

A Project Worth Watching at OIRA

By: Sally Katzen | March 29, 2021

In brief...

Building up the ability for agencies to conduct effective benefit cost analysis was difficult when President Clinton authored Executive Order 12866 in 1993, so too will be building out better distributional analysis under President Biden's "Modernizing Regulatory Review" Memorandum. It was worth the effort then, and it will be worth the effort now.

Among the signals sent during the first week of the Biden Administration about the direction his appointees are likely to take in the regulatory arena, perhaps the most important is the Presidential Memorandum, "[Modernizing Regulatory Review](#)," issued on January 20, 2021. In that Memorandum, the President tasks OIRA with a number of assignments, including considering ways in which the regulatory review process, presided over by OIRA, can be made more efficient, transparent, inclusive and proactive.

The heart of the assignment to OIRA is to identify ways to "modernize and improve" the process to 1) ensure that it reflects the most current developments in scientific and economic understanding; 2) fully accounts for regulatory benefits that are difficult or impossible to quantify; and 3) the most important – to "propose procedures that take into account the distributional consequences of regulations . . . so as to ensure that regulatory initiatives appropriately benefit and do not inappropriately burden disadvantaged, vulnerable, or marginalized communities."

To those who watched the lead-up to the Presidential election and are aware of the various policy positions among Biden's supporters and advisors, this emphasis on distributional equities should not come as a surprise. Throughout the campaign, Biden spoke of the disproportionate adverse effect government policies can (and sometimes do) have on under-represented communities. And consideration of these effects is not specifically captured in benefit-cost analysis (BCA), which many of Biden's most progressive supporters have always been [deeply concerned with](#), if not hostile to; BCA is, they believe, inherently biased against regulations and has consistently been employed in the service of de-regulation.

What the Biden Administration is seeking to do by explicitly incorporating distributive effects in any quantitative or qualitative analysis of the anticipated effects of proposed regulations is to widen the lens of the inquiry and bring into the discussion – and the evaluation of proposals – not just costs and benefits to society writ large, but to look at who bears the costs and who derives the benefits. It is important to recognize that interest in the distributive effects of regulatory proposals is not something new. Both EO 12866 and EO 13563 speak of distributional effects. Yet it has not taken root. It has not been made operational. Circular A-4 – the "bible" on how to do a Regulatory Impact Analysis – doesn't

spell out how to do it. And it is, in fact, rarely part of the analyses undertaken by the agencies. That is what the push here is for – to make it a real consideration in evaluating proposed regulations.

It is understood that this will not be easy. While there has been some good work done in the field, there is no consensus, no coherent well-accepted approach to take off the shelf and begin to implement. So, in many ways, this is not unlike what I found when I became the OIRA Administrator in 1993. Notwithstanding that BCA was a crucial part of the Reagan EO 12291, a lot of work had been undertaken by economists in the academy and elsewhere, and some agencies were able to undertake BCA – some of it even robust BCA – there were still many agencies for which it was almost like a foreign language, and they had to develop the capacity and the resources to make it real.

So too, now in 2021, the hope is that the brightest and most creative minds will set their sights on this challenge, and develop the approaches, methodologies, and data banks to make this piece of the analysis a contributor to good decision-making for rulemaking. This is what OIRA is tasked with shepherding through. It is a tall order, but one worth undertaking – at least I think so.

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