

# Thirty Years of Regulatory Review

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Thirty years ago, President Reagan put cost-benefit analysis at the heart of how agencies like the EPA and OSHA do business and initiated one of the most important recent developments in how the federal government works.

In a 1981 [executive order](#), Reagan instructed the Office of Information and Regulatory Affairs (OIRA), which is part of the White House Office of Management and Budget, to oversee all major agency regulations to make sure they met a cost-benefit standard. This move was heavily fought by protection oriented groups, like environmentalists, because they saw it as a backdoor for favoring industry at the expense of the public.

In the early years, many of these concerns were borne out as OIRA became a "black hole" where regulations would get sucked in, but never come out. The process lacked transparency, which, coupled with a methodology that tended to over count costs and under count benefits, worked to make OIRA's influence tilt in a strongly anti-regulatory direction.

Since then, there has been a major move to increase OIRA's transparency and ensure that cost-benefit analysis is used in a more neutral fashion. Presidents of both political parties have embraced cost-benefit analysis, most recently exemplified in an [executive order](#) by President Obama. Agencies have used cost-benefit analysis to show the public the huge economic benefits of environmental, public health, safety and consumer protection.

But while progress has been made, there is still a long way to go to ensure that cost-benefit analysis is a neutral tool. For example, in a [recent analysis](#) of the benefits of greenhouse gas reductions, the Obama administration gave far too little economic

weight to the interest of future generations, and failed to adequately account for catastrophic risks. The results of the study show that the public benefits of these regulations are already far larger than the compliance costs, but that doesn't mean we shouldn't strive to get the numbers right.

There also some important changes in tone, with [Cass Sunstein](#), Obama's appointed head of OIRA in 2009, emphasizing the benefits of protecting the public's wellbeing and promoting a "humanized" cost-benefit analysis that assigns value to distributional considerations and impacts on future generations.

But there are still many reforms that could improve the process. Two of those are major pieces that should be addressed right away.

First, OIRA should build an institutional mechanism to review agency [inaction](#) as opposed to only reviewing proposals. Right now, the scales are tilted because OIRA doesn't look at cases where agencies are failing to address important risks. Specifically, every year, dozens of proposals for rulemaking that advocacy groups and private parties submit to agencies languish. OIRA should examine these petitions to make sure agencies are looking for ways to maximize net benefits, and not unduly delaying action.

Another item on OIRA's punch list should be to ensure that the Obama administration's new requirement for the retrospective reviews of major regulations be done in a balanced manner. The president's new executive order asks that "excessively burdensome" and "insufficient" rules be revised -- directing agencies to eliminate some and strengthen others. It's commendable that "insufficient" rules would be highlighted in this way. But care must be taken so that the retrospective review process does not become an exercise in deregulation. Too little regulation can be just as harmful as too much, so retrospective review must identify both.

OIRA should also implement procedures to make sure that the right rules are selected for review. Old rule, new information, or changed circumstances: these are good reasons to move a rule to the top of the list for analysis. Agencies shouldn't be choosing rules to review simply because they have gotten a lot of public complaint. The purpose shouldn't be to re-litigate rules that industry doesn't like, but instead to increase the effectiveness and efficiency of government action.

As OIRA moves into its fourth decade we can chart an arc of progress there that, we hope, will continue. What started as a mechanism to roll back protections is now much closer to an unbiased lens with which to decide the appropriate levels of regulation. But there is still much left to be done to fully achieve that goal.

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