Agency Economists
Committee on Regulation

Proposed Recommendation for Committee | October 17/September 25, 2019

For more than four decades, executive branch agencies have been required to conduct a regulatory impact analysis (RIA) when they develop a “significant regulatory action”—a rule that is likely to have an annual economic impact exceeding $100 million. Some executive branch and independent agencies are also subject to statutory requirements for benefit-cost analysis or other forms of economic analysis, which may apply to certain programs or to all rules they promulgate.

The economic analysis agencies produce in response to these legal requirements is an extremely valuable tool for anticipating and evaluating the likely consequences of proposed regulations.

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1 As used in this Recommendation, the term “agency” as used in this Recommendation refers to the specific governmental unit with statutory authority for the development of regulations but is conducting an analysis in connection with regulations it may issue, rather than referring to the larger parent agency in which some such units are embedded, such as the Occupational Safety and Health Administration, and not in lieu of the larger Department, such as the Department of Labor, in which they may be embedded. Of course, when the parent agency is itself issuing a rule, the term “agency” is intended to encompass it.

2 See, e.g., 7 U.S.C. § 19(a) (CFTC); 15 U.S.C. § 77b(b) (SEC); 15 U.S.C. § 2058(j) (CPSC). All federal agencies, moreover, are obligated to participate in a regulatory planning process that requires a preliminary impact analysis developed at least in part by agency economists. Exec. Order No. 12,866, supra note 2, §4(c).
rules. An agency’s economic analysis sometimes assesses other potential results of a regulation, such as cost-effectiveness, economic feasibility, or distributional consequences.

Several Conference recommendations have sought to improve the quality and transparency of agency economic analysis. The Conference has not, however, addressed the organizational structure of the economic analysis function, an issue that may to a degree be influenced by existing executive order requirements for specific agency structures to oversee required impact analyses.

At present, some agencies task a centralized unit of economists with conducting all regulatory economic analyses (“functional” organization). Examples include the Federal Communications Commission’s Office of Economics and Analytics and the Federal Trade Commission’s Bureau of Economics. Both units are independent of the offices that write regulations, but they conduct economic analyses to inform decisions about regulations. At other agencies, economists are spread amongst an agency’s program divisions, working alongside...
other rule development staff, rule writers and attorneys (“divisional” organization). At the Environmental Protection Agency (EPA) Department of Energy, for example, the economists who produce RIAs that accompany regulations are usually located work under the supervision of in the program offices (Air, Water, etc.) that write the regulations. Finally, many Still other agencies have economists dispersed through various program divisions, as in the divisional mode of organization, but also have economists in a central office that reviews draft regulations and the accompanying economic analyses (“hybrid” organization). Examples of hybrid organizations include the National Center for Environmental Economics at the Environmental Protection Agency, the chief economist’s office in the Department of Agriculture, and the Director of Regulatory Analysis in the Office of the General Counsel at the Department of Transportation. Of course, an agency may have multiple distinct entities tasked with performing economic analysis, and each such entity may fall under a different organizational heading. This is especially true with large or geographically widespread agencies. While each of these distinct organizational structures may blend together to some degree within large or geographically diverse agencies, each of these structures has inherent strengths and weaknesses. For instance, a functional organization is likely to limit the number of day-to-day interactions that economists have with rule-writers, lawyers, and other non-economists within the agency, whereas a divisional organization may impair the objectivity of economic analysis if the economists seek to avoid conflict with their non-economist supervisors. Decision-making authorities, practices, and procedures can be crafted to support the strengths and mitigate the weaknesses of the chosen organizational structure. The challenge for each agency is to find the blend of organizational structure, practices, and procedures that will enable the agency to successfully fulfill its economic analysis obligations objectives.

This Recommendation offers best practices and factors for agencies to consider in designing their economic analysis programs. It does not recommend that agencies should afford greater prominence to economics than to any other discipline in the rule development process. It

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\[\text{Id. at 30.}\]

\[\text{Id. at 9.}\]
does not recommend any one form of organization over another and is sensitive to the fact that each agency will want to tailor its economic analysis program to fit its individual needs. Rather, it focuses on ways to ensure that structure, practices and procedures complement each other, forming a coherent system for producing high-quality economic analysis that informs regulatory decisions and is consistent with the elements set forth in relevant Executive Orders and OMB guidance (e.g., requirements of Executive Order 12,866 and OMB Circular A-4), and both agency-specific and cross-cutting statutes such as the Regulatory Flexibility Act (1) that require economic analysis.

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RECOMMENDATION

Agency Consideration of Structure and Function of Economists

1. Agencies that are required by executive order or statute to conduct regulatory impact analysis or another form of economic analysis should consider whether the existing organizational structure for economists allows the agency to produce sound, objective, consistent, and high-quality economic analysis. Regulatory Policy Officers (or analogous agency officials) should meet with relevant decisionmakers to assess the organizational structure’s contribution to the quality and use of economic analysis.

2. In reviewing their organizational structures, agencies should consider how best to provide their economists the pros and cons of each structure. Ideally, the organizational structure should give economists the independence to develop objective regulatory analysis that is consistent with best professional practice; and ensures compliance with all as well as analytic requirements consistent with the requirements of (such as those contained in Executive Order 12,866 and OMB Circular A-4); and Organizational structure should also promote the flow of this analysis to decision-makers, including rule writers and attorneys, rule writers and other rule development staff as early in the decision making process as feasible. Relevant pros and cons organizational structures include the following:

   a. “Functional” organizations that have a centralized economics unit tend to have the following strengths and weaknesses:

      1) Pros: Economists. This structure may enable economists to be able to produce more objective, consistent, and high-quality analysis due to greater independence, collaboration with peers, economies of scale, ongoing professional development, and recruiting advantages.

Commented [KH2]: The Committee voted to retain language that is structure-specific, but recognizes that individual elements can apply across structures.

Commented [KH3]: The Committee voted in principle to remove the “pro and con” language and use alternative phrasing.
2) **Cons**: Because they are often physically separated from day-to-day events in the program offices, economists may be less informed about critical details of pending regulatory issues and lack interactions with other experts in the development of a rule. The physical separation may also enable economists to more strongly resist collaboration with the central economics office.

b. “Divisional” organizations that locate economists in program offices tend to have the following features:

1) **Pros**: This structure can allow economists to produce more direct and relevant analysis that is closely focused on program-specific regulatory issues and decisions, and can facilitate earlier involvement in the development of regulations.

2) **Cons**: Economists working within this structure may feel pressure to produce less objective analysis in order to support program office decisions, and they may have fewer opportunities to develop professional skills through interaction with other economists located in other offices.

c. “Hybrid” organizations that locate economists in program offices but also have a centralized economic review function may tend to have the following features:

1) **Pros**: This structure may combine the benefits of divisional organization with a centralized quality control function and expanded opportunities for skill development.

2) **Cons**: Economists working in program offices may still be marginalized by other rule development staff and face career disincentives to informing the central economics office of that fact when they disagree with the quality or objectivity of a regulatory analysis.

3. Agencies that are standing up a new economic analysis unit or that are considering restructuring an existing economic analysis unit should carefully consider evaluate these pros and cons-potential strengths and weaknesses in deciding what type of

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structure they wish to adopt. Agencies should further consider taking specific steps to promote high-quality, objective economic analysis. Although these recommended steps may be associated with specific organizational structures, they may also generally apply to the development of economic analyses across all organizational structures.

4. Agencies that are not currently required to conduct economic analysis but wish to build or improve their capabilities to do so should carefully consider each of these options above.

Structure-Specific Recommendations

5.4 Particularly relevant to Agencies that have chosen a more functional organization structure should consider taking the following steps to minimize the potential drawbacks associated with that approach: walling off economists in an independent unit, which are especially likely to emerge when an agency has adopted a functional structure:

a. Ensure that economists are included on multidisciplinary regulatory development teams, along with rulewriters and attorneys other rule development staff, from the outset;

b. The agency should ensure that economists have a path to make independent recommendations to higher-level decision-makers and
c. Give the agency the opportunity to express concerns about the quality of economic analysis to the agency head.

5.5 Particularly relevant to Agencies that have chosen a more divisional organization should consider taking the following steps to minimize the potential drawbacks associated with that approach: diluting economists’ influence by dispersing them through the agency, which are especially likely to emerge when an agency has adopted a divisional structure:

a. Provide, where feasible, that economists in the program offices operate under the general supervision of a senior-level multidisciplinary team.
economist within the agency. [ML alternative language: Ensure that the supervisory structure does not create disincentives for economists to offer objective, independent economic analysis.]

b. Empower a central economics office at the agency level to:

1) Serve as a quality check on economic analyses developed by the program offices;

2) In coordination with agency Regulatory Policy Officers (or analogous agency officials), standardize and disseminate high-quality analytical methods; and

3) Conduct longer-term research and development to inform future regulatory proceedings

c. Provide the central economics review office with a pathway to express concerns about the quality of economic analysis to the agency head.

Recommendations Applicable to All Organizational Forms

7-6. To promote meaningful consideration of economic analysis early in the decision-making process, agencies should consider developing guidance clarifying that economists will be involved in regulatory development before significant decisions about the regulation are made. Agencies should make this guidance publicly available by posting it on their websites.

8.7. To further promote meaningful consideration of economic analysis early in the decision-making process, agencies planning unusually large or complex rulemakings should consider issuing an advance notice of proposed rulemaking, a notice of data availability, or some other form of public notice that includes a preliminary economic analysis of alternatives during the development of agency regulatory plans and budgets under applicable executive orders. Agencies should involve their relevant economic units at this stage in the process of developing agency regulatory plans and budgets under...
applicable executive orders in order to promote meaningful consideration of economic analysis while a rule is being shaped.

9. Agency officials should consider assigning Regulatory Policy Officers or other analogous agency officials should rely on a specific economics unit with the responsibility to collaborate with agency economists to articulate relevant analytical methods and offer training, workshops, and assistance in economic analysis to others within the agency.