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**REGULATORY REVIEW: MILLER'S DEPARTURE FROM OMB  
NOT LIKELY TO PROMPT CHANGES IN REVIEW STRUCTURE**

Although the chief architect of the Reagan Administration's regulatory review system has been nominated to chair the Federal Trade Commission, the structure he created at the Office of Management and Budget is likely to remain essentially unchanged.

Insiders say James Miller's duties as director of OMB's Office of Information and Regulatory Affairs will be assumed, at least temporarily, by James Tozzi, a career professional who now coordinates review procedures under Miller.

Miller's legacy at OMB is a highly centralized system of regulatory review that may radically change the way regulations are issued. Here is basically how the system works:

As with most operations directly responsible to the White House, the regulatory review apparatus functions through a three-way, support-oriented mechanism. Staffed and located at OMB, the three groups under Miller's direct control operate under the following principles President Reagan set out Feb. 17 in Executive Order 12291:

- Regulatory actions cannot be taken unless "potential benefits to society . . . outweigh the potential costs."
- Regulatory objectives of agencies must "maximize the net benefits to society."
- Agencies must review alternative approaches to all rules and choose the least costly for both consumers and business.
- Agencies must set "regulatory priorities" to better target federal actions for society and industries affected by regulation. In addition, agencies must review rules in the context of their impact on the economy in general and future regulatory activities.

Of the three groups, the one with perhaps the toughest job is directed by Tozzi, whose regulatory credentials are extensive. His group reviews the merits of each federal regulation--either proposed or in final form--and coordinates the overall review procedure at OMB.

Staffed with about 60 employees, including 20 to 25 professionals known as "desk officers," the Tozzi review group also monitors federal regulations for compliance with the Paperwork Reduction Act of 1980. Not only do the desk officers coordinate OMB's review of regulations, they also are the "point men" for contacts with agencies and departments under their supervision--a job that helps ensure consistency of information between OMB and federal regulators.

The second segment of the review triangle screens each federal regulation sent to OMB for uniform economic methodology and its potential impact on consumers and businessmen. Led by Thomas Hopkins, an economics analyst who did similar work for the Council on Wage and Price Stability under the Carter Administration, this group also is charged with reviewing regulatory impact analyses that must accompany all major rules issued by the federal government. According to OMB, a major rule is one that has an annual effect on the economy of \$100 million or more and/or substantially increases the costs and prices to consumers, individual industries, federal and state government agencies, or geographic regions.

The third leg of the operation, responsible for reviewing the budgetary impact of federal regulations, has no group leader, as such, but is staffed by OMB professionals who review agency budgets regularly. Though diffused, this group is critically important because it helps control federal spending. Tozzi and Hopkins monitor this phase together.

Typically, the review process takes about nine days but it does not necessarily end discussion on a proposed rule. If agency officials are dissatisfied with the results of a Tozzi/Hopkins review, they can appeal suggested rule changes to Miller, OMB Director David Stockman, and/or Vice President George Bush, who heads a high-level "regulatory relief" task force.

If necessary, agency heads may take concerns directly to the President, either through the Bush task force, which Reagan chairs, or one of the various Cabinet councils where most Administration policy decisions are made.

White House officials say that there have been some occasions when regulatory matters have gone to the President but these decisions have involved major Administration policy -- such as relaxation of federal emission standards for autos and steel plants. In general, "routine" squabbles over regulations will be settled by the Bush task force, a senior White House aide said.

The Bush group, formally called the Presidential Task Force on Regulatory Relief, shoulders not only the overall responsibility for the regulatory review program at OMB but also is charged with formulating Administration regulatory policy. Formed by Reagan the day after his inauguration, the Bush task force membership includes, in addition to the Vice President, the Secretaries of Treasury, Commerce and Labor; the Attorney General; the director of OMB; the chairman of the Council of Economic Advisers, and the assistant to the President for policy development, Martin Anderson.

Though Bush uses the resources of his own office and that of the various member agencies and offices, he also relies heavily on the Miller operation for support services. As a result, the regulatory review offices of Tozzi and Hopkins have been running full steam for the past four months.

According to Miller's office, his operation has received 881 regulations from 13 agencies and departments since mid-February. To date, 764 rules have been approved without revision by Miller's shop, while another 36 regulations were changed slightly to conform with the President's executive order.

In 26 cases, agencies have completely withdrawn their regulations after consultation with OMB and have 55 other minor rules under reevaluation.

In providing direct assistance to the Bush task force, the Miller operation also has been analyzing 27 existing federal regulations that might be modified to cut red tape and hold down costs to consumers and business.

In a June 6 report to the President, the Bush task force estimated the potential savings from revision of these 27 rules--dispersed among all executive branch agencies--to be between \$1.8 billion and \$2.1 billion in annual costs. The one-time investment savings alone comes to nearly \$6 billion, according to the task force report.

To some observers, both in the private sector and on Capitol Hill, the White House initiative to cut federal red tape raises some serious questions about the process of federal regulation.

Most agree that the President has ultimate responsibility for and authority over federal departments and agencies. Yet some have expressed concern over the techniques now being used by the White House to control the flow of paper and regulations.

Rep. John Dingell (D-Mich), chairman of the House Commerce Committee, for example, has expressed some of these concerns. At a recent hearing of his oversight subcommittee, Dingell said that by creating a clearinghouse at OMB where all regulation must eventually flow, Reagan may be displacing the authority of federal agencies to carry out the law.

For example, the requirement of regulatory impact analyses (RAs) on major regulations may contravene some agency powers to develop and issue rules, Dingel said. Many laws do not provide that a federal regulation need be issued only if its cost to society is less than its benefit to society, he said.

In light of the recent Supreme Court decision on cotton-dust regulation, the potentially serious question about the legality of RIAs must be addressed quickly by the White House. (Such an in-house review is being conducted now, but results are not expected until later in the summer.)

In testimony June 18 before Dingell's subcommittee, Miller said that while federal agencies -- and the independent agencies which comply voluntarily -- are expected to adhere to the principles of the Reagan order, they are "expected to adhere to these principles only to the extent permitted by law."

"If a statute expressly or by necessary implication prohibits the consideration of benefits or costs or alternatives by an agency during its rulemaking, then the provisions of E.O. 12291 imposing them would not apply," Miller said. "If a statute or a court order establishes a date for a rulemaking action, then the E.O. 12291 can't delay that action" either, he added.

"In other words, if Congress or the courts have spoken on a matter, then the executive order process will conform to that expression, not contradict it," Miller told Dingell.

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