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To: John F. Morrall III/OMB/EOP@EOP

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Subject: Hahn/Litan Comments on 2002 OMB Cost-Benefit Report

Dear John,

I hope you find these comments helpful. You and your colleagues did a great job this year.

Please confirm receipt.

Best,

Bob

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An Analysis of the Fifth Government Report On the Costs and Benefits of Federal Regulations

Robert W. Hahn and Robert E. Litan

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Executive Summary

This paper critically reviews the draft of the Office of Management and Budget's fifth report on the benefits and costs of federal regulation. The draft report is a significant improvement over previous reports in terms of the responsiveness to the congressional mandate, and the information it provides on recent improvements at OMB. We think the changes that OMB has made to increase transparency and efficiency are significant. These include making greater use of the Internet to communicate information, sending letters to agencies encouraging specific regulations with net benefits, and providing information on turnaround time for reviewing rules.

There is still room for substantial improvement, however. We offer six recommendations—one for Congress and five for OMB—that we believe would be helpful in holding regulators and lawmakers more accountable for the regulations they produce. Our recommendations focus on getting the regulatory agencies to produce better analysis, making that analysis more transparent and readily available, and making the regulatory process itself more transparent.

We recommend that Congress require agencies to comply with OMB's economic guidelines. We also suggest that OMB improve its report by including a scorecard on the extent to which regulatory analyses comply with their guidelines; providing more information on regulations aimed at reducing terrorism; and making greater use of its in-house expertise to improve estimates of benefits and costs for individual regulations.

An Analysis of the Fifth Government Report On the Costs and Benefits of Federal Regulations

Robert W. Hahn and Robert E. Litan

The Office of Management and Budget (OMB) has just released a draft of its fifth annual report to Congress on the costs and benefits of federal regulation.¹ The congressional act that calls for this year's OMB report requires OMB to submit to Congress: estimates of the costs and benefits of federal regulation; its impact on non-federal government, small business, wages, and economic growth; and recommendations for reform.² This year's draft report is the most informative and useful report that OMB has issued on this subject.³

The report represents a significant improvement over past reports in several ways. The 2002 OMB report is the first in which OMB seriously addresses its mandate to suggest specific regulations in need of reform. OMB also lists several constructive changes that it has made in its own procedures over the past year.

In commenting on earlier reports, we listed various ways in which OMB could improve its annual report. We are delighted to find that several of those recommendations have been implemented in this year's draft report.

As noted in our previous analyses, however, we find that OMB is not adequately using the expertise of its own staff to furnish insights about the likely economic impacts of particular regulations. In particular, the staff could perform a valuable public service by assessing the quality of estimates submitted by the agencies charged with promulgating regulations.

¹ See OMB (2002a).

² Section 624 of the FY2001 Treasury and General Government Appropriations Act requires OMB to submit "an accounting statement and associated report" containing: "(1) an estimate of the total annual costs and benefits (including quantifiable and nonquantifiable effects) of Federal rules and paperwork, to the extent feasible: (A) in the aggregate; (B) by agency and agency program; and (C) by major rule; (2) an analysis of impacts of Federal regulation on State, local, and tribal government, small business, wages, and economic growth; and (3) recommendations for reform."

³ Although the report is published in the Federal Register by OMB, the particular office within the Office of Management and Budget that is responsible for reviewing rules submitted by agencies, issuing information quality guidelines, issuing prompt letters, and enforcing Executive Order 12,866 is the Office of Information and Regulatory Affairs (*OIRA*). See Office of Management and Budget, *OIRA Q&As*. Available: http://www.whitehouse.gov/omb/inforeg/qa_2-25-02.pdf (last visited May 23, 2002).

We recognize that the issue of having OMB provide its own assessment of the quality of regulations is politically sensitive as well as time consuming. Short of offering its own views on the benefits and costs of regulations, OMB should develop a scorecard that objectively describes how regulatory agencies conform with various economic guidelines related to the development of good regulatory analyses. OMB could, for example, score regulations on how well they conform with their own guidelines to agencies for doing economic analysis.⁴

Section 2 identifies improvements in the report and constructive changes in regulatory oversight that are discussed in the report. Section 3 suggests ways the report could be improved and lists specific recommendations. Section 4 presents our conclusions.

2. Improvements in the Report and Improvements at OMB

This section identifies improvements in the report and improvements implemented by OMB that are discussed in the report.

Improvements in the Report

There were four significant substantive improvements in this year's report: a description of actions taken on possible rules for reform; a new discussion of the impact of regulatory guidance and an invitation to submit information on this topic; new information on regulations related to terrorism; and a change in the measurement of total aggregate costs and benefits.

In previous comments on the OMB annual report, we suggested that "OMB should examine strategic reforms that could improve the regulatory process." In addition, "OMB should offer suggestions on how Congress could help make regulations and the regulatory process more transparent."⁵

⁴ For OMB economic guidelines, see OMB (2000b).

⁵ See Hahn and Litan (2000).

The 2002 report describes the first action taken by OMB on specific existing regulations that represent opportunities for reform.⁶ In its 2001 draft report, the OMB asked the public to submit suggestions for regulations that presented opportunities for reform. In the final report of that year, OMB prioritized the 71 suggestions it received, and published details on each suggestion.⁷

This year, OMB has gone a step further in using public suggestions to help stimulate reform. It states in this year's report that for each suggestion that it reported as a "high priority" in 2001, it met with the relevant agency. In some cases, either OMB or the agency took additional actions based on the suggestion. The report lists those actions.⁸

We think that reporting actions taken based on the public's suggested reforms is a valuable addition to the annual report. It is, as OMB states, an effective way to identify the regulations that present the best reform opportunities.⁹ Using the *Federal Register* to solicit comments and to report progress is an effective way of formalizing the reform process and making it more transparent.

⁶ The reform component of OMB's mandate has been handled differently in previous reports. In its second report, the OMB under the Clinton administration advocated the Administration's proposal for electricity reform. See OMB (1999a, Chapter IV, §II). The report issued in June 2000 addresses the reform mandate by listing regulations that agencies planned to issue as proposed or final regulations in the following year. The list did not contain existing regulations recommended for reform; it was a set of regulations taken from the list of agencies' planned regulations that were published in the annually released Administration's Regulatory Plan, which OMB stated "may be viewed as specific recommendations for regulatory improvement or reform based on statutory mandates and the Administration's priorities." OMB (2000a, Chapter V). The 2001 report lists "Seventy one Suggestions From the Public for Reform" and OMB prioritizes the suggestions. This year's report is the first in which OMB reports action taken on reform suggestions. See Appendix A, OMB (2001a, 65).

⁷ See Appendix A, OMB (2001a, 65).

⁸ See OMB (2002a, 15022) and status report on actions taken on "high priority" recommendations in Appendix B, OMB (2002a, 15036–15037). The draft report that OMB published in May, 2001 laid the groundwork for this process, stating, "we would like to receive suggestions on specific regulations that could be rescinded or changed that would increase net benefits to the public by either reducing costs and/or increasing benefits." OMB (2001b, 22054).

⁹ "Across-the-board reviews of all existing rules have been attempted in the past but have not always been particularly successful and have induced a questionable allocation of limited agency and OIRA resources. The Bush Administration believes that a targeted review process for existing rules, pursuant to public comment and new statutory authority provided to OIRA, is the best available mechanism to facilitate review of existing rules outside of the authority under the Regulatory Flexibility Act." OMB (2002a, 15022).

OMB has also addressed its mandate to make reform recommendations by identifying the improper use of guidance documents as a problem in the regulatory process.¹⁰ The OMB report explains that “guidance (as opposed to regulations) is issued without notice and comment in order to clarify or explain an agency interpretation of a statute or regulation. These guidance documents may have many formats and names, including guidance documents, manuals, interpretive memoranda, staff instructions, policy statements, circulars, bulletins, and so on.”¹¹

This is the first report in which OMB has identified a component of the regulatory process that has the potential to be improved.¹² OMB discusses the problem of misused guidance documents in this year’s report and “seeks public comment on the nature and extent of problematic guidance documents in agency policymaking.” It asks commenters to “submit to OMB a copy of the problematic guidance, with any relevant portions identified.”¹³ We think OMB’s identification of this reform opportunity is appropriate. OMB is fulfilling its obligation to make reform suggestions by using its expertise to identify practices that can be reformed, and involving the public to target potential reforms.

This year, OMB also added a table providing information on regulations related to terrorism. The table includes information on the issuing agency, sub agency, and rulemaking stage. We think this is an appropriate addition to this year’s draft report because regulations related to terrorism are likely to be a subject of great interest, at least in the near future.

OMB dramatically changed its approach to estimating the aggregate costs and benefits of regulation in this report. Instead of combining estimates from other published

¹⁰ Guidance documents can be a source of regulations without being subject to notice-and-comment procedures or other safeguards. “Through guidance documents, agencies sometimes have issued or extended their ‘real rules,’ i.e., interpretative rules and policy statements, quickly and inexpensively – particularly with the use *of* the Internet – and without following procedures prescribed under statutes or Executive orders.” OMB (2002a, 15034).

¹¹ OMB (2002a, 15034).

¹² Last year, OMB discussed the reinstatement of prompt letters, which was a reform of the regulatory process. This is the first year, however, in which OMB identifies an existing component of rulemaking that could be changed, and where change would require a cooperative effort with the agencies.

¹³ OMB (2002a, 15035).

work, it relied on its own database of regulations from April 1, 1995 through September 30, 2001.¹⁴

We think this approach is preferable for OMB. Its comparative advantage does not lie in developing a sophisticated estimate of the costs and benefits of regulation based on other scholarship. We think its resources are better utilized in this area by extending the database it has developed over a longer time period.¹⁵ The simplified and less ambitious handling of aggregates makes the information in this year's report more credible and useful.¹⁶

Improvements at OMB that Were Discussed in the Report

In the 2002 report, OMB lists several changes in its procedures that it has either implemented or plans to implement. Some of these changes were stated in the 2001 final report, but not in the 2001 draft report, and this is our first opportunity to comment on those changes.¹⁷ For some of these changes, the 2002 draft report also provides important details. For example, the report states that OMB has reduced the turnaround time on approving agencies' regulations and provides a table reporting turnaround time since 1999.¹⁸ We think that the new initiatives demonstrate an increased OMB effort to improve the regulatory process.

¹⁴ In previous years, OMB used other studies to derive an estimate of the costs and benefits of regulation in 1988. To estimate updated total costs and benefits, OMB then added estimates from its own collection of agency estimates for rules published since 1987, and from other more recent academic studies. See OMB (1997, § II. 2. "Total Costs") for an explanation of the methodology, which was replicated in each annual OMB report through 2001.

¹⁵ As stated in a recommendation below, we also do not think that OMB should take the agency numbers, which make up the aggregate estimates, as given.

¹⁶ In its 2000 report, OMB correctly noted that the aggregate estimates it had developed in previous reports were not very reliable for several reasons: "Most attempts to summarize the total costs and benefits of Federal regulations have simply added together a diverse set of individual studies. This is an inherently flawed approach. These individual studies vary in the quality, methodology, and type of regulatory impacts they include. They use different assumptions about baselines and time periods, different discount rates, different valuations for the same attribute, and different approaches to dealing with uncertainty. They also are seldom able to analyze the interaction effects among the tens of thousands of regulations. Although we are mindful of, and tried to correct for, these problems in our estimates, our numbers *too* should be used with caution." OMB (2000a, 15). This year's report includes similar comments. See OMB (2002a, 15024).

¹⁷ Prompt letters and return letters were discussed in the 2001 final report. See OMB (2001a, 39, 44).

¹⁸ See Table 3, OMB (2002a, 15019).

Table 1 summarizes seven reported improvements in OMB oversight and explains why we think they are constructive.

The use of prompt letters, which were discussed in last year's final report, sends a strong signal that OMB is interested in adding new regulations where the benefits are likely to exceed the costs. This year, OMB sent letters to the Food and Drug Administration, the Occupational Safety and Health Administration, the National Highway Traffic Safety Administration (NHTSA), and two letters to the Environmental Protection Agency. Prompt letters counter the perception that regulatory oversight means criticizing and doing away with existing rules and help OMB encourage "government agencies to add regulations that make sense while cutting back on those that don't."¹⁹

By reviving the practice of returning rules, OMB also sent a strong signal to agencies that regulations would not be simply rubber stamped. 20 rules were returned to agencies between July 1, 2001 and March 1, 2002.²⁰ In contrast, during the Clinton administration, very few rules were returned.²¹ Indeed, in the last 3 years of the Clinton administration, no rules were formally returned, although we understand that OMB played a role in influencing a number of rules as they were being developed.²² Nonetheless, if the regulatory oversight agency returns no rules, there is a very real risk that regulatory agencies will no longer take the oversight function very seriously.²³

We recognize that an increase in returned rules does not imply that the quality of the oversight is necessarily improved, that the quality of approved rules is necessarily improved, or that rules are being returned for legitimate reasons. Executive Order 12,866 requires that returned rules be accompanied by a written explanation from the Administrator of OMB's Office of Information and Regulatory Affairs (OIRA). The

¹⁹ See Hahn and Sunstein (2001).

²⁰ OMB (2002a, 15014).

²¹ "During the full eight years of the Clinton Administration, OMB returned for reconsideration approximately one rule in 500." OMB (2002a, 15018).

²² "An average of 600 significant rulemaking actions were approved per year during the Clinton Administration. During the last three years of the Clinton Administration, there were exactly zero rules returned to agencies by OMB for reconsideration." OMB (2002a, 15018).

²³ An alternative interpretation is that the regulated agencies were simply doing what the oversight agency wanted. We are skeptical that this was the case, since many of the regulations did not pass a benefit-cost test based on the agency numbers. For percentages of rules in which agencies find that benefits exceed costs, see Table 1, Hahn and Litan (1997).

Administrator must identify provisions of the Executive Order that were unfulfilled by the regulation.²⁴ OMB has generally clearly stated its causes for concern in returning rules in letters to the agency heads. For example, in the most recent return letter that is posted on the OIRA website, the OIRA Administrator's letter to the Department of Transportation stated that the agency's Tire Pressure Monitoring Systems rule was being returned because "the analysis NHTSA has performed to date does not adequately demonstrate that NHTSA has selected the best available method of achieving the regulatory objective..." and that "the technical foundation for NHTSA's estimates of safety benefits needs to be better explained and subjected to sensitivity analysis."²⁵

One of the more controversial aspects of the OMB review process is the time it takes from start to finish. Some critics have argued that OMB takes too much time in reviewing certain rules, thus adding unnecessary delay to the development of regulations. To address this concern OMB has published information on the average turnaround time for rules that are submitted to OMB for review. For example, in July of 2001, 25 of the 97 rules pending in OMB's Office of Information and Regulatory Affairs were pending for more than 90 days; in January of 2002, none of the 86 pending rules were pending for over 90 days.²⁶ Though OMB has made this information available before, this is the first time OMB has reported information on turnaround time as part of its annual cost benefit report. We think it is one useful measure of OMB's performance of its regulatory oversight function.²⁷

The report states several ways in which OMB is using the Internet to make information about itself and regulation available. The report states that OIRA has increased the amount of information on its website, maintained an online log of its meetings to comply with the disclosure provisions of Executive Order 12,866, posted

²⁴ "For each regulatory action that the Administrator of OIRA returns to an agency for further consideration of some or all of its provisions, the Administrator of OIRA shall provide the issuing agency a written explanation for such return, setting forth the pertinent provision of this Executive order on which OIRA is relying." See Exec. Ord. No. 12,866, 3 C.F.R. 638(1994).

²⁵ We do not assume that the quality of the agencies' finalized regulations is improved by quicker evaluation at OMB.

²⁶ Table 3, *EO 12,866 Reviews Over 90 Days by Date*. OMB (2002a, 15019).

²⁷ We do not assume that the quality of the agencies' finalized regulations is improved by quicker evaluation at OMB.

information about written correspondence from outside parties on regulations under review, and is working to allow “outside parties electronic access to the information now contained in OIRA’s docket room” by “linking up to the Administration’s Egovernment initiative.”²⁸ It also states that three of the seven new staff additions to OIRA “will buttress OIRA’s staffing in information technology and policy for the E-Government initiative.”²⁹ These actions illustrate OMB’s commitment to making the regulatory process more transparent.

In this year’s report, OMB states that it plans to devote more attention to the interaction between federal rule-making agencies and State and local governments. The report states that “this Administration will bring more uniformity to the consultation process to help both agencies and intergovernmental partners know when, how and with whom to communicate” and that “this Administration intends to enforce the Unfunded Mandates Reform Act to ensure that agencies are complying with both the letter and the spirit of the law.”³⁰ This shows that OMB may be paying more attention to the requirements of its enabling legislation. In this year’s report, OMB asks the public for suggestions on how agencies’ consultation with small government can be improved and states that its final report will contain a discussion of agencies’ compliance with the Unfunded Mandates Reform Act.³¹

One important change reported this year is the increase in OIRA staff. OIRA has been understaffed relative to its workload for several years, thus making it difficult to carry out its functions effectively.³² Indeed, a chart provided in the report shows that OIRA staffing declined steadily for ten years before the trend began to reverse in 2001.³³

²⁸ OMB (2002a, 15018).

²⁹ OMB (2002a, 15022).

³⁰ “States and localities should have a clear point of contact in each agency, and agencies must understand that “consultation” means more than making a telephone call the day before a rulemaking action is published in the *Federal Register*.” OMB(2002a, 15039).

³¹ OMB (2002a, 15039).

³² “Another perspective on the problem of accurate regulatory accounting comes from the number of civil servants working on regulations compared with the number reviewing their economic content. While more than 130,000 fulltime-equivalent employees work at federal regulatory agencies, OMB’s Office of Information and Regulatory Affairs has only forty-two professionals, fewer than half of whom actually review the economic analysis in the RIAs.” Hahn and Litan (1997, 19).

³³ See Table 4, OIRA Staff Ceiling, OMB (2002a, 15021).

OIRA plans to add seven new staff positions, four of which are intended for staff with science and engineering expertise. We think it is particularly important that OIRA has access to individuals with scientific expertise because many of the most important regulations address complex environmental, health and safety issues.³⁴

Finally, the Director of the OMB has suggested that OIRA establish a scientific advisory panel. The report states that OIRA is in the process of forming such a panel, which will hold biannual, open meetings.³⁵ We think such a board could be helpful in advising OIRA on setting priorities, establishing guidelines for risk assessment and economics, and suggesting new approaches to improving information and risk assessment.

3. Recommendations for Improving the Cost-Benefit Report and Getting Real Results

Although this year's report improves on past years' reports in several ways, we offer six specific recommendations aimed at improving regulatory analysis, making that analysis more transparent, and making the regulatory process itself more transparent.

Recommendation 1: The Congress should pass a law requiring that all regulatory agencies comply with OMB's economic guidelines when analyzing the impact of economically significant regulations.^{36,37}

There are three sets of guidelines issued by OMB with which agencies should be complying when they issue regulations.³⁸ The guidelines are: Guidelines to Standardize Measures of Costs and Benefits and the Format of Accounting Statements, which were published on March 22, 2000; M-00-02, Guidance for Implementing E.O. 13132,

³⁴ See, e.g., Breyer (1993, 62).

³⁵ OMB (2002a, 15022-15023).

³⁶ For economic guidelines, see OMB (2000b). OMB also ought to carefully monitor the extent to which agencies are adhering to the newly issued Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies. OMB (2002b).

³⁷ Executive Order 12,866 classifies a rule as significant if it has an impact on the economy of \$100 million or more in one year. The Unfunded Mandates Reform Act classifies a rule as significant if the regulation has an impact on the private sector and/or state or local governments of \$100 million or more in one year.

³⁸ In addition, agencies' regulations should comply with Executive Order 12,866.

“Federalism”, which were published on October 28, 1999; and Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, which were republished on February 22, 2002.³⁹

The rationale is simple. OMB’s guidelines represent a set of principles for improving regulatory analysis and making the regulatory process more transparent. They should be required for all significant regulations from both independent and executive agencies. Unless the President decides that the regulation addresses an emergency, Congress should require that proposed regulations cannot move forward if the agencies’ RIAs fail to meet the guidelines.

Currently, OMB has no effective mechanism for enforcing its guidelines and it needs one. Previous efforts to enforce similar guidelines have fallen short of the mark.⁴⁰ Moreover, agencies frequently fail to communicate their findings in a clear manner.⁴¹

If Congress does not pass the law that we recommend, enforcement authority for implementing the guidelines should be included in a new Executive Order that applies to the executive agencies.

Recommendation 2: OMB should work to improve the quality and quantity of information at all federal regulatory agencies, so it can present a more realistic picture of what is known about the impacts of federal regulation in its report.

OMB should ask all federal regulatory agencies to submit more data and better data on the costs and benefits of all important regulatory activities, making sure agencies adhere to the information quality guidelines set forth by OMB.⁴²

³⁹ See OMB (2000b), OMB (1999b), OMB (2002b). The Information Quality Guidelines state that every federal agency must issue their own guidelines related to information quality. As a federal agency, OMB did this on May 1, 2002. See OMB (2002c).

⁴⁰ See, e.g., Figure 5 in Hahn et al. (2000, 875), suggesting that agencies often do not quantify the impacts of alternatives in RIAs.

⁴¹ See, e.g., Hahn and Litan (1997) and Arrow et al. (1996); also see Hahn (1999) for a specific suggestion for summarizing results in a “Regulatory Impact Summary” and using the *Federal Register* to communicate findings of the regulatory analysis in a clear, concise fashion.

⁴² See OMB’s Information Quality Guidelines, OMB (2002b). These guidelines can be expected to improve the quality of information submitted to OMB by a regulatory agency, because they promote independent, external, expert peer review of an agency’s data, and stress that an agency’s data should be reproducible. See OMB (2002b, 8459, 8460).

Requiring each regulatory agency to submit more and better data on the benefits and costs of all important regulatory activities would help present a better picture of the actual economic impact of federal regulation.⁴³ It would also make the regulatory process more transparent and help identify important gaps in our knowledge.⁴⁴

To help fulfill this requirement, agencies should summarize each regulation that has been proposed using a standardized summary developed by OMB. This summary should also be included in each **RIA** that is submitted to OMB.⁴⁵

Recommendation 3: OMB should rely more heavily on its own expertise to inform judgments about the benefits and costs of regulation.

None of the OMB reports take advantage of the expertise that resides within OMB to evaluate the economic impact of regulations. The major advantage that OMB analysts have over other potential authors of this report, such as academics, is that they are more familiar with the details of particular regulations and regulatory analyses.

Recommendation 4: OMB should issue a scorecard assessing the extent to which regulatory analyses comply with their guidelines.

It would be useful if OMB issued an annual scorecard identifying the extent to which regulatory analyses comply with its economic guidelines.⁴⁶ Providing information back to some year, such as 1990, would be useful as a way of providing a benchmark for comparison.⁴⁷

⁴³ This requirement should apply to all federal regulatory agencies, including those that are independent, to the extent permitted by law.

⁴⁴ A consensus seems to be emerging that the independent agencies are producing little information that evaluates the economic impact of their regulations. That finding is consistent with OMB's review, a report by the General Accounting Office, and research by Furchtgott-Roth and Hahn. See GAO (1998), Hahn (2001) and Furchtgott-Roth (1996). Hahn (2001) and Furchtgott-Roth (1996) find that regulatory agencies provide very little information on the economic impacts of a large number of regulatory activities in which they are engaged.

⁴⁵ For an example of such a summary page, see Table 4, Hahn and Sunstein (2002, 1519).

⁴⁶ See OMB (2000b) for economic guidelines.

⁴⁷ The U.S. General Accounting Office (GAO) or economists outside of the government could also perform this task.

Recommendation 5: OMB should provide more information on return letters and agency responses to return letters.

OMB frequently asks agencies to address specific issues in their return letters.⁴⁸ For example, OMB returned a rule to the Small Business Administration (SBA) with the request that SBA “should undertake a rigorous analysis consistent with the principles outlined under the Federal Credit Reform Act of 1990 and OMB Circular A-129.” OMB returned a rule to the Department of Agriculture with the request that the Animal and Plant Health Inspection Service evaluate the significant economic impacts of its proposed policy, as required by Executive Order 12,866.⁴⁹ We think that OMB should summarize the return letters it issues in this report, highlighting important concerns that it has raised in each letter. OMB ought to note, for example, when it returns a rule because of insufficient analysis and when it returns a rule because costs exceed benefits. It should also note how an agency responds to specific return letters. This summary would provide the public with useful information on the nature of OMB’s concerns and the responsiveness of the agency to those concerns.

Recommendation 6: OMB should improve its information on the economic impact of regulations aimed at reducing terrorism.

OMB has taken an important first step in listing terrorism-related regulations, the agency responsible for each regulation, and whether a regulation has been finalized. We think it should ask relevant agencies to provide more information about the costs and benefits of those regulations. While, in many instances, it may be difficult to arrive at precise quantitative estimates of the benefits, some quantitative or qualitative description will be possible. In addition to encouraging the agencies to estimate the effects of terrorism-related regulations, OMB could become more involved in this process, and develop ways to measure the regulations’ effectiveness. An attempt at measuring the net

⁴⁸ A return letter includes the OIRA Administrator’s written explanation of the reasons that OIRA is returning the rule for further consideration. The written explanation is required by Executive Order 12,866. See § 6. (b) (3). Executive Order 12,866, 3 C.F.R. 638(1994).

⁴⁹ Return letters are available at: http://www.whitehouse.gov/omb/foreg/return_letter.html (last visited May 29, 2002).

benefits of different terrorism-related regulations will help policy makers and the public compare the merits of different regulatory options.⁵⁰ Estimating the costs and benefits of terrorism-related regulations will also help policy makers and the public assess whether regulations are meeting expectations.

4. Conclusion

This paper critically reviews the draft of the Office of Management and Budget's fifth report on the benefits and costs of federal regulation. The draft report is a significant improvement over previous reports in terms of the responsiveness to the congressional mandate, and the information it provides on recent improvements at OMB. We think the changes that OMB has made to increase transparency and efficiency are significant. These include posting policies and information on the Internet, sending letters to agencies encouraging specific regulations with net benefits, and providing information on turnaround time for reviewing rules.

We also think it is important that OMB is asking the public to submit specific suggestions for constructive reform in a number of areas, including regulations, regulatory programs, and regulatory guidance documents. OMB should continue to use this information to help set priorities.

There is still room for substantial improvement. We offer six recommendations—one for Congress and five for OMB—that we believe would be helpful in holding regulators and lawmakers more accountable for the regulations they produce. Our recommendations focus on getting the regulatory agencies to produce better analysis, making that analysis more transparent and readily available, and making the regulatory process itself more transparent.

⁵⁰ For a discussion of how the government can effectively deal with the risk of terrorism, see O'Hanlon et al. (2002).

TABLE 1 – IMPROVEMENTS AT OMB DISCUSSED IN THE REPORT

Change	Supporting Information Provided	Likely Outcome
Issuing prompt letters ⁵¹	Number of prompt letters issued (and their subjects and recipients) ⁵²	Increase in transparency, shows a concern for pro-regulatory activity
Reinstating practice of returning rules with poor analyses to agencies	Table reporting total number of rules reviewed and number of rules returned in each year since 1981 ⁵³	More diligent evaluation of submitted rules
Tracking turnaround time on agencies' submitted rules	Data on the turnaround time for returned rules since 1999 ⁵⁴	Increase in transparency, responsiveness
Increased use of Internet to publicize OMB actions	Posting logs of meeting and correspondence with outside parties, posting prompt and return letters, continuing E-government initiative	Increase in transparency
Initiative to improve agencies' contact with small governments ⁵⁵		More serious consideration of Sec. 638 (a)(2) of the Treasury and Appropriations Act ⁵⁶ and of the Unfunded Mandates Reform Act
Increasing OIRA staff	Table reporting OIRA staff ceiling since 1981 ⁵⁷	Increased oversight ability
Establishment of a science advisory panel ⁵⁸		More informed decision making, increased transparency ⁵⁹

⁵¹ OMB (2002a, 15020).

⁵² OMB (2002a, 15020). The 2001 OMB final report discussed the return of the prompt letter and stated that OMB had already issued two prompt letters. This year's draft report presents our first opportunity to comment on the new practice, since prompt letters were not discussed in the 2001 draft report.

⁵³ Table 2, OMB (2002a, 15018). The 2001 OMB final report discussed OMB's plan to reinstate the return letter and included a table listing the number of returned rules between 1981 and 2000 OMB Table, in (2001a, 41). However, this is the first year in which OMB is actually reporting an increase in returned rules per year, from 0 in 2000 to 18 in 2001. See Table 2, OMB (2002b, 15018). This report provides our first opportunity to comment on returned rules because the return letter was not discussed in the draft of the 2001 report.

⁵⁴ Table 3, OMB (2002a, 15019).

⁵⁵ OMB (2002a, 15039).

⁵⁶ Sec 638 (a)(2) of the FY2001 Treasury and General Government Appropriations Act calls on OMB to present an analysis of the impacts of Federal regulation on State, local, and tribal governments, small business, wages, and economic growth.

⁵⁷ Table 4, OMB (2002a, 15021).

⁵⁸ OMB (2002a, 15022-15023).

⁵⁹ The advisory panel can be expected to increase transparency because OMB intends its meetings to be open. OMB (2002a, 15023).

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