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## Improving Regulatory Transparency and Accountability

*Regulatory Policy Commentary*

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The [Advisory Committee on Transparency](#) (a project of the Sunlight Foundation that advises the Congressional Transparency Caucus) will hold a [panel discussion](#) on August 20<sup>th</sup> on the role of OMB's [Office of Information and Regulatory Affairs](#). In particular, panelists (including me) are asked to discuss whether OIRA's focus on regulatory impact analysis is appropriate and whether its interactions with regulatory agencies are adequately transparent.

The approximately 50 career professional staff who work in OIRA (the "President's Super-Regulators," as ACT calls them) review the regulatory, information collection, and statistical activities of Federal Executive branch agencies. OIRA's role, like that of OMB's budget, management, and legislative divisions, is to provide the President with a tool to manage federal agencies' natural proclivity to want more — whether it is more budget resources, more autonomy in legislative matters, more information about private citizens, or more regulatory authority.

OIRA wears two important hats. First, as President Obama has observed, it provides "[a dispassionate and analytical 'second opinion' on agency actions.](#)" Like other parts of OMB, OIRA is less susceptible than line agencies to special interest pressures, both as a result of its executive and legislative mandate and its cross-government perspective. With its cross-cutting perspective and its focus on understanding tradeoffs and consequences, OIRA coordinates regulatory policy, minimizing conflict and duplication among agencies, and provides expertise in policy analysis, economics, statistics, risk analysis, and decision science. The analytical principles it applies are not controversial and certainly not partisan — they have remained essentially the same since OIRA's founding. It currently operates under an executive order signed by President Clinton.

Wearing its second hat, OIRA is charged with ensuring that regulatory decisions are consistent with the policies of the elected President. Career OIRA staff work closely, not only with their counterparts in agencies across the government, but also with political officials in the White House. The Constitution vests all Executive authority in the President, and OMB provides many of the tools that enable a President to exercise that authority. The U.S. could hardly be called a democracy if regulators did not have to answer to elected officials.

Both of OIRA's roles enhance transparency and accountability in the rulemaking process. As an expert evaluator of agency regulatory proposals and analyses, OIRA encourages agencies to develop and rely on quality regulatory impact analyses (RIAs). A good RIA provides a

transparent accounting of the information available on the need for and consequences of regulatory proposals and alternatives. It provides an extremely useful framework for decisionmaking by identifying the underlying problem to be solved, identifying and evaluating alternative regulatory and non-regulatory approaches to address it, and organizing this information in a consistent, coherent, and comprehensive way. Though it does not serve as the sole basis for crafting regulations, regulatory impact analysis does help decisionmakers consider a wide range of possible effects, and is arguably the most reliable method for ensuring transparency in regulatory decisions.

OIRA's second role, as defender of the elected President's policies, occasionally conflicts with the first. Nevertheless, this role is important and it ensures regulations are accountable to voters. As Chief Executive, Presidents need an office like OIRA to help them manage the activities of the disparate regulatory agencies.

In both roles, OIRA helps to counteract the natural tendency of regulatory agencies to be "captured" by the concentrated special interests who seek to influence agency decisions. What we used to call the "iron triangle" (an agency, its Congressional oversight committees, and the special interest seeking favoritism) will naturally resist any attempt by the President to keep the agency focused on the broader public interest.

There have been recommendations over OIRA's 30-year history to document interactions between OIRA and agency staff, but for several reasons, this would not likely increase transparency in the regulatory process, and if implemented would disrupt constructive, open dialogue between members of the executive branch.

First, OIRA already operates more transparently than most parts of the government in that it discloses on its website all its [meetings](#) with parties outside the executive branch. It also [identifies all regulations](#) for which review is ongoing and concluded. Once a regulation is published, OIRA makes available the draft regulation as originally submitted for review, as well as the final post-review draft, allowing interested parties to see what changes were made during interagency review.

Second, regulatory impact analysis and OIRA's disclosure procedures contribute greatly to transparency in regulatory development. Misguided attempts to document all interactions between OIRA and agency staff would focus debate on who said what to whom, rather than on the substance of decisions and supporting documentation. Furthermore, such constraints would likely lead to less transparency, rather than more. The President's staff need to be able to engage in deliberative discussions, and if those discussions cannot be coordinated by OIRA, they will happen anyway, but be much less transparent.

Rather than focusing on what different people in the executive branch say to each other, Congress could do more to improve the regulatory process by taking a more active role in evaluating agency regulations to ensure they meet statutory goals and improve the lives of

American citizens. To do this, Congress should create a Congressional office responsible for regulatory analysis and oversight.

Even a small staff of regulatory experts housed in a Congressional agency, such as the [Congressional Budget Office](#) or the [Government Accountability Office](#), could provide an independent check on the analysis and decisions of both the regulatory agencies and OIRA. They could also devote resources to areas OIRA does not, such as examining the effects of regulations issued by independent regulatory agencies.

Just as the CBO enhances transparency and accountability by providing independent estimates of the on-budget costs of legislation and federal programs, a Congressional regulatory staff could increase transparency and accountability by providing Congress and the public independent analysis about the likely off-budget effects of new regulatory legislation and agency rules.

*[Susan E. Dudley](#) directs the [George Washington University Regulatory Studies Center](#), and served as administrator of the Office of Information and Regulatory Affairs from 2007 to 2009. Her new book with [Jerry Brito](#), [Regulation: A Primer](#), is available from [Amazon](#).*