

NOTICE & COMMENT



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OIRA's Lineage and Enforcement Responsibilities, by Jim Tozzi

by [Guest Blogger](#) – Tuesday, Jan. 2, 2018



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Professor [Andrew Rudalevige](#) of Bowdoin College has written two articles on the creation of the Office of Information and Regulatory Affairs (OIRA): [one](#) just published in the 2018 Winter Edition of *National Affairs* ([Number 34](#)) and the other an earlier and more-detailed presentation published by the [Midwest Political Science Association](#).

Professor Rudalevige concludes:

Presidential authority is a key starting point for managing the executive branch. But as OIRA's history should make clear, it is not the only important factor. Regulatory review did not instantly spring into being when Reagan signed his executive order; it came about only after more than a decade of effort prior to the Reagan administration, and it developed only because Reagan and his team invested in its maturation.

That included building up staff, nurturing expertise, and paying for it; developing operating procedures and improved analytic techniques; and finding the skill and will to use both legal authority and extra-legal leverage. Bureaucratic [entrepreneurs](#) were also influential, a variable rarely noted but often present in institutional development.

Professor Rudalevige's insights provide invaluable guidance to the political leaders of the incumbent Administration and to OIRA managers as OIRA expands its product line from the review of individual regulations to the implementation of a regulatory budget and possibly review of the regulations issued by independent agencies.

In all instances OIRA's continued existence will require managers who are willing to pay the personal price for imposing [discipline](#) throughout the government. As Justice Scalia [stated](#) so eloquently, "administrative law is not for sissies"; others [call](#) it a "blood sport". A contributing phenomenon was [identified](#) by a former Director of OMB when he stated: "The bureaucracy is generally resistant, no matter what the hell you're trying to do."

In 1981, well before centralized regulatory review became the “most important institutional feature of administrative state” and before *Sierra Club v. Costle* became accepted dogma, OIRA’s enforcement activities were discussed, as noted above, but its enforcement *responsibilities* were seldom addressed. Nonetheless centralized regulatory review would not have survived for nearly a half century without a cadre, however small, of individuals who were willing to place their career on the line because the mere existence of centralized regulatory review was at that time repugnant to a number of the leaders of the administrative state who frequently advocated retaliatory measures. The absence of a strong disciplinary component of centralized review at its *inception* would have relegated it to still another version of interagency coordination which would have ceased to exist.

It should be noted that the disciplinary actions so noted herein deal with the procedural requirements of the rulemaking process not the substance of the rule.

OMB, including OIRA, has the responsibility to advise the Presidency of the impact of their planned actions but once a decision is made OMB has the responsibility to ensure the decisions are implemented in accordance with prevailing statutes. Fortunately over the last *half century*, OIRA and its predecessors were, and presently are, supported by a bipartisan base. But a *national constituency* would be a great help.

Jim Tozzi served as a regulatory official in five consecutive presidential administrations starting with Lyndon Johnson and ending with Ronald Reagan. He is presently the head of the [Center for Regulatory Effectiveness](#).

This post is part of the Administrative Law Bridge Series, which highlights terrific scholarship in administrative law and regulation to help bridge the gap between theory and practice in the regulatory state. The Series is further explained [here](#), and all posts in the Series can be found [here](#).

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