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IN A HEARING ON "AN INTRODUCTION TO A REGULATORY BUDGET"
BEFORE THE HOUSE COMMITTEE ON THE BUDGET
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Thank you, Chairman Price, Ranking Member Van Hollen, and distinguished Members of the House Committee on the Budget, for the opportunity to testify today on An Introduction to a Regulatory Budget.

My name is Richard J. Pierce, Jr. I am Lyle T. Alverson Professor of Law at the George Washington University School of Law and a Senior Fellow at the Administrative Conference of the United States. For 39 years my teaching, research, and scholarly writing has focused on administrative law and government regulation. I have written 125 articles and 20 books on those subjects. My books and articles have been cited in scores of judicial opinions, including over a dozen opinions of the United States Supreme Court.

I have long supported a regulatory budget, but it needs to be carefully designed and implemented. As I will explain later in my testimony, we already have a regulatory budget in the form of Executive Orders issued by Presidents of both parties that are implemented by the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB). That regulatory budget is well-designed and well-implemented.

There are versions of a regulatory budget that would harm the nation. One version of a regulatory budget that would harm the nation is a regulatory budget that would limit the total cost of the rules that an agency can impose on the firms that it regulates. The other version that would harm the nation would require an agency to rescind an existing rule that imposes costs equal or greater to the cost of a proposed new rule at or before the time that it issues the new rule.

Those two forms of a regulatory budget share a common flaw. They establish a budget based solely on the cost of a rule and ignore the benefits of a rule. I share the views that President Reagan expressed when he issued Executive Order 12,291. That Executive Order required each Executive Branch agency to use cost-benefit-analysis (cba) to evaluate each rule the agency proposes to issue and to issue only those rules that will yield estimated benefits that exceed the estimated costs of the rule unless a statute forbids the agency to use cba in deciding whether to issue a rule. President Reagan's Executive Order also gave OIRA responsibility to review the cbas provided by each agency and to take such actions as are needed to ensure that each agency complies with the Executive Order.

Every President since President Reagan has issued Executive Orders that reflect President Reagan's view that the cost of a rule alone is not an appropriate criterion to use in deciding whether the agency should issue the rule, and that the appropriate criterion is the net benefits of a rule to society. Those net benefits can only be estimated by subtracting the estimated cost of a rule from the estimated benefits of the rule. The benefits include lives saved, injuries and illnesses avoided, and reductions in property damage. Any version of a regulatory budget that does not take account of the benefits of rules will cause avoidable losses of life, injuries, illnesses, and property damage.

The importance of considering both the benefits and the costs of a proposed rule is illustrated by OIRA's estimates of the aggregate costs and benefits of all of the rules reviewed by OIRA during the ten-year period between October 1, 2003 and September 30, 2013. OIRA estimated that the costs were between 57 and 84 billion dollars. That seems like a large regulatory cost until you compare it with OIRA's estimate of the benefits of the rules. OIRA estimated the aggregate benefits as between 217 billion and 863 billion dollars. If you apply the principles urged by most economists and adopted by Presidents Reagan, Bush, Clinton, Bush, and Obama, the net benefit of the rules to society was between 133 and 806 billion dollars. Many thousands of Americans are alive and well today only because agencies in the Bush and Obama Administrations issued those rules.

More recently, Presidents Clinton, Bush, and Obama have reinforced the principles underlying cba and expanded the scope of the application of those principles by issuing Executive Orders that require Executive Branch agencies to review all of their existing rules, to identify those rules that impose costs that exceed the benefits they confer on society, and to begin the process of rescinding or amending any rule that produces costs that exceed its benefits except where a statute prohibits an agency from taking that action. Those Executive Orders are an excellent complement to the Executive Orders that forbid an agency from issuing a new rule unless its benefits exceed its costs. They are expected to save 20 billion dollars and to eliminate over 100 million hours of paperwork.

When you combine the effects of the Executive Orders that forbid an agency from issuing a rule with costs that exceed its benefits to society with the effects of the Executive Orders that require agencies to identify and to rescind or amend any existing rule with costs that exceed its social benefits, you get a regulatory budget that maximizes the net social benefits created by rules issued by federal agencies by ensuring that the aggregate social benefits of those rules exceed the aggregate costs of those rules. That is a sensible version of a regulatory budget. Any version of a regulatory budget that considers only the cost of rules and ignores the benefits of rules will reduce social welfare by costing society hundreds of billions of dollars in the forms of loss of lives, increased injuries and illnesses, and damage to property.

Thank you again for the opportunity to testify today. I look forward to your questions.