

September 13, 2012

The Honorable Joseph I. Lieberman
Chairman, Committee on Homeland Security & Governmental Affairs
United States Senate
Washington, DC 20510

Dear Senator Lieberman:

As former Administrators of the Office of Information & Regulatory Affairs (OIRA), we write to express our strong support for the Independent Agency Regulatory Analysis Act (S. 3468), legislation introduced by Senator Rob Portman, Senator Mark Warner, and Senator Susan Collins. We believe that this bipartisan bill would improve the quality of rulemaking by independent regulatory agencies by affirming the president's authority to extend to independent agencies the same principles of regulation that have long governed executive agencies.

For thirty years, presidents of both parties have required executive agencies to consider regulatory impacts when crafting new regulations, with review by OIRA.¹ Chief among the requirements imposed on executive agencies is the duty to assess the benefits and costs of major new regulations and determine that the benefits of those regulations will justify the costs. To be sure, the quality of economic analysis by regulatory agencies has been mixed. But based on our experience, we believe this longstanding approach has improved the cost-effectiveness of regulations by enhancing accountability and analytical rigor in the rulemaking process.

To date, these principles and requirements for rulemaking have not been applied to independent regulatory agencies. These agencies are considered independent not because their method of regulation differs from executive agencies, but rather because Congress has limited the president's power to remove their top officials (either by statute or by tradition). Legal advisors to both President Reagan and President Clinton concluded that the president has the legal power to extend these requirements to independent agencies, but both presidents chose not to do so out of deference to Congress.

For years, many of us across the political spectrum have urged reconsideration of this decision. Our concern is that independent agencies typically do not engage in the economic analysis that has come to be expected from executive agencies. According to a 2011 Office of Management and Budget report, it appears that roughly half of the major rules developed by independent agencies over a 10-year period provided no information on either costs or benefits. In 2011, not one of the 17 major rules issued by independent agencies was based on a complete benefit-cost analysis. The same was true in 2010 (17 major rules, none with a complete benefit-cost analysis) and in 2009 (13 and 0).

The Independent Agency Regulatory Analysis Act would address this problem. First, the bill affirms the authority of the president to issue an executive order extending to independent agencies the same principles that apply to executive agencies. This approach will improve

¹ See Executive Order 13,563 (2011); Executive Order 12,866 (1993); Executive Order 12,291 (1981).

regulatory analysis while preserving a degree of flexibility for future presidents to refine the requirements over time. Second, the bill adopts a balanced approach to accountability by providing for OIRA review of every proposed and final economically significant regulation, followed by a public exchange of views between OIRA and the independent agency concerning the quality of the agency's benefit-cost analysis and other important considerations. The bill does not permit judicial review of an agency's compliance with the terms of the executive order, but rather provides that OIRA's assessment and the agency's response will form part of the rulemaking record.

We should note that this proposed expansion of centralized regulatory review will necessitate additional funds for a modest increase in OIRA's staff, but we believe that this would prove to be money well spent on smarter regulation.

As former OIRA Administrators from Democratic and Republican administrations, we hold varying views on regulatory reform. But we are unanimous in our view that independent agencies should be held to the same good-government standards as executive agencies, and S. 3468 admirably advances that goal.

Sincerely,

Sally Katzen
OIRA Administrator (1993-1998)

Susan Dudley
OIRA Administrator (2007-2009)

John Spotila
OIRA Administrator (1999-2000)

James C. Miller III
OIRA Administrator (1981)

Christopher C. DeMuth
OIRA Administrator (1981-1984)

John D. Graham
OIRA Administrator (2001-2006)

Wendy Lee Gramm
OIRA Administrator (1985-1988)

cc: Senator Rob Portman
Senator Susan Collins
Senator Mark Warner