

'Modernizing Regulatory Review'

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MRR § 1

'[R]eaffirms the basic principles set forth in [EOs 12866 and 13563], which took important steps towards modernizing the regulatory review process.'

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1. It is reasonable to infer that the Memorandum should be read in the context of these prior EOs.
2. However, this 'affirmation' begs two questions
 - a. Which prior steps were 'important'?
 - b. Which 'important steps' were left undone?

MRR § 2(a)

Directs OMB 'ensure that the review process promotes policies that ... fully account[] for regulatory benefits that are difficult or impossible to quantify, and [] not have harmful anti-regulatory or deregulatory effects...'

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1. This answers the question, at least in part:

- a. The undone 'important step' is biasing the regulatory review process--
 - i. With respect to policy preferences, the Memo favors regulation and opposes deregulation.
 - ii. With respect to regulatory analysis, the Memo favors counting benefits that are impossible to count and opposes counting costs that are impossible to count.
- b. This is not a 'reaffirmation' of EO 12866; it's a repudiation.

2. No prior supplement to EO 12866 did this.

- a. Bush 43's Circular A-4 did not direct agencies to produce biased RIAs.
- b. Obama's EO 13563 established a framework for retrospective review, but it did not direct any changes in analytic practice.
- c. Trump's EO 13771 established a regulatory budget, which implies a preference for deregulation, but it did not direct or authorize agencies to exaggerate costs.
 - It incentivized agencies to understate the costs of new regulations and overstate the costs of those existing regulations that they chose to revise or sunset in order to meet the regulatory budget

3. So the Memorandum is qualitatively different, and in highly undesirable ways from the perspective of BCA.

MRR § 2(b)(ii)

Directs OMB 'to ensure that regulatory initiatives appropriately benefit and do not inappropriately burden disadvantaged, vulnerable, or marginalized communities.'

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1. **Sec. 2(b)(ii) puts thumbs on the scale favoring certain groups,** which Memorandum does not define.
2. **Some interpret DVM as a shorthand for low-income. It's not.**
3. **DVM is a euphemism for Democratic Party coalition members in general and blacks in particular.** Some examples of the latter:
 - a. CDC and FDA say **being black is per se a risk factor** justifying preferred access to COVID-19 vaccines and pharmaceuticals. CDC's own research says this is false.
 - b. The Administration directed agencies to write "**equity action plans**" giving preferential treatment to blacks in employment and contracting irrespective of past or current discrimination.
 - c. The Administration's **Sec. 1005 of the American Rescue Plan Act (ARPA), which gave preferential treatment to blacks and selected other minority farmers. Statute was enjoined as unconstitutional.**
 - d. The Administration's **\$29 billion restaurant revitalization program in ARPA Sec. 5005, which gave preferential treatment to restaurants owned by members of 'socially and economically disadvantaged' groups. Statute and SBA rule were enjoined as unconstitutional.**
- This evidence (and more) shows the Administration interprets DVM as shorthand for affirmative racism of the form advocated by Ibram X. Kendi.

MRR § 2(b)(ii) [the complete text]

'[P]ropose procedures that take into account the distributional consequences of regulations, including as part of any quantitative or qualitative analysis of the costs and benefits of regulations to ensure that regulatory initiatives appropriately benefit and do not inappropriately burden disadvantaged, vulnerable, or marginalized communities.'

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1. My previous slide was misleading. I did not quote the entire text, and a text without a context is a pretext.
2. Here's the context:
 - a. The Memo calls for distributional analysis **only if** it benefits 'disadvantaged, vulnerable, or marginalized communities.'
 - b. Put succinctly, this is an abomination.
 - c. To be credible, BCA methods must be theoretically credible and consistently applied. **All else is pretext.**
3. Distributional analysis for low-income households requires **using their WTPs and discount rates**, not population defaults.
 1. The Administration seems to believe that distributional analysis will yield greater net benefits. And maybe it will.
 2. But this may depend on the choice of regulatory goods.
 3. Upper-income households care about 10^{-6} risks from chemicals in the environment. The poor care about 10^{-2} risks from ineffective policing, crummy schools, and derailed freight trains.
4. SBCA members should support distributional analysis, but **only free of political constraints.**

MRR § 2(b)(iii)

Directs OMB to 'play a more proactive role in partnering with agencies to explore, promote, and undertake regulatory initiatives that are likely to yield significant benefits.'

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1. OIRA has always been conflicted.
 1. It works for the President, BUT--
 2. It has been the least-political repository in the federal government of expertise on the objective application of BCA.
2. The Memorandum removes that conflict.
 1. OMB no longer has any role in directing agencies to conduct BCA objectively.
 2. OMB's role now is to reduce friction in regulatory development, analysis, and review, by—
 1. Refraining from critical examination of agency RIAs.
 2. Encouraging deficient RIAs.

MRR § 2(b)(ii)

Directs OMB to 'propose procedures that take into account the distributional consequences of regulations, including as part of any quantitative or qualitative analysis of the costs and benefits of regulations...'

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1. 'Taking account of the distributional consequences' is very much desirable as a reform to regulatory BCA.
2. The theoretically correct way to do BCA is to estimate benefits and costs for each household to obtain their net benefits, then sum across households in the population.
3. If information were free we could do this.
4. A charitable description of how federal agencies actually do BCA is to subtract aggregate compliance expenditures from aggregate benefits. No account is taken for benefits and costs for individuals or households.
5. We should always support doing BCA properly.
6. Using WTPs and discount rate defaults that probably apply to upper-income households is a form of regulatory colonialism.

Questions? Comments?

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