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## THE DAILY FEED

# Tozzi backs bolstering existing data laws over EPA 'secret science' rule

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Former White House Office of Management & Budget (OMB) regulatory review chief Jim Tozzi is opposing EPA Administrator Scott Pruitt's proposed "secret science" rule to bar use of data in decisions if it is not publicly available, countering that a more effective way to improve transparency would be to bolster two existing data laws.

Tozzi, now head of the Center for Regulatory Effectiveness that independently analyzes federal rules, told a May 2 American Bar Association (ABA) regulatory discussion that EPA should pursue its transparency goals through the Data Quality Act (DQA) and Data Access Act (DAA) rather than creating a complex new regulatory regime under a recently proposed rule.

The proposed "EPA rule that came out puts a whole new regulatory program together," Tozzi said, noting that bolstering the DQA and DAA would more efficiently achieve similar aims. "Before you come out with a new regulatory regime, be sure that [the two laws] are implemented to the fullest."

EPA is seeking comment through May 30 on the recently [proposed rule](#) that would generally require that the agency make "reasonable efforts" to ensure that methodologies, technologies and information used to support rulemaking are publicly available.

But the policy aimed at delivering on Pruitt's pledge to end the agency's use of "secret science" in rulemaking leaves significant flexibility for the agency to continue to rely on research that could otherwise be barred, such as trade secrets and medically protected data, and to address legal hurdles, such as statutes mandating use of best available science.

Tozzi told the ABA meeting that EPA's proposed rule may seek broader data validation and disclosure than could be achieved under even a strengthened DQA and DAA because the statutes' reach are limited to government funded studies. He said he is uncertain whether the proposed EPA policy may seek to require public disclosure of other data as well.

Nonetheless, Tozzi, who served at OMB in several prior presidential administrations and played a role in developing the DQA and DAA, argued that taking administrative steps to bolstering those two laws would be a more efficient path toward greater disclosure than a new regulatory regime.

While the DQA allows groups to challenge the quality of federal data, its usefulness is limited because federal judges have denied suits over DQA petition responses under the Administrative Procedure Act on grounds the responses are not "final" agency actions. And Tozzi argued that the companion DAA is seldom used because of Clinton-era policy limiting the reach of the statute to government reports with the effect of law.

Tozzi argued that the White House Office of Management and Budget could strengthen the DAA by striking the limitation to reports with the rule and effect of law. Similarly the administration could bolster the DQA by instructing the Justice Department to no longer argue against judicial review of agency responses to petitions filed under the DQA.

In a May 1 statement, CRE says, "[W]e have worked on Data Access and Data Quality issues for more than two decades but we are not supportive of EPA's" notice of proposed rulemaking on transparency and science as written, "because instead of building on the two statutes currently in existence it creates a new regulatory regime."