

The Limits of Political Control: How Organizational Capacity Influences Regulatory Review*

Alex Bolton
abolton@princeton.edu

Rachel Augustine Potter
rapotter@virginia.edu

Sharece Thrower
stthrower@pitt.edu

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Abstract

Contemporary studies of administrative politics focus primarily on political control and largely ignore institutional capacity. In this paper, we argue that both political and organizational factors, as well as the interactions between the two, are essential in explaining executive policymaking. To test this theory, we consider the case of the Office of Information and Regulatory Affairs (OIRA), an agency largely perceived as a political instrument of the president. Using a new dataset of more than 35,000 rules reviewed by OIRA from 1988-2013, we not only find that political factors influence the length of review but organizational factors also exhibit a significant role. Specifically, we find that review is generally longer when OIRA is understaffed and over-worked. Further, we demonstrate that low institutional capacity inhibits the president's ability to expedite priority rules. Overall, this study highlights the organizational limitations of political control.

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The question of who controls the bureaucracy has animated scholarly debates for decades given the importance of administrative decisions for policy outcomes. The study of political control, however, largely focuses on conflicts between political actors while failing to account for the organizational constraints that agencies face in carrying out their missions (Meier and O’Toole, 2006). Further, the interaction between political control and these factors remains mostly unexplored. In this paper, we argue that the political control apparatus is fundamentally constrained by institutional capacity. Thus, the implementation of political goals is stymied in low-capacity organizations.

To demonstrate this argument, we focus on the activities of the Office of Information and Regulatory Affairs (OIRA), the component of the White House Office of Management and Budget (OMB) responsible for overseeing agency regulations. OIRA reviews agency draft rules twice during the course of the notice-and-comment rulemaking process. The office is small but powerful—if it disagrees with an agency’s rule it can force the agency to alter its policy or even stop the rule altogether. Media accounts of OIRA often contain accusations of political bias in its review (e.g., Eilperin, 2013; Shapiro, 2011). Scholars also highlight the political nature of OIRA review, emphasizing the office’s role in navigating relations between the president and Congress (Wiseman, 2009), or suggesting partisan bias in its selection of which rules to review (Acs and Cameron, 2013).

The political nature of OIRA is thus well-established. However, we argue that even in this highly politicized environment, organizational limitations are meaningful for both the functioning of the agency as well as the level of control that political principals are able to exert. As a bureaucratic organization, OIRA remains inhibited by the same host of constraints that any bureaucratic institution faces (see, e.g. Wilson, 1989). We focus here on the role of leadership, staff resources, and workload in influencing OIRA’s ability to carry out its regulatory review mission as well as the president’s goals.

In particular, we study how these resource constraints, in conjunction with political

considerations, affect OIRA's ability to quickly review draft rules. Timely review of agency rules has been a persistent issue since OIRA's creation. Currently, OIRA operates under an Executive Order (EO 12866, 1993) that directs the office to review rules in no more than 90 days. Nonetheless, the length of reviews frequently exceeds this deadline, sometimes extending months – and in some cases years – beyond that. From 1988 to 2013, OIRA reviews ranged from 1 to 1214 days. Some observers have speculated that the length of time a rule is under review at OIRA is subject to political manipulation. For instance, in the lead-up to the 2012 presidential election the review of many regulations significantly slowed, causing some to speculate that the Obama administration was sitting on controversial rules in order to avoid political backlash (see Copeland, 2013; Eilperin, 2013).

We argue that political motivations, such as whether a rule is a presidential priority or whether it is submitted by an ideologically discordant agency, can lead OIRA to accelerate or decelerate the pace of its review. However, organizational capacity constraints also serve to decrease the speed of the office's review. And when political and organizational interests conflict, even the president cannot compel OIRA to move more quickly. In order to test this theory, we construct a new dataset of more than 15,000 proposed rules and 19,000 final rules reviewed by OIRA between 1988 and 2013. Using these data, we find that administrative concerns trump political ones when it comes to the speed of OIRA review of rules. The implications of this research speak to the limitations on the use of OIRA as a political tool of the president, as well as delay and ossification in the regulatory process.

The remainder of the paper proceeds as follows. We begin by offering background on regulatory review and the related literature. We then develop a theory of the duration of OIRA rule review that yields testable predictions. Next, we describe the data and empirically test these predictions, using a competing risk survival technique. The final section offers concluding remarks and directions for future research.

OIRA Review & Regulatory Delay

Administrative rules issued by agencies under the Administrative Procedure Act (APA) carry the full force of law and touch on almost all policy areas. Given these implications, presidents have consistently sought ways to gain political control over agency rulemaking.¹ Although early efforts to centralize regulatory review took a variety of guises (Kerwin and Furlong, 2011), regulatory review was placed under OIRA’s auspices in 1981 when President Ronald Reagan gave the office the authority to review and approve executive agencies’ proposed and final rules under EO 12291.

In order to complete the regulatory process laid out in the APA, EO 12291 required OIRA approval of an agency’s rule not once, but twice (Croley, 2003). First, the agency had to obtain OIRA clearance of the draft proposed rule (prior to its publication in the *Federal Register*) and then again of its draft final rule. In addition, “major” rules—defined as those that had an annual effect on the economy of at least \$100 million or that impacted either prices or the economy—were required to include a regulatory impact analysis that included a cost-benefit analysis of the policy.²

This setup remained in place until President Clinton issued another order in 1993 (EO 12866), narrowing the scope of OIRA’s review from all rules to just “significant” ones. This EO granted OIRA the authority to determine which rules fell under its loose definition of significant,³ essentially leaving all of the office’s powers intact, but considerably reducing its workload. In many other respects, however, Reagan’s framework for OIRA remained

¹This falls under a broader heading of presidential efforts to manage the administrative state (see Lewis, 2008; Moe, 1985; Rudalevige, 2002).

²Critics often point to the cost-benefit requirement as a way that Republican presidents have executed a deregulatory agenda. See (Croley, 2003).

³Under EO 12866, OIRA can deem a rule “significant” if it will “(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the president’s priorities, or the principles set forth” in the EO.

intact. OIRA still had two opportunities to review agency rules and cost-benefit analysis was still required, albeit for a smaller subset of rules than the previous EO had required. Today, although subsequent presidents have tweaked OIRA's role, the process still functions in accordance with the basic principles instituted by Clinton.

OIRA review encapsulates many different functions. During the course of a review, OIRA coordinates with other agencies in the executive branch to ensure the draft policy does not conflict with existing programs or create legal difficulties. OIRA also reviews the cost-benefit analysis prepared by the agency, if one was required, and coordinates with other component units in the Executive Office of the President (EOP) to ensure that the draft rule does not cause issues with respect to presidential priorities. Finally, as Sunstein (2013) notes, OIRA desk officers may form opposition to the rule on its merits, based on good governance principles, or on their prior experience working with the agency and its programs. Whenever issues arise, OIRA and the agency must negotiate over what changes to make to the rule and, if no compromise can be reached, OIRA can return the rule to the agency for further reconsideration.

Although the details of what occurs during any particular OIRA review occur outside of the public's purview, scholars have attempted to discern the effects of OIRA review in a number of different contexts. For instance, Dragu (2010) examines the factors that lead OIRA to require changes to agency rules, concluding that such changes are more likely to occur later in a president's term and during election years. Further, he finds that OIRA is more likely to block a rule from being promulgated under Republican presidents as well as in the beginning of presidential administrations. In another study of OIRA decision-making, Acs and Cameron (2013) offer an examination of when OIRA decides to audit an agency (i.e., bring the agency's rule in for formal OIRA review). They find that under the Bush administration, OIRA was more likely to audit a liberal agency's rule, while other administrations did not exhibit the same type of ideological targeting.

The ability of OIRA to stall a rule through its review process has the potential to ossify the process, yet it has received scant attention from scholars.⁴ Technically speaking, OIRA has limits on the length of time it can review an agency’s rule. Prior to the 1993 EO, review time was limited to 60 days for major proposed rules, 30 days for major final rules, and 10 days for non-major rules. OIRA had the authority to extend the review time on any rule at its discretion. Agencies, in turn, were instructed to await OIRA approval before publishing their rules, and a norm developed that agencies would not violate this standard.⁵ EO 12866, issued in 1993, set a 90-day limit for all rules under OIRA review. Review can be extended for an additional 30 day period at the request of the agency and subject to written approval of the OMB Director.⁶

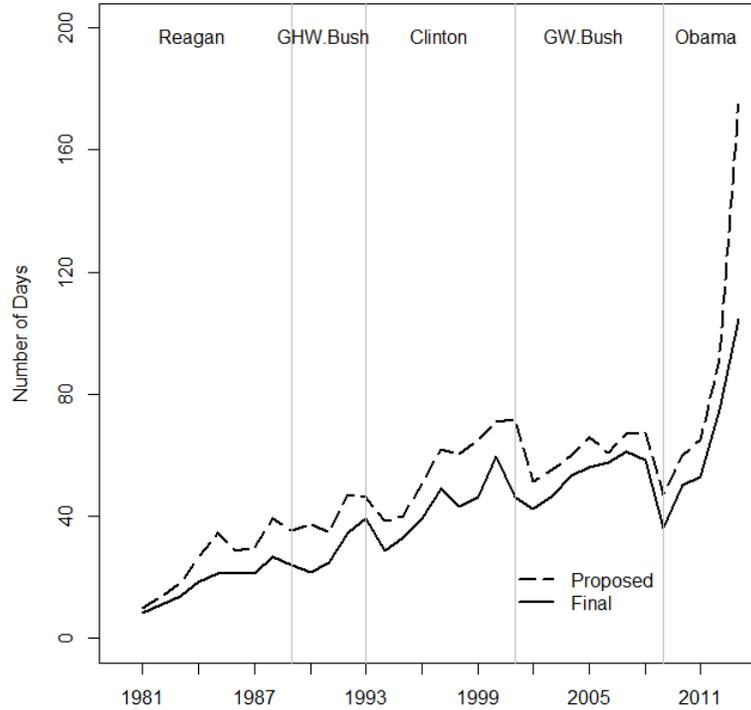
As a result of these loopholes and the demands of the review process, the length of OIRA reviews has generally increased over time, as shown in Figure 1. Prior to 1993, average review times were shorter. However, consistent with the longer review period established under EO 12866, review times increased in the pursuant years. In addition, review times for proposed rules exceed those for final rules. This is unsurprising since, in most cases, final rules have already been vetted at the proposed rule stage. However, as Figure 1 demonstrates, there is considerable variation over time and within presidential administrations in the length of OIRA’s rule review. In the next section, we offer a theory that explores both the political and organizational factors underlying delays in OIRA’s regulatory review.

⁴Yet, see Copeland (2013) for a thorough history and discussion of the issue. See also McLaughlin (2011) and Ellig and Fike (2013) for a discussion of political aspects of the review process for a subset of OIRA reviews.

⁵Copeland (2013, 10) describes an interesting exception where the Reagan-era Environmental Protection Agency (EPA) published a rule despite OIRA’s objections. Reportedly, an OIRA official responded by ominously warning EPA officials that there was “a price to be paid for what they had done.”

⁶Although the language of the EO stipulates that both conditions must be met (i.e., OMB approval *and* an agency request), in practice the EO has been interpreted very loosely, such that only one condition need hold. In other words, the agency extension clause enables indefinite review extensions, particularly because OIRA sometimes puts pressure on agencies to request an extension (Copeland, 2013; Heinzerling, 2013; Sunstein, 2013). However, as Nou (2013, 1796 - 7) points out there are political costs to extending review, including increased interest group and congressional scrutiny.

Figure 1: Average Length of OIRA Rule Review, 1981 - 2013



Source: Authors' analysis of data from www.reginfo.gov.

A Theory of OIRA Review Length

Early scholars of public administration and the bureaucracy advocated for a separation of politics and administration. In particular, they argued that the operations of administrative agencies should be a strictly technical and business-like endeavor, devoid of political control (Goodnow, 1900; Wilson, 1887). Subsequent researchers studied the bureaucracy through the lens of economic and organizational theory in an effort to understand its complexities as an institution (March and Simon, 1958; March and Olsen, 1976*a*; Niskanen, 1971; Weber, 1946). However, with the strengthening of presidential oversight over the executive branch (Kaufman, 1956), more recent scholarship has largely viewed the bureaucracy in terms of political control (e.g. Lewis, 2008; Moe, 1985). In particular, the rise of OIRA's regulatory review power in the 1980s became a central means for presidents to affect

bureaucratic outcomes (Cooper and West, 1988). As a result, studies mostly treat OIRA as a purely political tool and less scholarly attention is given to the organizational aspects of OIRA's behavior.⁷ Further, the interaction between these organizational constraints and an agency's ability to carry out its principal's political goals has received even less scrutiny.

In this section, we seek to explain one major aspect of OIRA's behavior: that is, variation in the review length of agency regulations. Specifically, why does OIRA sometimes review rules in a matter of days, but at other times prolongs review for months or, in some cases, years? To answer this question, we first develop an organizational perspective on OIRA decision-making based on existing theories of public administration and institutional capacity. From this, we extract a set of testable hypotheses. Next, we further develop hypotheses based on the predominant view that OIRA is a political tool of the president. Finally, we recognize that OIRA is not solely a tool of impartial administration nor a purely political puppet of the president; rather, both of these elements are essential and interrelated. As such, we expand on how OIRA's institutional capacity conditions the pursuit of the president's political goals. We argue that politics and organizational factors are not separable; rather, a full account of political control must also consider how organizational capacity facilitates or stymies the ambitions of politicians.

The Organizational View of OIRA

Though OIRA has largely been conceptualized as an implement of presidential control over the bureaucracy, it is still an organization. As such, it faces the same constraints as any other institution. In particular, many bureaucracy scholars identify recognize the connection between capacity and organizational performance, arguing that low capacity institutions face more difficulties in carrying out their functions (Carpenter, 2001; Huber and McCarty, 2004;

⁷As Meier and O'Toole (2006) lament, this is a larger problem in the literature on political control, as such studies rarely consider features of the bureaucracy. Cooper and West's (1988) study of OIRA review is a notable exception, however, in that it incorporates both the political goals and organizational aspects of OIRA review.

Huber and Shipan, 2002; Rourke, 1969).

Considered in this light, OIRA's capacity should affect how it performs its duties. As such, we argue that the timing of OIRA review is a measure of its performance, which is based on its organizational capacity (Carpenter et al., 2012).⁸ These reviews are costly to OIRA in terms of the amount of resources, including staff and time, it must devote to each rule. Thus, when OIRA's capacity is higher, it is better equipped to handle these costs and decrease the length of review. Conversely, when OIRA's capacity is low, it should be less equipped to operate smoothly. Consequently, it may produce lengthier rule reviews as a result of its sheer inability to manage its responsibilities. As a result, as OIRA's capacity decreases, its review times should increase.

To understand the specific ways that the regulatory review process is affected by this mechanism, we focus on three distinct aspects of OIRA's capacity: leadership, staffing, and workload. First, some scholars argue that strong leadership is critical to the administration and success of an agency. This is because effective leaders are able to make decisions, secure external resources, settle internal disputes, boost morale, and motivate workers – all of which influence the substance and timing of the organization's outputs (Carpenter, 2001; Kaufman, 1981; Rourke, 1969; Seidman and Gilmour, 1970).

Based on this reasoning, the OIRA Administrator may be important in ensuring quick and efficient reviews of regulations. Yet, there are often significant leadership gaps at OIRA. Its administrator position has frequently undergone long periods of vacancy, largely attributable to the difficulties of advancing nominees through the contentious Senate confirmation process. For instance, following Administrator John Graham's departure in February 2005, the position remained unfilled for nearly a year until President Bush recess appointed Susan Dudley to fill the role in January of 2006.

During these periods when the OIRA Administrator position is vacant, its ability to

⁸Measuring the time to complete a task is not a novel measure of performance. See Lewis and Wood (N.d.) for another example.

respond to the policy and political issues that arise during the course of regulatory review is hindered. For instance, Croley (2003, 842) notes that EO 12866 “provides that disagreements between OIRA staff and a rulemaking agency are to be resolved wherever possible by OIRA’s Administrator, and in the event of an impasse – when, for example, an agency head is unyielding to OIRA – by the vice president or president directly.” In the absence of a confirmed Administrator, these highly political tasks fall to whomever happens to be acting in the Administrator’s place (usually the Deputy Administrator, a career civil servant).⁹ While an interim administrator may possess much of the same formal authority as a Senate-confirmed one, he or she may lack the political authority to undertake potentially controversial actions. Thus, without the political backbone provided by the Senate-confirmed leader, OIRA’s bureaucratic capacity is diminished and rules are more likely to languish on the docket.

H1. Leadership Hypothesis. OIRA review times increase during periods of vacancy in the OIRA Administrator position.

In addition to vacancies in leadership, resource scarcity may lead to delays as a result of diminished capacity. In particular, organizations with greater staffs sizes are associated with having a higher capacity to carry out its duties. Large staffs are more likely to be able to deal with burgeoning tasks than staffs of smaller size. This in turn leads to the more efficient management of organizational functions and goals (Carpenter et al., 2012; Eisner and Meier, 1990; Olsen, 1976). On an average day between 1988 and 2013, OIRA had more than one hundred rules simultaneously under review. In spite of this high volume, OIRA has maintained an average of around 60 Full Time Equivalent (FTE) employees, although there has been an overall downward trend in the number of FTEs in recent years. These top-line figures in themselves may actually understate the case in two ways. First, Nou (2013, 1800)

⁹Under the Federal Vacancies Reform Act of 1998 (P.L. 105 – 277), persons may only serve in an acting role for a maximum of 210 days. Consequently, while the Deputy Administrator often is the first to serve in the event of a vacancy in the OIRA Administrator, the acting role may be filled by many individuals during the course of a long vacancy.

notes that “of this already small staff, only about twenty to thirty consistently engage in regulatory review.”¹⁰ Second, as Copeland (2013) details, FTE numbers are authorizations and, at any given point in time, it is possible that actual staffing numbers fall below that ceiling. The implication of staffing shortages, of course, is that, rather than a long review indicating a political agenda on OIRA’s part, OIRA may simply not have the manpower to review all of the rules on its docket in a timely manner.

H2. Staffing Hypothesis. As the size of OIRA’s staff decreases, OIRA review times increase.

Finally, organizations may be limited by the sheer amount of work they face. When burdened with a heavier workload, organizations are more constrained in time and resources. As a result, they are less capable of carrying out their duties, it is difficult for them to focus their attention on certain problems, and it may take them longer to make decisions (March and Olsen, 1976*b*; Olsen, 1976). These type of workload constraints may also influence how OIRA comes to timely decisions regarding rules under review.

Generally speaking, agencies are assigned one particular OIRA desk officer.¹¹ As a result, if an agency produces a large number of draft rules and submits them all to OIRA at once, they may in effect clog the pipeline and slow the review process for all of their rules on OIRA’s docket. While this may seem like a suboptimal strategy from the agency’s perspective, sometimes outside events – such as a change in political leadership, the launching of a policy campaign, or increased congressional scrutiny – may precipitate a surge in rule production. Conversely, at other times, agency rule production may fall off, due to shifting priorities at the agency. Under these circumstances, OIRA may be better able to quickly review rules.

H3. Workload Hypothesis. As the size of OIRA’s workload increases, OIRA re-

¹⁰The remainder of OIRA’s staff are dedicated to administrative duties or to OIRA’s information management and statistical standard-setting tasks.

¹¹In the case of a high volume regulatory agency, like the Environmental Protection Agency, the agency is subdivided by policy area and assigned to a handful of desk officers.

view times increase.

The Political View of OIRA

Though the idea that bureaucratic agencies are limited by their capacity is not new, this logic is rarely (if ever) applied to OIRA. Instead, the literature predominantly views OIRA as a highly politicized actor that executes the will of the president. As such, political factors are often identified as the driving force behind rulemaking decisions (Acs and Cameron, 2013; Croley, 2003; Moe and Wilson, 1994; West, 2005). This section explores the political factors that could explain OIRA decision-making with regards to review times.

To begin, the political view of OIRA presumes that OIRA is (more or less) a perfect agent of the president, a perception that can largely be attributed to two factors. First, the OIRA Administrator is a presidential appointee, suggesting that he or she will act in ways that reflect the preferences of the president (Lewis, 2008). Second, OIRA is housed within the EOP, suggesting that the president exerts a considerable degree of control over its actions (Epstein and O'Halloran, 1999; Lewis, 2003).

Agencies, on the other hand, possess their own preferred policy outcomes that they would like to pursue (e.g., Ferejohn and Shipan, 1990). As such, the president and agency may disagree on the substance of a rule based on their differing policy preferences. These disagreements may be reflected in the regulatory review process as OIRA attempts to learn the ideological consequences of a draft rule and potentially alter it. When a rule comes onto OIRA's docket for review, OIRA can either engage in a cursory (quick) or rigorous (more prolonged) review. If an agency is ideologically distant from the president, OIRA (the president's agent) may be less trusting of that agency compared to an agency that is more proximate to the president. Thus, this leaves the potential for a large policy loss if OIRA performs a cursory review and does not engage in extended negotiations with the agency.

To minimize this policy loss, OIRA can choose to perform a more rigorous review of the agency's rules, in an effort to induce the agency to promulgate a more favorable policy (see Cooper and West, 1988). A longer review time is just one way in which OIRA can intensify the review process, as OIRA works to hammer out policy disagreements and negotiate policy concessions.¹² On the other hand, OIRA does not need to execute such a demanding review for ideologically congruent agencies who they trust more to act according to the president's preferences.

H4. Political Targeting Hypothesis. As the ideological disagreement between the president and the agency increases, OIRA review times increase.

In addition to targeting rules based on the ideology of the issuing agency, OIRA's political motivations may come to the fore during times that are politically salient. The timing of rulemaking is often viewed as a strategic consideration for agencies (Gersen and O'Connell, 2009; O'Connell, 2008; Yackee and Yackee, 2010), but OIRA also has its own strategy with respect to political timing. For instance, no president wants to have controversial rules issued in the lead-up to an election, lest rulemaking distract from the campaign. Generally, the White House is more cautious during election periods.¹³ With respect to review time, the implication is that during an election season, OIRA will slow down and carefully scrutinize the rules on its docket so as to ensure that all rules that are issued accurately reflect presidential priorities.

H5. Political Timing Hypothesis. OIRA review times increase during presidential election years.

Finally, the president may prefer that OIRA quickly reviews rules that are related

¹²In addition, during the course of a longer review, OIRA staff may be building coalitions with powerful stakeholders in the EOP. These allies may come in handy should OIRA need leverage to compel the agency to make changes to the rule or political support to return the rule to the agency.

¹³An alternative hypothesis would be that presidents actually seek to push through politically popular rules during an election season. To the extent that this is true, it should bias against finding results in support of our hypothesis.

to his or her policy priorities. Because OIRA reviews many rules at a time, it is limited in which rules receive its attention. Indeed, Cohen, March and Olsen (1976) argues that organizations with time constraints will move tasks up in their work queue based on their importance. Similarly, presidents tend to give more immediate attention to their priorities in bureaucratic policymaking (Rourke, 1969). Further, presidents may have incentives to quickly implement policies that are central to their agendas in order to garner favor with the public and to avoid the possible mobilization of political opposition. Additionally, it is important for presidents (and OIRA) to lock-in key policies now, rather than wait. Future governing coalitions (i.e., a new Congress or president) may disagree with the policies offered in a draft rule. It is more difficult, however, for dissenters to overturn a rule that is already codified in the *Federal Register* since finalized rules are durable policy instruments (see Potter and Shipan, 2013) and there is a status quo bias in American politics.

H6. Presidential Priorities Hypothesis. OIRA review times decrease for rules that are presidential priorities.

The Politics-Organization Interaction

Political and organizational factors do not operate in a vacuum and, critically, we argue that they play off one another. While we note that some studies have considered how both politics and administration are interdependent (Gordon, 2011; Huber, 2007; Krause, 2003), we seek to further explore how they are conditional on each other by specifically focusing on the decision-making of OIRA. In particular, it is widely recognized that presidential control over the bureaucracy has increased in order to achieve the president's policy goals, especially with the rise of regulatory review (Cooper and West, 1988; Heclo, 1975). At the same time, the presidency itself has become more institutionalized (Moe, 1985) which is accompanied by the previously discussed organizational limitations. Here, we examine the extent to which these institutional limitations hinder the president from pursuing her

political preferences.

We argue that while OIRA may advance presidential priorities quickly through the review process, it is hindered in its ability to do so by how well-equipped it is to perform its job. In other words, when OIRA is low in capacity, its ability to respond to presidential demands will be diminished. Thus, we expect that when capacity is low (e.g. administrator vacancies, low staff levels, etc.), review times for presidential priorities will be indistinguishable from non-priorities. On the other hand, increased capacity facilitates OIRA's ability to carry out the president's political objectives. At high levels of capacity, we argue that OIRA review of presidential priorities will be significantly quicker than review of non-priorities because the office will be able to prioritize politically salient rules. In sum, we argue that the politically-motivated actions of OIRA are conditional on its organizational resources.

H7a. Conditional Low Capacity Hypothesis. When OIRA's capacity is low, there will be no difference in review times for priority and non-priority rules.

H7b. Conditional High Capacity Hypothesis. When OIRA's capacity is high, OIRA review times will be shorter for priority rules than non-priority rules.

Thus, a central piece of our theoretical argument is that political control is fundamentally dependent upon organizational capacity. While previous work has examined the effects of political control on capacity (see, for example Lewis, 2008), our argument suggests that capacity itself can impact the efficacy of institutions created to facilitate political control.¹⁴ Thus, the dichotomy between political control, in which factors like ideology and elections determine bureaucratic outcomes, and neutral administration, in which organizational capacity is most influential, is a false one. It is necessary to consider both factors and their interactions in order to better understand administrative outcomes.

¹⁴In other words, whereas other studies feature capacity as a dependent variable, we place it on the righthand side of the equation. This is possible since OIRA's capacity is exogenously set by Congress, a point to which return in the conclusion.

Data

To test these hypotheses, we collect data related to both the organizational and political explanations of OIRA review length. To generate the dependent variable, the length of OIRA review, we calculate the number of days that a rule was under review at OIRA from 1988 until 2013.¹⁵ For each rule that OIRA reviewed, we count the number of days from when OIRA received the rule to the day that it completed review.¹⁶ The dataset yields 15,971 proposed rules and 19,437 final rules from more than 34 agencies, with *Review Time* ranging from 1 to 1214 days.¹⁷

To test the organizational hypotheses, we measure the vacancy level, staff size, and workload of OIRA. We measure the vacancy level by determining the dates that each OIRA administrator served and when vacancies in the administrator position occurred. The variable *Vacancy* is the average level of vacancy during the course of each individual rule review, with higher levels indicating that there was a vacancy for a more significant portion of the rule’s review. For instance, a rule that was under review for 90 days with no vacancy in the Administrator position would receive a value of “0,” while a rule under review for 90 days where the Administrator seat was vacant for 45 of those days would receive a value of “0.5.” To measure staff size, we create the variable *FTE* as a count of the number of allotted FTEs for OIRA for the fiscal year during which the rule was under review.¹⁸ Finally, we include the variable *Log Workload* to test whether the volume of workload reduces OIRA’s ability to review rules in a timely manner. To create this variable, we count the number of rules under OIRA review for each agency for every day in our dataset. Then for the duration

¹⁵Although OIRA was created in 1981, our analysis begins in 1988 due to limited data availability for some of the covariates. In the online appendix we rerun our main analyses on the full range of years in the data excluding the limiting covariates. The results are substantially similar to those reported here.

¹⁶These data come from www.reginfo.gov, the official government website that records data relating to OIRA’s review under EO 12866. We exclude from the analysis rules that were labeled as “improperly submitted” or “exempt from Executive Order review,” as these technical categories do not lead to substantive review by OIRA.

¹⁷For a list of agencies included in this analysis, see Table A3 in the Appendix.

¹⁸These data come from the Government Accountability Office (2003) and Copeland (2013). We thank Copeland for his assistance in procuring additional data.

of each rule’s review, we average the daily number of rules to get a sense of the workload that the agency has created for OIRA during the course of that rule’s time on the docket.¹⁹ Overall, we expect that the time for review of an agency’s rule will increase as: the vacancy level increases, staff size decreases, and the workload submitted by that individual agency increases.

To measure the political hypotheses, we first consider the ideological distance between OIRA and the agency using ideology estimates created by Clinton and Lewis (2008). These authors create these scores using expert surveys, where 37 bureaucracy experts were asked to rate more than 80 agencies as conservative or liberal. Clinton and Lewis (2008) then use a multirater item response model to aggregate the experts’ scores into an aggregate agency score. To obtain a measure of ideological alignment, we create a dummy variable *President-Agency Disagreement* that takes on a value of “1” if the president is a Republican (Democrat) and the agency’s Clinton-Lewis score is liberal (conservative), and “0” otherwise. We count an agency as “liberal” whenever its Clinton-Lewis score is less than zero, and “conservative” otherwise. Consistent with H4, we expect that disagreement between the two actors will slow the pace of review.²⁰

Of course, presidents have tools to combat ill-behaved agencies, particularly by staffing those agencies with loyal presidential appointees (Moe, 1985). As Lewis (2008) shows empirically, presidents frequently use political appointments to staff agencies with whom they disagree in an effort to exert more control and induce outcomes consistent with presidential preferences. This suggests that through politicization, the level of politically-appointed leadership in an agency, presidents can staff a discordant agency with leaders who will advance the administrations’s agenda. We expect politicization to lead to shorter reviews, as agency leadership may be more sympathetic to the success of the president’s ideological goals than

¹⁹To address skewedness in the data, we also take the natural log of this variable.

²⁰We use Clinton and Lewis’s scores here because they cover a wide range of agencies during the period under study. However, these scores are limiting in that they are time-invariant and that they force us to dichotomize our distance measure. As a robustness check, we use alternate scores of agency ideology in lieu of Clinton and Lewis’s data. See Table A4 in the Appendix.

careerists and write rules closer to the president’s ideal point.

Thus, as an extension of the *Political Targeting Hypothesis* (H5), we include a measure of the politicization of each agency, which we expect to decrease the length of review time. To do this, we extend Lewis’s (2008) data on presidential staffing of agencies.²¹ For each agency, we gather a count of the number of presidentially-appointed positions, including presidentially-appointed Senate-confirmed (PAS) employees, Schedule C employees, and non-career Senior Executive Staff (SES) positions, based on data from the Office of Personnel Management (OPM) and the Plum Book, an official government publication that lists appointments during each presidential administration. The politicization variable, *Log Politicization*, is the natural logarithm of the number of presidential appointees (PAS, non-career SES, and Schedule C) in an agency in a given year divided by the total number of employees in that agency, so that higher values indicate a greater degree of penetration by presidential staff.

The *Political Timing Hypothesis* (H2b) suggests that OIRA takes a more cautious approach to rule review during an election year. To test this hypothesis, we coded the variable *Election Year* dichotomously, so that it takes on a value of “1” if the rule was submitted for OIRA review during a presidential election year, and “0” otherwise. This hypothesis emphasizes the role of the president’s electoral incentive in regulatory review. Yet there is not always another election on the horizon for the president. Lame duck presidents face neither a current nor future election because they have either lost a contest for reelection, come up against a term limit, or decided to retire. Indeed, scholars of rulemaking have dubbed this lame duck period as “midnight rulemaking,” as an outgoing president works with agencies to push through a slew of last-minute rules to accomplish his agenda.²² In

²¹Lewis’s original dataset covers the period 1988 - 2005. In extending the dataset, we gathered the number of non-career SES and Schedule C employees from OPM’s FedScope tool. These numbers vary by fiscal year. Because FedScope does not count the number of PAS employees, we approximate this number using the number of PAS positions as counted by the Plum Book. Because this is only published quadrennially, the numbers of PAS appointees in each agency counted in our measure varies only quadrennially.

²²O’Connell (2008, 891) notes that midnight rulemaking occurs regardless of whether the incoming president is of the same party as the outgoing president

order for an outgoing president to leave his mark via midnight rulemaking, agency rules must be approved by OIRA before the new president takes offices. As a result, OIRA may be pressured by both administration and agency officials to expedite rule review.²³

When the electoral incentive is eliminated during the midnight period, OIRA may actually *decrease* review time. To test this implication, we include a dummy variable *Midnight* that indicates whether or not a rule was submitted for review during the midnight rulemaking period. We conceive of the midnight period as the period in November following a presidential election that puts a president into lame duck status until the date in January when the new president assumes office.

To evaluate the final political hypothesis (H6), we construct a measure of presidential priorities based on presidential rhetoric. Using data from the Policy Agendas Project, we create a count of the number of times an agency’s policy area was mentioned in the State of the Union (SOTU) each year.²⁴ For instance, a mention of agricultural subsidies would count for agencies related to agriculture, such as the Department of Agriculture. We then code the variable *Priority* as a “1” if the number of counts for that agency in a given year is greater than the mean mentions for an agency in that year and “0” otherwise.²⁵

In order to test the conditional hypotheses, we interact the presidential priorities measures with each of the bureaucratic resource variables – vacancy rate, staff size, and workload. Consistent with H7a and H7b, we expect that under high levels of organizational capacity (operationalized as high staff levels, no administrator vacancies, and relatively low workload), presidential priorities will be reviewed more quickly than non-priorities.

We include a number of control variables. First, we include dummy variables to in-

²³Indeed, McLaughlin (2011) finds that the mean OIRA review time for agency rules decreases during months that fall during a midnight period.

²⁴These addresses are coded by sentence and categorized into a set of predefined topic areas. We then match these topic areas to the agencies in the dataset. The data are available at <http://www.policyagendas.org/>.

²⁵Making this variable binary allows us to account for the skewed nature of the SOTU mentions data as well as take account of the fact that speeches differ in lengths each year, generating lower or higher overall mentions. Results using a continuous measure of counts yield substantively similar results.

dicating whether or not the rule had an associated statutory or judicial deadline. Deadlines serve as “powerful motivations for expedited behavior” (Nou, 2013, 1797), and so we expect *Statutory Deadline* and *Judicial Deadline* to lead to shorter reviews by OIRA.²⁶ Next we include two dummy variables, *Econ Significant* and *Regulatory Flexibility Analysis*, to account for the complexity of the rule. Rules that take a value of “1” for these variables require additional analyses and should be associated with longer reviews (Ellig and Fike, 2013).

Finally, we include two measures to account for the political environment at the time of rule review. The dichotomous variable *Divided Government* is coded as “1” when the president and either the House or the Senate are from opposing political parties and may lengthen the duration of rule review (Yackee and Yackee, 2009). We also include a control *Post 1993* to indicate whether or not the rule was reviewed after the EO 12866 (which brought an accompanying change in the expected review time). Lastly, we include fixed effects for presidents, to account for any differences in the orientations of different presidential administrations toward OIRA. See Table A1 in the Appendix for descriptive statistics for the variables used in the analysis.

Methods and Analysis

To analyze these data, we use survival analysis, a statistical technique that addresses the duration of an event while also accounting for the fact that some covariates may change during the course of the study. Survival analyses model time to failure (i.e., when an event occurs), which in our case means the time it takes OIRA to conclude review with respect to a particular rule. However, “failure” here can occur in two ways: OIRA can deem the review “consistent” with EO 12866 (i.e., approve the rule) or OIRA can reject the rule.²⁷ These are mutually exclusive events, meaning that a rule may conclude with either approval or

²⁶See Table A2 in the Appendix for a discussion of how we coded these and other variables.

²⁷Rejections can occur via a formal return of the rule by OIRA or the agency withdrawing the rule from consideration, often due to pressure by OIRA (see Sunstein, 2013). Regardless, if a rule is withdrawn or returned the agency cannot proceed with that rulemaking.

rejection, but cannot have both of these events occur at the same time. While the majority of reviews conclude with approval and that is the outcome of greatest substantive interest to our argument, it would bias our analysis to discard those rules that met other fates since it is not clear what the outcome of that review will be at the outset of a review.

Instead, we account for the two possible review outcomes using a competing risks survival regression. This semi-parametric approach is appropriate when subjects are at risk of multiple events occurring at any one time (Box-Steffensmeier and Jones, 1997). The approach has the advantage of directly modeling competing outcomes in the context of the hazard framework, which has become familiar and intuitive to researchers.

Table 1 shows regression coefficients from the empirical analysis for both proposed and final rules. Positive coefficients correspond to shorter review times, while negative coefficients reflect longer reviews. For ease of interpretation, we also report the subhazard ratios for the models in Figure 2. The subhazard ratio can be interpreted as the hazard or risk of ending rule review, given the covariates, when OIRA approves the rule (i.e. deems it “consistent” with EO 12866). When the subhazard ratio is greater than one, the covariate is associated with an increased risk of ending rule review. A ratio less than one corresponds to a decreased risk of ending rule review. In other words, a subhazard ratio greater than one can be interpreted as the covariate leading to shorter rule review, while ratios less than one mean the covariate leads to longer review times. Since these are ratios, we can subtract the subhazard ratio from 1 and multiply it by 100 to report a percentage change in these ratios when increasing the covariate by 1 unit.

Overall, the models offer strong support for the organizational capacity hypotheses and mixed support for the political hypotheses. Consistent with the *Leadership Hypothesis*, review time significantly increases when there is a vacancy in the position of OIRA administrator. Particularly, the hazard of ending rule review decreases by 15% for proposed rules and 11% for final rules as the vacancy rate increases. Additionally, the time of rule review de-

creases as the staff capacity of OIRA increases. In other words, a one person increase in staff size corresponds to an increased risk of ending review by about 2% for both proposed and final rules. Both of these effects decrease review time, consistent with the *Staffing Hypothesis*, and are significant at the 0.01 level. While workload does not have a significant impact on the length of review for proposed rules, increased workload does significantly increase the review of final rules. Thus, a one unit increase in OIRA's logged workload corresponds to a 11% increase in the hazard of review ending. This provides support for the *Workload Hypothesis*.

With respect to the political hypotheses, for both proposed and final rules we find that *President-Agency Disagreement* is significantly associated with an increase in the time that an agency's rule is under OIRA review. More precisely, the risk of ending OIRA's review decreases by 10% for proposed rules and 13% for final rules when the agency's preferences are not aligned with the president, as opposed to when they are aligned. While we find some support for the *Political Targeting Hypothesis*, we fail to find evidence for this hypothesis when examining politicization. The number of political appointees in the agency does not significantly impact the length of review for final rules; however it does significantly increase the length for proposed rules, contrary to the *Political Targeting Hypothesis*. This could suggest that there is a tradeoff between politicization and competence; that is, while politicized agencies are more loyal, they may be less competent and thus produce lower quality rules. Consequently, these agencies may require additional oversight from OIRA, resulting in longer reviews.

Next, *Election Year* significantly increases the number of days that rules are under review for final rules, while *Midnight* decreases the length of final rule review. This substantiates the *Political Timing Hypothesis*. Substantively, presidential election years correspond to an 9% increase in review time for final rules, while midnight periods lead to a 12% decrease. In sum, we find some, but not overwhelming, empirical support for these political hypotheses. Lastly, we find empirical support for the *Presidential Priorities Hypothesis*.

As expected, presidential priorities are reviewed more quickly by OIRA, corresponding to an increased hazard of review ending for both proposed and final rules by 16% and 20% respectively (columns 1 and 2). These analyses provide support for the idea that, on average, presidential priorities are briskly shepherded through the review process relative to non-priorities.

With respect to the control variables, rules with judicial deadlines appear to significantly shorten review of both proposed and final rules, while statutory deadlines decrease review time for just final rules. Consistent with our expectations, these rules face shorter review times based on institutionally imposed deadlines. Finally, proposed rules requiring a regulatory flexibility analysis correspond to significantly longer review times. These results reflect the time OIRA devotes to managing the review of complex rules, particularly investing more time when a rule is initially proposed and submitted.

Thus far, we have demonstrated that OIRA's organizational capacity is a significant source of regulatory delay, contributing on a level equivalent to that of political factors. However, from an institutional perspective, bureaucratic capacity is a concern only to the extent that it actually limits the president. That is, if the president is able to "fast-track" the rules that he cares about regardless of OIRA's capacity, then we may question the extent to which delay is really a function of capacity. Furthermore, delay itself may be normatively less concerning if important regulations can be expedited through the regulatory process.

In the remainder of this section, we examine the extent to which the president's ability to quickly advance his or her priorities is conditioned on the capacity of OIRA to review rules. Specifically, we hypothesize that while rules that are associated with a high priority area for the president may receive faster review, even the president will be limited by OIRA's capacity constraints. That is, when capacity is low, high priority policy areas get bogged down in regulatory delay.

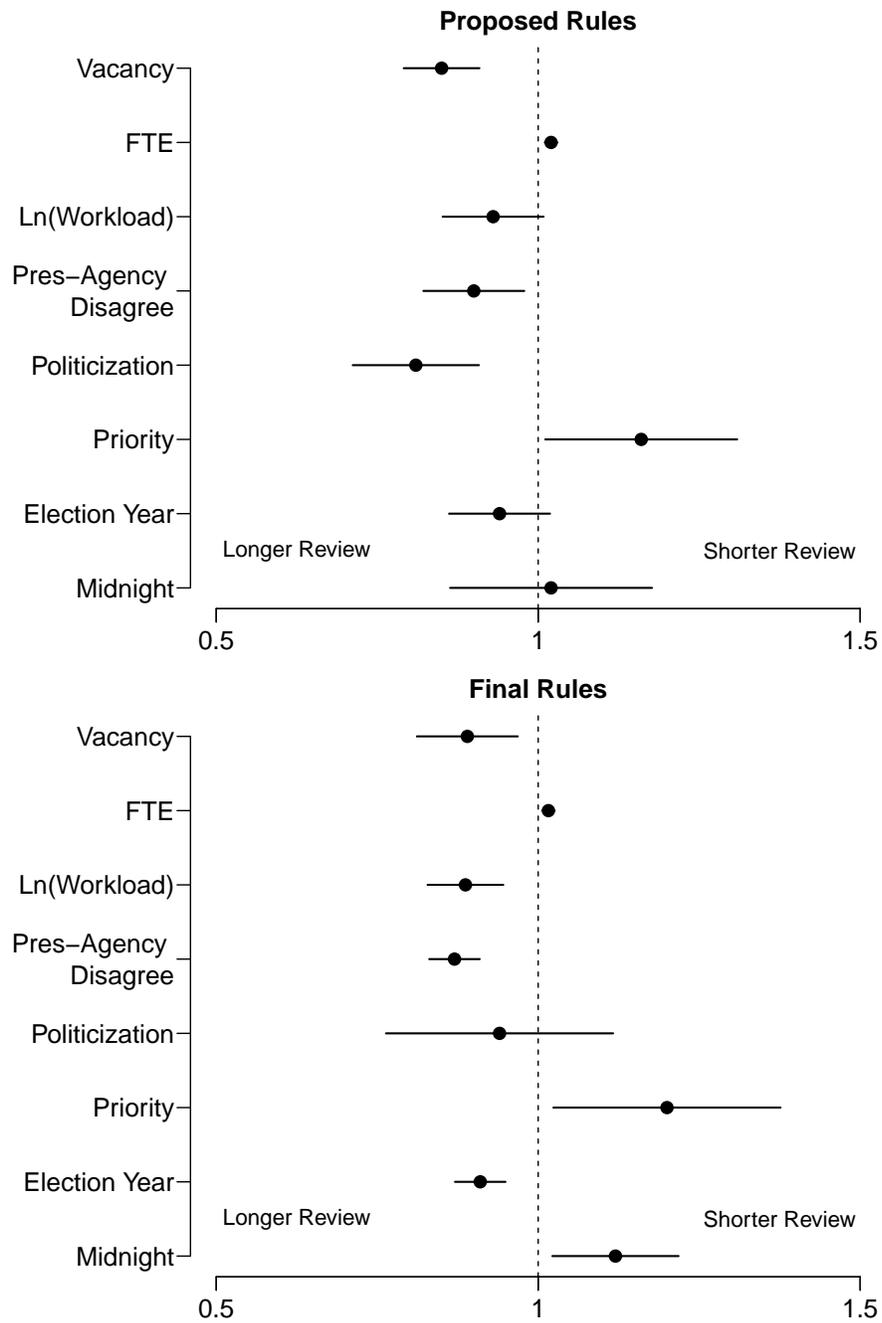
Accordingly, we interact the priority measure with each of the three resource vari-

Table 1: Competing Risks Models of OIRA Review Length

Variable	Proposed Rules	Final Rules
<i>OIRA Capacity:</i>		
Vacancy	-0.157*** (0.039)	-0.113*** (0.044)
FTE	0.021*** (0.005)	0.016*** (0.005)
Log Workload	-0.069 (0.014)	-0.119*** (0.036)
<i>Political Targeting and Timing:</i>		
President-Agency Disagreement	-0.102** (0.044)	-0.139*** (0.026)
Log Politicization	-0.205*** (0.079)	-0.057 (0.091)
Election Year	-0.060 (0.039)	-0.091*** (0.023)
Midnight	0.025 (0.077)	0.117** (0.047)
Priority	0.148** (0.066)	0.181** (0.074)
<i>Control Variables:</i>		
Judicial Deadline	0.588*** (0.156)	0.507*** (0.131)
Statutory Deadline	0.087 (0.072)	0.142** (0.061)
Economically Significant	-0.091 (0.126)	0.053 (0.127)
Regulatory Flexibility Analysis	-0.135*** (0.051)	-0.004 (0.049)
Divided Government	0.047 (0.035)	0.033 (0.048)
Post-1993	-0.133 (0.085)	-0.190** (0.092)
N	10,390	12,269
Years	1988 – 2013	1988 – 2013
President Fixed Effects	✓	✓

Coefficients reported from competing risks models, with robust standard errors clustered by agency in parentheses and presidential fixed effects (not shown). Note that positive coefficients correspond to shorter review times, while negative coefficients reflect longer reviews. Significance codes: * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$, two-tailed tests.

Figure 2: Subhazard Ratios from the Competing Risks Models



Note: This figure shows the subhazard ratio associated with each variable. A ratio of greater than one indicates an increased risk of ending rule review. Lines indicate 95% confidence intervals.

Table 2: Presidential Priorities and the Constraining Effects of OIRA Capacity

Variable	Proposed Rules	Final Rules
<i>OIRA Capacity:</i>		
Vacancy	-0.086** (0.039)	-0.046* (0.047)
FTE	0.016** (0.007)	0.011** (0.004)
Logged Workload	-0.086 (0.063)	-0.143*** (0.033)
<i>Political Targeting and Timing:</i>		
President-Agency Disagreement	-0.095** (0.042)	-0.130*** (0.023)
Log Politicization	-0.208*** (0.062)	-0.056 (0.088)
Election Year	-0.065* (0.037)	-0.093*** (0.022)
Midnight	0.022 (0.074)	0.113** (0.047)
Priority	-0.694* (0.398)	-0.665*** (0.213)
<i>The Conditional Hypotheses:</i>		
Priority x Vacancy	-0.183* (0.107)	-0.180* (0.108)
Priority x FTE	0.014** (0.007)	0.014*** (0.004)
Priority x Workload	0.051 (0.073)	0.062 (0.055)
<i>Control Variables:</i>		
Judicial Deadline	0.586*** (0.156)	0.506*** (0.138)
Statutory Deadline	0.086 (0.068)	0.143** (0.059)
Economically Significant	-0.089 (0.122)	0.054 (0.124)
Regulatory Flexibility Analysis	-0.132*** (0.051)	0.000 (0.048)
Divided	0.050 (0.035)	0.037 (0.047)
Post-1993	-0.125 (0.083)	-0.182** (0.087)
N	10,390	12,269
Years	1988-2013	1988-2013
President Fixed Effects	✓	✓

Coefficients reported from competing risks models, with robust standard errors clustered by agency in parentheses and presidential fixed effects (not shown). Note that positive (negative) coefficients correspond to shorter (longer) review times. Significance: * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$, two-tailed tests.

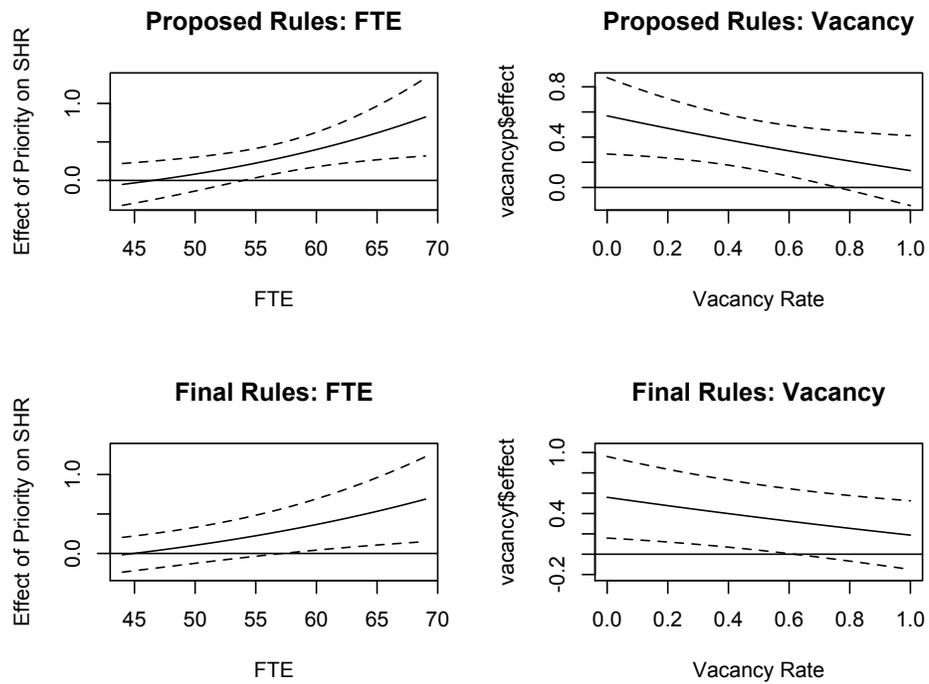
ables to empirically test the conditional priorities hypotheses (H7a and H7b) in Table 2. We present the results of these interactions graphically in Figure 3. For each capacity variable (and for proposed and final rules respectively), each graph displays the change in the subhazard ratio for priority rules *compared to non-priority rules* for representative values of capacity. Specifically, the graphs show the predicted change in the subhazard ratio between priority and non-priority rules.²⁸ To begin, the right column shows that when there is no vacancy in the OIRA Administrator position, priority rules move through the review process more quickly than non-priority rules (an increase in the subhazard ratio of 0.57 for proposed rules and 0.56 for final rules). Yet, when vacancy is high, there is no statistically significant difference between priority rules and nonpriority rules in terms of review time. This suggests that all rules suffer when the OIRA Administrator position is unfilled.

For staff size, the subhazard ratio for review time increases by 0.92 for proposed rules and 0.73 for final when the FTE is at its highest values, suggesting that having a larger staff results in special treatment for priority rules. Yet, at the lower end of the scale, the difference in review times diminishes, until at 44 FTE (OIRA’s staff size in 2013), there is no discernible difference in review time between priority and nonpriority rules. Finally, we fail to find a significant effect when interacting workload with presidential priorities (not shown). This insignificant result suggests that presidents may have more leverage to overcome workload constraints. OIRA is not compelled to review rules in the order in which they are received, thus priorities may move to the front of the queue. This would be consistent with the null result reported here. Overall, we find empirical evidence that OIRA’s institutional capacity limits its ability to quickly pursue presidential goals.

To ensure that these findings do not hang on any particular specification of the models, we present a series of robustness checks in the online appendix to the paper. First, we substitute Bertelli and Grose’s (2011) estimates of agency ideology in lieu of Clinton and

²⁸As a result, zero is a meaningful comparison point, as compared to one in Figure 2.

Figure 3: Marginal Effects of Capacity on the Subhazard Ratio for Priority Versus Nonpriority Rules



Note: These figures depict the change in the subhazard ratio for priority rules (as compared to non-priority rules) for representative values of each capacity variable. Lines indicate 90% confidence intervals.

Lewis’s measure (see Table A4).²⁹ Next, we partition the data and separately examine review times before and after the institution of E.O. 12866 in 1993 (see Table A5). To ensure that outliers are not driving the results, we exclude any rule reviewed after 2011 since reviews conducted in the 2011–2013 period were decidedly longer than any other period (see Table A6), as well as any rule that took longer than 120 days to review (i.e., the rule was granted more than one review extension by OIRA, see Table A7). We rerun the models excluding *Log Politicization*, since this variable limits the years we are able to include in our analysis (see Table A8) and adding agency-level fixed effects (see Table A9). Finally, we reestimate the models using a Bayesian multinomial probit (MNP, not shown).³⁰ These robustness checks confirm our basic findings. Notably, the findings on bureaucratic capacity are highly robust across the different appendix models; to the extent that these analyses do not exactly reproduce the results that we present here it is in the direction of *weakening* support for the political hypotheses. We take this as further evidence in favor of the importance of organizational capacity (relative to political concerns) in affecting OIRA’s review.

Discussion and Conclusion

In sum, this study shows the importance of both organizational and political factors when explaining the influences of bureaucratic behavior. By examining the case of OIRA rule review, we demonstrate that this agency is not solely a political tool of the president but is also constrained by its institutional capacity. Specifically, we find that ideology, political timing, and presidential priorities all impact the length of time that OIRA takes to review a rule. While these findings are consistent with the prevailing view of OIRA as the president’s

²⁹Bertelli and Grose’s (2011) estimates are based on the statements of agency heads during congressional testimony and place the agency and president on the same scale. Using these scores limits the number of agencies and years that we include in the analysis (1991–2004).

³⁰One limitation of the competing risks approach is that it assumes that the risk of each outcome (approval or rejection) occurring is independent of the risk from the other outcomes. Since we cannot be certain that this assumption is met in practice, we employ MNP since it does not require the same assumption with respect to independent risks.

regulatory henchman, they do not tell the whole story. We argue that OIRA's organizational capacity also affects rule review outcomes. Consistent with this view, we find that OIRA takes longer to review rules when it is low in capacity – as measured by a lack of leadership, reduced staffing, and a high volume of rules on its docket. Thus, both ideological and organizational factors are important in explaining the actions of OIRA.

This new portrait of OIRA complements existing work on institutional capacity that suggests that resource limitations can hinder an organization's ability to effectively perform its functions (Huber and Shipan, 2002; Huber and McCarty, 2004). Yet, we argue that studying these factors independently paints an incomplete portrait. To demonstrate the interdependence of political and institutional influences, we show that OIRA's capacity limits its ability to pursue the president's policy goals. When capacity is high, OIRA can quickly advance presidential priorities. However, low capacity hampers its ability to speedily review these priorities.

Overall, this paper offer a number of contributions to the study of political control. First, it advances our understanding of OIRA decision-making—an understudied yet critical area considering the growth of the regulatory state. Second, it helps explain some alternative sources of ossification in the regulatory process by demonstrating that delay may not solely be a consequence of political factors. Instead, our findings strongly suggest that there exists some institutionalized sources of delay caused by limitations in capacity. More broadly, this has implications in understanding much of the current gridlock in the regulatory process.

Finally, this paper highlights the importance of considering both political and organizational factors to explain the behavior of bureaucratic institutions, as shown with the case of OIRA. These results raise additional questions in exploring the link between politics and organizational capacity. Congress controls OIRA's capacity, both directly and indirectly. For instance, filling the OIRA Administrator position requires confirmation by the Senate. Thus, prolonged vacancies are often the result of conflict between Congress and the president

over his or her nominee. Further, OIRA's allotment of FTEs is determined in the annual appropriations process for OMB. Importantly, this allotment can be adjusted by Congress at any point in time.³¹ Finally, Congress also plays an indirect role in managing the volume of OIRA's workload by issuing explicit mandates for agencies to promulgate rules.³² Thus, while Congress has consistently raised concerns over the delays produced by OIRA, it actively contributes to the problem via its role in setting OIRA's capacity levels. Future studies should explore the role of congressional control in managing OIRA's capacity and the subsequent link to regulatory delay.

Overall, these results provide a more nuanced picture of control of the bureaucracy. While the preferences of political principals clearly influence outcomes, studies of political control should take into account the role of institutional capacity, both in terms of its direct effects on performance as well as how it conditions the advancement of political goals. This result also applies to other studies of political institutions which tend to focus on partisan conflicts and the ideological motivations behind policymaking. Institutional decision-making is not solely about which actors politically exert the most control. Instead, these studies should account for the organizational limitations that can inhibit or facilitate institutions in the pursuance of political goals and outcomes.

³¹However, if anything, Congress has acted to *reduce* the staff size of OIRA. For instance, in the fiscal year 1995 appropriations process, Congress reduced the overall staff ceiling for the Office of Management of Budget and set OIRA's FTE level to fifty (Sen. Rpt. 103-286).

³²Other rules are issued at the agency's discretion, often based on the statutory authority granted in the agency's organic statute (see West and Raso, 2013).

References

- Acs, Alex and Charles M Cameron. 2013. "Does White House Regulatory Review Produce a Chilling Effect and "OIRA Avoidance" in the Agencies?" *Presidential Studies Quarterly* 43(3):443–467.
- Bertelli, Anthony M. and Christian R Grose. 2011. "The Lengthened Shadow of Another Institution? Ideal Point Estimates for the Executive Branch and Congress." *American Journal of Political Science* 55(4):767–781.
- Box-Steffensmeier, Janet M. and Bradford S. Jones. 1997. "Time is of the essence: Event history models in political science." *American Journal of Political Science* 41(4):1414–1461.
- Carpenter, Daniel, Jacqueline Chattopadhyay, Susan Moffitt and Clayton Nall. 2012. "The Complications of Controlling Agency Time Discretion: FDA Review Deadlines and Post-market Drug Safety." *American Journal of Political Science* 56(1):98–114.
- Carpenter, Daniel P. 2001. *The Forging of Bureaucratic Autonomy: Reputations, Networks, and Policy Innovation in Executive Agencies, 1862-1928*. Princeton University Press.
- Clinton, Joshua D. and David E. Lewis. 2008. "Expert Opinion, Agency Characteristics, and Agency Preferences." *Political Analysis* 16(1):3–20.
- Cohen, Michael D., James G. March and Johan P. Olsen. 1976. *Ambiguity and Choice in Organizations*. Columbia University Press chapter People, Problems, Solutions, and the Ambiguity of Relevance.
- Cooper, Joseph and William F. West. 1988. "Presidential Power and Republican Government: The Theory and Practice of OMB Review of Agency Rules." *Journal of Politics* 50(4):864–895.
- Copeland, Curtis W. 2013. "Length of Rule Reviews by the Office of Information and Regulatory Affairs." Report, Administrative Conference of the United States, 12/2/13.
- Croley, Steven. 2003. "White House Review of Agency Rulemaking: An Empirical Investigation." *The University of Chicago Law Review* pp. 821–885.
- Dragu, Tiberiu. 2010. Presidential Rule-making: An Empirical Analysis. Technical report working paper, Department of Political Science, University of Illinois at Urbana Champaign. <https://netfiles.uiuc.edu/tdragu/www/papers/rulemaking.pdf>.
- Eilperin, Juliet. 2013. "White House Delayed Enacting Rules Ahead of 2012 Election to Avoid Controversy." *Washington Post*, 14 December 2013, <http://www.washingtonpost.com/politics/white-house-delayed-enacting-rules-ahead-of-2012-election-to-avoid-controversy/2013/12/14/7885a494-561a-11e3-ba82-16ed03681809story.html>. Last accessed 7 July 2014.

- Eisner, Marc Allen and Kenneth J. Meier. 1990. "Presidential Control versus Executive Power: Explaining the Reagan Revolution in Antitrust." *American Journal of Political Science* 34(1).
- Ellig, Jerry and Rosemarie Fike. 2013. "Regulatory Process, Regulatory Reform, and the Quality of Regulatory Impact Analysis." Working Paper 13-13, Mercatus Center, George Mason University.
- Epstein, David and Sharyn O'Halloran. 1999. *Delegating powers: A transaction cost politics approach to policy making under separate powers*. Cambridge University Press.
- Ferejohn, John and Charles R. Shipan. 1990. "Congressional Influence on Bureaucracy." *The Journal of Law, Economics, & Organization* .
- Gersen, Jacob E. and Anne Joseph O'Connell. 2009. "Hiding in Plain Sight? Timing and Transparency in the Administrative State." *The University of Chicago Law Review* pp. 1157–1214.
- Goodnow, Frank J. 1900. *Politics and Administration*. MacMillian Company.
- Gordon, Sanford C. 2011. "Politicizing Agency Spending Authority: Lessons from a Bush-era Scandal." *American Political Science Review* 105(4):717–734.
- Government Accountability Office. 2003. "Rulemaking: OMB's Role in Reviews of Agencies' Draft Rules and the Transparency of Those Reviews." Report, GAO-03-929, Washington, DC.
- Heclo, Hugh. 1975. "OMB and the Presidency - the Problem of "Neutral" Competence." *The Public Interest* .
- Heinzerling, Lisa. 2013. "Inside EPA: A Former Insider's Reflections on the Relationship between the Obama EPA and the Obama White House." *Pace Environmental Law Review* (forthcoming) .
- Huber, Gregory Alain. 2007. *The Craft of Bureaucratic Neutrality*. Cambridge University Press.
- Huber, John D. and Charles R Shipan. 2002. *Deliberate Discretion?: The Institutional Foundations of Bureaucratic Autonomy*. Cambridge University Press.
- Huber, John D. and Nolan McCarty. 2004. "Bureaucratic Capacity, Delegation, and Political Reform." *American Political Science Review* 98(3):481–494.
- Kaufman, Herbert. 1956. "Emerging Conflicts in the Doctrines of Public Administration." *The American Political Science Review* 50(4).
- Kaufman, Herbert. 1981. *The Administrative Behavior of Federal Bureau Chiefs*. The Brookings Institution.

- Kerwin, Cornelius M. and Scott R. Furlong. 2011. *Rulemaking: How Government Agencies Write Law and Make Policy*. CQ Press.
- Krause, George. 2003. "Coping with Uncertainty: Analyzing Risk Propensities of SEC Budgetary Decisions, 1949-97." *American Political Science Review* 97.
- Lewis, David E. 2003. *Presidents and the Politics of Agency Design: Political Insulation in the United States Government Bureaucracy, 1946-1997*. Stanford University Press.
- Lewis, David E. 2008. *The Politics of Presidential Appointments: Political Control and Bureaucratic Performance*. Princeton University Press.
- Lewis, David E. and Abby K Wood. N.d. "The Paradox of Agency Responsiveness: A Federal FOIA Experiment." . Forthcoming.
- March, James G. and Herbert A. Simon. 1958. *Organizations*. John Wiley & Sons, Inc.
- March, James G. and Johan P. Olsen. 1976a. *Ambiguity and Choice in Organizations*. Eds. James G. March and Johan P. Olsen. Columbia University Press chapter Organizational Choice under Ambiguity.
- March, James G. and Johan P. Olsen. 1976b. *Ambiguity and Choice in Organizations*. Columbia University Press chapter Attention and the Ambiguity of Self-interest.
- McLaughlin, Patrick A. 2011. "The Consequences of Midnight Regulations and Other Surges in Regulatory Activity." *Public Choice* 147(3-4):395–412.
- Meier, Kenneth J and Laurence J. O'Toole. 2006. "Political Control Versus Bureaucratic Values: Reframing the Debate." *Public Administration Review* 66(2):177–192.
- Moe, Terry M. 1985. "The Politicized Presidency." *The New Direction in American Politics* 235:269–71.
- Moe, Terry M. and Scott A. Wilson. 1994. "Presidents and the Politics of Structure." *Law and Contemporary Problems* 57(2):1–44.
- Niskanen, Willam A. Jr. 1971. *Bureaucracy and Representative Government*. Aldine.
- Nou, Jennifer. 2013. "Agency Self-Insulation Under Presidential Review." *Harvard Law Review* 126(7).
- O'Connell, Anne Joseph. 2008. "Political Cycles of Rulemaking: An Empirical Portrait of the Modern Administrative State." *Virginia Law Review* pp. 889–986.
- Olsen, Johan P. 1976. *Ambiguity and Choice in Organizations*. Columbia University Press chapter Choice in an Organized Anarchy.
- Potter, Rachel A. and Charles R. Shipan. 2013. "Separation of Powers and Agency Rule-making." Working paper, University of Michigan Ann Arbor.

- Rourke, Francis E. 1969. *Bureaucracy, Politics, and Public Policy*. Little, Brown, and Company.
- Rudalevige, Andrew. 2002. *Managing the President's Program: Presidential Leadership and Legislative Policy Formulation*. Princeton University Press.
- Seidman, Harold and Robert Gilmour. 1970. *Politics, Position, and Power*. Oxford University Press.
- Shapiro, Ari. 2011. "Obama Office Alters More Federal Rules Than Bush." *National Public Radio* November 28.
- Sunstein, Cass R. 2013. "The Office of Information and Regulatory Affairs: Myths and Realities." *Harvard Law Review* 126:1838.
- Weber, Max. 1946. *Essays in Sociology*. Gerth, H.H. and C.Wright chapter Bureaucracy.
- West, William F. 2005. "The Institutionalization of Regulatory Review: Organizational Stability and Responsive Competence at OIRA." *Presidential Studies Quarterly* 35(1):76–93.
- West, William F. and Connor Raso. 2013. "Who Shapes the Rulemaking Agenda? Implications for Bureaucratic Responsiveness and Bureaucratic Control." *Journal of Public Administration Research and Theory* 23(3):495–519.
- Wilson, James Q. 1989. *Bureaucracy*. Basic Books.
- Wilson, Woodrow. 1887. "The Study of Administration." *Political Science Quarterly* .
- Wiseman, Alan E. 2009. "Delegation and Positive-sum Bureaucracies." *The Journal of Politics* 71(03):998–1014.
- Yackee, Jason Webb and Susan Webb Yackee. 2009. "Divided Government and US Federal Rulemaking." *Regulation & Governance* 3(2):128–144.
- Yackee, Jason Webb and Susan Webb Yackee. 2010. "Administrative Procedures and Bureaucratic Performance: Is Federal Rule-making "Ossified"?" *Journal of Public Administration Research and Theory* 20(2):261–282.

Appendix

Table A1: Summary Statistics

Variable	Mean	Standard Deviation	Minimum	Maximum
Review Days	34.546	54.645	1	1214
Vacancy	0.313	0.452	0.000	1.000
FTE	64.510	12.510	44.000	90.000
Logged Workload	2.325	0.965	0.000	4.525
President-Agency Disagreement	0.423	0.494	0.000	1.000
Logged Politicization	0.005	0.010	0.000	0.241
Election Year	0.227	0.419	0.000	1.000
Midnight	0.028	0.164	0.000	1.000
Priority	0.427	0.495	0.000	1.000
Statutory Deadline	0.085	0.278	0.000	1.000
Judicial Deadline	0.018	0.132	0.000	1.000
Economically Significant	0.070	0.254	0.000	1.000
Regulatory Flexibility Analysis	0.076	0.266	0.000	1.000
Divided Government	0.836	0.370	0.000	1.000

Table A2: Description of the Variables

<i>Variable Name</i>	<i>Description</i>
Vacancy	Proportion of days that the OIRA Administrator position was vacant during the course of a rule’s review.
FTE	The number of Full Time Equivalent OIRA staff in the year the rule was submitted.
Log Workload	The number of rules under review at OIRA for the agency submitting the rule, averaged over each day the rule was under review.
President-Agency Disagreement	Dichotomous variable coded “1” if the agency is liberal (conservative) and the president is Republican (Democrat), and “0” otherwise. We code an agency as liberal (conservative) if its Clinton-Lewis score is less (greater) than zero.
Log Politicization	The natural logarithm of the number of presidential appointees (PAS, non-career SES, and Schedule C) in an agency in the year the rule was submitted divided by the total number of employees in that agency in that year.
Election Year	Dummy variable coded as “1” if the rule was submitted during a presidential election year, and “0” otherwise.
Midnight	Dummy variable coded as “1” if the rule was submitted following a presidential election that puts a president into lame duck status until the date in January when the new president assumes office, and “0” otherwise.
Priority	Dummy variable coded as “1” if the agency’s issue area for that particular year is mentioned in the State of the Union address more than the average agency issue area and “0” otherwise.
Statutory Deadline	Dummy variable coded as “1” if the rule had a statutorily-imposed deadline, and “0” otherwise.
Judicial Deadline	Dummy variable coded as “1” if the rule had a judicially-imposed deadline, and “0” otherwise.
Economically Significant	Dummy variable coded as “1” if the rule is economically significant, meaning that it will “have an annual effect on the economy of \$100 million or more, and “0” otherwise. ³³
Regulatory Flexibility Analysis	Dummy variable coded as “1” if the agency was required to prepare a regulatory flexibility analysis in accordance with the Small Business Regulatory Enforcement Fairness Act (SBREFA), and “0” otherwise.
Divided Government	Dummy variable coded as “1” if the president and either the House or the Senate are from opposing political parties, and “0” otherwise

Table A3: List of Agencies Included in the Dataset

Corporation for National & Community Service
Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Department of Health and Human Services
Department of Homeland Security
Department of Housing and Urban Development
Department of Justice
Department of Labor
Department of State
Department of Transportation
Department of Veterans Affairs
Department of the Interior
Department of the Treasury
Environmental Protection Agency
Equal Employment Opportunity Commission
Federal Mediation and Conciliation Service
General Services Administration
National Aeronautics and Space Administration
National Archives and Records Administration
National Endowment for the Arts
National Science Foundation
Office of Government Ethics
Office of Management and Budget
Office of Personnel Management
Office of Science and Technology
Office of the United States Trade Representative
Peace Corps
Railroad Retirement Board
Small Business Administration
Social Security Administration
United States Agency for International Development

Table A4: Competing Risks Model with Bertelli-Grose Agency Scores, 1991–2004

Variable	Proposed Rules	Final Rules
<i>OIRA Capacity:</i>		
Vacancy	-0.079 (0.115)	-0.288** (0.133)
FTE	0.063*** (0.021)	0.028* (0.015)
Logged Workload	-0.167*** (0.053)	-0.158** (0.066)
<i>Political Targeting and Timing:</i>		
President-Agency Disagreement	-0.422 (0.268)	-0.458* (0.235)
Logged Politicization	-0.100 (0.159)	-0.037 (0.321)
Election Year	0.112*** (0.043)	-0.039 (0.035)
Midnight	-0.171 (0.269)	0.033 (0.228)
Priority	0.113 (0.115)	0.159** (0.069)
<i>Control Variables:</i>		
Judicial Deadline	1.381*** (0.107)	1.739*** (0.280)
Statutory Deadline	0.165** (0.078)	0.073 (0.086)
Economically Significant	0.059 (0.106)	0.284** (0.137)
Regulatory Flexibility Analysis	-0.105* (0.059)	0.090* (0.050)
Divided Government	0.254*** (0.086)	0.198*** (0.052)
Post-1993	-0.232* (0.135)	-0.270** (0.116)
N	2,793	3,031
Years	1991–2004	1991–2004
President Fixed Effects	✓	✓
Agency Fixed Effects	✓	✓

Coefficients reported from competing risks models, with robust standard errors clustered by agency in parentheses and presidential and agency fixed effects (not shown). * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$, two-tailed tests.

Table A5: Competing Risks Model: Pre- and Post-Executive Order 12866

Variable	Proposed Rules	Final Rules	Proposed Rules	Final Rules
<i>OIRA Capacity:</i>				
Vacancy	-0.240*** (0.046)	-0.182*** (0.048)	0.070 (0.054)	0.061 (0.048)
FTE	0.029*** (0.008)	0.027*** (0.007)	0.031*** (0.010)	0.027*** (0.009)
Logged Workload	0.004 (0.046)	-0.071** (0.036)	-0.161*** (0.038)	-0.16*** (0.053)
<i>Political Targeting and Timing:</i>				
President-Agency Disagreement	-0.151*** (0.059)	-0.247*** (0.032)	0.085* (0.048)	0.156*** (0.051)
Logged Politicization	-0.293*** (0.057)	-0.051 (0.076)	0.113 (0.1941)	0.088 (0.151)
Election Year	0.001 (0.053)	-0.019 (0.029)	-0.014 (0.060)	-0.085** (0.041)
Midnight	0.162*** (0.047)	0.177*** (0.038)	-0.764*** (0.210)	-0.300** (0.151)
Priority	0.171** (0.70)	0.168** (0.077)	0.86 (0.061)	0.101* (0.060)
<i>Control Variables:</i>				
Judicial Deadline	0.131* (0.070)	1.049 (0.065)	0.872*** (0.152)	0.803*** (0.158)
Statutory Deadline	0.026 (0.059)	0.149* (0.080)	0.192 (0.118)	803* (0.083)
Economically Significant	-0.304*** (0.101)	-0.154 (0.091)	0.049 (0.137)	0.202 (0.148)
Regulatory Flexibility Analysis	-0.238*** (0.066)	0.012 (0.049)	0.034 (0.075)	0.013 (0.070)
Divided Government	0.029 (0.161)	0.037 (0.139)	0.058 (0.061)	0.057 (0.067)
N	6132	7770	4258	4499
Years	1988 – 1993	1988 – 1993	1994 – 2013	1994 – 2013
President Fixed Effects	✓	✓	✓	✓

Coefficients reported from competing risks models, with robust standard errors clustered by agency in parentheses and presidential fixed effects (not shown). * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$, two-tailed tests.

Table A6: Pre-2011 Analysis

Variable	Proposed Rules	Final Rules
<i>OIRA Capacity:</i>		
Vacancy	-0.155*** (0.038)	-0.114*** (0.042)
FTE	0.021*** (0.005)	0.015*** (0.005)
Log Workload	-0.074* (0.042)	-0.123*** (0.038)
<i>Political Targeting and Timing:</i>		
President-Agency Disagreement	-0.093** (0.047)	-0.133*** (0.030)
Log Politicization	-0.213*** (0.063)	-0.062 (0.091)
Election Year	-0.067 (0.042)	-0.098*** (0.023)
Midnight	0.028 (0.075)	0.119** (0.046)
Priority	0.155** (0.066)	0.187** (0.073)
<i>Control Variables:</i>		
Judicial Deadline	0.607*** (0.166)	0.511*** (0.141)
Statutory Deadline	0.083 (0.072)	0.135** (0.058)
Economically Significant	-0.113 (0.121)	0.051 (0.127)
Regulatory Flexibility Analysis	-0.144*** (0.049)	-0.011 (0.049)
Divided Government	0.043 (0.042)	0.033 (0.043)
Post-1993	-0.136 (0.085)	-0.195** (0.089)
N	10,026	11,904
Years	1988 – 2010	1988 – 2010
President Fixed Effects	✓	✓

Coefficients reported from competing risks models, with robust standard errors clustered by agency in parentheses and presidential fixed effects (not shown). Note that positive coefficients correspond to shorter review times, while negative coefficients reflect longer reviews. Significance codes: * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$, two-tailed tests.

Table A7: Analysis of Rules Reviewed under 120 days

Variable	Proposed Rules	Final Rules
<i>OIRA Capacity:</i>		
Vacancy	-0.170*** (0.049)	-0.155*** (0.045)
FTE	0.013** (0.006)	0.014** (0.006)
Log Workload	-0.043 (0.042)	-0.096*** (0.030)
<i>Political Targeting and Timing:</i>		
President-Agency Disagreement	-0.048 (0.041)	-0.131*** (0.029)
Log Politicization	-0.244*** (0.064)	-0.057 (0.096)
Election Year	0.015 (0.040)	-0.040 (0.037)
Midnight	0.051 (0.068)	0.149** (0.051)
Priority	0.104* (0.057)	0.153** (0.076)
<i>Control Variables:</i>		
Judicial Deadline	0.588*** (0.156)	0.468*** (0.135)
Statutory Deadline	0.087 (0.072)	0.158*** (0.055)
Economically Significant	0.036 (0.124)	0.158 (0.120)
Regulatory Flexibility Analysis	-0.139*** (0.049)	-0.003 (0.061)
Divided Government	0.047 (0.050)	0.019 (0.052)
Post-1993	-0.315*** (0.080)	-0.299*** (0.094)
N	9665	11,724
Years	1988 – 2013	1988 – 2013
President Fixed Effects	✓	✓

Coefficients reported from competing risks models, with robust standard errors clustered by agency in parentheses and presidential fixed effects (not shown). Note that positive coefficients correspond to shorter review times, while negative coefficients reflect longer reviews. Significance codes: * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$, two-tailed tests.

Table A8: Competing Risks Model without Politicization Variable, 1981–2013

Variable	Proposed Rules	Final Rules
<i>OIRA Capacity:</i>		
Vacancy	-0.130*** (0.026)	-0.082** (0.033)
FTE	0.023*** (0.003)	0.019*** (0.004)
Logged Workload	-0.033 (0.037)	-0.069** (0.034)
<i>Political Targeting and Timing:</i>		
President-Agency Disagreement	-0.185*** (0.044)	-0.197*** (0.036)
Election Year	-0.094*** (0.032)	-0.100*** (0.020)
Midnight	0.037 (0.067)	0.115*** (0.043)
Priority	0.110** (0.050)	0.167*** (0.054)
<i>Control Variables:</i>		
Judicial Deadline	0.536*** (0.161)	0.472*** (0.131)
Statutory Deadline	0.102 (0.071)	0.139** (0.063)
Economically Significant	-0.134 (0.118)	-0.023 (0.110)
Regulatory Flexibility Analysis	-0.120*** (0.044)	0.014 (0.045)
Divided Government	0.054* (0.029)	0.044 (0.045)
Post-1993	-0.056 (0.078)	-0.102 (0.086)
N	15,971	19,437
Years	1981–2013	1981–2013
President Fixed Effects	✓	✓

Coefficients reported from competing risks models, with robust standard errors clustered by agency in parentheses and presidential and agency fixed effects (not shown). * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$, two-tailed tests.

Table A9: Competing Risks Model with Agency Fixed Effects

Variable	Proposed Rules	Final Rules
<i>OIRA Capacity:</i>		
Vacancy	-0.149*** (0.029)	-0.108*** (0.026)
FTE	0.018*** (0.004)	0.015*** (0.004)
Logged Workload	-0.204*** (0.024)	-0.211*** (0.021)
<i>Political Targeting and Timing:</i>		
President-Agency Disagreement	-0.034 (0.022)	-0.035* (0.021)
Logged Politicization	-0.193 (0.118)	-0.103 (0.116)
Election Year	-0.41 (0.028)	-0.078*** (0.025)
Midnight	0.024 (0.062)	0.098* (0.047)
Priority	0.056* (0.034)	0.068** (0.0301)
<i>Control Variables:</i>		
Judicial Deadline	0.743*** (0.075)	0.602*** (0.065)
Statutory Deadline	0.063* (0.033)	0.116*** (0.028)
Economically Significant	-0.065* (0.038)	0.079** (0.037)
Regulatory Flexibility Analysis	-0.155*** (0.034)	1.022 (0.051)
Divided Government	0.031 (0.031)	0.046 (0.030)
Post-1993	-0.271*** (0.062)	-0.257*** (0.057)
N	10,390	12,269
Years	1988 – 2013	1988 – 2013
President Fixed Effects	✓	✓
Agency Fixed Effects	✓	✓

Coefficients reported from competing risks models, with robust standard errors clustered by agency in parentheses and presidential and agency fixed effects (not shown). * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$, two-tailed tests.