

To be certain, OIRA has at times interceded in agency business in ways that have raised concerns. OIRA has seemed particularly focused on the EPA. This is not surprising because EPA has been quite active in the regulatory arena.

OIRA's review of EPA's proposal to regulate coal ash has been its most controversial to date. After a review that lasted more than six months, documents showed that the published proposal was weaker than EPA's original submission and that industry comments may have influenced the decisionmaking process.

In response to a major coal ash spill in Kingston, TN in 2008, EPA pledged to regulate the disposal of coal ash, a toxic byproduct of coal combustion. The agency prepared a proposed rule and submitted it to OIRA for review on Oct. 16, 2009.

OIRA did not approve the proposed rule until May 4, 2010. The review lasted 200 days, far exceeding OIRA's self-imposed 120-day limit. During the review, OIRA and EPA met with outside stakeholders on at least 43 different occasions. 30 of those meetings were with representatives of a variety of industries opposed to or fearful of coal ash regulation.

Internal documents released to the public after the review show that EPA had been swayed from its original plans. EPA's original submission proposed regulating coal ash as a hazardous waste. The published version actually contains two proposals – one to regulate coal ash as a hazardous waste, the other to regulate it as solid waste. While the former would impose cradle-

[32] All data was acquired from RegInfo.gov.

to-grave restrictions for waste management, the latter would set standards similar to those required for simple household garbage.[33]

Additionally, EPA and OIRA considered, and appear to have taken, comments from the Tennessee Valley Authority (TVA), a quasi-governmental electric utility given a draft copy of the proposal during OIRA's review. TVA is the owner of the Kingston facility where the coal ash dam-break occurred in 2008 and would be subject to EPA's coal ash regulations.[34]

Because the original proposal is still one of the options, the change may prove insignificant. However, environmental advocates fear that elevating the second option may alter the debate during the public comment period. At the very least, the protracted review, industry presence, and addition of a more lenient regulatory option raise concerns that public health may not be the administration's primary concern.

We have observed three other instances when OIRA review of EPA policy has stoked controversy:

- Under the Endocrine Disruptor Screening Program (EDSP), EPA is seeking health effects information on pesticides suspected of having adverse effects on the human endocrine system. Before collecting data from pesticide manufacturers, EPA was required to seek OIRA approval.

  In its original submission, EPA wanted to emphasize fresh testing designed to detect effects on human endocrine systems, but manufacturers could also submit existing studies if appropriate. When OIRA approved the request, it instructed the agency to consider existing studies "to the greatest extent possible." The caveat concerned scientists and public health advocates who say most currently available studies were not conducted with the goal of determining a chemical's effect on the endocrine system and did not study low-dose exposures.[35]

  The incident created a public outcry with most complaining that OIRA was interfering in agency scientific actions despite clear messages from the president about the need to restore scientific integrity. In response to a letter from Rep. Edward Markey, OMB Director Orszag pledged that OMB would not interfere in the EDSP and reaffirmed that "OMB fully supports the EPA's sole authority to make the scientific decisions related to this effort."[36]

- OIRA inserted itself in EPA business again in November 2009, this time over an EPA proposal to tighten the national air quality standard for sulfur dioxide. While it does not appear OIRA had any impact on the standard itself, an email exchange between EPA and OIRA employees shows that OIRA attempted to persuade EPA to inflate its estimates of the costs of sulfur dioxide regulation. The e-mail exchange took place Nov.

[33] For more information, see "Commentary: White House Misadventures in Coal Ash Rule," OMB Watch, May 18, 2010. Available at: http://ombwatch.org/node/11001.
[34] For more information, see "Commentary: Changes to Coal Ash Proposal Place Utility's Concerns above Public Health," OMB Watch, June 2, 2010. Available at: http://ombwatch.org/node/11041.
[35] For more information, see "OMB Role in EPA Chemical Program Questioned," OMB Watch, Oct. 28, 2009. Available at: http://ombwatch.org/node/10511.
[36] Peter R. Orszag, letter to The Honorable Edward J. Markey, Nov. 16, 2009. Available at: http://markey.house.gov/docs/markeyedspletter.pdf.

19, three days after the draft proposed regulation was approved by OIRA and sent back to EPA.[37]

- OIRA interceded in a different air quality standard in January 2010. While reviewing EPA's draft final rule for nitrogen dioxide exposure, OIRA persuaded EPA to change its criteria for the placement of air pollution monitors. The change occurred just days before EPA faced a judicial deadline to publish the rule. Though the change was made late in the process and at OIRA's behest, EPA credits OIRA for improving the rule. EPA said the change will actually strengthen the monitoring network for nitrogen dioxide, granting regulators more discretion to place monitors in vulnerable communities.[38]

Although some of these examples may appear to contradict the claim that OIRA has played a less interventionist role under President Obama, it should be noted that there is no apparent pattern to OIRA's interference, as there has been during past administrations.

OIRA's willingness to play a less interventionist role is not the sole or even primary reason rulemaking agencies have succeeded in reviving moribund rulemakings and addressing new hazards: there is no replacement for qualified political appointees and their staffs with a commitment to public health and welfare. However, without OIRA's support, or at the very least its willingness to stand aside, certain successes, including some of those named below, may have been dulled or thwarted.

EPA has likely been the most active rulemaking agency. The agency has finalized improved air pollution standards for both sulfur dioxide and nitrogen dioxide. Perhaps most significantly from a public health perspective, the agency proposed strengthening the air quality standard for ozone, or smog.

EPA has been particularly active on climate change regulation. After the Bush administration had spent years dodging a 2007 Supreme Court ruling that said EPA could regulate greenhouse gas emissions under the Clean Air Act if they were determined harmful, current EPA Administrator Lisa Jackson proposed an endangerment finding for greenhouse gases in April 2009. EPA finalized the endangerment finding on Dec. 15, 2009.[39]

The endangerment finding was a step EPA needed to take to set the stage for regulation of greenhouse gas emissions. EPA, in partnership with the Department of Transportation, set standards limiting vehicle greenhouse gas emissions and strengthening vehicle fuel economy. EPA has also set greenhouse gas limits for stationary sources such as power plants.

Consumer safety also appears to be a priority for rulemaking agencies under the Obama administration. In July 2009, FDA finalized a rule intended to reduce the risk of salmonella in eggs. FDA estimates the regulation will prevent 79,000 illnesses and 30 deaths every year, at a

[37] For more information, see "New OIRA Staffer Calls Attention to Office's Role," OMB Watch, Dec. 8, 2009. Available at: http://ombwatch.org/node/10621.
[38] For more information, see Matthew Madia, "Last-Minute Changes Will Improve Air Pollution Monitoring, EPA Says," OMB Watch, Feb. 17, 2010. Available at: http://www.ombwatch.org/node/10770.
[39] Lisa P. Jackson, "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act," Environmental Protection Agency, Dec. 15, 2009. 74 FR 66496. Available at: http://www.epa.gov/climatechange/endangerment/downloads/Federal_Register-EPA-HQ-OAR-2009-0171-Dec.15-09.pdf.

cost of less than a penny per dozen.[40] Enforcement at FDA has accelerated as well.[41] CPSC has been busy implementing the requirements of the Consumer Product Safety Improvement Act passed by Congress in 2008, many of which targeted toys and other children's products. Most recently, CPSC proposed new standards for cribs including a ban on drop-side cribs, a style that has been implicated in infant deaths.

Department of Labor agencies have remained on the periphery of rulemaking activity. Agencies within the department seemed particularly hard hit by the difficulties of the nomination process. Assistant secretaries for the Occupational Safety and Health Administration (OSHA) and Mine Safety and Health Administration were not confirmed until the fall of 2009. President Obama's nominee to lead the Wage and Hour Division, enforcer of wage and leave standards and child labor laws, withdrew amid Republican objections. President Obama has yet to nominate a replacement.

V. Conclusion

In terms of both process and rulemaking, much work remains to be done. The White House needs to reform the regulatory process and establish its vision for the role of regulation. Despite the administration's progress, there are countless more hazards in need of agency attention. But early successes indicate that the Obama administration is serious about regulatory reform, and we hope they will continue to look for ways to improve the process.

Thank you for the opportunity to testify today.

[40] Jeffrey Shuren, "Prevention of Salmonella Enteritidis in Shell Eggs During Production, Storage, and Transportation," Food and Drug Administration, HHS, July 9, 2009. 74 FR 33030. Available at: http://edocket.access.gpo.gov/2009/pdf/E9-16119.pdf.

[41] For example, see Lyndsey Layton, "FDA warns 17 food companies of misleading claims on labels," The Washington Post, March 4, 2010. Available at: http://www.washingtonpost.com/wp-dyn/content/article/2010/03/03/AR2010030303119.html.