

Scientific Integrity Recommendations for the Office of Information and Regulatory Affairs

Problem:

The two most recent administrators of the White House Office of Information and Regulatory Affairs (OIRA, a part of the Office of Management and Budget) have greatly expanded OIRA's power to delay or halt regulations essential to the protection of the health and safety of the American people.

President Bush's first OIRA head, John Graham, invited corporate special interests to create a list of 76 regulatory protections they wanted weakened or eliminated. Even more insidious were the policies he crafted to change the way that all federal agencies conduct scientific peer review and risk assessments. Graham's methodology for conducting cost-benefit analyses was widely criticized for weighting the scales against protective regulations.

Graham's successor, Susan Dudley, oversaw the expansion of OIRA's role after President Bush issued Executive Order 13422. This executive order reduced transparency by placing politically appointed regulatory policy officers in all regulatory agencies and giving them more power to sign off on agency regulations, expanded OIRA's review of guidance documents and elevated the identification of market failures as a justification for any new regulations. In addition, OIRA under Dudley's tenure directly meddled in the science behind regulations for smog, greenhouse gases, and the North Atlantic right whale.

Solutions:

Restore Agency Primacy on Scientific Matters

John Graham hired a handful of scientists to create in-house scientific expertise at OIRA. The agency then began to review and criticize the scientific basis for decisions such as EPA's standards for ozone, fine particulate matter and formaldehyde pollution. This small number of in-house scientists does not provide adequate scientific expertise to credibly review scientific findings across multiple agencies. It is inappropriate for the White House to second-guess the consensus of agency specialists with decades of experience, and of advisory committees composed of internationally respected experts.

When asked how to improve scientific integrity EPA and NOAA scientists responded:

"The unprecedented and unwarranted influence of the EPA's scientific work and findings by the White House and OMB must end."

"OMB should stay out of NOAA decision-making on scientific and policy issues – they should stick to budget."

"[OMB] is a true source of frustration. ... They have hired their own scientists and play the 'my scientist is better than yours' game."

"Get the OMB out of the business of reviewing science—they do not have adequate staff or adequately skilled staff to provide a scientific review of everything EPA does."

"All communications between EPA and OMB during the development of agency technical products and actions should be preserved for the public record."

"OMB is increasingly interfering in earlier stages of projects... sometimes insisting on methodologies that are less credible than those selected by EPA scientists."

*For more information,
see www.ucsusa.org/surveys*



In response to UCS surveys, more than 100 federal scientists identified the office of Management and Budget (OMB) by name as the primary culprit behind political interference in their scientific work (see www.ucsusa.org/surveys for full essay responses).

President Obama should:

- Issue an executive order affirming that Congress, in passing public health, safety and environmental legislation, give primary authority to the federal agencies in crafting regulations. The memo should state that the role of OIRA is to coordinate and oversee the regulatory process, not to serve as a *de facto* gatekeeper for regulations.
- Explicitly state in the executive order that OIRA will respect the scientific expertise in the agencies and should explicitly exclude OIRA from interfering in purely scientific determinations (including risk assessments and other guidance documents).

Restrain the Use of Cost-Benefit Analysis

In 2003, OIRA required federal agencies to adhere to a particularly narrow form of cost-benefit analysis (CBA) when assessing the impact of proposed regulations. This form of CBA has been proven highly susceptible to political manipulation. For example, OIRA distorted both the costs and the benefits when assessing the EPA's 2007 ozone standard, and pressured the FWS to remove any reference to the economic benefits of protecting critical habitat for two endangered species: the bull trout and the red-legged frog. Such incidents have degraded the credibility of cost-benefit analysis as a regulatory decision making tool.

The next OIRA administrator should:

- Revise OMB Circular A-4 and set forth narrow restrictions on how CBA will be used in the regulatory process. These guidelines should emphasize that cost-benefit analysis:
 - Should be used only at the discretion of the regulatory agency
 - Should be used only when consistent with the intent of the relevant statute
 - Should not determine the regulatory outcome (unless specifically required by statute)
- The cost-benefit analysis process should also be fully transparent and the White House should never manipulate or alter the results of such an analysis.

Increase Transparency

OIRA should work with federal agencies to increase the transparency of the regulatory process, expand rule-making dockets, and make them more user-friendly. It is currently very difficult for the public to find comprehensive information on how regulations are crafted, thus reducing the ability of the public to provide input into regulatory proposals. The rule-making docket should incorporate the following reforms:

The next OIRA administrator should:

- Work with the Chief Technology Officer and the E-Government Administrator to overhaul www.regulations.gov to make it a truly consumer-oriented and user-friendly portal for information about proposed, pending and final regulations. This website is a first step toward bringing rule making into the information age; improving its search and browsing functionality will help it live up to its full potential.

- Encourage the use of interactive technology to engage the public in the regulatory process. Individual agencies should be allowed to innovate better methods for communicating information to the public and receiving feedback on proposed regulations.
- Develop a regulatory tracking system that provides information on regulatory proposals earlier in the rule-making process. OIRA currently only produces twice-yearly reports on the president's regulatory agenda and the status of any rules in preparation. A regularly updated tracking system would provide the public with more accurate and timely information about pending regulations and any associated paperwork requirements.
- Ensure that the public docket contains sufficient information about how a regulation was developed, including:
 - All scientific studies in an agency's possession related to a proposed regulation, regardless of whether the study was directly cited or whether it directly informed the final decision.
 - All official interagency communications regarding rules under review, including those from OIRA, OMB or other White House offices.
 - Completed and peer-reviewed drafts of agency documents prepared by scientific or technical staff before they are subjected to OIRA or interagency review.

Reverse OIRA Bulletins on Scientific Topics

OIRA under John Graham attempted to exert greater control over how agencies conduct peer review and risk assessment. In both instances, the National Academies strongly criticized the proposed changes.

The next OIRA administrator should:

- Refrain from policing federal scientific work through over-prescriptive “one-size-fits-all” policies on scientific practices.
- Seek the advice of agency scientists and the National Academies in issuing broader and more flexible guidelines that leave room for individual agencies to craft their own policies.

For more recommendations from the Scientific Integrity Program, please see our report, *Federal Science and the Public Good*, available at: www.ucsus.org/federalscience

