

Tozzi Floats OIRA Overhaul For ‘Proactive’ Role Developing EPA Policies

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Jim Tozzi, the first director of the White House Office of Information & Regulatory Affairs (OIRA) that reviews major EPA rules prior to their publication, is proposing that the Biden administration overhaul the office by increasing its staffing levels and giving OIRA a “proactive” role in helping agencies develop their policies.

The suggestions for changes to bolster OIRA, which is part of the White House Office of Management & Budget (OMB), come ahead of the Feb. 9 Senate Homeland Security & Government Affairs Committee confirmation hearing for Neera Tanden, President Joe Biden’s nominee to lead OMB. And the Senate Budget Committee is slated to hold a separate nomination hearing for Tanden on Feb. 10.

In [a Jan. 24 post](#) on the website of the Center for Regulatory Effectiveness (CRE) that Tozzi heads, he says that OIRA should continue its key role of reviewing regulations from EPA and other agencies, but should also take proactive steps to work with agencies to tackle urgent issues such as climate change and the COVID-19 pandemic, which are both top priorities for Biden.

“Therein lies the justification for a proactive strategy for OIRA accompanied by well-defined constraints not to mention that it is also preferred to an ad hoc strategy employed by White House staff to promote regulations outside the jurisdiction of a publicly accountable organization, OIRA,” Tozzi writes in [another post on his site](#).

Christopher Walker, a professor of law at Ohio State University, in [a Feb. 5 Yale Regulatory Journal blog post](#) said while “much more will be written . . . on the Biden administration’s approach to centralized review of regulatory actions” through OIRA, including Biden’s Jan. 20 executive order on modernizing regulatory review, Tozzi “has some fascinating initial takes.”

Tozzi, who became the first OIRA administrator when the office was created in 1980, advocates that Biden create a “proactive mission” for the office that avoids “suppressing OIRA’s traditional role of reviewing regulations.”

He also suggests a clear chain of command for political appointees at OIRA as well as a personnel increase. Tozzi says OIRA in its early years had just one political appointee and nearly 100 employees. Now, it has three political and 50 career staffers, marking a nearly 50 percent cut in staffing levels while its assigned duties “have increased substantially.” Further, it should hire staff with entrepreneurial skills, he says.

Tozzi says OIRA should create a “success registry” to document procedural changes to the centralized regulatory review process as well as critiques of its work by credentialed parties.

Tozzi points to Biden’s Jan. 20 executive order on modernizing regulatory review that says OMB should “consider ways that OIRA can play a more proactive role in partnering with agencies to explore, promote and undertake regulatory incentives that are likely to yield significant benefits.”

The order adds that OIRA should propose “procedures that take into account the distributional consequences of regulations” and identify ways to improve the regulatory review process.

Because Biden intends to explore broadening the scope of analyses to be used, Tozzi says, “We must await the outcome of that process” but notes that there should be a clearly defined cutoff points for when rules are sent to OIRA and clear policy for whether OMB or each agency should identify the cutoff.

The Biden administration is already revisiting a Trump-era EPA cost-benefit rule that seeks to drastically limit how benefits are considered when developing air policy rules by barring inclusion of “co-benefits.”

Regulatory Review ‘Stability’

Tozzi did not suggest any candidate to lead OIRA in the Biden administration, but instead touted the “amazing stability of centralized regulatory review,” which will turn 50 this October.

Now that Biden has taken office, “pro-regulatory voices are being heard in the halls of OIRA,” which Tozzi believes could help ensure that his agencies’ rules are lasting.

He cites the Obama administration’s focus on health care rules including OIRA’s emphasis on economically sound regulations as one reason for why the majority of Obama’s “health regulations are still in existence.”

Finally, Tozzi is welcoming some of Biden’s early regulatory review moves including his decision to appoint a scientist with knowledge of climate change to OIRA, a “rare event.”

Biden has selected Obama-era environmental official Alex Barron to be a senior counselor in OIRA, “adding a climate scientist to the team that will vet and sign off on rules written by agencies across the federal government,” [Bloomberg reported](#) Feb. 2.

Tozzi says the Biden administration is “on top of their game” even if one “disagrees” with its approach because it “not only recognizes the importance of centralized regulatory review but is well aware of its history and is fully cognizant of its inherent flexibilities, which allows one to address energetic issues in a forceful, informed and creative manner.”

OIRA’s interim political leader is Sharon Block, who has advocated for a worker-oriented overhaul of the office, according to [Bloomberg Law](#).

Meanwhile, Tanden is expected to face tough questions at her confirmation hearings, though an easier path to clearing the Senate now that Democrats have a narrow majority in the upper chamber, [Politico notes](#).

Tanden is likely to field difficult questions from Republicans, who have called her “radioactive,” and her nomination is seen as a more partisan vote than some other nominees, such as Michael Regan, Biden’s nominee to lead EPA, who [had a smooth confirmation hearing Feb. 3](#) and is expected to be confirmed easily.

Tanden, who runs the left-leaning Center for American Progress, has openly criticized the GOP on social media but has won praise from Democrats for a career of advocacy and support of government assistances for families.

– Dawn Reeves (dreeves@iwpnews.com)

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