



The Heritage Foundation  
**Executive Memorandum**

No. 813

May 9, 2002

## REGULATING THE REGULATORS: OIRA'S COMEBACK

*JAMES L. GATTUSO*

Who regulates the regulators in the federal government? For the past 21 years, that job has been the responsibility of an obscure White House organization known as the Office of Information and Regulatory Affairs (OIRA). This office reviews each major new rule developed by executive branch agencies to ensure that it is justified and consistent with the President's priorities.

During the eight years of the Clinton Administration, OIRA rarely blocked, or even slowed, proposed regulations. But since last summer, things have been different. John Graham, the former Harvard professor who took over the office last July, has reinvigorated it, taking firm stands against federal agencies that do not justify their regulatory plans adequately.

Much more needs to be done—the Bush Administration's record is far from a model of regulatory restraint—yet OIRA's renewed activity has already sparked much criticism from regulators as well as the interest groups with a stake in regulation. The key question is whether President George W. Bush and other top policymakers will give their full backing to the work of this oft-neglected office.

**OIRA plays a critical role.** Each year, the nation's approximately 130,000 regulators promulgate over 4,000 new rules. According to a recent OIRA report, annual regulatory costs are about the same as the entire federal discretionary budget: about \$2,500 per American.

Until about 30 years ago, new regulations were generated by each agency with only informal review by the White House. However, as the number of regulations and rulemaking agencies grew, the system became unworkable; Presidents became unable to oversee the quality of rulemaking or even its consistency with the policies of their own Administrations.

In 1971, to address this problem, Richard Nixon required each agency to perform rudimentary analyses of each new regulation under the direction of the Office of Management and Budget (OMB). Gerald Ford expanded on this system, as did Jimmy Carter.

In 1981, Ronald Reagan established the modern structure for the review of regulations. Under this system, all executive branch agencies were required to produce formal "Regulatory Impact" (cost-benefit) analyses of their proposed regulations. These analyses were reviewed by the newly created OIRA (a part of OMB). OIRA approval was required for a rule to

---

Produced by the  
Thomas A. Roe Institute  
for Economic Policy Studies

Published by  
The Heritage Foundation  
214 Massachusetts Ave., NE  
Washington, D.C.  
20002-4999  
(202) 546-4400  
<http://www.heritage.org>



This paper, in its entirety, can be found at: [www.heritage.org/library/execmemo/em813.html](http://www.heritage.org/library/execmemo/em813.html)

---

move forward, subject to a Cabinet-level appeal. This basic structure was maintained by the first Bush Administration.

President Clinton kept the same basic system, although—in response to concerns over secrecy—he required more public disclosure of contacts with OIRA. Throughout the Clinton years, however, OIRA became a much less aggressive watchdog over regulation than it had been under previous Presidents. From 1993 to 1999, OIRA returned, on average, only two rules per year to agencies for more work, in contrast with the over 31 per year that were returned from 1981 to 1992. None were returned during the last three Clinton years. Not surprisingly, the regulatory burden became heavier during this time; total *Federal Register* pages increased 30 percent (although the actual number of new rules was relatively flat).

**A Revitalized OIRA.** Since last year, OIRA not only has recovered its historical role, but has been more active than ever. By its own recent accounting, OIRA has:

- **Returned more proposed regulations.** Twenty proposed regulations were returned to agencies from July 2001 to March 2002—more than during the entire Clinton Administration.
- **Identified rules for review.** Last year, OIRA identified 23 existing rules that should be re-examined by agencies, and it plans to target more this year. At the same time, it has sent what it calls “prompt letters” to agencies, recommending areas for possible action.
- **Set new standards for cost-benefit analyses.** Among other things, OIRA recommends that analyses be peer-reviewed, ensuring that an outside source attests to their accuracy.
- **Accomplished quicker reviews.** OIRA is now completing its reviews in 90 days or less.
- **Increased staff.** This is an area of concern, given that regulators have outmanned OIRA’s approximately 50 staffers by some 2,500 to one, making effective oversight difficult.
- **Increased openness.** Rather than simply return a rule without explanation, a public letter explaining OIRA’s rationale is now part of each return.

**Next Steps.** The reform of regulatory watchfulness is good news for consumers. Policymakers who want to impose new regulations now have to work a little harder to justify their plans. Moreover, changes in OIRA have the potential to increase the quality of the review process, permitting better decisionmaking.

However, more reform is needed. The Administration has allowed far too many questionable regulations—on everything from the size of washing machines to drinking water—to take effect. And there are institutional challenges. As the gatekeeper against excessive regulation, OIRA will often be at odds with various agencies, which may view its requirements as bureaucratic procedural hurdles to their own agendas. Their natural inclination will be (and historically has been) to appeal directly to White House higher-ups, including the President, to bypass or overrule the process.

This situation presents a challenge for President Bush. While OIRA should not be immune from appeal, its decisions must not be easily reversible, or else—as the Clinton experience shows—it will lack the credibility and clout needed to do its job. In this sense, institution-building is as important as procedural reform in restraining excessive or counterproductive regulation. OIRA and its standards of review should become an accepted and respected part of the regulatory system, just as OMB is in the budgetary system.

To achieve this objective, President Bush must make clear to all, including his agency heads, that restraining regulation is a key goal of his Administration and that OIRA’s efforts will receive his backing. Through both words and actions, he must make it clear that regulatory review procedures are more than just another bit of Washington paperwork that can be disregarded when politically convenient. While OIRA has much more to do, it has improved the regulatory process. President Bush should take advantage of the opportunity presented by that reform.

—James L. Gattuso is Research Fellow in Regulatory Policy in the Thomas A. Roe Institute for Economic Policy Studies at The Heritage Foundation.