

Peter Strauss' Comments on "Agency Economists"

I am troubled by the consultant's report, which in a number of respects, in my judgment, is inadequate to support recommendations on this important topic.

- 1) The most important empirical work underlying the paper comprises three case studies. Each of them is a case study of an independent regulatory commission, and one responsible for regulation that (save for a few FCC functions, perhaps) is independent of scientific expertise.
 - a. Although mentioning President Obama's E.O. encouraging IRC compliance with EO 12866, the paper seems not to consider that this compliance is not required, with the consequence that CBA and economists' roles can be quite different to what they are under EO 12866. Yet the recommendations appear aimed at EO 12866 agencies.
 - b. EPA, FDA, OSHA, NHTSA and other agencies that ARE subject EO 12866 depend on scientists for evaluation of issues central to their rulemakings, and relations/arguments between these technicians and economists have been central to concerns about the EOs and their execution. Yet the study is written as if lawyer-economist relations is its sole concern. The word "scientist" does not appear, and "science" appears only in a citation to the journal Political Science.
 - c. The consultant did supplement the case studies with a literature review and with interviews of a few agency officials, some of whom did work at science-sensitive agencies. The relatively informal and sparse nature of these inquiries did not, where they might have, explore the scientist/economist interface – and to have so limited an inquiry into an area so often identified as one of conflict is remarkable.
- 2) The consultant does not appear to have been aware of the Regulatory Policy Officer, OIRA's mechanism of coordination and control of agencies' internal CBA process under EO 12866. He fails even to mention the Trump executive order ramping up those controls by supplementing the RPOs already at the top of the process, who are in regular coordination with OIRA and responsible for internal implementation of its guidance (which is mentioned), with a required regulatory reform officer and regulatory reform task force. EO 13777. Very possibly ACUS would wish not to be involved in study of these elements. But to have recommendations aimed at agency organization of offices contributing to CBA studies, ostensibly contrasting functional, divisional and integrated structures without ever mentioning much less analyzing the impacts of these required structures is very strange. Regulatory policy officers and the EO 13777 are not mentioned in the study.

The proposed recommendation for the Committee addresses "the organizational structure of the economic analysis function," as if agencies were free to choose. It too doesn't attend to the 12866 gap, treating the FCC and FTC before mentioning the EPA. In remarking that "each of these organizational structures has strengths and weaknesses," it doesn't note the ways in which EOs 12866 and 13777 control choices by agencies that are not IRCs. "[T]he requirements of Executive Order 12,866 and OMB Circular A-4" are addressed as if they were indifferent to agency organizational choices, and the required organizations of EO 13777 are not at all mentioned.

In my judgment, for ACUS to accept this report as final and base a proposed recommendation on it would be wrong.