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Attorney Bull and Committee members,

I am submitting this comment both as a former desk officer in the Office of Information and Regulatory Affairs (OIRA) and as someone who has researched and written extensively about the role of OIRA over the past decade. I have watched much of the first two committee meetings (teaching and administrative obligations have prevented my attendance) and I felt that there were a few points that deserve the committee's attention.

First, I would like to congratulate Curtis Copeland on a thorough and fascinating report. I do not believe I have seen this much data on OIRA review times gathered in one place before and it will be useful not just to ACUS but to those of us who research the regulatory process.

Also, any ACUS statement that improves the functioning of OIRA and allows it to carry out its crucial role in regulatory policy is a good thing in my view. ACUS has long supported OIRA's missions of executive oversight and regulatory analysis and it is my certainly my hope that this statement will continue that tradition. There are parts of the statement including proposals 1 (continuing the current Administration's focus on improving timeliness) and 2 (placing a priority on timely interagency review) that clearly do this.

Proposal 3 contemplates the increased use of the "return letter" or a new "delay letter." It also recommends an entirely new time frame (180 days) by which a return letter, delay letter, or clearance would be required. This new time frame appears to have little basis for support other than a vague sentiment that 180 days is too long. And proposal 4 has specific suggestions regarding the commencement of OIRA review. These suggestions are (if I understand correctly) largely in reaction to Mr. Copeland's findings on the marked increase in OIRA review times in 2012-2013. There is no doubt that some of the extremely large review times justifiably raise eyebrows and questions about good government. However, before making major reforms to a process that (as Copeland describes) did not have these problems in the 20 years prior to 2012, we should understand whether the past year is an anomaly or indicative of a broader trend.

It is my strong suspicion that it was an anomaly. The first cause for the delays that Mr. Copeland cites (based on interviews with agency officials) is "concerns by some in the Executive Office of the President (EOP) about the issuance of potentially costly or otherwise controversial rules during an election year." I have written before about the intensely political role of OIRA (Shapiro 2005). Copeland goes on to note that Sally Katzen told him that this heightened

sensitivity is characteristic of election years. I would go on to add that for regulatory policy, 2012 was unlike any election year since possibly the pre-OIRA election of 1980.

Livermore et. al. (2011) have noted that media mentions of the phrase “job-killing regulations” went up by more than 17,000% between 2007 and 2011. In nearly every Republican presidential debate, regulations were mentioned as a cause of a lagging economic recovery. Regulation was also mentioned in the first Presidential debate between President Obama and Governor Romney. While scholars who study regulation like me were happy to see this, I would imagine that the reaction in regulatory agencies and OIRA was quite different.

Issuing any controversial regulation in 2012 was likely to get much more attention than in any previous election year. Returning one would likely get much attention as well. A President being besieged (fairly or unfairly) for his regulatory policy would be acutely aware of this. The politically safest action was to let the regulations sit at OIRA and let OIRA take the blame. To me, this is the Occam’s Razor explanation for the long review times in 2012. While the other explanations offered to Copeland by agency personnel may be true in a case or two, none seem to have the explanatory power of the unique political climate. Many regulations then carried over into 2013, as the Administration awaited the confirmation of a new OIRA Administrator.

If 2012 was indeed an anomaly, then major changes to the OIRA review process are unwarranted. Improvement is always possible and ACUS is correct to focus on possible areas for improvement. But I would expect that in the second half of 2013 and in the years going forward, that review times will slowly decrease back to historical norms (as the current backlog is reduced) without external changes. Indeed, the data cited in the ACUS statement provides support for this hypothesis. If this turns out not to be true, these issues can certainly be revisited in a year or two.

One final note on proposal 5. I strongly support the increase in OIRA staff. As I have written elsewhere (Shapiro and Morrall 2013), increasing the size of OIRA is a potential win-win change. More OIRA staff could either increase the quality of OIRA review or shorten the review times and possibly do both. Often forgotten, is that in addition to regulatory review, OIRA staff manages the Paperwork Reduction Act review process and has numerous other statutory responsibilities. To the extent that non-political considerations are behind what some consider overly lengthy review times (and I note that the question of the ideal length of review is an open one), more OIRA staff is the easiest solution to the problem.

Thank you for your attention.

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Works cited.

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