

MERCATUS ON POLICY

Economists in the Bureaucracy: A Question of Autonomy

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Since the early 1980s, federal regulatory agencies have produced regulatory impact analyses (RIAs) for major regulations that include an estimate of the expected benefits and costs of the regulation.¹ While observers have both praised and criticized benefit-cost analysis (BCA) since it first became part of the regulatory process, very few have examined the question of what determines the effectiveness of the economists producing the analysis. When do decision makers listen to the economists, and when are the economists ignored?

Supporters of benefit-cost analysis call for reforms that include focusing on more uniform analysis and better compliance with Office of Management and Budget guidance,² while opponents largely want the enterprise abandoned. Benefit-cost analysis is not going away—it has now been endorsed by five presidents, both Democrats and Republicans.³ But merely insisting on better analysis is unlikely to lead to improvement. BCA operates in a political and bureaucratic framework, and any reforms have to acknowledge and work within this framework.

This essay looks at one aspect of the bureaucratic environment in which economists conduct benefit-cost analysis. We examine the autonomy of agency economists from the programs promulgating the regulations to be analyzed. We find some evidence that economists located in the program office responsible for drafting the regulation have less influence on regulatory decision-making.

BUREAUCRATIC STRUCTURE AND ECONOMIC ANALYSIS

Benefit-cost analysis, as a part of a broader requirement that agencies conduct RIAs, has been a formal part of the regulatory process since 1981. The requirement is meant to ensure not only that agencies produce numerical calculations of the benefits and costs of their actions, but, more importantly, that they use the process of analyzing the benefits and costs to better understand the tradeoffs between regulatory options. Many supporters of this requirement have criticized RIAs as failing to live up to their goals.⁴

This analysis takes place in the context of the federal agencies that write regulations. Many insightful works have been written about the functioning of the federal bureaucracy. Bureaucrats have been described as zealots in pursuit of a mission and as risk-averse functionaries.⁵ They have been characterized as interested in maximizing their budgets.⁶ Their agencies have particular cultures that are shaped by myriad forces.⁷ Included in these forces is the organization of each agency.⁸

Despite this work, scholars studying BCA have largely ignored bureaucratic structure as a factor in how influential economists can be in regulatory decision-making (one exception is a working paper by Richard Williams)⁹ and as a possible explanation for BCA's limitations. There are multiple organizational structures into which agencies can place economists. The program office that drafts the regulation can hire full-time economists to analyze the benefits and costs of the regulation. The program office can also hire a consultant but maintain control of the analysis. If either of these happens, it is also possible that the analysis is reviewed by another office (perhaps at the department in which the agency is housed) before the rule is sent to OMB for review. For example, the Department of Agriculture Office of Risk Assessment and Cost-Benefit Analysis is an independent departmental office that reviews proposed major regulations to ensure they are based on sound scientific and economic analysis.¹⁰ Alternatively, an agency or department can have a departmental office that is independent of the program office complete the analysis.

Given these varying structures, we are interested in whether the autonomy of the economists who conduct the analysis impacts the output of the RIA process. When economists are located in the program office that produces the regulation, do those economists have less influence on regulatory decisions than economists

outside of program offices who have more autonomy? Economists in program offices receive performance appraisals from managers in those offices, making it difficult to provide input that challenges the results the managers want. On the other hand, economists located in another department can provide a more neutral perspective and therefore offer meaningful alternatives to those preferred by the program office.

ASSESSING THE QUALITY OF REGULATORY ANALYSIS

A research team at the Mercatus Center at George Mason University developed a qualitative framework to assess the quality and use of regulatory analysis produced by federal agencies. The scoring process evaluates the quality of federal regulatory analyses using criteria that include openness, analysis, and use. The openness score includes criteria on how easily a reasonably informed citizen could find and understand the analysis. The analysis score includes criteria on how well the analysis defines and measures the outcomes, benefits, and costs of the regulation. The use score includes criteria on how much the analysis affected decisions in the proposed rule. Within these three categories, there are 12 subcategories scored from 0 to 5, meaning each analysis has a maximum score of 60. The research team used this criterion to evaluate economically significant regulations between 2008 and 2012 and scored a total of 108 regulations.¹¹

Drawing upon this earlier research, we divided agencies into three categories. The first contained agencies that rely on economists in program offices and do not seek any input from an independent office (except OMB). The agencies in this category are the non-FDA agencies within the Department of Health and Human Services and the non-NHTSA agencies within the Department of Transportation. The second category consists of agencies that rely on economists in program offices as well as departmental offices independent of program offices. The Environmental Protection Agency, the Food and Drug Administration, the Department of Agriculture, and the Department of Homeland Security fall in this category. Finally, the third category is made up of the Occupational Safety and Health Administration, the Mine Safety and Health Administration, and the National Highway Traffic Safety Administration—agencies that tend to rely on economists in autonomous departmental offices for analysis.¹²

TABLE 1. MERCATUS SCORES AND PLACEMENT OF ECONOMIC ANALYSTS

Category	Average Mercatus Score
Program Office Only	26.55
Program and Departmental Office	30.44
Departmental Office Only	30.52

Source: Authors' calculations of average scores for each category, "Regulatory Report Card," Mercatus Center at George Mason University, accessed April 25, 2016, <http://mercatus.org/reportcards>.

The average Mercatus scores for regulatory analyses conducted by agencies between 2008 and 2012 in each category are in table 1. The direction of the scores is relatively clear. The further removed from the program office, the higher the score from the research team at Mercatus. The sample sizes are small, however, so statistical significance is not present and generalizations are unwise. To supplement this data we used interviews with agency economists.

We spoke to 15 economists in regulatory agencies and asked them about their experiences regarding their freedom to challenge policies in their agencies.¹³ The economists voiced two views that were somewhat in conflict with one another. The first was (in keeping with our hypothesis) that autonomy was critical in their ability to successfully voice economic concerns. "As long as program people write performance appraisals of economists, they will get the results they want. They don't have to say they want a particular outcome, but people aren't stupid. The lack of independence at the agencies, I know people all over government, and they have the same problem," was how one interview subject described it, and other economists echoed this sentiment.

On the other hand, agency economists also argued that their influence was greatest when they were brought into the process early. One interview subject described the struggle to be at the table at the beginning of a policy decision as "an ongoing campaign," while another framed the problem by saying, "We often found that the agency had often committed to an approach that we thought was wrongheaded. It would save time if we got brought in earlier." Economists within program offices were more likely to be at the table when policy options were considered.

Professor of public policy Serge Taylor studied the use of environmental impact statements in the Army Corps of Engineers and the US Forest Service in the 1980s.

On the subject of analytical independence, he noted, "We do not want the analysts to be integrated at the cost of being co-opted, nor do we want them to be so autonomous as to be irrelevant to the policy decisions."¹⁴ The conflict described by Taylor plays out in the federal bureaucracy. If economists are within the program office, they are more likely to be present earlier in the decision-making process when key policy choices are made. But they are less likely to be able to challenge their direct supervisors regarding those choices. Economists in an independent departmental office become involved in policy decisions when they are told about them. This could be early in the process, but it also could be after an agency is locked into a position.

CONCLUSION

It is a bureaucratic maxim that where you stand depends on where you sit. Despite this, there has been little work on the effect of bureaucratic organization on the role of economic analysts. Regulatory impact analysis is often criticized for justifying regulatory decisions rather than informing them. One correction for this may be to increase the autonomy of the economists charged with writing the RIAs. In doing so, however, supporters of analysis must be careful to ensure that increases in economists' autonomy do not come at the cost of causing economists to lose their involvement at an early stage when key decisions are made.

NOTES

1. This requirement was formalized in Exec. Order No. 12291, 3 C.F.R. 127 (1981).
2. See Office of Management and Budget, *Circular A-4*, September 17, 2003, https://www.whitehouse.gov/omb/circulars_a004_a-4/.
3. Benefit-cost analysis is nested within the broader regulatory impact analysis described in Executive Order 12291 and its successors. The RIA requirement also includes analyses to meet statutory requirements such as the Regulatory Flexibility Act and the Unfunded Mandates Reform Act.
4. Robert W. Hahn and Paul C. Tetlock, “Has Economic Analysis Improved Regulatory Decisions?,” *Journal of Economic Perspectives* 22, no. 1 (2008): 67–84.
5. Anthony Downs, *Inside Bureaucracy* (Boston: Little, Brown, 1967).
6. William A. Niskanen, *Bureaucracy and Representative Government* (New Brunswick: Transaction Publishers, 1971).
7. James Q. Wilson, *Bureaucracy: What Government Agencies Do and Why They Do It* (New York: Basic Books, 1989).
8. Thomas H. Hammond, “Agenda Control, Organizational Structure, and Bureaucratic Politics,” *American Journal of Political Science* 30, no. 2 (1986): 379–420.
9. Richard Williams, “The Influence of Regulatory Economists in Federal Health and Safety Agencies” (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, July 2008).
10. The USDA Office of Risk Assessment and Cost-Benefit Analysis was established by the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994. For more information, see USDA, “Office of Risk Assessment and Cost-Benefit Analysis Analysis,” http://www.usda.gov/oce/risk_assessment/.
11. Jerry Ellig and Patrick A. McLaughlin, “The Quality and Use of Regulatory Analysis in 2008,” *Risk Analysis* 32, no. 5 (2012): 855–880.
12. This breakdown includes most of the major agencies that produce RIAs that monetize both benefits and costs. Shapiro and Morrall used a data set of 109 such regulations, and these agencies were responsible for 99 of them. The only major agency missing was the Department of Energy, which produced 5 of the other 10 regulations. Five additional agencies produced one regulation each in the data set. Stuart Shapiro and John F. Morrall III, “The Triumph of Regulatory Politics: Benefit-Cost Analysis and Political Salience,” *Regulation & Governance* 6, no. 2 (2012): 189–206.
13. This work was part of a broader project on the role of analysis in public policymaking conducted by one of the authors. Stuart Shapiro, *Analysis and Public Policy: Successes, Failures, and Directions for Reform* (Cheltenham, UK: Edward Elgar, forthcoming).
14. Serge Taylor, *Making Bureaucracies Think: The Environmental Impact Statement Strategy of Administrative Reform* (Stanford: Stanford University Press, 1984).

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