

JIM TOZZI PUBLIC COMMENT ON AGENCY ECONOMISTS PROJECT

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The consultant report states: “This report examines the relationship between the organization of economists in agencies and the robustness and integrity of economic analysis that is intended to inform decisions about the design and adoption of individual regulations.”

Should it be decided to devote additional attention to the integrity of economic analysis then the following considerations might be addressed.

Traditionally attorneys are preoccupied with judicial review and economists are preoccupied with benefit-cost analysis when it comes to managing the administrative state as opposed to challenging it.

The implementation of a regulatory budget will diminish, to a degree, the influence of both disciplines as presently practiced when it comes to managing the administrative state because the adoption of a proposed rule will no longer be based on the sole demonstration that its benefits exceed its costs. Instead before a rule is promulgated it will have to survive competition in an open forum as to its merits relative to other available proposed rules.

Far more wrenching is the fact that the magnitude of the net benefits of a proposed rule will not necessarily dominate whether it is selected for inclusion in a regulatory budget because other social welfare functions may emerge, such as distributional considerations given the value laden construct of benefit-cost analysis as presently practiced.

A recent publication of Professor Richard Pierce of the George Washington University opens the door for a public debate of this issue when he concludes:

" the gap between the goal of maximizing the net benefits of regulation as measured by cba and the goal of ensuring that agencies act in accordance with the preferences of the public, as those preferences are perceived by Congress, is likely to be as large as the gap between the goal of maximizing the net social benefits of regulation as measured by cba

and ensuring that agencies act in accordance with the preferences of the public, as those preferences are perceived by the President."

Richard J. Pierce Jr. Takeaways from the Conference on the Future of White House Regulatory Oversight and Cost-Benefit Analysis (GW Law School Public Law and Legal Theory Paper No. 2019-60)