Organizational Capacity, Regulatory Review, and the Limits of Political Control*

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Abstract

Studies of administrative politics focus primarily on political control and ignore organizational capacity. We argue that political and organizational factors, as well as the interaction between the two, are necessary for explaining executive policymaking. To test this theory, we consider the Office of Information and Regulatory Affairs (OIRA), an agency often perceived to be the president's political instrument. Using a new dataset of over 35,000 regulations reviewed by OIRA, we demonstrate that political factors influence review lengths, but organizational factors also exhibit a significant role. We find that reviews are longer when OIRA is understaffed and over-worked. Significantly, we demonstrate that low organizational capacity inhibits the president's ability to expedite priority rules. Overall, this study highlights the organizational limits of political control.

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The question of who controls the bureaucracy has animated scholarly debates for decades, particularly given the importance of administrative decisions for policy outcomes. The study of political control, however, largely focuses on conflicts between political actors while giving less attention to 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 largely unexplored. In this paper, we argue that the political control apparatus of the administrative state is fundamentally constrained by organizational capacity. Thus, the implementation of political goals is stymied in low-capacity organizations.

While our argument has broad application, to demonstrate it concretely 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 pressure 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 (Eilperin, 2013; Shapiro, 2011*a*). 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, 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 three resource-based dimensions of capacity including 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.

We study how these resource constraints, in conjunction with political considerations, affect OIRA's ability to quickly review 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, reviews frequently exceed this deadline, often extending months – and in some cases years – beyond that. Some speculate that OIRA review is politically manipulated. For instance, in the lead-up to the 2012 presidential election, regulatory review slowed considerably, inviting accusations 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, indeed 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 10,000 proposed rules and 12,000 final rules reviewed by OIRA between 1988 and 2013. 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 limits 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.

1 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 every policy area. Given the potential of this tool, 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; Tozzi, 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 described 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.

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,[2] essentially leaving all of the office's powers unchanged, but considerably reducing its workload. In many other respects, however, Reagan's framework for OIRA remained 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 reconsideration.[3]

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. Haeder and Yackee (Forthcoming) use text analysis to argue that agency rules are more likely to incorporate regulatory changes during the course of review when interest groups directly lobby OIRA about the rule. 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 this aspect of regulatory delay has received relatively little 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.

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.[5]

[Figure 1 about here.]

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. That is, OIRA reviewed more rules, but for shorter time periods. 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 review process.

2 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 intervention (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 Olsen, 1976; Niskanen, 1971). 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.[6] 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: 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 agent of the president. Finally, we recognize that OIRA is not solely a tool of impartial administration nor a purely political instrument 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.

2.1 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 recognize the connection between capacity and organizational performance, arguing that low capacity institutions face more difficulties in carrying out their activities (Carpenter, 2001; Huber and McCarty, 2004; Huber and Shipan, 2002; Rourke, 1969). These claims are consistent with the resource-based view of agencies in public administration, which conceptualizes resources as part of an organization's capacity and argues that firms with greater resources tend to perform more effectively (Barney and Clark, 2007; Downs, 1967; Lee and Whitford, 2012; Pfeffer and

Salancik, 2003; Penrose, 2009; Wernerfelt, 1984).

Considered in this light, OIRA's capacity—in particular its resource-based capacity—should affect how it performs its duties. As such, we argue that the timing of OIRA review is a measure of its performance. 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. This suggests that OIRA 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.

Although in some cases longer reviews can be desirable since they grant an agency additional time to gather information and deliberate (Carpenter et al., 2012),[7] in many cases longer reviews are costly (both politically and societally) (Carpenter, 2002). While we recognize both the costs and benefits, we remain neutral as to the desirability of delay in the regulatory review process (Carpenter and Fendrick, 2004). Instead, we highlight that the length of time agencies take to complete tasks has been previously employed as a useful measure of agency performance (Ando, 1999; Lewis and Wood, 2012; Yackee and Yackee, 2010; Whitford, 2005).

To understand the specific ways that the regulatory review process is affected by this mechanism, we focus on three distinct aspects of OIRA's resource-based capacity: leadership, staffing, and workload. First, scholars argue that strong leadership and managerial skills are important resources to an organization given that they can contribute to its performance and success (Behn, 2009; Castanias and Helfat, 1991; Hansen, Perry and Reese, 2004; Rainey and Steinbauer, 1999). Effective leaders are able to make decisions based on their expertise, allocate resources, acquire outside support, secure external resources, settle internal disputes, coordinate activities, enforce individual responsibilities, boost morale, motivate workers, and maintain a vision for the organization – all of which influence the substance and timing of the organization's outputs (Carpenter, 2001; Downs, 1967; Rourke, 1969; Simon, 1976; Wilson, 1989).

Based on this reasoning, the OIRA Administrator may be important in ensuring quick and efficient reviews of regulations.[8] 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 in January of 2006.

Consistent with previous literature, frequent turnover in top management positions can inhibit an agency's productivity, performance, and effectiveness given the importance of leadership stability to an organization's functioning (Behn, 2009; Rainey and Steinbauer, 1999; Warwick, 1979; Whitford, 2002). During periods when the OIRA Administrator position is vacant, the office's ability to 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 or even the managerial skills to undertake potentially controversial actions. Such deficiencies in this resource capability produce direct and negative implications for an organization's management and overall performance (Carmeli and Tishler, 2004). Thus, without the political backbone provided by the Senate-confirmed leader, OIRA's organizational capacity is diminished and rules are more likely to languish on the docket.

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

In addition to vacancies in leadership, staff size is another important resource that influences agency performance (Lee and Whitford, 2012). In particular, deficiencies in staffing correspond to delay in the completion of administrative responsibilities (Carpenter, 2002, 2004*a*,*b*). Organizations with greater staffs sizes are associated with having a higher capacity to carry out their duties. Large staffs are more capable of handling high volumes of work than staffs of a smaller size. This in turn leads to the more efficient management of organizational functions and goals (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 may actually understate the case in two ways. First, Nou (2013, 1800) 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 may 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 (Olsen, 1976). For instance, Carpenter (2004*a*,*b*) argues that the US Food and Drug Administration's (FDA) inability to manage a growing workload can clog its critical drug review process. Further, Whitford (2005) shows that increases in the Environmental Protection Agency's (EPA) workload correspond to longer times until enforcement of hazard waste law by this agency. These type of workload constraints may also influence how OIRA comes to timely decisions regarding rules under review.

In general, agencies are assigned one particular OIRA desk officer. 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.

> *H3. Workload Hypothesis.* As the size of OIRA's workload increases, OIRA review times increase.

In sum we argue that organizational capacity is a key component of OIRA review. It is worth noting that the president plays only a minor role in determining OIRA's capacity. For example, in the case of leadership vacancies, the OIRA administrator, while a presidential appointee, requires confirmation by the Senate. And, similarly, in the case of staffing Congress can set caps on the number of employees in the office, and explicitly did so at least once in the time period we examine. However, we return to the possibility that capacity may be part of a larger political game in a later section.

2.2 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 treats

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 (see e.g., Shapiro, 2011*b*), 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, which previous studies tend to take as a sign that the president exerts a considerable degree of control over its actions (e.g. Moe, 1985; Lewis, 2003).

Agencies, on the other hand, possess their own preferred policy outcomes that they would like to pursue. 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 one 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. In 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.[11] Thus, when an ideologically opposed agency and the president disagree over the substance of policy, the amount of time OIRA spends reviewing a rule increases as negotiations proceed. On the other hand, OIRA review is much less demanding for ideologically congruent agencies, who are trusted 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.[12] 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 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) argue that organizations with time constraints will move tasks up in the queue based on their importance. Further, some studies find that governmental agencies speed up decision-making processes for priority issues (Ando, 1999). Similarly, 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 and there is generally a status quo bias in American politics.

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

2.3 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 (Durant, 1992; 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 his (someday 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's capacity is low, its ability to respond to presidential demands will be diminished. Thus, we expect that when capacity is low (vacancies in the Administrator position, 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 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.

> *H7. Conditional Capacity Hypothesis.* When OIRA's capacity is high, OIRA review times will be shorter for priority rules than non-priority rules. When OIRA's capacity is low, there will be no difference in review times for priority and 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, our argument suggests that capacity itself can impact the efficacy of institutions created to facilitate political control. Therefore, the dichotomy between political control and neutral administration is a false one.

3 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.[13] 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.[14] The dataset yields 10,390 proposed rules and 12,269 final rules from more than 34 agencies, with *Review Time* ranging from 1 to 1214 days.[15]

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 an indicator variable that takes on a value of "1" if the Administrator position was vacant on the day the agency submitted the rule to OIRA, and "0" otherwise. To measure staff size, we create the variable *FTE*, which is a count of the number of allotted Full Time Equivalent (FTE) employees for OIRA for the fiscal year during which the rule was under review.[16] 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 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.[17] 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.

For 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 agency 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.[18]

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

Thus, as an extension of the *Political Targeting Hypothesis* (H4), 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.[19] 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* (H5) 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.[20] In 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.[21]

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. Following previous measures of the president's most important policy concerns (Cohen, 1995, 1999), 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 from the Policy Agendas Project.[22] 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.

In order to test the conditional hypotheses, we interact the presidential priorities measures with each of the organizational resource variables – vacancy, staff size, and workload. Consistent with H7, 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 indicate whether or not the rule had an associated statutory or judicial deadline. Deadlines serve as "powerful motivations for expedited behavior" and signal the salience of the policy to Congress (Nou, 2013, 1797), and so we expect *Statutory Deadline* and *Judicial Deadline* to lead to shorter reviews by OIRA.[23] 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). We also include *Agency Budget*, which accounts for variations in budget levels across the submitting agencies.

Next, 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). This variable helps to control for the possibility that Congress is acting to limit or alter OIRA capacity or that OIRA review time is independently responsive to partisan divisions. 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).

Finally, while all presidents since Reagan have made use of OIRA's regulatory review functions, we note that presidents could have different views regarding the way in which these functions should be employed. This in turn could also influence differences in the capacity of OIRA across presidential administrations as well as review times. For instance, during the Reagan administration, far more rules were reviewed by OIRA than during the Clinton administration and subsequently. If president's seek to adjust the capacity of OIRA in order to translate their preferences into administrative action, then this could be an important confounding factor. We include presidential fixed effects to account for any discrepancies in preferences across presidents.

4 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.[24] These are mutually exclusive events, meaning that a rule may conclude with either approval or 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.[25]

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 Vacancy 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 12% for proposed rules and 10% for final rules as the vacancy rate increases. Additionally, the time of rule review decreases 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 statistically significant. Finally, increased workload significantly increases the length of review. Thus, a one unit increase in OIRA's logged workload corresponds to a 7% decrease in the hazard of review ending for proposed rules and 12% for final. 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 9% 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 trade-off between politicization and competence; that is, while politicized agencies are more loyal, they may be less competent and thus produce lower quality rules (e.g. Lewis, 2008). Consequently, these agencies may require additional oversight from OIRA, resulting in longer reviews.

Next, *Election Year* does not have a significant relationship with the number of days that rules are under review, although *Midnight* significantly decreases the length of final rule review. This is weak support the *Political Timing Hypothesis*. Substantively, midnight periods lead to a 11% decrease in review times for final rules. 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 21% respectively. These analyses provide support for the idea that, on average, presidential priorities are briskly shepherded through the review process relative to non-priorities.

[Table 1 about here.]

[Figure 2 about here.]

With respect to the control variables, rules with both judicial and statutory deadlines appear to significantly shorten review of both proposed and final rules. Consistent with our expectations, these rules face shorter review times based on institutionally imposed deadlines. However, there is no significant relationship between economically significant rules and review time.[26] Finally, proposed rules requiring a Regulatory Flexibility Analysis correspond to significantly longer review times.

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.[27] However, from a presidential power 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.

[Table 2 about here.]

Accordingly, we interact the priority measure with each of the three resource variables to empirically test the conditional capacity hypothesis (H7) 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 observed values of the organizational capacity variables. 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 0.56 for proposed rules and 0.60 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.

[Figure 3 about here.]

For staff size, the subhazard ratio for review time increases by 0.81 for proposed rules and 0.84 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. 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, however, we find empirical evidence that OIRA's institutional capacity limits its ability to quickly pursue presidential goals.

To ensure that these findings do not rely on any particular specification of the models, we present a series of robustness checks in the supplemental appendix. To begin, we address possible measurement error in our data. First, we focus on the *President-Agency Disagreement* variable, by substituting Bertelli and Grose's (2011) estimates of agency ideology in lieu of Clinton and Lewis's measure (Table A3), and then by recoding our original variable more conservatively (Table A4), and finally by employing Treier and Jackman's (2008) method to account for uncertainty (Table A5). Next, we address the same issue with respect to the *Vacancy* variable, with two alternate codings (Table A6). We then consider the inclusion of alternate control variables in addition to those already in Table 1, including real budget levels and employment figures (Table A7) as well as OIRA's workload under the Paperwork Reduction Act (Table A8). Our next set of checks considers the effect of different time periods. First, we drop *Log Politicization*, which allows us to consider reviews from 1981 onward (Table A9). Second, we partition the data and separately examine review times before and after the institution of E.O. 12866 in 1993 (Table A10). 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 A11), 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 A12). The third set of checks examines the possible role that OIRA's informal review may play in observed review time. First, we drop rules from the analysis where reviews lasted fewer than ten days. As Copeland (2013) notes, rules that were informally reviewed usually have these sorts of short durations (Table A13). We then drop the four most informally-reviewed agencies (as identified by Copeland (2013)) from the analysis (Table A14) and, subsequently, focus exclusively on these agencies (Table A15). The fourth set of checks revisits some of our modeling assumptions, first by including agency fixed effects (Table A16) and then by clustering standard errors - separately, by agency and then by year (Table A17). The fifth and final set of checks acknowledges that prior review of a final rule at the proposed rule stage could influence review time. Table A18 models final review times with a control variable for the number of days the rule was under review in its proposed stage. Finally, we include a Seemingly Unrelated Regression model that assumes the errors are correlated between the proposed rule and final rule model (Table A19). These robustness checks confirm our basic findings that capacity significantly affects review time.

4.1 OIRA's Capacity as a Political Game

We now return to the point raised earlier that capacity may be tapping into a different manifestation of political control. This potential concern stems from the notion that Congress may manipulate OIRA's capacity as part of a larger game of political control. However, a number of considerations—both theoretical and empirical–lead us to believe that this sort of political infighting is not confounding our findings.

First, Congress may actually *benefit* from having a high capacity OIRA, irrespective of partisan strife. As we have shown, fewer resources leads to longer review times. These delays can create regulatory uncertainty and public backlash that not only hurts the president, but can also blow back on congressional actors. In other words, limiting OIRA's capacity as a form of political retribution is a blunt tool and could actually serve to slow down review of rules that benefit specific interest groups or society as a whole. While the president may suffer in this game, congressional actors are not immune to its ill effects.

Further, as Wiseman (2009) demonstrates formally, OIRA review may be welfare-enhancing for Congress, as agencies may propose policies closer to Congress's ideal point than the president's in order to limit the extent to which OIRA can move policy with review. Indeed, Congress "might actually prefer that OIRA be empowered with oversight capacity rather than hindered by cumbersome procedures and limited resources"(Wiseman, 2009, 1010). In addition to ideological considerations, OIRA may also improve the quality of agency policies in ways that are valued by all actors, such as with a more thorough cost-benefit analysis or inter-agency coordination. Again, this suggests that a low capacity OIRA is suboptimal for congressional actors.

Second, from the congressional vantage point, adjusting capacity as a way to punish OIRA or the president for a particularly bad decision is neither a responsive nor an efficient tool. The types of capacity that we consider—vacancies in the OIRA administrator position, staff levels, and workload—are not quickly or easily manipulated. For example, limiting the number of staff that OIRA is able to hire typically requires some sort of legislative action (e.g., language in an appropriations bill), which involves overcoming several collective action problems and veto points. While not insurmountable, this observation suggests that changing staff capacity cannot be accomplished unilaterally by any one member of Congress. Further, the time between stimulus (limitation) and response (limitation enacted) is long, since such limitations are often implemented by not filling positions when current employees exit. This suggests a long time horizon, one which exceeds that typically attributed to reelection-seeking members of Congress (Mayhew, 1974). Similar arguments apply to the issues of leadership vacancies and for workload capacity.[29]

Even though we have theoretical reasons to think that conflict with Congress is not the primary driver of our findings, we nevertheless consider a number of empirical approaches to address this possibility. First, we acknowledge that if such behavior occurs, it is most likely to occur during periods in which the ideological preferences of Congress diverge from those of the president. For instance, a Democratic Congress may want to limit a Republican president's review capabilities (and vice versa).[30] We tested this by interacting divided government with the capacity measures to assess whether the effects reported in Table 1 are dependent on that nature of partisan conflict between the president and Congress (see Table A20). We find that there is no significant difference between OIRA's capacity under divided versus under unified government, further providing evidence as to the robustness of our main findings. Finally, we reran the models including fixed effects for each congressional session to control for any differences in preferences that each congress may have concerning OIRA's capacity levels (see Table A21). Again, this additional constraint does not substantively alter our findings and is consistent with our arguments that political factors are not driving the impact of capacity on regulatory delay. In sum, we take these null effects as evidence that ideological battles are not systematically determining OIRA's capacity in a way that would adversely affect our our conclusions.

5 Discussion and Conclusion

This study shows the importance of both organizational and political factors in explaining bureaucratic behavior. Through an examination of OIRA's regulatory review function, we demonstrate that this office 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 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 organizational capacity that suggests that resource limitations can hinder an organization's ability to effectively perform its functions (Carpenter, 2001, 2004*a*; Downs, 1967; Huber and Shipan, 2002; Huber and McCarty, 2004; Lee and Whitford, 2012; Pfeffer and Salancik, 2003; Rourke, 1969). 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.

This paper offer a number of contributions to the study of political control. First, it advances our understanding of OIRA decision-making—a critical feature of the administrative process considering the rapid growth of the regulatory state. Further, the few studies examining this topic focus exclusively on the political nature of OIRA while not accounting for its organizational limitations (Acs and Cameron, 2013; Croley, 2003). Second, it unpacks an oft-overlooked source of ossification in the regulatory process, demonstrating that delay may not solely be a consequence of political factors. Instead, our findings strongly suggest that capacity shortages can lead to regulatory delay.

While OIRA is the substantive focus of this paper, the argument has broader implications beyond that particular office. That is, presidents struggle to control many agencies and many types of activities. However, the president's ability to exert political control over agencies diminishes the more insulated they are from his control (see, e.g., Arel-Bundock, Atkinson and Potter, 2015). While the president has many mechanisms to exercise influence over an agency within the EOP, like OIRA, he has many fewer sticks to use with an agency like the Trade and Development Agency, which is located in the Executive branch but is not a Cabinet-level agency. In this context of weakened presidential power, organizational capacity constraints serve only to exacerbate the president's ability to push policy priorities through the agency in question. In other words, we consider the OIRA case to be a hard test of the theory, and expect to see the effects of capacity intensify for agencies that are farther removed from the president's direct reach. As such, political control is likely to be even more limited and sensitive to capacity constraints in structurally insulated agencies.

Overall, these results provide a nuanced picture of political 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 exert the greatest political control. Instead, these studies should account for how organizational limitations inhibit or facilitate the pursuit of political goals.

Notes

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

[2]Under 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.

[3]On occasion, OIRA reviews rules informally *prior* to the agency's formal submission of the rule. In such cases, the agency sends OIRA the rule and negotiation can occur outside of the official view of the docket. We expect that our argument about the effects of capacity on review time also holds for informal review, since lowered capacity diminishes OIRA's ability to informally review. Nevertheless, we consider empirical strategies to address informal review in the robustness section.

[4]Yet, see Copeland (2013) for a thorough history and discussion of the issue. In particular, Copeland identifies a number of different political and organizational factors that may affect regulatory delay. See also Ellig and Fike (2013), McLaughlin (2011), and Balla, Deets and Maltzman (2011). Ours is the first analysis to systematically examine the effects of both political and capacity variables and their interaction through the entirety of OIRA's history and across all reviewed rules.

[5]Although 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 loosely, such that only one condition need hold (Copeland, 2013; Sunstein, 2013). However, as Nou (2013, 1796 - 7) points out there are political costs to extending review.

[6]As 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.

[7]Additionally, some scholars argue that certain regulated industries could benefit from delay in the review process because it allows them the opportunity to alter, slow, or completely stop regulations that could have implications inimical to their interests (Balla, Deets and Maltzman, 2011; Kelman, 1981).

[8]To be sure, some presidents may prefer to have their administrators move regulations more slowly through the process. We account for this in the analysis by including presidential fixed effects. Thus, conditional on presidential preferences over general speed of the review process, having a Senate-confirmed administrator leads to quicker reviews.

[9]Under 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.

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

[11]See Bressman and Vandenbergh (2006). However, longer review times may also give agencies space to build counter-coalitions, suggesting that there could be some downsides to lengthier reviews from the perspective of OIRA (see, e.g., Nou, 2013).

[12]An 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.

[13]Although OIRA was created in 1981, our analysis begins in 1988 due to limited data availability for some of the covariates. In the Appendix we rerun our main analyses on the full range of years in the data excluding the limiting covariates (Table A9). The results are substantially similar to those reported here.

[14]These data come from www.reginfo.gov, the official government Web site 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.

[15]For a list of agencies and the median associated review times, consult Figure A1 in the Appendix.

[16]These data come from the Government Accountability Office (2003) and Copeland (2013). One concern that might arise is that we use FTE authorized levels for OIRA rather than actual FTE levels. Unfortunately, the latter are unavailable from the Office of Personnel Management. We can, however, examine the authorized and actual FTE levels for OMB at large using available data, to get a sense of whether this is a problem for the analysis. At OMB, FTE positions filled tend to be highly correlated with FTE positions allotted ($\rho = 0.77$). Furthermore, a regression of the actual FTE levels from OMB on the budgeted levels yields a coefficient of 0.86, which is statistically indistinguishable from 1 ($p = 0.31$). This gives us increased confidence that the authorized FTE level for OIRA is adequately capturing OIRA employment over time.

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

[18]We 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. We also recharacterize our dichotomous measure to count disagreement only when the confidence interval for Clinton and Lewis's measure excludes zero. Finally, we also use the "method of composition" to propogate uncertainty from the Clinton-Lewis estimates through our model (see, for example, Treier and Jackman, 2008). See Tables A3, A4, and A5 in the Appendix.

[19]Lewis'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.

[20]O'Connell (2008, 891) notes that midnight rulemaking occurs regardless of whether the incoming president is of the same party as the outgoing president.

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

[22]These 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.

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

[24]Rejections 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.

[25]But, see Table A22 for an analysis of withdrawals as the substantive outcome of interest.

[26]This is surprising since many consider economically significant rules to be those that are most important to the administration. Yet, while economically significant rules include some

priority issues, they also include many cyclical types of rulemaking (e.g., annual payment rules by the Centers for Medicare and Medicaid Services and annual crop payment subsidy rules from the Department of Agriculture). On net, we speculatively believe there may be a "wash" between economically significant rules that are expedited through the process and those whose technical nature requires more review time.

[27]Wald tests confirm the joint significance of the organizational factors.

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

[29]For instance, members of Congress can capitalize on an existing vacancy in the OIRA Administrator position and seek to prolong it. They cannot, however, create such vacancies, since only the president can fire the OIRA Administrator. This limits the availability of vacancies as a strategy to constrain OIRA's capacity.

[30]In all of the models reported in the paper, we control for this directly by including an indicator for divided government. We also note that divided government is not highly correlated with our capacity variables.

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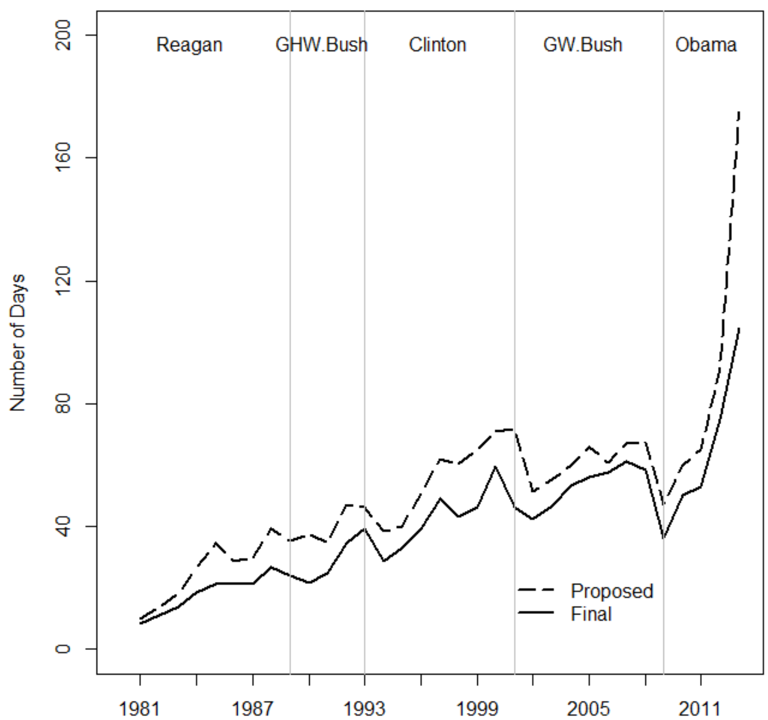
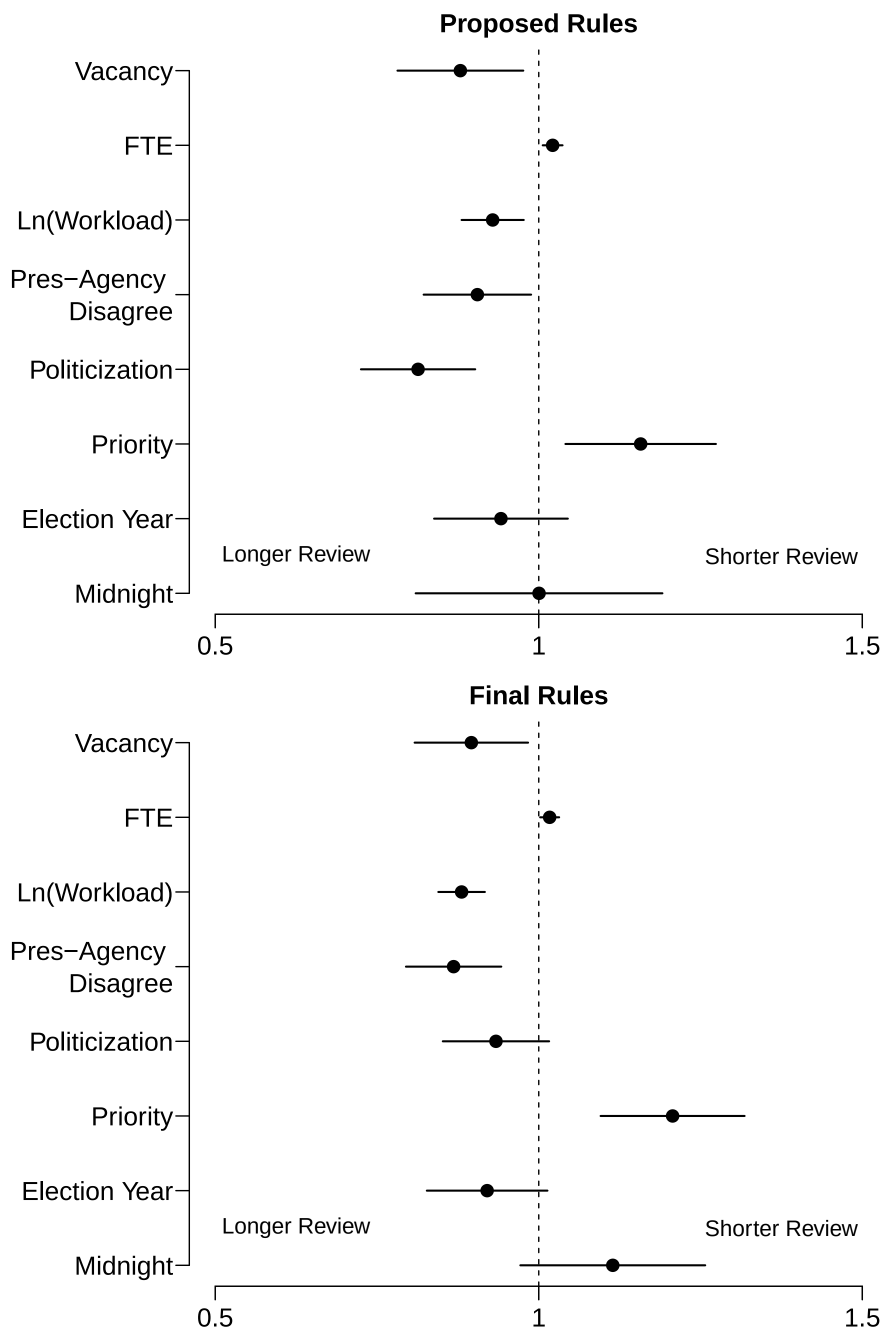
Figure 1: Average Length of OIRA Rule Review, 1981 - 2013



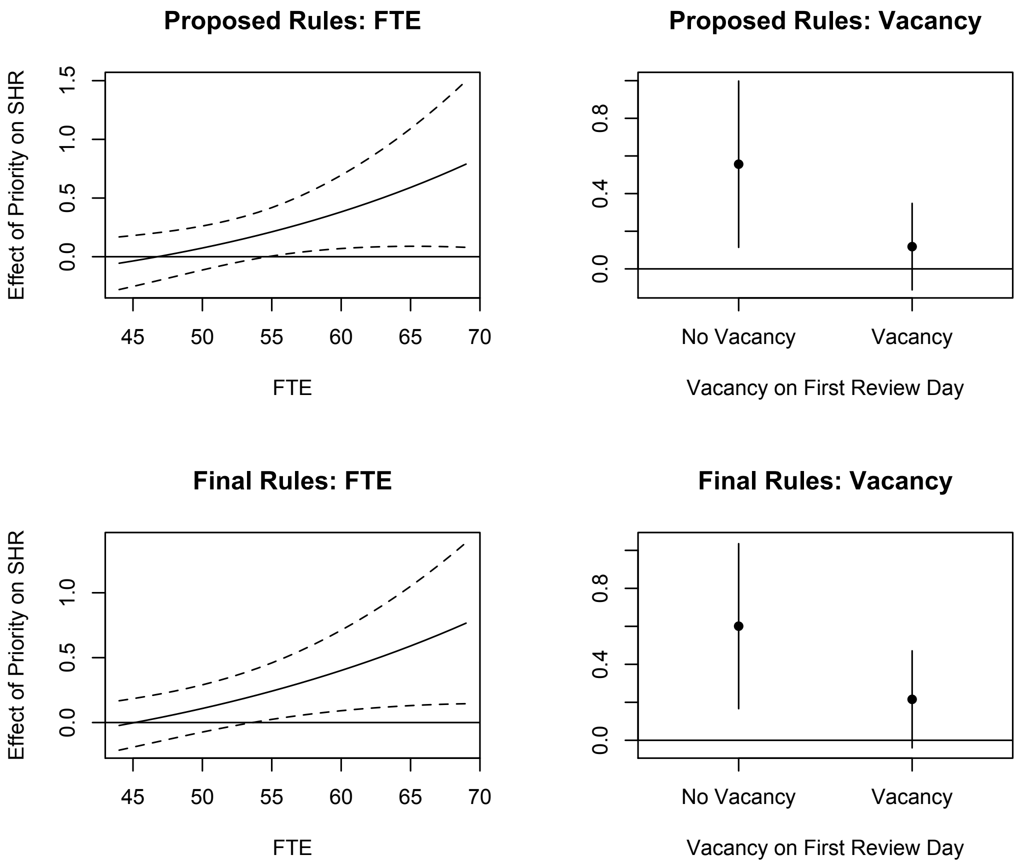
Source: Authors' analysis of data from www.reginfo.gov.

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.

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.

Table 1: Competing Risks Models of OIRA Review Length

Variable	Proposed Rules	Final Rules
OIRA Capacity:		
Vacancy	-0.129^{**}	-0.110^{**}
	(0.056)	(0.050)
FTE	0.021^{***}	0.017^{**}
	(0.008)	(0.007)
Log Workload	-0.074^{***}	-0.127^{***}
	(0.026)	(0.021)
Political Targeting and Timing:		
President-Agency Disagreement	-0.100^{**}	-0.141^{***}
	(0.047)	(0.043)
Log Politicization	-0.206^{***}	-0.068
	(0.055)	(0.045)
Election Year	-0.060	-0.083
	(0.056)	(0.052)
Midnight	0.000	0.108^{*}
	(0.097)	(0.065)
Priority	0.146^{***}	0.188^{***}
	(0.051)	(0.047)
Control Variables:		
Judicial Deadline	0.587^{***}	0.508^{***}
	(0.122)	(0.126)
Statutory Deadline	0.089^{**}	0.144^{***}
	(0.041)	(0.035)
Economically Significant	-0.080	0.064
	(0.054)	(0.047)
Regulatory Flexibility Analysis	-0.145^{***}	-0.015
	(0.003)	(0.032)
Agency Budget	0.002	0.002^{*}
	(0.003)	(0.001)
Divided Government	0.057	0.031
	(0.054)	(0.053)
Post-1993	-0.151	-0.192
	(0.126)	(0.131)
N	10,223	12,111
Years	1988 – 2013	1988 – 2013
President Fixed Effects	✓	✓

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

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

Variable	Proposed Rules	Final Rules
OIRA Capacity:		
Vacancy	-0.054	-0.044
	(0.074)	(0.062)
FTE	0.016**	0.012
	(0.008)	(0.008)
Logged Workload	-0.093**	-0.144***
	(0.047)	(0.028)
Political Targeting and Timing:		
President-Agency Disagreement	-0.092*	-0.132***
	(0.048)	(0.044)
Log Politicization	-0.208***	-0.067
	(0.054)	(0.043)
Election Year	-0.064	-0.086*
	(0.055)	(0.051)
Midnight	-0.002	0.108
	(0.095)	(0.067)
Priority	-0.710**	-0.673**
	(0.356)	(0.281)
The Conditional Hypotheses:		
Priority *x* Vacancy	-0.195*	-0.177**
	(0.102)	(0.086)
Priority *x* FTE	0.014**	0.014***
	(0.007)	(0.005)
Priority *x* Workload	0.059	0.049
	(0.072)	(0.049)
Control Variables:		
Judicial Deadline	0.585***	0.503***
	(0.123)	(0.127)
Statutory Deadline	0.089**	0.145***
	(0.042)	(0.035)
Economically Significant	-0.077	0.063
	(0.054)	(0.047)
Regulatory Flexibility Analysis	-0.143***	-0.010
	(0.038)	(0.032)
Agency Budget	0.002	0.002*
	(0.003)	(0.001)
Divided	0.060	0.034
	(0.054)	(0.053)
Post-1993	-0.144	-0.182
	(0.124)	(0.128)
N	10,223	12,111
Years	1988-2013	1988-2013
President Fixed Effects	✓	✓

Coefficients reported from competing risks models, with robust standard errors clustered by agency and year. Significance: $*p < 0.10$, $**p < 0.05$, $***p < 0.01$, two-tailed tests.