

Presidential Accountability in Rulemaking

Historically, presidents have implemented their policies, in part, through federal regulatory programs. One mode of operation consists of midnight calls from White House staff to agency regulators; another mode is to work through an office located within the Executive Office of the President with the charge to review regulations to ensure their compliance with the objectives of the chief executive, the statutory mandates of Congress, and rulings of the courts.

Consequently the issue is not whether a president influences regulations but instead how the task is accomplished. In that the authority of the president to review regulations before they are proposed is well established and since the record clearly indicates that eight consecutive presidents have chosen the Office of Information and Regulatory Affairs in the Office of Management and Budget (or its predecessors) as their agent for centralized regulatory review, the most fruitful discussions will center on exploiting OIRA's strengths and minimizing its weaknesses — not emphasizing its abolition or demise.

The office is a provider of a number of unique services. One of the most significant is providing a protective shield against the wholesale dismembering of regulatory agencies as a result of public opposition to overly costly and intrusive programs developed through the tunnel vision which occasionally occurs in regulatory agencies. OIRA also provides institutional protection to relevant offices in regulatory agencies charged with reviewing regulations before they are submitted to OMB.

A study of the emergence and abolition of these internal review bodies will demonstrate that their continued existence is in large part due to the presence of OIRA. In fact the office's fostering of the development of these intra-agency

review offices could be one of the most lasting impacts of centralized regulatory review in any administration. OIRA's painstaking review of the benefits and costs of a proposed regulation uncovers unsubstantiated claims which, if not corrected, could result in adverse judicial rulings; this review also provides for the maximization of net benefits to the public.

Lastly, OMB's review of regulations is a process which provides a mechanism for eliminating inconsistencies among agency regulatory programs. The harmonization of regulatory programs across government was one of the principal objectives of the Quality of Life Review established by the Nixon administration, the seldom recognized process which provided the template for centralized regulatory review by subsequent administrations.

It took twenty years and five presidential administrations to institutionalize centralized regulatory review in the Executive Office of the President. In the ensuing period, OIRA, when presented with reasoned criticism, responded in a positive manner. Consider, for example, the alleged lack of transparency in the early initial days of centralized regulatory review prior to the establishment of OIRA. The process was formed based upon the experience of individuals who worked on the "budget side" of OMB. Public participation in the budget process occurs at the congressional level, not within the Executive Branch. Lack of transparency in the formulation of the president's budget request is not seen as problem because the budget request is just that, a request not a final action.

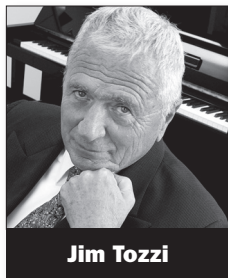
Consequently in the pre-OIRA years of centralized regulatory review, the OMB review process was patterned after the budget formulation process and therefore lacked transpar-

ency. It should be noted that the lack of transparency in the initial OMB regulatory review process, the Quality of Life Review, was taken in response to OMB's concern that opening up the regulatory process would open up the budget process. Opening up the budget formulation process was a paramount concern because from the onset a number of career officials within OMB opposed getting into the review of regulations. Consequently, the last thing the proponents of regulatory review needed was to give those within OMB who opposed regulatory review ammunition to kill the regulatory review process.

However after a number of informed discussions over a period years, OIRA undertook a number of changes in its process which led to a substantial increase in the transparency of centralized regulatory review. The point to be emphasized is that since the office is an established institution with a congressionally confirmed leader; it responds to reasoned suggestions. The considerable actions taken by OIRA to improve the transparency of centralized regulatory review is a living testament to the merits of having the office manage the process in lieu of midnight calls made by White House staff. Consequently as a result of OIRA's emphasis on transparency it discloses its contacts with a wide range of stakeholders.

The attendant disclosures would have never occurred years ago and demonstrates that a viable centralized regulatory review process must be administered by an institution amenable to change but at the same time preserves the capability of the president to manage and not simply preside over the executive branch.

Jim Tozzi served as a senior regulatory policy official in five consecutive administrations and is a public member of the Administrative Conference of the United States.



Jim Tozzi