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Independent Regulatory Agencies Should be More Accountable

Regulatory Policy Commentary
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Should government regulators think through the likely effects of proposed regulations to see whether they'll do more good than harm? Every president for over 30 years has thought so, and required executive branch agencies to analyze regulatory impacts before imposing new requirements, and to send them for review by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget.

However, because of their historical designation as “independent,” some agencies have been exempt from these common-sense requirements, making their regulations [less accountable and well-reasoned](#) than others. This issue has recently gained the attention of the [President's Jobs Council](#), the [Administrative Conference of the United States](#), and [legislators in Congress](#).

Independent regulatory agencies (such as the Securities and Exchange Commission, the Federal Communications Commission, and the Consumer Product Safety Commission) are considered independent not because their method of regulation differs from executive agencies, but because Congress has limited the president's power to remove their top officials (either by statute or tradition). Legal advisors to presidents from Ronald Reagan to Barack Obama, as well as bodies such as the [American Bar Association](#), [ACUS](#), and the [President's Jobs Council](#) have concluded that presidents have the constitutional authority to extend analytical and executive oversight requirements to independent agencies' regulations, but presidents have been reluctant to do so out of deference to Congress.

The renewed interest in ensuring the accountability of independent agency regulations is due in part to the variety of new responsibilities assigned to them under the Dodd-Frank Act. These regulations will have broad social impacts, yet the analysis supporting them tends to be less robust because the issuing agencies have not been covered by the regulatory executive orders. According to available [government data](#), roughly half of the rules developed by independent regulatory agencies over the last 10 years provided no information on either the costs or the benefits expected from their implementation. Over the last three years, not one of the 47 major rules (with impacts of \$100 million or more per year) issued by independent agencies was based on a complete benefit-cost analysis.

New legislation introduced by Senator Rob Portman, Senator Mark Warner, and Senator Susan Collins attempts to correct this analytical void. [S. 3468](#) would require independent regulatory agencies to follow the same principles other agencies have long followed, with a goal of

improving regulatory outcomes by understanding possible consequences of new regulations *before* businesses, workers, and individuals are asked to comply with them.

For years, experts across the political spectrum have urged greater transparency, analytical rigor, and accountability for regulations issued by independent agencies. The new research and legislative focus on independent agencies is a welcome step in that direction.