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President Obama's Executive Order: Improving Regulation and Regulatory Review

Regulatory Policy Commentary

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Though regulations are one of the most important tools available to the Executive Branch for achieving policy goals, they rarely reach the attention of the President because their effects (largely off-budget) are often not visible. That's what makes President Obama's January 18 [Wall Street Journal op ed](#), and his newly announced [policies on regulation](#), newsworthy and significant. These actions may reveal a new appreciation for the effect regulations can have on economic well-being, and the importance of a balanced regulatory approach to putting America back on a path to prosperity.

The new [Executive Order](#) on "Improving Regulation and Regulatory Review" issued by the President on January 18, 2011 contains nothing earth-shattering, but it does affirm sound principles and practices that have been in effect since 1981. It supplements and reinforces President Clinton's [Executive Order 12866](#), issued in 1993, and stresses the importance of conducting sound analysis of likely regulatory impacts, of providing public opportunities to engage in the process of developing new regulations, and of designing less-burdensome, more flexible approaches to achieve regulatory goals. It also requires agencies to develop plans for periodically reviewing regulations already on the books, with an eye toward streamlining, repealing, or expanding them to make them more effective and less burdensome.

Whether the President's actions signal a real recognition that regulations can place unreasonable burdens on economic growth remains to be seen. Over the first two years of his term, the federal government issued 132 economically significant regulations (defined as having impacts of \$100 million or more per year). That averages out to 66 major regulations per year, which is dramatically higher than the averages issued by President Clinton (47 per year) or President Bush (48 per year). President Obama's upcoming [Regulatory Agenda](#), released just last month, does not presage a slow-down in activity. There are 183 more regulations underway now than last year at this time, representing a 5 percent increase in activity. The regulatory road ahead looks even more ambitious when one focuses on the largest regulations. The Agenda reveals a 20 percent increase in economically significant regulations, or 40 more regulations with impacts of over \$100 million under development now than at this time last year.

How the new Executive Order will affect these upcoming regulations will depend in large part on the [Office of Information and Regulatory Affairs \(OIRA\)](#), the office in OMB that oversees and coordinates all significant executive branch regulations. The good news is that the Order

will likely strengthen OIRA's hand. From its catbird seat in the Executive Office of the President, OIRA reviews regulations to ensure they are consistent with the President's priorities, and coordinates interagency review to avoid redundancy and conflict. With its mission to ensure the benefits of regulations justify their costs, it is more interested in impacts on society broadly and less susceptible to special interest pressures than line agencies.

One disappointment in the new Executive Order is that it does not bring the so-called independent agencies under the OIRA review rubric, nor does it subject them to the Order's analytical and transparency requirements. Thus, most financial regulation (including those issued by the new Consumer Financial Protection Agency) will continue to be exempt from OIRA's scrutiny as well as the principles and procedures outlined by the President.

Nevertheless, the renewed focus on regulation is positive. The [Small Business Office of Advocacy](#) recently estimated that federal regulations cost American households \$15,586 on average each year. It is good to see the President is paying attention.