

# United States Senate

WASHINGTON, DC 20510

March 5, 2020

President Donald J. Trump  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, D.C. 20500

Dear Mr. President:

We write to thank you for your leadership in reducing the regulatory burden faced by U.S. businesses. Many businesses have shared that the regulatory pause has provided the certainty to invest and hire additional employees. However, we are concerned that a growing number of regulations are being promulgated by independent agencies, which are not required to undergo a thorough and rigorous review by the Office of Information and Regulatory Affairs (OIRA). Accordingly, we believe that OIRA should review the significant regulatory actions of independent regulatory agencies to increase the transparency and accountability of the regulatory process. Although these agencies have been created with certain protections designed to insulate them from the political process, they are not a fourth branch of government that is exempt from Congressional and Executive oversight.

Since its creation in 1980, OIRA has served as the check on the administrative rulemaking process. Primarily through the requirements set forth in Executive Order 12866, OIRA ensures agencies rigorously assess the costs and benefits of their significant regulatory actions. This analysis provides the public with an estimate of a regulation's economic impact as well as potential burdens the rule may impose on the public. Regulations that bind the public, regardless of the issuing agency, must be subject to thorough review by OIRA.

When OIRA was created, the Reagan Administration exempted independent agencies from centralized review, not because of questions over the Executive branch's authority to do so, but for the practical reason that these agencies were not a priority for the new office.<sup>1</sup> For most of their existence, independent agencies occupied a relatively small role in the administrative process. Today, however, these agencies play a major role in regulating all aspects of the economy, including broadband internet access, banking and securities exchange, as well as energy and environmental policies.<sup>2</sup> This increased role in rulemaking requires greater oversight from both Congress and the Executive branch.

Centralized review of independent agencies has a long history of support from former OIRA Administrators of both parties, the Administrative Conference of the United States, and

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<sup>1</sup> See Memorandum from Larry L. Simms to David Stockman, *Proposed Executive Order on Federal Regulation* (Feb. 12, 1981), reprinted in "Role of OMB in Regulation," H.R. Rep. No. 70, 97th Cong., 1st. Sess. 152 (1981), at 94 (quoting C. Boyden Gray, Counsel to the Vice President, at the Chamber of Commerce, April 10, 1980) available at [http://njlaw.rutgers.edu/collections/gdoc/hearings/8/82601518/82601518\\_1.pdf](http://njlaw.rutgers.edu/collections/gdoc/hearings/8/82601518/82601518_1.pdf).

<sup>2</sup> *Reviewing Independent Agency Rulemaking: Hearing Before the S. Comm. On Homeland Security and Governmental Affairs, Subcommittee on Regulatory Affairs and Federal Management*, 114<sup>th</sup> Cong. 10-11 (2016) (Testimony by Adam J. White).

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the American Bar Association.<sup>3</sup> This is not a foreign concept as OIRA already conducts limited review of all rules, including those issued by independent agencies, to determine whether the rule is “major” under the Congressional Review Act.<sup>4</sup>

Studies by the Administrative Conference of the United States and the Government Accountability Office (GAO) have found the analysis conducted by independent agencies without OIRA oversight is not as searching and thorough as agencies clearly within the Executive branch. These agencies often fail to produce quantitative cost-benefit analysis if not explicitly directed to by statute.<sup>5</sup> GAO confirmed this, writing “[w]hile most financial regulators said that they attempt to follow OMB’s guidance in principle or spirit, we found that they did not consistently follow key elements of the guidance in their regulatory analyses.”<sup>6</sup>

Extending OIRA review to these agencies would increase transparency and consistency in the administrative process as well as improve the quality of the analysis used to develop regulations that bind the American people.

All regulation, regardless of the issuing agency, should be firmly grounded in a statute passed by Congress. The Executive is responsible for ensuring that the laws are faithfully executed, and this should include a rigorous and thorough review of all significant regulatory action. Independent agencies are not independent from accountability, and therefore we urge you to use your existing authority to extend OIRA review to independent agencies.


Sincerely,



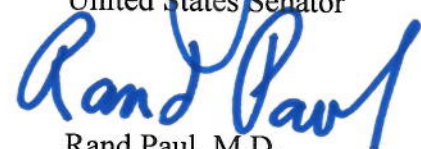
James Lankford  
United States Senator



Rob Portman  
United States Senator



Ron Johnson  
United States Senator



Rand Paul, M.D.  
United States Senator

<sup>3</sup> See Strengthening Regulatory Review: Recommendations for the Trump Administration from Former OIRA Leaders, the Institute for Policy Integrity (2016)(this recommendation included indorsements by Christopher C. DeMuth, Sally Katzen, John Graham, and Susan Dudley); ACUS Recommendation 88-9, Presidential Review of Agency Rulemaking 4 (adopted Dec. 8, 1988) and ACUS Recommendation 2013-2, Benefit-Cost Analysis at Independent Regulatory Agencies (adopted June 13, 2013); Letter from the ABA’s section on Administrative Law and Regulatory Practice to the Office of Information and Regulatory Affairs (2009), and a Report to the President-Elect of the United States (2016).

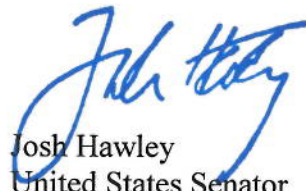
<sup>4</sup> See 5 USC 804; Memorandum from the Office of Management and Budget, Guidance on Compliance with the Congressional Review Act, M-19-14.

<sup>5</sup> See Curtis W. Copeland, Economic Analysis and Independent Regulatory Agencies (Apr. 30, 2013), at <https://www.acus.gov/sites/default/files/documents/Copeland%20Final%20BCA%20Report%204-30-13.pdf>.

<sup>6</sup> GAO, Dodd-Frank Act: Agencies’ Efforts to Analyze and Coordinate Their Rules, p. 10 (Dec. 2012), at <http://www.gao.gov/assets/660/650947.pdf>.



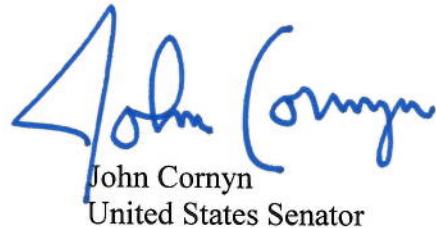
Rick Scott  
United States Senator



Josh Hawley  
United States Senator



Charles E. Grassley  
United States Senator



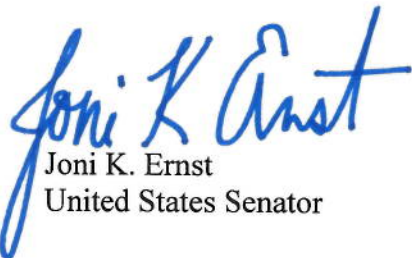
John Cornyn  
United States Senator



Mike Lee  
United States Senator



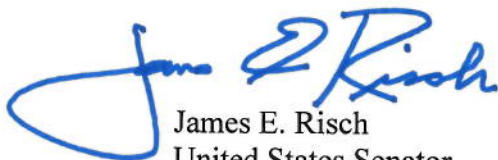
Thom Tillis  
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Joni K. Ernst  
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Tom Cotton  
United States Senator



James E. Risch  
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John Barrasso, M.D.  
United States Senator



Marco Rubio  
United States Senator

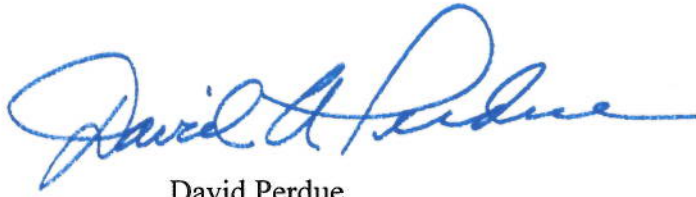


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David Perdue  
United States Senator



Mike Braun  
United States Senator



M. Michael Rounds  
United States Senator



Ted Cruz  
United States Senator



Kelly Loeffler  
United States Senator

cc: The Honorable Paul Ray  
Administrator  
Office of Information and Regulatory Affairs  
Office of Management and Budget