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CAN TRUMP'S AMBITIOUS
DEREGULATORY AGENDA SUCCEED?

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P R O C E E D I N G S

MR. GAYER: Good morning, everybody. It is a beautiful day outside and you are all here to talk about regulatory policy. I love it. My kind of people. My name is Ted Gayer; I am the vice president and director of Economic Studies here at Brookings. I am also the founding director for the Center on Regulation of Markets, which is a relatively new endeavor here at Brookings. Its goal is to improve regulatory policy through independent research on regulatory performance and process and to host events like this where we can have an informed debate on regulation, regulatory policy, and everything with the word reg in it. There's a long tradition at Brookings, as some of you might know, of working on regulatory policy. Way back in the 1990s of my youth -- and I'm going to stick by that being my youth -- I was affiliated on the AEI side with the Joint Center on Regulatory Studies, it was a partnership between AEI and Brookings. When I got to Brookings in 2009 that Center no longer existed. There's a lot of good people where working regulation, so I wanted to start something up again and, lo and behold, here we are. I think it's a particularly opportune time to focus our attention on regulatory policy. In recent years, and certainly since the Joint Center, we've seen increasing delegation of policy making authority from congress to the agencies and we see this now, nine months into the Trump administration. If you look at the priorities of the president I would say on the domestic policy front you have repeal of the ACA -- and that didn't go as he had planned -- we have tax reform or tax cuts, depending on how you want to categorize it, and that I think the prospects there are moving along, but it's still uncertain. And then we had an agenda of deregulation and unlike the first two, deregulation of course is something that doesn't require congressional participation and hence I think it's safe to say or surmise that it is less stalled certainly and more proactively moving forward within the executive branch.

So the plan for today is for me to talk for about 20 minutes or so on a new paper that we just released today. It is a paper I coauthored with my colleague, Phil Wallach, here at Brookings and also with Bob Litan, who is at the Council of Foreign Relations. Bob

unfortunately is recovering from illness, so he is not here today. I hope he's watching on our webcast on line. So get well soon, Bob, and hello to everybody else also who's watching on line. Thank you for joining us today.

After I finish my talk, Cheryl Bolen will be moderating a session, a panel discussion of the paper and just the state of Trump's regulatory policy more broadly. And then, of course, as is we do with all of our events here at Brookings we'll be taking questions from you. So save up your questions for that time.

So, with that, I'm just going to give you an overview of the paper. I of course encourage you to read the paper as well. So what are we looking at? We're looking at Trump's regulatory plan; his requirements are twofold requirements now. Like I said, more or less off and running at the beginning of the administration, January 30 issued an executive order which set up both a regulatory offset requirement and a regulatory budget requirement. The regulatory offset is essentially what it says there, for every new regulation we need to offset it by identifying two regulations to eliminate. And the regulatory budget, as is noted there, is each there, each fiscal year, the OMB director will come up with a budget for each agency and there can be no net increase above that budget level for that agency for that fiscal year. This is I would call a break from this historical emphasis across both democratic and republican administrations where the focus in the regulatory world was very much on maximizing net benefits to society. And the way you do that is you measure benefits and you measure costs and there's a lot of attention, a lot of methodological discussion and debate and indeed disagreements on how measure both benefits and cost, but an understanding that we should be balancing benefits and costs. With Trump's executive order there is not a discarding of that old methodology and that old framework, but certainly a redoubled effort on the cost side.

Now, if you look across administrations there have been some differences. So President Reagan had an executive order saying that benefits should outweigh costs, Clinton changed that to benefits should justify costs. So you can kind of see a little bit of nuance there.

I would say broadly speaking the democratic administrations put more emphasis on distributive impacts and equity when considering benefits of regulations. But again, by and large the whole goal was like how do we better measure benefits and costs and try to figure out regulations that maximize that difference.

So what is the rationale and the history of this? So, as I was just alluding to, from an economics point of view, kind of a redoubled emphasis on the cost side through an offset and through a budget, it doesn't make economic sense. So just take the offset. If you have a regulation that's going to be extremely costly but have even more tremendous amount of benefits such that the difference is quite large, you would want to promulgate that regulation, again consistent with law, but nonetheless from an economic point of view that is a welfare improving regulation that we should pursue and we shouldn't disfavor it relative to another regulation that perhaps has smaller net benefits but lower costs. And you're living in a world of cost constraints you might wind up doing that.

So economically it doesn't make much sense. Politically, or in the lingo that we use in academia, there is a political economy argument for why you would use such an instrument. There's a public choice or political economy literature that suggests the kind of institutional framework of policy making could lead to overregulation. You could have agencies trying to maximize their authority or be reluctant to undo old regulations that perhaps are not very effective. You have notions for some regulations that the costs might be diffuse, so you don't get a lot of political efforts against it, but if the concentrations were benefits you might have more kind of political emphasis on one side even though it might not be justified from a net benefit point of view.

So one way to think of Trump's proposal is it's in some sense a blunt political instrument meant to counter political impulses to over regulate. It's in some sense analogous to what we do with fiscal budgeting, we come up with fiscal budgets for direct expenditures that limit agency spending, so it's not like agencies can spend so long as net benefits are increasing.

They are subject to budget constraints on the cost side. And I would point out a regulatory budget is not a new idea. In fact I'm going to talk a little bit about Brookings from my perch up here. If you go back to 1978, Bob Crandall, a long-time economist here at Brookings, wrote a Brookings paper, an economic activity paper in 1978 essentially advocating for a regulatory budget, not an offset, but a budget. My coauthor, Bob Litan, also at the time at Brookings wrote a book with Bill Nordhaus in 1983, again advocating for a regulatory budget. And even if you dig down and look at President Carter's economic report for the president, and just a self-interested aside, his counsel who wrote that book was chaired by Charlie Schultze of Brookings, they don't endorse a regulatory budget, but they basically here's an idea that one might consider. So it's not out of thin air that these ideas have come up.

One key difference, if you look, a lot of those historical advocates for regulatory budget, in those worlds again, as with fiscal budgeting, congress had a very strong role in determining what those regulatory budgets should be. In the world we live in now with Trump's plan it's through executive order, it's OMB, it's a directive of OMB to determine what those regulatory budgets should be. So it's absent a role of congress, unlike the previous suggestions.

There's also some international experience with regulatory offsets and regulatory budgeting. British Columbia in 2001 established a two for one offset requirement. Every new regulation had to have two offsetting ones. Although, actually I just misspoke. The measure that they use wasn't regulation, it was regulatory requirements, which is a little bit more subjective than regulation. And I'm going to talk in a moment about how you go about measuring costs in an offset or a regulatory budget framework. It's a key issue. So the British Columbia example, they went through all the regulations and within the regulations they counted what they thought were regulatory requirements. And again, it's the subject measures, basically an action or steps some private entity has to do in order to be in compliance with this regulation.

In 2012, kind of off of the perceived success of the British Columbia policy,

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Canada as a whole started a one for one offset requirement on their regulations, except in this case it wasn't regulatory requirements, it was actual regulations. So just count number of regulations, for every new one you've got to offset two other ones. And they also set a regulatory budget cap, but in this case the cost measure that they use is something called the administrative burden cost, which is essentially compliance cost to business. And again, it's just an important thing to consider for all of these, including the Trump plan. How you measure cost actually presents all sorts of differences or challenges and implications for what comes as a result of the policy.

And then, finally, just another example, the U.K. in 2001 instituted a one for one and then increased for a three for one offset. It's actually more a budget than an offset. They one for one is for every dollar of regulation you had to reduce a dollar of regulation elsewhere. And again, here I think it's extremely important, the cost measure they used was net cost to business. So you can imagine scenarios -- indeed this happened -- where society is not being made better even though you're reducing the net cost of business. If you promulgate a rule that basically says businesses can reduce the required pension contributions to workers, it's essentially a transfer from workers to the businesses, but under this definition a net cost of business would count as a cost reduction. So you can get some kind of perverse outcomes if you're not careful about how you measure costs.

So with Trump's plan it faces both legal and practical challenges, which we outline in the paper. So, first, on the legal one we had the good fortune, Phil and I, of working with the coauthor, Bob, who early in his career actually was part of arguing the case of Motor Vehicles Manufacturers Association versus State Farm, which is sort of a seminal case in this field. In that case, what happened was President Reagan came and taught this, wanted to rescind an existing transportation rule on airbags and seatbelts that the Carter administration had promulgated. They went through what they thought was consistent with the Administrative Procedures Act, a review process, but their argument was since they were rescinding a rule it

didn't need to meet the same standard of review, it could be sort of a looser standard of review. And they lost. So the implication of that rule, as well as others, is that procedurally if the administration comes in they can't just eliminate a rule, they have to go through the standard Administrative Procedure Act requirements. You can't just strike something, you have to do a full notice and comment and provide evidence for the decision of the rulemaking that you're promulgating.

And on the evidence front, another part consistent with the law, you can't promulgate a rule that is seen by the Courts as arbitrary and capricious. So you have to establish an evidentiary basis that's both consistent with the existing statutes and actually provides evidence that you've been in support of the rule that you're proposing.

So this does constrain the administration's abilities to deregulate. I think there is, if you read the executive order and the guidance documents and other documentation on it from the Trump administration, there is language in there that suggests that they are understanding and deferential to the fact that they actually have to comply with these requirements. I just put some phrases up there, so these are just kind of permeating the executive order. We can only do this to the extent permitted by law, almost otherwise required by law, in accordance with the Administrative Procedures Act, et cetera. So there's an understanding in their actions that they might not need congress to do this, but there's going to be a judicial review coming and they better be prepared for that.

On the practical challenges there are a number of practical challenges. I've already alluded to one, the first one, and that is really the biggest one. If you're going to require an offset or if you're going to put a regulatory budget on cost, how in the world do you measure cost? And kind of such is life, generally, the more that a measure gets that what we care about the harder it is to actually measure it reliably. Sort of cruel twists of fate. So, for example, it's rather easy to measure the pages in the Code of Federal Regulations. You can go count the Code number of pages each year and if those numbers go up you can say, well this correlates

with costs so costs are going up. But, of course, if that was your requirement for budget neutrality that is a very imprecise measure. You can imagine more pages but less burden on society or the other way around. You can kind of step it up one more than that and count the number of regulatory restrictive words. This is what I call where you get kind of biblical. You count the number of shalls and musts and, you know -- I almost said thou, but that's the wrong book (laughter) -- and required and other words, and use that as a proxy for regulatory costs. Of course, relatively easy to measure, somewhat informative, but not a perfect correlate for costs. You could, in the U.K. sense, look at things like the cost to business. And, again, it gets a little harder to measure compliance costs and other costs to business of complying with a -- that a regulation might inflict on them. But again it's sort of imprecise or it's a little one sided because transfers from workers or from customers or consumers to businesses wouldn't get captured in that.

So economists, we're high minded sorts, we've defined what the true costs are. The true costs are opportunity costs. But for this regulation what would this private entity be doing with their resources, so what's the next best thing that they would be doing, what would be their willingness to pay for that. This is what is commonly referred to as opportunity costs, not just for regulations but with everything. When you mandate something, when you require something, when you draw resources, government draw resources away from the private sector, the opportunity costs are what would be done with those resources if they hadn't been subject to the regulation or rule. And, of course, this is a very conceptually correct approach to measuring opportunity costs. It's also enormously different. It's sort of like the economist work program. It gives us lots of things to do and lots of things to measure across all different kind of regulation and laws, but it's enormously, enormously different to do. And certainly on a regulation, broadly speaking, if you want to budget for all the regulations in a given year that's a hard number to come by. So it does create a challenge and I think that is the biggest challenge, practically, with achieving what the Trump administration's rules are trying to do here.

There are other questions about flexibility over time. If an agency has a cost saving now how far in the future can they bank that and use it later? There's questions of flexibility across agencies and the guidance documents allow potentially some of this, where a cost saving in an agency can be used as an offset for another agency. It quite honestly seems kind of hard to see how that's going to work out, but it's at least within the guidance documents conceivable.

And then there's a big question of exemptions. What rules does this offset apply to and what don't they? So, for one, it doesn't apply to non-significant rules, smaller rules, less than \$100 million. It does apply to guidance documents, it doesn't apply to independent agencies, it might apply to meet international committees. And then you have civil emergencies, military regulations, natural security, foreign affairs functions -- I think most of those it doesn't apply to. But there is some discretion about which rules will be subject to this offset requirement.

I'm going to be winding down soon. So scenarios. So we kind of lay this out in the end of the paper. This is sort of our attempt of what will happen. And one of the luxuries or challenges when you have three authors for one paper is you can lay out lots of scenarios and we could each carry our own probability weights across those three scenarios. So I don't know that we all necessarily agree on what will happen, but these are just some of the possibilities. One thing that's omitted out of this is it could be that offset in a regulatory budget doesn't make a difference at all, that it's totally non-binding. And the reason why that's actually conceivable is if you get an administration like the Trump administration, which is predisposed, irrespective of these rules or this change in process, predisposed not to regulate, then the fact that you're adding these other constraints just might not be binding. Like if you have an EPA that plans to do the minimum amount of promulgation of new rules then meeting any sort of requirement on a budgetary cap, regulatory cap, or an offset might actually be relatively easy. That's probably an extreme version.

And then we sort of bound like sort of best and worst case outcomes. On the worst case outcomes you could have this just being a total morass. And that might even be the design of it. As I said before when we were talking about the legal challenges, if they want to promulgate a rule that's subject to this offset they essentially have to promulgate three rules. One is the new rule and two is two rules rescinding old rules. And again, with all the cost benefit analysis measuring those opportunity costs, all the rest, and so it is creating let's call it headwinds to promulgating new regulations and it could just mean irrespective of what net benefits it's just kind of gunking up the system and slowing the process down.

Another kind of bad possible outcome is, okay, we need to meet these requirements, let's just -- how are we going to find two regulations to cut, let's do it haphazardly because it's not like we have a clear, well agreed upon inventor of regulations that are sitting there where we have precise measure of opportunity costs and can say oh, yeah, we're going to triage this one and that one. It could just be haphazard. So that's another possibility.

On the pro side it could do what those advocates -- again, starting in the late '70s and '80s -- were suggesting, why they were suggesting it, that it is sort of a political instrument to put some sort of budget discipline. If for every new rule you have to actually maintain a budget neutral it does give you an incentive to triage, to try and prioritize, to try and actually go deeper into the existing rules to figure out which ones are not effective or ineffective or indeed costly. So that I think will be part of the discussion following my talk, so I'll leave that for the discussants to kind of probe deeper into.

But I do want to just highlight one additional thing. So this slide tells you kind of our take on the possibilities of what might happen. And so then the question is as we move forward what is happening. And so the other thing, in addition to the paper that we're releasing today we're releasing something that we call "Tracking Deregulation in the Trump Era". So this is a tracker that we have on line that I am -- I'm not very techy so this is not interactive what I have right here, but it's more interactive if you go to the website. This is just a screenshot. And

basically what we're doing is we're looking at timelines of key regulations, one that we think are kind of most highlighted or most in the targets of possible deregulation and giving kind of a timeline of what's happened, what happened under Obama, what's happening under Trump, and then tech is kind of describing the process and where things are right now. So, again, this is a screenshot. It's an interactive thing, so go interact with it and you'll see on the website -- there's a URL up there -- you can also Google it -- you'll also see on the website an email. So we are looking for feedback, questions, suggestions, thing that we may have missed. We'd love to hear from you.

So with that, I'm going to pause, I'm going to invite the panelists up. Let me just, before they come up, introduce Cheryl Bolen, who is a reporter from Bloomberg BNA; she's a White House correspondent, she writes a lot on regulatory policy. And so there you are. We are delighted she's here. And I'm going to sit down. Phil Wallach, my coauthor is going to -- I think I can say this -- represent me, let's hope (laughter) on the panel, or represent us on the panel. And so, again, thank you for being here and panelists come on down. (Applause)

MS. BOLEN: I am Cheryl Bolen and as Ted said I'm White House reporter for Bloomberg BNA. I have been covering regulatory policy since 2009. I finally recall asking Cass Sunstein, who was OIRA administrator at the time, this really easy question. I said does regulation kill jobs. Little did I know that whole books had been written on that topic. Anyway, no such softballs for these guys today.

But let me go ahead and introduce our panel. To my left is Howard Shelanski who was the former OIRA administrator in the second term of President Obama, and he is currently a professor at Georgetown Law. Then we have Stuart Shapiro. And he is a professor at the Edward Bloustein School of Planning and Public Policy at Rutgers University. And then, of course, Phillip Wallach, who is a senior fellow here in Governance Studies at the Brookings Institution. And then Susan Dudley -- and I should know this off the top of my head -- director of the George Washington University Regulatory Studies Center and, again, former OIRA

administrator in the second term of President George W. Bush.

And so what I would like to do is start off by asking the panelists to really just take one or two minutes and if you've got any opening thoughts, or especially if you have any observations what Ted and Phillip's paper, if you would just go ahead and share those thoughts with us.

Howard?

MR. SHELANSKI: Okay. Well, I'll start with a couple of observations about the paper. I think it's a terrific paper that's incredibly valuable right now. And it does a nice job of pointing out some of the history of regulatory review and reform and some of the challenges that it will face.

Looking at the actual executive orders, I think that there are some things to watch out for as we watch the implementation of those executive orders going forward. And I think one of the things that the paper points out is a very salient point, when one reads the executive order, 13771 and 13777, that I think are relevant to regulatory reform in the Trump administration, no real changes are being made to the underlying governing structure of regulatory review in the United States. The executive orders have set the criteria for what OIRA does. The underlying circulars that OMB has sent out that tell agencies how to do regulatory impact analysis and how to review rules are not being changed. But there's a definite shift and emphasis on regulatory costs. And because there is a lot of play in the joints, methodologically in terms of data that are used, in terms of just the political valence and the emphasis that a particular administration has, without changing the underlying executive orders, a shift in focus to costs can have substantial impacts. And if one looks at what the leadership of what the agencies have been doing, and the leadership of OMB, one can see that there is pretty clear mandate being sent out through the Executive Branch that the Executive Branch agencies and beyond, even into the independent agencies, really had better make sure that the benefits really justify the costs and that every cost is accounted for and, as well as possible, quantified.

My evidence for that are two things. Most notably it was interesting to me that OMB Director Mick Mulvaney at a certain point criticized the Obama administration for not having taken into account costs and for looking one sidedly at benefits. That was not an accurate statement and it was quite well debunked in a subsequent *Washington Post* article. Where we only looked on one side it turned out we looked at about 15 rules where we only looked at the costs and didn't look at benefits. But when one sees that that is the perception of the leadership of the very office of the government that is going to be running regulatory review, that's a pretty clear signal I'm going to be watching for any extent to which an agency has deemphasized or not fully accounted for costs. Hence the cost emphasis.

Similarly, when one looks at what the EPA is doing on climate regulations it's really quite clear that the emphasis is overwhelmingly on costs. And again I would refer you to an interview that Chris Wallace had with Scott Pruitt on Fox News where Pruitt was talking about how he was going to take down the Clean Power Plan, and Wallace came back and said but what about those tens of thousands of asthma cases a year that will be prevented by the Clean Power Plan, what are you going to do to make up for those lost benefits. I'm putting this in words in his mouth -- I'm not sure he said lost benefits. But he really held Pruitt's feet to the fire because he did not have an answer, which signaled again I'm not looking at benefits I'm looking at costs.

So I think we're going to be entering a period where the emphasis is on costs. Costs are going to be the main criterion and we're going to see a lot of rules pulled down because of costs. And the thing to watch for is insufficient and inaccurate accounting for very genuine benefits.

MS. BOLEN: Stuart:

MR. SHAPIRO: Thank you, and thank you for inviting me. I also really enjoyed the paper. I thought it was a nice outlining of the world we're in right now, empty of a lot of the rhetoric that has accompanied many of these debates.

I want to pick up on something Ted said in his talk where he outlined the fourth possible scenario where these executive orders don't really make that big a difference. And I actually think that's not an unlikely scenario. Quite frankly, given what Howard said, if you tell Scott Pruitt that he has to get rid of two regulations for every one he enacts or he has to keep costs of his regulations within a budget, that's like telling my kiss they have to eat their candy before they can have their vegetables. So to put that in political science terms, the existing means of control of agency actions, particularly the appointment power and the fact that the republicans control congress right now, I think is sufficient in the short-term to ensure that there's not much regulatory accumulation and that there's an emphasis on deregulation and eliminating regulatory costs.

So the real impact of this order, this question is, is what happens after the short-term, what happens in a longer-term period when like Anne Gorsuch being replaced by Williams Ruckelshaus, Scott Pruitt eventually moves on and is replaced by Christine Todd Whitman, or someone like that, when congress goes into the hand of the democrats rather than being in the hand of the republicans. The question then is no longer is are the executive orders needed, but rather are they sufficient to try and slow regulatory accretion. And I think the answer there -- and this is more guesswork obviously -- is also likely to be no. I think once political forces align in favor of regulation, once judges start telling the administration they have to issue regulations, those exceptions are going to start to loom very large in the implementation of the executive order.

And then in the longer-term, when we have a democratic administration, I have to think that these executive orders are among those that get revoked on the proverbial day one of the new administration. I don't think these will be like executive order 12291 which was then modified by Bill Clinton and adapted and regulatory impact analysis became a permanent part of the regulatory framework. I don't think two for one or regulatory budgets are the same and I'm happy to elaborate on that later in comment.

MS. BOLEN: Great. Phillip?

SPEAKER: Did you like the paper?

SPEAKER: It's your paper.

MR. WALLACH: I do like the paper. I recommend everyone read it. (Laughter)

So I just want to emphasize, I disagree with Stuart. I think there's real ambition behind this design and I think it would be a real disappointment if all it amounted to was a very complicated kind of moratorium. You know, I think the business community that, let's face it, is largely behind the push for this -- it didn't come springing out of President Trump's head certainly -- they think regulatory accumulation is a really serious problem. And this is designed to get agencies to use some of their energy to tackle accumulated regulations that have built up over many decades now of a very active regulatory state. And that's not something that's so off the wall, right. As Howard well knows, President Obama's administration undertook a regulatory look back program designed to get at some existing rules and say let's assess these, let's get out the dead wood where we can. But I would say most people would say it's a fairly modestly sized effort. And this is designed to supercharge it.

And so I think the point I just want to make is that it will be a real disappointment to a lot of people who have been instrumental in designing these executive orders if all they amount to is just no more new regulations. This really is designed to get agencies to go back into their closets and figure out what can be thrown out.

MS. BOLEN: All right. Susan?

MS. DUDLEY: I also really liked the paper, and I wasn't a coauthor. (Laughter) I think it does a very nice job of stating up front what most economists would agree, and that is that benefit cost analysis and the net benefits test is the right measure, is the right way to go about introducing new regulations and evaluating existing regulations. And there's a paragraph that I'm going to quote repeatedly, that says so the reason for doing a constraint like this is not economic but it's political economy, it's -- adding that constraint is because there are problems

with the way benefit cost analysis is done. As Ted mentioned briefly, the agencies incentives, both to evaluate their new regulations and measure benefits and costs, but also to look back and evaluate the effective existing regulation. The fact that often regulated parties once a regulation is place are not interested in removing them or evaluating them. And that it is just plain hard to do. So I think there are a lot of arguments for -- I think that the paper makes an excellent case for why despite the fact that we all think if things could be done perfectly benefit cost analysis should be the governing rule, having this as an overlay -- and I think that's a key point -- it is not replacing or should not be -- and I think this is something that Stuart or Howard mentioned too -- shouldn't be replacing that requirement for net benefits, but an overlay on top of it.

I also think that the paper does a nice job of saying there are a lot of challenges though, which is why each of us has a different sense of what might the outcome be. Not only the EPA challenges but also it just hard to do the measurements and measuring just cost is harder than measuring net costs or net benefits for a variety of reasons that's probably not worth going into now. So I also like the way they laid out several scenarios, and Stuart has added a fourth. But the best case scenario I think does depend on this new requirement being something that's overlaid on top of the existing requirements for net benefits. And that it actually stimulates and incentivizes real evaluation of existing regulations, which despite every president since Carter and even before, has told agencies don't only look going forward at the benefits and costs of future regulations, but look at the regulations on the books and see whether they really are achieving their intended objectives. There really has never been an incentive, and I hope this incentivizes that and also in so doing provides the tools that we don't have right now to look back at existing regulations and look at their benefits and costs.

MS. BOLEN: Great, thank you. All right. So, moving on, the title of this panel is "Can Trump's Ambitious Deregulatory Agenda Succeed?" But before we can determine if he can succeed, I have to ask, what is President Trump's regulatory agenda? Does anyone have a

good sense of the goal here, what he's trying to do? And is it really to cut regulations by 75 percent or what have you, and what would that look like? So, if anyone has a view on where he's going. (Laughter)

MR. SHELANSKI: I don't have a view on where he's going, but a couple of things that might help us to see where he might be going, what's likely to happen. I would draw a distinction between retrospective review of regulations and deregulation. Retrospective review of regulations could be -- as actually some of the Trump executive orders say -- could be reforming a rule, strengthening a rule if it's found to be too weak in light of circumstances, or repealing a rule. It could be any of those things. I think when one looks beyond some of the superficial language of the executive Orders to the systems it is setting up, it is not really a retrospective review effort that is designed to find out what's not working well, what could work better, how should we change things, it is a deregulatory effort, it is an effort to get rid of rules. And when one looks in 13777, which is the thing that sets up these regulatory task forces within agencies, they're deregulatory task forces; look at their mandate.

So I think the objective is to look at rules than can be removed more so than rules that can be reformed. So that's one place that he's heading. I think that's the biggest interest there. There are limited resources within agencies. You have a choice to strengthen a rule or get rid of one and make your regulatory budget and live up to the two for one, you're going to get rid of the rule. So I think that that's going to be the ultimate objective. And I think they're starting with rules that they perceive to have big political payoff. And whether it stops after that and becomes effectively just a moratorium remains to be seen. But I do think there is good evidence that we will see and where this is all really heading is getting rid of a bunch of big rules that have political payoff and then settling into what is really a roadblock to new rules. And part of the reason that that's true is there's actually much less of a constituency for deregulation than people think, and this is what you discover when you get out there and you try to get rid of rules. President Obama asked the business roundtable publicly, I think 25 percent of rules

might be able to be cut, give me your suggestions. President told OIRA, get those suggestions from the business roundtable. I waited, I got zero, not one, none from the business roundtable, not one from the U.S. Chamber of Commerce. So business has a few rules that have yet to be implemented, like clean power and some other that they want to get rid of, but beyond that they do not have a broad agenda, as Susan mentioned, for getting rid of the stock of long existing rules because they've absorbed the fixed costs of accommodating to them, they serve as frankly barriers to any new firm that wants to enter into the business, because they have to comply. So you actually don't have a big constituency from business knocking on the door to get rid of that old stock of rules. Who else is going to come to ask for that? Certainly not the public interest community, certainly not the unions, certainly not the agencies, because they'd rather go forward than backwards. So actually the forces aligned against true retrospective review and actually serious and sweeping deregulation of the longstanding stock of rules is very limited once you get beyond a few high profile rules, ones where industry has mostly not yet had to absorb the compliance costs.

So where I think Trump is heading is a big statement that let's get rid of everything we can, let's get rid of these big high profile rules, and then let's really stick to the budget. So I think we'll see a blip of real deregulation and then the real emphasis is to be able to say at the end of whatever period of time look how much lower we are on regulatory activity than past administrations. And on that note I would just point out a fact that is often lost in all of this, the Obama administration issued fewer rules than the Bush administration or the Clinton administration or -- this may shock you -- the Reagan administration. The Obama administration issued fewer significant regulations than the Bush administration. It did issue more economically significant regulations, but when you strip away the ones that Courts or congress - like ozone -- required the administration to do, this myth that regulatory activity under Obama was a marked departure from the historical norm is nonsense. So Trump does not have some big inflated stock of terrible rules that this administration can just go in and sweep away.

They're working off of a pretty well curated set of rules on the books and once they get beyond the ones that they don't like, even if they're good rules, they're going to have a harder time than they think sweeping away the stock.

MS. BOLEN: So, Susan, you look like you have something to say?

MS. DUDLEY: Yeah, I agree. I think the rhetoric is definitely deregulatory. You know, that's certainly the language, more than we've see in decades. And I also agree that there will always be entrenched interests that make it hard to remove regulations once they're on the books. I mean there are kind of funny stories about companies that were the most vociferous opponents of a new regulation and then once the regulation was in place and the agency reviewed it and realized it really wasn't very effective, they were the most vociferous opponent of removing that very same regulation because they ended up being the only company that could comply with it. So there is that, but I think if we look at the evidence from other countries, which this paper does nicely, they illustrate that there is some low hanging fruit, that there are ways to modify regulations so that they are easier to comply with, less redundant so that there's less duplication and redundancy. So again, I'm hoping for the best case scenario that the paper presented, because it's in nobody's interest to get rid of regulations that have large net benefits and keep the regulations that don't. So I hope this focuses on what are these regulations that we think could be done more efficiently.

And I'll just make a quick point. There are two parts to the executive order. One is the one in two out and that one is just rule for rule, but the outs can be trivial, small rules while the ins can be big -- or ins -- only big rules count as ins. What the authors are calling the budget part, the cost offset part, that's going to be more binding and that very explicitly allows modifications that reduce costs, as well as elimination. So I think that's important.

MS. BOLEN: Stuart?

MR. SHAPIRO: Yes, I will largely with what Howard and Susan said. I do think that Trump's goal was almost certainly not the 70 percent, which was a rhetorical flourish on the

campaign trail, of which there were a few, but rather to do what Howard said, which is to get some regulations as trophies that he can go ahead and say look what we did, we got rid of the Clean Power Plan, the Fiduciary Rule, a couple of the other very controversial Obama administration rules, and then possibly to slow the pace of regulation.

I will add that there is a constituency for deregulation. It is small businesses that want to expand possibly and people that want to start small businesses. But despite all the rhetorical attention given to small businesses they are not a powerful political constituency compared to the large businesses that generally are happy with things the way they are.

MS. BOLEN: Did you want to?

SPEAKER: I would just follow onto the very last point. I think the administration would certainly make the point and this will empower people like that because we need their ideas to meet the budget and we're not just saying that. Like we really need that stuff as sort of the grist to our mill now. So we're going to be out looking for it. And so I think ideally that's who the administration would say would be empowered by this rule.

MS. BOLEN: Great. And now I'd like to turn -- because we've touched on a couple of topics here that I was going to ask about -- but an important question to me is the link between regulation and economic growth and job creation. And really when you hear this administration talk about deregulation they say they're doing it grow the economy, to increase jobs, to spur innovation. And so my question to you is -- it's like the does regulation kill jobs -- what is the link between regulation and economic growth, does regulation depress economic growth and does deregulation grow the economy?

MS. DUDLEY: I will first answer the question you didn't ask, and that is the regulation in jobs. And I think that there's not a good consensus on that. That's a very good talking point, it's a political point, but I don't think -- I think that's a harder one.

The effect of regulation on economic growth, there is a general sense that excessive regulation, you know, definitely it will constrain economic growth because it prevents

innovation, it prevents new businesses, as Stuart said, from starting up, and it does protect entrenched interests at the expense of the innovators and the new ones. Empirically though it is so hard to measure, in part because measuring the -- how do we measure regulation? How do we measure the cost? It's the things that Ted mentioned, is it the number of pages, it is the number of command words. We don't have a good estimate of the cost. We have estimates of economic growth, but less so on innovation and some of the things that we care about.

So that's some stuff that we're working on at the GW Regulatory Studies Center. And other groups have done some admirable efforts, but to be able to say empirically yes it does and here's the point at which it's the right amount of regulation to be optimal for economic growth and when we get over the hump so that it's not, I think a lot of people would agree that we're over that point. So we're in the point that it may be inhibiting growth, but what's the optimal point I think is not -- there's no empirical evidence that would tell you one number.

MS. BOLEN: Stuart, you look like you're --

MR. SHAPIRO: Yes, I will add to that. I think the things Susan said absolutely right, but I think the reason that this question has continued political resonance is that some people lose their jobs because of a regulation, some people gain jobs because of a regulation. But the people that either lose their jobs because of a regulation or who believe they lost their job because of a regulation remember it and vote and donate accordingly. People who gain jobs because of regulation are probably very unlikely to credit the regulation with them getting the job. And so there's an asymmetry there. And in addition to the difficult measurement issues that Susan talked about, which makes it very hard to estimate the aggregate impacts, there's clearly an imbalance political impact.

MS. BOLEN: All right. Thank you. And, Howard, you're nodding your head. Do you want to?

MR. SHELANSKI: Yes, I think that's a great point and it's often the same person who loses their job or who gets fewer hours, may have actually gained a great health benefit or

something, but of course they discount that. You don't know about the illness, you know, not suffered. So there really is a difference in political salience there that's extremely important.

But when it comes to the link between growth and regulation I think there is a sense that at some point there is a link. And so it is better not to have rules that you don't need because we don't need what that point is. An analogy, loosely speaking, is something like the so called Laffer curve with economic growth and taxation. And mentioning the Laffer curve in Brookings is a little bit like bringing a deep fried Twinkie to a three star restaurant. But if you think about a curve that would sort of show growth increasing as a curve of growth with regulation, you know, at some point growth is going to drop off when the regulatory load gets too high. But we don't know where that is. And there's a very big question, when regulatory costs are a really tiny, tiny fraction of GDP, whether that can be really tagged with dragging things down. Over time there turns out to be relatively little simple correlation between measures of economic growth and measures of regulatory cost. So people could talk about regulatory costs going up in the Obama administration -- and I would urge people to look carefully and closely at that data and the shape of that trend -- but remember, job growth expanded through the whole administration.

Now, admittedly, one has to be very careful when one talks about job growth. What jobs, what is the quality of the work that people are getting? Is regulation downgrading that quality. Those are all serious and difficult issues to take into account. And, of course, we don't know about the jobs not created. Would we be at three percent unemployment without the regulation? No, I don't think so, nobody thinks so. But it's a very difficult story to assess, but I would say in general my sense is our regulatory burden on the economy, and there are sectors where there may be exceptions, but as a whole can't really be tied very closely to our growth rate or our struggles to get above a two percent growth rate.

MS. BOLEN: Mm-hmm. And, Phillip? No? Okay. So, Susan, you touched on this a little bit about the idea of excessive regulation, and that's a question I often have and this

plays into some of what we've already said. But, of course, this administration says it only wants to eliminate those rules that are unnecessary, duplicative, outdated, burdensome, excessively costly, or unlawful. So who can argue with that? So my question is, how much is too much regulation, how many of these monster regulations are out there, and why haven't we been able to get rid of them before?

Anyone?

MS. DUDLEY: Just sort of right back to the basics. President Clinton's executive order 12866 that we're still operating under starts with the premise that market forces and competition are pretty good regulators, that that can regulate behavior, you're not going to cheat your customers because people will know about it. And your paper actually mentions, too, new technologies that weren't around in 1993-6 when Clinton's executive order, make that even easier to track. So competition is a very good starting point in market forces. So it's only when we find some material failure of those markets that it may be worthwhile intervening and regulating. And it's only then that we start to do net benefit cost analysis. I think if we could get ourselves back to that core requirement that every president has agreed on since 1981, that may be the way that we can start to weed out the things that are excessive, because too often both legislators and regulators too, if there's any -- you know, a crisis happens and that anecdote is enough to drive new regulatory policy, even if we haven't identified what the core problem was and how we can best address it.

MS. BOLEN: Stuart?

MR. SHAPIRO: Yes. I think there are clearly some regulations out there that are problematic for any of the number of reasons that were listed there. In my research I was talking a couple of weeks ago with somebody who makes cider in the Midwest and they were complaining about how if the alcohol content gets too high it gets regulated as a wine, but if the carbonation content gets too low then it's regulated a different way, and that this really caused a great deal of burden for them and all they wanted to was make cider and sell it to a small

number of people. So there are examples out there like that. They are challenging to find and what you really need, and previous administrations have tried this and been successful, as Howard noted, only to a limited degree, is to be able to get out there and ask people what are the problems. But if you don't have a good way of doing that, and there is no easy way of doing that, it's hard to find the right answers to that question.

MS. BOLEN: Okay. So, yes, we are getting closer to the time when I'm going to turn to audience questions, but I want to just ask a couple more here of you. What I'd like to turn to next is the issue of cost benefit analysis and whether that's at risk right now of turning political in this administration. And both OMB Director Mulvaney and OIRA Administrator Naomi Roa have questioned some of the legitimacy of the Obama administration's assumptions, perhaps undervaluing costs and overestimating benefits. So I'm wondering, isn't there just a standard way -- this is a loaded question (laughter) -- of evaluating costs and benefits, or how much flexibility is there, how much trust can we put in cost benefit analysis?

MR. WALLACH: I'll take that one. I mean cost benefit analysis is not some golden path to the truth. It's a way of clarifying assumptions and clarifying thinking that really serves a very vital accountability purpose, but assumptions can be made differently. And a lot of what we're seeing in some of the very high profile rules is that the Trump administration will make very different assumptions than the Obama administration did. So, an example I know well is the Clean Power Plan. The question there is on the one hand should we count just benefits to U.S. citizens or benefits throughout the world. Traditionally we've just looked at benefits to U.S. citizens. The Obama administration counted them globally, the Trump administration will not. Similarly, do we count co-benefits, and in what way do we do that. So co-benefits is it's not what the rule is designed to prevent or address but just by putting it into place it has these ancillary benefits. So the co-benefits for the Clean Power Plan I believe were bigger than the benefits.

MS. DUDLEY: Ninety-nine percent of the benefits.

MR. WALLACH: Thank you. Much bigger than the benefits.

MS. DUDLEY: No, actually, I'm thinking of a different rule.

SPEAKER: Mercury.

MS. DUDLEY: Yeah.

SPEAKER: Mercury.

SPEAKER: Mercury.

MS. DUDLEY: Yeah, I'm wrong about that.

MR. WALLACH: So basically it's that if your rule forces coal power plants to shut down that has lots of health benefits, even if nominally that's not what you're -- those kinds of health benefits weren't what the rule was designed to secure. So there's a lot of that. I mean it probably shouldn't be overlooked just how much of these struggles are about the future of coal. I mean that really is a running theme through a lot of these debates. And so, you know, I think we should understand what cost benefit analysis can get us and what it can't. It cannot solve political questions for us, but it ought to be a disciplining mechanism that really forces you to put your cards on the table.

MS. DUDLEY: I mean I'll paraphrase Winston Churchill, that cost benefit analysis is the worst of all possible tools for doing policy except for everything else that we've tried. And I think it's exactly Phil's point, that what it should be is -- you know, your best laying out of the alternatives and your best information you have on the likely consequences, positive and negative, but there are so many assumptions in that. So I'm going to put in a plug right now for a paper that Stuart and I are among 19 coauthors, called a Consumer's Guide to Regulatory Impact Analysis, that kind of walks through 10 tips for when you look at a regulatory impact analysis or benefit cost analysis what are the questions you should ask and what should you be skeptical of so that you understand what are the assumptions that went into something and what different outcomes you would get if you make a different plausible assumption, and they're huge as Phillip's example showed.

MS. BOLEN: Howard, did you want?

MR. SHELANSKI: I mean I'll just respond briefly. There is always a little bit of politics to cost benefit analysis in the sense that you can make legitimate -- there are different legitimate assumptions that one could use. There's not a single right way of doing things. And so the choice of which of the methodological paths one is going to follow is going to be somewhat dictated by policy preferences. I think that's natural and normal. So there is a difference between cooking the books and a different set of methods and assumptions. So I think what's ultimately important is, first of all, not to confuse the two and not to call a difference in methodology cooking the books. But I also think what's critical is that those assumptions and methods be carefully spelled out in regulatory impact analyses so they can be commented on so they can be challenged. It might well be legitimate for somebody to decide that we should not include certain co-benefits in the benefits calculation or that the evidence on a certain kind of indirect cost is too weak to count that cost. But one should spell out why one is making that determination and what the evidence is.

Where the concern comes in is not where one gets two different results through two different administrations, but where some very important piece of data is left out or wrongly discounted or mis-portrayed and where the method is opaque. So I feel like as long as regulatory impact analyses are transparent and as long as the assumptions and methods are spelled out so that they can be -- see the light of day and the public can comment and experts can comment, that's okay. We may get different results but there will be legitimate paths.

And I just want to put in a plug for OIRA. This is what the OIRA career staff spend their days focusing on. Whether they're in a democratic administration or republican administration they are pushing back on the assumptions that the agencies are making, whether they're pro regulatory or deregulatory, and making sure that they are well grounded and legitimate and that reasonable minds truly could differ and that it's not in fact a cooking of the books. And so as long as the OIRA staff is given their free reign and their independence to

keep doing that, and as long as the OIRA administrator is willing to take their results up, the administrator doesn't have to win in the debates higher up in the White House, but the administrator does have to bring the news to the people who are the ultimate decision makers. And as long as OIRA is there to do the analysis and hold people's feet to the fire and the administrator is willing to give the news, even when it's bad, higher up the chain, I feel like I'm not that worried about the fact that different paths through cost benefit analysis could lead to different results.

MS. BOLEN: Did you want?

MR. SHAPIRO: I agree with all of that. I think that, like Phillip said, it's cost benefit analysis done well is a great aid to policy making and there are many instances that any of us on the stage can come up with where it has improved policy outcomes. But it is not a science, and some might even say science is subject to this, but it's based on assumptions and those assumptions can change. And the difficulty really comes in the way that that is communicated and that if the changes are communicated poorly then it's going to erode faith in the underlying analysis because it is going to look like we're cooking the books even if it's a legitimate change in assumptions.

MS. BOLEN: And, Howard?

MR. SHELANSKI: There's just one criterion that I would urge people to keep an eye on going forward though. You know, there are only certain things that can be well quantified. And if one over fetishizes the quantification of costs and benefits one will weed out lots of very legitimate things that a rule could achieve that are not subject to quantification. So there may be real benefits, but you can't quantify them. And if one shrinks cost benefit analysis to a mandate to only count things that can be rigorously and properly quantified, then one really rigs the game because as a general rule costs are more quantifiable than benefits. And if one reads the executive orders non quantifiable benefits are permissible to be counted as in the basket of benefits that will justify costs. And if one moves away from non-quantifiable benefits

and says that dignitary interests, equality, distributional goals, all kinds of things that many rules actually pursue, then one winds up in the situation where some very good rules with very significant social benefits will not pass cost benefit analysis, not because there aren't real benefits, but because we've shrunk the criteria to focus too much on what is quantifiable. So that is one change that I think may be occurring or that I would watch out for. Because that really could go beyond different legitimate methods through cost benefit to tilting cost benefit very much in the direction of overweighting costs.

MS. BOLEN: Thank you. All right. So my final question before we turn to audience questions is to bring out your crystal ball predictions and how successful will Trump be in deregulating. Whether you call it retrospective review or peer deregulation, many, many administrations have tried, often running up against Courts, not so many have succeeded. Can Trump do it, or what obstacles will he face? And I'm going to reverse it and start with Susan.

MS. DUDLEY: I think he will face obstacles, challenges in the Courts, challenges in agencies who are less enthusiastic about his goals. So I think at least in the short-term what we will see is a continued slower pace of new regulations because -- and we haven't talked a lot about this, but it is in the paper -- actually removing regulations takes a long time. At least as much time as introducing a new regulation, and part of that is the litigation that will come when you have two public records, the one supporting the regulation and a new one supporting changing that regulation.

So that's as far as I'm willing to go on the prognosticating.

MS. BOLEN: Grab your crystal ball, Phillip.

MR. WALLACH: I'll pass on the crystal ball entirely, but I will say that this part of the Trump administration's work has been handled with a lot of professionalism. I don't see it necessarily as so distinctively Trumpian, in the end in the way so many other of the President's sort of trademark initiatives. So I think that there a lot of pros on the job here. I think that something we haven't talked about today, these regulatory reform options that Howard to

referred to just a little bit, that are being created as sort of permanent standing committees in each department. I think that's a clever managerial strategy that could turn out to be effective.

So I would just say that so far what I've seen from them is a pretty serious effort.

MS. BOLEN: Stuart?

MR. SHAPIRO: I think if we set the criteria as we outlined earlier, Howard and I outlined earlier, as being the elimination of a few high profile rules and a slowdown in regulatory accumulation, I think there's a reasonable chance he will succeed at that. I think it depends a lot on the litigation of those high profile rules, which is unpredictable. I think beyond that I would be surprised to see large scale changes, but we'll see.

MS. BOLEN: Howard?

MR. SHELANSKI: I think that if one measures success by the number of rules repealed, he'll be more successful than past administrations but probably not dramatically so. So I'm probably largely in agreement with the rest of the folks here, but I want to point something out. And this is where the larger effect may be felt. There are a variety of ways to deregulate. One doesn't merely have to repeal a rule, one could stop enforcing a rule. And I think that when one looks at what happens in the agencies one needs to look beyond the regulatory count to what is happening to the personnel who are expert at monitoring and enforcing. And to the extent that we start to see fewer enforcement actions and a depletion of the capacity within agencies, perhaps taking people who were good at enforcement and moving them to regulation task forces or, who knows, to accounting, one might start to see some real effects out there that are deregulatory without repeal. And I will speculate, and this is pure speculation, that that is actually where some of the larger impact will be felt out there. And that can endure. It's one thing to repeal a bunch of executive orders when a new administration gets into power and to initiate rulemaking to restore rules that were repealed. To rebuild agency capacity and expertise and monitoring and enforcing could be a much slower process. So if the goal is really to make regulation less present and effective, he may be dramatically more

effective than if we measure simply by the reduction of rules on the books.

MS. BOLEN: Well, thank you. I have a lot more questions but I would like to give our audience an opportunity. So we don't have a -- we do have a microphone? Excellent. And lots of interest right up here in the front. And if you could speak loudly, say your name, and who you're with, and try to keep it to a shortish kind of question.

This gentleman right up front.

QUESTIONER: Robert Schroeder with International Investor. We heard a bare mention, but I'd like to hear more about the opposing groups. We all know the analysis can be twisted or spun according to who's doing it. The medical community will get involved in a lot of this. We haven't heard much from labor yet. I think there's other constituencies as well, certainly food safety advocates, consumer advocates for the financial community, et cetera. Will they become more evident do you believe and will that add to the political turmoil trying to assess the actual costs of deregulation in terms of people's health and the consequences for labor and consumers?

MS. BOLEN: So are you talking about their involvement in cost benefit analysis or lobbying certain roles?

QUESTIONER: To be clear, both in the analysis and, let's face it, the political turmoil that's going to follow a lot of this. This is a perfect foil, if you would, for not just the democrats but anybody who is going to fight against big business.

MS. DUDLEY: There's already a lawsuit filed -- and I should defer to lawyers on the panel. Is that just -- that said the executive order itself is illegal.

SPEAKER: I mean generally consumer advocacy groups, environmental groups, are extremely well institutionally established as a permanent presence in Washington and Trump has probably been very good for their fundraising. (Laughter) So these are all going to be fights, contested. You know, I don't know that those people have much influence among the political appointees in the Trump administration, but certainly they do some among the career

civil service and they will certainly be contesting everything every step of the way in Court.

MS. BOLEN: Behind you there.

MR. O'SHEA: Hi, Casey O'Shea for the Coalition For Regulatory Innovation, which is supported by the National Association of Manufacturing and North America's Building Trades Unions. I was curious if Brookings intends to study potential legislative frameworks moving forward?

MS. BOLEN: Phillip?

MR. WALLACH: You mean regulatory reform? Yeah, so that's definitely one of the focuses of our Center. We're keeping a close eye. Obviously nothing is happening imminently.

MS. BOLEN: If I could just follow though, looking at congress and regulatory reform legislation, do any of the panelists see a particular bill or proposal that you think might make it all the way through this year?

SPEAKER: I mean it seems like there's the most optimism with the Regulatory Accountability Act, which passed the House. A significantly different version sponsored by Senator Rob Portman is looking for votes in the Senate. And it's not inconceivable that it can count up to 60 votes with certain changes. I mean that's not going to happen in 2017, we'll look and see what kind of progress it can make in 2018.

SPEAKER: There were a couple of democratic senators I think that --

SPEAKER: Yeah, Senator Heitkamp is (inaudible) for sure.

MS. BOLEN: And, Howard, you look like (laughter) -- no? Okay. I just wanted to follow up on that.

In the third row there.

MS. RUIZ: Hello. Astrid Ruiz with a private sector company called UpBoost, which works in rural revitalization and development.

How does a cost benefit analysis take into account the urban, suburban, rural

inequalities and how can it avoid being skewed in terms of its assumptions on economic development?

MS. BOLEN: We talked a little about this is in --

MS. DUDLEY: Yeah, cost benefit analysis itself tends to not look at distributional impacts, but regulatory impact analysis is broader than benefit cost analysis. And it uses that but it also does try to look at different impacts. And the executive orders are quite explicit about that, though it is an important part of regulatory analysis.

MS. BOLEN: Okay, on this other side of the room here, you've got to raise your hand.

MR. LASSMAN: I'm Kent Lassman with the Competitive Enterprise Institute. I would ask the panel to follow up on one of the points Howard was concluding with about the difficulty in accounting for benefits, particularly distribution and other social benefits. How much deference should Courts give the regulatory agencies when it is not spelled out in the statute on that question of those benefits?

MS. BOLEN: The chevron deference?

SPEAKER: Auer deference specifically.

MS. BOLEN: All right. So legal analysis here?

SPEAKER: I'm happy -- why don't you take a swing at it? (Laughter).

MS. DUDLEY: I won't, but I will just -- one thought I had when Howard was making that point, which is an important point, is that there are also a lot of indirect costs and less quantifiable costs because it is very hard to measure the opportunity cost, which is what we care about. What does this mean about a new business getting started, what does this do? Those are costs that are invisible. They are not costs of complying. So compliance costs tend to be easier to measure, but I think that there are equally difficult things on the cost side.

In terms of the co-benefits or the things that aren't -- co-benefits and global benefits are probably examples of what you're asking about. If the Clean Air Act directs EPA to

protect U.S. citizens should Courts question whether EPA should count benefits of protecting -- or affecting non U.S. citizens. And I'm not a lawyer, so.

MS. BOLEN: We have lawyers here.

SPEAKER: I'm not a lawyer. I mean, look, I think it's a tough question. From a technocratic standpoint all the benefits that flow from a particular action should be counted in the cost benefit analysis. The fact that you happen to get a benefit that isn't explicitly addressed by the statute, I'm not sure -- I think one would have to think hard about whether this is a legitimate case for saying, and then you can't count it. On the other hand, I do think that if what we think the primary purpose of the rule really is is to use some kind of shoehorn to get at those co-benefits that are outside the scope of the statute, then the rule's probably not valid. But the fact that I'm doing a rule that I'm authorized to do by my grant of authority from congress, it happens to have as an externality some other great set of benefits that will flow to the public, if those are really in existence my cost benefit hat says why wouldn't I count them. Whether I should be legally prohibited from counting them I think is not so much a deference question as sort of a policy decision to be made in agencies because we don't want to give agencies incentive to pursue rules that aren't really high priority rules in themselves under the grant of statutory authority, but you can get at something you don't have authority to regulate at, that I think is sort of the bigger concern.

MS. DUDLEY: And if I can just add, that was in this Consumer's Guide 10 tips document. There were 19 coauthors and we had very different views on things like how to handle co-benefits. And the way we settled on that is making the point that usually it would be more cost effective to target those benefits directly rather than as a side effect of something else. And so you should look at your regulation, and if there's some other way to get at those, that's probably the better way. So you should question co-benefits that dominate the end.

SPEAKER: Dominate?

MS. DUDLEY: That dominate the benefits, but dominate your analysis, because

there's probably a better way to get at them.

SPEAKER: I would add that cost benefit analysis is, at the end of the day, a tool for assisting policy makers to make decisions. The questions about the legal propriety of those decisions may have been impacted by some of the cost benefits, but usually there's other specific questions that are more important.

MS. BOLEN: All right. Where's the microphone? Oh, there he is. In the blue.

MS. McINTYRE: Hi, Michelle McIntyre from Coalition for Sensible Safeguards. My question, and maybe you guys can address it, is the impact of agency budgets and what's going on with staff in a lot of these agencies, have on rule making, especially in compliance with the one in, two out EO.

MR. SHAPIRO: So I think, and Howard talked about enforcement -- I think the effects will be agency budgets will be dwarfed by the effect. The biggest part of that will be the effect on enforcement. When you talk about the number of people at an agency that are tasked with enforcement compared to the number tasked with rule writing, enforcement is much, much bigger. So if there are large cuts in agencies that's I think where you're going to see the largest effects.

MS. BOLEN: Phillip?

MR. WALLACH: But there is I mean a capacity issue. If you see the executive order really working in the optimistic scenario it's going to take a lot of work to do these retrospective analyses well. And so some agencies may have more economists laying around that they can apply to that task than others. You know, it will be interesting to see how OMB tries to support agencies in that task. Again, that being in the sort of active optimistic scenario.

MS. BOLEN: Oh, finally, on this side.

MR. MASSAD: Hi. Tim Massad. I was formerly the Chair of the Commodities Futures Trading Commission from 2014 to 2017. I thought it was an excellent paper and excellent panel discussion.

I'd like to just offer a couple of observations. One is a lot of times people may have seen these measurements of how many rules were issued. And they're often tied to pages of the Federal Register. The problem is in the rule you first have a proposed rule and you have a final rule, and each of those have a lot of things that aren't the actual rule, like a discussion of cost benefits. In the final you have to have a discussion of all the comments you received and you have to respond to all those comments, otherwise the rule is not valid. So I had my staff at one time go back after one of these editorials came out and measure how many pages of rules and rule proposals did we issue and how many of those pages are the actual rules. And the actual rules were less than 10 percent, more like 5 percent I think.

That's not to say we shouldn't try to simplify and eliminate some rules, and I agree with a lot of the comments that were made. The staffing issue I think is a very real one because if you're in an agency and you're mandated to implement Dodd-Frank you don't really have the staff to go back and look at rules that have been on the books for a long time, even though you know they probably could be simplified or maybe we don't need them anymore. It is a challenge.

And, finally, I thought all the comments on cost benefit were right on point. This is not a science, this is not a mathematical equation. And particularly in the financial regulatory space the challenge for us was a lot of the rules we were mandated to issue were designed to reduce the risks of certain types of activity so that you might reduce the risk of a failure of firms, not because we want to prevent the failure of a particular firm, we want to have an economy where firms can fail, but we were trying to prevent the possibility of the next financial crisis. And you've got to measure the impact of that and the probability that this rule will have in reducing that risk. It's a very, very hard thing and that's why it's not a science.

MS. BOLEN: So I can assume from that that the tall, tall, tall stacks of pages from the Federal Register isn't a good way to measure regulatory burden. (Laughter)

Okay. Does anyone want to respond to that?

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SPEAKER: I'll just throw out one point which we haven't dwelled on, but I think the way that the EO is set up right now, the things like the CFTC are not covered by it, so that's just worth pointing out.

SPEAKER: Although there is an MOU, but. (Laughter)

MS. BOLEN: Gentleman back here.

MR. BERGER: Sam Berger, Center for American Progress. I guess I'd be interested to hear your thoughts on the threat to cost benefit analysis just as a concept at this point. You have a situation which some people suggest you're not accurately capturing all the benefits, you're overestimating costs, et cetera. And then you have the Obama administration come in and say no, we're going to do a really good hard look at this and we're going to put forward rules that have significantly more benefits than costs. Howard probably knows it off the top of his head; I think it's like eight and a half times more. And then you have the Trump administration come in and say well, okay, let's just ignore benefits then and focus on the cost, which gives a sense that the object here is not to find net beneficial activity, it's to reduce costs on certain large businesses.

So I'd just like to get your sense of whether this sort of next step really calls -- to the extent to which it calls into question and gives strength to those who have serious concerns about cost benefit analysis in the first place.

MS. BOLEN: Howard, did you --

MR. SHELANSKI: I mean, Sam, one quick response to that, and I would note the things that Phil said about the actual text of the executive orders. What's interesting to me is somebody did look carefully and think about writing the currently Trump executive orders, because they say a lot of the right things. You know, the devil is in the implementation details. So I don't think cost benefit analysis -- I don't feel like cost benefit analysis itself is under threat. I know there are a lot of people who would like it to be and would be delighted if the system got broken here. And people said it's too politicized, we're never going to do it. I think everyone on

this panel, but certainly -- at least three of the four of us are serious proponents despite its flaws of the art and science of cost benefit analysis.

So maybe my optimism is coloring my response a bit. But I also think that given that there was some real thought -- when you read like 13777 that sets up the deregulatory task for, it says a lot of the right stuff. You could actually hve imagined another administration having written that to sincerely set up a retrospective look back institution with the agencies. So if the same people who are thinking about maintaining that legitimacy and if Naomi Rao and the folks at OIRA are given the voice that they should have in this process I think in the end what you're going to have is, as we described earlier, a tilting of the skills, of the weights, if you will, towards costs, but not to a degree that that threatens or breaks the integrity and the durability of cost benefit analysis.

MS. BOLEN: Stuart?

MR. SHAPIRO: I'm a little more pessimistic I think than Howard on this.

MR. SHELANSKI: Is that because you want to be?

MR. SHAPIRO: No. (Laughter) It isn't actually, I'm a huge advocate of analysis. But I think the threat is though not form these Orders in particular, but sort of the threat toward analysis and science more broadly when we see complaints about the congressional budget office and proposals to restructure it, when we see the debate over cost benefit analysis, when we see disputes over the science underlying certain policy issues. I think those are all of one piece and that's what worries me.

SPEAKER: Agreed.

MS. BOLEN: Okay. Susan?

MS. DUDLEY: In addition to executive order 13777, which explicitly references the previous executive orders, OMB's guidance -- so again, the OIRA staff that Howard talked about being very important in all of this -- their guidance is very explicit about the value of benefit cost analysis. And it's not cost to businesses. I think that's inaccurate and it's a mistake.

And I think OIRA has also been explicit about that. It is the opportunity cost to society at large, not just business costs, which are more what we see in Canada and the U.K..

One more thing I was -- but maybe I'll think of it later.

MS. BOLEN: Howard had a follow up.

MR. SHELANSKI: Yeah, I mean just one follow up, Sam, that I think is really important, and it's similar to the potential degradation of enforcement capability and capacity. We are seeing a deliberate and widely reported degradation of the scientific capacity in the agencies. And to build on the point about the broader threat to analysis, the reduction of that capacity will again be very difficult to build back up. And that does affect the quality of the cost benefit analysis. I would say particularly the benefit analysis, but actually both sides of it, and may lead to a situation where you have fewer good scientists in the agencies, or fewer economists who -- or less good data, or aspects of science or reams of data you're not allowed to look at. When that happens you're short circuiting the very function, which is why I think one needs to look -- just as one needs to look at sort of budgets and enforcement levels one also needs to look at what's happening with the scientific staffing and the people who actually do cost benefit analysis.

So I, for example, do not view the announcement that Scott Pruitt made earlier this that scientists who've received any grants from EPA cannot serve on the EPA Scientific Advisory Board. That is not an innocuous kind of decision. That means that some of the very experts who spent their time studying the issues that EPA is looking at aren't going to be able to chime in and say what the results are. And I don't think the conflict of interest rational holds a lot of water there for keeping them out of the process.

MS. BOLEN: Well, on that note we have come to noon hour and now that we've answered all your questions no more debate here. I would like so much to thank Brookings and this panel. And it has been an excellent discussion. Thank you audience for all your great questions. (Applause)

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