

Regulatory Affairs Veteran Shares Insights on Trump’s Cutbacks and What Lies Ahead for Biden

By Courtney Bublé

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As the transition team for President-elect Joe Biden plots how it will tackle regulatory [policy](#), Jim Tozzi, who played an integral role in starting the Office of Information and Regulatory Affairs 40 years ago, is sharing his insights.

Tozzi started his career in government during the Johnson administration in various roles at the Defense Department and then went on to serve in several senior roles at the Office of Management and Budget. In 1980, he helped start OIRA within OMB, which represented the culmination of an “incremental” process over several administrations. Presently, Tozzi is the head of the [Center for Regulatory Effectiveness](#), which provides independent analyses of agencies’ regulations to Congress.

[Paul Ray](#) is the current OIRA administrator who has been leading the Trump administration's regulatory rollbacks to speed up infrastructure projects, create jobs, increase efficiency for [Medicare and Medicaid](#), accelerate the construction of the [border wall](#) between the United States and Mexico, and boost the economy as it struggles during the novel coronavirus pandemic, among other things.

On Monday, two top House Democrats [urged](#) OMB and OIRA to encourage agencies not to take on last minute regulations out of concern they “may be rushed through without providing Congress adequate time to review these rules, as required by law.”

Despite the fact that the Trump administration has yet to formally recognize President-elect Biden as the winner of the election, it is [starting its push for last minute \(or “midnight”\) regulation changes](#), as most outgoing administrations do. Regulation experts [previously told *Government Executive*](#) they expect Biden to take action soon after Inauguration Day to reverse much of the Trump administration’s deregulatory agenda of the last four years, but undoing any last minute regulations could be difficult if there is a divided Congress.

Following Tozzi’s [recent article](#) about what questions he would ask Biden’s OIRA administrator nominee, *Government Executive* interviewed Tozzi about his tenure in government and his thoughts on the current and incoming administrations. The interview has been edited for length and clarity.

GE: What was the process like to start OIRA?

Tozzi: Many people think that OIRA started when President Reagan signed executive order [12291 in 1981, which formalized the regulation review process]. That was an incremental change because President Nixon had a [“quality of life review,”](#) that was prior to OIRA and that made all the environmental regulations come over. And President Ford did a little bit more. But then the big change, and he gets very little credit for it, [came from] President Carter.

When he came in [the quality of life review] was so very controversial...We started an office called the Office of Regulatory and Information Policy...and there was an old, old statute called the Federal Reports Act...which didn’t have the teeth of [the 1980 Paperwork Reduction Act.] I said, “You know we ought to really dress that up and make it stronger”...So I worked with the Senate and the House...and it wasn’t going to pass, that’s a different story, but we got it passed. That was the 1980 Paperwork Act, [which established OIRA as a part of OMB, among other things].

We had an operating team ready to go, so when President Reagan came in and signed 12291 it just happened and that’s how it got started, but it was a long [time] to [get there].

GE: What are your observations on the Trump administration’s approach to regulations?

Tozzi: I think in the regulatory field he did three or four big things and one of the biggest, to me, was he implemented a [regulatory budget](#). I developed that concept, along with staff, under Carter...So when President Trump said, “that’s the way to go” that was an absolutely huge change in the way the government operates and I applaud that. That’s the very positive part of it. [However], you could have a regulatory budget without the [“one in, two out” \[executive order\]](#). In fact, the regulatory budget my fellow colleagues and I developed didn’t have “one in, two out.” It was just the total amount of regulations you could issue and what it cost.

“One in, two out” is good for a temporary basis, but not as a permanent basis for operation. So keeping that in really put a regulatory budget in a bad light. [Also], OIRA is down to half of the staff that I had. They’re down to 45 and they just don’t have the staff to do it. Although I applaud the concept, I applaud the effort they took, I think the implementation wasn’t good for a number of reasons. What I said about the regulatory budget is indicative of many things that Trump did. I think in concept, not all of them, but many of them were pretty well founded, but I think the implementations were a little shabby.

GE: The Trump administration has not had a successful record in court defending its regulatory cutbacks, correct?

Tozzi: They’re not holding up. There's another thing with President Trump, [with] a lot of his deregulatory actions...there is a question of how much and what the intensity of the deregulation is? Some of them might be well-placed of some sort of deregulation, but I think there might be a question of the intensity of it and there’s a big question if they complied with the Data Quality Act [one of the laws OIRA reviews regulations under]. I guess in the bottom line, the courts are saying they didn’t.

GE: What are some of the considerations the incoming Biden administration should take when deciding who to nominate as OIRA administrator?

Tozzi: What happens in Washington...names pop up...I think a more fundamental thing you have to do is ask what you want that person to do, then you judge the person relative to what you want them to do. [In the [recent article](#)], I outline three different types of jobs that a new person could have.

One is called “status quo plus.” You take what we're doing now, with reviewing individual regulations, the Paperwork Act and you turn it up a couple notches. You have OMB review more regulations and also more guidance. So you do what you're doing now in a lot more detail and a lot more volume.

The second option you may ask the person to do, which we haven't done, is “proactive innovation.” OMB eats what’s on their plate; they don't go out and look for food. And this would put them in a proactive mode where they would say, “in addition to reviewing all the regulations, people sent over, there's a couple of really hot spots that need a lot of attention.” Say climate change and OMB [would] work with all the agencies together to [have] a say in a very viable climate change program, not just [the Environmental Protection Agency] and [National Oceanic and Atmospheric Administration]. That would be a new role from the OIRA.

Then the third would be a lot more grandiose and say “OIRA is now an institution that’s more powerful than it's ever been.” Instead of just looking at individual regulations or a couple of hotspots, you should put your program together for the whole government, put it out like a federal budget...and let the people look at it and you run the whole program as a total. OMB doesn’t do any of that [now].

I don’t think anyone would do option three, but a number of them would be willing to do option two or a variant of it and some will want option one. So the people you get for one of those two are quite different. I think that if you want number two, you need policy entrepreneurs...If you do number one, you would want a good economist or a good attorney.

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