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## Review: Pasachoff's The President's Budget as a Source of Agency Policy Control, by Jim Tozzi

by [Guest Blogger](#) – Tuesday, Aug. 9, 2016



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[Editor's Note: This is Jim Tozzi's review of [Eloise Pasachoff](#), *The President's Budget as a Source of Agency Policy Control*, 125 Yale Law Journal 2182 (2016), which originally appeared [here](#). Jim Tozzi served as a career regulatory official in five consecutive Administrations and was instrumental in the establishment of centralized regulatory review.]

Centralized regulatory review began on the "budget side" of OMB in the form of the [Quality of Life Review](#). From the onset probably the single biggest opposition to OMB assuming its new role were career budget examiners who stated regulatory review was very political and it would eventually set the stage for an intrusive oversight of the budget process.

Well it took forty five years but they were correct as witnessed by the recommendations in the following article. Consequently the author of the following article is to be complimented not only for educating the public of the very important and far reaching impacts of the "[budget side](#)" of OMB but also for setting the stage for disclosing an observation that few scholars of centralized regulatory review appreciate.

More specifically not only was the [Quality of Life Review](#) conducted by the "budget side" of OMB but there has not been a subsequent regulatory review process which could match its [force](#) because the reviewers of regulations could impact an agency's budget, legislation and personnel levels in addition to its regulations and requests to collect information from the public.

Notwithstanding an overreach in the author's recommendations for transparency the article also makes a very informed statement in one of its conclusions:

*The Article concludes with a cautionary note for OIRA's critics, who have sometimes suggested that OIRA's role in regulatory review ought to be eliminated. Because OIRA's work could be accomplished through the RMOs, which are less transparent and*

*accountable, reform – not elimination – is the better option. More generally, future analysis of OIRA's interactions with agencies should include consideration of the RMOs' complementary power.*

[RMO's are budget units on the "budget side" of OMB.]

The bottom line is not to increase the transparency requirements for either OIRA or the "budget side" because such an action will result in "grandstanding" to the detriment of EOP operations as well as detracting extremely limited staff resources from more fruitful endeavors. Finally it must be remembered that unlike OIRA decisions the budget is a proposal to the Congress—those who wish for more transparency in the budget process best take their arguments to the Congress.

We are approaching a federal debt level of \$20 trillion and no leader in government is addressing this problem in a serious manner; there is no need to shackle the few staff who are working the issue with a myriad of reporting requirements. On a much broader level when addressing issues of program reform the literature is replete with recommendations made by civil society organizations to increase the transparency of the said program but often there is a near vacuum in terms of substantive changes. To this end attempting to either diagnose or treat the financial cancer induced by an uncontrollable national debt by the use of additional reporting requirements is a diversion; in the event equity considerations are of concern such considerations are secondary to first controlling the magnitude of the deficit.

N. B. The national debt, some fifty years ago, which marked the first year of federal employment by the author of this note was \$311 billion; a debt level which reflects, as of that date, some 174 years of federal spending including the financing of two world wars. One can hardly imagine that nearly all of the current debt level of \$20 trillion was amassed over the past 50 years—the professional life span of the author— and represents a seventy fold change in the national debt.

We have little information to discern whether the increase in the cost of complying with federal regulations had a similar increase; nonetheless we are confident in our statement that the resultant increase would have been significantly greater had not the Quality of Life Review established a precedent for centralized regulatory review by OMB accompanied by the corresponding and equally important centralized regulatory review performed by federal agencies of their component parts.

[Little wonder that a parent of the author once remarked that it best his son leave federal employment since the longer he was employed the more the financial health of the nation worsened. BTW, has anyone heard either party even mention reducing the national debt during the two recent Presidential Conventions?]

**JOURNAL:** [Yale Law Journal](#)

**AUTHOR:** [Eloise Pasachoff](#)

**ABSTRACT.** A large body of literature in administrative law discusses presidential control of executive agencies through centralized review of regulations in the Office of Information and Regulatory Affairs (OIRA), part of the White House's Office of Management and Budget (OMB). Largely overlooked in this literature is how the President's budget acts as a source of agency policy control—in particular, how the White House exercises control through OMB's authority to prepare the budget, oversee agencies' execution of the budget, and create and implement management initiatives through the budget process. This Article identifies seven levers associated with OMB's work on budget preparation, budget execution, and management and shows how these levers can control agency policymaking. These levers have some salutary aspects, especially in their valuable coordination work throughout the administrative state, but they also raise a series of accountability concerns related to opacity, the extensive discretion afforded to civil servants and lower-level political appointees, and the potential for substantive policy (and political) choices to be obscured by technocratic-sounding work. The Article concludes with a reform agenda, mapping out ways that the President, OMB, Congress, and civil society should respond to these accountability problems. Future analyses of

OIRA's authority should incorporate discussion of the complementary power of OMB to use the budget as a source of agency policy control.

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This entry was tagged OIRA, OMB.

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