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THE EARLY DAYS OF REAGAN
REGULATORY RELIEF
AND SUGGESTIONS FOR OIRA’S FUTURE

JAMES C. MILLER III*

On May 11, 2011, The George Washington University hosted a conference to commemorate the thirtieth anniversary of the Office of Information and Regulatory Affairs (OIRA). The conference was organized by former OIRA Administrator Susan Dudley and had the additional purpose of reviewing and analyzing OIRA’s impact on the efficiency and equity of the federal regulatory process. What follows is based on my presentation at that conference. These Remarks describe my experiences during the early days of centralized regulatory review and present a number of suggestions for OIRA’s future.

COUNCIL ON WAGE AND PRICE STABILITY

After serving on the senior staff of President Ford’s Council of Economic Advisers and writing the chapter on regulation for the 1975 Economic Report of the President, it was my honor to succeed George Eads in October 1975 as an Assistant Director of the Council on Wage and Price Stability (CWPS or the Council). In this role, I headed the Government Operations and Research (GOR) unit, which had the narrow task of addressing ways in which government itself contributed to inflation. The other, more prominent unit of the Council was headed by Bob Crandall and was charged with addressing ways the private sector contributed to inflation.

The Council staff’s leadership, including Director Mike Moskow and Deputy Director Bill Lilley, thought the private sector group should look as though it were doing something without really doing much of anything.

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The reason is that we knew that at least 90% of what was being demanded—by members of Congress and, especially, the press—would be counterproductive, actually contributing to inflation rather than abating it.

The public sector side, however, had a more plausible mission, and carrying it out well would support the Council’s mandate. We all recognized that inflation was almost exclusively a monetary phenomenon, and our mandate and tools in the inflation battle were puny compared with those of the Federal Reserve System—which, at that time, was revving up the monetary base and thus was the principal cause of the inflation the nation was experiencing.

But there was a little more to it. Recall the old Fisher Equation of Exchange\(^1\):

\[
MV = PT
\]

or, the money stock times the velocity (rate of turnover) of money equals the average price level times the number of transactions. Rearranging the equation, we have:

\[
P = \frac{MV}{T}
\]

or, the average price level equals the money stock times velocity, all divided by the number of transactions. So it is obvious that, everything else equal—specifically, the money stock and velocity—an increase in the number of transactions would decrease average price. In other words, anything we could do to increase real gross domestic product (GDP), everything else equal, would reduce the level of price that would have obtained otherwise. In more colloquial terms, if inflation is caused by “too much money chasing too few goods,” anything that increased “goods” would decrease inflation.

And how do you increase real GDP? Well, if you are dealing with government, a good place to begin is to insist that regulations generate net benefits, preferably maximum net benefits. In simple terms, that means that you choose the least costly means of achieving any given regulatory objective and that, along a stylized continuum of regulatory intensity, you maximize the difference between benefits and costs. That is, you choose the intensity level where marginal benefits equal marginal costs. And that is what we—Tom Hopkins, John Morrall, and many others—tried to do. Our authority was limited to filing statements with the agencies involved and embarrassing them in the press.\(^2\) But by doing this with confidence


and skill, and with some support from the White House staff and members of the Council, we had a modicum of success.

OTHER EARLY EFFORTS

Of course, there were other precursors of OIRA, and I do not want to shortchange them here. President Nixon’s Quality of Life Review program launched an interagency review process, coordinated by the Office of Management and Budget (OMB), for agency standards, regulations, and guidelines. Additionally, President Carter formed the Regulatory Analysis Review Group (RARG) to evaluate major regulations, an effort led in part by George Eads as a Member of the Council of Economic Advisers and that relied heavily on Council staff. But, like Council’s efforts under President Ford, these programs lacked the authority to override agency initiatives when they were truly wrongheaded.

RESEARCH AT AMERICAN ENTERPRISE INSTITUTE

With the change in administration in January 1977, the work of the Council continued, but I took refuge at the American Enterprise Institute (AEI). There, Marvin Kosters, I, and others engaged daily in researching and evaluating regulatory phenomena. I do not mean to imply that we made startling discoveries or wrote seminal articles. We did not deal with higher order mathematical equations nor did we conduct much econometric research. Rather, our efforts entailed rote application of economic principles to regulatory phenomena, aiming to design institutional approaches to increase the likelihood that such principles would play a stronger role in guiding policy in the regulatory arena.

After four years of regulatory review at AEI, I was convinced that to make substantial improvements in the regulatory process, we needed a bold approach. It was clear that the raison d’être of regulatory agencies is to promulgate regulations. If not restrained in some way, the agencies will not insist on cost-effectiveness, will not choose the “right” intensity of each regulation, and will even promulgate regulations where costs exceed


benefits. There needed to be a screen. And that screen had to be a benefit–cost test.

EXECUTIVE ORDER 12,291

Governor Reagan had campaigned on, among other themes, reducing excessive regulation. He loved to tell of the purported Occupational Safety and Health Administration (OSHA) rule that required the “Mom and Pop Store” to have separate-sex bathrooms for its employees, although the only employees were Mom and Pop. Moreover, he was convinced that overzealous regulators were deterring expansion of economic activity. Not surprisingly, when President-elect Reagan announced his economic policy program, he included “regulatory relief” as one of its four elements. (The other three were tax cuts, spending restraint, and stable monetary policy.) Regulatory relief was thus a key element in Reagan’s new “supply-side revolution.”

The day after Christmas 1980, Boyden Gray and I were asked by the Reagan–Bush Transition Team to head up an initiative to flesh out how the regulatory relief effort would be organized and what it would do. Although we did not know each other, Boyden and I found that we had similar ideas and complementary skills. We quickly determined that for the regulatory relief mandate to work it had to come from the very top, so we went about drafting an executive order. As I recollect, the principles were:

1. Do not regulate unless you have the requisite information;
2. Choose the least costly means of achieving any given regulatory objective (or its corollary: choose the greatest regulatory benefit for any given regulatory cost); and
3. Choose the intensity of regulation that maximizes the difference between benefits and costs—that is, where marginal benefits equal marginal costs.

In any event, do not regulate unless you can clearly show that the benefits exceed the costs.

Practicing the principle of comparative advantage, I drafted the economics and Boyden drafted the legal framework. But it was truly a joint effort. And we had a draft executive order ready for circulation to White House staff and the Department of Justice on Day One.

THE REGULATORY REVIEW PROCESS AND STAFF

Within weeks of the inauguration, the draft executive order had been revised to reflect the suggestions of others, and those with the ultimate firepower made the decision to empanel a Presidential Task Force, headed by Vice President George Bush. After reviewing the matter with the
Cabinet, where the Vice President explained its purpose and the review process, President Reagan signed Executive Order 12,291 (E.O. 12,291) on February 17, 1981. The Vice President made the decision that E.O. 12,291 would apply to the executive regulatory agencies only, not to the so-called independent agencies.

We were off and running. The staff of this powerful Task Force was three in number: Boyden Gray, also serving as Counsel to Vice President Bush; Rich Williamson, also serving as a Deputy Assistant to the President; and me, also serving as the OMB Associate Director with the regulation portfolio.

It was our good fortune that just as the Task Force was established, President Reagan abolished the Council by executive order. Most of its personnel—quite good people throughout—took jobs in other agencies, though some went into the private sector. The GOR people and OMB’s expanded role in regulation were a perfect match. This unit had more knowledge of regulatory activity in the federal government than any like-sized group in government, and had the skills to perform the needed benefit–cost analyses that would be required under the Task Force’s charter. Part of OMB they thus became.

Soon afterwards, our quick reaction to a certain “February Surprise” enhanced our reputation and visibility. One morning that month the Washington Post reported that a large volume of final rules had been sent to the Federal Register in the closing days of the previous administration. Many were far-reaching and highly controversial. We needed to review these. While we were thinking of what, if anything, we might do, Richard Willard, then on the White House Counsel’s staff, stopped by and reported, “Well, if they haven’t yet been published, the agency’s head can withdraw them, no questions asked.” Promptly, we put in motion an effort that resulted in the President ordering agency heads to withdraw all pending rules, unless required by concerns over public health and safety.

To facilitate the review process, we began providing guidance to the agencies on how they were to perform their regulatory analyses and report their findings. This resulted in several OMB circulars clarifying the process.

7. Many of the Council’s economists who joined OIRA in 1981 remained there for many years, including Art Fraas, John Morrall, Brian Mannix, Tom Hopkins, Tom Lenard, Beth Pinkston, and Mike Mazur.
envisioned by E.O. 12,291. We also put together priorities—rules under development to review and existing rules to review—with the goal of lessening their regulatory burdens. These various “hit lists” were announced by the Vice President to considerable interest by the public. Finally, in the interest of transparency, we required all communications to OIRA and its officials to be logged and kept on file for public inspection.

We also took an initiative to review presidential executive orders. This effort was led by White House Fellow Phoebe Morse, who was assigned to my office. President Reagan approved the project when Vice President Bush noted at a cabinet meeting, “Mr. President, these are your regulations.” With the aid of the regulatory staff, Phoebe coordinated government-wide comments on the orders. And what did she find? That many a hit dog was hollering. It seemed that a large number of these executive orders (over 1,000!) governed mundane, almost trivial matters such as who led and who sat where in international meetings. Nevertheless, we were successful in eliminating many of these executive orders and streamlining others.

While the President’s and the Vice President’s moves to rein in excessive regulation were quite popular—especially with the business community—not everyone was enamored by the idea. Specifically, the Democrats in Congress demanded to know more about what was going on and to have a role in shaping procedures. Oversight and Government Reform Committee Chairman John Dingell held hearings at which both Boyden and I appeared to explain the new program and to answer questions. At times, the session was quite adversarial. Later, I mused, to no one in particular, why were they so upset. Assistant OMB Director Jim Tozzi put his finger on it when he said, “You are regulating the regulators; that’s what they think they are supposed to do.”

Fairly early on, we encountered a significant setback from the courts. In a decision by the U.S. Supreme Court in a case involving the National Highway Traffic Safety Administration, the Court said the Administration could not withdraw or change a rule unless we went through a complete rulemaking and found, on the record, evidence warranting such a change.9 That was followed by court decisions asserting that OMB could not delay issuance of regulations subject to legislative or judicial deadlines.10 This, of


10. See, e.g., Envtl. Def. Fund v. Thomas, 627 F. Supp. 566 (D.D.C. 1986) (holding that Office of Management and Budget (OMB) lacks authority to use its regulatory review powers to delay promulgation of the Environmental Protection Agency (EPA) regulations
course, let the agencies “game” OMB by holding rules and analyses until the last minute.

Of course, we faced challenges from within the Administration. Not all Reagan officials liked the idea of having OMB look over their left shoulders about their regulatory activities. Already, they had OMB looking over their right shoulders about money, and that was quite enough! Agency officials increasingly challenged our decisions to return regulatory initiatives, threatening to appeal our decisions. Here, Vice President Bush played a firm role in supporting the OMB review process, as to my recollection no such appeal was successful. In one case, an agency head sent a regulation to the Federal Register without going through the review process, and upon the rule becoming public and subject to ridicule (the “ketchup is a vegetable” rule), it was promptly withdrawn, by order of the President himself.11

THE PAPERWORK REDUCTION ACT

As we all know, the Paperwork Reduction Act12 was the result of a bipartisan effort to reduce the excess paperwork burden on the American people. The Act was the last bill President Carter signed, and, according to Jim McIntyre, it was signed over the protests of each of the President's cabinet members, save his OMB Director (McIntyre).

One day in early spring, Jim Tozzi exclaimed to me, “You’re going to be Administrator of OIRA.” “What’s OIRA?,” said I. Boy, did I have a lot to learn! At that time, the OIRA Administrator was not a presidentially appointed, Senate-confirmed position, as it is now. So, one day I was an OMB Associate Director, and the next day I was Administrator of OIRA. And with OIRA, we took on additional responsibilities, such as leadership of the federal government’s information technology and census policies. I shall not endeavor to address all these roles here, leaving that for others. Instead, I will turn to suggestions for where we go from here. These are based on little more than memory of my time at OIRA and casual, but interested, observation of OIRA’s work over the years.

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SUGGESTIONS FOR OIRA’S FUTURE

1. Be tough. OIRA stands in the way of a lot of what agencies want to do. Former General Services Administrator Terry Golden used to say, “Life in Washington is not life in the fast lane; it’s life in the oncoming lane!” OIRA is in the oncoming lane.

2. Do not be intimidated by your small scale compared with those of the other agencies. A small group of really good analysts can review and “grade” analyses by others, much like a board of editors of a professional journal can review and accept or reject articles for publication.

3. Always do what is right. Never even think of retaliating against some agency or personnel for giving you a hard time.

4. Take every opportunity to educate. Explain to agencies in considerable detail just why you are returning their regulatory initiatives. Perhaps more importantly, tell the public why centralized regulatory review is important to them.

5. Focus on basic economics—benefit–cost analysis. As Alexander Pope said about words: “Be not the first by whom the new are tried, nor the last to lay the old aside.”

6. Understand that the raison d’être of regulatory agencies is to issue regulations. (Officials may deny this, but they act as though that is their motivation.) Understanding their motives will help you spar with them and turn them to advantage—promulgating regulations that truly make sense.

7. Keep up with developments in your profession. That will keep your faculties sharp—and you may learn something you can apply in your work!

8. Find a vehicle to test Humphrey’s Executor. That is the Depression-era decision by the U.S. Supreme Court that limits the President’s ability to supervise and control the so-called independent regulatory agencies. John Graham’s proposal—which I support—requires a vehicle. I predict that this Supreme Court would reverse Humphrey’s Executor.

9. Failing that, comment on regulations proposed by the independent agencies. If nothing else, that would illustrate the need for OIRA review of independent agency initiatives.

10. Pursue new ways of fulfilling the objective of greater regulatory efficiency. In particular, take a leadership role in advocating a regulatory budget.

11. Publish an annual report on the overall costs of federal regulation. Even with deficiencies in measurements, a time series would be very useful.

12. Address state regulatory activity, especially how it interfaces with federal regulatory activity.

13. Investigate relationships between federal regulation and federal tax expenditures. Both are ways the federal government commands the use of resources.

14. Rank all agencies by the quality of their regulatory analyses, as has been suggested by Susan Dudley. As Alan Merton, former president of George Mason University, is fond of saying, “What gets measured gets better.”

15. Keep your congressional committees apprised of what you are doing and why. Give them—a heads-up whenever you do something likely to create controversy.

16. Constantly be on the lookout for excellent staff to offset attrition.

17. Spend time thinking about long-term goals and write up a plan for meeting them. Do not be a slave to your inbox.

18. Do not forget your families. Doing so will cost you—and OIRA—in the long run.

19. Stay in touch with your predecessors. Not only can they offer good advice, they can vouch for you—and OIRA—to others, including members of Congress and the press.

20. Do not vote for collective bargaining. Union representation of OMB employees would destroy the OMB culture.

21. Avoid a “we/they” attitude with respect to the White House staff and the Vice President’s staff. You really need them on your side.

22. Let the White House staff know what you are doing. OIRA activities will be talked about in the West Wing and may be mentioned in presidential remarks.

23. Always remember that you work for the President. Make him or her proud.

24. Finally, be comforted by the fact that, while OIRA may not be perfect, it has endured—despite a number of termination attempts. That fact alone is testament to its value.