Presidential Oversight and Regulatory Delay: How Politics and Organizational Capacity Influence OIRA Rule Review*

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Abstract

The White House Office of Information and Regulatory Affairs (OIRA) has been described by some observers as a "regulations-smiting agency" and many perceive it as an instrument to carry out the political will of the president. Yet, pundits and scholars largely fail to consider OIRA as an organization itself, limited by its institutional capacity and resources. In this paper, we examine how both bureaucratic and political factors shape the duration of OIRA's rule review. Using a new dataset of more than 35,000 rules reviewed by OIRA from 1981-2013, we find that an agency's ideological distance to the president increases the length of review. However, organizational factors and resources have an impact equivalent to that of political factors traditionally though to play such a central role in regulatory review. Specifically, we find that review is generally longer when OIRA is understaffed and over-worked. Further, we demonstrate institutional capacity conditions the president's ability to expedite priority rules. This study not only contributes to a growing literature on the "ossification" of the rulemaking process, but also highlights the limitations of rule review as an outlet for presidential power.

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In order to keep pace with the demands of modern society, regulations must be continually revised. Yet, rulemaking, the process by which regulations are updated, is plagued by frequent delays. In fact, these delays are so prevalent that scholars have come to describe the regulatory process as "ossified" (McGarity, 1992; Yackee and Yackee, 2010). The Office of Information and Regulatory Affairs (OIRA), a component of the Office of Management and Budget (OMB), serves as an institutionalized source of delay as it has the opportunity to review rules promulgated by executive branch agencies not once, but twice during the course of this process. As such, OIRA is both influential and controversial. As the clearinghouse for agency rules, it has been described as "one of Washington's most obscure, yet powerful, offices" (Skryzycki, 2005). Much of the controversy surrounding this White House office centers on the delays associated with its regulatory review, with some reviews even lasting for years. Further, OIRA is often criticized for the perceived political bias motivating such delays.

Prolonged review of rules by OIRA is problematic for at least two reasons. First, delays forestall the benefits of critical regulations and can create economic uncertainty for regulated parties concerned with compliance costs. For instance, in a recent critique of the Obama administration's protracted review of energy-efficiency rules from the Department of Energy, interest groups calculated that each additional month of delay resulting from OIRA review created "pollution equivalent to burning 19,000 rail cars of coal" (Broder, 2013). Second, lengthy OIRA reviews may further stall the regulatory process (Yackee and Yackee, 2010). Bringing a rule from a policy idea to a binding final rule often takes years (Kerwin and Furlong, 2011; O'Connell, 2008) and extended review by OIRA further contributes to the length of the process (Hwang et al., 2014). In addition, lengthy reviews may have a chilling effect, deterring agencies from writing new rules in the first place (Acs and Cameron, 2013). Indeed, this deterrent effect may actually be intentional, as OIRA has been accused of sitting on rules in order to stifle costly new regulations (see Nou, 2013).

While particularly acute in recent years,[1] accusations of regulatory delay have stigmatized OIRA since its creation in 1981. These delays persist in spite of an executive order (EO 12866) specifically requiring that OIRA spend no more than 90 days reviewing any given rule. However, the office's review sometimes extends many months – and in some cases years – beyond that. From 1994 to 2013,[2] the length of OIRA reviews ranged from 1 to 1214 days. While the majority of rules (82%) were reviewed within the 90-day time frame, there is extreme heterogeneity. At its most delayed, some reviews lasted over three years – more than thirteen times longer than the prescribed time.

Although OIRA's review of agency rules fulfills many functions, including coordinating regulatory policy within the executive branch and overseeing agency cost-benefit analyses, observers tend to focus on its *political role* in ensuring that agency rules reflect presidential priorities (Sunstein, 2013). For instance, the media and watchdog groups often highlight OIRA's political nature, using epithets like the president's "killing ground" for rules to describe the office (Shapiro, 2011). This view of OIRA as a politically-motivated actor is further reinforced by scholars who characterize it as a tool of presidential control over the bureaucracy (Moe, 1985), emphasize its role in navigating relations between the president and Congress (Wiseman, 2009), or suggest partisan underpinnings for its actions (Acs and Cameron, 2013). In other words, OIRA is perceived as an instrument of obstruction and delay, often targeting certain agencies based on their ideological opposition to presidential goals.

While these political factors are important, this paper argues that the president's ability to carry out ideological targeting is limited by OIRA's institutional capacity. In particular, our theoretical argument focuses on the role that staffing, leadership, and workload play in contributing to regulatory gridlock. In order to test these hypotheses, we construct a

[1] See Copeland (2013) for a discussion of issues surrounding OIRA and regulatory delay during the Obama administration.

[2] We offer these statistics starting in 1994, since the 90-day deadline under EO 12866 took effect at the end of 1993.

dataset of more than 15,000 proposed rules and 19,000 final rules reviewed by OIRA between 1981 and 2013. While we find that political factors such as an agency's ideological distance to the president increases the length of review, our analysis suggests that ideological targeting is only part of the story. The institutional capacity of OIRA itself also plays a critical role in regulatory delay. In particular, we find that leadership vacuums, understaffing, and high workloads are significant factors in lengthening the time that it takes OIRA to complete rule reviews. Further, we demonstrate that these capacity limitations even hinder the ability of the president to carry out expeditious reviews of his highest priority regulations.

Overall, this study not only contributes to a more nuanced (and much needed) understanding of OIRA's decision-making. It also advances a less political, organizational account of gridlock in the policymaking process; our findings demonstrate that although political factors may stall rulemaking, bureaucratic capacity considerably limits OIRA's ability to perform its duties. As policymakers seek reforms to ameliorate regulatory delays, our results suggest the importance of increasing the resources at OIRA's disposal (e.g. Wallach, 2014).

The remainder of the paper proceeds as follows. We begin by offering background on regulatory review and the related literature. We then develop a theory of length in OIRA rule review that yields testable predictions. Next, we describe the data and empirically test these predictions, using a competing risk survival technique. The following sections assess the extent to which the office's limited capacity prevents the president from accomplishing his legislative agenda and discuss the constraints on increasing OIRA's capacity. The final section offers concluding remarks and directions for future research.

OIRA Review & Regulatory Delay

Administrative rules issued by agencies under the Administrative Procedure Act (APA) carry the full force of law and touch on almost all policy areas. Given these implications, presidents have consistently sought ways to gain administrative control over agency rulemaking.[3] Although early efforts to centralize regulatory review took a variety of guises (Kerwin and Furlong, 2011), regulatory review was placed under OIRA's auspices in 1981, when President Ronald Reagan gave it the authority to review and approve executive agencies' proposed and final rules under EO 12291.

In order to complete the regulatory process laid out in the APA, EO 12291 required OIRA approval of an agency's rule not once, but twice (Croley, 2003). First, the agency had to obtain OIRA clearance of the draft proposed rule (prior to its publication in the *Federal Register*) and then again of its draft final rule. In addition, "major" rules—defined as those that had an annual effect on the economy of at least $100 million or that impacted either prices or the economy—were required to include a regulatory impact analysis that included a cost-benefit analysis of the policy.[4]

This setup remained in place until President Clinton issued another order in 1993 (EO 12866), narrowing the scope of OIRA's review from all rules to just "significant" ones. This EO granted OIRA the authority to determine which rules fell under its loose definition of significant,[5] essentially leaving all of the office's powers intact, but considerably reducing its workload. In many other respects, however, Reagan's framework for OIRA remained intact. OIRA still had two opportunities to review agency rules and cost-benefit analysis was still required, albeit for a smaller subset of rules than the previous EO had required. Today, although subsequent presidents have tweaked OIRA's role, the process still functions in accordance with the basic principles instituted by Clinton.

[3] This falls under a broader heading of presidential efforts to manage the administrative state (see Moe, 1985; Rudalevige, 2002; Lewis, 2008).

[4] Critics often point to the cost-benefit requirement as a way that Republican presidents have executed a deregulatory agenda.

[5] Under EO 12866, OIRA can deem a rule "significant" if it will "(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the president's priorities, or the principles set forth" in the EO.

OIRA review encapsulates many different functions. During the course of a review, OIRA coordinates with other agencies in the executive branch to ensure the draft policy does not conflict with existing programs or create legal difficulties. OIRA also reviews the cost-benefit analysis prepared by the agency, if one was required, and coordinates with other component units in the Executive Office of the President (EOP) to ensure that the draft rule does not cause issues with respect to presidential priorities. Finally, as Sunstein (2013) notes, OIRA desk officers may form opposition to the rule on its merits, based on good governance principles, or on their prior experience working with the agency and its programs. Whenever issues arise, OIRA and the agency must negotiate over what changes to make to the rule and, if no compromise can be reached, OIRA can return the rule to the agency for further reconsideration.

Although the details of what occurs during any particular OIRA review occur outside of the public's purview, scholars have attempted to discern the effects of OIRA review in a number of different contexts. For instance, Dragu (2010) examines the factors that lead OIRA to require changes to agency rules, concluding that such changes are more likely to occur later in a president's term and during election years. Further, he finds that OIRA is more likely to block a rule from being promulgated under Republican presidents as well as in the beginning of presidential administrations. In another study of OIRA decision-making, Acs and Cameron (2013) offer an examination of when OIRA decides to audit an agency (i.e., bring the agency's rule in for formal OIRA review). They find that under the Bush administration, OIRA was more likely to audit a liberal agency's rule, while other administrations did not exhibit the same type of ideological targeting.

The ability of OIRA to stall a rule through its review process has the potential to ossify the process, yet it has received scant attention from scholars.[6] Technically speaking, OIRA has limits on the length of time it can review an agency's rule. Prior to the 1993 EO,

[6] Yet, see Copeland (2013) for a thorough history and discussion of the issue. See also McLaughlin (2011) and Ellig and Fike (2013) for a discussion of political aspects of OIRA review for a subset of OIRA reviews.

review time was limited to 60 days for major proposed rules, 30 days for major final rules, and 10 days for non-major rules. OIRA had the authority to extend the review time on any rule at its discretion. Agencies, in turn, were instructed to await OIRA approval before publishing their rules, and a norm developed that agencies would not violate this standard.[7] EO 12866, issued in 1993, set a 90-day limit for all rules under OIRA review. Review can be extended for an additional 30 day period at the request of the agency and subject to written approval of the OMB director.[8]

As a result of these loopholes and the demands of the review process, the length of OIRA reviews has generally increased over time, as shown in Figure 1. Prior to 1993, average review times were shorter. However, consistent with the longer review period established under EO 12866, review times increased in the pursuant years. In addition, review times for proposed rules exceed those for final rules. This is unsurprising since, in most cases, final rules have already been vetted at the proposed rule stage. However, as Figure 1 demonstrates, there is considerable variation over time and within presidential administrations in the length of OIRA's rule review. In the next section, we offer a theory that explores both the political and organizational factors underlying delays in OIRA's regulatory review.

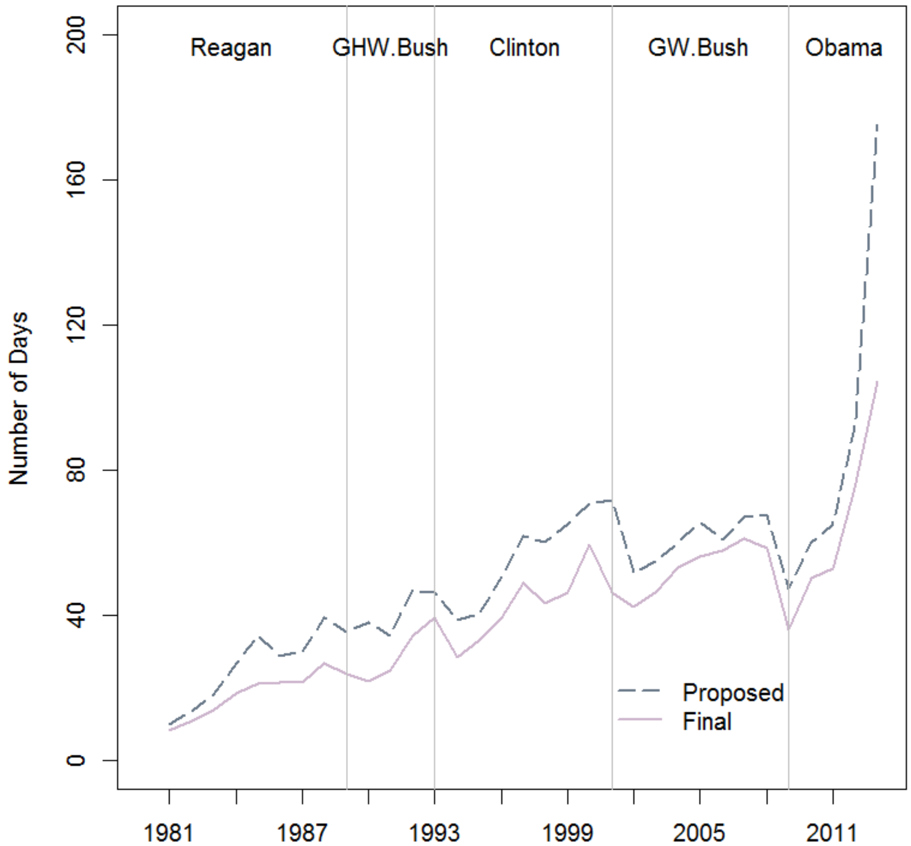
A Theory of OIRA Review Length

Why does OIRA sometimes review rules in a matter of days, but at other times prolongs review for months or, in some cases, years? The literature predominantly views OIRA as a highly politicized actor that executes the political will of the president. As such,

[7]Copeland (2013, 10) describes an interesting exception where the Reagan-era Environmental Protection Agency (EPA) published a rule despite OIRA's objections. Reportedly, an OIRA official responded by ominously warning EPA officials that there was "a price to be paid for what they had done."

[8]Although the language of the EO stipulates that both conditions must be met (i.e., OMB approval *and* an agency request), in practice the EO has been interpreted very loosely, such that only one condition need hold. In other words, the agency extension clause enables indefinite review extensions, particularly because OIRA sometimes puts pressure on agencies to request an extension (Copeland, 2013; Sunstein, 2013; Heinzerling, 2013). However, as Nou (2013, 1796 - 7) points out there are political costs to extending review, including increased interest group and congressional scrutiny.

Figure 1: Average Length of OIRA Rule Review, 1981 - 2013



Source: Authors' analysis of data from www.reginfo.gov.

political factors such as ideology (Acs and Cameron, 2013), conflict with the other branches (Potter and Shipan, 2013) and deadlines (Lavertu and Yackee, 2014) are often identified as the driving force behind rulemaking decisions. While these factors undoubtedly play an important role in explaining review length, existing accounts of OIRA decision-making emphasize politics at the expense of other important factors. We point to the fact that OIRA faces considerable resource constraints and occasionally suffers from leadership deficits as well. We argue that these bureaucratic factors deserve equal attention in an account of the length of OIRA review. In the paragraphs that follow, we lay out both the political and bureaucratic accounts and draw out the empirical implications of each.

To begin, the political view of OIRA casts that office as the president's regulatory henchman.[9] Viewed from this perspective, OIRA operates as the president's regulatory eyes, ears, and hammer, ensuring that those agency rules that make it into the *Federal Register* accurately reflect presidential preferences and priorities. This political perception of OIRA can largely be attributed to two factors. First, the OIRA Administrator is a presidential appointee, suggesting that he or she will act in ways that reflect the preferences of the president. Second, OIRA is housed within the EOP, suggesting that the president exerts a considerable degree of control over its actions (Epstein and O'Halloran, 1999; Lewis, 2003).

The political view of OIRA thus presumes that OIRA is (more or less) a perfect agent of the president. Agencies, on the other hand, may submit rules to OIRA for review that accord with their own preferences or accommodate the president's preferences. While agencies occasionally offer rules that entirely express presidential preferences, we argue that more often than not agencies write rules that reflect their own ideological preferences as well and attempt to bring policy closer to their own preferred positions.[10] Previous work leads us to expect that the degree to which rules reflect the president's preferences will depend upon the control he exerts over an agency, such as whether or not it is a Cabinet or an independent agency and the extent to which the agency is led by presidential appointees (e.g. Epstein and O'Halloran, 1999; Lewis, 2003, 2008).

When a rule comes onto OIRA's docket for review, OIRA can either engage in a cursory (quick) or rigorous (more prolonged) review. If an agency is ideologically distant from the president, it is more likely to submit a rule that is ideologically distant from the president as compared to an agency that is more proximate to the president. Thus, this leaves the potential for a large policy loss if OIRA performs a cursory review and does not engage in

[9]Of course, this paints an unflattering portrait of OIRA. Croley (2003) suggests that OIRA review may actually be normatively desirable, serving to counterbalance the influence of interest groups that occurs through agency capture.

[10]Indeed, the notion that bureaucratic agencies behave in ways that reflect their policy preferences is a cornerstone of the Principal-Agent problem that is so often used to characterize the president's relationship with executive agencies.

extended negotiations with the agency. To minimize this policy loss, OIRA can choose to perform a more rigorous review of the agency's rules, in an effort to induce the agency to promulgate a more favorable policy. A longer review time is just one way in which OIRA can intensify the review process, as OIRA works to hammer out policy disagreements and negotiate policy concessions. In addition, during the course of a longer review OIRA staff may be building coalitions with powerful stakeholders in the EOP. These allies may come in handy should OIRA need leverage to compel the agency to make changes to the rule or political support to return the rule to the agency. On the other hand, OIRA does not need to execute such a demanding review for ideologically congruent agencies who are likely to propose regulations closer to the president's preferences. This logic leads to our first hypothesis:

> *H1. Political Targeting Hypothesis.* As the ideological disagreement between the president and the agency increases, OIRA review time increases.

In addition to targeting rules based on the ideologies of agencies, OIRA's political motivations may come to the fore during times that are politically salient. The timing of rulemaking is often considered a strategic consideration of agencies (Gersen and O'Connell, 2009; O'Connell, 2008; Yackee and Yackee, 2010), but OIRA also has strategic considerations with respect to political timing. For instance, no president wants to have controversial rules issued in the lead-up to an election, lest rulemaking distract from the campaign. Generally, the White House is more cautious during election periods.[11] With respect to review time, the implication is that during an election season, OIRA will slow down and carefully scrutinize the rules on its docket so as to ensure that all rules that are issued accurately reflect presidential priorities, as stated in this next hypothesis:

[11] An alternative hypothesis would be that presidents actually seek to push through politically popular rules during an election season. To the extent that this is true, it should bias against finding results in support of our hypothesis.

H2. Political Timing Hypothesis. OIRA review times increase during presidential election years.

However, while presidential politics no doubt have a role in review outcomes, such explanations overlook the fact that the majority of OIRA staff—the so-called "desk officers"—are career civil servants and serve regardless of the party of the president. Further, OIRA is a bureaucratic organization and, as such, is subject to the same sorts of operational constraints that all government agencies face. That is, even if OIRA desk officers aim to be a perfect agents of the president (and we are not making the case that they do), other factors may limit their ability to accomplish this goal.

Here, we take the view of Lee and Whitford (2013) that agency resources, or inputs, should be thought of not as control variables, but as explanatory variables worthy of study in their own right. Their argument applies the Resource-Based View (RBV) of the firm, which suggests that increasing an organization's resources leads to better performance, to public sector agencies and finds that increased resources lead to better agency performance. In the case of OIRA, we argue that organizational capacity influences its ability to perform its functions, which in turn is reflected in the length of rule reviews. Rule review is costly to OIRA in terms of the amount of resources, including staff and time, it must devote to each rule. Thus, when OIRA's capacity is higher, it is better equipped to handle these costs and decrease the length of review. Conversely, when OIRA's capacity is low, it should be less equipped to handle its duties. Consequently, it may produce lengthier rule reviews as a result of its sheer inability to manage its overwhelming responsibilities, as stated in our final hypothesis:

H3. Bureaucratic Capacity Hypothesis. As OIRA's bureaucratic capacity increases, OIRA review times decrease.

Data

To test these hypotheses, we collect data related to both the political and bureaucratic explanations of OIRA review length. To generate the dependent variable, the length of OIRA review, we calculate the number of days that a rule was under review at OIRA from 1981 until 2013. For each rule that OIRA reviewed, we count the number of days from when OIRA received the rule to the day that it completed review.[12] The dataset yields 15,971 proposed rules and 19,437 final rules from more than 34 agencies, with *Review Time* ranging from 1 to 1214 days.[13]

The first hypothesis addresses the political relationship between OIRA and the agency submitting the rule for review. To begin we consider the ideological distance between OIRA and the agency using ideology estimates created by Clinton and Lewis (2008). The authors create these scores using expert surveys, where 37 bureaucracy experts were asked to rate more than 80 agencies as conservative or liberal. Clinton and Lewis (2008) then use a multirater item response model to aggregate the experts' scores into an aggregate agency score. To get a measure of ideological alignment, we create a dummy variable *President-Agency Disagreement* that takes on a value of "1" if the president is a Republican (Democrat) and the agency's Clinton-Lewis score is liberal (conservative), and "0" otherwise.[14] We count an agency as "liberal" whenever its Clinton-Lewis score is less than zero, and "conservative" otherwise. Consistent with H1, we expect that disagreement between the two actors will slow the pace of review.

[12] These data come from www.reginfo.gov, the official government website that records data relating to OIRA's review under EO 12866. We exclude from the analysis rules that were labeled as "improperly submitted" or "exempt from Executive Order review," as these technical categories do not lead to substantive review by OIRA.

[13] For a list of agencies included in this analysis, see Table A3 in the Appendix.

[14] We use Clinton and Lewis's scores here because they cover a wide range of agencies during the period under study. However, these scores are limiting in that they are time-invariant and that they force us to dichotomize our distance measure. As a robustness check, we substituted Bertelli and Grose's (2011) estimates of agency ideology in lieu of Clinton and Lewis's measure. The new estimates are based on the statements of agency heads during congressional testimony and place the agency and president on the same scale. We note that using these continuous measures does not substantively alter our results, although it does limit the sample size to a smaller number of agencies from 1991-2004.

Of course, presidents have tools to combat ill-behaved agencies, particularly by staffing those agencies with loyal presidential appointees (Moe, 1985). As Lewis (2008) shows empirically, presidents frequently use political appointments to staff agencies with whom they disagree in an effort to exert more control and induce outcomes consistent with presidential preferences. This suggests that through politicization, the level of politically-appointed leadership in an agency, presidents can staff a discordant agency with leaders who will advance the administrations's agenda. Previous work (e.g. Lewis and Rudalevige, 2005; Nathan, 1983) has suggested that politicization and the centralization of policymaking apparatus in the White House (e.g. OIRA) are strategic substitutes. As a result, we expect politicization to lead to shorter reviews, due to the fact that agency leadership may be more sympathetic to the success of the president's ideological goals than careerists and write rules closer to the president's ideal point.

As an extension of the first hypothesis, we include a measure of the politicization of each agency, which we expect to decrease the length of review time. We rely on Lewis's (2008) data on presidential staffing of agencies. For each agency, counts of the number of presidentially-appointed positions, including presidentially-appointed Senate-confirmed (PAS) employees, Schedule C employees, and non-career Senior Executive Staff (SES) positions are based on data from the Office of Personnel Management (OPM) and the Plum Book, an official government publication that lists appointments during each presidential administration. We extend Lewis's data through 2013.[15] The politicization variable, *Log Politicization*, is the natural logarithm of the number of presidential appointees (PAS, non-career SES, and Schedule C) in an agency in a given year divided by the total number of employees in that agency, so that higher values indicate a greater degree of penetration by presidential staff.

[15] Lewis's original dataset covers the period 1988 - 2005. In extending the dataset, we gathered the number of non-career SES and Schedule C employees from OPM's FedScope tool. These numbers vary by fiscal year. Because FedScope does not count the number of PAS employees, we approximate this number using the number of PAS positions as counted by the Plum Book. Because this is only published quadrennially, the numbers of PAS appointees in each agency counted in our measure varies only quadrennially.

The *Political Timing Hypothesis* (H2) suggests that OIRA takes a more cautious approach to rule review during an election year. To test this hypothesis, we coded the variable *Election Year* dichotomously, so that it takes on a value of "1" if the rule was submitted for OIRA review during a presidential election year, and "0" otherwise.

This hypothesis emphasizes the role of the president's electoral incentive in regulatory review. Yet there is not always another election on the horizon for the president. Lame duck presidents face neither a current nor future election because they have either lost a contest for reelection, come up against a term limit, or decided to retire. Indeed, scholars of rulemaking have dubbed this lame duck period as "midnight rulemaking", as an outgoing president works with agencies to push through a slew of last-minute rules to accomplish his agenda.[16] In order for an outgoing president to leave his mark via midnight rulemaking, agency rules must be approved by OIRA before the new president takes offices. As a result, OIRA may be pressured by both administration and agency officials to expedite rule review.[17]

In a sense, this is the inverse of H2; when the electoral incentive is eliminated during the midnight period, OIRA may actually *decrease* review time. To test this implication, we include a dummy variable *Midnight* that indicates whether or not a rule was submitted for review during the midnight rulemaking period. We conceive of the midnight period as the period in November following a presidential election that puts a president into lame duck status until the date in January when the new president assumes office.

To test the *Bureaucratic Capacity Hypothesis* (H3), we focus on three dimensions of OIRA capacity—leadership, staffing, and workload. Scholars of bureaucratic politics and organizational dynamics have long acknowledged the importance of political leadership in influencing agency outputs (Lewis, 2008; Carpenter, 2001; Meier and O'Toole, 2002). Leadership affects OIRA in that regulatory reviews often culminate in difficult decisions and

[16] O'Connell (891 2008) notes that midnight rulemaking occurs regardless of whether the incoming president is of the same party as the outgoing president

[17] Indeed, (McLaughlin, 2011) finds that the mean OIRA review time for agency rules decreases during months that fall during a midnight period.

even more difficult political dynamics. Yet, there are often significant leadership gaps at OIRA; its Administrator position has frequently undergone long periods of vacancy, largely attributable to the difficulties of advancing nominees through the contentious process. For instance, following Administrator John Graham's departure in February 2005, the position remained unfilled for nearly a year until President Bush recess appointed Susan Dudley to fill the role in January of 2006.

During these periods when the OIRA Administrator position is vacant, its ability to respond to the policy and political issues that arise during the course of regulatory review is hindered. For instance, Croley (2003, 842) notes that EO 12866 "provides that disagreements between OIRA staff and a rulemaking agency are to be resolved wherever possible by OIRA's Administrator, and in the event of an impasse – when, for example, an agency head is unyielding to OIRA – by the vice president or president directly." In the absence of confirmed Administrator, these highly political tasks fall to whomever happens to be acting in the Administrator's place (usually the Deputy Administrator, a career civil servant).[18] While an interim administrator may possess much of the same formal authority as a Senate-confirmed one, he or she may lack the political authority to undertake potentially controversial actions. Thus, without the political backbone provided by the Senate-confirmed leader, OIRA's bureaucratic capacity is diminished and rules are more likely to languish on the docket.

To measure the vacancy level, we searched publicly available sources to determine the dates that each OIRA administrator served and when vacancies in the administrator position occurred. The variable *Vacancy* is the average level of vacancy during the course of each individual rule review, with higher levels indicating that there was a vacancy for a more significant portion of the rule's review. For instance, a rule that was under review for

[18]Under the Federal Vacancies Reform Act of 1998 (P.L. 105 – 277), persons may only serve in an acting role for a maximum of 210 days. Consequently, while the Deputy Administrator often is the first to serve in the event of a vacancy in the OIRA Administrator, the acting role may be filled by many individuals during the course of a long vacancy.

90 days with no vacancy in the Administrator position would receive a value of "0," while a rule under review for 90 days where the Administrator seat was vacant for 45 of those days would receive a value of "0.5."

In addition to vacancies in leadership, resource scarcity may lead to delays as a result of diminished capacity. On an average day between 1981 and 2013, OIRA had more than one hundred rules simultaneously under review. In spite of this high volume, OIRA has maintained an average of around sixty Full Time Equivalent (FTE) employees, although there has been an overall downward trend in the number of FTEs in recent years. These top-line figures in themselves may actually understate the case in two ways. First, Nou (2013, 1800) notes that "of this already small staff, only about twenty to thirty consistently engage in regulatory review."[19] Second, as Copeland (2013) details FTE numbers are authorizations and, at any given point in time, it is possible that actual staffing numbers fall below that ceiling. The implication of staffing shortages, of course, is that, rather than a long review indicating a political agenda on OIRA's part, OIRA may simply not have the manpower to review all of the rules on its docket in a timely manner. The variable *FTE* is a count of the number of allotted FTEs for OIRA for the fiscal year during which the rule was under review.[20]

Another capacity-related concern stems from how OIRA assigns review of individual rules. Generally speaking, agencies are assigned one particular OIRA desk officer. [21] As a result, if an agency churns out a high volume of draft rules and submits them all to OIRA at once, they may in effect clog the pipeline and slow the review process for all of their rules on OIRA's docket. While this may seem like a suboptimal strategy from the agency's perspective, sometimes outside events – such as a change in political leadership,

[19] The remainder of OIRA's staff are dedicated to administrative duties or to OIRA's information management and statistical standard-setting tasks.

[20] These data come from the Government Accountability Office (2003) and Copeland (2013). We thank Copeland for his assistance in procuring additional data.

[21] In the case of a high volume regulatory agency, like the Environmental Protection Agency, the agency is subdivided by policy area and assigned to a handful of desk officers.

the launching of a policy campaign, or increased congressional scrutiny – may precipitate a surge in rule production. Conversely, at other times, agency rule production may fall off, due to shifting priorities at the agency.

We include the variable *Log Workload* to test whether the volume of workload reduces OIRA's ability to review rules in a timely manner. To create this variable, we count the number of rules under OIRA review for each agency for every day in our dataset. Then for the duration of each rule's review, we average the daily number of rules to get a sense of the workload that the agency has created for OIRA during the course of that rule's time on the docket.[22] Consistent with H3, we expect that as the workload submitted by an individual agency increases, the time for review of that agency's rules will also increase.

Finally, we include a number of control variables in the models. First, we include dummy variables to indicate whether or not the rule had an associated statutory or judicial deadline. Deadlines serve as "powerful motivations for expedited behavior" (Nou, 2013, 1797), and so we expect *Statutory Deadline* and *Judicial Deadline* to lead to shorter reviews by OIRA.[23] Next we include two dummy variables, *Econ Significant* and *Regulatory Flexibility Analysis*, to account for the complexity of the rule. Rules that take a value of "1" for these variables require additional analyses and should be associated with longer reviews (Ellig and Fike, 2013).

Finally, we include two measures to account for the environment at the time of rule review. The dichotomous variable *Divided Government* is coded as "1" when the president and either the House or the Senate are from opposing political parties and may lengthen the duration of rule review (Yackee and Yackee, 2009). We also include a control *Post1993* to indicate whether or not the rule was reviewed after the EO 12866 (which brought an accompanying change in the stated review time). Lastly, we fixed effects for presidential administrations, to account for any differences in the orientations of presidents toward OIRA.

[22]To address skewedness in the data, we also take the natural log of this variable.
[23]See Table A2 in the Appendix for a discussion of how we coded these (and other) variables.

See Table A1 in the Appendix for descriptive statistics of the variables used in the analysis.

Methods & Analysis

To analyze these data, we use survival analysis, a statistical technique that addresses the duration of an event, while also accounting for the fact that some covariates may change during the course of the study. Survival analysis is based on the notion of time to failure (i.e., when an event occurs), which in our case means the time it takes OIRA to conclude review with respect to a particular rule. However,"failure" here can occur in not one, but three ways: OIRA can deem the review "consistent" with EO 12866 (i.e., approve the rule), OIRA can return the rule to the agency (i.e., veto the rule), or the agency can withdraw the rule from consideration.[24] These are mutually exclusive events, meaning that a rule may conclude with either approval, rejection, or withdrawal, but cannot have more than one of these events occur at the same time. While the majority of reviews conclude with approval and that is the outcome of greatest substantive interest to our argument, it would bias our analysis to discard those rules that met other fates since it is not clear what the outcome of that review will be at the outset of a review.

Instead, we account for the three possible review outcomes using a competing risks survival regression. This semi-parametric approach is appropriate when subjects are at risk of not just one, but possibly multiple events occurring at any one time (Box-Steffensmeier and Jones, 1997). The approach has the advantage of directly modeling competing outcomes in the context of the hazard framework, which has become familiar and intuitive to researchers.[25]

[24] Agency withdrawals can occur for a variety of reasons, including OIRA pressuring the agency to withdraw (see Sunstein, 2013). Regardless, if a rule is withdrawn or rejected the agency cannot proceed with that rulemaking.

[25] One limitation of the competing risks approach is that it assumes that the risk of each outcome (approval, rejection, or withdrawal) occurring is independent of the risk from the other outcomes. Since we cannot be certain that this assumption is met in practice, as a robustness check we reestimate these models using Bayesian multinomial probit (MNP). While MNP does not require the same assumption with respect to independent risks, it does allow us to jointly model the incidence of all three events occurring. Separate

Table 1 shows regression coefficients from the empirical analysis for both proposed and final rules. The first two columns report the analysis without the politicization variable, while the last two columns include this variable.[26] Positive coefficients correspond to shorter review times, while negative coefficients reflect longer reviews. For ease of interpretation, we also report the subhazard ratios for the models in Figure 2. The subhazard ratio can be interpreted as the hazard or risk of ending rule review, given the covariates, when OIRA approves the rule (i.e. deems it "consistent" with EO 12866). When the subhazard ratio is greater than one, the covariate is associated with an increased risk of ending rule review. A ratio less than one corresponds to a decreased risk of ending rule review. In other words, a subhazard ratio greater than one can be interpreted as the covariate leading to shorter rule review, while ratios less than one mean the covariate leads to longer review times. Since these are ratios, we can subtract the subhazard ratio from 1 and multiply it by 100 to report a percentage change in these ratios when increasing the covariate by 1 unit.

Overall, the models offer mixed support for the two political hypotheses and strong support for the bureaucratic one.[27] For both proposed and final rules, we find that *President-Agency Disagreement* is significantly associated with an increase in the time that an agency's rule is under OIRA review. More precisely, the risk of ending OIRA's review decreases by 11% for proposed rules and 15% for final rules when the agency's preferences are not aligned with the president, as opposed to when they are aligned. While we find some support for the *Political Targeting Hypothesis*, we fail to find evidence for this hypothesis when examining politicization. The number of political appointees in the agency does not significantly impact the length of review for final rules; however it does significantly increase the length for

coefficient estimates are provided for each outcome. The results, which we include in Table A6 of the Appendix are nearly identical to those reported here.

[26]We initially exclude politicization because it shortens our years of analysis as this data is only available from 1988-2013. However, regardless of its inclusion, the results remain virtually unchanged. Because of this, we focus on the full models when describing the results of the analysis in the remainder of this section.

[27]Because the institution of EO 12866 in 1993 fundamentally altered expectations regarding review time, we separate out reviews pre- and post- the EO and run separate models for the two time periods. The results of this robustness check are in Table A4 of the appendix. These results are largely similar to those we report here.

proposed rules by 16%, contrary to the *Political Targeting Hypothesis*. This suggests that politicization and centralization (conceived of as review time) are actually complementary strategies, in line with the implications of Moe (1985) and contrary to the findings of Lewis and Rudalevige (2005). Finally, *Election Year* significantly increases the number of days that rules are under review, while *Midnight* decreases the length of final rule review. This substantiates the *Political Timing Hypothesis*. Substantively, presidential election years correspond to an 9% increase in review time for final rules, while midnight periods lead to a 12% decrease. In sum, while we find some, but not overwhelming, empirical support for these political hypotheses.

The models offer strong support for the *Bureaucratic Capacity Hypothesis*. Consistent with our expectations, review time significantly increases when there is a vacancy in the position of OIRA administrator. Particularly, the hazard of ending rule review decreases by 14% for proposed rules and 10% for final rules as the vacancy rate increases. Additionally, the time of rule review decreases as the staff capacity of OIRA increases. In other words, a one person increase in staff size corresponds to an increased risk of ending review by about 2% for both proposed and final rules. Both of these effects decrease review time, consistent with the *Bureaucratic Capacity Hypothesis*, and are significant at the .01 level. While workload does not have a significant impact on the length of review for proposed rules, increased workload does significantly increase the review of final rules. Thus, a one unit increase in OIRA's logged workload corresponds to a 11% increase in the hazard of review ending.

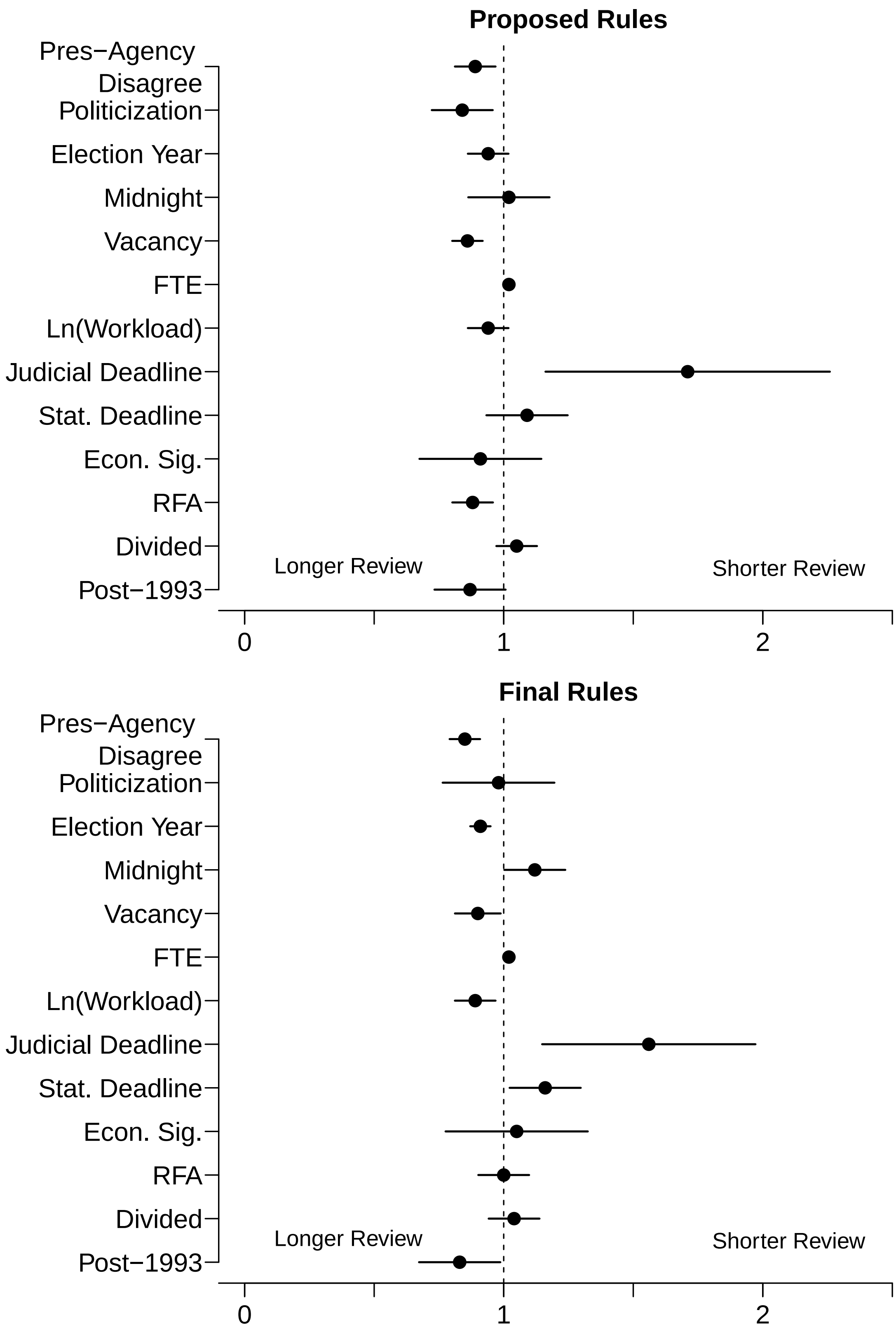
Additionally, rules with judicial deadlines appear to significantly shorten review of both proposed and final rules, while statutory deadlines decrease review time for just final rules. Consistent with our expectations, these rules face shorter review times based on institutionally imposed deadlines. Finally, proposed rules requiring a regulatory flexibility analysis correspond to significantly longer review times. As previously explained, this result reflects the time OIRA devotes to managing the review of complex rules, particularly

Table 1: Competing Risks Models of OIRA Review Length

Variable	Proposed Rules	Final Rules	Proposed Rules	Final Rules
Political Targeting and Timing:				
President-Agency Disagreement	-0.198^{***}	-0.219^{***}	-0.121^{**}	-0.166^{***}
	(0.048)	(0.052)	(0.050)	(0.040)
Log Politicization			-0.172^{***}	-0.021
			(0.071)	(0.111)
Election Year	-0.097^{***}	-0.105^{***}	-0.061	-0.091^{***}
	(0.028)	(0.016)	(0.039)	(0.021)
Midnight	0.032	0.117^{***}	0.017	0.117^{**}
	(0.068)	(0.045)	(0.079)	(0.049)
OIRA Capacity:				
Vacancy	-0.130^{***}	-0.084^{**}	-0.156^{***}	-0.110^{**}
	(0.027)	(0.041)	(0.044)	(0.051)
FTE	0.023^{***}	0.019^{***}	0.022^{***}	0.017^{***}
	(0.003)	(0.004)	(0.005)	(0.005)
Log Workload	-0.034	-0.068^{*}	-0.064	-0.112^{***}
	(0.043)	(0.041)	(0.048)	(0.040)
Control Variables:				
Judicial Deadline	0.498^{***}	0.419^{***}	0.537^{***}	0.448^{***}
	(0.169)	(0.139)	(0.161)	(0.136)
Statutory Deadline	0.100	0.143^{**}	0.083	0.146^{**}
	(0.072)	(0.059)	(0.073)	(0.058)
Economically Significant	-0.138	-0.026	-0.095	0.048
	(0.120)	(0.113)	(0.128)	(0.130)
Regulatory Flexibility Analysis	-0.118^{***}	0.0197	-0.132^{***}	0.001
	(0.044)	(0.045)	(0.049)	(0.048)
Divided Government	0.054^{*}	0.043	0.050	0.037
	(0.031)	(0.042)	(0.036)	(0.043)
Post-1993	-0.071	-0.112	-0.136	-0.183^{*}
	(0.077)	(0.091)	(0.084)	(0.096)
N	15,971	19,437	10,390	12,269
Years	1981 – 2013	1981 – 2013	1988 – 2013	1988 – 2013
President Fixed Effects	✓	✓	✓	✓

Coefficients reported from competing risks models, with robust standard errors clustered by agency in parentheses and presidential fixed effects (not shown). Note that positive coefficients correspond to shorter review times, while negative coefficients reflect longer reviews. Significance codes: $^{*}p < 0.10$, $^{**}p < 0.05$, $^{***}p < 0.01$, two-tailed tests.

Figure 2: Subhazard Ratios from the Competing Risks Models



investing more time when a rules is initially proposed and submitted.

Presidential Priorities & Capacity Constraints

In the previous section, we demonstrated that OIRA's organizational capacity is a significant source of regulatory delay, contributing on a level equivalent to that of political factors. However, from an institutional perspective, bureaucratic capacity is a concern only to the extent that it actually limits the president. That is, if the president is able to "fast-track" the rules that he cares about regardless of OIRA's capacity, then we may question the extent to which delay is really a function of capacity. Furthermore, delay itself may be normatively less concerning if important regulations can be expedited through the regulatory process.

In this section we examine the extent to those rules that are high priority for the presidents receive special treatment. Specifically, we hypothesize that while rules that are associated with a high priority area for the president may receive faster review, even the president will be limited by OIRA's capacity constraints. That is, when capacity is low, even high priority policy areas get bogged down in regulatory delay.

To consider the constraining effect of capacity in this domain, we construct a measure of presidential priorities based on presidential rhetoric. Using data from the Policy Agendas Project, we create a count of the number of times an agency's policy area was mentioned in the State of the Union (SOTU) each year.[28] For instance, a mention of agricultural subsidies would count for agencies related to agriculture, such as the Department of Agriculture. We then code the variable *Priority* as a "1" if the number of counts for that agency in a given year is greater than the mean mentions for an agency in that year and "0" otherwise.[29]

[28] These addresses are coded by sentence and categorized into a set of predefined topic areas. We then match these topic areas to the agencies in the dataset. The data are available at http://www.policyagendas.org/.

[29] Making this variable binary allows us to account for the skewed nature of the SOTU mentions data as well as take account of the fact that speeches differ in lengths each year, generating lower or higher overall mentions. Results using a continuous measure of counts yield substantively similar results.

Table 2: Presidential Priorities and the Constraining Effects of OIRA Capacity

Variable	Proposed Rules	Final Rules	Proposed Rules	Final Rules
Political Targeting and Timing:				
President-Agency Disagreement	-0.102**	-0.139***	-0.095**	-0.130***
	(0.044)	(0.026)	(0.042)	(0.023)
Log Politicization	-0.205***	-0.057	-0.207***	-0.056
	(0.064)	(0.091)	(0.062)	(0.088)
Election Year	-0.060	-0.091***	-0.065*	-0.093***
	(0.039)	(0.023)	(0.037)	(0.022)
Midnight	0.025	0.117**	0.022	0.113**
	(0.077)	(0.047)	(0.074)	(0.047)
Bureaucratic Capacity:				
Vacancy	-0.157***	-0.113***	-0.086**	-0.046
	(0.039)	(0.044)	(0.039)	(0.047)
FTE	0.021***	0.016***	0.016**	0.011*
	(0.005)	(0.005)	(0.007)	(0.004)
Logged Workload	-0.069	-0.119***	-0.086	-0.143***
	(0.042)	(0.036)	(0.063)	(0.033)
Presidential Priorities:				
Priority	0.148**	0.181**	-0.694*	-0.665***
	(0.066)	(0.074)	(0.398)	(0.213)
Priority x Vacancy			-0.183*	-0.180*
			(0.106)	(0.108)
Priority x FTE			0.014**	0.014***
			(0.007)	(0.004)
Priority x Workload			0.051	0.062
			(0.073)	(0.055)
Control Variables:				
Judicial Deadline	0.588***	0.506***	0.586***	0.506***
	(0.156)	(0.131)	(0.156)	(0.138)
Statutory Deadline	0.087	0.142**	0.086	0.143**
	(0.072)	(0.061)	(0.068)	(0.059)
Economically Significant	-0.091	0.053	-0.086	0.054
	(0.126)	(0.127)	(0.122)	(0.124)
Regulatory Flexibility Analysis	-0.135***	-0.004	-0.132***	0.000
	(0.051)	(0.049)	(0.051)	(0.048)
Divided	0.047	0.033	0.050	0.037
	(0.035)	(0.048)	(0.035)	(0.047)
Post 1993	-0.133	-0.190	-0.125	-0.182**
	(0.085)	(0.092)	(0.083)	(0.087)
N	10,390	12,269	10,390	12,269
Years	1988-2013	1988-2013	1988-2013	1988-2013
President Fixed Effects	✓	✓	✓	✓

Coefficients reported from competing risks models, with robust standard errors clustered by agency in parentheses and presidential fixed effects (not shown). Note that positive (negative) coefficients correspond to shorter (longer) review times. Significance: $*p < 0.10$, $**p < 0.05$, $***p < 0.01$, two-tailed tests.

The results using competing risks models are presented in Table 2. As expected, presidential priorities are reviewed more quickly by OIRA, corresponding to an increased hazard of review ending for both proposed and final rules by 16% and 20% respectively (columns 1 and 2). These analyses provide support for the idea that, on average, presidential priorities are shepherded through the review process relative to non-priorities.

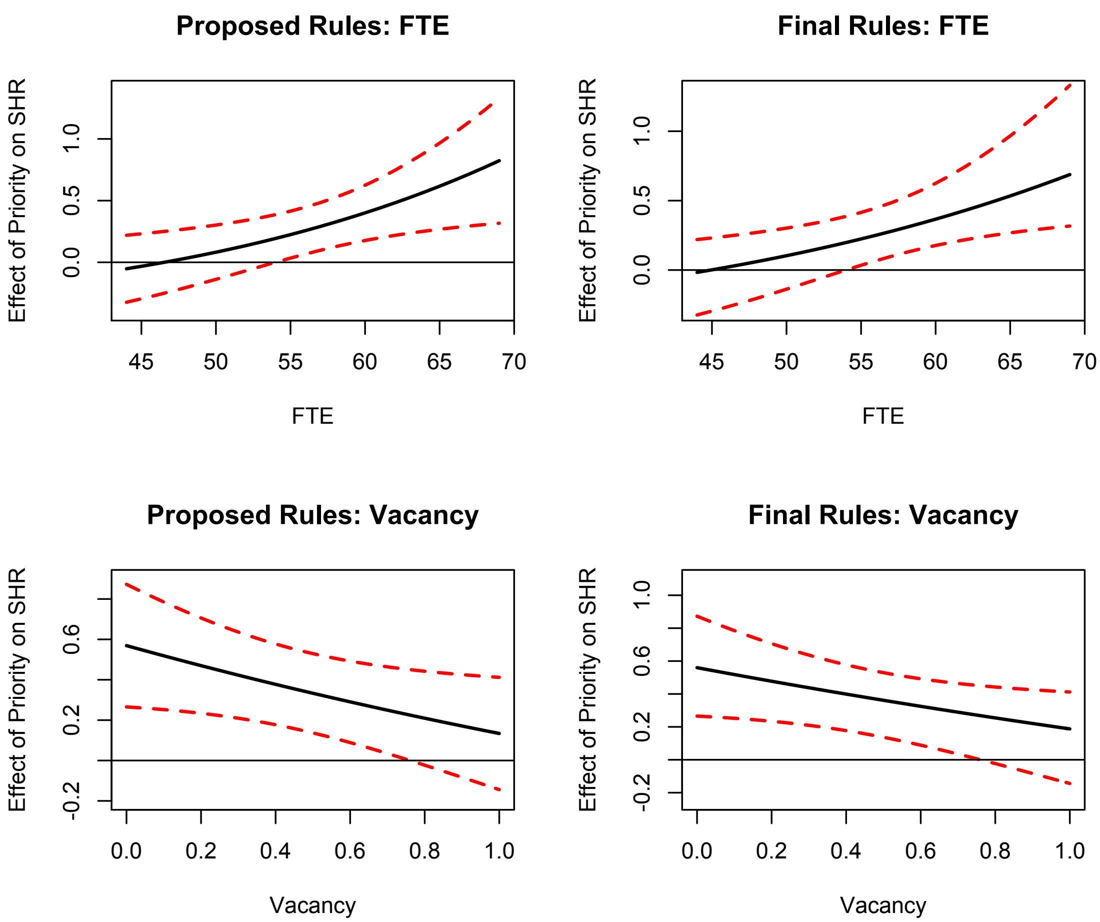
However, we complicate this notion in the third and fourth columns of the table. Here, we interact the priority measure with each of the three resource variables described above in order to assess the extent to which OIRA's capacity works to constrain presidential action, even on top of priorities. We present the results of these interactions graphically in Figure 3.

For each capacity variable (and for proposed and final rules respectively), each graph displays the change in the subhazard ratio for priority rules *compared to nonpriority rules* for representative values of capacity. Specifically, the graphs show the predicted change in the subhazard ratio between priority and nonpriority rules.[30] To begin, Figure 3 shows that when there is no vacancy in the OIRA Administrator position, priority rules move through the review process more quickly than nonpriority rules (an increase in the subhazard ratio of 0.57 for proposed rules and 0.56 for final rules). Yet, when vacancy is high, there is no statistically significant difference between priority rules and nonpriority rules in terms of review time. This suggests that all rules suffer when the OIRA Administrator position is unfilled.

For staff sizes, the subhazard ratio for review time increases by 0.88 for proposed rules and 0.73 for final when the FTE is at its highest values, suggesting that having a larger staff results in special treatment for priority rules. Yet, at the lower end of the scale, the difference in review times diminishes, until at 44 FTE (OIRA's staff size in 2013), there is there is no discernible difference in review time between priority and nonpriority rules. Finally, we fail

[30]As a result, zero is a meaningful comparison point, as compared to one in Figure 2.

Figure 3: Marginal Effects of Capacity on the Subhazard Ratio for Priority Versus Nonpriority Rules



Note: These figures depict the change in the subhazard ratio for priority rules (as compared to non-priority rules) for representative values of each capacity variable. Lines indicate 90% confidence intervals.

to find a significant effect when interacting workload with presidential priorities (not shown).

Overall, we take these findings as support for our thesis that OIRA's institutional capacity is an important source of ossification in the rulemaking process. While, on average, rules that are presidential priorities move through OIRA's review process at a more rapid clip, even the president is hampered by the office's limited resources. When the Administrator position is vacant or staff size is low, presidential priorities do not receive special treatment compared to other rules on the docket. This raises the question of why the president would tolerate such constraints on OIRA's capacity, given that they lead to costly delay and inefficiency in the rulemaking process. We explore this puzzle in the next section.

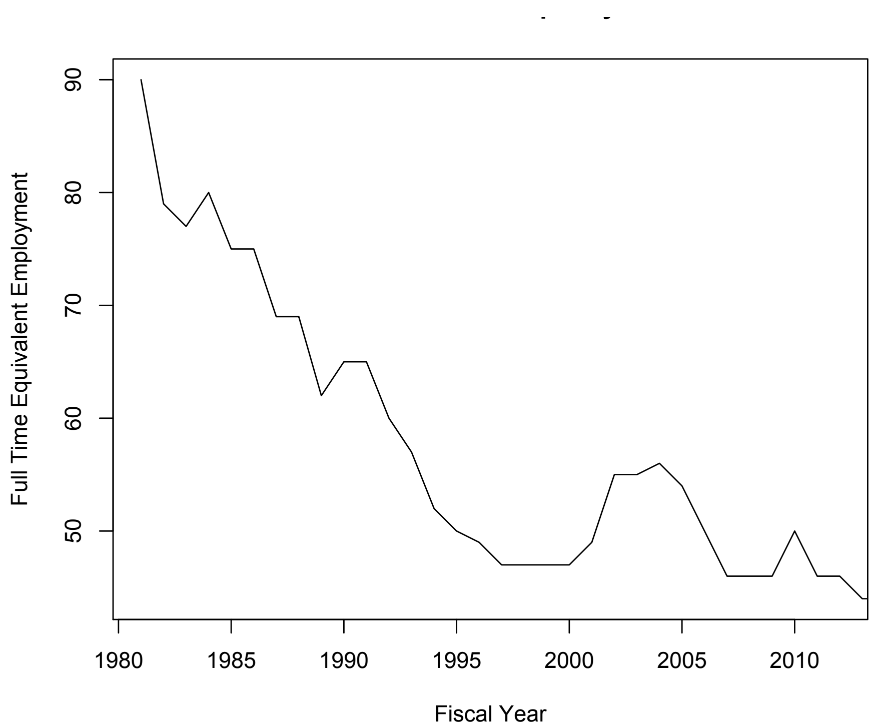
Discussion

In sum, our research shows that bureaucratic capacity negatively affects OIRA's ability to complete timely reviews of agency draft regulations, perhaps even more than the political factors previously shown to be central to OIRA's motivations. This, in turn, contributes to the overall ossification of the regulatory system. Even the speed with which the president's high priority regulations move through the review process in hindered by institutional capacity. From the president's perspective, the obvious solution to this problem, of course, is to increase OIRA's capacity. Yet, the president cannot unilaterally do this, as Congress controls the levers to manage OIRA's capacity.

In other words, if the president wants to increase OIRA's capacity – by filling vacancies in its leadership, increasing its staff size, or reducing its workload – he must convince Congress to do so. Tellingly, capacity decisions have historically been politically loaded. Gaps in the OIRA Administrator position have been a regular occurrence; between 1981-2013 the position was vacant for more than 25% of days. These vacancies occur not only because of the inherent difficulties in finding qualified candidates that can survive the nomination process, but also because of nomination fights between Congress and the administration (e.g., McCarty and Razaghian, 1999). For instance, the nomination of James Blumstein, President George H.W. Bush's choice for OIRA Administrator, failed because of a larger political battle between Congress and the president over the appropriate role for OIRA in the regulatory review process (Tomkin, 1998, 213-4). As a result, the Administrator position remained vacant for the duration of the senior Bush's presidency.

Similarly, OIRA's staff size has been a point of contention. As Figure 4 shows, although OIRA had a staff of approximately 90 FTEs at its founding, since that time its staff size has dropped rather precipitously, currently hovering around 45 FTEs. While some of the staff reductions correspond to the decrease in the number of rules reviewed by OIRA under EO 12866 (1993), this change cannot explain all of the fall off, particularly since OIRA has assumed a number of new responsibilities in the intervening years (Arbuckle, 2011).

Figure 4: OIRA FTE Allocations over Time



Source: GAO (2003) and Copeland (2013)

As one former OIRA official explains, "Being understaffed is a fact of life at OMB.

No OMB Director wants to ask Congress for a staffing increase for himself while he is asking agencies to reduce their own funding and staffing" (Arbuckle, 2011, 889). This is however, a tractable problem; OIRA's allotment of FTEs is subject to a ceiling that is determined in the annual appropriations process for OMB. Importantly, that cap can be adjusted by Congress at any point in time.[31]

Finally, Congress also plays an indirect role in managing OIRA's workload. Many, although not all, of the rules reviewed by OIRA are written by agencies in response to explicit congressional mandates that require agencies to promulgate rules.[32] Thus, Congress creates (albeit in a circuitous manner) much of the volume to which OIRA must respond. Indeed, Wiseman's (2009) model shows that congressional decisions to delegate rulemaking authority may be based on the promise of OIRA review of the agency's policy at a later point.

In sum, Congress has considerable leverage in compelling OIRA to move more quickly when reviewing rules, by quickly confirming nominees for leadership positions (or perhaps even eliminating the confirmation requirement), increasing OIRA's FTE allotment, or reducing the number of legislative mandates that require agencies to write rules. While Congress may be concerned about regulatory delays due to OIRA review, this concern must be balanced by the concern over excessive executive interference in the rulemaking process through OIRA review that may accompany capacity increases.

Conclusion

This study addresses an important source of institutionalized delay in the rulemaking process. While previous scholars have highlighted the political nature of OIRA, we suggest

[31] However, if anything, Congress has acted to *reduce* the staff size of OIRA. For instance, in the fiscal year 1995 appropriations process, Congress reduced the overall staff ceiling for the Office of Management of Budget and set OIRA's FTE level to fifty (Sen. Rpt. 103-286).

[32] Other rules are issued to manage the agency's programs, often based on the statutory authority granted in the agency's organic statute.

organizational constraints may also limit that office's ability to move rules through the process quickly. Our analysis allows us to test whether political factors are the key sources of delay or whether bureaucratic capacity contributes more significantly to delays. The results suggest that OIRA engages in some degree of political gamesmanship. It takes the office longer to review rules submitted by agencies that do not share the president's ideological predispositions and the prospect of an election affects the length of review in predictable ways. However, the bureaucratic variables more strongly account for variation in review length than the political variables. That is, like any other bureaucratic organization, resources and institutional capacity are a driving force underlying review length. Specifically, we find that OIRA reviews take longer when there are vacancies in its political leadership, when staff levels are reduced, and as the volume of rules on its docket increases. This suggests that OIRA's capacity may be a considerable source of ossification in the regulatory process.

Yet, even in the face of these constraints, OIRA can determine how to allocate its limited resources. As an extension to our theory, we consider whether OIRA's resources are so limited as to prevent the president from expediting review of high priority rules. We find that rules that are high priority do receive special treatment and are reviewed by OIRA more quickly. However, we also show that even the president's policy priorities are slowed in the review process by limitations in OIRA's capacity.

In sum, this account unpacks the determinants of OIRA's review of agency regulations and, in doing so, offers a contribution to our understanding of the rulemaking process. By considering both the political and bureaucratic factors behind OIRA review, we paint a much more nuanced view of OIRA. While OIRA serves as a political tool of the president, it is also an organization that faces the same resource allocation decisions as any other organization. This new portrait of OIRA complements existing work on institutional capacity that suggest that resource limitations can hinder an organization's ability to effectively perform its functions (Huber and Shipan, 2002; Huber and McCarty, 2004).

This research has direct implications for ongoing policy debates about the role of OIRA in the regulatory process. For instance, in the 113^{th} Congress several proposals have been introduced that would increase OIRA's responsibilities, including extending OIRA review to independent regulatory agencies. Proposals like this are regularly bandied about the halls of Congress, yet they are rarely accompanied by (we would argue requisite) discussions about increasing OIRA's capacity.[33] It is our hope that this research will highlight the need for those discussions to go hand-in-hand.

Of course, this paper demonstrates only one avenue through which OIRA contributes to regulatory delay; there are other avenues through which OIRA can affect the pace of the rulemaking process. For instance, OIRA can compel an agency to make changes to a rule or return the rule to an agency for further consideration. When these negotiations occur, they can slow the rulemaking process, even bringing it to a halt. Future studies would do well to consider how OIRA's organizational capacity contributes to its use of these tools. In any case, this study of the regulatory delay produced by OIRA's rule review shows that not everything in Washington is political; sometimes bureaucracy matters too.

[33] See Wallach (2014) for an important exception.

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Appendix

Table A1: Summary Statistics

Variable	Mean	Standard Deviation	Minimum	Maximum
Review Days	34.546	54.645	1	1214
President-Agency Disagreement	0.423	0.494	0.000	1.000
Logged Politicization	0.005	0.010	0.000	0.241
Election Year	0.227	0.419	0.000	1.000
Midnight	0.028	0.164	0.000	1.000
Vacancy	0.313	0.452	0.000	1.000
FTE	64.510	12.510	44.000	90.000
Logged Workload	2.325	0.965	0.000	4.525
Statutory Deadline	0.085	0.278	0.000	1.000
Judicial Deadline	0.018	0.132	0.000	1.000
Economically Significant	0.070	0.254	0.000	1.000
Regulatory Flexibility Analysis	0.076	0.266	0.000	1.000
Divided Government	0.836	0.370	0.000	1.000

Table A2: Description of the Variables

Variable Name	*Description*
President-Agency Disagreement	Dichotomous variable coded "1" if the agency is liberal (conservative) and the president is Republican (Democrat), and "0" otherwise. We code an agency as liberal (conservative)if its Clinton-Lewis score is less (greater) than zero.
Log Politicization	The natural logarithm of the number of presidential appointees (PAS, non-career SES, and Schedule C) in an agency in the year the rule was submitted divided by the total number of employees in that agency in that year.
Election Year	Dummy variable coded as "1" if the rule was submitted during a presidential election year, and "0" otherwise.
Midnight	Dummy variable coded as "1" if the rule was submitted following a presidential election that puts a president into lame duck status until the date in January when the new president assumes office, and "0" otherwise.
Vacancy	Proportion of days that the OIRA Administrator position was vacant during the course of a rule's review.
FTE	The number of Full Time Equivalent OIRA staff in the year the rule was submitted.
Log Workload	The number of rules under review at OIRA for the agency submitting the rule, averaged over each day the rule was under review.
Statutory Deadline	Dummy variable coded as "1" if the rule had a statutorily-imposed deadline, and "0" otherwise.
Judicial Deadline	Dummy variable coded as "1" if the rule had a judicially-imposed deadline, and "0" otherwise.
Economically Significant	Dummy variable coded as "1" if the rule is economically significant, meaning that it will "have an annual effect on the economy of $100 million or more, and "0" otherwise.[34]
Regulatory Flexibility Analysis	Dummy variable coded as "1" if the agency was required to prepare a regulatory flexibility analysis in accordance with the the Small Business Regulatory Enforcement Fairness Act (SBREFA), and "0" otherwise.
Divided Government	Dummy variable coded as "1" if the president and either the House or the Senate are from opposing political parties, and "0" otherise

Table A3: List of Agencies Included in the Dataset

Corporation for National & Community Service
Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Department of Health and Human Services
Department of Homeland Security
Department of Housing and Urban Development
Department of Justice
Department of Labor
Department of State
Department of Transportation
Department of Veterans Affairs
Department of the Interior
Department of the Treasury
Environmental Protection Agency
Equal Employment Opportunity Commission
Federal Mediation and Conciliation Service
General Services Administration
National Aeronautics and Space Administration
National Archives and Records Administration
National Endowment for the Arts
National Science Foundation
Office of Government Ethics
Office of Management and Budget
Office of Personnel Management
Office of Science and Technology
Office of the United States Trade Representative
Peace Corps
Railroad Retirement Board
Small Business Administration
Social Security Administration
United States Agency for International Development

Table A4: Competing Risks Model: With Agency Fixed Effects

Variable	Proposed Rules	Final Rules
Political Targeting and Timing:		
President-Agency Disagreement	0.963	0.960
	(0.033)	(0.027)
Logged Politicization	0.827	0.911
	(0.231)	(0.164)
Election Year	0.960	0.925***
	(0.034)	(0.022)
Midnight	1.022	1.103**
	(0.086)	(0.047)
Bureaucratic Capacity:		
Vacancy	0.861***	0.896**
	(0.038)	(0.044)
FTE	1.019***	1.016***
	(0.005)	(0.005)
Logged Workload	0.813***	0.806***
	(0.041)	(0.036)
Control Variables:		
Judicial Deadline	2.103***	1.825***
	(0.299)	(0.255)
Statutory Deadline	1.064	1.123***
	(0.077)	(0.062)
Economically Significant	0.936	1.082
	(0.120)	(0.138)
Regulatory Flexibility Analysis	0.858***	1.022
	(0.038)	(0.051)
Divided Government	1.032	1.049
	(0.040)	(0.048)
Post-1993	0.762***	0.775**
	(0.067)	(0.084)
N	10,390	12,269
Years	1988 – 2013	1988 – 2013
President Fixed Effects	✓	✓
Agency Fixed Effects	✓	✓

Subhazard ratios reported from competing risks models, with robust standard errors clustered by agency in parentheses and presidential and agency fixed effects (not shown). *$p < 0.10$, **$p < 0.05$, ***$p < 0.01$, two-tailed tests.

Table A5: Competing Risks Model: Pre- and Post-Executive Order 12866

Variable	Proposed Rules	Final Rules	Proposed Rules	Final Rules
Political Targeting and Timing:				
President-Agency Disagreement	0.818***	0.747***	1.093*	1.165***
	(0.060)	(0.041)	(0.053)	(0.059)
Logged Politicization	0.803***	1.007	1.089	1.084
	(0.050)	(0.083)	(0.211)	(0.179)
Election Year	0.988	0.969	0.990	0.925**
	(0.053)	(0.025)	(0.062)	(0.035)
Midnight	1.156***	1.184***	0.461***	0.729**
	(0.051)	(0.046)	(0.098)	(0.112)
OIRA Capacity:				
Vacancy	0.785***	0.837***	1.077	1.067
	(0.042)	(0.049)	(0.058)	(0.053)
FTE	1.027***	1.025***	1.032***	1.028***
	(0.008)	(0.007)	(0.010)	(0.008)
Logged Workload	1.010	0.937	0.854***	0.856***
	(0.051)	(0.036)	(0.347)	(0.047)
Control Variables:				
Judicial Deadline	1.083	1.049	2.339***	2.146***
	(0.083)	(0.065)	(0.372)	(0.362)
Statutory Deadline	1.017	1.165**	1.215*	1.164*
	(0.061)	(0.091)	(0.140)	(0.093)
Economically Significant	0.730***	0.851	1.051	1.226
	(0.077)	(0.084)	(0.142)	(0.180)
Regulatory Flexibility Analysis	0.791***	1.009	1.029	1.023
	(0.048)	(0.049)	(0.083)	(0.074)
Divided Government	1.015	1.024	1.072	1.079
	(0.152)	(0.147)	(0.065)	(0.070)
N	6081	7729	4309	4540
Years	1988 – 1993	1988 – 1993	1994 – 2013	1994 – 2013
President Fixed Effects	✓	✓	✓	✓

Subhazard ratios reported from competing risks models, with robust standard errors clustered by agency in parentheses and presidential fixed effects (not shown). $^{*}p < 0.10$, $^{**}p < 0.05$, $^{***}p < 0.01$, two-tailed tests.

Multinomial Probit Models

The competing risks Cox framework forces us to make a number of potentially uncomfortable assumptions. Most notably, the model fails when the competing risks are not independent of one another. In particular, this suggests that a rule's "risk" of being deemed consistent with the executive order is independent of its "risk" of being withdrawn by the agency or returned to the agency. In order to relax this assumption, we turn to an alternative framework, the multinomial probit model (for a similar modeling approach, see Chaudoin (2012).[35] In order to carry out this analysis, we converted the dataset from the previous section into one in which each observation is a rule-review day. This allows us to account for daily changes in some of the variables, such as workload and staffing. Thus, the results in this section can be interpreted as effects on the probability that review is terminated on a given day.

In this framework, the status of the rule is noted in each time period as being under review (0); deemed consistent with the executive order, with or without changes (1); returned to the agency (2); or withdrawn by the agency (3). After review has been terminated the rule leaves the dataset. The key feature of the multinomial probit model that makes it attractive for analyzing situations where the independence of competing risks assumption is violated is that allows for correlation between the error variables for each outcome (see Imai and van Dyk (2005) for further technical elaboration of the model).[36] Additionally, we include a cubic polynomial for duration in order to approximate the baseline hazard rate (see Carter and Signorino (2010)).

The independent variables in this analysis are the same as those used in the previous survival analysis. As before, we divide the analysis by proposed and final rules. In order to implement the analysis we used the Markov Chain Monte Carlo algorithm created by Imai and van Dyk (2005). All estimates are the result of 100,000 draws preceded by 50,000 burn-in draws. We use uninformative smooth priors, distributed $\mathcal{N}(0, 100)$. Table A6 presents the results of the multinomial probit analysis. In particular, we present posterior means and 95% credible intervals in brackets for each variable.

[35] Note that the multinomial probit model also relaxes the proportional hazards assumption in the Cox model.
[36] Note that this is equivalent to relaxing the independence of irrelevant alternatives assumption characteristic of multinomial logistic models.

The results of the analysis broadly support the inferences of the survival analysis.[37] With respect to the "political variables," we find strong support for the idea that ideological disagreement between the president and the agency significantly lengthens the time of review for all types of review termination. Additionally, we find strong support for the hypothesis that review times lengthen during election years. As in the previous analysis, we find little support for an effect of politicization or the midnight period on review time. With respect to the "bureaucratic" variables we again find similar results. Increased personnel resources significantly shorten the length of review. Similarly, having a Senate-confirmed OIRA administrator leads to shorter review times. The overall size of the OIRA docket also has a significant effect on review length, increasing it considerably. Overall, the results of the multinomial probit analysis strongly support the conclusions from the survival analysis.

[37]Note that negative coefficients indicate review is less likely to terminate in that particular manner.

Table A6: Multinomial Probit Results

	Proposed Rules			*Final Rules*		
	Consistent	Returned	Withdrawn	Consistent	Returned	Withdrawn
President-Agency Disagreement	-0.11	-0.07	-0.02	-0.10	-0.16	-0.03
	[-0.13, -0.08]	[-0.14, -0.02]	[-0.05, 0.02]	[-0.12, -0.08]	[-0.28, -0.03]	[-0.08, 0.02]
Logged Politicization	-0.01	-0.03	0.01	0.01	-0.03	0.00
	[-0.02, 0.00]	[-0.06, -0.00]	[-0.01, 0.02]	[0.001, 0.01]	[-0.10, 0.03]	[-0.02, 0.02]
Election Year	-0.07	-0.15	-0.07	-0.08	-0.23	-0.06
	[-0.10, -0.05]	[-0.24, -0.06]	[-0.11, -0.03]	[-0.11, -0.06]	[-0.44, 0.03]	[-013, 0.00]
Midnight	-0.01	-0.36	0.20	0.02	0.20	0.31
	[-0.08, 0.05]	[-0.72, -0.02]	[0.12, 0.28]	[-0.02, 0.06]	[-0.13, 0.50]	[0.21, 0.41]
Vacancy	-0.13	-0.07	-0.09	-0.06	-0.08	0.11
	[-0.16, -0.10]	[-0.16, 0.03]	[0.05, 0.14]	[-0.09, -0.05]	[-0.27, 0.08]	[0.04, 0.18]
FTE	0.01	0.00	0.00	0.01	0.03	0.01
	[0.002, 0.01]	[-0.01, 0.02]	[-0.01, 0.01]	[0.003, 0.01]	[-0.001, 0.05]	[0.001, 0.2]
Logged Workload	-0.03	0.03	-0.07	-0.05	0.04	-0.08
	[-0.04, -0.02]	[-0.03, 0.08]	[-0.09, -0.05]	[-0.06, -0.04]	[-0.04, 0.13]	[-0.11, -0.06]
Judicial Deadline	0.31	0.23	0.03	0.22	0.43	-0.17
	[0.24, 0.39]	[-0.01, 0.47]	[-0.11, 0.16]	[0.17, 0.28]	[0.11, 0.74]	[-0.47, 0.08]
Statutory Deadline	0.02	-0.13	-0.02	0.04	-0.08	-0.15
	[-0.01, 0.06]	[-0.29, 0.01]	[-0.08, 0.03]	[0.02, 0.07]	[-0.35, 0.16]	[-0.25, -0.06]
Economically Significant	-0.07	-0.13	-0.02	0.02	-0.04	0.04
	[-0.11, -0.03]	[-0.27, -0.00]	[-0.08, 0.04]	[-0.01, 0.05]	[-0.47, 0.25]	[-0.04, 0.12]
Post 1993	-0.22	-0.27	-0.10	-0.16	0.54	-0.13
	[-0.28, -0.16]	[-0.52, 0.01]	[-0.19, 0.00]	[-0.20 -0.11]	[0.02, 1.09]	[-0.28, 0.02]
Cubic duration	✓	✓	✓	✓	✓	✓
Presidential FE	✓	✓	✓	✓	✓	✓