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Beyond Structure and Process: The Early Institutionalization of Regulatory Review

Abstract: With regulatory reform again on the presidential agenda, the history of the Office of Information and Regulatory Affairs (OIRA) provides a useful case study of organizational effectiveness. In 1981, President Ronald Reagan charged OIRA with imposing cost-benefit analysis on agency regulations, formalizing a new process of centralized regulatory review. But OIRA's effectiveness flowed less from a single executive order than from the previous decade of presidential experimentation with regulatory review and Reagan's continued investment in its institutionalization. This article draws extensively on archival documents to understand how regulatory review established itself as a constant of presidential management through the development of attributes such as staff capacity, organizational complexity, bureaucratic leverage, and reputation. Today's policymakers should heed broader lessons for enhancing organizational effectiveness: singular structural and procedural changes are necessary, but not sufficient, for achieving reform.

Keywords: presidency, regulation, regulatory review, Richard Nixon, Gerald Ford, Jimmy Carter, Ronald Reagan, Office of Management and Budget, Office of Information and Regulatory Affairs, institutionalization, executive order

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“The single constant in the American experience with regulation has been controversy,” concludes a prominent historian of that experience.¹ And while many of the rules of political life seemed suspended in 2016, this one remained evergreen: attacking regulatory overreach was one area where Donald J. Trump’s policy preferences were completely congruent with the Republican Party’s. As president, he issued an early executive order to require two regulations to be stricken from the books for every one added.² In February 2017 a new order declared that “it is the policy of the United States to alleviate unnecessary regulatory burdens placed on the American people” and directed all agencies to appoint deregulatory task forces, while yet other Trump orders told specific departments and agencies to weaken high-profile rules already on the books.³ Their first destination was the courtroom: nearly immediately, a coalition of left-leaning interest groups brought suit against the “2-for-1” directive, arguing (as per the Supreme Court’s *State Farm* decision) that rescinding regulations requires the same cost-benefit analysis as their promulgation, and that rules cannot be set aside simply to meet the constraints of an arbitrary target.⁴ By the spring of 2018, judges had rejected half a dozen efforts by the EPA to sideline extant regulations without sufficient justification.⁵

This renewed attention to regulation, and deregulation, highlighted a wide range of reforms already on the table—proposals ranged from requiring Congress to vote on making new rules effective to expanding the data required to justify new rulemaking in the first place.⁶ Many reformers hearkened to what they saw as a hugely successful Reagan-era innovation: the Office of Information and Regulatory Analysis (OIRA), tasked by executive order in 1981 with vetting the regulatory agenda and the draft rules proposed by the executive branch agencies, so as to ensure that the costs of regulations were justified by their benefits. Over time OIRA has become viewed less as a partisan tool and more as what agency observer William West calls a neutral “ideologue for efficiency,”⁷ which has made it a role model when it comes to contemporary proposals for good government. One recent iteration urges creation of a Congressional Regulation Office (CRO), mirroring OIRA as the Congressional Budget Office mirrors the president’s Office of Management and Budget (OMB). Another proposes that every state should create its own version of OIRA, using the power of regulatory review to tamp down local rent-seeking.⁸

Would this work? These and like recommendations are largely driven by questions of structure and process: they assume that replicating OIRA, whether in Washington, D.C., or Washington State, will replicate OIRA’s positive effect

on policy analysis. If we create a new box on the organization chart and create a new process that flows through it, technocratic cost-benefit analysis—“good government”—will result. After all, structure and process surely matter to outcomes. As Terry Moe wrote in an influential 1989 essay, “structural choices have important consequences for the content and direction of policy,” and stakeholders therefore fight bitterly over those choices.⁹

But this raises a broader question regarding the role of organizational design and political decision-making. Both theory and history—not least, the history of OIRA itself—suggest that other variables are of crucial importance to organizational effectiveness. Studies of the regulatory process at the state level have found, for instance, an “indeterminate effect” for procedural controls.¹⁰ More generally, scholarly discussions of institutionalization suggest that resources of other kinds must be invested to achieve effective neutral competence of the kind OIRA provides—personnel, expertise (and the money to pay for it), leverage in bureaucratic politics, reputation, and even the weight of history.

The remainder of this article shows why this is the case, and how regulatory review developed in the federal government. The next section lays out what scholars suggest is necessary for institutionalization generally, and thus for organizational effectiveness in the executive branch. I will then turn to what West called “the institutionalization of regulatory review,” but far earlier in the sequence of institutional development.

Though OIRA is hardly a household name (in early 2017 Senator James Lankford called it “the most important agency that no one has ever heard of”), it has received a wide array of scholarly attention.¹¹ Yet little of this deals systematically with the function of regulatory review prior to OIRA’s creation. This article fills that void by using extensive archival documentation to show how centralized regulatory review solidified its place in American government from the late 1960s to the early 1980s.¹² Though the research is specific to one agency, its implications speak to organizational behavior and authority writ large—and show that structure and process are necessary, but not sufficient, to promote effective reform. In his attempts to resuscitate regulatory relief, President Trump would do well to pay attention to that history.

THINKING ABOUT INSTITUTIONALIZATION

A week after the 1984 election, OMB deputy director Joseph Wright exhorted those thinking about the long-term impact of the Reagan Revolution to “get it institutionalized or it will not survive in Washington, D.C.”¹³

Wright meant that the administration needed to create routines embodied in organizations that would perform the managerial tasks he wanted to prioritize—and would be expected by others to do so, such that they would outlast the Reagan presidency and become “normal” for future administrations. As such, he was in tune with broader scholarly approaches along these lines. Institutions can be structured in statute—even in Constitution—constraining and empowering political actors, as when the duties and rights of the presidential office are shaped by historical precedents of law, prerogative, and circumstance.¹⁴ But recurring interactions in and between organizations can also become “institutions”: as Samuel Huntington put it five decades ago, “Institutions are stable, valued, recurring patterns of behavior.”¹⁵

The obvious question, then, is how organizations or procedures acquire that value and stability. For Huntington, it is through gaining “adaptability, complexity, autonomy and coherence.”¹⁶ Nelson Polsby’s well-known definition is similar: an organization that is institutionalized is well bounded (again, has autonomy), internally complex (creating what Graham Allison would later term “standard operating procedures”), and universalistic (i.e., following impersonal rules rather than favoritism or nepotism).¹⁷ More recently, Daniel Carpenter’s work on bureaucracy generally, and on the history of the Food and Drug Administration specifically, adds reputation—and its own potential to institutionalize organizational power—to the mix. Carpenter argues that “reputation and power institutionalized” springs from positive beliefs about the “capacities, roles, and obligations of an organization” among that organization’s “audience networks.”¹⁸ In a sort of virtuous circle, over time an agency can build a reputation for autonomy and then protect that autonomy through reputation.¹⁹

These characteristics do not apply perfectly to regulatory review—which, after all, was embodied in various organizational forms and via different legal authorizations from the 1970s onward—but they help us think about the resources necessary for a process to obtain “value and stability” and thus for a reform to institutionalize. They serve as a useful guide to the observable implications arising from a process of institutionalization in the function’s history. To wit:

- Organizational capacity, in terms of staff and expertise (and the money to pay for them);
- Organizational leverage, in terms of the legal or *de facto* ability to demand (or prevent) action, and to sanction others for noncompliance;

- Organizational complexity, such that proprietary internal processes are established in a way that establishes “value”—positively, by setting expectations, and negatively, by making it more costly to shift functions to another actor; and
- Organizational reputation for using these resources well—a reputation for “skill and will” which then reinforces autonomy and becomes a resource in its own right.²⁰

How do these play out in the early history of presidents’ efforts to build their capacity for regulatory review? It is to that history we now turn.

REGULATORY REVIEW BEFORE REAGAN

The expansion of the American regulatory state has been well documented, from the genesis of independent regulatory commissions in the late nineteenth century to the “alphabet soup” of new agencies during the New Deal to the wave of rulemaking in the 1960s and 1970s extending protections to workers, consumers, and the environment.²¹ The present narrative begins as concerns about the costs that regulation might impose on business and the macroeconomy gained traction.

Hoping to neutralize a Democratic edge on environmental issues in advance of his reelection campaign, Richard Nixon had created the Environmental Protection Agency (EPA) in late 1970. At the same time, he was conflicted about what the EPA actually wanted to do: while the agency’s budget in fiscal year 1973 was \$2.4 billion, its regulatory actions under the Clean Air Act mandated some \$65 billion in nonfederal spending.²² Thus the White House set up a Quality of Life Committee tasked with ensuring that “suitable analyses of benefits and costs” were conducted and that EPA took into account the worries more business-friendly government agencies had about its aggressive rulemaking efforts.²³

Cost-benefit analysis of regulation had begun to gain traction in parts of the federal government in the mid-1960s. In this case the impetus came from the Flood Control Act of 1936 (which authorized Army Corps of Engineers projects only when the projects’ benefits exceeded their costs); from a young economics PhD named Jim Tozzi; and from a policy paper that urged extension of cost-benefit analysis to the Corps’ regulations as well as its projects.²⁴ Tozzi, who headed the Secretary of the Army’s Systems Analysis Group, pushed his group to do just that, beginning a career as a bureaucratic entrepreneur preaching the gospel of cost-benefit analysis in several roles over time.

Most immediately, the work done in the 1960s in developing applicable methods and expertise would have important spillover effects when Tozzi and his colleagues moved from the Pentagon to OMB. Tozzi became chief of the Environment branch in 1972, parachuting into OMB's expanding responsibility for what became known as the Quality of Life Review (QLR).

In May 1971, OMB director George Shultz had written to EPA claiming the authority to oversee its regulations, building on his agency's long-standing authority to coordinate budget requests, draft legislation, testimony to Congress, and executive orders.²⁵ In October a brief memorandum from Shultz to department heads across government sought to extend that central clearance to "proposed agency regulations, standards, guidelines and similar materials" where those had "a significant impact on the policies, programs, and procedures of other agencies" or "impose significant costs on, or negative benefits to, non-Federal sectors." Analysis had to be accompanied by a "comparison of the expected benefits or accomplishments and the costs (Federal and non-Federal) associated with the alternatives considered."²⁶ That remains the template for regulatory review today.

OMB, then or later, could not claim decision-making power to approve or veto proposed rules directly: authority to promulgate regulations is normally delegated in statute to a specific department head, not to the president. Further, the Administrative Procedure Act (APA) constrains the process by which regulations are drafted, published, and made effective. Even so, the QLR set the groundwork for future attempts at regulatory review. Because it was conducted by the same personnel who put together agency budgets, and because it had strong White House backing (according to Tozzi, he reported directly to Domestic Council aides),²⁷ the QLR process gave OMB informal leverage over bureau behavior. And since it included not just draft regulations but "standards, guidelines and similar materials" too, it was harder for agencies to hide behind the APA. "We made a lot of changes," Tozzi recalled. "When a regulation went out of OMB, it was lean and mean."²⁸ Indeed, what Tozzi later termed the "force and depth" of the QLR template was arguably unique.²⁹

That said, its *breadth* was quite constrained. While Shultz's memorandum theoretically applied to most regulations, the EPA was clearly its main and often its only target. "In practice this requirement has been routinely imposed only on" EPA, that agency's assistant administrator complained to OMB.³⁰ Indeed, OMB's examiner for the Food and Drug Administration—in sharp contrast to Tozzi and his colleagues in the Natural Resources Division—reported that he "simply ignored" the QLR memo.³¹ Not surprisingly, this was

contentious; EPA charged that the reviews delayed regulations past statutory deadlines; that staff resources were “divert[ed]” to the interagency process; and that OMB’s “coordinating role . . . has caused a diffusion of responsibility, transferring a significant degree of control over the regulations from EPA to OMB and subordinate officials in other agencies.”³² Observers documented “heated arguments between EPA and the Department of Commerce, . . . with OMB at times playing a mediating role and at times pressing its own institutional interests.”³³ Complaints arose then (and certainly later) that cost-benefit analysis was skewed toward highlighting regulation’s costs and downplaying its benefits.

Still, Gerald Ford kept QLR, and added new procedures. With inflation topping 11 percent in 1974, he required agencies to issue “Inflation Impact Statements” (IIS) to accompany their “major” regulatory or legislative proposals. The IIS process was monitored by OMB’s General Government Division and the new Council on Wage and Price Stability (CWPS), which Congress had told to “review and appraise the various programs, policies, and agencies” contributing to inflation.³⁴ CWPS officials also testified at agency hearings as rules were being considered.

The IIS process overlapped with QLR to the extent that EPA regulations were among those subject to comment. But generally the QLR interagency process took place before rules were formally proposed in the first place and continued to be administered by the budget side of OMB without CWPS participation.³⁵ As far as EO implementation went, in mid-1975 OMB director James Lynn told the president that agencies had “responded . . . in mixed fashion. . . . We have had difficulty keeping the emphasis of impact analyses on careful decisionmaking, rather than legal procedures,” and in avoiding overlong delays.³⁶ The executive order did not define “major,” a loophole that delighted rule-writers. James C. Miller III, then a CWPS economist, recalled that “I’d call up an agency and say ‘we just saw this morning in the *Federal Register* a regulation you published. We think it is a major rule which requires an IIS.’ They’d say ‘no.’ And that was the end of the conversation.”³⁷ Thus a late 1976 report from CWPS to Ford noted the need for “formal directives that require agency compliance” if regulatory review were to gain effective scope.³⁸

As it turned out, Jimmy Carter was eager to supply those directives. Six weeks into his presidency Carter bluntly declared that “one of my Administration’s major goals is to free the American people from the burden of over-regulation.” Where rules did not “protec[t] the public interest” but instead harmed competition or discouraged innovation, “we will eliminate government regulation.”³⁹ QLR itself was phased out—but Carter wanted a bigger system altogether.

Mr. Carter Goes to Washington

By the summer of 1977, Carter's OMB had proposed a range of regulatory process reforms, including mandating a review of existing regulations with an eye toward sunseting outmoded ones, emphasizing "adequate consideration of the consequences of new regulations," and enhancing public participation in regulatory development.⁴⁰ Charles Schultze, then chair of the Council of Economic Advisers, worked with OMB and CWPS to come up with an executive order implementing "regulatory analysis," a phrase designed (in Schultze's words) "to sever any connections with the much-criticized [IIS] program of the Ford Administration."⁴¹ The new idea—or new version, anyway—was to require agencies to prepare a comprehensive analysis of the proposed regulation as well as of alternative approaches the agency had considered, to be issued when the rule went out for public comment. (Further, a major rule would now be defined, generally as one with an annual effect on the economy of \$100 million or more.) To prevent what Schultze called "pro-forma" analysis by the agencies, "generating paperwork but having no impact on the quality of regulations," an interagency Regulatory Analysis Review Group (RARG) would conduct supplemental analysis on ten to twenty selected rules each year. "This group has *no authority* to order changes in regulations," Schultze stressed to Carter, but its review would be part of the open record as a way of providing public pressure within the strictures of the Administrative Procedure Act.⁴²

The agencies groused, and EPA administrator Douglas Costle even played the Nixon card: "Reintroducing too close an analogy [to QLR] only nine months after the old system ended will probably be misinterpreted and actually hinder reform."⁴³ But on March 23, 1978, Carter issued Executive Order 12044. Schultze noted that while many of the agencies would prefer no process, "almost all agree that if such a process is to exist, this approach is acceptable." Intriguingly, the administration had also sent the order out for public comment via the *Federal Register* as if it were itself a regulation—the first time (and the last?) a draft executive order had been handled in this manner. More than 350 letters came back. One, from the chairs and ranking members of six Senate committees and subcommittees, urged that independent regulatory commissions (IRCs) be excluded from the order so as not to "violate the intent of Congress that the Executive Branch not control the rules these agencies issue."⁴⁴ OMB director Jim McIntyre didn't agree legally, but did argue for political prudence: including the IRCs "would provoke a confrontation with the Congress and attract attention away from the substantial improvements the Order can make in the management of regulation in the executive branch."⁴⁵

"Avoidance of Regulatory Analysis"

On the eve of his order's issuance, Carter handwrote a note to McIntyre: "Jim: Devote top effort to enforcement. I will help you personally."⁴⁶ Despite this plea, implementation of the order would be inconsistent. (By the fall of 1978, Carter domestic staffer Stu Eizenstat was already complaining to the president that OMB was not doing enough to "demonstrate fulfillment of your commitment to discipline the bureaucracy.")⁴⁷ Even so, the Carter years built the organizational foundation his successor would build on. They taught OMB analysts what questions to ask and what agency evasion tactics to forestall.

OMB's guidance to department heads demanded more public participation, regulatory language in "plain English," and effective senior-level policy oversight, so that the presidents' political appointees were not blindly approving regulatory proposals generated lower in the civil service. "What improvements, if any, were made as a result of better policy oversight?" McIntyre asked the agencies. Was regulatory analysis completed early? "Was the least burdensome of the acceptable alternatives chosen? If not, were the reasons provided to the public?" Were agencies seeking "to help weed out unnecessary regulations and to improve essential ones"?⁴⁸

The "grades" given to the Department of Health, Education, and Welfare by OMB in 1979 suggested they were not. Responses to an early report attempted to be gentle—"since this was HEW's first attempt at producing a complete agenda . . . some problems were to be expected"—but accompanied a lengthy document enumerating "many deficiencies" even so. What was the statutory rationale for new regulations? Why were so few undergoing regulatory analysis? What was the rationale for choosing particular rules for review rather than others?⁴⁹ In June, HEW submitted a new report, more than a month late: an "analysis of our first year implementation" of the order. OMB's readers marked it up with scribbled question marks and comments such as "not true," "not certain," and "only at OMB request." HEW needed "improved responsiveness to OMB" and more effort in calculating the costs of regulations. HEW's "greatest weaknesses of [its] 12044 practices" were pretty fundamental: "avoidance of regulatory analysis." (And, someone added, "poor general attitude.") The file recounted that one thing in HEW's favor was the "absence of public complaints" but concluded, "there is little other evidence of significant progress."⁵⁰ Talking points for a meeting scheduled with HEW Secretary Joseph Califano stressed that "regulatory analysis is HEW's weakest area," and that the department had, "in OMB's view, avoided undertaking several

analyses when they should have been developed.” The OMB interlocutors were to tell the secretary that “the president must be able to point to specific results.”⁵¹

Yet with all that, HEW was “in the top third of all Departments.”⁵² By May 1979, McIntyre conceded that “collectively we have not done enough to show major progress.”⁵³ Just five regulations were “RARGeD” in 1978, five in 1979, and eight in 1980.⁵⁴ Still, the president’s men continued to think about strengthening regulatory review. In the fall of 1978, McIntyre, Eizenstat, and Schultze drafted an enhanced directive that would have asserted the president’s authority to make final determinations on the issuance of regulations—this “caused consternation in the regulatory community” and never went past draft form.⁵⁵ The same memo’s proposals for an enforceable regulatory calendar morphed into a far weaker demand for regular reports from a Regulatory Council dominated by the agencies themselves. But in February 1980, OMB’s division heads were told to plan for more to come in the hoped-for second term. One proposal was to require an annual “regulatory budget,” which would “credibly estimate (1) benefits, (2) immediate costs, or (3) later costs if nothing is done” and, ideally, “be used to terminate regulations that are no longer needed[.]”⁵⁶

Meanwhile, Carter was seeking statutory authority for EOP regulatory analysis, in order to codify his executive order; as Jim Tozzi later put it, he “didn’t want the fluke of an election to overturn centralized review.”⁵⁷ In the event, of course, the 1980 election would only expand that review. That, in turn, was helped along by the Paperwork Reduction Act of 1980, a new vehicle that proved very maneuverable indeed.

Paperwork Control and Regulatory Review

The 1942 Federal Reports Act (FRA) emerged from the huge growth in government information collection efforts in the New Deal. It put OMB in charge of approving forms and questionnaires that agencies sought to issue, making sure they were necessary and not duplicative.⁵⁸ As a side benefit, the FRA could be useful leverage for other management purposes. In one 1980 case, OMB director McIntyre wrote to EPA posing a Hobson’s choice: Would the agency like to have its information-gathering efforts stopped? Or instead to submit a regulation for OMB analysis? “I would appreciate your views with respect to which of the aforementioned alternatives you prefer we pursue,” McIntyre wrote.⁵⁹

Various efforts to update the FRA—which exempted the Internal Revenue Service and thus more than half of all federal paperwork—led first to a

Carter executive order and then to the Paperwork Reduction Act (PRA).⁶⁰ The order demanded that each agency prepare an annual “paperwork budget” detailing the number of hours required to comply with its requests; OMB was charged with approving those budgets, and with publishing an annual calendar compiling the governmentwide total.⁶¹ The law, though, gave OMB far more authority. Having eliminated many of the FRA’s exemptions, the PRA allowed OMB to squelch any information collection instruments it deemed unreasonable, including regulations that themselves required the collection of information. The PRA created an Office of Information and Regulatory Affairs (OIRA) within OMB to manage all this.

Not surprisingly, OMB was on board, testifying before Congress that “improving the management of Federal information is not a controversial issue.”⁶² Tozzi himself made frequent appearances behind the scenes on the Hill, pushing fervently but mostly covertly for the bill’s passage—he earned the nickname “Stealth” (like the bomber) for his hidden but effective efforts to forestall agencies’ demands for exceptions to its mandates.⁶³

Indeed, the Cabinet strongly recommended Carter veto the PRA when it came to his desk in December 1980. Treasury did not like losing its monopoly over tax forms; Defense complained generally that “the Bill creates a more powerful bureaucracy in OMB”; and Labor argued (rather presciently) that “the regulatory process will be unduly slowed by the imposition of the paperwork requirements.”⁶⁴ But sticking to his antiregulatory guns, Carter signed it into law.

THE REAGAN RENOVATION

In early February 1981, President Ronald Reagan was told that “the staff of the Task Force and OMB have been developing an executive order” to replace Carter’s EO 12044, “which has proven totally ineffective.”⁶⁵ Even those who gave Carter credit argued that his contribution was mostly procedural, not substantive; Jim Miller, the former CWPS economist named by Reagan to lead OIRA, wrote to OMB deputy director Ed Harper that “the Carter program made some advances, primarily in terms of cost accounting and paperwork reduction. . . . It did *not* make much of an inroad into the substance of regulations (it was ‘business as usual’).” By contrast, Miller promised, “Our program will build on the successes of the accounting and paperwork reduction programs and, for the first time, make real changes in the substance” of regulations.⁶⁶

But it should already be clear that this protests too much. The PRA did provide new authority to constrain agency paperwork—handy, since few regulations fail to generate paperwork. Even so, this nominal power needed to be made tangible—and doing so quickly was only possible because many of the resources noted at the outset already served as a scaffolding that Reagan could cement together. James Anderson argues that “the Carter administration’s efforts and experiences collectively constituted a substantial legacy for the Reagan administration in devising its regulatory management program.”⁶⁷ Proximate practitioners agreed. Ford OMB director James Lynn praised, for instance, “some of the things that Carter’s administration did by way of putting that regulatory review function at OMB. Now the Hill hated that thing, particularly the Democratic side of the Hill hated it—but it was a Democratic president that put that in. We couldn’t have done it.”⁶⁸ And regulatory review entrepreneur Tozzi puts it similarly: “When Reagan issued the executive order, we had an infrastructure, which is very important. . . . We had a system in place.”⁶⁹

To be sure, Reagan propelled that system forward with gusto. On January 22, 1981, he announced the formation of a Presidential Task Force on Regulatory Relief, to be chaired by Vice President George Bush, with Jim Miller as executive director. (The shift from regulatory *reform*, to *relief*, would also be reflected in July 1981 revisions to the standard OMB Budget Examiner’s Handbook.)⁷⁰ A week later, on January 29, Reagan announced a freeze on pending regulations. And on February 17, he issued Executive Order 12291. Here Reagan had to walk a familiar tightrope. As Peter Shane, then in the OMB general counsel’s office, wrote: “Our policy aim is to give the Director some measure of leverage over the regulatory process without purporting to authorize OMB to disapprove regulatory officials’ exercise of their statutory discretion.”⁷¹

In distinct contrast to the Carter administration’s inclusive consultation process, the new text was tightly held among a small group of OMB, CWPS, and White House staff. The first draft distributed for wider review went to the departments around 8 pm on Friday, February 13—demanding comment by 11 am on Monday. Monday was Presidents’ Day, and more than one Cabinet secretary had trouble tracking down staff over the three-day weekend; many responses were not submitted until Tuesday, February 17.⁷² Department lawyers, summoned to the White House that day, assumed the text was a draft still ripe for revision. When they reached the last page, though, they found President Reagan’s signature already affixed.⁷³

There was reason for the power play—as word spread about the new order, so did agency objections. A memo to the new Secretary of Agriculture warned that the draft was much like EO 12044 but also placed “considerably more of the management function at OMB.” With a marked lack of bureaucratic solidarity, the secretary was informed that “the target of this executive order appears to be those agencies that are out of control with respect to unnecessary regulation. This criticism is justified when referring to certain independent agencies such as EPA, FTC, etc.”—but not, of course, USDA.⁷⁴ Another department’s phone call to the White House was blunt: “The Secretary of Transportation is strongly opposed to the proposal as written,” arguing that it would lead to lengthy delays, that OMB was not competent to conduct such reviews anyway, and that it represented “over-centralization” (contrary to the “Cabinet government” the president claimed to want). Even UN ambassador Jeane Kirkpatrick weighed in: “No attribute of OMB’s composition fits it to make the technical and political determinations involved here.”⁷⁵

But that conclusion disregarded OMB’s extant expertise, built over the previous decade—as well as Reagan’s willingness to back it up. As two heads of OIRA later wrote, the president saw the centralization that the agencies decried as the only way to encourage policy coordination, “greater political accountability, and more balanced regulatory decisions.”⁷⁶ As issued, Executive Order 12291 required all executive branch agencies (though not the IRCs) to submit both proposed and final draft regulations to OMB. “Regulatory action shall not be undertaken,” it went on, “unless the potential benefits to society from the regulation outweigh the potential costs to society” and the choice of regulation maximized the “net benefits to society.” Major regulations required formal “Regulatory Impact Analyses” to be completed.⁷⁷ Existing rules were also subject to review, if the director designated them as “major.” OIRA could not override a firm departmental decision (except on paperwork matters), but the order did give it the power to use a delay-based variant of veto bargaining. Meanwhile the rest of the review infrastructure, as institutionalized over the next several years, gave it the power to withstand the immediate, and fierce, opposition that arose from members of Congress and their affiliated interest groups.⁷⁸ During Reagan’s first term, OIRA further developed the key attributes noted earlier: staff capacity, internal complexity that gave the organization value and autonomy, intra- and inter-agency leverage, and a reputation for having all these things. In short, it institutionalized.

Capacity

OIRA's most basic infrastructure, its staff, did not have to be built from scratch. Instead it sprang to life nearly fully formed as the sum of three extant offices.

As early as 1977, OMB had created a division of Regulatory Policy and Reports Management organized around "desk officers" who oversaw groups of related agencies. In 1980, those desk officers became the heart of a new Office of Regulatory Information and Policy (inevitably termed "RIP") that brought together regulatory specialists from both the budget and management sides of OMB.⁷⁹ Then, in 1981, the forty-five people in RIP became the heart of the new OIRA. They were joined by a cadre of twenty or so regulatory analysts taken from the now-defunct CWPS and by a group of two dozen statisticians moved from the Commerce Department to OMB.⁸⁰

Jim Miller, as noted, became OIRA administrator, with Jim Tozzi and CWPS director Thomas Hopkins as his deputies. The RIP staff (under Tozzi) became three management branches devoted to regulatory policy, information policy, and reports management; the others (under Hopkins) became two "analysis" branches covering regulatory and statistical analysis. The division between regulatory "policy" and "analysis" was somewhat artificial. But it reflected the separate history of CWPS and the need to accommodate both Tozzi and Hopkins (who were allies rather than rivals), as well as Miller's belief in what Tozzi termed the "sanctity of the economics profession" in regulatory analysis.⁸¹ It also enabled a loose functional divide: the idea was for Hopkins's division to organize not by agency (as did the desk officers) but around regulatory problem areas that cut across agency lines, focusing on highly controversial and costly regulations. The analysis branches also staffed the Vice President's Task Force. Throughout, analysts worked closely with the desk officers, buffered from direct agency contact while providing detailed scrutiny of select rules. The formal divide ended in May 1983, when Hopkins and Tozzi left government; at that point the two divisions merged under a single deputy administrator, longtime OMB counsel Robert Bedell.

As soon as OIRA was created, it sought more staff and more space. Just six days after EO 12291's issuance, Tozzi wrote to the White House's Office of Administration asking to "expedite the hiring of personnel for OIRA," and the requests kept coming. At a February 1981 meeting, Miller said that "the nature of our responsibility is increasing to the extent we need as much staff help as we can possibly get."⁸² At that point OIRA had about 75 staff, but said it needed 93 just to keep up with "current services" and could use as many as 140.

The office peaked later that year with just under 90 full-time staff, plus 9–10 part-time reinforcements.⁸³ They kept busy. In the month of February 1981 alone, records show that the desk officers dealing with education, housing, and labor met with departmental staff, congressional aides, other parts of OMB, and even with school principals; attended various agencies' public hearings and working sessions; reviewed options papers; screened resumes; and joined a pilot program on whether to adopt OMB-wide word processing.⁸⁴ The agency estimated that in fiscal 1983 it would have to review 4,200 regulations, 7,800 requests to issue forms or gather information, and help “the Vice President . . . reform the regulatory process, stop burdensome new regulations, and ferret out existing regulations with unwarranted cost and complexity.”⁸⁵

For this OIRA needed expertise as well as mere bodies. Recall Polsby's point that rules, to be institutionalized, must be universalistic rather than subjective. Here, that reflects the (imperfect) evolution of a discipline of cost-benefit analysis applied impartially across policy areas.⁸⁶ The agencies and their congressional allies complained that OIRA did not have the technical expertise to evaluate highly complex regulatory proposals, and there was some truth to this. Early on, for example, Tozzi was warned that radiation rules about to emerge from EPA were very complicated: “The staff knows relatively little about them” and if OIRA wanted to weigh in substantively it would need to “devote a large block of CWPS [i.e., “analysis”] staff time to studying the rules and developing recommendations.”⁸⁷

Thus trade-offs in finite staff resources were a fact of life. OIRA was not, and would never be, big enough to cover all aspects of all topics. But on the one hand, it sought to use its placement in the White House orbit to draw on experts both in other parts of OMB and in presidential staff offices such as the Office of Science and Technology Policy and the Council on Environmental Quality. On the other, it sought to build up its own specialized competencies. Even under Carter, OMB's vacancy announcements seeking “leadership in the agency implementation of Executive Order 12044” prioritized skills in both research design and analysis in fields such as “economics, statistics, mathematics, law, or administrative law.”⁸⁸ The need for quantitative skills, not surprisingly, ramped up with the more formal imposition of cost-benefit analysis in 1981, and new ads demanded “demonstrated analytical ability . . . [with a] background in economics, statistics, mathematics, financial analysis, or other quantitative analytical training.”⁸⁹ By then most OIRA staff already had advanced degrees (including seventeen PhDs, in economics, math, statistics, and physical and social sciences).⁹⁰

Organizational Complexity

Beyond people and desks, OIRA needed to gain authority. As noted above, that flows partly from complexity: the development of effective routines allows assigned functions to be carried out in a meaningful way and makes others reliant on those routines, giving value to the organization. Thus Miller quickly issued a series of more than a dozen “Standard Operating Procedures Memoranda.” Number 5, for instance, decreed that “whenever meetings are held to which staff from executive agencies are invited, the relevant [OMB] Budget Examiners should also be invited”; #9 said that recommendations on regulatory action should be checked with “the ‘other side’” to better integrate the ex-RIP and -CWPS staffs.⁹¹ The agency had to develop a range of prosaic forms and systems dealing with regulatory submissions, docket worksheets, correspondence, and response deadlines. It needed to define terms laid out in the executive order and decide what needed to be kept on the public record, what outside contacts were allowed, and how to coordinate within OIRA and across OMB.⁹² Soon a retiring regulatory analyst was asked to produce a written manual of procedures codifying his institutional memory.⁹³ One of OIRA’s assets over time, in fact, was expertise in the regulatory process itself, something that became more valuable as that process became more complicated.

OIRA also had to channel interactions with its “constituents” in the wider executive branch. In deliberations over how to word a memo regarding the implementation of Reagan’s order, OMB staff noted that “agencies continue to be concerned about the extent of the OMB role—which should lead us *not* to flaunt the new power available to us.”⁹⁴ But they warned Miller to be on the lookout for agencies looking to evade regulatory review—for instance, by giving “informal guidance via administrative notes” rather than by rulemaking.⁹⁵ Later OIRA found that agencies sought to overdesignate “emergency rules,” or split up “major” rules into several smaller ones, or try—subtly, or not—to get courts to order them to do things that OIRA would not have approved otherwise.⁹⁶ The extension of central clearance to regulations, though, did come with advantages to the agencies, since OIRA’s facilitation of interagency review gave them advance notice of (and the ability to weigh in on) other bureaus’ rulemaking initiatives.

OIRA’s first effort at Regulatory Impact Analysis Guidance in 1981 stressed that agencies needed to “enabl[e] independent reviewers to make an informed judgement that the objectives of EO 12291 are satisfied”—making the case for action over inaction, to start with, and moving to the benefits and

costs of competing options and different “stringency levels.”⁹⁷ Over time, OMB sought to both improve cost-benefit analysis generally and foil agency shirkers. “What have we learned about reforming existing regulations?” OMB asked itself during its regular spring review in 1982. “What measures do we have of the cost-savings due to Administration reform efforts?” Conversely, “Is there any evidence that the Administration’s actions have reduced the benefits of regulations?” And “should OMB begin to hold agencies accountable for the accuracy of the content and timetable in their agendas?”⁹⁸ This last question ultimately led to the issuance of a new executive order in January 1985 on the “regulatory planning process,” requiring each agency to provide an accounting of its “regulatory policies, goals, and objectives for the coming year” and “all significant regulatory actions underway or planned.”⁹⁹ As noted above, something similar had been discussed in the Carter administration, but not implemented.

Under the new order, OMB was authorized to reject rules not included in an agency’s regulatory calendar unless they arose from new statute or judicial order. Too often, OMB staff argued, “EO 12291 review . . . comes too late,” after the agency had already invested time and money in developing a new regulation, complete with commitments to constituency groups and legislators. “Agency heads will now have an annual review process within their organizations, for them to set the agency’s priorities and assure that regulations are consistent with administration policy.”¹⁰⁰ The ability to backstop this added to OIRA’s repertoire, and to its autonomy—the more it was needed by others, the more “value” (in Huntington’s sense) it attained.

Leverage

OIRA took another helpful shortcut to institutionalization: as part of OMB, it could piggyback on long-standing relationships with every agency in the executive branch, linked to budgeting since the 1920s and to managing the formulation of legislative proposals and executive orders since the 1930s. During debate over the PRA, OMB had opposed creating a new, statutory office, worrying that it “would isolate these functions from other OMB responsibilities [and] prevent the balancing of competing interests.”¹⁰¹ But in practice there was not much isolation. Having used the EPA budget as a regulatory weapon in the Nixon years, Tozzi, for one, knew the score. OMB was now “sort of a full-service bank,” he noted. “The government works using three things: money, people, and regulations; the agency must get all three through OMB.”¹⁰²

OIRA leadership reached out to the budget divisions very early on.¹⁰³ As one desk officer later noted—in a memo with the marvelous title “Response to Request for Material for OIRA’s ‘We Need More \$\$’ Briefing Book”—regulations “often contain significant budget issues.”¹⁰⁴ OIRA was happy to hold up rules in ways that built intra-OMB capital: an Education rule, for instance, received an extension “requested by OMB budget staff . . . [who] wish to consult with their [division head]. They believe the rule . . . is unnecessary and programmatically unsound.”¹⁰⁵ In another case, “by refusing to find regulations consistent with EO 12291 until EPA had satisfied [the Office of Federal Procurement Policy] and [the Budget Review Division], we in effect gave teeth to” an OMB management directive.¹⁰⁶ There was help from the top, too: David Stockman, Reagan’s first budget director, fully supported deregulatory efforts. And Stockman’s successor was none other than Jim Miller, who went from OIRA to the FTC before returning to head OMB in 1985.

Still, OIRA also needed help from above—and leaned into its ability to call on White House support. As Miller told his staff in May 1981, “While I gather that most agencies have been very cooperative with the desk officers . . . please provide me with the names of recalcitrant officials, dates, and, preferably, written evidence of their lack of cooperation. I will take this matter to higher levels.”¹⁰⁷

To make sure those higher levels would listen, Miller staffed the Vice President’s Task Force with OIRA personnel while making sure that White House aides were given frequent updates about rules in the pipeline and an opportunity to weigh in on them. Miller worked with OMB deputy director Ed Harper to create “an early warning system” to give an “opportunity for White House reaction” to pending regulations; “we must have a system which does get their input,” Harper agreed.¹⁰⁸ Soon there were regular “Status Report on Regulatory Relief” memos from Miller to the vice president and the OMB director, along with “regulatory activity highlights” and “regulatory news bulletins.”¹⁰⁹

OIRA’s goals were of course congruent, though not identical, with Reagan’s political preferences, and agencies knew it. If they didn’t, they learned: the vice president and White House senior staff were very much in the loop. Ed Meese jumped in more than once to fight “significant backsliding” from “the President’s strong deregulatory philosophy.”¹¹⁰ Indeed, when an OSHA regulation was sent to the *Federal Register* without clearance, Joe Wright complained to Meese of a “run on E.O. 12291” and warned that “a premeditated attempt to circumvent a Presidential Order should not be allowed to go unnoticed. I would strongly suggest that you bring in [OSHA]

and [the Secretary of Labor] and that we have a very serious discussion.” He reminded Meese that “last year, we brought in several administrators . . . to have ‘religious sessions’—I certainly think another one is required in this case.”¹¹¹

To be sure, OIRA didn’t always win even its pitched battles.¹¹² But the ability to summon West Wing deities made clear to agencies that the regulatory review process was here to stay—in practice, not just on paper.

Reputation

Inheriting OMB’s history was also useful in acquiring some of its reputation for neutral competence and bureaucratic sway. OIRA, in its own right, sought to build a reputation both for competence and for something like ruthlessness, or at least a willingness to use its various forms of leverage—“a Charles Atlas transformation,” as the *Washington Post* put it.¹¹³ One scholar of the process found that “my efforts and those of other researchers to extract information from officials about cases in which OMB caused a regulatory proposal to die provoked a kind of *fear*, even panic.”¹¹⁴ As OIRA administrator Jim Miller told Congress in 1981, “You know, if you’re the toughest kid on the block, most kids won’t pick a fight with you.”¹¹⁵

Frequently OIRA’s fights were with agencies, about substance or timing. Sometimes, though, as the office sought autonomy, they were with other parts of Executive Office of the President or even OMB. Analysis, not politics, was OIRA’s beat: thus one OIRA staff member recalled pushing back when OMB director Stockman would push for “an unjustifiable change” in a proposed regulation.¹¹⁶ But there were less exalted turf wars too—as when, a few years later, OIRA administrator Wendy Gramm was urged to hold her ground against a new PAD who had just arrived from the White House and was cutting unilateral deals with Health and Human Services about budget-related regulation.¹¹⁷

Other threats came from Congress. Legislators (mostly, but hardly exclusively, Democrats) had long been concerned with White House interference in agency rulemaking; congressional solicitude for the independent regulatory commissions was one reason IRCs had been spared from regulatory review all along the line. Starting in June 1981, Rep. John Dingell (D-Mich.), chair of the Energy and Commerce Committee’s subcommittee on Oversight and Investigations, kicked off a long series of hearings considering ways to rein in OIRA and regulatory review. “We believe such limitations would be unconstitutional and are opposing them,” Harper told Meese.¹¹⁸

This opposition was surprisingly successful. Barry Friedman's critical review of OIRA in this period notes that by the mid-1980s "Congress . . . extracted procedural concessions from OIRA and shone a spotlight on some of OMB's most egregious violations of due process."¹¹⁹ But in return, legislators and bureaucrats accepted the principle of regulatory review: Reagan obtained a "surprising degree of cooperation, compliance, and comity among entities that might have been expected to act with determination to . . . eliminate the centralized review process."¹²⁰ As with other aspects of the institutional presidency—for instance, the development of a centralized legislative program—both legislators and bureaus found that the routinization of a presidential initiative served their own organizational needs.¹²¹ Not least, agencies themselves grew to value OIRA's interagency coordination process, both in terms of the information and potential influence it provided.

Counterintuitively, early attacks by Congress wound up strengthening OIRA's analytic mission over time. In 1986, Miller (now OMB director) and OIRA chief Wendy Gramm cut a deal with Congress, effectively trading legislative accommodation to regulatory review generally in exchange for additional oversight, in the form of enhanced procedural transparency and future Senate confirmation of OIRA administrators. A Gramm memo locked in place guidelines expanding disclosure of OIRA staff contacts with and materials received from outside interests—addressing the (sometimes accurate) charge that the neutral rationality of cost-benefit analysis had been swayed by favoritism to industry importuning.¹²² In return, OIRA was funded and reauthorized for three years, and legislative efforts to further manage regulatory review operations were largely dropped.

A few years later, President George H.W. Bush's use of a Council on Competitiveness under Vice President Dan Quayle undercut some of the agreed-upon disclosure, helping prevent the Senate confirmation of Bush's nominee to lead OIRA. But this meant the office was headed by a career civil servant for much of the administration, tamping down provocation and helping solidify the agency's reputation for "policy rationality" (in OIRA), separate from the focus on "policy outcomes" elsewhere.¹²³ As far as those outcomes went, Bush priorities such as the Clean Air Act amendments and the Americans with Disabilities Act led to more, not less, regulatory activity. Indeed, Bush OMB director Richard Darman was moved to scrawl on one staff memo that "Clean Air and ADA increased regulatory burden by more than all that Bush Task Force cut in '80s!"¹²⁴

By 1990, Senator John Glenn (D-Ohio) had a telling exchange with an anti-OIRA activist testifying before the Senate. Glenn asked whether the

witness “would prefer to have OMB completely out of the loop?” “Right,” was the reply—“but we recognize that that is not likely to happen.” To laughter in the hearing room, Glenn said in return, “I think you’re correct.”¹²⁵

INSTITUTIONALIZATION AND ORGANIZATIONAL EFFECTIVENESS

That was not the end of the story, of course. Another important landmark came in 1993, when Bill Clinton issued Executive Order 12866, putting Reagan’s version of regulatory review on a bipartisan footing. Clinton’s update, which remains in place today, limited OIRA review to “significant” rules and added rhetorical assurances of agencies’ regulatory independence. Mostly, though, this codified existing practice. And Clinton’s order included some interesting fine print. Recall that Carter (and Reagan) had backed away from claiming the ability to direct agencies in their exercise of rulemaking; Clinton strongly implied just that. White House staffer (and future Supreme Court justice) Elena Kagan thus claimed that Clinton’s order codified an even more “expansive understanding of the President’s authority over the sphere of administration.”¹²⁶ In any case, Clinton—like his next Democratic successor, Barack Obama—valued OIRA for its interagency coordination and information-gathering functions as well. Cass Sunstein, head of the agency during Obama’s first term, has argued that “it would not be excessive to describe OIRA as, in large part, an information aggregator” of “views and perspectives of a wide range of sources both inside and outside the federal government,” as well as a mechanism for enforcing departmental responsiveness to public input during the rulemaking process.¹²⁷

Even by 1986, though, OIRA and regulatory reform had benefited from fifteen years of development that aggregated its resources and enhanced its autonomy. As posited in the broader literature, the institutionalization of regulatory review included the growth of staff, expertise (including better analytic techniques), internal procedures and routinization, legal authority, and extralegal leverage stemming both from the gradual embrace of the process by OMB and the desire of successive presidents to control regulatory policy. It is worth adding the tireless role of a bureaucratic entrepreneur to this mix, something too little noted in theories of institutional development.¹²⁸ In this case, Jim Tozzi, who left for the private sector in 1983, built expertise and alliances across five administrations over nineteen years, keeping the ember of cost-benefit analysis burning so that subsequent presidents could stoke the fire. OIRA’s Jim Miller even suggested that any success in regulatory review accrued by the Carter regime was “primarily, I gather, because of Jim Tozzi’s work.”¹²⁹

Some would argue that the origins of regulatory review in skepticism over the costs of environmental regulation hard-wired a bias toward industry interests into its infrastructure. Certainly rent-seeking politics of various sorts have always come into conflict with cost-benefit analysis, and while the OIRA review process has become more permeable over time, the public most active in seeking input to OIRA decision-making remains lobbies hostile to regulation.¹³⁰ Even under the Obama administration, many suspected that the Clean Power Plan, now slated for replacement by the Trump EPA, was held in abeyance until the 2012 election was safely past.¹³¹

Politics will never cease to matter in the regulatory process, of course: when we discuss the “social cost of carbon” or the cash benefits accrued from a healthy human life, the results of analysis flow from the parameters we set. The success of regulatory review depends on political actors being as interested in the quality of analysis OIRA can provide as they are in outcomes that match their preexisting biases. Indeed, there may be an upper bound on what any president is willing to spend on good government, understood in this sense as policies based on disinterested, nonpartisan analysis.¹³²

These are useful lessons for current policymakers interested in improving the regulatory process, or for that matter for anyone seeking to make governmental functions work better in general. In OIRA’s case, the creation of a new office and top-level process was necessary for the effectiveness of regulatory review but not nearly sufficient for it. Reform is not a matter of immaculate conception but rather, “the slow boring of hard boards.”¹³³ It is not the issuance of executive orders but the provision of resources that makes those orders function in practice.

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NOTES

1. Thomas K. McCraw, *Prophets of Regulation* (Cambridge, Mass., 1984), 301.
2. Executive Order 13771, issued 30 January 2017.
3. Executive Order 13777, issued 24 February 2017; and see, inter alia, Executive Order 13772, issued 2 February 2017; Executive Order 13778, issued 28 February 2017; and Executive Order 13789, issued 21 April 2017.
4. *Motor Vehicles Manufacturers Association v. State Farm*, 463 U.S. 29 (1983).
5. Coral Davenport and Lisa Friedman, “In Rush to Kill Obama Rules, Pruitt Puts His Agenda at Risk,” *New York Times*, 8 April 2018, A16.
6. See, e.g., Richard Pierce, “Introduction to the OIRA 30th Anniversary Conference,” *Administrative Law Review* 63 (2011): 1–6; C. Jarrett Dieterle, “Regulatory Reform in the

114th and 115th Congresses,” *R Street Policy Study* 91 (April 2017), available at <http://www.rstreet.org/policy-study/regulatory-reform-in-the-114th-and-115th-congresses/>.

7. William F. West, “The Institutionalization of Regulatory Review: Organizational Stability and Responsive Competence at OIRA,” *Presidential Studies Quarterly* 35 (March 2005): 76–93. See also Donald R. Arbuckle, “The Role of Analysis on the 17 Most Political Acres on the Face of the Earth,” *Risk Analysis* 31 (2011): 886–92.

8. Philip Wallach and Kevin R. Kosar, “The Case for a Congressional Regulation Office,” *National Affairs* (Fall 2016): 56–68; Edward Glaeser and Cass R. Sunstein, “Regulatory Review in the States,” *National Affairs* (Summer 2014): 37–54.

9. Terry M. Moe, “The Politics of Bureaucratic Structure,” in *Can the Government Govern?*, ed. John E. Chubb and Paul E. Peterson (Washington, D.C., 1989), 268.

10. Stuart Shapiro and Debra Borie-Holtz, *The Politics of Regulatory Reform* (New York, 2013), 20. See also John D. Graham and Paul R. Noe, “Beyond Process Excellence,” in *Achieving Regulatory Excellence*, ed. Cary Coglianese (Washington, D.C., 2017); William F. West, “Inside the Black Box: The Development of Proposed Rules and Procedural Controls,” *Administration & Society* 41 (2009): 576–99.

11. Lankford quoted in Tim Devaney, “Trump Weighs Key Pick for Regulatory Rollback,” *The Hill*, 12 March 2017, available at <https://origin-ny1.thehill.com/regulation/administration/323507-trump-weighs-key-pick-for-regulatory-rollback>. For a comprehensive review of the scholarly literature on OIRA, see Eloise Pasachoff, “The President’s Budget as a Source of Agency Policy Control,” *Yale Law Journal* 125 (2016): 2182–2290.

12. West, “Institutionalization of Regulatory Review.”

13. Joe Wright, “Status of Management Reviews - FY 86 budget,” 12 November 1984, National Archives—II, College Park, Maryland [NARA], Record Group [RG] 51, Entry UD-UP 200, OMB Director’s Office Files, Box 3, Folder [Management/Budget Presentations, March–December 1984].

14. Edward S. Corwin, *The President: Office and Powers*, 4th rev. ed. (New York, 1957); Richard M. Pious, *The American Presidency* (New York, 1979).

15. Samuel Huntington, *Political Order in Changing Societies* (New Haven, 1968), 12; see also Karen M. Hult and Charles Walcott, *Governing Public Organizations: Politics, Structures, and Institutional Design* (Pacific Grove, Calif., 1990).

16. Huntington, *Political Order in Changing Societies*, 15.

17. Nelson Polsby, “The Institutionalization of the U.S. House of Representatives,” *American Political Science Review* 62 (March 1968): 144–68; Graham Allison, *Essence of Decision* (Boston, 1971).

18. Daniel P. Carpenter, *Reputation and Power: Organizational Image and Pharmaceutical Regulation at the FDA* (Princeton, 2010), 298, 45.

19. Daniel P. Carpenter, *The Forging of Bureaucratic Autonomy: Reputations, Networks, and Policy Innovation in Executive Agencies, 1862–1928* (Princeton, 2001); see also James Q. Wilson, *Bureaucracy* (New York, 1989).

20. Richard E. Neustadt, *Presidential Power and the Modern Presidents* (New York, 1990), 50.

21. See, e.g., Marshall R. Goodman and Margaret T. Wrightson, *Managing Regulatory Reform: The Reagan Strategy and Its Impact* (Westport, Conn., 1987); Cornelius Kerwin, *Rulemaking*, 3rd ed. (Washington, D.C., 2003); McGraw, *Prophets of Regulation*.

22. See Office of Management and Budget, "Issue #1: Quality of Life Review," *Issue Papers: Environmental Protection Agency, 1974 Budget*, n.d., available at <http://thecre.com/ombpapers/QualityofLife2.htm>.

23. Jim Tozzi, "OIRA's Formative Years: The Historical Record of Centralized Regulatory Review Preceding OIRA's Founding," *Administrative Law Review* 63 (2011): 37–69; see also Joe Greene Conley III, "Environmentalism Contained: A History of Corporate Responses to the New Environmentalism" (PhD diss., The Program in History of Science, Princeton University, 2006); Robert V. Percival, "Who's in Charge? Does the President Have Directive Authority over Agency Regulatory Decisions?" *Fordham Law Review* 79 (2011): 2487–2540.

24. The paper was by Michigan State's Allen Schmid, then consulting for the Pentagon. See Edward P. Fuchs and James E. Anderson, "The Institutionalization of Cost-Benefit Analysis," *Public Productivity Review* 10 (Summer 1987): 25–33; author interview with Jim Tozzi, 22 March 2017; Conley, *Environmentalism Constrained*, 164.

25. George C. Eads and Michael Fix, *Relief or Reform? Reagan's Regulatory Dilemma* (Washington, D.C., 1984), 47–48; on central clearance, see Andrew Rudalevige, *Managing the President's Program* (Princeton, 2002), chap. 3.

26. Director to Heads of Departments and Agencies, "Agency Regulations, Standards, and Guidelines Pertaining to Environmental Quality, Consumer Protection, and Occupational and Public Health and Safety," memo of 5 October 1971, available at <http://thecre.com/ombpapers/QualityofLife1.htm>.

27. Notably John Whitaker and Richard Fairbanks. Author interview with Jim Tozzi.

28. As quoted in Meghan Twohey, "Jim Tozzi: On Jazz and OMB," *The Federal Paper* 1 (18 November 2002).

29. Tozzi, "OIRA's Formative Years," 48.

30. Alvin L. Alm to Jim J. Tozzi, "Interagency Review of EPA Regulations," memo of 1 November 1976, available at <http://thecre.com/pdf/QualLifeReview7.PDF>. Tozzi agreed that "EPA was right" that it received by far the most attention. "That's a fair criticism." He notes, though, that OMB only had five staff people working on QLR and thus expanding the review was not feasible (author interview with Jim Tozzi.).

31. Quoted in Eads and Fix, *Relief or Reform?*, 49.

32. John R. Quarles Jr., acting administrator, to EPA assistant administrators et al., "Termination of the Quality of Life Review," memo of 25 January 1977, available at <http://thecre.com/pdf/QualLifeReview8.PDF>. See also Percival, "Who's in Charge?," 2498.

33. Eads and Fix, *Relief or Reform?*, 49. A 1974 internal OMB memo suggests that even OMB staff were befuddled at times: "The logic of the current regulatory review procedure escapes me," one analyst wrote, "i.e. the procedure wherein EPA is required to disclose all its information . . . [to] other agencies but OSHA is not required to do the same." Glenn Schleede to Mike Duval and Jim Cavanaugh, "Vinyl Chloride Standards," memo of 1 October 1974, Gerald Ford Library [GFL], White House Central Files, Subject File FG 6-16, Box 62.

34. CWPS was created by Public Law 93-387, replacing the Cost of Living Council; Executive Order 11821, issued 27 November 1974, required that "major" legislative and regulatory proposals "must be accompanied by a statement which certifies that the inflationary impact of the proposal has been evaluated." Inflation Impact Statements were renamed Economic Impact Statements by Executive Order 11949, issued 31 December 1976.

35. Eads and Fix, *Relief or Reform?*, 52; Tozzi, “OIRA’s Formative Years,” 51. By the end of the Ford administration, OMB had, EPA conceded, “recently made efforts to apply the same ground rules to other agencies.” John Quarles Jr. (acting administrator, EPA) to Don Crabill (OMB), letter and attached memo of 25 January 1977, available at <http://thecre.com/pdf/QualLifeReview8.PDF>. For much of the administration, though, EPA still felt “singled out”; see Percival, “Who’s in Charge?,” 2500.

36. James Lynn to President, “Status of Inflation Impact Statement Initiative,” memo of 19 June 1975, GFL, Philip Buchen Files, Box 11, [Economy—Inflation Impact Statements (1)].

37. Quoted in Fuchs and Anderson, “Institutionalization of Cost-Benefit Analysis,” 28.

38. Thomas J. Hopkins, “The Evolution of Regulatory Oversight: CWPS to OIRA,” *Administrative Law Review* 63 (2011): 73.

39. Jimmy Carter, “Airline Industry Regulation Message to the Congress,” 4 March 1977.

40. Bert Lance to the President, “Improving the Federal Regulatory Process,” memo and attached material of 23 August 1977, NARA, RG 51, OMB Office of General Counsel, Executive Order and Proclamation Files 1977–79, Box 4, [EO 12044 (T1-9/78.1)].

41. Charlie Schultze to the President, “Economic Impact Analysis,” memo of 7 October 1977. Jimmy Carter Library [JCL], Office of the Staff Secretary, Presidential Files, Container 46, [10/11/77 [2]].

42. *Ibid.* (emphasis in original). RARG was chaired by CEA and included OMB as well as Treasury, Commerce, Labor, and a group of regulatory line agencies: Agriculture, Defense, Energy, HEW, Interior, Justice, Transportation, and EPA. CWPS provided staff support. Rules for review were selected by a steering committee made up of CEA, OMB, Treasury, Labor, Commerce, and one member, rotating quarterly, from the regulatory agencies.

43. Douglas Costle to the President, “Ensuring Sensible Regulation,” memo of 6 October 1977. JCL, Office of the Staff Secretary, Presidential Files, Container 46, [10/11/77 [2]].

44. Senator Abraham Ribicoff et al., letter to the President, 16 December 1977.

45. James T. McIntyre to the President, “Executive Order on Improving Government Regulations,” memo, attached material, and handwritten comments of 20 March 1978. NARA, RG 51, OMB Office of General Counsel, Executive Order and Proclamation Files 1977–79, Box 4, [EO 12044].

46. *Ibid.*

47. Stu Eizenstat to the President, memo and attached materials of 2 September 1978. JCL, Neustadt Papers, Box 70. Supported by author interview with CWPS attorney (later OIRA head) Sally Katzen, 11 March 2017.

48. James McIntyre to Heads of Executive Departments and Agencies, “Evaluation of EO 12044, Improving Government Regulations,” memo of 10 April 1979. NARA, RG 51, Entry UD-WW 281, Records of Information and Regulatory Affairs, Information Policy Branch, Box 4, [1,50.10 DO/MIS Executive Orders].

49. Stanley Morris to Richard Cotton, letter of 12 February 1979, and attached materials. NARA, RG 51, Entry UD-WW 368, OIRA 1981–84 Division Office, Box 2, [EO 12044—Department of Health, Education and Welfare].

50. Richard Cotton to Wayne Granquist, letter of 14 June 1979, and attached materials. NARA, RG 51, Entry UD-WW 368, OIRA 1981–84 Division Office, Box 2, [EO 12044—Department of Health, Education and Welfare].

51. Stanley Morris to John White and Wayne Granquist, “Briefing Materials for E.O. 12044 Meeting with the Department of HEW,” memo, n.d. [summer 1979] and attached

materials. NARA, RG 51, Entry UD-WW 368, OIRA 1981–84 Division Office, Box 2, [EO 12044—Department of Health, Education and Welfare].

52. Ibid.

53. Eizenstat to the President, memo and attached materials of 2 September 1978.

54. The (slight) increase over time was due to the arrival of Alfred Kahn as the dual-hatted chair of CWPS and special adviser to the president on inflation. See Eads and Fix, *Relief or Reform?*, 60; author interview with Sally Katzen.

55. James E. Anderson, “The Carter Administration and Regulatory Reform: Searching for the Right Way,” *Congress and the Presidency* 18 (Autumn 1991): 121–46.

56. Dave Mathiasen to Distribution [Jim Tozzi], “New Focus for Spring Planning Review,” memo of 21 February 1980. NARA, RG 51, Entry UD-WW 281, Records of Information and Regulatory Affairs, Information Policy Branch, Box 4, [1.31.15 Spring Review Planning and Policy Guidance 1981].

57. Author interview with Jim Tozzi. See, e.g., the proposed Regulation Reform Act of 1979 (introduced as S. 755 and H.R. 3263).

58. Luther Stringham, “Government Questionnaires and the Federal Reports Act of 1942,” *Public Administration Review* 3 (Spring 1943): 150–57. Note that OMB was known as the Bureau of the Budget from 1921 to 1970.

59. James T. McIntyre Jr. to Douglas Costle, letter of 25 November 1980, and supporting material. NARA, RG 51, Entry UD-WW 257, OMB Program Records: Records of Regulatory Policy (OIRA), Box 1, [OIRA-RP-EPA-1980–84, General].

60. Executive Order 12174, issued 30 November 1979.

61. One OMB staffer boasted that EO 12174 was “the most far-reaching reform of paperwork control since enactment of the Federal Reports Act” itself (perhaps a low bar?). See Stan Morris, “Note to the Regulatory Policy and Reports Management Staff,” memo of 25 January 1980, NARA, RG 51, Entry UD-WW 368, OIRA 1981–84 Division Office, Box 2, [C.6.1 OIRA/HR Creation of RIP].

62. Wayne Granquist, Associate Director, Testimony before House Government Operations Committee, 21 February 1980. NARA, RG 51, Entry UD-WW 281, Records of Information and Regulatory Affairs, Information Policy Branch, Box 5, [1.60.20.02 Paperwork Bill, 1/26/80 #4].

63. See Peter Behr, “If There’s a Rule, Jim Tozzi Has Read It,” *Washington Post*, 10 July 1981.

64. Stu Eizenstat and Si Lazarus to the President, “Enrolled Bill HR6410, Paperwork Reduction Act of 1980,” memo and supporting material of 10 December 1980. NARA, RG 51, Entry UD-WW 281, Records of Information and Regulatory Affairs, Information Policy Branch, Box 5, [1.60.20.02 Paperwork Bill, 1/26/80 #4].

65. Richard Darman to the Cabinet, “Cabinet Matter: Executive Order on Regulatory Management,” draft memo for the President of 2 February 1981. Ronald Reagan Library (RRL), White House Office of Records Management [WHORM] Subject Files: FG—Federal Government Organizations, Box 1, [FG (000068-000088)]. See also James C. Miller III, “The Early Days of Reagan Regulatory Relief and Suggestions for OIRA’s Future,” *Administrative Law Review* 63 (2011): 93–101.

66. Jim Miller to Ed Harper, memo of 29 January 1981. NARA, RG 51, Office of the Director: Deputy Director’s Subject Files: Ed Harper, 1981–82, FRC 51-82-50, Box 3, [Regulatory Relief]. For other critiques of the Carter program, see Timothy B. Clark,

“Substance over Process,” *National Journal*, 3 January 1981, 28; Christopher DeMuth, “The White House Review Programs,” *Regulation* (January–February 1980): 20–23.

67. Anderson, “Carter Administration and Regulatory Reform,” 144.

68. James T. Lynn, oral history of 24 February 1997, Gerald R. Ford Library, *NLGRF-OH 1997 Feb 24*.

69. Quoted in C. Jarrett Dieterle, “Lessons from the Godfather of Regulatory Budgeting,” *The Hill*, 23 February 2017.

70. B. James, “OMB Examiner’s Handbook: Budget Policies,” draft of 8 July 1981. NARA, RG 51, Entry UD-WW 281, Records of Information and Regulatory Affairs, Information Policy Branch, Box 1, [1.02.05 1981–82 OMB Examiner’s Handbook].

71. Peter M. Shane to James C. Miller III, “Draft Executive Order on Federal Regulation,” memo of 29 January 1981. NARA, RG 51, Office of the Director: Deputy Director’s Subject Files: Ed Harper, 1981–82, FRC 51-82-50, Box 3, [Regulatory Relief]; see also Richard Willard to Fred Fielding, “Executive Order on Regulatory Reform,” memo of 6 February 1981, which notes that “a recurring question in regulatory review programs is the power of the President to control the actual content of rulemaking entrusted by statute to particular agencies.” This memo reflects a meeting that day, for which Willard’s handwritten notes suggest that Jim Tozzi was not yet a known force to the Reagan White House—he is identified as “Jim Cozey.” Notes and memo in RRL, WHORM Subject Files: FG—Federal Government Organizations, Box 1, [FG 000089 (2)].

72. For an early draft, see Richard Darman, White House Staffing Memorandum, Document 000089S, 3 February 1981. RRL, WHORM Subject Files: FG—Federal Government Organizations, Box 1, [FG 000089 (2)]. For agency comment, see RRL, WHORM Subject Files: FG—Federal Government Organizations, Box 1, FG (000067 (1)), e.g., Samuel Pierce to Craig Fuller, “Proposed Executive Order/Federal Regulation,” memo of 17 February 1981. See also James C. Miller III, *Fix the U.S. Budget!: Urgings of an “Abominable No Man”* (Stanford, 1994), 3.

73. Peter Behr, “OMB Now a Regulator in Historic Power Shift,” *Washington Post*, 4 May 1981.

74. Richard Lyng to the Secretary, “Proposed Executive Order on Regulatory Management,” memo of 27 January 1981. RRL, WHORM Subject Files: FG—Federal Government, Organizations, Box 1, [FG (Begin-000066)].

75. Craig Fuller notes of telephone call from John Fowler, 16 February 1981, 10:45 a.m.; Jeane J. Kirkpatrick to Members of the Cabinet, “Executive Order on Federal Regulation,” memo of 16 February 1981. Both in RRL, WHORM Subject Files: FG—Federal Government Organizations, Box 1, FG (000067 (1)).

76. Christopher C. DeMuth and Douglas H. Ginsburg, “White House Review of Agency Rulemaking,” *Harvard Law Review* 99 (1986): 1081.

77. As before, those with annual economic effects of at least \$100 million. The OMB director could also define other regulations as “major.”

78. See, among many others, Barry D. Friedman, *Regulation in the Reagan-Bush Era: The Eruption of Presidential Influence* (Pittsburgh, 1995); James T. O’Reilly and Phyllis E. Brown, “In Search of Excellence: A Prescription for the Future of OMB Oversight of Rules,” *Administrative Law Review* 39 (Fall 1987): 421–44.

79. Stan Morris, “Note to the Regulatory Policy and Reports Management Staff,” memo of 25 January 1980, NARA, RG 51, Entry UD-WW 368, OIRA 1981–84 Division

Office, Box 2, [C.6.1 OIRA/HR Creation of RIP]; more generally, see Anderson, “Carter Administration and Regulatory Reform”; Tozzi, “OIRA’s Formative Years.”

80. Reagan terminated the CWPS via Executive Order 12288, issued 29 January 1981. The 25-person-strong Office of Statistical Policy and Standards from the Commerce Department was moved to OMB by the Paperwork Reduction Act. An aide to Tozzi told him in December 1980 that Congress expected OMB to absorb the Commerce staff rather than create its own capacity for statistical analysis (and that expanding the OMB staff was tactically helpful anyway given Reagan’s expected executive branch hiring freeze). John P. McNicholas to Jim Tozzi, “Views on Statistical Policy Function under S. 1411,” memo of 1 December 1980. NARA, RG 51, Entry UD-WW 281, Records of Information and Regulatory Affairs, Information Policy Branch, Box 5, [1.60.20.02 Paperwork Bill, 1/26/80 #4].

81. Author interview with Jim Tozzi.

82. See, e.g., Jim Tozzi to Linda Smith, “Request to Post ‘Vacancy Announcements’ Against OIRA Vacancies,” memo of 23 February 1981; Jim Tozzi, “Action items resulting from 8:30 meeting with Miller,” notes of 23 February 1981. Both in NARA, RG 51, Entry UD-WW 411, OIRA Information Policy Branch FY1981–82, Box 1, [2.20.15 IP Operating Procedures]. See also Jim Tozzi to Linda Smith, “Need for More Office Space,” memo of 29 January 1981. NARA, RG 51, Entry UD-WW 368, OIRA 1981–84 Division Office, Box 1, [A.2 OIRA/HR 1981–82 Administrative Matters].

83. “Decision Unit 0336: Office of Regulatory and Information Policy,” n.d. (late 1981). NARA, RG 51, Entry UD-WW 368, OIRA 1981–84 Division Office, Box 1, [A.2 OIRA/HR 1981–82 Administrative Matters]; No author, “Budget Justification for the Office of Information and Regulatory Affairs,” 27 February 1981. NARA, RG 51, Entry UD-WW 411, OIRA Information Policy Branch FY1981–82, Box 1, [2.20.15 IP Operating Procedures]; “Update on Personnel: OIRA,” revised 2 October 1981. NARA, RG 51, Entry UD-WW 368, OIRA 1981–84 Division Office, Box 6, [P.3. Personnel Matters 1981–82].

84. OIRA Reports Management: Human Resources, “Highlights for week[s] ending” 6, 13, 20, and 27 February 1981. NARA, RG 51, Entry UD-WW 368, OIRA 1981–84 Division Office, Box 9, [W.1 Weekly Activities Report, 1981].

85. No author, “Budget Justification for the Office of Information and Regulatory Affairs,” report of 27 February 1981. NARA, RG 51, Entry UD-WW 411, OIRA Information Policy Branch FY1981–82, Box 1, [2.20.15 IP Operating Procedures].

86. However neutral the analysis, of course, it rests on assumptions that have political ramifications—starting with the monetary value of a human life or the “social cost of carbon,” a cost mandated by President Obama and revoked by President Trump (see Executive Order 13783, issued 28 March 2017).

87. Geoffrey White to Jim Tozzi, “EPA Radiation Protection Guidance,” memo of 30 March 1981. NARA, RG 51, Entry UD-WW 257, OMB Program Records: Records of Regulatory Policy (OIRA), Box 1, [OIRA-RP-EPA-1980–84, General].

88. “Merit Promotion Program Vacancy Announcement,” 12 October 1979, as well as other similar material and personnel memoranda in NARA, RG 51, Entry UD-WW 368, OIRA 1981–84 Division Office, Box 6, [P.3. Personnel Matters 1981–82].

89. Draft “Vacancy Announcement,” n.d., included with letter of 23 February 1981. NARA, RG 51, Entry UD-WW 368, OIRA 1981–84 Division Office, Box 6, [P.3. Personnel Matters 1981–82].

90. “Summary of OIRA Professional Staff and Experience,” n.d. NARA, RG 51, Entry UD-WW 281, Records of Information and Regulatory Affairs, Box 5, [1.60.20.02 Paperwork Bill, 1/26/80 #4].

91. Jim Miller to All OIRA Staff, “Standard Operating Procedure Memoranda,” memo collating previously issued SOP memoranda, 15 May 1981. NARA, RG 51, Entry UD-WW 411, OIRA Information Policy Branch FY1981–82, Box 1, [2.20.15 IP Operating Procedures]. Again, on Standard Operating Procedures as a mainstay of organizational maintenance, see Allison, *Essence of Decision*, chap. 3.

92. See the materials in NARA, RG 51, Entry UD-WW 368, OIRA 1981–84 Division Office, Box 6, [M.2 Memos to all 3 Div’s (Tozzi’s) 1981–82], for example C. Louis Kincannon to Clearance Officers of Departments and Agencies, “More recent changes in Reports Management Practices,” memo of 2 February 1981; Kincannon to Jim Tozzi, Gail Coad, John McNicholas, OIRA Desk Officers, “Processing of EO 12291 Submissions,” memo of 2 March 1981; Kincannon to OIRA Desk Officers, “OMB Review of EO 12291 Submissions,” memo of 15 April 1981; Kincannon to IRA Desk Officers, “Write-Ups on Regulations under Review by President’s Task Force,” memo of 6 April 1981. See also Arnold Strasser to Reports Management Desk Officers, memo of 5 November 1981, NARA, RG 51, Entry UD-WW 368, OIRA 1981–84 Division Office, Box 1, [OIRA/HR 1981–82 Administrative Matters], which notes that “as you know, [OIRA chief] Chris DeMuth is very concerned that we have not been responding to our mail on a sufficiently timely basis.”

93. Robert Bedell to Darrell A. Johnson, “Contracting for Preparation of an OMB Paperwork Control Manual,” memo and attached material of 19 August 1985. NARA, RG 51, Entry UD-UP 224, OIRA Program Records, Box 2, [H.6 OMB Paperwork Control Manual].

94. Jim Tozzi to Director, “Implementing EO 12291,” memo (with handwritten addenda) of 3 February 1981. NARA, RG 51, Entry UD-WW 368, OIRA 1981–84 Division Office, Box 6, [M.5 Memos to heads of executive depts. and agencies 1981–82].

95. Jim Tozzi to Jim Miller and Glenn Schleede, “OMB Compliance with Executive Order 12291,” memo and attached material of 18 May 1981. NARA, RG 51, Entry UD-WW 281, Records of Information and Regulatory Affairs, Information Policy Branch, Box 4, [1.50.10 DO/MIS Executive Orders].

96. “General Notes: Regulations Received for Review under EO 12291,” status as of 18 March 1981. NARA, RG 51, Entry UD-WW 368, OIRA 1981–84 Division Office, Box 7, [R.4.3 Regulatory Tracking System—Weekly Report to J. Miller 1981–82]. In his own interviews, Samuel Workman found this trick still in play as of the 2010s. See Samuel Workman, *The Dynamics of Bureaucracy in the U.S. Government* (New York, 2015), 68. On court cases, see Ed Clarke to Tim Muris, “Pending Lawsuits in EPA,” memo of 7 April 1981; Rick Otis to Bob Bedell, “Summary of EPA’s Amendments to Petroleum Refining Effluent Guidelines,” memo of 14 August 1984. Both in NARA, RG 51, Entry UD-WW 257, OMB Program Records: Records of Regulatory Policy (OIRA), Box 1, [OIRA-RP-EPA-1980–84, General].

97. Interim Regulatory Impact Analysis Guidance (12 June 1981), attached to David Stockman to Rep. Lyle Williams, letter of 16 May 1983. NARA, RG 51, Entry UD-WW 257, OMB Program Records: Records of Regulatory Policy (OIRA), Box 1, [OIRA-RP-EPA-1980-84 EO 12291 (previously 12004)]. Costs and benefits were to be broken down as monetary, quantitative but nonmonetary, and nonquantifiable.

98. Pete Modlin to Don Moran et al., “Topics for Spring Planning Review,” memo and attached material of 26 March 1982. NARA, RG 51, Entry UD-WW 281, Records of Information and Regulatory Affairs, Information Policy Branch, Box 4, [1.31.15 Spring Review Planning and Policy Guidance 1981].

99. Executive Order 12498, issued 4 January 1985.

100. Jim MacRae to Gail Coad et al., “Talking Points for Cabinet Council Presentation,” memo and attached material of 2 June 1985. NARA, RG 51, Entry UD-UP 224, OIRA Program Records, Box 1, [E.5.4 Executive Order 12498, 1985–86]. See also Gramm (2011, 30–31).

101. Granquist testimony before House Government Operations Committee.

102. Quoted in Friedman, *Regulation in the Reagan-Bush Era*, 60, 35.

103. Jim Tozzi to Program Deputy Associate Directors, “OMB Review of Regulatory Proposals,” memo of 27 February 1981. NARA, RG 51, Entry UD-WW 368, OIRA 1981–84 Division Office, Box 6, [M.2 Memos to all 3 Div’s (Tozzi’s) 1981–82].

104. Judy Egan to Jefferson Hill, “Response to Request for Material for OIRA’s ‘We Need More \$\$’ Briefing Book,” memo of 6 November 1986. NARA, RG 51, Entry UD-UP 224, OIRA Program Records, Box 1, [A.2 Administrative Matters, 1985–86].

105. Likewise at HUD, “budget examiners requested an extension so that they may further explore the budgetary impact of the change.” See Route Slips of 11 July and 3 June 1983, respectively. Both in NARA, RG 51, Entry UD-WW 368, OIRA 1981–84 Division Office, Box 2, [E.2 Extensions, 1983–84].

106. Geoff White to Jim Tozzi, “Extension of EPA Regulations Implementing the Uniform Relocation Act,” memo of 26 March 1982. NARA, RG 51, Entry UD-WW 257, OMB Program Records: Records of Regulatory Policy (OIRA), Box 1, [General (#2) OIRA-RP-EPA 1980–84].

107. Jim Miller to Jim Tozzi, “Ideas Stimulated by Desk Officer Responses,” memo of 27 May 1981, NARA, RG 51, Entry 411, OIRA Information Policy Branch, FY1981–82, Box 1, [2.20.15 IP 1981–82 Operating Procedures].

108. Jim Miller to Ed Harper, “Handling Sensitive Regulatory Matters,” memo of 10 September 1981. NARA, RG 51, Office of the Director: Deputy Director’s Subject Files: Ed Harper, 1981–82, FRC 51-82-50, Box 3, [Regulatory Relief].

109. NARA, RG 51, Office of the Director: Deputy Director’s Subject Files: Ed Harper, 1981–82, FRC 51-82-50, Box 3, [Regulatory Relief]; “OMB Regulatory News Bulletin,” 29 October 1982 [item 107789], and “Regulatory Activity Highlights: Significant Regulations Under Review at OMB, Week Ending November 5, 1982” [item 109305], RRL, WHORM Subject Files, FG 006-11 (OMB), Box 2, [FG 006-11 107600-107813].

110. Ed Harper to Ed Meese, “Proposed Actions in Regulatory Reform Area,” memo of November 20, 1981.

111. Joseph R Wright Jr. to Edwin Meese III, “Run on E.O. 12291,” memo of 3 October 1983. RRL, WHORM Subject Files, FG 006-11 (OMB), Box 3, Folder [208300-226737], Document 219282.

112. For instance, in a well-known 1983 dispute with the Labor Department over cotton dust, OIRA was upset by Labor’s incomplete assessment of a 1978 rule setting standards for worker exposure to such dust. The issue went to the Task Force (which favored OIRA), and then to the White House. Labor’s position prevailed, arguably because the administration was under so much political pressure over its regulatory battles with EPA

that it didn't want to open up another front. See Christopher DeMuth to T. Timothy Ryan, letter of 27 January 1983 and attached material. RRL, WHORM Subject Files, FG 006-11 (OMB), Box 3, [FG 006-11 144100-150199], document 144127; Robert E. Botsch, *Organizing the Breathless: Cotton Dust, Southern Politics, and the Brown Lung Network*, reprint ed. (Lexington, Ky., 2014), 136.

113. Behr, "OMB Now a Regulator."

114. Friedman, *Regulation in the Reagan-Bush Era*, 35.

115. Quoted in *ibid.*, 147.

116. Quoted in *ibid.*, 61.

117. James MacRae Jr. to Wendy L. Gramm, "Your Meeting with Debbie Steelman," memo and attachments of 13 March 1986. NARA, RG 51, Entry UD-UP 224, OIRA Program Records, Box 2, [H.1 Health and Human Services Department, Part II, 1985-86].

118. Ed Harper to Ed Meese, "Proposed Actions in Regulatory Reform Area," memo of 20 November 1981. See generally Eads and Fix, *Reform or Relief?*

119. Friedman, *Regulation in the Reagan-Bush Era*, 5.

120. *Ibid.*, 4, and see also 118.

121. Richard E. Neustadt, "Presidency and Legislation: The Growth of Central Clearance," *American Political Science Review* 48 (September 1954): 641-71.

122. Friedman, *Regulation in the Reagan-Bush Era*, 114-16; Wendy L. Gramm, "Regulatory Review Issues, Oct. 1985-Feb. 1988," *Administrative Law Review* 63 (2011): 29-30. For a systematic analysis of industry lobbying at OIRA, see Simon F. Haeder and Susan Webb Yackee, "Influence and the Administrative Process: Lobbying the U.S. President's Office of Management and Budget," *American Political Science Review* 109 (August 2015): 507-22.

123. O'Reilly and Brown, "In Search of Excellence."

124. Richard Darman handwritten notation on C. Boyden Gray and Michael Boskin to the President, "Proposed Regulatory Reform Initiative," memo of 23 December 1991. NARA, RG 51, Entry 388, Records of the Director's Office: Director's Office Files, 1989-92, Box 5, [Darman Notes 1991].

125. The exchange with Public Citizen Congress Watch attorney David Vladeck is from a Senate Governmental Affairs Committee hearing on S. 1742, quoted in Friedman, *Regulation in the Reagan-Bush Era*, 119.

126. Elena Kagan, "Presidential Administration," *Harvard Law Review* 114 (June 2001): 2288 (and see 2288-90).

127. See, e.g., Cass Sunstein, "The Office of Information and Regulatory Affairs: Myths and Realities," *Harvard Law Review* 126 (May 2013): 1838.

128. But for a seminal discussion of such entrepreneurial efforts, see Stephen Skowronek and Matthew Glassman, eds., *Formative Acts: American Politics in the Making* (Philadelphia, 2007).

129. Miller to Harper, memo of 29 January 1981.

130. As noted above, Friedman, *Regulation in the Reagan-Bush Era*, argues that OIRA was largely pro-business and less than transparent about its contacts with industry lobbies. For a more recent discussion, see Haeder and Yackee, "Influence and the Administrative Process: Lobbying the U.S. President's Office of Management and Budget." For a useful theoretical discussion of "regulatory capture" in this regard, see Daniel Carpenter and David A. Moss, eds., *Preventing Regulatory Capture* (New York, 2014).

131. See, e.g., Juliet Eilperin, “White House Delayed Enacting Rules Ahead of 2012 Election to Avoid Controversy,” *Washington Post*, 13 December 2013, available at https://www.washingtonpost.com/politics/white-house-delayed-enacting-rules-ahead-of-2012-election-to-avoid-controversy/2013/12/14/7885a494-561a-11e3-ba82-16ed03681809_story.html?utm_term=.3943d8215f98. For a rare dissent from this conclusion, see Sunstein, “OIRA: Myths and Realities.”

132. Certainly OIRA has always been understaffed relative to its workload. While in the early 1980s, OIRA had more than 90 employees and hoped for 115, since the mid-1990s the office has been lucky to have as many as 50 staff members on hand. The Trump administration has proposed adding ten additional staff to OIRA. See C. Jarrett Dieterle, “Mulvaney Is Right to Call for More Money for OMB,” *The Regulatory Review*, 25 July 2017, available at <https://www.theregreview.org/2017/07/25/dieterle-mick-mulvaney-money-omb/>.

133. Max Weber, “Politics as a Vocation,” in *Max Weber: Essays in Sociology*, ed. and trans. H. H. Gerth and C. Wright Mills (New York, 1946), 128.