

# 10 Ideas to Improve Regulatory Oversight

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Ideas for the Obama Administration”

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# Regulatory Oversight

- History: consensus in favor
  - American consensus: every US President of both political parties over the last four decades.
    - Carter: EO 12044 = econ analysis; Paperwork Reduction Act of 1980 creates OIRA
    - Reagan: EO 12291 = OIRA role re BCA
    - Clinton: EO 12866 = distributional, qualitative, risk-risk, transparency
    - Bush-43: OMB Circular A-4 = detail, scorecard; Prompts.
  - Transatlantic consensus. EU Impact Assmts, IAB.
  - Yet aspects remain contested and can be improved.
- Rationales:
  - Maximize social welfare (net benefits)
  - Improve cognitive appraisal, decision making
  - Advance the President's policy agenda
- Learning - including from US, EU experience

# 10 ideas to improve regulatory oversight

## (1) Use BCA (or IA) to say Yes as well as No.

- Historically OIRA has issued “return” letters on agency proposals to regulate when  $C > B$ . But: institutionally biased (even if analytically unbiased).
- “Prompt” letters were recently invented by OIRA to nudge agencies to act when they are not acting and  $B > C$ . But: prompt letters have only been ad hoc.
- Create a regular mechanism for BCA to say “yes” to good ideas. Options:
  - Appeals of agency denials of petitions for rulemaking
  - Advisory body to OIRA to suggest “prompt” opportunities
  - NAS panel
  - Other expert panels, e.g. among federal agencies
- OIRA should help agencies develop rigorous proposals where desirable. E.g.: food safety, medical safety, climate change, financial/credit regulation, catastrophic risks.

(2) Between cold calculus and hotheaded impulse: Adopt a principle of “Warm Analysis.”

- Evaluate the full portfolio of important impacts – including target benefits, costs, ancillary harms, and ancillary benefits
- Don’t obsess over the most precise quantification of a more narrow set of impacts, when getting the full set of impacts in view is more important
- BCA of BCA: it’s a worse error to omit a major impact than to measure an impact imprecisely
  - “Rather be roughly right than precisely wrong”
  - Recent court decisions rejecting omission of climate impacts from IAs of auto standards, coastal regs
- Compassion in evaluating impacts:
  - international (as well as domestic) impacts
  - distributional impacts, and the least-well off
  - future generations
  - Welfare vs. WTP

### (3) How much analysis?

Replace current dollar thresholds (e.g. \$100m) for levels of analytic scrutiny with the better principle of "proportionate level of analysis" (as in the EU).

- VOI vs. COI
- "Proportionate" to expected change in decision (not just to magnitude of the issue)
- Could test parallel analyses based on "proportionate" criterion and on current \$ thresholds.

## (4) Ancillary input

Strengthen the system for interagency consultation on impact assessments

- Borrow from EU Interservice Consultation model
- Include attention to cross-domain ancillary risks (both negative and positive)

## (5) Broader scope: government-wide

- Expand the scope of WH oversight to cover a broader set of policies, including not only health & environmental regulation.
- Would help rebalance the historical institutional tilt toward greater scrutiny & delay of health & environmental regulation.
- EU impact assessment process covers all major policies in the Commission Work Programme.
- Consider covering “independent” agencies (recognizing the limits on removal of these agencies’ heads)
- More broadly, the US review system should also cover: ... *[see next slide]*

## (5) cont'd - US scope should also cover:

- **Trade measures** (e.g. Sec. 201 of the Trade Act of 1974 already provides that trade safeguards must “provide greater economic and social benefits than costs.”)
- **Banking/finance/insurance.** Credit crunch. Banks, mortgage-backed securities. Agencies overseeing financial markets.
- **Forest and resource management.** NFMA 6(k): timber sales allowed on National Forests where “economically suited.” Early view of NEPA: as pro-environment BCA.
- **International agreements.** US State Department will consult with OMB/OIRA on regulatory impacts of pending new international agreements. 71 Fed Reg 28831 (18 May 2006).
- **National security & counterterrorism policies.** Stern & Wiener, J. Risk Research (2006) (updated book chapter 2008): proposes a joint effort by OIRA & NSC.
- etc.

## (6) Upstream IA

- Apply impact assessment to legislation (as in the EU), not just to agencies' subsequent implementing regulations.
- Legislative IA could be undertaken by the Executive branch, at least to inform choices
  - By OIRA
  - By relevant agencies
- Legislative IA could be undertaken by the Legislative branch
  - GAO; CBO; new office
- Could be undertaken by an independent IA body

## (7) Retrospective as well as prospective

Increase use of ex post impact assessment:

- To revise policies in light of learning
  - “Adaptive management” across the regulatory landscape
- To improve future ex ante impact assessment methods
  - Are costs overstated?
  - Is technological innovation understated?
  - Are benefits understated?
  - More dynamic analyses
- To adjust the interpretation of ex ante assessments in light of ex post validation

## (8) Let them think

Give agencies a "superauthorization" (not a supermandate) to consider:

- The full portfolio of consequences (including costs, target benefits, and ancillary impacts, both negative and positive)
- Incentive-based policy instruments to better achieve statutory goals

This may require action by Congress.

## (9) Braintrust

Create a White House “Council of Risk Analysts” to:

- Improve evaluation & management of risks across government
- Help identify and evaluate ancillary effects (both harms and benefits) of policy choices
- Help assess emerging risks, and extreme low-probability high-consequence catastrophic risks; and policy responses to such risks
- Serve as the US “country risk officer” in a global network of national risk oversight bodies (World Economic Forum report 2008)
- Consider ways to coordinate, strengthen & streamline US regulation through overall restructuring and networking among agencies

This “CRA” could be a new body, or a group of heads of existing WH officials (e.g. from OMB/OIRA, NEC, NSC, CEQ, etc.)

## (10) Strengthen international cooperation and learning

Recognize the global role of regulation and its oversight:

- Enhance US-EU transatlantic regulatory cooperation
- Expand such links to other key countries, e.g. Canada, Japan, China, Korea, India, Brazil, Mexico.
- Conduct or charter studies comparing approaches across countries. Support OECD effort.
- Policy lab: Purposefully develop and test regulatory approaches across countries; evaluate; revise.
- Include international impacts in IAs.
- Consider an international Committee of Regulatory Oversight Chairs from key countries (with transparency and accountability), in order to share information & learning and coordinate approaches.