

The Next Regulatory Czar

Administrator of the Office of Information and Regulatory Affairs

Abstract

To accomplish his promised overhaul of the U.S. regulatory system, President Trump will need the help of a small office that most people outside of Washington have never heard of. The Office of Information & Regulatory Affairs (OIRA, pronounced Oh-Eye-Ruh), established in 1980, oversees the regulatory, information collection, and statistical activities of federal executive branch agencies. Like its budget counterparts in the Office of Management and Budget (OMB), it provides the president with a tool to check agencies' natural proclivity to want more (whether it's more budget resources or more regulatory authority).

As President Trump prepares to announce his nominee to be OIRA administrator, this *Regulatory Insight* provides an inside look at the functions of this important office, its origins and procedures, and why some (including this author) say the job of OIRA administrator is the best job in Washington.

OIRA

The Administrator of the Office of Information & Regulatory Affairs (a.k.a. the "Regulatory Czar") is the ultimate policy wonk. The Office reviews all manner of regulations from executive branch agencies, in which the important decisions are often down in the weeds. There is no overall budget number or meaningful summary statistic that simplifies the task.

Although it is stretched thin, OIRA's career staff has the expertise to penetrate the dense language of regulation and identify important decisions. Unlike their counterparts on the budget side of OMB, however, OIRA staff are not working on an annual cycle. Each regulation is running on its own clock, and some of them have statutory or judicial deadlines that demand immediate attention. A presidential transition is a particularly active time, as a new administration reviews pending or not-quite-final decisions from the outgoing administration.

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Especially given President Trump's stated deregulatory ambitions, it is urgent for the new administration to engage with OIRA.

One obstacle to pursuing the president's regulatory policies is that the OIRA administrator is a Senate-confirmed position, and confirmation often takes months. President Trump is expected to nominate an administrator soon. Typically, nominees have been people with strong academic or professional credentials in economics and/or administrative law. This is important not only for effectively managing the OIRA staff and dealing with agency personnel; it also seems to help facilitate the Senate confirmation process. Indeed, former OIRA administrators *from both parties* (with the exception of judges, for ethical reasons), have historically been effective in helping to persuade the Senate to confirm well-qualified nominees.

The Most Important Office You Never Heard Of

Little known outside the beltway, OIRA is an office of about 50 professional staff who review the regulatory, information collection, and statistical activities of federal executive branch agencies. It operates within OMB in the Executive Office of the President (EOP) and provides a function analogous to OMB's oversight of department and agency fiscal budgets. Its role, like that of the budget divisions, is to provide the president with a tool to check agencies' natural preference for more (whether it's more budget resources or more regulatory authority). This institution of regulatory oversight is important but, unsurprisingly, not always appreciated by the agencies being overseen.

The office holds considerable sway over federal regulatory policy and the OIRA administrator is one of the most important government positions most people have never heard of. Regulation is one of the key tools for accomplishing policy goals and the administrator gets involved in a dizzying range of issues and works with senior appointees across the government.

Executive Orders Ensure Continuity

Unlike most other EOP offices, OIRA has specific statutory responsibilities relating to paperwork and statistics. Its core function, however, is to review regulations. The office was created by the Paperwork Reduction Act of 1980 (PRA),¹ but it was President Ronald Reagan's Executive Order (E.O.) 12291 that first gave OIRA the mandate to analyze regulations.²

¹ 104th Congress Public Law 104-13. <https://www.gpo.gov/fdsys/pkg/PLAW-104publ13/html/PLAW-104publ13.htm>

² Executive Order 12291, "Federal Regulation." February 17, 1981. <https://www.archives.gov/federal-register/codification/executive-order/12291.html>

President Bill Clinton replaced E.O. 12291 with E.O. 12866 in 1993,³ but did not change the basic principles that guide regulatory review. However, under the Clinton E.O. OIRA review was limited to “significant” draft proposed and final regulations prior to publication. (OIRA ultimately determines what rules are “significant.”) This process remains in effect today, as Presidents George W. Bush, Barack Obama, and Donald Trump have reinforced and expanded OIRA’s role (see President Obama’s E.O. 13563⁴ and President Trump’s E.O. 13771⁵).

OIRA ensures compliance with the relevant executive orders, which require, to the extent permitted by law, that regulations be based on adequate information concerning the need for and consequences of proposed government action, and that regulatory actions maximize net benefits to society. President Trump’s “two-for-one” E.O. 13771 also requires that new regulatory costs be offset by removal or modification of existing regulations. These orders provide the mechanism for the elected president to effectively manage the regulatory authority Congress has delegated to executive branch agencies.

The off-budget costs of meeting regulatory requirements are estimated to exceed two trillion dollars annually.⁶ This is not directly comparable to budget dollars, and it is difficult to say how much discretion congress has delegated to regulatory agencies. But regulation is an important aspect of policy, and not one that can be left to the agencies themselves, any more than it would be practical to give them a blank check on their budgets.

OIRA Procedures

Under E.O. 12866, all executive branch agencies must submit significant proposed and final regulations (draft regulatory text along with preamble and supporting documents) to OIRA for interagency review before publication in the Federal Register. This review involves coordination with other agencies in the executive branch (including White House offices) and can last 90 days (and sometimes more, although on average reviews take around 60 days).

Many of the roughly 500 OIRA regulatory reviews are handled by career staff without much input from the administrator, but some can be quite contentious and require the administrator to have an in-depth understanding of a regulation’s requirements and supporting analysis. In

³ Executive Order 12855, “Regulatory Planning and Review.” September 30, 1993.

<https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf>

⁴ Executive Order 13563, “Improving Regulation and Regulatory Review.” January 18, 2011.

<https://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf>

⁵ Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs.” January 30, 2017.

<https://www.gpo.gov/fdsys/pkg/FR-2017-02-03/pdf/2017-02451.pdf>

⁶ National Association of Manufacturers, “The Cost of Federal Regulation to the U.S. Economy, Manufacturing and Small Business.” September 10, 2014. <http://www.nam.org/Data-and-Reports/Cost-of-Federal-Regulations/Federal-Regulation-Full-Study.pdf>

In addition to mastering substantive details, the administrator must be adept at negotiating and finding consensus across conflicting offices and agencies within the executive branch while staying true to established principles and the president's priorities.

The OIRA administrator's job is largely inward facing, working with policy officials in executive agencies and the White House. While a regulation is under review, however, interested parties may request a meeting with OIRA and the issuing agency. These meetings with outside parties are subject to procedural and disclosure requirements. OIRA posts the meetings and a list of participants on its public website, invites the regulating agency to attend, and does not share information on the draft regulation with public attendees.

OIRA also coordinates retrospective review of regulation (which is likely to be more important given President Trump's stated goal of reducing regulations by 75%), and oversees the implementation of government-wide policies in the areas of information policy, privacy, and statistical policy. (The head of OIRA's Statistical & Science Policy Branch carries a statutory title of "Chief Statistician of the United States," which is unique for an OMB career executive.) OIRA coordinates implementation of the Information Quality Act, including agencies' peer review and information dissemination practices. The Office is also active in international regulatory cooperation efforts with key trading partners and implementation of the Small Business Regulatory Enforcement and Fairness Act (SBREFA).

OIRA also reviews and approves government collections of information from the public under the PRA. It must approve any agency requests to collect information from ten or more people, as well as any policy that requires ten or more people to retain or disclose information. OIRA reviews over 3,000 agency collections per year, which involves significant staff time but only in rare cases presents a policy issue that requires the attention of the OIRA Administrator. The PRA also includes a significant number of provisions related to information technology policy, which are now carried out in coordination with the Office of E-Government and Information Technology.

A Policy Wonk's Dream Job

The value of an institution like OIRA lies in its cross-cutting perspective and its focus on understanding tradeoffs and consequences, intended and unintended. OIRA not only coordinates regulatory policy, minimizing conflict and duplication among agencies, but, as President Obama observed, it provides "a dispassionate and analytical 'second opinion' on agency actions." OIRA's clear mission—to understand the consequences of different regulatory options before they are put in effect—attracts very capable and principled people.

For someone with an analytical mind and a wonky interest in ensuring regulatory policy is efficiently targeted at compelling public needs, the job of OIRA administrator is the best job in Washington.

Further Reading

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Cass Sunstein, “The Office of Information and Regulatory Affairs: Myths and Realities.” *Harvard Law Review*. Vol. 126 (2013)

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