H.R. 1704, CONGRESSIONAL OFFICE OF REGULATORY ANALYSIS CREATION ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES, AND REGULATORY AFFAIRS

OF THE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

SECOND SESSION

ON

H.R. 1704

TO ESTABLISH A CONGRESSIONAL OFFICE OF REGULATORY ANALYSIS

MARCH 11, 1998

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H.R. 1704, CONGRESSIONAL OFFICE OF REGULATORY ANALYSIS CREATION ACT

WEDNESDAY, MARCH 11, 1998

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,
NATURAL RESOURCES, AND REGULATORY AFFAIRS,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:07 p.m., in room 2154, Rayburn House Office Building, Hon. David McIntosh (chairman of the subcommittee) presiding.

Present: Representatives McIntosh, Sununu, Barr, Sessions, Tierney, and Kucinich.

Staff present: Mildred J. Webber, staff director; Karen Barnes, professional staff member; Andrew Wilder, clerk; and Elizabeth Mundinger, minority counsel.

Mr. SESSIONS [presiding]. The Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs will come to order.

Today, we are going to examine a very important issue, the burden of Government regulations on the American people, and Congress's role in reviewing these regulations. We are considering a bill called the Congressional Office of Regulatory Analysis Creation Act, H.R. 1704, submitted by Sue Kelly, the Honorable Sue Kelly of New York, which would help Congress carry out its responsibility to review regulations.

The problem that is before Congress is that regulatory costs each year amount to $688 billion. That is a 1997 figure. If you will please note for purposes of evaluation, we have on the left of the Chair, three different charts that enumerate these costs and show the burden of regulatory growth that we have and the huge increase. That is approximately $6,875 annually for a typical family of four. That is roughly one-third for paper work, one-third for economic regulations such as price and entry controls, and one-third for social regulation, such as environmental, health and safety rules. More is spent on regulation than on medical expenses, food, transportation, recreation, clothing or savings. Regulatory costs absorb 19 percent of an average family after tax burden in 1997.

The costs are rising. Today's regulatory costs, total regulatory costs in 1997 were up 1.6 percent from the previous year, 7.2 percent over the past 5 years, and 25.3 percent over the past 10 years. In addition, the number of pages in the Federal Register, which contains all Federal regulations, has grown 37 percent over the last

10 years. Each of these figures are on those posters to the left of the Chair.

[The text of H.R. 1704 follows:]

105TH CONGRESS
1ST SESSION

H.R. 1704

To establish a Congressional Office of Regulatory Analysis.

IN THE HOUSE OF REPRESENTATIVES

MAY 22, 1997

Mrs. KELLY (for herself and Mr. TALENT) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Government Reform and Oversight, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To establish a Congressional Office of Regulatory Analysis.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Congressional Office of Regulatory Analysis Creation Act".

SEC. 2. FINDINGS.

The Congress finds that—

(1) Federal regulations have had a positive impact in protecting the environment and the health and safety of all Americans; however, uncontrolled increases in the costs that regulations place on the economy cannot be sustained;

(2) the legislative branch has a responsibility to see that the laws it passes are properly implemented by the executive branch;

(3) effective implementation of chapter 8 of title 5 of the United States Code (relating to congressional review of agency rulemaking) is essential to controlling the regulatory burden that the Government places on the economy; and

(4) in order for the legislative branch to fulfill its responsibilities under chapter 8 of title 5, United States Code, it must have accurate and reliable information on which to base its decisions.

SEC. 3. ESTABLISHMENT OF OFFICE.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established a Congressional Office of Regulatory Analysis (hereinafter in this Act referred to as the "Office"). The Office shall be headed by a Director.

(2) APPOINTMENT.—The Director shall be appointed by the Speaker of the House of Representatives and the majority leader of the Senate without regard to political affiliation and solely on the basis of the Director's ability to perform the duties of the Office.

(3) TERM.—The term of office of the Director shall be 4 years, but no Director shall be permitted to serve more than 3 terms. Any individual appointed as Director to fill a vacancy prior to the expiration of a term shall serve only for the unexpired portion of that term. An individual serving as Director at the expiration of that term may continue to serve until the individual's successor is appointed.

(4) REMOVAL.—The Director may be removed by a concurrent resolution of the Congress.

(5) COMPENSATION.—The Director shall receive compensation at a per annum gross rate equal to the rate of basic pay, as in effect from time to time,

for level III of the Executive Schedule in section 5314 of title 5, United States Code.

(b) PERSONNEL.—The Director shall appoint and fix the compensation of such personnel as may be necessary to carry out the duties and functions of the Office. All personnel of the Office shall be appointed without regard to political affiliation and solely on the basis of their fitness to perform their duties. The Director may prescribe the duties and responsibilities of the personnel of the Office, and delegate to them authority to perform any of the duties, powers, and functions imposed on the Office or on the Director. For purposes of pay (other than pay of the Director) and employment benefits, rights, and privileges, all personnel of the Office shall be treated as if they were employees of the House of Representatives.

(c) EXPERTS AND CONSULTANTS.—In carrying out the duties and functions of the Office, the Director may procure the temporary (not to exceed one year) or intermittent services of experts or consultants or organizations thereof by contract as independent contractors, or, in the case of individual experts or consultants, by employment at rates of pay not in excess of the daily equivalent of the highest rate of basic pay under the General Schedule of section 5332 of title 5, United States Code.

(d) RELATIONSHIP TO EXECUTIVE BRANCH.—The Director is authorized to secure information, data, estimates, and statistics directly from the various departments, agencies, and establishments of the executive branch of Government, including the Office of Management and Budget, and the regulatory agencies and commissions of the Government. All such departments, agencies, establishments, and regulatory agencies and commissions shall promptly furnish the Director any available material which the Director determines to be necessary in the performance of the Director's duties and functions (other than material the disclosure of which would be a violation of law). The Director is also authorized, upon agreement with the head of any such department, agency, establishment, or regulatory agency or commission, to utilize its services, facilities, and personnel with or without reimbursement; and the head of each such department, agency, establishment, or regulatory agency or commission is authorized to provide the Office such services, facilities, and personnel.

(e) RELATIONSHIP TO OTHER AGENCIES OF CONGRESS.—In carrying out the duties and functions of the Office, and for the purpose of coordinating the operations of the Office with those of other congressional agencies with a view to utilizing most effectively the information, services and capabilities of all such agencies in carrying out the various responsibilities assigned to each, the Director is authorized to obtain information, data, estimates, and statistics developed by the General Accounting Office, Congressional Budget Office, and the Library of Congress, and (upon agreement with them) to utilize their services, facilities, and personnel with or without reimbursement. The Comptroller General, the Director of the Congressional Budget Office, and the Librarian of Congress are authorized to provide the Office with the information, data, estimates, and statistics, and the services, facilities, and personnel, referred to in the preceding sentence.

(f) APPROPRIATIONS.—There are authorized to be appropriated to the Office for fiscal years 1998 through 2006 such sums as may be necessary to enable it to carry out its duties and functions.

SEC. 4. RESPONSIBILITIES.

(a) TRANSFER OF FUNCTIONS UNDER CHAPTER 8 FROM GAO TO OFFICE.—

(1) DIRECTOR'S NEW AUTHORITY.—Section 801 of title 5, United States Code, is amended by striking "Comptroller General" each place it occurs and inserting "Director of the Office"; and

(2) DEFINITION.—Section 804 is amended by adding at the end the following:

"(4) The term 'Director of the Office' means the Director of the Congressional Office of Regulatory Affairs established by section 3 of the Congressional Office of Regulatory Analysis Creation Act.".

(3) MAJOR RULES.—

(A) REGULATORY IMPACT ANALYSIS.—In addition to the assessment of an agency's compliance with the procedural steps for "major" rules described in section 801(a)(2)(A) of title 5, United States Code, the Office will also conduct its own regulatory impact analysis of these "major" rules. This analysis shall include—

(i) a description of the potential benefits of the rule, including any beneficial effects that cannot be quantified in monetary terms and the identification of those likely to receive the benefits;

(ii) a description of the potential costs of the rule, including any adverse effects that cannot be quantified in monetary terms and the identification of those likely to bear the costs;

(iii) a determination of the potential net benefits of the rule, including an evaluation of effects that cannot be quantified in monetary terms;

(iv) a description of alternative approaches that could achieve the same regulatory goal at a lower cost, together with an analysis of the potential benefit and costs and a brief explanation of the legal reasons why such alternatives, if proposed, could not be adopted; and

(v) a summary of how these results differ, if at all, from the results that the promulgating agency received when conducting similar analyses.

(B) TIME FOR REPORT TO COMMITTEES.—Section 801(a)(2)(A) of title 5, United States Code, is amended by striking "15" and inserting "45".

(4) NONMAJOR RULES.—The Office shall conduct a regulatory impact analyses, as defined in paragraph (3)(A), of any nonmajor rule, as defined in section 804(3) of title 5, United States Code, when requested to do so by a committee of the House of Representatives or the Senate, or individual Representative or Senator.

(5) PRIORITIES.—

(A) ASSIGNMENT.—To ensure that analysis of the most significant regulations occurs, the Office shall give first priority to, and is required to conduct analyses of, all "major" rules, as defined in section 804(2) of title 5, United States Code. Secondary priority shall be assigned to requests from committees of the House of Representatives and the Senate. Tertiary priority shall be assigned to requests from individual Representatives and Senators.

(B) DISCRETION TO DIRECTOR OF OFFICE.—The Director of the Office shall have the discretion to assign priority among the secondary and tertiary requests.

(b) TRANSFER OF CERTAIN FUNCTIONS UNDER THE UNFUNDED MANDATES REFORM ACT OF 1955 FROM CBO TO OFFICE.—

(1) COST OF REGULATIONS.—Section 103 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1511) is amended—

(A) in subsection (b), by striking "the Director" and inserting "the Director of the Congressional Office of Regulatory Analysis"; and

(B) in subsection (c), by inserting after "Budget Office" the following: "or the Director of the Congressional Office of Regulatory Analysis".

(2) ASSISTANCE TO THE CONGRESSIONAL OFFICE OF REGULATORY ANALYSIS.—Section 206 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1536) is amended—

(A) by amending the section heading to read as follows: **"SEC. 206. ASSISTANCE TO THE CONGRESSIONAL OFFICE OF REGULATORY ANALYSIS."**; and

(B) in paragraph (2), by striking "the Director of the Congressional Budget Office" and inserting "the Director of the Congressional Office of Regulatory Analysis".

(c) OTHER REPORTS.—In addition to the regulatory impact analyses of major and nonmajor rules described in section 4(a) of the Congressional Office of Regulatory Analysis Creation Act, the Office shall also issue an annual report on an estimate of the total cost of Federal regulations on the United States economy.

SEC. 5. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect 180 days after the date of enactment of this Act.

Mr. SESSIONS. At this time I will ask Mr. Sununu if he has any opening remarks. Mr. Sununu.

Mr. SUNUNU. Thank you, Mr. Chairman. I don't have an opening statement, although I will be submitting some brief remarks for the record. I am pleased that Congresswoman Kelly is here to discuss her proposed legislation that will I think help us get our hands around the costs of regulations, not just for a business community or even the small business community that's so important

to our economy, but ultimately it's regulatory costs that's placed on consumers. They are the ones who are buying the products, and they are the ones who are really paying the hidden costs of the regulations and the hidden costs of the ability to write rules that Congress has delegated to a number of these agencies. So I welcome her, welcome her testimony, and look forward to hearing the other panelists as well.

Mr. SESSIONS. I thank the gentleman from New Hampshire. It should be noted in the record that Mr. Tierney of Massachusetts is unable to be here at this time, but we have gone ahead and made a decision to move forward with this hearing, that we will continue until we finish, as long as we do not have any votes. So those people who are witnesses, we will continue in this process.

I would now like to welcome the Honorable Sue Kelly, who is a friend of this committee and certainly of our Congress, a colleague of ours. She is also the author of this bill, H.R. 1704.

Mrs. Kelly, I would like to have you give your testimony for such time as you wish to consume.

STATEMENT OF HON. SUE KELLY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mrs. KELLY. Thank you very much, Chairman Sessions and Congressman Sununu, and any of the other members of the subcommittee who manage to come. I am glad to have the opportunity to speak before you about H.R. 1704. This legislation would establish a congressional office of regulatory analysis. I appreciate your giving me the opportunity to testify.

We are all familiar with studies that demonstrate the tremendous burdens that Federal regulations place on our economy. A recent study by the Office of Management and Budget attempted to quantify the figure, estimating there's approximately $280 billion in annual costs for all regulations. Other studies place this figure significantly higher, with annual costs exceeding $700 billion. We also know that these costs disproportionately fall on our Nation's small business owners.

The reason I make these points is not because I am trying to imply that all regulations are bad or harmful. On the contrary, I would be among the first to cite the many beneficial effects that regulations have had in our country, especially with respect to the environment and worker health and safety. Rather, the reason I point out the burdens that regulations create is simply to reiterate the significant role that regulations play in our system of government.

It also does not appear as if this role is going to be scaled back any time in the near future. In 1997 alone, agencies issued roughly 4,000 new regulations. Of these, 59 were designated major rules, meaning generally that each one had an annual effect on our economy of $100 million or more.

In other words, the cumulative effect on the economy of just these 59 rules was on the order of at least $6 billion. As responsible legislators, we cannot ignore the enormous impact that these regulations have. We must commit ourselves to the goal of ensuring that only those regulations that are absolutely necessary are permitted to be in place.

Fortunately, Congress has recognized this role. This month marks the 2-year anniversary of the Small Business Regulatory Enforcement Fairness Act, or SBREFA, for short. A key provision of SBREFA is the Congressional Review Act, the CRA, which allows Congress to review new regulations and eliminate those that it deems too burdensome or inconsistent with congressional intent. I want to point out, I said new regulations, and eliminate those that it deems too burdensome or inconsistent with congressional intent.

This is something I know you, Mr. Chairman, have been actively involved with, and for that, you deserve our thanks. Unfortunately however, Congress has not fully implemented this new oversight tool. In my opinion, this can be explained in large part because of the fact that nearly all of Congress's information about the impact of new regulations comes from the agencies who are developing them. This information is often unreliable because agencies have a vested interest in downplaying any negative aspects of the regulations they have proposed. As a result, Congress is at a disadvantage when trying to determine just how a particular regulation will impact the economy, making it that much more difficult to effectively implement the CRA.

This is a problem that the Congressional Office of Regulatory Analysis is designed to address. If established, CORA would be charged with conducting its own analyses of a select new rules to help determine their potential impact on the economy and on small businesses. It would break the monopoly of information that has traditionally been held by the agencies and helped Congress exercise its vital oversight responsibility.

Before I conclude, I would like to briefly address one of the concerns I have heard expressed about my legislation. It seems as if some contend that CORA could not possibly carry out its mandated functions within the limited budget with which it would be forced to operate. They cite statistics asserting that on average it costs in the neighborhood of half a million dollars, and takes roughly 3 years to conduct a single regulatory impact analysis. That confusion seems to stem from the definition that's being used for a regulatory impact analysis.

Those who have raised the concerns seem to think that CORA would be starting from scratch and doing an exact duplicate of what an agency is required to do. If this perception is the result of a poor choice of wording in my legislation, I think it's something that can be fixed. However, I want to make it absolutely clear for the record that such a brand new stem to stern full-blown regulatory impact analysis is not what is envisioned for CORA. The intent is to have CORA do an analysis of the information that agencies have developed about the impact of their own rules. In other words, CORA would provide a second opinion or an analysis of the analysis of new rules. If CORA were required to do a full regulatory impact analysis in the manner that some have suggested, I would be the first to agree it could not possibly meet that goal with the limited budget that we have assigned it. But that is not the intent of the legislation. I want the record to reflect that.

All that one needs to do is look at the history of the Office of Information and Regulatory Affairs, OIRA. OIRA reviewed an aver-

age of about 2,300 rules per year during 1982 to 1993. Although this number has dropped significantly in recent years, it still reviews hundreds of rules each year. It does this with a staff and budget similar to what CORA would have. There is also no reason why it would not begin to analyze major rules before they were finalized. It could also use agencies own statistics and methodologies in addition to using its own independent expertise and judgment. As a result, there is no reason to think that CORA would be unprepared for or unable to carry out its mandate.

In conclusion, H.R. 1704 is a very simple concept that will help Congress deal with an increasingly complex and burdensome regulatory system. It will give Congress the resources it needs to oversee the regulations that the executive branch issues on a regular basis and facilitate use of the Congressional Review Act. I thank the subcommittee for the opportunity to be here today and I am happy to answer any questions that you have. Thank you very much.

Mr. SESSIONS. Thank you, Congresswoman. We appreciate your testimony today. I have one question, and then I will defer to Mr. Sununu. Please let the record reflect that Mr. Tierney did come in for just a moment during your comments, but had to leave due to another vote in another committee.

I have heard you clearly say that in essence, this organization would be a watch dog, primarily responsible for looking at legislation where rules and regulations were involved. Would they come give testimony? Would they come and be an advocate on behalf of any particular piece of legislation? Or would they be more like this watch dog and advisory council? How do you envision them really working?

Mrs. KELLY. I envision them as being available to any Member of Congress on a bipartisan basis, on a completely non-political basis to offer information and to offer any kind of research that that Congressman would like to have with regard to a proposed agency rule or regulation.

Right now as a Congressman, I am sure you understand as I do, when I need information sometimes it's difficult to get all that information quickly. This would be an office that could do that. An office that's over there putting together information so it's available to us as needed.

Mr. SESSIONS. Do you envision also, and I believe your testimony suggested this or perhaps said it, that they would look at Executive orders or those orders that either the President or the administration issued as on their behalf within agencies? That they would have those, that responsibility also to look at those and quantify them and provide information?

Mrs. KELLY. Yes. They could look at anything that has any kind of impact on a rule or a regulation having to do with the small business entities. Of course if they are called to testify, they would come and testify just like any other agency, any other offices available. This is not an agency. This is an office. So the people in that office are obviously available if they are called to testify. But their primary job would be simply to be there as someone that we can refer to, an office we can refer to.

Mr. SESSIONS. Good. Thank you. The gentleman from New Hampshire.

Mr. SUNUNU. Thank you very much. Thank you, Congresswoman. Could you describe a little bit how, well first, with regard to this being an agency or an office, not an agency, the office wouldn't really have the ability to weaken or modify any existing regulations. Correct?

Mrs. KELLY. No. Congress would have the ability to weaken or modify or strengthen and enhance. Let's put it on both sides. The idea is to give us information that we need.

But right now, stop and consider what has happened to small businesses just in the last year. I am a small business woman, so are three of my children and my husband. We are very busy just trying to make ends meet and trying to run our businesses. It is almost impossible for us to know which of those 4,000 rules and regulations that were just promulgated last year are affecting our businesses. It is very difficult for a businessperson to know that. We depend on our Congressmen to keep an eye out for us.

The other thing that as Congressmen and women, we are not always cognizant when these rules and regulations come from the agencies about redundancies and overlap. This office could tell us that kind of information.

Mr. SUNUNU. How would the analysis that the office is doing compare to the regulatory impact analysis that some agencies currently undertake?

Mrs. KELLY. It would take whatever they have to say into account.

Mr. SUNUNU. It would build on that?

Mrs. KELLY. It would build on that, yes. The idea, and it's written into the bill, is that they would take whatever is available. That was actually in the body of my testimony, that they would take the agency's own information. But the other thing that is written into the bill is that they can contract out for further studies if they need to. It's one of the things I think that would save money from the agency. We have kept the amount of money that the agency could ever, would ever be working on. I shouldn't say agency, I mean office.

Mr. SUNUNU. Once this analysis is done, how do we ensure, what mechanism do we use to make sure that the information then gets out to consumers, to the small business community to enable them to better understand what new rules and regulations may be, but also what the costs of those regulations may be?

Mrs. KELLY. That really is the congressional responsibility. This is an office that will work for Congress. That is a congressional responsibility for us to know what is there and to be aware. I am sure you, Mr. Sununu are as aware as I am when something, someone will call and say, "I think that there is something happening at an agency level that I would like you to have a look at." This would provide us with an office to turn to to say, I have a constituent who is concerned about this, could you please give me information.

If there is information there that is a warning flag or if there is—and I am speaking about it one way or another, if we need to enhance it or if we need to reduce it we will know because the of-

fice will have that information, and we can put it together with all the other information that we are getting from other sources such as the agency itself.

Mr. SUNUNU. But as the legislation is currently written, you do not take advantage or utilized say the Small Business Development Center network or other resources available say to the SBA to help get this information out to consumers? That's not currently part of the legislation.

Mrs. KELLY. That's not currently part of the legislation because this is really not an advocacy office. We have in the Small Business Administration an ombudsman that's an advocate. This is an office that's not an advocacy office, but a referral office. It's one that will give us the tools that we need. You know, you wouldn't ask a plumber, I mean you would look at a plumber who came to your house to repair a sink who didn't have a wrench as somebody who maybe didn't have all the tools he or she needed. That is kind of the way I view this. It is a needed tool Congress doesn't have. I think we really do need this tool in our toolbox in order to evaluate what we are doing with regard to regulations and rules.

Mr. SUNUNU. Thank you very much.

Mrs. KELLY. Thank you.

Mr. SESSIONS. Thank you, Mr. Sununu.

I would now ask Mr. Tierney of Massachusetts, I would ask that you not at this time give an opening statement, but rather ask questions of Mrs. Kelly. Then I will allow you that opportunity.

Mr. TIERNEY. Mr. Chairman, I'll do more than that for you. I really have no questions. Thank you for coming, Representative.

Mrs. KELLY. Thank you very much, Mr. Tierney.

Mr. SESSIONS. Thank you. Having no further questions from the subcommittee, we want to thank you so much for taking your time to be here. We appreciate your appearance. We will keep you advised of the progress that we're making in the subcommittee on your bill.

Mrs. KELLY. Thank you, Mr. Chairman.

Mr. SESSIONS. I would now before we have the first panel come forward, I would like to allow Mr. Tierney the opportunity to make an opening statement.

Mr. Tierney.

Mr. TIERNEY. Thank you, Mr. Chairman. Thank you for your patience in waiting as we had these dueling committees to get back and forth. I want to thank you for holding this important hearing. I am pleased that we are looking at a proposal that would ostensibly provide Congress with more information. Nevertheless, I believe it's flawed because it would be duplicative, expensive, and would run contradictory to existing efforts to streamline government.

Furthermore, I am concerned that the appointment process would open the door to creating an entity that merely provides support for partisan ideology. It's duplicative in that H.R. 1704 creates a congressional office of regulatory analysis, otherwise to be known as CORA, that would perform duties that are already being handled by others. Both the Office of Information and Regulatory Affairs and the General Accounting Office are already responsible for reviewing the agencies' submissions for major rules under the Con-

gressional Review Act. Additionally, the Congressional Budget Office is responsible for comparing an agency's estimate of the cost of a rule with the CBO's original estimate for the act.

Furthermore, for the last 2 years, the Office of Information and Regulatory Affairs has been estimating the total cost of regulations on the U.S. economy. Apparently the only unique function that CORA would perform is an independent cost-benefit analysis, or as I just heard the representative indicate, sort of an analysis of an analysis, as if that might be necessary, which was also referred to as a regulatory impact analysis or RIA. CORA would analyze all major rules and upon request, all non-major rules. This new function would simply be too costly.

In March 1997, the CBO conducted a thorough analysis of the cost of conducting a cost-benefit analysis. After reviewing 85 analyses from four agencies, the CBO concluded that the average cost of performing a single analysis was $570,000. Therefore, at an average cost of $570,000 per RIA, the CORA would need about $35 million annually to conduct its own independent RIA or analysis of the analysis for the 60-plus major rules filed with Congress each year.

CBO also notes that there's a very broad range of costs. However, CORA would be conducting independent analyses for all major rules. I would venture to say that those analyses then are the more expensive ones, and that the $35 million estimate is quite conservative. Clearly CORA could not adequately perform this function with the $5 million a year that is provided for in the bill as amended by the Judiciary Committee.

That said, it appears that CORA could not perform this function within the 45 day time limit provided in the bill. CBO found that on average, a cost-benefit analysis took 3 years to complete. Proponents of the bill may argue that CORA's analysis would not be as thorough as the analysis referred to in these studies. I suggest that that must be what the representative was talking about when she mentioned an analysis of an analysis.

If the purpose of CORA is merely to review what the agency has done, why are we duplicating work that is already performed by OIRA, the GAO, the CBO and others? I do not believe we need to create a new small bureaucracy to solve a larger bureaucratic problem. This is in fact what people are always complaining we do with small businesses. Now we apparently intend to do it on agency after agency that's working within the Government.

I am also, Mr. Chairman, very concerned that the appointment process for CORA opens itself to partisan politics. The majority would be tempted to create a partisan shop that would merely reanalyze the agency's cost-benefit numbers to come up with new numbers that fit the majority's political agenda. Apparently, Mr. Chairman, the majority believes that if it asked the question enough times, it will eventually get the answer that it wants.

CORA's Director would be appointed by the majority party. The appointment process is modeled after the one used for the CBO. The majority has been under fire in the media for using this appointment process to encourage its political agenda. For example, a recent widely publicized incident revealed an effort by the majority to replace the current CBO Director June O'Neill, mainly because she would not apply dynamic scoring, the process used to

project economic growth produced by tax cuts when scoring their budget. Commenting on this situation, the Hill newspaper editorialized perhaps it's naive to argue that the CBO should be above the political fray. But Congress and its leaders risk damaging their own credibility when they bring pressure on the CBO to produce budget projections that support their political ideology.

Mr. Chairman, I believe that Congress should diligently monitor the executive branch and ensure that it is fulfilling its regulatory requirements. As the subcommittee with jurisdiction over regulatory affairs, we have the authority to hold hearings on a regulation when we question whether or not a cost-benefit analysis was performed correctly. In fact, I recall that you held two hearings last year on the EPA's analysis of the clean air standards for ozone and particulate matter. However, the subcommittee has not held any hearings between July 1997 and March 1998. During that time, Mr. Chairman, we were busy expending our subcommittee resources investigating the White House data base to no apparent benefit to anyone.

I believe we should take our oversight obligations seriously through the subcommittee rather than abrogating our oversight responsibilities and delegating them to a new expensive and partisan bureaucracy.

Mr. Chairman, I would like to submit for the record a number of documents that summarize the substantial cost of performing an independent RIA.

Mr. SESSIONS. Without objection.

[The information referred to follows:]

CBO PAPERS

REGULATORY IMPACT ANALYSIS:
COSTS AT SELECTED AGENCIES
AND IMPLICATIONS FOR
THE LEGISLATIVE PROCESS

March 1997

CONGRESSIONAL BUDGET OFFICE
SECOND AND D STREETS, S.W.
WASHINGTON, D.C. 20515

SUMMARY

Recent proposals for regulatory reform would subject the regulations that federal agencies issue to increased cost-benefit analysis. Various laws and executive orders already require such analyses (known as regulatory impact analyses, or RIAs) for any "significant" rule—defined as one that would cost more than $100 million a year or have adverse effects on the U.S. economy or the federal budget. Some recent legislative proposals would also have the Congressional Budget Office (CBO) or other Congressional support agencies perform similar work.

Many studies have explored whether the benefits of regulation justify its costs, but few have examined the nature and level of resources necessary for the government to conduct cost-benefit analyses. CBO has tried to fill that gap by studying the costs of 85 RIAs from six offices in four agencies: the Environmental Protection Agency (EPA), the Coast Guard, the Federal Aviation Administration (FAA), and the National Highway Traffic Safety Administration. CBO chose those agencies because they are frequently cited as imposing significant regulatory costs on the economy.

CBO also examined cost data on regulatory analyses from the Occupational Safety and Health Administration, but OSHA was unable to distinguish RIAs from other analyses. Thus, OSHA's analyses are not included in the final RIA count, but

some of its cost information is presented for purposes of comparison. Examining other regulatory agencies, such as the Food and Drug Administration and the Department of Agriculture, would also have been instructive, but CBO was unable to do so because of time limitations.

The majority of the RIAs in CBO's study date from 1990 through 1996, although some of the analyses are still going on, and five were published before 1990. (The FAA submitted some RIA data from 1988 and 1989.) CBO reviewed that seven-year period to capture the most recent analyses and to account for the fact that RIAs can take years to complete.

Based on the sample of 85 analyses, the average cost per RIA was about $570,000, with a range of $14,000 to more than $6 million per analysis. The median cost (the value below which half of the costs per RIA are found) was $270,000, indicating that a few relatively expensive analyses were skewing the average upward. When the four RIAs that cost more than $2 million were excluded, the average and median costs were about $390,000 and $270,000, respectively. (All values are stated in 1995 dollars.)

The RIAs in CBO's study also varied considerably in the amount of time they took to complete, with an average of three years and a range of six weeks to more than 12 years. For agencies that use outside contractors (all EPA offices and the

Coast Guard), in-house personnel costs—salary, fringe benefits, and estimated overhead—accounted for about one-third of all RIA costs; spending on outside contractors accounted for the remaining two-thirds.

Although CBO's study represents a best attempt to collect and verify original data from a sample of agencies that conduct RIAs, it leaves many questions unanswered. The most difficult is why the costs of analyses vary so much, both among agencies and within them. CBO identified several possible reasons based on anecdotal evidence from agency staff. A thorough exploration would require investigating the history of each rule, which was beyond the scope of CBO's review.

Despite those limitations, the Congressional Budget Office identified several features of regulatory impact analyses and similar analytic efforts by federal agencies:

- There Is No Such Thing as a Typical RIA. The cost of the analyses and the time needed to complete them varied tremendously in CBO's survey. Anecdotal evidence suggests several reasons for that variability, including the scope and complexity of the rule being analyzed, the nature of the information required to perform the RIA, and the degree of political consensus surrounding the rule. The costs and time needed to perform similar regulatory analysis in the future will probably also vary—both at executive agencies and at CBO or other

parts of the legislative branch that might be required to undertake similar analysis.

- Agencies Do Not Track Costs Separately for Each RIA. Although agencies employ both government personnel and outside contractors to perform RIAs, none of the agencies that CBO reviewed keep track of the total contract and personnel costs incurred for each regulatory impact analysis. In addition, estimates of the time that government personnel spend on RIAs are imprecise because agencies do not keep time sheets by activity. Estimates of contractor costs are more reliable because they can be traced through billing records. However, even contractor costs can be hard to allocate if one contract includes work on several RIAs. As a result, accurately projecting the costs that another office might experience in undertaking regulatory analysis is difficult because the components of the baseline costs are not well documented.

- Reported RIA Costs Do Not Reflect the Cost of Some Supporting Analysis. Agencies routinely perform economic analysis on proposed rules. Some of that analysis is included in the RIA and some is not, but even analysis excluded from the final document plays a role in the decisionmaking process. Moreover, agencies often need to perform

other types of analysis—such as risk analyses or engineering studies —to determine the costs and benefits of a regulation. Although those studies are necessary precursors to the RIA, they are not included in the costs attributed to preparing it. By excluding the costs of those studies, the agencies in CBO's survey may underestimate the costs of performing regulatory impact analyses. Other agencies—including CBO—would therefore probably need to establish some added analytic infrastructure to support a regular program of regulatory analysis.

- Determining What Constitutes an RIA Is Difficult. Although the term "regulatory impact analysis" usually signifies a cost-benefit analysis performed for a significant rule, other working definitions exist. Some officials define an RIA as any analysis that considers benefits as well as costs, or that considers alternatives as well as the preferred option, even if it is not for a significant rule. Also, some RIAs are never published because the rules they are associated with are never finished and put into effect. Consequently, although much work has gone into the analysis, the RIA will never show up on any list of published analyses. Given all of those difficulties, it can be hard to define and isolate the universe of RIAs. That problem will be compounded if such analysis is moved to the legislative stage, because the form the potential

regulations *might* take and whether they will be significant or minor are generally even more uncertain at that point.

In sum, regulatory impact analyses generally require a considerable amount of resources and time. Conducting comparable analysis within the current legislative process would be difficult even if sufficient resources were made available. The Congress has the ability to consider and vote on a bill the same day the bill is reported by a committee if it chooses to do so, and normal rules permit a bill to be considered in as few as three days. By contrast, even the quickest analysis in CBO's review took six weeks. Furthermore, the average duration per analysis—three years—is longer than the two-year session of Congress between national elections.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
POLICY, PLANNING AND EVALUATION

MAY 17 1995

Honorable Cardiss Collins
Committee on Reform and Oversight
2157 Rayburn House Office Building
U. S. House of Representatives
Washington, DC 20515-6143

Dear Congresswoman Collins:

Thank you for giving us the opportunity to provide information for your subcommittee mark-up on H.R. 994, the Regulatory Sunset and Review Act of 1995. The Administrator has asked me to respond on her behalf, and I would like to answer each of your questions in turn. As you will see from our response, this legislation has far-reaching implications for Environmental Protection Agency (EPA) and its regulatory programs.

1. **How many regulations are currently administered by your agency?**

   EPA has historically issued approximately 200 **final, substantive** rules each year. Assuming this has been true since the establishment of the Agency in 1970, EPA administers approximately 4800 final rules as codified in the Code of Federal Regulations. As explained in our response to Question 2, these figures do not include nonregulatory actions published in the "Final Rules" section of the Federal Register.

   We should note that of these final, substantive and regulatory actions, many do not establish new regulatory programs but rather amend existing parts of the Code of Federal Regulations.

2. **How many final regulations have been issued by your agency in each of the years 1981 through 1994?**

   Since 1981 EPA has issued approximately **2,800 final substantive rules.** Of these 2800, **70 have cost over $100 million.** The chart below breaks these numbers out by year.

	# of Final Rules[1]	Final Rules over $100 million
1981	225	1
1982	289	5
1983	237	2
1984	245	0
1985	242	7
1986	234	2
1987	200	7
1988	212	6
1989	224	3
1990	162	12
1991	130	8
1992	103	7
1993	155	5
1994	192	5
TOTAL:	2,850	70

3. **For those final rules issued by your agency in each of the years 1981 through 1994, how many rules: establish new regulatory requirements; implement revisions to existing regulatory requirements; and eliminate regulatory requirements?**

Historically, EPA has not tracked regulations according to these categories. However, for the first three months of 1995 the figures for our final rules are as follows:

New regulatory requirements:	5
Revisions to existing requirements:	20

No rules to date in 1995 have totally eliminated regulatory requirements. We have, however, modified a number of our

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[1]EPA published 7,403 actions in the "Final Rules" section of the Federal Register from 1981 to 1994. We estimate that approximately 2800 of these were truly regulatory in nature. The balance are "ministerial" or "routine and frequent" actions (categories used by the Federal Register) which are related to final rules but which are nonregulatory. These categories include State Implementation Plans under the Clean Air Act, Pesticide Tolerances, Significant New Use Rules under TSCA, Premanufacture Notices, UST State approvals, Ocean Dumping site designations, Outer Continental Shelf amendments, Designation of Areas for Air Quality (state attainment designations), and UST State codifications. Many of these actions do not impose new regulatory requirements but rather implement other major regulations or revise existing requirements. Their relatively large numbers reflect EPA's commitment to providing geographic and other site-specific flexibility to the regulated community.

existing rules to allow more flexibility to the regulated community. The state options in our Vehicle Inspection and Maintenance program are examples of this initiative. All of our existing regulations are currently under review as part of the President's Regulatory Reinvention initiative. We expect to announce by June 1 a number of existing requirements that will be eliminated.

4. **How many existing regulations has your agency reviewed to determine whether they continue to serve the purpose for which they were originally issued in each of the years 1981 through 1994?**

The driving force behind EPA's regulatory activity has been new legislation and the requirements placed on the Agency to develop and implement the corresponding regulatory programs. Most recently, the Clean Air Act Amendments of 1990 have required EPA to commit a substantial portion of its resources to develop the regulatory program, meet the many statutorily imposed deadlines, and assure compliance with the new rules.

When we take into account the Agency's additional responsibility to meet many judicial deadlines, there has been little time and fewer resources available to review existing regulations other than those periodic reviews mandated by statute. Among EPA's mandated reviews are the TSCA Section 8 biannual review, the annual review of the Effluent Guideline program under the Clean Drinking Water Act, and the reviews of National Ambient Air Quality Standards under the Clean Air Act.

5. **How many regulations would your agency have to review within the three-year time period and within the seven-year time period established by H.R. 994?**

Within seven-years, EPA would need to review all 2800 final, substantive rules currently codified at the rate of about 400 per year. In addition, EPA will publish approximately 600 final, substantive rules over the next three years and would therefore need to review 200 of these per year to meet the three-year sunset provision of H.R. 994.

6. **How many people would your agency envision needing in order to carry out the requirements of H.R. 994 to review all existing and all new regulations that are issued?**

(See response to question #7.)

7. **What are the administrative costs your agency would expect to incur in order to carry out the review and other requirements of H.R. 994?**

In order to respond to this question, we must make several assumptions with regard to a number of the provisions in H.R. 994, and place this bill into context with other pending legislation, particularly H.R. 1022. H.R. 994 requires that the Agency develop information to characterize risks and economic costs, benefits and impacts for all rules. This level of investment in risk and economic analysis is not now routinely produced to support every regulatory action undertaken by the Agency. However, the regulatory development process for major or significant regulations does require this kind of information be developed (primarily economically significant regulations as defined under Executive Order 12866 and the Unfunded Mandates Reform Act of 1995). Proposed provisions in H.R. 1022 require risk and economic information be prepared for a substantially larger universe of the Agency's regulations, though not every new and past regulation as required in H.R. 994.. Therefore, H.R. 994 would require more analysis than is (1) either conducted under current requirements, and (2) additional requirements posed by H.R. 1022's risk assessment and economic analysis provisions. What follows below is an attempt to depict these baseline and incremental costs.

In response to previous requests for information from Congress and the White House, the Agency measured the baseline level of current resources devoted to risk assessment and economic analyses. We estimate that we devote approximately 690 full-time equivalent (FTE) positions at a cost of $55 million per year, and an additional $65 million per year in extramural resources to conduct risk assessments and cost-benefit analyses required under existing environmental statutes, administrative procedures, and other Administration policies.

The Agency has also estimated the incremental annual costs of meeting the risk assessment and benefit-cost provisions of H.R. 1022, which affects primarily new rules, but will also have potential implications for past rules. Due to the uncertainties in knowing how many past and new regulatory actions will be the subject of judicial review, the Agency produced a range of estimates for the resources needed to comply with the provisions of H.R. 1022. A larger proportion of the estimated costs are attributed to the resources required to analyze permit decisions, but there will be substantial increases in the analytic requirements for regulatory actions (between 671 and 998 FTEs, and $221 to $287 million in salary and analytic resources).

The provisions of H.R. 994 expand these requirements beyond current and proposed action covered under H.R. 1022, affecting: (1) the remainder of new EPA activities not already covered by this proposed legislation; and (2) the

universe of past EPA activities not covered by this proposed legislation. At this time, the Agency does not have a definitive count of the number of additional new regulations that will be promulgated into the future. In response to an earlier question, the agency estimated that approximately 200 new regulatory actions will be promulgated on an annual basis in the coming three years. Of these regulations, the Agency estimates that approximately 150 will be "major" rules (as defined under H.R. 1022), and they will be analyzed in accord with the provisions of H.R. 1022. Therefore, around 50 additional or "non-major" regulations will need to be analyzed to meet the criteria described in H.R. 994. The Agency anticipates that few of these regulations will require that this information be prepared under current regulatory and administrative provisions, so new analyses will be required for these rules. Consistent with assumptions and information developed for the H.R. 1022 analysis, the EPA could conceivably be required to devote an additional 5 to 18 FTEs at a cost of $0.5 to $1.5 million, and $0.5 to $2.5 million in extramural resources for the study of these 50 new regulatory actions.[2]

In addition to the study of new rules, the provisions of H.R. 994 require the Agency to review all of its past rules. At this time, we do not have an estimate on the number of rules, but have information on the number of pages in the Code of Federal Regulations (CFR) devoted to environmental regulations (around 14,200 pages). In response to Question 2, the Agency estimated it has promulgated roughly 2,850 final regulatory actions since 1981. If we allow for the possibility that for the years prior to 1981, the Agency promulgated final regulatory actions amounting to an additional 20% beyond this figure, then the total estimated number of rules that would need to be reviewed could be between about 2850 (assumes all final rules promulgated prior to 1981 have since been revised) and 3420 rules. The schedule detailed in H.R. 994 requires that all of these previous final rules must be reviewed within a seven-year time period. Assuming an equal proportion of rules would be studied over this period, then between 400 and 490 past rules would be analyzed each year for the next seven years. Using the same cost figures for these rules as were used above to analyze review of new "non-major" rules, this would result in an annual expenditure of 41 to 154 FTEs at a cost

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[2] Basis for estimates: The low range assumes 1 person-month (0.08 FTE) and high range assumes 3 person-months (0.25 FTE) per rule at a cost of $80,000 per FTE; low range assumes $10,000 extramural resources and the high end assumes $50,000 extramural resources per rule, with 1 FTE per $500,000 extramural resources for contract administration.

of $3 million to $12 million, and $4 million to $25 million in extramural resources for the study of these past rules.[3]

Table 1 serves to summarize these estimates. Taken together, baseline Agency resources devoted to these activities, if altered as a consequence of provisions in H.R. 1022 and H.R. 944, would require a substantial increase or re-direction of Agency resources to fulfill these requirements. The resource demands would require several thousand persons be devoted to these types of analyses (above and beyond the number of people that now work in these areas). We estimate that an additional $1.4 - $1.7 billion in annual extramural resources would be devoted to the conduct of risk assessments and economic analyses to fulfill the provisions of proposed legislation in the House of Representatives. Of this amount, between 1400-1860 staff would be reviewing and analyzing new and past rules, at an annual cost of $350-$450 million for personnel and extramural resources.

We should note that should H.R. 1022 fail to pass, but H.R. 994 be enacted, the incremental costs to the Agency to satisfy the conditions of H.R. 994 would be less than the estimated sum of the incremental costs of these two bills. This is primarily due to the provisions in H.R. 1022 for judicial review, and inclusion of permits in the universe of regulatory actions subject to risk and economic analysis. However, the costs of enacting H.R. 994, absent any additional changes, will be greater than the incremental costs of H.R. 994 provided in Table 1. There would still be requirements to produce risk and economic information for all new and past regulations. The analyses performed for H.R. 994 could conceivably be less complex and resource-intensive than those produced for H.R. 1022, but there would still be a substantial increase in effort and cost to perform these analyses given the large number of rules to which the provisions of H.R. 994 would be applied.

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[3] Basis for estimates: The low range assumes 1 person-month (0.08 FTE) and high range assumes 3 person-months (0.25 FTE) per rule at a cost of $80,000 per FTE; low range assumes $10,000 extramural resources and the high end assumes $50,000 extramural resources per rule, with 1 FTE per $500,000 extramural resources for contract administration.

Table 1

Summary of Preliminary Estimate of Cumulative Incremental Costs of Meeting H.R. 1022 and H.R. 994

Type or Purpose for FTEs and Extramural Resources	Low Estimate	High Estimate
Baseline Costs		
- FTEs for regulations	**690 FTEs**	**690 FTEs**
- $ for FTEs and regulations	**$120 million**	**$120 million**
H.R. 1022 Provisions		
- FTEs for regulations	671 FTEs	998 FTEs
- $ for FTEs and extramural resources	$221 million	$287 million
- FTEs for permits	1,945 FTEs	2,223 FTEs
- $ for FTEs and extramural resources	$1,103 million	$1,261 million
Sub-Total Increment for H.R. 1022		
- FTEs	**2,616 FTEs**	**3,221 FTEs**
- $ for FTEs and extramural resources	**$1,324 million**	**$1,548 million**
H.R. 994 Provisions		
- FTEs for new regulations not covered under H.R. 1022	5 FTEs	18 FTEs
- $ for FTEs and extramural resources	$1 million	$4 million
- FTEs for past regulations	41 FTEs	154 FTEs
- $ for FTEs and extramural resources	$7 million	$37 million
Sub-Total Increment for H.R. 994		
- FTEs	**46 FTEs**	**172 FTEs**
- $ for FTEs and extramural resources	**$8 million**	**$41 million**

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Type or Purpose for FTEs and Extramural Resources	Low Estimate	High Estimate
Cumulative Total (Base resources + H.R. 1022 + H.R. 994)		
Including Permits		
- FTEs	3,352 FTEs	4,083 FTEs
- $ for FTEs and extramural resources	$1,452 million	$1,709 million
Only Regulations		
- FTEs	1,407 FTEs	1,860 FTEs
- $ for FTEs and extramural resources	$ 349 million	$ 448 million

I hope this information will be useful to you as you begin your mark-up. Please let me know if I can be of further assistance.

The Office of Management and Budget has no objection to this letter from the standpoint of the President's program.

Sincerely,

David Gardiner
Assistant Administrator

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January 14, 1998

SECTION: Pg. 3

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HEADLINE: DEMOCRATS DEFEND CBO'S O'NEILL, AS REPUBLICANS LOOK FOR A SUCCESSOR

BYLINE: A.B. Stoddard

BODY:

House Democrats have rushed to the defense of **June O'Neill,** who Republican leaders plan to replace as director of the Congressional Budget Office (CBO).

Last week The Hill reported that GOP leaders will soon begin the process of creating a search committee to find a new CBO director whose term would begin next January at the start of the 106th Congress.

At issue is O'Neill's methodology. Since some Republicans had hoped she would predict GOP tax cuts would yield increased economic growth , an economic model known as dynamic scoring , they are frustrated that the CBO's estimates have remained conservative. Indeed, so cautious are her estimates that the CBO's calculations of the fiscal 1997 budget deficit were $100 billion higher than were finally calculated.

But Democrats on the House side, who strongly oppose dynamic scoring, have endorsed O'Neill's tenure at the CBO. Rep. Jerry Costello (D-Ill.), a member of the Budget Committee, said O'Neill has used honest numbers to calculate the deficit and the budget.

"I admire the fact that she hasn't caved in to the wishes of the Republican leadership on dynamic scoring," he said. "It should not be at the whim of the Republican leadership to replace her because she doesn't agree with them on policy matters."

In response to the account in The Hill, Rep. Charles Schumer (D-N.Y.) plans to send a letter to House Speaker Newt Gingrich (R-Ga.) and Senate Majority Leader Trent Lott (R-Miss.) expressing concern that the GOP seeks to "oust" O'Neill and plans to replace her with someone who advocates dynamic scoring. The letter, which has been circulated to colleagues for their signatures, will be sent to GOP leaders when Congress returns at the end of the month, according to Cathie Levine, Schumer's press secretary.

In the letter, Schumer stated that the CBO had established credibility as a non-partisan agency whose directors had helped make it one of the most respected in Washington.

"None of these directors , not Rudy Penner, not Alice Rivlin, not Robert Reischauer and not **June O'Neill** , bent their mainstream economic views for

political purposes," wrote Schumer.

Schumer urged any replacement of O'Neill to be an economist who adheres to mainstream economic principles. He called dynamic scoring, which lead to trickle-down economic policies in the Reagan administration, "a colossal mistake."

"Fifteen years later, we have finally dug ourselves out of the quarry that trickle-down economics brought us," wrote Schumer. "These same economists argue that the 1993 Clinton budget would lead to a steep recession. Again, they couldn't have been more wrong."

Costello, who has signed the Schumer letter, warned it would be poor timing to replace O'Neill at the end of a year in which President Clinton is expected to submit to Congress the first balanced budget in 30 years.

"We shouldn't be making enormous policy changes in the agency which has tried to use honest calculations to estimate the deficit," he said.

Costello admitted that Democrats will have little say in whether or not O'Neill serves out a second term as the CBO director. However, he said she " has tried to do the best job she could without interjecting partisan politics in the process."

O'Neill said in an interview with The Hill last week that "economists naturally think about dynamic effects because it is their job. But on the issue of dynamic scoring , would you for each and every piece of legislation that passes attempt to say what the effect on the GDP (gross domestic product) would be for the next 10 years, that would have to do with what is practical and what is not practical."

O'Neill added that she was requested by the Republican leadership last summer to analyze the effects of the balanced budget agreement and that she didn't receive any complaints about her analysis.

"Most people have observed the independence of the CBO so there has been little interference," she said.

A spokeswoman for the majority staff of the House Budget Committee said she could neither confirm nor deny that O'Neill would be replaced.

Senate Democrats are not as supportive of O'Neill as their counterparts on the House side. According to several sources, an incident that took place a year ago involving a study on the effects of capital gains tax cuts diminished O'Neill's credibility with Democrats on the Senate Budget Committee.

The study, originally presented at the American Enterprise Institute, was being prepared by the CBO but had reportedly been stalled or canceled by O'Neill who deemed it inadequate.

In June of 1996, then-Sen. Bill Bradley (D-N.J.) requested a copy of the study, asking the CBO to provide it in early September. When he left office in November, the request had yet to be fulfilled. Last January, aware of the unfulfilled request, Sen. Paul Sarbanes (D-Md.) asked O'Neill about the study during a hearing in the Senate Budget Committee. Since the summary of the study

concluded that wealthy people benefit the most from capital gains, Sarbanes suggested that perhaps the report had been "stopped in its tracks for some reasons."

O'Neill responded that the CBO's "primary attention is devoted to reports that are requested by the chair and the ranking minority of the committee." Ranking member Sen. Frank Lautenberg (D-N.J.) then made a formal request for the study and it was eventually submitted to the committee after what O'Neill said were some changes in the writing of the study.

O'Neill denies ever canceling the study. "I believe that at the time I had told the senator it was a work in progress," she said. "I didn't say it was not going to come out."

O'Neill also denies she meant to "quash" the report. "I think it's a very good study and I myself have tried to promote it," she said. "It's a treasure of information on capital gains that had not been available before."

Despite the incident, Senate Democrats share the concern that O'Neill will be replaced by someone who is more of an ideologue, sources said.

"Both parties have conflicting feelings about this," said the aide. "For Democrats we are not delighted with her because she has an ideological bias , as illustrated in the capital gains tax study, on the other hand we could end up with somebody a lot worse."

LANGUAGE: English

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January 14, 1998

SECTION: Pg. 14

LENGTH: 464 words

HEADLINE: DONE IN BY DYNAMIC SCORING

BODY:

By most accounts, **June O'Neill** has done a credible job since being appointed director of the Congressional Budget Office by the newly elected Republican leadership three years ago. While not as politically savvy as the three other economists who have headed the CBO since it was established in 1975, O'Neill is widely regarded as a competent professional who calls the shots on economic policy issues as she sees them.

But that, apparently, is the main reason why Republican leaders are unhappy with O'Neill and have decided to replace her when her four-year term expires at the end of the year. As The Hill's A. B. Stoddard reported last week, Republicans have become disenchanted with O'Neill because she failed to produce more optimistic forecasts of the budget deficit.

Never mind that the best statistical minds in the country, including those who work for Treasury Secretary Robert Rubin and Federal Reserve Board Chairman Alan Greenspan, didn't see that the nation's extraordinary economic growth is shrinking the federal deficit faster than anyone expected. Because of a surge in tax revenues and spending restraints , largely imposed by the Republican Congress , the $570 billion deficit that was projected for 2002 when President Clinton took office may even turn into a surplus this year.

But O'Neill's skeptical attitude toward dynamic scoring , the process used to project economic growth produced by a tax cut , prevented the CBO from alerting Republican budgeteers in both the House and Senate in time to get a jump on Clinton and promise voters tax cuts and other goodies in this election year.

As a top Republican aide involved in the budget process told The Hill, even though O'Neill is a "good, solid economist," more conservative members were angered that the CBO didn't give them advance notice of a budget surplus that would justify cutting taxes and thereby "stimulate the economy instead of having to offset it by cutting Medicare or Social Security."

While there were other criticisms of O'Neill's brittle personal style and her recent firing of three senior CBO employees , Democrats were angered because one was former Rep. Stanley Greigg (D-Iowa) and suggest the firings were politically motivated , it appears that O'Neill was destined to fail.

As her immediate predecessor, Robert Reischauer, noted, any director of the CBO who was truly doing his or her job would be criticized by Congress. " Those who appoint you," said Reischauer, "are the most disappointed in your

performance."

Perhaps it is naive to argue that the CBO should be above the political fray. But Congress and its leaders risk damaging their own credibility when they bring pressure on the CBO to produce budget projections that support their political ideology.

LANGUAGE: English

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January 7, 1998

SECTION: Pg. 1

LENGTH: 1552 words

HEADLINE: GOP READY TO DUMP CBO CHIEF;**JUNE O'NEILL** AT ODDS WITH LEADERS ON ECONOMIC FORECASTS AND POLICIES

BYLINE: A.B. Stoddard

BODY:

Although **June O'Neill** has a year remaining in her term as director of the Congressional Budget Office, she has so antagonized Republican leaders that they will soon begin the process of replacing her in 1999, sources said.

O'Neill, named CBO director when the GOP took control of Congress in 1995, has reportedly disappointed some Republicans , particularly in the House , who expected her to produce more optimistic forecasts for their tax-cutting proposals.

Like her predecessor, Robert Reischauer , a Democratic appointee who was not re-appointed after the Republicans won control of Congress , O'Neill also is likely to serve only one term and step down as the CBO's fourth director at the end of the 105th Congress. Alice Rivlin was the CBO's first director, followed by Rudolph Penner.

O'Neill's status also is complicated by her recent firing of three senior aides, including a former Democratic member of Congress.

"There is some displeasure with June, in part because of her performance at committees and weakness in testimony, and there are some policy issues, like dynamic scoring, that have led to disgruntlement on the House side," said a top Republican aide involved in the budget process.

Dynamic scoring consists of projecting the economic growth produced by a tax cut.

The staffer, who called O'Neill a "good, solid economist," said "when a bill comes along and cuts taxes, the more conservative members would like to see it stimulate the economy instead of having to offset it by cutting Medicare or Social Security. She has not favored more dynamic scoring."

As a result, the aide said, "There will be a search committee established to start the process of finding a replacement for **June."**

O'Neill, who noted there is an election between now and the time her term will expire, told The Hill that congressional leaders have not given her any evaluation of her performance.

"Most people have observed the independence of the CBO so there has been little interference," said O'Neill.

On the subject of dynamic scoring, O'Neill said "economists naturally think about dynamic effects because it is their job. But on the issue of dynamic scoring , would you, for each and every piece of legislation that passes, attempt to say what the effect on the GDP (gross domestic product) would be for the next 10 years, that would have to do with what is practical and what is not practical."

Sources acknowledge that budgeteers in both the House and Senate were frustrated with O'Neill, blaming her for the CBO's cautious forecasts. A year ago the CBO estimated a deficit of $125 billion for fiscal 1997, but amended the figure months later during budget negotiations. As a result of unexpected tax revenues, the CBO then estimated the deficit would actually be more than $40 billion less than previously stated. The year-end total deficit was $22 billion, nearly one-sixth of the original estimate.

In her defense, many observers say it is unfair not only to compare O'Neill to Reischauer, but also to criticize her conservative estimates at a time of extraordinary and unpredictable economic growth.

Indeed Reischauer himself , who did not deliver administration-friendly forecasts for Clinton's health care plan , said that any director of the CBO who is truly doing his or her job will be criticized by Congress.

"Those who appoint you are the most disappointed in your performance," said Reischauer, now a senior fellow in the Economic Studies Department at the Brookings Institution.

Another often-recited story of O'Neill's tenure involves a study on capitol gains taxes that she allegedly canceled because she said it was inadequate. At a hearing in the Senate Budget Committee last winter Sen. Paul Sarbanes (D- Md.) asked O'Neill about the study, which had previously been presented at the American Enterprise Institute.

O'Neill reportedly told Sarbanes that studies could only be requested by chairmen or ranking members and that Sen. Frank Lautenberg (D-N.J.) then made the request. While some say O'Neill was then forced to produce a version of the study she had canceled, O'Neill herself denied she ever took such action.

"It was not canceled," said O'Neill. "I believe I told the senator at the time it was a work in progress. I didn't say it was not going to come out. It may have been pushed farther to the front burner as a result of the request but it was something that couldn't appear the way it was. There was some question in the writing of it."

The study, which reportedly showed cuts in capital gains to benefit the wealthy, was submitted to the committee after a long delay one budget aide said was purely political.

O'Neill also denies she meant to "quash" the report, as others allege, due to its findings. "I think it's a very good study and I myself have tried to promote it," she said.

Another controversy attached to O'Neill was her recent firing of three senior CBO employees, including Stanley Greigg, a former Democratic representative from Iowa who served as director of the Office of Intergovernmental Relations. He helped establish the CBO with Rivlin in 1975.

Because all three men claimed to have been fired without explanation and are over the age of 60, and one of them is disabled, the incident caught the attention of the House Budget Committee. Fourteen Democrats on the committee wrote to O'Neill on Oct. 29, inquiring whether such "midnight pink slips" had violated the law.

"The CBO has, we are informed, not disclosed any documentation nor has asserted any reason for these dismissals. ... We are troubled that the CBO might be relying on age and handicapped stereotypes in making employment decisions. This is absolutely untenable and patently illegal," said the letter written by Rep. Patsy Mink (D-Hawaii).

O'Neill, who responded to the letter from the Democrats, said the three men were "made aware of the complaints against them and they were made aware of their rights." She said she is not able to discuss those explanations because the legal agreement they entered into required the parties to keep such information confidential.

A spokeswoman for Rep. John Kasich (R-Ohio), chairman of the House Budget Committee, said she was aware of the firings but not of the letter Democrats sent to O'Neill. She did not respond further.

While some former employees question O'Neill's tactics in firing the three men, two of them said the dismissals were warranted, most especially in the case of Greigg.

"This is an unusual event for the CBO, to fire top people," said one former top-level staffer. "I had seen other directors who were no fans of Stan Greigg. But why did June fire him? I think it's a matter of personality and sensitivity. June is not a real warm person. I don't think she would lose sleep over firing someone. This is not an attractive feature of June's personality, but in this case it enabled her to do the right thing."

Paul Houts, the former editor-in-chief at the CBO, said he has had to sell his house as a result of his dismissal and he blames O'Neill, if not directly. Because O'Neill is a weak leader, he maintains, power struggles emerged between the assistant directors which eventually drove the men out of their jobs.

In the end, Houts and Greigg were approached by O'Neill about being fired, but Sherwood Kohn, 70 , an editor who had already arranged his retirement plans for January with the CBO , was called by the Personnel Department and told to be out of his office by the end of the week.

Houts said he was informed by O'Neill herself that he had been fired and that O'Neill said only that "the process wasn't working." When he asked to see his personnel file Houts said he found not a single letter or memo of complaint or any other analysis of his performance.

The men said that during mediation with the Office of Compliance, attorneys for the CBO refused to reveal any evidence warranting the terminations. All three settled with the CBO as a result, but only Greigg received adequate compensation because he had 28 years of government service, according to Houts. Having spent most of their professional lives in the private sector, both Houts and Kohn received less compensation.

Houts called getting fired "a truly bizarre episode," one in which the three men were not the only victims of O'Neill's decision.

"The CBO has experienced some deterioration because of the way June handled administrative duties and her poor relationship with the Hill," said Houts. " Under the leadership of Penner, Rivlin or Reischauer the CBO's veracity was never in question."

But most CBO watchers agree that O'Neill's tenure was cursed from the start by Reischauer's stardom coupled with unpredictable economic growth that made forecasting particularly difficult. Indeed, the concept of a balanced budget, in addition to a surplus, is likely to cool budgetary politics for years to come.

"The CBO was going to become less influential and it wouldn't matter who the director was," said a former assistant director at the CBO. "It shouldn't be as up top on the agenda as it was 10 years ago. Why prolong public attention to a problem that shouldn't rank as high? There are other problems that are more important now like Social Security and Medicare."

LANGUAGE: English

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The National Journal

May 10, 1997

SECTION: BUDGET; Pg. 930; Vol. 29, No. 19

LENGTH: 840 words

HEADLINE: 11th-Hour Save Puts CBO's O'Neill on the Spot

BYLINE: Eliza Newlin Carney

BODY:

June O'Neill just can't seem to win. Two years ago, Democrats blasted her gloomy economic forecasts. Last year, **Republicans** accused her of overstating the costs of their pet projects. Now critics within both parties question whether her budget numbers can be believed at all.

As director of the nonpartisan **Congressional Budget Office,** Congress's fiscal arbiter, O'Neill takes it as a good sign that her detractors sit on opposite sides of the aisles. ''If we're attacked by both sides, then we're probably doing the right thing,'' she said.

Still, the CBO's 11th-hour discovery of a $ 225 billion revenue windfall has put O'Neill on the spot. Most Members of Congress, of course, are delighted about the money. But some wonder whether the CBO may have hurt its credibility.

''The fact that the CBO, at the very moment when the budget agreement seemed to be faltering because tough choices were (being) made, came up miraculously with a $ 225 billion gift--you've got to say that's suspect,'' said Sen. Phil Gramm, R-Texas. ''It does not pass the smell test.''

O'Neill, 62, is hardly the first CBO head to feel the heat during high-stakes budget talks. When she took over the job, outgoing CBO director Robert D. Reischauer reportedly gave her a skunk doll, as a reminder that the CBO can be about as popular as a skunk at a congressional picnic.

But O'Neill, an academic economist and former CBO analyst, has attracted unusual controversy since **GOP** leaders appointed her in 1995. Democrats threatened to block her appointment, fearing that, as a free-market conservative and a **Republican,** she was unlikely to be objective.

In 1995, Minority Leader Thomas A. Daschle, D-S.D., angered in part by the CBO's cautious growth estimates, called the agency a ''**Republican**-dominated organization that can't be

relied on as a bipartisan resource any longer.''

Daschle doesn't appear to be upset about the $ 225 billion miracle: He's pleased that the CBO's forecast ''is moving in the direction that's more consistent with other estimates,'' an aide said. Few budget experts, in fact, question the numbers. Their real surprise is that the CBO didn't twig until so recently that the economy was booming. And the timing has caused speculation that O'Neill was bowing to **GOP** pressure.

''That is absolutely not true,'' O'Neill said of the charge. She added that ''it was an accident'' that the CBO boosted its **revenue estimate** when it did. As O'Neill tells it, the agency was doing a routine monthly economic analysis when, toward the end of April, ''it became abundantly clear that the Treasury was awash in revenues.'' She added: ''It seemed really foolish and counter-productive to wait to transmit this news--which also, incidentally, would be known by the Treasury. I thought we should tell the Budget Committees what we found.''

To many observers, O'Neill's story rings true. ''Given that the revenues are pouring in and the economy is looking so good, the CBO didn't have much choice but to tell the Congress that,'' said Rudolph G. Penner, former CBO chief and now managing director of the Barents Group of KPMG Peat Marwick in Washington.

Still, O'Neill's side of the story hasn't gotten much play. Even her allies admit that she lacks the public relations skills and stature that the job demands. O'Neill herself acknowledges that Washington is a far cry from academia. ''I don't give my own opinions on anything, and it's frequently frustrating not to,'' she said. But O'Neill may soon be called on to speak up in the CBO's defense--particularly if a recession deflates that revenue windfall.

LANGUAGE: ENGLISH

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July 25, 1996, Thursday, Final Edition

SECTION: OP-ED; Pg. A29

LENGTH: 887 words

HEADLINE: Unlearned Lessons About Welfare

BYLINE: Paul Offner

BODY:

The remarkable thing about the welfare bill passed Tuesday by the Senate is that it ignores just about everything we've learned about the subject during the past 35 years. It's as if there were no lessons from past welfare reform efforts, many of them evaluated by groups like the Manpower Demonstration Research Corp. and the Urban Institute. Congressional reformers even disregard their own in-house experts at the **Congressional Budget Office,** who have been telling them in clear English that the evidence doesn't support their current proposals.

Lesson number one: Welfare reform won't remove many families from the rolls. Only four of 23 welfare reform demonstrations had caseload reductions exceeding 5 percent, one study found. Even the program in Riverside, Calif., regarded by many as the most successful on record, saw caseloads decline less than 10 percent. "The payoff for such programs has been shown to be low in terms of reductions in welfare case loads," says the CBO. Yet reform leaders predict the rolls will plummet under their plans. Wisconsin Gov. Tommy Thompson, for instance, says 60 percent of those placed in workfare in his state will find private jobs and leave the rolls.

Since caseloads won't fall much, putting welfare adults to work will require a large public jobs program. This is the ugly little secret that neither Democrats nor Republicans want to face up to. President Clinton always has shied away from a big jobs program -- "It won't be necessary, we won't do it, we can't afford it," says top aide Bruce Reed. And Republicans agree. "I don't see us going back to a massive public works program," says Michigan Gov. John Engler. The only problem is that that's exactly what's needed if we're going to put welfare mothers to work.

Unfortunately, the states don't have the slightest idea how to run large jobs programs. Nowhere have public jobs been created for more than a small fraction of welfare recipients even though workfare is popular with the voters, and one governor after another has committed himself to it. Even in carefully organized demonstrations, only a minority of recipients actually participated in work activities. Yet both parties now say they'll put half of all recipients -- 2.5 million people -- into jobs.

Look at what happened the last time the federal government passed a welfare work requirement. The year was 1988, and the requirement applied to only 6

:rcent of all cases -- welfare families in which both the father and mother :re present. Since only one parent had to work, day care was not an issue. Most : those to whom the requirement applied were fathers with work experience who ıus were relatively easy to place. States were given five years to get ready. :ill, 41 states flunked. Nine didn't even make one-quarter of the federal :andard.

Granted, that was several years ago. Maybe the states are more committed to ıe effort now and more skilled at job creation. So let's assume the governors :tually create all the needed jobs -- and come up with the necessary day care ıd transportation. It will cost a bundle. When fully phased in, says the CBO, ıe Republican bill would increase spending by almost $ 9 billion a year. ıanwhile, however, federal welfare funding is being cut by about $ 10 billion a ıar. Does anyone really think governors are going to increase state taxes to :ose the gap? States will be "reluctant to commit their own funds to employment :ograms," predicts the CBO. (States simply could drop recipients from the ɔlls, of course, although the governors insist that's not their intention. And ıere are practical difficulties: Even the most anti-welfare governor will seek ɔ avoid TV pictures showing mothers with young children being thrown into the :reets.)

So what happens? The congressional bills provide penalties for states failing ɔ meet the federal employment targets. The only problem is that the penalties :e small compared with the costs of creating public jobs. Here's the CBO again: Most states would simply accept penalties rather than implement the equirements." In other words, the work strategy will be a flop, and once again ıe American people will have been misled by all the reform talk.

But we've got to do something, respond the congressional reformers; the ırrent arrangements have given us soaring illegitimacy and rising welfare ependency. Doubtful. Last year, three eminent conservatives (William Bennett, lenn Loury of Boston University and James Q. Wilson of UCLA) told the Ways and ans Committee that little is known about the link between welfare and ıt-of-wedlock births. They might as well have been talking to the four walls. embers continue to insist that slashing welfare will bring back the fathers, ıatever the research community may say.

Through all of this, the **Congressional Budget Office** told congressional eaders the truth about their the welfare proposals. It cannot have been easy. BO Director **June O'Neil** was handpicked for the job by Gingrich and Dole, at ıose pleasure she serves. In time, though, it is congressional leaders who will e on the hot seat. When the new plans don't work, they will have to acknowledge ıey were forewarned.

The writer is commissioner of health care finance for the District of ɔlumbia.

ANGUAGE: ENGLISH

OAD-DATE: July 25, 1996

Mr. TIERNEY. Thank you. And articles that attack the majority's alleged abuse of the CBO's appointment process and other related material. Thank you, Mr. Chairman.

Mr. SESSIONS. Thank you, Mr. Tierney. I appreciate your comments. Just so that you are aware, testimony that has been made today by Congresswoman Kelly, I believe partially answered some of the things that you were discussing, the question that CORA would not conduct the type of RIAs that CBO has said would cost $500,000 and take 3 years. Instead, they would review what agencies have done and OIRA does not at this time do that review.

Mr. TIERNEY. Mr. Chairman, if I might just respond to that. It was exactly my point when I said that that's all we are going to do is what we termed was an analysis of the analysis. That in fact is our job, not the requirement for an establishment of an entirely new bureaucracy, to simply look at paperwork to see whether the paperwork was done properly or not. That is all already done by OIRA, the GAO, the CBO and others. So I guess that would exactly be my point. That although she tried to respond to it, I think she in fact made our point. Thank you.

Mr. SESSIONS. Good.

Mr. SUNUNU. Mr. Chairman, if I might just make one comment on that point. It's not simply a question of Congress doing the analysis. Obviously we're all busy. That aside, we have for example, a Congressional Budget Office that helps us with budgetary analysis. I think what the Congresswoman is suggesting is a congressional office of regulatory analysis to help us with the analysis of the regulatory issues. The reason that is important is because falling back on the issue of the budget, for example, the President and the administration puts together their budget proposal. But I don't think it is always worthwhile to take the agency or the President or their proposals completely at face value. A case in point, the President's budget proposal estimated a year 2000 surplus of $10 to $15 billion. But in fact, when June O'Neil, that Mr. Tierney has complimented here today, and rightly so, completed her analysis of the President's budget, it showed that in fact in the year 2000, it will run a deficit.

At a time when putting Social Security first is on our minds of foremost, I think it just shows the importance of independent analysis, whether the proposal is coming from the President, from the administration, or from any other agency. We need independent review, independent analysis, sometimes of analysis that's already been done. That is what we are trying to achieve here. Thank you.

Mr. SESSIONS. Thank you, Mr. Sununu. My comments would be along the same line. Part of what Mr. Tierney has expressed today is the discussion about static versus dynamic models that are used by the CBO. I think it's very interesting that we have found ourself to be placed in an attack by the minority on this regard because in the real world, the issues that I believe we're dealing with now, those that deal with tax cuts in our economy and how they might play out, simply cannot be addressed with static modeling. It would not offer what I would call a real-world opportunity to see how these tax cuts would play out. So I would like to just make sure that the record reflects that I am a person that believes that dynamic modeling would be not only appropriate, but one that would

be a responsible venue for any Congress to take when we were looking at that as a modeling for the future, since we're now in a balanced budget and tax cut mode.

Is there any further discussion before we call the second panel? Hearing none, I would now ask that we have panel two, Sharon Miller, if you would please come forward.

Ms. Miller, I am going to swear you in in just a minute, if you will please remain standing. Sharon Miller is CEO from Immediate Temporary Help, which is a small business in Midland, MI.

[Witness sworn.]

Mr. SESSIONS. Thank you. Will the record please reflect that she answered in the affirmative.

Ms. Miller, we are glad to have you here with us today. I am going to give you 5 minutes, please.

STATEMENT OF SHARON MILLER, SMALL BUSINESS OWNER, MIDLAND, MI

Ms. MILLER. Mr. Chairman, members of the subcommittee, thank you for allowing me to appear before you today. My name is Sharon Miller, chairwoman of the National Small Business United, the oldest small business organization in the Nation, representing 65,000 small businesses in all 50 States. I am also the owner of Immediate Temporary Help, a small business based on Midland, MI, and an active member and past chair of the Small Business Association of Michigan.

As Members of the House National Economic Growth, Natural Resources, and Regulatory Affairs Subcommittee, I know you are well aware of the impact that regulations have on America's 22 million small business owners. For you to take the time to address ways to minimize the impact on small business and explore mechanisms to involve Congress in the process is critical. I applaud your efforts.

You well know only precious few small businesses employ or can afford to hire the lawyers, consultants, engineers, and regulatory experts to keep them abreast of the dizzying amounts of rules, regulations, and the laws that come from Washington, DC, and their State capitals. That is why organizations such as NSBU are so critical. But my organization or any small business organization cannot possibly reach all of the small businesses that are affected. That is why Congress passed SBREFA 2 years ago this month. The Small Business Regulatory Enforcement Fairness Act of 1996 was designed to get small business more involved in the regulatory process and allows small entities or organizations that represent them the ability to sue agencies in Federal court among many other vital functions.

SBREFA also includes the Congressional Review Act which called for Congress to have the ultimate oversight upon major regulations that impact the American economy in the excess of $100 million. Where does SBREFA law stand today? At this early point, it is my perspective that Federal agencies have yet to take it seriously. The problem I see isn't infrastructure and set up under SBREFA. The problems I see is Federal agencies just flat out ignoring the law that Congress passed. Ultimately the whole culture

of regulating must change for SBREFA to be truly effective. This has not yet occurred.

That is why the introduction and passage of H.R. 1704, the Congressional Office of Regulatory Analysis Creation Act is so important. Having reviewed the content and intent of the proposed legislation, NSBU, on behalf of its 65,000 members, offers our support to the legislation. CORA can serve a vital function for America's small business, and put real strength into SBREFA. It would be a small budget, small staff addition to Capitol Hill, whose impact could be far reaching. We know the story of SBREFA. We know that there are those who want to see it fail. We know that Congress has taken no action under SBREFA, despite the approximately 105 major rules based since it became law.

It is a learning process, but we are approaching the end of the learning curve. We need to act soon. But we don't want to take action without proper information. Again, SBREFA isn't about eliminating all the regulation, but simply about having a more informed process. What NSBU foresees CORA accomplishing is to allow Congress to act in a bipartisan and informed manner that will help Members on both sides of the aisle help their constituents more. Members on both sides of the aisle often admit that there are times when the Federal regulatory agencies go too far. In the small business community we see it nearly every day, the list of forms, the duplicative paperwork, the ridiculous process steps, the over-bearing compliance officer. It is something a small business has to live with every day of the company's existence.

To make matters worse for small business, they have never been able to be an active part of the regulatory process. Regulators, big business, and law firms have monopolized the process and made it complicated and expensive. On a regular basis, the business that I own is requested to go back 5 or more years and answer questions relating to past employees about benefits, about earnings, and many more issues from the Social Security Department. When we have to do that, these forms are two or three pages long. We have to go back in files that are offsite. We have to search. This is a day or two of work. During that day or two of looking for old files, we are not able to move forward and do the things that we are about to do.

The truth of the matter is that we have seen 2 years of SBREFA and Federal regulatory agencies aren't including and informing the small business community nearly enough. They are not deterred from business as usual, nor are many of them regulating any wiser. They know how difficult it is for a small business to sue. Courts aren't always the answer for small business, and while they have proven a critical vehicle for interest groups to push their agenda, the expense and enormity is somewhat overwhelming.

Despite all this, NSBU is obligated to protect small business interests and has sued the EPA in Federal court over last year's promulgation of the revised National Ambient Air Quality Standards, known as NAAQS, for ozone and particulate matter because small business concerns were not met and EPA disregarded the SBREFA process entirely.

It is our hope that in the near future, a middle ground can be found between small business, Congress, and Federal regulatory

agencies. Some manner of a hammer without tying up the courts. One matter is certain. In a current dynamic regulatory, agencies aren't deterred by the Congressional Review Act provisions of SBREFA because they know that Congress likely doesn't have the time, resources, nor inclination to get in the regulatory game, despite the rhetoric. I think a major reason that Congress hasn't weighed in more is because they feel uninformed. Information on regulation is hard to come by. There are only two places to go, the agency promulgating or lobbyists fighting the regs. Either source's information could be somewhat skewed.

The other main reason Congress stays out of it is partisanship—no matter the strength of the argument, fighting any regulation leads to partisan wrangling. EPA's NAAQS revision is a perfect example. It is clear that the science is weak. SBREFA has violated the American people, and small businesses will suffer economically. There were two main bills, H.R. 1984 and S. 1084 that would have protected small business and the country from these unnecessary and questionable standards of both these bills had extensive bipartisan support. Yet we continue to witness partisanship rearing its ugly head through discussion of possible solutions, limiting the effect of Congress power.

If CORA existed this very day, I am certain the non-partisan information they would provide Congress would unite nearly all of you to end this regulation, but we don't see it happening. So Congress for the most part sits out, and this shouldn't be. While progress has been and is being made by a handful of regulatory agencies, progress is not across the board. Congress must get involved to solve some of these problems. CORA is a step in the evolutionary process of better government. On behalf of NSBU and our 65,000 members, I would ask this subcommittee and the entire Government Reform and Oversight Committee to follow the lead of the Judiciary Committee and report this important bill to the House floor and pass H.R. 1704 in 1998.

Mr. Chairman, members of the subcommittee, thank you for your time.

[The prepared statement of Ms. Miller follows:]

Mr. Chairman, members of the subcommittee, thank you for allowing me to appear before you. My name is Sharon Miller, chairwoman of National Small Business United (NSBU), the oldest small business organization in the nation representing 65,000 small businesses in all 50 states. I am also the owner of Immediate Temporary Help, a small business based in Midland, Michigan.

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You well know only a precious few small businesses employ -- or can afford to hire -- the lawyers, consultants, engineers and regulatory experts to keep them abreast of the dizzying amount of rules, regulations and laws that come from Washington, DC and their state capitals. That is why organizations such as NSBU are so critical. But, my organization -- or any small business organization -- cannot possibly reach all of the small businesses that are affected.

An October 1995 Small Business Administration, Office of Advocacy report to Congress entitled "The Changing Burden of Regulation, Paperwork and Tax Compliance on Small Business", exemplifies the problem. In this report, the Office of Advocacy found that the total cost of federal regulations on a per-employee basis is 50% greater for firms with less than 20 employees -- the vast majority of my members -- than for firms with 500 or more employees. No matter the perspective, the report found that the total costs of federal regulations are generally 90% higher for small companies than large.

That is why Congress passed SBREFA two years ago this month. The Small Business Regulatory Enforcement Fairness Act of 1996 was designed to get small business more involved, provide small businesses plain-English explanations of new regulations, require federal agencies to do the research on the most cost-effective

implementation methods available for small businesses to achieve compliance, and establish Regulatory Fairness Boards to rate the regulators. SBREFA, which mainly put real "teeth" into the 1980 Regulatory Flexibility Act (Reg Flex), took the further step of requiring the Environmental Protection Agency, the Occupational Health & Safety Administration and the Internal Revenue Service to convene, prior to introduction of a regulation, a panel of small business owners to gather their input on how to minimize the negative impact of the proposed regulation. SBREFA has also given small entities, or organizations that represent them, the ability to sue agencies in Federal Court if they feel adversely affected or aggrieved by an agency's rulemaking for failure to comply with the law. It also makes a number of sections of Reg Flex, including Section 610 -- a section that requires agencies to review their regulations periodically -- judicially reviewable for small business.

Last, but by no means least, SBREFA contained the Congressional Review Act, which called for Congress to have ultimate oversight upon major regulations that impact the American economy in excess of $100 million.

SBREFA TODAY

Where does the SBREFA law stand today? At this early point, it is my perspective that federal agencies have yet to take it seriously. I see the same amount of effort being made on following SBREFA as we saw when Reg Flex became law -- that is: very little effort indeed. It isn't for a lack of involvement nor process. There are Small Business Regulatory Fairness Boards in every region and there are Small Business Advocacy Review panels. Former Congressman Peter Barca is our first Small Business Ombudsman and is charged with leading efforts to protect small business. Last, but not least, the SBA's Office of Advocacy continues making every effort to weigh in on the issues and keep small business informed and active on regulations.

The problem I see isn't infrastructure and set up under SBREFA. The problems I see is federal agencies just flat out ignoring the law that Congress passed. Ultimately,

the whole culture of regulating must change for SBREFA to be truly effective and this has yet to occur.

That is why the introduction and passage of H.R. 1704, the *Congressional Office of Regulatory Analysis Creation Act* is so important. Having reviewed the content and intent of the proposed legislation, NSBU -- on behalf of its 65,000 members -- offers our support to the legislation.

CORA and REGULATION

Small business owners understand that while not all regulation is "bad," there are clearly some mandates that prove ineffective and detrimental to small business. The reams of regulations that flow from Washington, D.C. have not been slowed by the enactment of the SBREFA. As small business owners search for a mechanism to minimize the disproportional regulatory impact on their businesses, providing added weight to the Congressional Review Act is a positive step.

NSBU has always attempted to work with Congress and the federal regulatory agencies to keep small business informed and in compliance with all rules and regulations. With the added nonpartisan information that CORA would provide, Members of Congress can actively join small businesses efforts to limit the far-reaching scope of unnecessary regulation -- when it is appropriate.

CORA can serve a vital function for America's small business and put real strength into SBREFA. It would be a small budget, small staff addition to Capitol Hill whose impact could be far reaching.

We know the story of SBREFA. We know that there are those who want to see it fail. We know that Congress has taken no action under SBREFA despite the approximately 77 major rules based since it became law. It is a learning process, but we are approaching the end of the learning curve and we need to act soon. But, we don't want to take action without proper information. Again, SBREFA isn't about eliminating

all regulation, but simply about having a more informed process. What NSBU foresees CORA accomplishing is to allow Congress to act in a bipartisan and informed manner that will help members on both sides of the aisle help their constituents more.

NEXT STEPS

Members on both sides of the aisle often admit that there are times when the federal regulatory agencies go too far. In the small business community we see it nearly everyday: the lists of forms, the duplicative paperwork, the ridiculous process steps, the overbearing compliance officer. It is something a small business has to live with every day of the company's existence. To make matters worse for small business, they have never been able to be an active part of the regulatory process, regulators, "big business" and lawfirms have monopolized the process and made it complicated and expensive.

There have been champions for the small business community through the regulatory process. The Small Business Administration's Office of Advocacy has been a lonely voice with very limited resources in this fight against overburdensome regulation.

CORA could augment what the Office of Advocacy is doing by being a data source and a resource for members of Congress on both sides of the aisle to look into regulation. We all want a smaller more efficient government. Some will say all CORA will do is add to government, but indeed we would see a net reduction in government because of this office and Rep. Sue Kelly's -- and other's -- idea and efforts.

The truth of the matter is that we have seen two years of SBREFA and federal regulatory agencies aren't including and informing the small business community nearly enough. They aren't deterred from business as usual nor are many of them regulating any wiser. They know how difficult it is for small business to sue. Courts aren't always the answer for small business, and that while they have proven a critical vehicle for interest groups to push their agenda the expense and enormity is somewhat overwhelming. Despite all this, NSBU is obligated to protect small business interests,

and has sued the EPA in federal court over last year's promulgation of the revised National Ambient Air Quality Standards (NAAQS) for ozone and particulate matter, because small business concerns were not met and EPA disregarded the SBREFA process entirely. It is our hope that in the near future a middle ground can be found between small business, Congress, and federal regulatory agencies -- some manner of a hammer without tying up courts.

One matter is certain, in the current dynamic, regulatory agencies aren't deterred by the Congressional Review Act provisions of SBREFA because they know that Congress likely doesn't have the time, resources nor inclination to get in the regulatory game despite the rhetoric. I think a major reason that Congress hasn't weighed in more is because they feel uninformed. Information on regulation is hard to come by. There are only two places to go, the Agency promulgating or lobbyists fighting the reg. Either source's information could be somewhat skewed.

The other main reason Congress stays out is partisanship. No matter the strength of the argument, fighting any regulation leads to partisan wrangling. EPA's NAAQS revision is a perfect example. It is clear that the science is weak, SBREFA has been violated and the American people and small businesses will suffer economically. Yet, we continue witness partisanship rearing its ugly head throughout discussions of possible solutions. If CORA existed this very day, I am certain that the nonpartisan information they would provide members of Congress would unite nearly all of you to end this regulation. But we don't see it happening.

So Congress -- for the most part -- sits it out and this shouldn't be. While progress has been and is being made by a handful of regulatory agencies progress isn't across the board. Congress must get involved to solve some of these problems.

CORA is a step in the evolutionary process of better government. NSBU and a number of our regional affiliates support Rep Sue Kelly, Jim Talent and thirty-two other cosponsors of CORA because it will be a positive factor for small business. On behalf of NSBU and our 65,000 members, I would ask this subcommittee and then the entire

Government Reform and Oversight Committee to follow the lead of the Judiciary Committee and report this important bill to the House floor and pass H.R. 1704 in 1998. Thank you for your time. I will answer any questions.

Pursuant to the terms of rule XI, clause 2(g)(4) of the Rules of the House of Representatives, National Small Business United (NSBU) communicates the follow federal grant:

From the Environmental Protection Agency (EPA), for the ENERGY STAR Small Business program. This is a three year grant, which commenced on 5/1/96 and runs until 4/30/99. NSBU will receive $285,000 to promote this program in partnership with the EPA.

Immediate Temporary Help, Inc. receives no federal grant money.

Mr. SUNUNU [presiding]. Thank you very much, Ms. Miller. We'll go to Mr. Tierney for questions, please.

Mr. TIERNEY. Thank you. Thank you, Ms. Miller for joining us today and sharing your views. I may share some of your concerns that small businesses aren't always sufficiently involved in the development of regulations. They may not adequately be informed about how to comply with regulations once they are adopted. Still I don't necessarily think that CORA is the answer to that.

Apparently from what I have seen and what I have heard and read about the testimony of the representative in putting forth the legislation, the only new thing that CORA would do is yet another cost-benefit analysis, an additional cost-benefit analysis or she said an analysis of the analysis. I was making the point that as small businesses, you probably have seen enough analysis of the analysis and now we'll have our agencies suffering that experience that we as small businesses often complain about.

If it is to be more than that, than a perfunctory review of paperwork, then we have also seen the estimates that it will take $35 million to do it. Wouldn't you agree with me that we might better spend that $35 million making sure that there is a way for small businesses to be involved in the process of the development of regulations and impact it at that point in time, to have some say in the regulations and as they are developed, and to be adequately informed about how to comply before the burden has been placed?

Ms. MILLER. Well, it's obvious to me that it's not working as it's currently laid out. We have had 77 different areas where something could have been done, should have been done, and Congress hasn't acted on any of those 77.

Mr. TIERNEY. How was that? There are 77 rules.

Ms. MILLER. That's right.

Mr. TIERNEY. And what would you have had Congress do?

Ms. MILLER. Well, there hasn't been dialog about those rules. There has been no action on any of those rules.

Mr. TIERNEY. I think there has been inaction on those rules which would lead us to believe that Congress chose not to act on them. Isn't that correct? Or would you have them bring every single rule up for review and some dialog and some debate and go through that process even if they didn't have a problem with the rule?

Ms. MILLER. As an individual business owner, a small business owner, I find it unbelievable that 77 instances would come before Congress with no action.

Mr. TIERNEY. So for all the agencies in Government, for all 50 States, for all the areas that 77 rules were implemented, you find it unbelievable that there would be 77 rules that were just accepted?

Ms. MILLER. Yes. I would. I believe that that would show me and based on the action in SBREFA and the NAAQS issue, it shows me that it's not working. So CORA——

Mr. TIERNEY. So they should do by inference?

Ms. MILLER. Pardon me?

Mr. TIERNEY. This you do by inference. Your majority or your major testimony here today is that you don't think it's working be-

cause Congress hasn't attacked any one of those 77 rules and gone after it?

Ms. MILLER. I point to the NAAQS issue again.

Mr. TIERNEY. NAAQS apparently you disagree with NAAQS. You don't like the science or you don't like the rules.

Mr. MCINTOSH. Would the gentleman yield? What she's saying is that——

Mr. TIERNEY. I'm asking her to answer the question.

Mr. MCINTOSH. I know. But what she is saying is Congress doesn't have the guts to do its job.

Mr. TIERNEY. Well, let's hear her say that then. But I think basically, because she's the witness and I can talk to you any time, David——

Ms. MILLER. That would not be my terminology, but the——

Mr. TIERNEY. Are you arguing that we didn't get enough information on NAAQS before Congress acted? Because certainly I would find it hard to agree with that. We were inundated with information.

Ms. MILLER. I would assume that, and I can't speak for Congress and what they do or don't know. I wouldn't be right to make my comment in this forum on that. However, based on the action or lack of action that took place on the NAAQS issue, I would assume that someone didn't have all the information they needed.

Mr. TIERNEY. Because they disagree with you?

Ms. MILLER. They didn't disagree with me. They didn't test it against the SBREFA Act.

Mr. TIERNEY. Well, it wasn't supposed to be tested against the SBREFA Act. We had plenty of areas of testimony on that and plenty of support for those that had the feeling that it was not a rule at that particular point in time subject to SBREFA. I mean certainly you had the debate on that issue and you had a conclusion on it. You are just not happy with that conclusion and now want to point to that as evidence of why we should develop another agency to do analysis of analysis.

Ms. MILLER. Well again, I disagree with you on the SBREFA Act and the NAAQS issue as it relates and the small business community certainly disagrees with you on that, so much so that we filed a lawsuit. So I don't think that we have the answer to that yet. I certainly can't agree with what you are saying.

Mr. TIERNEY. Let me ask you this. You compare CORA with the Small Business Office of Advocacy in your testimony. Do you expect CORA would act as an advocate for small business? Is that part of your contention?

Ms. MILLER. Absolutely not. It would be a place for information. It would be for all people to get—for both sides of the aisle to get that information, as I understand it. We aren't asking for an advocacy office to be established. That is not what we are supporting this. It's nothing to do with the CORA.

Mr. TIERNEY. You made a point in your testimony to say that you thought that this CORA should be bipartisan in nature.

Ms. MILLER. Absolutely.

Mr. TIERNEY. So that would you support an adjustment in CORA that would allow for a more bipartisan manner of appointment of

the officials of CORA, for the people that would operate it rather than to have one party or another just make those appointments?

Ms. MILLER. You are asking me if I would look at or support a different——

Mr. TIERNEY. No. If you would support bipartisanship, by taking away that partisan potential of just having one party make the appointments, which obviously would lead to the prospect of the imposition of some partisan ideology and just remove that by putting in a more neutral appointment process.

Ms. MILLER. I believe there should be a neutral appointment process.

Mr. TIERNEY. Thank you.

Mr. SUNUNU. Thank you very much. Mr. McIntosh.

Mr. MCINTOSH. Thank you, Mr. Chairman. First of all, let me say I strongly support this legislation and appreciate the author, Mrs. Kelly, coming earlier. I appreciate you coming, Ms. Miller, and want to say thank you to my colleagues who have chaired this hearing so far. You have done a great job for me and the whole committee.

Let me put some facts on the table here about this discussion. The fact is that the agencies are failing to do their regulatory impact analysis. OIRA in their own correspondence with this subcommittee admits that of the 58 major rules that they were sent last year, there were only 16 of them in which they did a regulatory impact analysis where they weighed the costs and the benefits. The agencies aren't living up to their own Executive order that President Clinton promulgated at the beginning of his administration. OIRA has virtually abdicated its role in trying to police and enforce that. So you need to have congressional action. In order for us to take a role in this, we need to have the information to be able to understand what is at stake in these regulations.

Frankly, I would be willing to entertain an amendment to increase the authorization if you think that is what it is going to take, Mr. Tierney, to get the job done. Because I think it is so important that we have this information before us. Let's take one example, the NAAQS regulation that we talked about earlier. EPA gave testimony to this subcommittee last year that they were going to arrogantly break the law in SBREFA, by promulgating that regulation without doing an impact analysis because of the supposedly small impact on small businesses, when their own regulatory review materials state very clearly that it has a significant impact on small businesses.

I asked their lawyer, "How are you going to defend that in court with a straight face?" And he gulped and said, "Well, we'll do it."

OIRA conspired with EPA to make sure that other agencies did not give any type of regulatory impact analysis on that regulation. We're currently investigating that entire episode, because it was one of the worst episodes that I've ever seen in OIRA's history.

These things are a very serious matter. The impact of these regulations are huge. Testimony before this subcommittee has indicated that regulations cost as much as $600-$700 billion a year, more per family in this country than the tax burden on the average family. It's time that Congress does fulfill its responsibility under the Congressional Review Act. CORA is a tremendous piece of legislation

that will provide the tools we need in a bipartisan fashion to move forward with this bill.

So I want to thank you, Ms. Miller, for coming forward, and I do have one question for you. That is, in your estimation, if CORA had been in place 3 years ago, when we changed the majority in this Congress, would your small business have been better off?

Ms. MILLER. Yes, I believe it would have.

Mr. SUNUNU. Thank you.

Mr. MCINTOSH [presiding]. Thank you very much, and thank you, Ms. Miller. We'll ask our third panel to come forward at this time.

Our third panel includes Ms. Wendy Gramm, director of the Regulatory Analysis Program for George Mason University; Robert Hahn, resident scholar at the American Enterprise Institute; and Robert Litan, director of Economic Studies at the Brookings Institution.

I'll ask you to remain standing so that you can be sworn in. If you would please stand and raise your right hands.

[Witnesses sworn.]

Mr. MCINTOSH. Let the record show that the witnesses answered in the affirmative.

Good afternoon, and thank you all for taking the time to be with the committee today. I certainly welcome your testimony and ask that we begin with Ms. Gramm—Dr. Gramm.

STATEMENTS OF WENDY GRAMM, DIRECTOR, REGULATORY ANALYSIS PROGRAM, CENTER FOR THE STUDY OF PUBLIC CHOICE, GEORGE MASON UNIVERSITY; ROBERT HAHN, RESIDENT SCHOLAR, THE AMERICAN ENTERPRISE INSTITUTE; AND ROBERT LITAN, DIRECTOR OF ECONOMIC STUDIES, THE BROOKINGS INSTITUTION

Ms. GRAMM. Thank you.

I'd like to summarize my testimony.

I support H.R. 1704 and the creation of a Congressional Office of Regulatory Analysis. CORA can help Congress carry out its responsibilities under the Congressional Review Act. That office can also help Congress with its very important oversight role to see if the executive branch of Government is implementing the laws that it has passed.

Analysis that is independent of the agency that produces the rule is crucial. Indeed, for 25 years, Presidents of both parties have felt the need for analysis that is independent of the agency writing the rules. They have generally housed an independent analysis group within the Executive Office of the President, and usually it has been within the Office of Information and Regulatory Affairs, OIRA.

But in this administration, OIRA is weak, and the analysis of regulations by agencies as a result is simply awful, or non-existent. Even if OIRA were strong, and even if agencies were doing a better job of analyzing the benefits, the costs, the effects, and the alternatives to regulation, a Congressional Office of Regulatory Analysis would be very valuable. My belief in the importance of independent analyses, outside the executive branch, from the perspective of the average citizen is the reason why I started the regulatory analysis

program at the Center for Study of Public Choice at George Mason University.

This is a need I identified when I headed OIRA over 10 years ago. The need for a mechanism to create responsible regulations and to limit the production of overly burdensome regulations is even greater today, as very conservative estimates of the direct cost of regulation approaches $7,000 per year per family—I didn't know you would have a visual for me right there. But those are the same figures that I'm using that professor Hopkins, from Rochester, has carefully analyzed.

A Congressional Office of Regulatory Analysis can help ensure that these resources that American families dedicate each year are used wisely, and to help ensure that regulations that are written implement the laws appropriately, as Congress has written them, and ultimately make society better off.

Thank you very much.

[The prepared statement of Ms. Gramm follows:]

Statement of Dr. Wendy L. Gramm, Director, Regulatory Analysis Program
Center for Study of Public Choice, George Mason University
Fairfax, Virginia

On Congressional Office of Regulatory Analysis Creation Act

Before the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs, Committee on Government Reform and Oversight, United States House of Representatives

March 11, 1998

Mr. Chairman, Members of the Committee, thank you for inviting me to testify on the "Congressional Office of Regulatory Analysis Creation Act" (H.R. 1704). Please note that this testimony reflects my own view and not necessarily that of the Center for Study of Public Choice or George Mason University.

Regulations are costing Americans around $688 billion dollars per year. This is 9 percent of GDP; the projected budget deficit of $34 billion in 1997 pales by comparison. Unfortunately, there are few effective mechanisms in place that can control the growth of the regulatory state. Indeed, over the past few decades as policy makers have become more concerned about the budget and deficits, they have turned increasingly to regulations as an off-budget way to advance the public interest, or in some cases, to advance special interests. The cost of the program is simply imposed through mandates, or requirements to do something, or to refrain from doing something. The regulatory burden thus can be and should be viewed as a tax – in this case, an additional tax of $6875 per year on the typical American family of four.

Another reason why the regulatory burden is so huge is that Americans have come to expect government to try to prevent every problem. Unfortunately, policy makers' easy answer to every problem tends to be – spend taxpayers' money by creating or expanding a program, or require the public to spend their resources directly through regulations. There are many

other reasons why the regulatory burden has grown – special interest groups' effectiveness at obtaining their specific regulatory goals, the desire of government agencies to expand their reach, new laws that require new regulations. The relative ease with which regulations can be imposed on state and local governments and the private sector is accompanied by a notable lack of controls or limits on the ability of policy makers to impose regulations.

As a result of the steady growth in regulations, since the mid-1970s, Americans have raised concerns that regulatory agencies are less and less accountable to the public for regulations. Congress and every President since President Nixon have created mechanisms to improve rulemaking procedures. In 1977, for example, the Commission on Federal Paperwork was established, chaired by Congressman Frank Horton and co-chaired by Senator Thomas J. McIntyre. The recommendations of this Commission resulted in the Paperwork Reduction Act of 1980 and the creation of the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget. The Regulatory Flexibility Act sought to reduce the burden on small businesses. More recently, the Unfunded Mandates Reform Act, and the Congressional Review Act in the Small Business Regulatory Enforcement Fairness Act (SBREFA) represent attempts by Congress to ensure that regulations are not overly burdensome.

Efforts to promote responsible rulemaking generally require agencies to consider regulatory costs. The Paperwork Reduction Act, the Regulatory Flexiblity Act, and the Unfunded Mandates Reform Act (UMRA), for example, require such analyses. With the formation of OIRA, the role of analyzing regulations and encouraging agencies to consider a regulation's costs, impacts, and the scientific underpinnings fell to this office. A significant role for this office is to help the President monitor paperwork and regulatory burdens – a role that Presidents Reagan, Bush and Clinton have formalized through executive order.

In recent years, OIRA has been ineffective. This conclusion is based on a review of regulations that have been issued by the Executive branch. An effective OIRA, for example, would have required EPA to provide a better analysis before promulgating the 1997 proposals further regulating ozone and particulate matter.

Even under the best of circumstances, there is a great need for careful analysis of regulations – proposed and existing. There is also a need for careful oversight of rulemaking by agencies as well. The ease with which the federal government imposes regulations on state and local governments, businesses, institutions, and individuals gives rise to these continuing needs.

My grave concern is that there is no organization currently up and running that is systematically providing careful analyses of agency rulemaking proposals. Thus if agencies do a poor job analyzing the costs, benefits, and impacts of regulations, there is little record or basis for preventing regulations that are overly burdensome. Not only does this result in more regulations whose costs exceed their benefits, but also poorly drafted ones that might actually endanger rather than promote public health and safety.

The need for careful analysis of federal regulations caused me to establish a Regulatory Analysis Program (RAP) at the Center for Study of Public Choice at George Mason University. The objective of RAP is to advance knowledge about the impact of regulations on society. One part of the program involves providing careful, high quality analyses of agency rulemaking from the perspective of the public interest. The objective is to create an organization like OIRA outside of government, in academia. I have long believed that an organization like this would be extremely helpful to the public and government agencies alike, including OIRA. Indeed, the concept for this program grew out of the experiences I had as head of OIRA over 10 years ago. Even if OIRA was strong and effective, RAP's analyses could provide valuable additional information. With a weak OIRA, this type of program is essential.

RAP is still in its infancy. However, even if this Regulatory Analysis Program was fully operational, it would be miniscule compared to the size of the regulatory state. I would thus still support Congress' efforts to increase the knowledge base for estimating the impact of regulations. Congress needs a source of information and analysis that is independent of the government agency which is producing the regulations. Since agencies rarely propose regulations they do NOT mean to impose ultimately, their analysis can be biased. Furthermore, some agencies discount information, especially cost information, which is provided by parties that must implement the regulation. For this reason, regulatory analysis that is independent of the agency that writes the rules is critical. If independent

analysis is provided by organizations in different sectors – Congress, the Executive branch, academia – we would undoubtedly receive a more balanced review and oversight of rulemaking.

I therefore support strongly and enthusiastically the objectives of the CORA bill, H.R. 1704. The benefits of the bill, if enacted, are the independent analyses that Congress will receive concerning regulations. Using this analysis, Congress will be able to eliminate unnecessary regulations, using the Congressional Review Act, and to prevent burdensome regulations from being imposed on states and individuals, using either the CRA or careful oversight of agencies. As an aside, I would argue that an important objective of Congressional oversight of the Executive branch involves tracking regulations and other forms of rulemaking to determine if those regulations and policies implement the laws as passed by Congress.

The benefits of the bill come from reducing unnecessary or overly burdensome regulations. Given the annual cost of government regulations of $688 billion, even a small percentage change would yield huge benefits. This estimate of the cost of regulations represent direct costs only, and therefore the total social benefits of better regulatory analysis and accountability are understated. An example of an important indirect benefit of a reduced regulatory burden is greater innovation at lower cost. In the health care area this would lead to an improvement in the quality of life if new pharmaceuticals are available more quickly and more cheaply. Another indirect benefit of lower regulatory burdens is better health that accompanies higher incomes and reduced stress due to higher incomes, greater job availability, and a better standard of living. There is also greater opportunity, freedom, and choice available when individuals and businesses can structure workplace practices, wages and fringe benefits to fit individual needs and circumstances, rather than being dictated by the one-size-fits-all approach that characterizes federal regulations.

The costs of the CORA bill include the cost of staffing the office. History has shown that much can be done with a small number of highly qualified individuals. President Ford and Carter's Council on Wage and Price Stability and OIRA were able to review many important regulatory proposals with a handful of high quality economists. I believe CORA could do the same.

I have one minor drafting issue with the bill, stemming from my experience in government and from a sensitivity regarding the branches of government and their different roles. I would caution drafters to consider section 3(d) of the bill concerning the information that the Executive branch *shall* provide to the office. It is important that discussion and preliminary analysis are not stifled in the executive branch. Such discussion and analysis of regulations might be chilled if agencies were concerned that early drafts or other information might become public.

In conclusion, I support this attempt to provide good quality analysis of government regulations. Indeed, I would like to have analyses of existing regulations and other non-major regulations and policies covered by this bill as well. Congress needs an independent and objective perspective, which, when combined with organizations like the Regulatory Analysis Program outside government and OIRA in the Executive branch, will contribute to better informed policy makers. Such analysis is especially important now that OIRA appears to be so weak. I believe that Congress is not able to do its job effectively under the Congressional Review Act without such capability. Oversight of government agencies and the implementation of laws like the Unfunded Mandates Reform Act are also rendered less effective without adequate independent analysis. A Congressional Office of Regulatory Analysis, as prescribed in H.R. 1704, can be a valuable if not essential source of information and analysis to help produce regulations that ultimately make society better off.

Mr. McINTOSH. Thank you, Dr. Gramm.

Mr. Hahn.

Mr. HAHN. I find myself in the unenviable position of following Dr. Gramm, who said everything that Dr. Litan and I were going to say, but more succinctly and better.

I'm going to give a brief bit of formal testimony and ask my distinguished colleague if he wants to add anything, and then we'll be happy to take your questions.

We're pleased to appear before you today to provide our views on—I gather the euphemism is CORA, the Congressional Office of Regulatory Analysis Creation Act. The two of us have studied and written about regulatory issues for over two decades now, and recently we co-authored a couple of pamphlets published jointly by our respective institutions—the American Enterprise Institute and the Brookings Institution—which outline principles we believe Congress should keep in mind as it seeks to improve the regulatory process. We forwarded copies of those pamphlets to you along with our formal testimony, and we'd ask that it be submitted in the record.

Like Dr. Gramm, we believe that the proposal in H.R. 1704 for a Congressional Office of Regulatory Analysis is an excellent idea. That office could help inform the public and the Congress about the benefits and costs of regulation. Too often, we believe that legislators and agencies find it in their interest to highlight the benefits of regulation without also noting the costs. We believe it is important to highlight both and that the public has a right to know how and why regulations are implemented.

This bill addresses a fundamental problem with the current regulatory effort. Despite the growing importance of Federal regulation in everyday life, neither the public nor Congress has sufficient information to fully appreciate the impact on the welfare of the average citizen.

Federal regulation—especially environmental health and safety regulation—as you can see implicitly in those diagrams that—Representative—I was going to say professor McIntosh, but that Representative McIntosh prepared has grown dramatically in recent decades, whether considered absolutely as a relative share of the economy or as a relative share of the output of the Federal Government. According to the first comprehensive government report on the benefits and costs of Federal regulation, produced by OMB, the cost of this so-called social regulation is roughly $200 billion annually. This is comparable to what the Federal Government spends on all domestic discretionary programs. And if you add in the burden associated with paperwork, such as filling out our tax forms, the cost is almost twice that high.

We need to compare these costs, of course, with the benefits. OMB places the aggregate benefits of social regulation at about $300 billion, with no estimate for any benefits associated with paperwork. I don't know about you, but I don't get a lot of benefits from sitting down and filling my tax form out—[laughter]—filling out my tax forms after hours. They do not provide an estimate of the number of individual regulations that would not pass a strict benefit cost test. Our research finds that more than half of the Government's regulation, let me repeat that, more than half of the

Government's regulations would fail a strict benefit cost test using the Government's own numbers—not some external folks who may have less of an axe to grind—but the Government's own numbers.

Moreover, we think we can do better for less. For example, a Harvard study found that if you reallocated mandated expenditures toward those regulations with the highest payoff to society, you could save an additional 60,000 lives annually without spending an extra nickel.

Over the past two decades, the debates over regulatory policy have often been highly partisan and ill-informed. We believe attempts to depoliticize the process, such as those in H.R. 1704, represent an important step in the right direction. We believe the office that is designed in H.R. 1704, for regulatory assessment, could provide a nonpartisan evaluation of the benefits and costs of regulation that can help improve public policy and equally important educate the American public.

We think tasks such as conducting regulatory impact analyses by this agency in a nonpartisan way, assessing whether the agencies actually comply with procedural steps for major rules, and issuing an annual report on the impact of Federal regulations, we think that all of these tasks are worthwhile.

One of the features of the bill that we especially like is that it provides a central focus for congressional study of regulatory activity. We know that there is study out there in the executive. We think that there can be healthy competition between the executive and the Congress on this issue. And I hope that my colleague, Dr. Litan, will expound on that.

Very quickly, we have three suggestions that the committee may wish to consider in modifying the bill.

First of all, you talk about issuing an annual report discussing the costs. We'd also like to see the benefits considered in that report.

To the extent—second, to the extent resources are an issue, the office should be given the discretion to concentrate its energy and its regulatory analyses on selected major rules rather than trying to perform an analysis—a superficial analysis of every rule.

Third, while we approve the idea of a separate Office of Regulatory Analysis, we've been in Washington long enough to know that while this may be public policy heaven for some, there may be some useful compromises. And one such compromise that you may want to consider is to create a separate division within CBO to address these functions.

In conclusion, a Congressional Office of Regulatory Analysis would help highlight the impact of regulation on consumers and workers. It will help inform the process of designing new laws and regulations, and it will also help provide insight on how to improve existing regulations.

We think the expenditures on such an agency, the benefits would far exceed the cost, and we can give you some data to suggest why. We believe that H.R. 1704 will help ensure that appropriate regulatory activity is carried out in a sensible, cost-effective manner. And we also think it deserves prompt action.

Thank you very much.

Mr. McINTOSH. Thank you, Mr. Hahn. And being referred to as professor is probably the nicest thing anybody has said about me in the last few days. [Laughter.]

Mr. Litan.

Mr. LITAN. Sure. Thank you very much.

I'll be very brief. I prepared my testimony jointly with Dr. Hahn, and he has more than adequately summarized it.

Let me just give you couple of personal observations. In a former life, before returning to Brookings, I was an Associate Director of OMB, not of OIRA, not Wendy's old job, but one of the Program Associate Directors. I'm not going to comment specifically on her characterization of OIRA during the Clinton administration. It probably is—it doesn't matter either way in terms of my own views as to whether or not we need this office, because I agree with Wendy that we do need the office. But let me just tell you personally that as a PAD at OMB, I spent a lot time having to deal with CBO on scoring issues. We didn't always agree with CBO, and I found myself having to troop up here to talk to these people to try to persuade them to change the numbers or whatever, and we would have professional discussions. I never had a political discussion. They were all professional to professional.

Now, sitting in that job, of course, it was a pain to me. On the other hand, knowing that CBO was out there is important institutionally because it keeps OMB honest in doing it's own estimates. And that's the central lesson here—that if you have an independent office, whether it's in CBO or whether it's a separate office, you're going to stiffen a lot of backbones. No. 1, you're going to stiffen the backbone of OIRA, because it's going to be forced to take it's review responsibilities more seriously than they would otherwise. No. 2, you're going to stiffen the backbone of the agencies, because the agencies may or may not be able to snow OIRA, but they're very unlikely to snow CBO. And I can tell you that because, even in the spending area, they try to do that right now, and they can't get away with it. And so on individual rules, you're going to have stiffened backbones so that's a key benefit of having this separate institution.

The second area of benefit, just keep in mind, is at the macro level. Beyond just individual rules, having another outfit out there to produce a report on Federal regulation will act as a very important check I think on having OMB do its report. Now, OMB made, in my view, a worthwhile first crack pursuing the Stevens Amendment in issuing its initial report. But there are a lot of gaps in this report. It's very aggregate in nature. OMB didn't do any independent review of the analysis that had already been done by the agencies and so forth. And most importantly, OMB didn't help you in Congress with your job, which is to compare the cost effectiveness of different statutes and different regulatory efforts. You'd like to know, it seems to me if I were sitting in your chair, how many dollars are we spending to save a life through occupational regulation versus environmental regulation and so forth. The numbers vary all over the lot, as all of us know. But OMB didn't tell us any of that in its report, and it seems to me that having an independent office out there do this every year would prod OMB to do a lot of its work, and, at the same time, provide you with useful informa-

tion because your business is legislating, not making individual rules. Although you're going to want to review individual rules under the Congressional Review Act, your larger job is to see whether or not we ought to tweak the statutes that are now on the books and see whether we can save more lives at less cost. And who's going to tell you that? Well, you can't set any information like that from this report. But if you had an independent office out there, giving you this comparative data on comparative regulatory effectiveness of different programs, you'd be able to do you jobs a lot more effectively.

So I think that in many ways may be the most important benefit of having a separate regulatory accounting office is what I will call the macro level, not just the individual rulemaking level.

Thank you.

[The prepared statement of Mr. Hahn and Mr. Litan follows:]

A Congressional Office of Regulatory Analysis

Robert W. Hahn and Robert E. Litan

We are pleased to appear before this Committee to provide our views on the Congressional Office of Regulatory Analysis Creation Act (H.R. 1704).

The two of us have studied and written about regulatory issues for over two decades. Recently, we co-authored two documents published jointly by the American Enterprise Institute and The Brookings Institution, which outline principles we believe Congress should keep in mind as it seeks to improve the regulatory process.[1] We have forwarded copies of these documents to the Committee with this testimony and would ask that the documents be included in the record with this testimony.[2] We are pleased that H.R. 1704 is consistent with many of the principles in these documents.

We believe a Congressional Office of Regulatory Analysis is a good idea. Such an office has the potential to better inform the public and Congress about the benefits and costs of regulation. It also has the potential to improve the level of dialogue about the impact of regulation on the American public. Too often, legislators and agencies find it in their interest to highlight the benefits of regulation without also noting the costs. We believe it is important to highlight both in a way that makes the regulatory process more transparent.

Our testimony proceeds in three parts. First, we offer a definition of the problem

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[1]Robert W. Crandall, Christopher DeMuth, Robert W. Hahn, Robert E. Litan, Pietro S. Nivola, and Paul R. Portney, *An Agenda for Federal Regulatory Reform* (American Enterprise Institute and The Brookings Institution, 1997) and Robert W. Hahn and Robert E. Litan, *Improving Regulatory Accountability* (American Enterprise Institute and The Brookings Institution, 1997).

[2]In addition, both of us have had experience reviewing regulatory analyses and proposals while we served on the staff of the Council of Economic Advisers.

that the proposed legislation attempts to address. Second, we consider how a Congressional Office of Regulatory Analysis could help address the problem. We conclude by offering three suggestions for modifying the bill.

What's the Problem?

H.R. 1704 addresses a fundamental problem with the current federal regulatory effort: despite the growing importance of federal regulation in everyday life, neither the public nor Congress has sufficient information to fully appreciate its impact on the welfare of Americans.

Federal regulation—especially environmental, health, and safety regulation—clearly has grown dramatically in recent decades, whether considered absolutely, as a relative share of the U.S. economy, or as a relative share of the output of the federal government. According to the first comprehensive government report on the benefits and costs of federal regulation, produced by the Office of Management and Budget, the cost of such "social regulation" is roughly $200 billion annually. This is comparable to what the federal government spends on all domestic discretionary programs. If the burden associated with paperwork is included, such as filling out tax forms, the cost is almost twice that high.

One should, of course, compare the benefits with the costs. OMB places the aggregate benefits of social regulation at $300 billion annually with no estimate for the benefits of paperwork. They do not provide an estimate of the number of individual regulations that would not pass a strict benefit-cost test, but research suggests that number could be substantial. Our research finds that more than half (57%) of the government's regulations would fail a strict benefit-cost test using the government's own numbers. Moreover, there is ample research suggesting that regulation could be significantly

improved, so that we could save more lives with fewer resources. One study has found that a reallocation of mandated expenditures toward those regulations with the highest payoff to society could save as many as 60,000 more lives a year at no additional cost.

Given the caps on federal discretionary spending, it is quite likely that regulatory activity will increase far more rapidly than federal spending. Yet, the economic impacts of regulation continue to receive much less scrutiny than direct, budgeted government spending. This must change if society is to reap the maximum rewards from regulation at the least cost.

While social regulation is on the rise, regulation of prices and entry into specific industries—so-called "economic regulation"—is on the decline. Over the past two decades, there has been substantial economic deregulation of airlines, trucking, railroads, financial markets, and energy markets. Although deregulating specific industries has led to substantial economy-wide gains, the steady rise in social regulation—which includes not only environmental, health, and safety standards but many other government-imposed rights and benefits—has had mixed results.

Entrepreneurs increasingly face an assortment of employer mandates and legal liabilities that dictate decisions about products, payrolls, and personnel practices. Examples include rules for making buildings and offices accessible to the disabled that pay little attention to either benefit or cost, and rules for providing child care that make it difficult to provide such care in the home. While such regulations may have superficial appeal, they also have the potential to be excessive. Philip Howard highlighted some of those excesses in his best-selling book on regulation, *The Death of Common Sense*. In that book Howard showed how laws and regulations deterred Mother Theresa and the Missionaries of Charity from building a homeless shelter in the South Bronx and prevented Amoco from reducing five times as much benzene at its Yorktown refinery at one-fifth the

current cost. The message is clear—our regulatory system is in urgent need of repair.

Several scholars have also questioned the wisdom of the expansion in social regulation. Some regulations, such as the phaseout of lead in gasoline, have been quite successful, while others, such as the requirement for safety caps on aspirin bottles, actually *increased* the hazards they aimed to reduce! The regulation on phasing out lead in gasoline was successful because it was based on a solid scientific and economic assessment, which strongly suggested that the benefits of removing lead from gasoline far outweighed the costs. In contrast, the regulation affecting aspirin was ineffective because the regulators failed to anticipate what in retrospect seems obvious—making it difficult for adults to remove caps from aspirin bottles led people to simply leave the caps off, thereby increasing the risks to young children. This regulation, whose impact was documented by independent policy research such as that proposed here, was modified eventually. It provides a good example of how even well-intended regulation can lead to perverse outcomes, and an even better example of how effective policy review can improve regulation and save lives.

Throughout this period of continuing regulatory change, the debates over regulatory policy have often been highly partisan and ill-informed. We believe attempts to depoliticize the process are needed. The proposed Congressional Office of Regulatory Analysis represents an important first step in the right direction.

How the Congressional Office of Regulatory Analysis Can Help Solve the Problem

The proposed Congressional Office of Regulatory Analysis can provide a non-partisan assessment of the benefits and costs of regulation that can help in improving policy and educating the American public.

The office would perform several important functions including:

- conducting its own Regulatory Impact Analysis (RIA) for each major rule—including an assessment of their benefits and costs;
- assessing whether the agencies comply with procedural steps for major rules; and
- issuing an annual report on the costs of federal regulations on the economy.

We think all of these tasks are worthwhile. The resources needed to do the tasks well should not be underestimated, however. We think it is important that the director of this office have the flexibility to hire appropriate high-level technical expertise where needed.

One of the features of the bill that we especially like is that it provides a central focus for the Congressional study of regulatory activity. Currently, different functions are being handled by different agencies. For example, CBO has responsibility for the Unfunded Mandates Reform Act and GAO has responsibility for the Small Business Regulatory Enforcement Fairness Act. It is better to put similar functions under one roof to avoid unnecessary duplication of effort.

The proposed office also is likely to stimulate better analysis and review of agency rules within the Executive. Both the administrative agencies and OMB are likely to improve the analysis of proposed regulations if they know that a congressional agency is providing an independent review. In the case of OMB, it is useful to draw an analogy to the process for making budget estimates. Both CBO and OMB develop budget estimates. In that case, we believe that each agency provides a useful check on the other.

Two Suggestions for Modifying the Bill

We have three suggestions that the committee may wish to consider in modifying this bill.

1. The annual report should also consider the benefits of regulation, provided adequate resources are made available. Benefits are frequently more difficult to estimate, but they are nonetheless important. Such estimates will be developed in the course of analyzing the benefits and costs of each major regulation.

2. To the extent resources are an issue, the office should be given the discretion to concentrate its own regulatory analyses on selected major rules rather than having to prepare an analysis for every major proposed rule.

3. While we approve of the idea of a separate Office of Regulatory Analysis, we think it would also be possible to create a separate division within CBO to carry out the required analysis, should a separate office be deemed infeasible.

Conclusion

Congress has traditionally paid much less attention to the benefits and costs of regulation than to directly budgeted expenditures. This imbalance should be rectified.

Regulation is becoming increasingly important in many aspects of our economy. It has an important affect on our quality of life and the costs of goods and services; it also affects the ability of firms to compete in an increasingly global economy.

We believe regulations and the regulatory process need to be scrutinized more carefully. Congress needs to have better information on the likely benefits and costs of regulations that flow from the laws it passes. In addition, American citizens have a right to know how regulations are likely to affect them in everyday life.

A Congressional Office of Regulatory Analysis would help highlight the impact of regulation on consumers and workers. It will help inform the process of designing new laws and regulations. And it will also help provide insight on how to improve existing regulations.

We believe H.R. 1704 will help ensure that appropriate regulatory activity is carried out in a rational, cost-effective manner. It deserves prompt action.

Suggested Reading

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Mr. McINTOSH. Thank you, Mr. Litan. Let me say that, in fact, I've thought of CORA as essentially a CBO of regulations. And I think that's the proper context for to consideration of this legislation. Historically, OMB was created before CBO and Congress, after the 1975 Budget Act, I think, concluded that they needed information in order to discharge their duties. And we've got a parallel situation now where Congress is becoming more active on regulatory issues, and we need that information.

I also appreciate your points greatly in terms of affecting the macro question. Many times we hear from regulatory agencies, "well, we didn't really like this regulation either, but Congress made us do it"—I mean, in essence. And this would allow us to have information about where that may be happening so that we can consider our duty and changing the underlying statute.

I thank all of you for coming. I'm going to actually, if it's all right with Mr. Tierney, call on our colleague, Mr. Sununu first.

Mr. Sununu.

Mr. SUNUNU. Thank you, Mr. Chairman. First, Mr. Hahn, if I could, I'd like very much for you to provide the committee perhaps a few examples of regulations and the analysis to support your assertion that, in some cases, the costs outweigh the benefits of a number—you cited a half—but just for the committee's benefit to provide us with some examples of those types of regulations for the record. And I'd ask that you just followup with some examples for the subcommittee and that those be included in the record.

Second, I'd like each of the members of the panel to address either or both of the following questions. One, can you give some—we talked about the big numbers so to speak—the cost to a family aggregate over the course of a year, the cost to our economy of regulations—but you try and personalize these a little bit more? Could you give the subcommittee some examples of hidden costs of regulation that consumers are paying that they otherwise—for whatever reason—might not really think about the regulatory costs associated with products that they're purchasing or services that they're purchasing. Give some personal examples of those hidden costs in our economy, and/or provide for some specific cases where lower cost alternatives, with regard to regulation, were not chosen, either because of institutional biases at the agencies where these regulations or rules were promulgated, or because we had a lack of technical information of what the alternatives were at a particular time. Or, frankly, because we had a poor or no independent analyses of the costs of regulations. So, personalize some of the costs that consumers are paying out there every day of regulation and also talk a little bit about where we didn't do a good job of choosing the lowest cost alternative for achieving what we may well agree is an important goal, but we didn't achieve that goal in a cost effective way.

Thank you.

Mr. LITAN. Want me to? I can take a first crack.

Mr. SUNUNU. Yes, please feel free if each—if you can just go——

Mr. LITAN [continuing]. On the record.

Mr. SUNUNU [continuing]. Through the line and address those couple of issues. Thank you.

Mr. LITAN. OK, on the cost issue. The problem is the costs are hidden, and they're spread around all the products we buy and sell. And so if you were to take even half that number up there on the board and divide it across, all retail sales, you're looking at maybe a couple percent on every item, on some items it's more, some it's less. On cars, for example, it may be several hundred bucks, if not more. Actually, it's probably more than that if you add all the safety and the environmental regulations. But I think—I don't really view it from that perspective because a lot of the costs it seems to me that we impose are probably worth it. And that's something that this agency would presumably tell you—would help tell you. And so, to me, you know, running through that exercise may or may not be that important, because I want to know whether any individual rule is worth it or not. And sort of adding up the aggregate cost—let's say it adds $1,000 to the price of a car—that in a way almost tilts the debate. It sort of says, "well, maybe it isn't worth it because we got $1,000 out of the car," when in fact some of the regulation may be worth it.

So I'd rather focus on individual rules, just as my own preference as a way to look at it. And then on looking at lower-cost alternatives, I'm going to have Bob expand on this, because we have in our testimony the aspirin example. That's one that we have in our testimony, and I'm probably—he can probably give you some others.

Mr. HAHN. I was going to give a couple of examples at different levels. First, let me start with a very personal example, which is really an anecdote, but it happens to be true.

Over 10 years ago, I started a school for low-income kids, low-income children in Providence, for kids in grades 4 through 8, primarily what is known today as children of color. They weren't known that way then. And our school is doing very nicely. It's supported primarily by private donors and foundations. But I went up to the school over the weekend and on Monday, and I noticed that this new building we had purchased for about $70,000, we now had a ramp going around the building. And as far as I could tell it was required by the Americans with Disabilities Act. Now no children are going to be using that building. Our main building is handicapped accessible. And we had to pay $15,000 to put this ramp, which I doubt many folks who are disabled would even use any way, because it's not simple to use but it satisfied the regulation. And what struck me about it is it really brought it home for us being a small organization, in a sense we're a business, we're spending $15,000, which is like two and a half scholarships for kids—you know 2½ years worth of scholarships, or 3 years worth of scholarships, and we have to do it for an expenditure which we don't think is in the best interest of the lower-income children that we educate.

I see my light's on. Let me add one other example, which might have a larger impact, but as—public policy impact.

We have traditionally regulated vehicles by saying how much junk should come out of the tailpipe—very specific amounts. And every vehicle had to meet that standard. Why not allow some vehicles to do better than the standards, and some vehicles to do slightly worse so long as there's no impact on the environment. And I

suggested that a couple of years ago in the context of the Clean Air Act—it was a non-starter. I think that if there were an agency like the one we're discussing today, actually analyzing alternatives like that, it would enable people on both sides of the aisle, no matter which party was in power, to get objective information which would say, "yes, we can save consumers hundreds of millions of dollars by having a flexible approach to controlling—to pursuing environmental objectives." And we can even move farther on those objectives faster if we pursue flexible approaches. And that would be taken more seriously.

Ms. GRAMM. It's hard to pick just a few. Let me give you personal example, though. When I retired from government, I started to work out of my home. And I thought this would be great. I needed, though, a little bit of assistance help to help me with scheduling and keeping track of my calendar and running errands, et cetera. And I had the perfect candidate. My assistant, when I was chairman at the CFTC, had had a baby recently, and she wanted to stay at home with her child, but she was happy and would have loved to have come to my house—and I would have been happy to have both her and her baby come to my house to help me several mornings a week with my odds and ends and administrative work that needed to be done. I thought it would be easy especially since that I could pay her Social Security and all other taxes, I thought, by simply adding her on like a household worker. I did pay Social Security for the housekeepers I had when my children were young so I knew how to fill those forms. I thought that it would be easy.

Unfortunately, when I realized what I actually had to do in terms of the regulations that were required to have her come as a temporary business employee—there were paperwork forms, tax forms that were literally an inch thick. It was something—it simply made me not hire her. Here was just another example of how regulations can stifle, job creation and flexible kinds of work activities that are useful.

There are lots of other kinds of regulations that we've heard of. I thought that the aspirin example was a good example that I think many people are aware of. That shows how you can have a regulation that actually does harm people rather than help them. I think the asbestos abatement programs, are a similar problem where we were very concerned about asbestos in many of our public buildings, but when you actually went through the process of ripping out the asbestos, you created a greater risk than if you had left that asbestos all tied together and really not affecting people. There are a lot of examples like that. I remember when the Environmental Protection Agency was first considering banning all uses of asbestos, the courts as well as OIRA at that time raised a question about whether or not there were alternatives available for the asbestos use, especially in brakes. Someone who might be exposed to that form of asbestos might be someone who works on brake linings and, therefore, could be afforded vacuum and personal protection devices. On the other hand, if you didn't have as effective brake linings, you have to consider the tradeoffs that this would potentially cause more accidents on the road.

You have the same kind of problem with National Ambient Air Quality Standards [NAAQS], for ozone and particulates. EPA has

its own analysis, as well as the Department of Energy, to indicate that ground-level ozone does have beneficial screening effects screening out ultraviolet radiation. EPA had a study that affirmatively stated that it did not consider, but there are other studies, including a Department of Energy study, to indicate that if you consider the screening effects of ground-level ozone, EPA's regulations would result in their being harmful to human health. There would be more deaths, more melanomas, more cataracts as a result.

These kinds of impacts don't even consider what people often refer to as a health-wealth effect, and that is for every $9 million to $12 million worth of regulations that are imposed on an economy tends to create one additional death simply from lowered health, greater stress that comes from unemployment, and lower incomes and a lower standard of living. We could go on forever, but the point is that with an office like CORA, you'll have an organization that is independent of the agency that wants to put forth the rule, looking at the rulemaking with greater care.

Mr. MCINTOSH. Thank you to all of you. Let me turn now to Mr. Tierney for any questions you might have for the panel.

Mr. TIERNEY. Thank you, Mr. Chairman.

Gentlemen, if I could ask Dr. Gramm just for a second to excuse me for regard to my questions. Didn't you, in the course of your presentation, indicate that you thought that there was sufficient current legislative support for agencies to actually perform this overview function without the need to create a new bureaucracy to handle all these duties?

Mr. LITAN. No, actually in the course of our testimony, we point out that in fact, of course, there is——

Mr. TIERNEY. Right. And you say that——

Mr. LITAN [continuing]. There is an Office of——

Mr. TIERNEY [continuing]. It could be done in CBO?

Mr. LITAN. The?

Mr. TIERNEY. Did you say it could be done in the CBO?

Mr. LITAN. Oh, this as an alternative, we did say that you could have this function performed within CBO. You would have to add some additional people and so forth to do it, because they don't have the analysts. But, yes.

Mr. TIERNEY. But if you did that, then you could do it in the CBO. I mean, I liked hearing all of your antidotes, and I think we can go on forever in any situation, given those. But with respect to your $15,000 ramp around your building, how is, you know, spending another $570,000 for yet a second analysis of the situation going to improve that particular incident, sir?

Mr. HAHN. Well—I think the two numbers are not comparable, with all due respect. I think the $570,000 you used, which presumably is the estimate of doing a good regulatory impact analysis, would relate to another number that I developed in the course of my serious research, which wasn't anecdotal, which was going back and looking at all OIRA's between 1980 and 1995. And we're now updating that to the present. And that suggests if you looked at the regulations that didn't pass the benefit-costs tests and either revised those or got rid of them, or made them more sensible, you could allow the economy to grow on the order of $300 billion so that

we're wasting a lot of money. So when you compare that $570,000 or several million in analysis toward the potential savings and the potential gains you could get from revising bad regulations or poorly designed regulations, you're talking about big bucks here. And that speaks to your earlier question that Dr. Litan answered. I think there is some value in having this be a separate agency, so Congress makes it clear to the American public that they recognize that the growth—that there is a growth in the regulatory activity and that if regulatory activity is going to continue to grow, we need to design regulations judiciously to make sure the American public gets the maximum bang for their expenditures.

Mr. TIERNEY. You're certainly not advocating scrapping all the regulations so that the economy can grow leaps and bounds?

Mr. HAHN. No, not at all——

Mr. TIERNEY. Because I guess it would grow best of all if you, if you looked purely economically——

Mr. HAHN. Actually, it would grow best of all because if you couldn't see your hand in front of your face and people had to breathe terrible air and were dying in the streets——

Mr. TIERNEY. So there's benefits to some regulations?

Mr. HAHN. Absolutely.

Mr. LITAN. Absolutely.

Mr. TIERNEY. And not all of them are measurable on economic terms, would you agree with that?

Mr. HAHN. Certainly, and we say that in a couple of pamphlets.

Mr. TIERNEY. Can you give me a couple of examples of benefits that you can't measure in economic terms?

Mr. HAHN. I don't think you can easily measure some certain kinds of benefits to ecosystems in economic terms.

Mr. TIERNEY. Then how do you factor that into a cost analysis?

Mr. HAHN. Well, what a distinguished—myself excluded—what a distinguished group of economists said in a couple of pamphlets, including one by AEI and Brookings, and one by AEI, is that it's not so much that we're saying that you should have a strict benefit-cost test apply all the time. But you should try to quantify to the extent possible, those things that you can, both on the benefit and cost side. You should also note those factors you think are important that can't be quantified. And then, the appropriate body, be it the Congress or an agency, should make a judicious decision based on the best information. Our view, I think speaking—and Bob, correct me if you disagree—is that we think bringing sunshine in the form of analysis that is clear to you and the American public, bringing that kind of information into the process is likely to improve public decisionmaking.

Mr. LITAN. I'd like to expand on that. There is a useful analogy. Just think of Defense expenditures. No one whom I know can quantify what we get by spending $250 billion, $300 billion for national defense. Yet, we all want it. At the same time though, Congress doesn't spend $1 trillion on national defense. It wants to know what the price tag of a B–2 Bomber is before it appropriates the money, and so this is sort of the same situation with some regulations. You can't quantify some of them, but you may want them. You want it. You may want to preserve a lake. You may want to preserve some oceans, but you want to know what the price tag is.

And just shutting your eyes and saying, "well, I don't care. I know it's important," is probably not a responsible thing to do because we don't act that way in defense. We actually do put price tags on something and we say we're not going to spend the whole GNP on defense. We're only going to spend so much.

Mr. TIERNEY. But we have the OIRA. We have the GAO. We have the CBO. We have all of those agencies participating in one way or another already. And now, you want to do yet another agency to help Congress out. Apparently, it needs yet another crutch?

Mr. LITAN. Yes, I'd like to expand on this because I think while you were gone, I was pointing out from my own personal experience that while I served at OMB during the Clinton administration on the budget side, I experienced this creative tension, sometimes not so friendly, between OMB and CBO on scoring. But, nonetheless I pointed out that there was a value to it. Even while we were disagreeing I knew there was a value in having an honest check on the numbers and the assessments. And that's why Congress created a Congressional Budget Office. And all I was saying is the same benefits of that can be brought to the regulatory field.

Mr. TIERNEY. By an honest check, you're implying that you want one that's either nonpartisan or certainly bipartisan? And would you agree with me, then, that a process that would appoint the people, the directors of this particular new agency ought to be something that encourages or results in a nonpartisan or a bipartisan staff?

Mr. LITAN. I think that we ought to have the same kind of thing that we have with CBO. I think everyone sort of has acknowledged that with CBO right now, the estimating is done in a professional way. I think people are quite satisfied with the process, though without getting into a debate on particular issues. I agree with you on the outcome. We want something respected as a professional operation that's nonpartisan.

Mr. TIERNEY. Do you think GAO's a professional operation?

Mr. LITAN. It is, but it doesn't have, with all due respect, it does not have the set of expertise right now in that agency to do the kind of work——

Mr. TIERNEY. But you think it has the right degree of nonpartisanship or bipartisanship in its staff?

Mr. LITAN. I'd say GAO is perceived to be nonpartisan.

Mr. TIERNEY. So that might be a good model to follow?

Mr. LITAN. It's a model, but I would prefer frankly the Congressional Budget Office, only because——

Mr. TIERNEY. Thanks. I appreciate it. Thanks.

Mr. LITAN. OK.

Mr. TIERNEY. The non-bias is killing me.

Mr. MCINTOSH. I would like to hear the rest of the analysis actually. Mr. Litan or Mr. Hahn, both of you seemed to indicate you wanted to add to that.

Mr. LITAN. Well, I would. Just think, for example, in the case of GAO. Would Congress say, "Well, we don't want to create a budget office. We'd rather have GAO do the numbers?" GAO doesn't do that. It's function, I think, has been more over time looking at the effectiveness of different expenditure programs, and they don't

have the staff expertise right now to do the kind of regulatory analysis that we're talking about.

Mr. MCINTOSH. So, it's not a matter of one being partisan and the other not partisan. They're both not partisan, but one of them has function on——

Mr. LITAN. Yes——

Mr. MCINTOSH [continuing]. Budget expertise. One of them has audit expertise on how the money is——

Mr. LITAN. Yes, it's a different kind of—it's a different kind of operation. Bob, you may want to expand, or Wendy, on this.

Ms. GRAMM. I think it's important to point out that the same arguments that you make for budget issues you can make for regulatory issues. Regulations are, in essence, a hidden tax, where you have decided that for public policy reasons, we're going to impose certain requirements by mandates rather than taxing and paying for the program through the regular fiscal budget process—the way we typically do. So, why shouldn't, then, you have similar kinds of institutions to provide the analysis and the information that you need to make sure that the laws are being implemented from a regulatory perspective in the same way that you do making sure that the dollars are spent in the way that you allocated.

Mr. MCINTOSH. Let me say to Mr. Tierney that I'm very sympathetic to your statement that we should be reluctant to create new agencies and new entities. And I would agree if I felt that one of these other entities had the capacity to do the job, which I actually think OIRA does have the capacity to do, but I don't think they're living up to it. I'm intrigued and want to think more about Mr. Litan's point that actually maybe you need two to have some intellectual tension there to get people to come up with the right answer. But I'm not convinced OIRA's doing the right job now. And I guess, Dr. Gramm, I'd like to ask you—when I served as a lowly staff member when you were the confirmed head of OIRA, and my recollection was that OIRA was pretty firm with the agencies. They had to get the regulatory impact analyses in. Would you have ever allowed the agencies in 1 year to have 43 of the 58 major rules that they were proposing come through the system and be allowed to be promulgated without a regulatory impact analysis that included a cost-benefit test?

Ms. GRAMM. Well, my statement about OIRA being weak really is based not on knowing what goes on the day-to-day business right now in that office. It's really based on looking at the output. It's clear that OIRA is not reviewing, based on the statistics, they're not reviewing as many regulations as they did in the past. There are fewer changes that are being made during their review process. Fewer rules are sent back—just a handful. But you also have to understand that the OIRA is part of the executive branch of Government, and this administration has, and this President has—even in his Executive order—made agencies more important in the regulatory review process. So, it's a function of this administration's priorities, frankly.

Mr. MCINTOSH. Well, let me actually submit for the record a chart here that does talk about some of those statistics on the output. In President Reagan's first term, when OIRA was created, they returned 192 regulations. In the second term, which is when

I think you served as the OIRA Administrator, OIRA returned 104 regulations. In President Bush's term, they returned 87. In President Clinton's first term, they returned 9 regulations. And to date, in President Clinton's second term, they returned 4 regulations. And so, by an order of magnitude, there are significantly fewer regulations that are being returned. My experience at the Competitiveness Council was for every one regulation, you actually sent back, you got a better result on about five or six of them, because the agencies negotiated to come up with a better rule. And so, those numbers don't even tell you the whole story.

Let me ask another question, Dr. Gramm. Was it your experience in OIRA that it was routine for OIRA to tell some of the agencies not to submit comments to them on regulations—for example, if the Energy Department had a regulation would they ever tell EPA, "don't submit your comments on the environmental impact?"

[The information referred to follows:]

Chart 3: Regulatory Actions by OIRA: 1981-1998

Period	Total Reviews	With Change (but not necessarily with substantive change)	Withdrawn by Agency (mixed category - includes both overtaken by new legislation, etc. & at OMB's request because problematic)	Returned (for Reconsideration, etc.)	% (of Total Reviews) With Change, Withdrawn by Agency, or Returned
President Reagan's 1st Term Jan. 1981- Jan. 1985	10,117	1053	177	192	14
President Reagan's 2nd Term Jan. 1985- Jan. 1989	8930	2053	237	104	27
President Bush Jan. 1989 - Jan. 1993	9218	2148	292	87	27
President Clinton's 1st Term Jan. 1993- Jan. 1997	3978	1281	223	9	38
President Clinton's Second Term to Date Jan. 1997- Jan. 1998	498	272	25	4[1]	60

Prepared for Congressman David M. McIntosh

[1]Three of the four were rules submitted by the Railroad Retirement Board.

Ms. GRAMM. On the contrary, the role of OIRA has traditionally really started from a coordination function especially, for example, during President Carter's years. The idea was to get comments—specifically to get comments from the other agencies. If for example, EPA might be proposing regulations that might have an effect on agriculture, they'd want to get comments from the Department of Agriculture. They'd want to hear their views, but also to ensure that you don't have regulations that work at cross purposes with other laws or other regulations—a pure coordination function. And so, in fact, the role of OIRA, and in fact the role of OMB in general, is to make sure that policies are coordinated, that the executive branch doesn't have conflicting regulations and rules out there.

Mr. LITAN. Mr. Chairman, can I just add just a couple of points?

Mr. MCINTOSH. Yes. Certainly.

Mr. LITAN. On your statistics about the number of rules returned, I'm not going to comment on whether I believe the following statement to be true, but I'm just saying that if Sally Katzen were here defending her old job what she would probably tell you is that the reason why there's been a dramatic fall off is that the agencies have internalized the instructions from OIRA, so they don't have to be slammed every so frequently and that they have learned the rules of the game. I fairly suspect that's what she would say.

But my second point is in my view, it doesn't matter. Even if OIRA was returning every single rule, if I were a Member of Congress, I'd still want an independent review. Because I'd want an independent assessment—how do I know that OIRA's doing it the right way? Another thing is I'm not going to get macro analysis out of OIRA, and I'm unlikely to. And the third thing is you want your source of information to act as a check. And institutionally—I would think just institutional jealousy or institutional rivalry would almost require that you have an organization that's yours rather than theirs.

Ms. GRAMM. I'd say that I agree with you that the number of returned rules doesn't tell the whole story. But what does tell the story is one, what—have the rules been like that have come out. Have they had decent cost-benefit analysis. For example, in the Clean Air Act rules, EPA's own cost benefit analysis indicates that costs exceeded the benefits, even as flawed as their analysis was. I also agree that it is important for Congress to have analysis that is independent of the executive branch. Part of your oversight function is to make sure that the executive branch is implementing the laws as they have been written. And OIRA, after all, is part of the executive branch, and they can perform an important function doing independent analyses, independent of the agency that writes the regulations. But what I'm also suggesting and I think my colleagues here also are suggesting that you need to have your own review because of the functions that you've given yourself under the Congressional Review Act, but also because of your oversight role.

Mr. MCINTOSH. Let me close by saying I'd very much agree with you there. And frankly, I've been critical of OIRA, but I also can be self-critical and say that I'm disappointed that Congress hasn't taken up more of these regulations under the Congressional Review

Act. And that, therefore, is one of the reasons that I'm a strong supporter of this bill. I have no further questions for this panel.

Mr. Tierney, did you have any last questions?

Mr. TIERNEY. Yes, I guess I do with Dr. Gramm. Thank you. Are you suggesting in the last statement that OIRA's analysis cannot be reviewed by Congress so that we can determine whether or not it's, in fact, be a well done analysis, cost-benefit analysis, that we can't look at what they've done, and with our staff and our own——

Ms. GRAMM. Well, I don't suggest——

Mr. TIERNEY [continuing]. Commonsense we can say——

Ms. GRAMM [continuing]. That at all. No, I'm just saying that I think Congress would benefit by having its own independent——

Mr. TIERNEY [continuing]. And why is that? Are you insinuating that because of the connection with the executive branch, there be some political bias there, or something that we ought to be concerned about that we can't otherwise——

Ms. GRAMM [continuing]. Well, don't forget that——

Mr. TIERNEY [continuing]. Detect?

Ms. GRAMM. Well, first of all, in many cases OIRA may not actually be writing any kind of analysis. A lot of their work is done by just discussion. Their job is to—and their role has traditionally been—to urge agencies to do better analyses. And, its clear——

Mr. TIERNEY [continuing]. Just starting——

Ms. GRAMM [continuing]. That they're not doing that. Or, at least the agencies are still not producing good analyses.

Mr. TIERNEY. Well, let's assume that OIRA does the job, or that we do our job and force OIRA to do the job that we think it should do, then aren't we not to be able to look at what they do and determine for ourselves whether or not the proper analysis has been done without going out and spending money and duplicating it?

Ms. GRAMM. Well, you might be able to do it, say, using your own staff. But the point is that it's not getting done. Again, I agree that on the macro issues, you might look at an individual analysis by analysis and determine yourself, say, if you're very interested Member of Congress and have a staff to look at all the regulations. I would argue that Congress, as a group, needs to have that kind of independent analysis, even if OIRA is very strong, simply because OIRA being part of the executive branch——

Mr. TIERNEY. Well, let's play that out for a second——

Ms. GRAMM [continuing]. Again, it's going to reflect the—reflect the President.

Mr. TIERNEY. Well, not necessarily, but let's play that out. Let's suppose that we're all so distrustful that we think because we're associated with the executive branch, therefore, that analysis can't be the one we're looking for. So, let's do CORA, where we have a real concern that now we have a partisan-established staff over there because it's selected by one of the parties in the majority. So, who do I go to now to get my third analysis so that we can keep on going down the line?

Ms. GRAMM. I really reject the notion that analysis is partisan.

Mr. TIERNEY. Oh, well, let's back up a step then. And why don't we just——

Ms. GRAMM [continuing]. And I don't think—I think——

Mr. TIERNEY [continuing]. Go along with the fact of seeing to make sure that OIRA did its job because now we're not concerned any longer that they're——

Ms. GRAMM [continuing]. You can do that——

Mr. TIERNEY [continuing]. Connected with the executive branch and we can trust them——

Ms. GRAMM [continuing]. I think that's what the office—that's what the office is meant to do. Right? The office——

Mr. MCINTOSH [continuing]. And on that point, Mr. Tierney, let me welcome your help in our oversight over OIRA because we're in the middle of that and we've got a long way to go to get them to do their jobs.

Mr. TIERNEY. Hopefully, we'll finish before we start creating new organizations to do that job.

Mr. MCINTOSH. Thank you all. I appreciate you coming today and appreciate your testimony. We, with unanimous consent, will hold the record open for 10 days. Mr. Sununu had some additional questions, and other Members may as well.

Let me call forward our final panel for today.

Mr. Gary Bass.

Welcome back, Mr. Bass. As you know, I think, we swear in all our witnesses at this subcommittee.

[Witness sworn.]

Mr. MCINTOSH. Let the record show the witness answered in affirmative.

Our final panel today is Mr. Gary Bass, who is the executive director of OMB Watch, an independent, non-governmental agency that watches not only OMB, but I suspect a lot of the other operations of the Federal Government.

Thank you for joining us today, and please share with us your testimony.

STATEMENT OF GARY BASS, EXECUTIVE DIRECTOR, OMB WATCH

Mr. BASS. It's always an honor to come before this subcommittee and before you, Mr. Chairman. In fact, I was probably given my whole panel to myself because you probably thought I was going to agree with you today. Alas, it's not to be true.

OMB Watch strongly opposes H.R. 1704, CORA. Let me drop back a little bit and—I was impressed with the witnesses today, in part because I continue to have this image now of a magic bullet out there. That there's going to be something magically that comes along and is going to make regulation better, particularly for business. And I was reminded because I lived through this now with the Reagan administration—and forward—that when President Reagan came in, within a matter of a couple weeks of taking office, we got Executive Order 12291, which was to move cost-benefit review to OMB. And it was the business community that rallied behind this and said, "this is the magic bullet. It's going to work."

Within 3 years, we had a second Executive order, Executive Order 12498. And the logic was, "we're not getting at the rulemaking early enough. We got to get in right when the agencies are starting to plan." And so the next Executive order came out, and the business community rallied around that and said, "this is the

solution." And so, now we had OIRA with two Executive orders going after regulation.

A few years later, during your tenure, we had the Vice President's Council on Competitiveness. Another magic bullet was coming—that you were going save business from bad regulation.

This time around, we've got legislation. In the last Congress, the Unfunded Mandates Reform Act, revisions to the Paperwork Reduction Act, SBREFA, and with each one of those I heard the rallying cry from business: "a magic bullet. This is going fix it." And here we are again with CORA, another magic bullet. Well, I don't think so.

There is no doubt that the regulatory process is a difficult process. There is always tension, but most often tension between regulated communities' interest and the public interest. And there is no doubt we need a better balancing act between those tensions. CORA will not achieve that balancing act that's needed. There just is nowhere in the making.

On top of it, one of the biggest problems with the rulemaking process is we need to speed it up, not take it and make it slower with more and more analyses.

Now, today there was a lot of discussions about regulation. I deal with regulation from a different perspective. I deal with the mothers and the fathers and the families of kids who eat tainted meat and have children that die. I deal with kids who have asthma from unclear air. I deal with people who depend on the Federal Government to put out fair and better public protections. I also must say about this notion of the cost of regulation. Regulation also generates jobs. There was an interesting study done by the Economic Policy Institute that demonstrated in the environmental arena, when you look at all regulation and all impact on the economy, it actually generated slightly more jobs, displacing in sub-sectors where the revenues and the incomes go.

The real issue, as you had said earlier today, Mr. Chairman, it isn't that you need more information. If Congress wants, it has the choice to disapprove or approve regulations. It requires political will. You have always had that authority. You've had it before the Congressional Review Act, to legislate as you wish. If you have a problem with a rule, use your power. It isn't a problem of information, and frankly, I was a little confused with Mrs. Kelly's comments at the beginning about just a second opinion. And in fact, if I hear her, I'd like to understand more clearly what she means because the legislation doesn't say that. And in fact, your esteemed panel before that, pulling out their testimony—it says right here from AEI and Brookings and it's going to conduct its own regulatory impact analysis, including an assessment of their benefits and costs. Assess whether the agencies comply with the procedural steps and issue an annual report on costs. You can look at the bill itself; it says that very specifically.

What is also says, is that CORA is to generate alternative regulatory approaches. Now, this is going to occur after the public has had an opportunity to comment on a rule—after a point at which there has been a fair and equal opportunity, and potentially jeopardize any kind of potential lawsuits that are filed on that through the Administrative Procedure Act.

Well, needless to say, I'm not pleased with CORA. My written testimony, which I hope will be submitted for the record, lists a number of specific concerns.

I do want to mention just one specific thing: that no way can these analyses be done in 45 days unless one of two options happen. You take the agencies' work, which then means it's duplicative. Or, alternatively, you take some special interest, whether it's an OMB Watch or whether it's a regulated community, in which, then, the data and the results are biased.

I don't see where we get. Let me make one final comment. There's been a lot of discussion about likening this to the budget process. It is very—it's actually a bad analogy to use. The budget, as you well know, is something that the administration proposes. Congress has the statutory responsibility to appropriate funds in order to have the execution through the executive branch. The regulatory process does not have a similar approach. Now, Congress has actually bills before it that is trying to make a mirror approach, but at this point that doesn't exist.

Second, the rulemaking process today has a very neutral process by which a rule is published in the Federal Register for notice and comment. It has added features for the small business review panels that Congress has enacted. It has many other features under the Unfunded Mandates Reform Act. In addition, the rulemaking process provides through the Administrative Procedure Act, judicial review. All of these are significantly different than the budget process.

So let me say that CORA will not increase Congress' use of the Congressional Review Act. More information is not what you need. You can go right to GAO's web site, if you're worried about speed, and get the analyses that they have done. It is costly; it is duplicative—raises concerns about CORA's ability to fairly review these rules.

So, let me just say to mix my metaphors, it's sort of like a pot of gold at the end of the rainbow. And I think that it's both elusive and imaginary.

Thanks.

[The prepared statement of Mr. Bass follows:]

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Statement of

Gary D. Bass, Ph.D.
Executive Director
OMB Watch

Before the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs
of the
House Committee on Government Reform and Oversight

On
Congressional Office of Regulatory Analysis Creation Act
March 11, 1998

My name is Gary Bass and I am executive director of OMB Watch, a nonprofit research and advocacy organization that works to encourage greater civic participation in federal decision-making and promote a more open, responsive, and accountable government. We have been monitoring federal regulatory activities since 1983 and have issued a number of reports on the topic. Pursuant to your request Mr. Chairman, OMB Watch has not received any federal grants or contracts in the current and two preceding years, nor are we representing any entity today that has received such funds.

We appreciate the opportunity to testify.

The bill before this Subcommittee, H.R. 1704 — the Congressional Office of Regulatory Analysis Creation Act — would set up a congressional office to review agency rulemakings and conduct its own cost-benefit analysis for every major rule (and nonmajor rule upon the request of Members).

It has been suggested that through the creation of CORA, Congress would be better informed on agency rules, and more likely to use the recently-enacted Congressional Review Act (CRA). As Rep. Kelly pointed out on May 22, 1997, when introducing H.R. 1704, the House has not moved a resolution of disapproval through the expedited track provided for under the law and no rule has been struck down.

Yet if you look at the recent case examples, there appears to be little confusion among Members. Is there anyone here on this Subcommittee who doesn't have an opinion on OSHA's methylene chloride rule or EPA's new clean air standards? Most, if not all, Members know exactly how they feel about these rules, which is not surprising considering the wealth of information already made available to Congress.

The CRA requires that agencies submit all proposed rules to the parliamentarian and leadership in each chamber. In addition, the General Accounting Office must prepare a report on each agency rule and submit it to the appropriate congressional committees in both the House and Senate. (In fact, this information can be viewed by anyone who has access to the world wide web — www.gao.gov) Thus, the intimate details of each agency rulemaking (e.g., the cost-benefit analysis, risk assessment, and small business panel recommendations) are right there at the finger tips of each Member and readily available to the relevant oversight committees.

And if after reviewing all this information Congress still has questions, congressional leaders can hold hearings. There have been many hearings on the CRA and on specific regulations such as OSHA's methylene chloride rule. Mr. Chairman, you, for one, have hosted several hearings on EPA's clean air standards in this Subcommittee.

The true reason that these rules — which have been vocally opposed by some Members — have not been considered under the disapproval process is political. There is a fear among those who might vote to strike down rules that they would be branded anti-environment or anti-worker as a result. More research will not address these political considerations.

But apart from whether H.R. 1704 would accomplish its stated purpose and lead to more resolutions of disapproval, the bill has many other problems:

It would create a costly new government apparatus that would duplicate functions already performed by OIRA and the individual agencies. Under Executive Order 12866, OMB's Office of Information and Regulatory Affairs (OIRA) must review all major rules (rules with an annual economic impact of $100 million or more, or rules OMB so designates) and other nonmajor rules that OIRA believes warrant consideration. Last year this amounted to the review of 502 agency rules; the content of these reviews is readily available to Congress.

CORA would duplicate all the work done by OIRA, including an annual report estimating the total cost of federal regulations on the U.S. economy. Although these responsibilities are time-consuming and expensive — OIRA operates on an annual budget of $5 million — H.R. 1704 goes further than simply creating a second OIRA.

CORA would also engage in activities currently handled by individual agencies, performing an additional "Regulatory Impact Analysis" for each major rule, and conducting cost estimates required by the Unfunded Mandates Reform Act of 1995 — currently a task undertaken by the Congressional Budget Office.

In explaining the necessity for this duplication, the bill states that "in order for the legislative branch to fulfill its responsibilities ... it must have accurate and reliable information on which to base its decisions." This is certainly true, but it assumes two things that may not necessarily be true. First, that information coming to Congress from OIRA, the agencies, and GAO is unreliable, which Congress has yet to prove is the case. And second, that information from CORA would be more reliable than that of the previously stated governmental entities.

Predictably, this new and redundant regulatory review apparatus would cost taxpayers millions, carrying with it few or no benefits. This bill was recently reported out of the Judiciary Committee. And precisely because CORA has the potential to be so outrageously expensive, it was amended to limit its annual appropriation to the same level as OIRA's. But considering that the scope of CORA's activities would be far greater than OIRA's, it's difficult to see how this could possibly be enough.

We believe that — regardless of funds — information generated by CORA would be unreliable, for reasons explained below. But without proper funding, this certainly would be the case. It can be expected that CORA would carry a substantially steeper price tag since it must not only engage in OIRA activities but also conduct cost-benefit analyses as well as cost estimates required under the Unfunded Mandates Reform Act. Some have suggested to properly fund CORA would cost at least as much as CBO at $25 million. And if all the studies are done to fulfill the requirements of the bill, it could cost upwards of $60 million. If this Subcommittee is true to its beliefs, then CORA's requirements should be waived if Congress does not fully fund the office. Otherwise, you will create another unfunded mandate.

If Members are truly concerned about the quality of analysis coming out of the agencies, perhaps Congress should use the funding that some seem ready to apply to CORA and appropriate it to the agencies. Just within the last two years the President has signed into law the Small Business Regulatory Enforcement Fairness Act, the Unfunded Mandates Reform Act, and amendments to the Paperwork Reduction Act — all of which require agencies to perform rigorous new regulatory cost assessments. The obligations under these laws would be more easily fulfilled with greater resources, and the results would likely be better as well.

It runs counter to current efforts to streamline the government. For a Congress that prides itself on streamlining government, H.R. 1704 goes in exactly the wrong direction. Not only would it create bigger government, but it would create government that duplicates functions already performed — which calls into question whether this bill could stand up to the sort of rigorous cost-benefit analysis so valued by Members of this Subcommittee.

This Congress has often raised objections to agencies that perform apparently redundant functions. And the administration has responded to such criticism through E.O. 12866 and the Vice President's "Reinventing Government" initiatives, both of which have attempted to increase government efficiency. H.R. 1704 would run counter to this by duplicating functions at OIRA and the individual agencies.

It contains the unreasonable expectation that CORA conduct its own cost-benefit analyses for all major rules. Not even OIRA does this, and for good reason. Cost-benefit analyses are extremely time-consuming, require significant expertise, and are done within the context of each rulemaking. Without being a part of that rulemaking (e.g., without being involved in the agency's public comment period, SBREFA panels, etc.), it would be impossible for CORA to make a credible, independent estimate at both cost and benefits. CORA could essentially copy agency findings, but if that's the case, the bill does not meet its stated purpose. Or it could use analyses produced by the regulated community, which the federal agency has rejected and might paint an unfair and inaccurate picture for Congress. This is especially dangerous because of CORA's lack of pubic accountability. When agencies choose a regulatory option that is "arbitrary and capricious," they can be sued. But the public would have no recourse for sloppy work produced by CORA.

Although cost-benefit analyses often take years to conduct, H.R. 1704 seems to imply that

CORA would do the various types of analyses within a 45-day period before reporting to the appropriate committee. Even if CORA gets a head start on its requirements — say when the agency publishes a Notice of Proposed Rulemaking — H.R. 1704 still would be unworkable.

During the 1994 debate over unfunded mandates, Robert Reischauer, Director of CBO at the time, was very skeptical of the legislative branch's ability to conduct these sorts of highly technical and time-consuming cost estimates, calling it "impossible in any practical sense." Congress heeded Reischauer's warning by narrowing the scope of analysis that CBO is to do under the Unfunded Mandates Reform Act.

Yet H.R. 1704 would move Congress directly into areas that Reischauer warned would be dangerous. To top it off, H.R. 1704 requires CORA not only to conduct detailed cost-benefit analyses, but also determinations of "potential net benefits" and descriptions of alternative regulatory approaches that could "achieve the same regulatory goal at a lower cost" and cost-benefit analyses of these approaches. These types of assessments are not required of agencies at this time. Furthermore, they put public protections secondary to finding "lower cost" regulatory approaches and don't take into account the reality of regulation. It is well documented that the costs of regulatory compliance decrease dramatically over time for a number of reasons (e.g., regulated entities adapt to new rules and learn to comply in more cost-effective ways; and technological advances improve the ability of regulated entities to comply). If CORA is not required to take these factors into consideration, you would create an institutional bias in the scoring of rules.

It contains no language requiring CORA to operate in the sunshine. During the 1980s, OMB was permitted to operate in secret with little public accountability. Rules would go to OMB, changes could be made, and no one would know exactly why. Similarly at CORA, significant decisions on agency rules affecting everything from small business to the environment to children's health could be made without ever providing a proper explanation to the public. This is especially significant if Congress is going to use CORA findings as a basis to reject agency rules.

As the Freedom of Information Act has been advanced, OMB has opened up slightly (though some of its problems still remain since it is not subject to the same statutory requirements as federal agencies). But H.R. 1704 doesn't touch the subject of whether or not FOIA would apply to CORA, nor does it spell out any other mechanisms to bring CORA into the sunshine to ensure greater public accountability.

More importantly, CORA raises serious concerns involving the Administrative Procedure Act. Under the APA, agencies are required to take a number of steps (e.g., public notice and comment) to ensure openness. Agencies can also be sued if the agency decision is "arbitrary and capricious," providing important checks and balances. CORA would have to conduct cost-benefit analyses just like federal agencies, but unlike federal agencies it would not be bound to the APA. This means important decisions at CORA that could lead to the defeat of public protections (and ignoring of public comments) might be made without any input from the public. In the absence of public accountability, it is possible that CORA could be used as a tool

to advance a political agenda rather than a source of objective analysis on agency rules.

It would politicize the rulemaking process. It's not hard to imagine a body like CORA, which would function as an arm of Congress, being influenced by the expectations of individual lawmakers looking to push an ideological agenda. Upon approval from OMB and the agency head, CORA could utilize executive branch facilities and personnel without reimbursement to carry out work it needs done. Thus, a process would be opened up in which Committees can lean on CORA and then CORA can lean on agencies, potentially with significant effects on agency rules. And why might this happen? Because powerful special interests that give campaign contributions lean on Committees. This would spell danger for the rulemaking process which is better off operating detached from the political arena and in the interest of sound science.

It contains a regulatory accounting provision that could be an attempt to create a congressional regulatory budget. There are many problems with the bill's requirement that CORA do an annual report on the "total cost of Federal regulations" on the U.S. economy. First, this would require significant work. CORA would not be able to review every rule generated by the executive branch, and therefore would need to establish a process for determining costs for every rule. Currently, OMB does not keep such information either.

Second, the regulatory accounting provision does not define what is meant by total costs. Does this include indirect costs? In the past, business has used such vague language to create opportunities for showing significant cost (e.g., lost business opportunity) relative to benefit, inflating burdens and justifying a decision not to regulate.

Third, there have been many recent attempts to quantify the cumulative costs of federal regulations by independent organizations and other researchers, yet in virtually every case, these studies vary by hundreds of millions of dollars — influenced by the various ideological underpinnings of the researchers. Likewise, it is easy to see how CORA's study could be influenced by Members of Congress looking to push an ideological agenda.

Fourth, the requirement does not instruct CORA to provide an annual estimate of the total benefit of federal regulations, including the economic benefit of regulation. This would create a one-sided figure that could be greatly misused.

Finally, as an annual requirement, the regulatory accounting provision raises serious concerns that it could become a backdoor approach to creating a regulatory budget — something strongly opposed by the public interest community but called for in the Contract with America.

It assumes that agencies never issue the most cost-effective regulatory alternative. The bill states that CORA must provide "a description of alternative approaches that could achieve the same regulatory goal at a lower cost..." But it is entirely possible that an agency will have taken the appropriate, most cost-effective action. In fact, it is unlikely that an agency would move forward with a rule if it believed there was another more cost-effective alternative that

could be used to achieve the exact same result. Rather, H.R. 1704 provides an excuse to focus more on cost and less on public protections.

It raises serious Constitutional questions over the separation of powers. The bill moves in the direction of subordinating the powers granted to the executive branch to execute the laws of the land. Congress has every right to establish laws and revise them, but H.R. 1704 would place the legislative branch in the role of describing regulatory alternatives for the way the executive branch is to execute. Moreover, Congress has enough trouble passing 13 appropriations bills each year without reviewing 500 major rules and a significant number of nonmajor ones.

It is not necessary. Under the CRA, GAO must provide an analysis of each agency rule to the appropriate congressional committees. Furthermore, information on OIRA's regulatory review and the agency's rulemaking is also delivered to Congress. This gives lawmakers all the tools they need to exercise necessary executive branch oversight. Supporters of H.R. 1704 have failed to identify why there is a need to transfer GAO's functions to a new congressional agency. Although H.R. 1704 purports to enhance congressional knowledge of agency rulemaking, Members have exhibited little confusion in this regard. For instance, most Members have formed well-developed opinions on OSHA's rule on methylene chloride and EPA's proposed clean air standards without an expensive apparatus like CORA.

In summary, the fact that Congress has not used the CRA is a function of political will, not a lack of information, and therefore CORA would not lead to more resolutions of disapproval as the Chairman hopes. But it would create a costly new government apparatus to perform a myriad of functions already performed by other government entities. This is not a wise use of resources and contradicts recent efforts to streamline government. In addition, an array of problematic side-effects would result from CORA's creation, such as its license to operate in secret and questions regarding the separation of powers between the executive and legislative branches of government. Furthermore, there are questions about CORA's mandated requirements and why they exceed those imposed on agencies. OMB Watch therefore strongly opposes H.R. 1704.

Mr. McINTOSH. Thank you for coming, Mr. Bass. Let me say one of those bullets that you mentioned, the Competitiveness Council, which I did serve on, was abolished after this administration took over. And I've often thought that they perhaps regretted doing that because there have been various times when the White House wanted the agencies to do things that it was difficult to arrange for; although, apparently Vice President Gore has in the second term been able to muster more influence along those lines. But as I saw them struggling with reinventing government, I thought they could use something like a Competitiveness Council. Let me say it is our concern—and it may not be the answer to this entire problem, but I do think it would help—it is our concern with the 50 percent of the regulations that do fail a cost-benefit test—and by the way, it's not business that actually pays for that—it ends up being the consumer that pays in higher prices or the person who loses their job who suffers the most as a result of those unproductive regulations. We heard testimony earlier today that 60,000 lives could be saved if we did a better job of using the regulatory apparatus that we have right now. And so, in many ways it's a benefit-benefit tradeoff that needs to be addressed. And I think Congress—well, now having served for 3 years—I'd have to say individually and as a whole, we're not really that well informed about many of the details of those tradeoffs. And it would be my hope that with CORA acting as a staff for Members in both parties that we could acquire that information. Some of it they'll produce themselves, but, yes, you're right, a lot of it they'll have to bring in from other sources in the agencies to better inform Congress. And that's why I compare them to CBO. I think Congress, prior to CBO, just didn't have the information about budget numbers and scoring and wanted an entity that reported to them to give them that information—give us that information. And in that sense the comparison is made with CORA and OMB, and CBO and OMB.

Let me ask you this question: If we could, as a result of CORA, have some regulatory changes where you saw a better tradeoff and more lives were saved, would that be worth spending the $5 million?

Mr. BASS. Well, I think you've biased the question slightly. One, I don't think it could be done within $5 million for the tasks that you're talking about, but we'll put that aside. I don't think that more analysis will result in saving lives. No, I don't. I think that there could be better analysis, and maybe one of the things that the oversight role of Congress should be is to strengthen that.

I'm concerned frankly that the problem, in my mind, is not the analysis. It's the timeframe that it takes to do a rulemaking. I'm thinking methylene chloride right now, one that is a controversial rule. It's a cancer-causing substance. It has taken almost a decade now for OSHA to issue a standard. It wasn't just doing the study. There was plenty of studies. There were lawsuits. There was a number of hurdles to get through. And on top it, as an example of one where a resolution of disapproval was introduced both in the House and the Senate and chose not to move it forward. So, I'm not sure that it's more analysis.

I would also add, Mr. Chairman, that your comment earlier—I think the tradeoff issue is a real issue and one that we all struggle

with if we want better rulemaking. I think, though, that too often we put an emphasis on cost-benefit where maybe it's not appropriate. The quantification issues are highly inappropriate in certain cases. And even the non-quantitative approaches are inappropriate.

For example, take civil rights. I personally, and I think many Members of Congress would agree, that on a constitutional right of civil rights, one would not want or would the public want to see a cost-benefit analysis. Many times in a civil right, the costs will be greater than the benefit. But we have made the determination in the country, in terms of our values and our beliefs that that's a case what we do want to happen: we do want to protect civil rights, no matter the costs.

You have also passed legislation—I shouldn't say you but past Congresses—an example of OSHA, where the Supreme Court has interpreted the statutory provisions and say that cost-benefit should not be considered in the case of health conditions, that the health of the worker prevails, no matter what the costs. So, there are many issues that go well beyond the points you've made that have to be looked at carefully.

Mr. MCINTOSH. Thank you for your time. And let me now ask Mr. Tierney, and then I'll turn to Mr. Barr, who will have some questions.

Mr. TIERNEY. Thank you, Mr. Chairman. Mr. Bass, you are a breath of fresh air. Thank you for joining us today. Let me—because I agree with a lot that you've said, and I don't recover ground, whatever. But might we not accomplish some of the things that the chairman and the author of this bill want to accomplish by taking the $5 billion that we're funding and putting it elsewhere to make things, to make the current analysis better? Wouldn't that be helpful?

Mr. BASS. I think that makes a lot of sense. In the last Congress, you passed a number of laws that require new analyses, new work on the part of the agencies. Personally, I think if Congress has a surplus of money and chooses to put it into the regulatory arena, I'd put it back to the agencies to get better analysis to help you make the decision you need to make.

Mr. TIERNEY. And one of the comments—you heard the colloquy going back and forth with previous witnesses—CORA, as you read it, does it seem to be in fact just establishing either another analysis of the analysis as the Representative herself said, or asking for a full-blown, very expensive proposition, again redoing ground that could be done—that should be done by the agencies that have already been placed for this?

Mr. BASS. Yes, I think it's quite conceivable that Congresswoman Kelly has a vision in her own mind where she intends to amend this bill. But as it's written, and I can only go based on what the bill is written, this requires significant new research. It takes the responsibilities that previously have gone to GAO and puts it over to this new office. It supplants the role that CBO played in terms of some of the work it was doing under unfunded mandates reform to put it to CORA. And in addition, it creates a whole new apparatus for analysis, not only with the annual report, but in the review of rule by rule. Frankly, I'm very nervous about Congress embedding itself in the rulemaking-writing process. And to come up with

alternative regulations, I'm not sure will achieve what the esteemed colleagues from Brookings and AEI want to do, which is a more academic and more careful overall look.

Mr. TIERNEY. But it may well have the effect of slowing down or just impeding any rulemaking or regulation process?

Mr. BASS. Well, it definitely has to. I mean, even the bill itself amends the number of days.

Mr. TIERNEY. And so that might, in fact, be somewhere where some people are going without. But let me ask you about a sunshine issue here. Did you see problems—in looking through your testimony here—with whether or not we might have a problem with the nature of the business does and what the public knows about what's being done. Would you expand on that a little bit?

Mr. BASS. Congress has a history of not being covered by many public access provisions that the executive branch already is. For example, the Freedom of Information Act is one example that does not apply to Congress. Since CORA would be a legislative branch agency, the public probably would not be able to review these materials in the same manner the agencies' materials now are available. Agency materials under risk assessments and peer reviews and, to some extent, some of the regulatory impact analyses are made part of the final rulemaking record, which are then subject to judicial review. Adding in a new component, through Congress, with a new type of analysis may greatly complicate that process. I would greatly urge that this committee—I know the judiciary committee has already looked at this bill—but consider what the judicial ramifications are for this.

Mr. TIERNEY. Well, thank you. I don't really have any other questions, but I do ask the chairman, have we put in the written testimony of this witness or may we do that?

Mr. MCINTOSH. Yes, seeing no objection, that will be included in the record.

Mr. TIERNEY. It seems to me that you've raised a number of good issues, Mr. Bass, and the committee might even use it as a road map to try to adjust what we have in existence to accomplish some of the purported purposes anyway of the Congresswoman's bill. Maybe we could withdraw that and get down to business to try to get down to the ends that we want to get and maybe this testimony is some way a design for the path that we could get there, which certainly as a minority would be willing to work with you on that. Thank you, sir.

Mr. MCINTOSH. Let me turn now to Mr. Bob Barr for any questions or a statement that you'd want to make.

Mr. BARR. Thank you, Mr. Chairman.

I do apologize for being late. I particularly wanted to get here while Ms. Gramm was testifying. I know of her work in the regulatory reform going back many years, and she's a national expert on this. And I know that her testimony was not only insightful but probably very eloquent as well. And I do appreciate her coming.

But I did want to commend Mrs. Kelly—I will be supporting and become a co-sponsor of H.R. 1704—and to commend you, Mr. Chairman for beginning—actually that's not the right—for continuing your work in terms of trying to bring some focus to our regulatory reform effort, and to continue to push this issue. I think this

is a good piece of legislation as once more part of overall regulatory reform. Unlike before us now, I'm not at all nervous about Congress taking on more of the responsibility in this area. I think part of the problem with the regulatory monstrosity that we have in this country is Congress, over the years, has abrogated too much of the responsibility for understanding the impact of rules and regulations and consciously deferring its proper role so that we don't need to hold ourselves accountable, and we can blame somebody else when those rules and regulations go awry and when problems develop. So, I think that this is really one step to try and bring back into the proper balance the regulatory scheme in this country. And there is so much more that we can do that this subcommittee has already begun to look at and that the last Congress and this Congress is moving forward on. But this, I think, will be an important part of that—to give us the tools to really restore a proper balance in the regulatory schemes of this country.

I commend you, Mr. Chairman, for your work in this area, and I commend also the Congresswoman from New York, Mrs. Kelly, for introducing this piece of legislation, which I do support.

Thank you.

Mr. MCINTOSH. Thank you, Mr. Barr. Before we adjourn, let me ask unanimous consent that my opening statement, the prepared statement, also be put into the record.

Seeing no objection, the committee stands adjourned.

Thank you.

[Whereupon, at 4 p.m. the subcommittee adjourned subject to the call of the Chair.]

[The prepared statement of Hon. David M. McIntosh follows:]

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Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs
Hearing on "Congressional Office of Regulatory Analysis Creation Act," H.R. 1704
March 11, 1998
Statement of Chairman David M. McIntosh

Today we are going to examine a very important issue -- the burden of government regulations on the American people and Congress' role in reviewing these regulations. We are considering a bill, the "Congressional Office of Regulatory Analysis Creation Act," which would help Congress carry out its responsibility to review regulations.

Regulation cost $688 billion in 1997. That's approximately $6,875 annually for a typical family of four. (roughly 1/3 for paperwork, 1/3 for economic regulations, such as price and entry controls, and 1/3 for social regulations, such as environmental and health and safety rules) More is spent on regulation than on medical expenses, food, transportation, recreation, clothing, or savings. Regulatory costs absorbed 19 percent of the average family's after-tax budget in 1997. And the costs are rising. Total regulatory costs in 1997 were up 1.6 percent from the previous year, 7.2 percent over the past five years, and 25.3 percent over the past ten years. The number of pages in the Federal Register, which contains all federal regulations, has grown 37 percent in the past 10 years.

Our Subcommittee held 18 field hearings over the past three years, and we heard from citizens across the country who are suffering under the burden of regulations. We heard from Bruce Gohman, president of W. Gohman construction company in St Paul, Minnesota, who told us that, although his company could grow, he keeps the number of employees under 50 so that he will not be subject to more regulations. We heard from Judi Moody in Sumner, Washington, who told us that when she and her husband tried to open a small bookstore and cafe, they were stopped by an overwhelming number of regulations. Mrs. Moody and her husband just wanted to hire a couple of employees to sell books and coffee. But because of government regulations, they were not able to realize their dream or create more jobs.

Not only do regulations cost jobs, but also some regulations work against their stated goal of protecting public health. The FDA recently proposed a rule to take asthma inhalers with CFCs off the market. This regulation will leave asthma patients without the medicine they desperately need, because many will not be compatible with the CFC-free alternative inhalers.

Clearly regulations need to be carefully analyzed before they are issued. Under the Congressional Review Act, Congress has the responsibility to review regulations and ensure that they achieve their goals in the most efficient and effective way. But, Congress cannot carry out its responsibility because it has neither all of the information it needs to carefully evaluate regulations nor sufficient staff for this function. The only analyses it has to rely on are those provided by the agencies which promulgate the rules. There is no official, third-party analysis of new regulations.

The "Congressional Office of Regulatory Analysis Creation Act" would provide Congress with the resources it needs to analyze regulations. It would establish a congressional office, known as CORA, to analyze regulations as they are issued and identify ones that are problematic. In the same way that the Congressional Budget Office was established in 1975 to equip Congress to address the growing budget problem, CORA should be established to equip Congress to address the growing and significant regulatory problem.

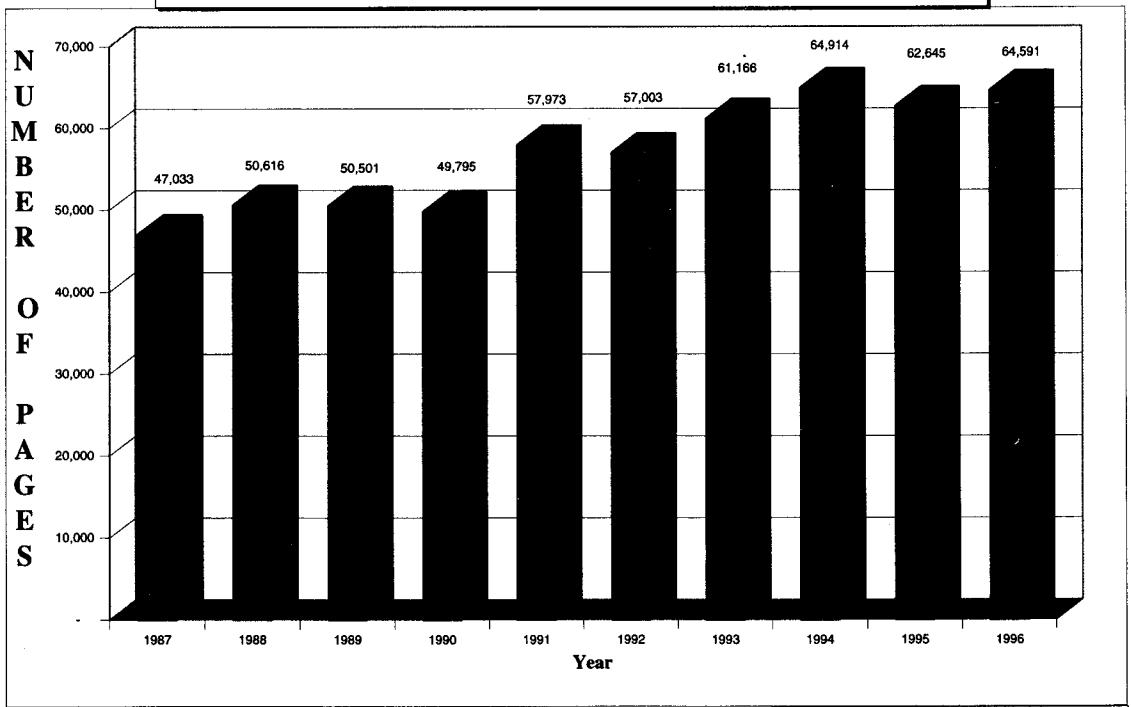
Our Subcommittee held a hearing yesterday on OMB/OIRA's failure to provide guidance to the agencies on compliance with the CRA. Because OMB/OIRA isn't doing its job, many agencies have violated the CRA, allowing hundreds of rules to take effect without being reported to Congress. CORA is needed because OMB/OIRA isn't doing its job. OMB's OIRA has failed to critically review agency regulatory submissions. With respect to the 4,476 regulatory reviews completed by OIRA to date during the Clinton Administration, OMB only returned to the agencies 13 regulatory submissions (i.e., less than 0.3%), including 3 from a minor agency (the Railroad Retirement Board). In contrast, there were 87 returns during the Bush Administration and 192 returns in the first Reagan term.

If we take last year's OMB "Report on the Costs and Benefits of Federal Regulations" as any indication of what the agencies are doing in the area of Cost-Benefit Analysis, I think the need for CORA becomes clearer. OMB was required to prepare a report for Congress giving estimates of the costs and benefits for all major rules they had reviewed or finalized during a 12-month period in 1996 and 1997. OMB provided cost-benefit information for only 15 out of 58 major rules issued during that period -- because the agencies had not provided OMB any estimates for the remaining 43 rules! If the agencies did do cost and benefit analyses for these rules, it's disturbing that OMB isn't aware of these analyses – or isn't willing to report the information to Congress as required by law. Clearly an independent voice is needed to provide accurate information to the people and their elected representatives, who have a right to know what they're getting out of these regulations, and at what cost.

CORA would perform several essential functions: (1) it would consolidate under one roof Congress' regulatory analysis functions, which are now performed by GAO and CBO; (2) it would analyze all major rules and report to Congress their potential costs, benefits, and alternate approaches that could achieve the same regulatory goals at lower costs; (3) it would analyze non-major rules, which currently go unchecked by GAO or OMB/OIRA, at the request of committees or members of Congress; and (4) it would issue an annual report on the estimated total cost of Federal regulations on the U.S. economy.

I want to thank the author of the bill, Chairwoman Sue Kelly of New York, for joining us today to talk about her legislation. As the chairwoman of the Small Business Committee's Subcommittee on Regulatory Reform and Paperwork Reduction, she has a unique understanding of the problems many Americans face in complying with costly, burdensome, and often counterproductive regulations. She has expertly crafted this bill. I also want to thank Sharon Miller, a small business owner who has traveled from Midland, Michigan to be with us today, and Wendy Gramm, Robert Hahn, and Robert Litan, who are some of the top experts in the field of regulatory analysis. I want to welcome Gary Bass of OMB Watch back to the Subcommittee as well. I look forward to your testimony and your insights on this bill.

Federal Register Growth Up 37% Over 10 Years
(1987-96)



Source: Office of the Federal Register, National Archives and Records Administration

Prepared for Representative David M. McIntosh

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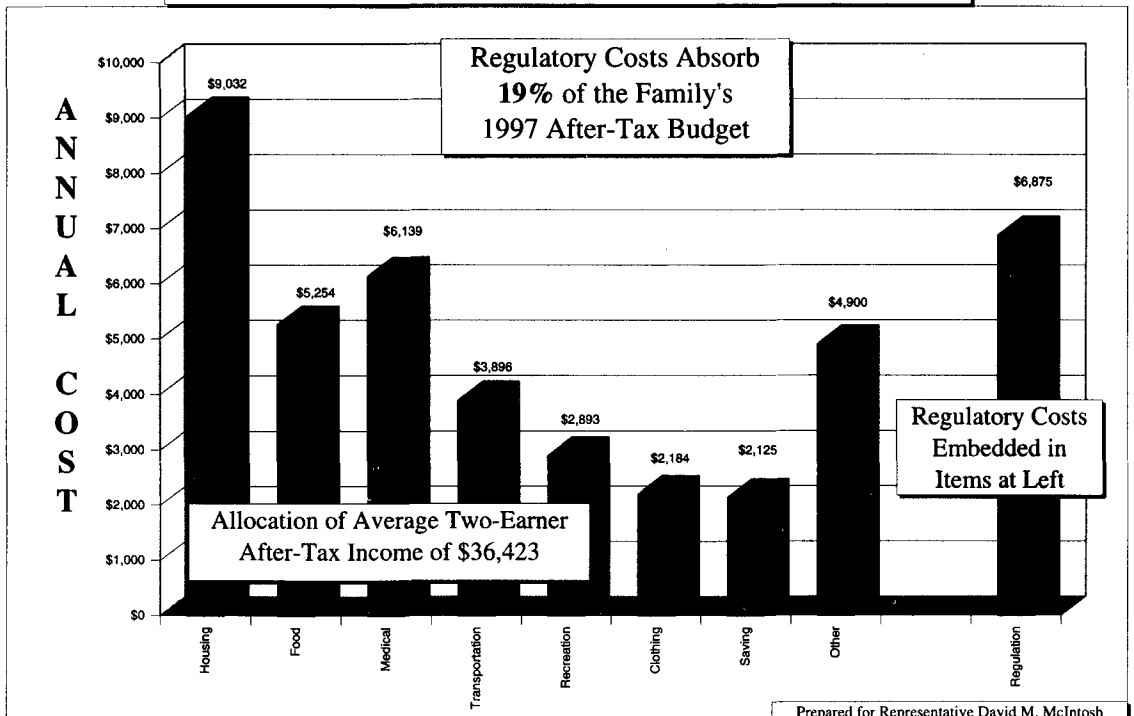
After-Tax Budget for the Two-Earner Family Contains $6,875 in Embedded Regulatory Costs



Prepared for Representative David M. McIntosh

Sources: Tax Foundation, Dr. Thomas D. Hopkins, CEI arithmetic.

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Total Cost of Regulations in 1997

$688,000,000,000

Cost for Average Family of 4

$6,875 per year

Source: Wayne Crews, Ten Thousand Commandments

Prepared for Congressman David M. McIntosh