As Prepared for Delivery:

Remarks on Regulatory Innovation

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I am greatly honored to be the recipient of this year's award. I thank you all.

In recent years, one of our goals has been to go beyond soundbites and slogans and to focus on evidence and data – to ensure that regulation is empirically informed.

The plea for empirical foundations may seem obvious, a little like a plea for sunshine rather snow. But think for a moment about *Moneyball*, the best-selling book and Oscar-nominated film about Billy Beane, who worked with statistician Paul DePodesta to bring the Oakland Athletics into the top-tier of baseball teams, and in a short time transformed baseball itself, by substituting empirical data for longstanding dogmas, intuitions, and anecdote-driven judgments.

Consider this exchange:

"The guy's an athlete, Bill," the old scout says. "There's a lot of upside there."

"He can't hit," says Billy.

"He's not that bad a hitter," says the old scout.

"Yeah, what happens when he doesn't know a fastball is coming?" says Billy,

"He's a tools guy," says the old scout . . .

"But can he hit?" asks Billy.

. . .

Paul reads the player's college batting statistics. They contain a conspicuous lack of extra base hits and walks."

"My only question," says Billy, "if he's that good a hitter why doesn't he hit better?" . . .

Over and over the old scouts will say, "The guy has a great body," or "This guy may be the best body in the draft." And every time they do, Billy will say, "We're not selling jeans here," and deposit yet another highly touted played, beloved by the scouts, onto his shit list.

For a long time, those thinking about regulation have been a bit like scouts in the era before Billy Beane. Scouts said that someone is "a tools guy," or that he "has a great body." Those favoring or opposing rules make analogous claims. "It won't cost a penny," or "ten years ago, the following happened," or "the industry will completely shut down." Regulatory systems need their own Billy Beanes and Paul DePodestas, carefully assessing what rules will do before the fact and testing them after the fact.

Smart regulations save lives. For example, the number of deaths on the highways is now down to its lowest level in sixty years. This is a large achievement, produced not only by the commitment and creativity of the private sector but also by educational and regulatory initiatives from local, state, and national governments. In areas that include food and workplace safety, clean air, energy efficiency, and investor protection, well-designed regulations are preventing tens of thousands of premature deaths and hundreds of thousands of illnesses and accidents -- and saving billions of dollars.

We have issued rules, in our first three years, with over $91 billion in net benefits – over 25 times the corresponding figure in the first three years of the Bush Administration, and over six times the corresponding figure in the first three years of the Clinton Administration.

Now let me turn to three new directions in recent years.

The Regulatory Lookback

In January 2011, President Obama called for a government-wide review of regulations on the books to reduce costs, to eliminate unnecessary burdens, and to get rid of what the President has called "absurd and unnecessary paperwork requirements that waste time and money." The lookback process has catalyzed a large and growing number of significant initiatives.

In November, and after careful consideration of public comments, about two dozen agencies produced final plans, spanning over 800 pages and offering more than 500 proposals.

These changes are already producing large and measurable savings for consumers and businesses. In the next five years, well over $10 billion in savings are anticipated from just a small fraction of the initiatives on the agencies' plans. In the future, the lookback process is expected to deliver a great deal more.

The lookback effort, designed above all to cut through unnecessary red tape, is no one-time endeavor. Very recently, the President issued a historic Executive Order to institutionalize the process of retrospective review. The order states that "further steps should be taken . . . to promote public participation in retrospective review, to modernize our regulatory system, and to institutionalize regular assessment of significant regulations."

The process of retrospective analysis, no less than prospective analysis, is becoming a standard part of the assessment of federal regulations. This is a fundamental shift.

New Requirements for the Issuance of Rules

The January 2011 Executive Order provides a series of new directives to govern future rulemaking. Cost-benefit analysis continues to play a central role in regulatory review and indeed the obligation to quantify both costs and benefits has been highlighted.

Let me emphasize several key points.

1. **Public participation**. The President made an unprecedented commitment to promoting public participation in the rulemaking process – with a central goal of ensuring that rules will be informed, and improved, by the dispersed knowledge of the public. Agencies are not merely required to provide the public with an opportunity to comment on their rules; they must also provide timely online access to relevant scientific and technical findings, thus allowing them to be scrutinized.

2. **Simplification and harmonization**. The Executive Order specifically directs agencies to take steps to harmonize, simplify, and coordinate rules. It

emphasizes that some sectors and industries face redundant, inconsistent, or overlapping requirements. In order to reduce costs and to promote simplicity, it requires greater coordination. The order also explicitly connects the goal of harmonization with the interest in innovation, directing agencies to achieve regulatory goals in ways that promote that interest.

3. **Flexibility**. The Executive Order directs agencies to identify and to consider flexible approaches that reduce burdens and maintain freedom of choice for the public. Such approaches may include, for example, public warnings, appropriate default rules, or provision of information "in a form that is clear and intelligible." We know that simplification of existing requirements can often promote compliance and participation and that complexity can have serious unintended consequences. We also know that flexible performance objectives are often better than rigid design standards, because performance objectives allow the private sector to use its own creativity to identify the best means of achieving social goals. To promote flexibility, we have recently issued several calls to all agencies to reduce reporting burdens on small business and to eliminate unjustified complexity. We have received many important initiatives in response.

Flexible, low-cost regulatory tools, including disclosure

Disclosure has become a central part of modern regulation, but often disclosure has not been helpful. One reason is that disclosure has not always been attuned to how real people actually process information. Sometimes people get too much information, and the information they get complicates rather than simplifies their decision-making.

Here are two examples of recent initiatives:

- *Food plate replacing food pyramid*: The Food Pyramid has long been criticized as insufficiently informative. It did not provide people with any kind of clear "path" with respect to healthy diet. In response to these objections, and after an extended period of deliberation, the United States Department of Agriculture replaced the Pyramid with a new, simpler icon, consisting of a plate with clear markings for fruit, vegetable, grains, and protein.

- *Fuel economy label*: Automobile manufacturers are currently required to disclose the fuel economy of new vehicles as measured by miles per gallon

> (MPG). This disclosure is useful for consumers and helps to promote informed choice. As the Environmental Protection Agency (EPA) has emphasized, however, MPG is a nonlinear measure of fuel consumption. For a fixed travel distance, a change from twenty to twenty-five MPG produces a larger reduction in fuel costs than does a change from thirty to thirty-five MPG, or even from thirty to thirty-eight MPG because less efficient cars will turn over their fuel supply more frequently.
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> Recognizing this problem, the Department of Transportation and EPA adopted an approach that calls for disclosure of relevant, meaningful factual material, including annual fuel costs. The new label must also provide a clear statement about anticipated fuel savings (or costs) over a five-year period. The information about annual fuel costs and five-year fuel savings (or costs) should simultaneously help counteract the potential difficulties with the MPG measure and not leave it to consumers to do the work to figure out the net economic effects of fuel economy standards on their budgets and lives.

One of our hopes is that the recent efforts to rethink the regulatory system might inaugurate a broader and more empirical conversation about how we might promote economic growth and job creation while protecting the health and safety of the American people. We’re not selling jeans here.