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Rewiring Regulation

Regulatory Review
for a New Political
Economy

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Introduction

In recent years, the executive branch has become an increasingly central focus for policymaking on both the left and the right. Among progressive advocates, there has been a growing attention to how executive action might help advance progressive priorities, from climate to racial and gender equity to imbalances of economic power, and more. But the ability of executive branch agencies to conceptualize, design, and implement effective public policy is shaped enormously by the back-end processes and systems by which these agencies structure their policymaking. What data and participatory measures, if any, are agencies employing to develop their proposals? What is the process for White House review and approval of these new policies? How are the policies implemented—whether through rulemaking, adjudicatory enforcement, or other mechanisms? While there has been an important and valuable shift in recent years to orient progressive economic policy more explicitly around structural inequities—from taking on questions of racial, gender, and economic inequity to experimenting with the affirmative role of government in proactively shaping markets and economic systems—the success of these conceptual shifts requires a parallel shift in intra-agency protocols and procedures to convert these broad principles into actionable policies.

This brief focuses on the ways in which reforms to the internal management of executive branch policymaking might enable policies that are better oriented toward structural inequities and more effectively implemented. These internal processes—from the process of regulatory review by the Office of Information and Regulatory Affairs (OIRA) to the ways in which policy development is coordinated by the Executive Office of the President (EOP)—can shape how problems are conceptualized and analyzed, how policies are designed, and through what mechanisms solutions are implemented. To explore this question, this brief identifies and describes several governance process reforms developed during the Joe Biden administration and draws out some broader lessons and implications of these developments.¹

These new executive branch policies drove several notable new policy changes that had some immediate impact. For example, the executive order on competition ([EO 14036](#)) included a list of over 70 regulatory actions, many of which have been applied and have had major impacts on communities. This includes, for example, the recent FDA rule on hearing aids, which brought much-needed competition to the market, lowering prices and increasing consumer access to the devices ([FDA 2022](#)). Similarly, efforts to center

¹ This brief draws on my experience as senior counselor and associate administrator (delegated the duties of the administrator) at the Office of Information and Regulatory Affairs from 2021 to 2023. However, the analysis and discussion below is based on publicly available information and reflects my own individual views. Many of these policies built on previous attempts and foundations from prior administrations including, for example, the Obama administration's promotion of distributional analysis and reforms to the regulatory review process. However, the focus of this brief is on what new steps were taken during the Biden administration specifically.



racial justice and disadvantaged communities in infrastructure and climate investments have helped channel resources to some of the most vulnerable places in the country. But for many of the reforms discussed below, the impact is more long-term and subtle. These reforms change the ways in which policies are conceptualized, the processes through which they are developed, and the broader organizational culture in which policy ideas ferment and ripen within the executive branch. The long-term implications of these changes are yet to be fully realized—they are still only a few years old at this point. But they are important to take stock of so that we can continue to evaluate their efficacy in the coming years.

The interventions that were deployed from 2021 to 2024 provide insights into *how* movements might push for these kinds of hidden-from-view but still important institutional changes going forward. The rise of significant external pressure from constituencies in previous years, culminating in the tremendous movement demands for action on climate change, racial justice, and economic inequality in 2020, set an urgent agenda for the incoming Biden administration. Parallel developments among policy experts, including research and state-level experiments on many of these questions, offered some off-the-shelf ways to adapt to these demands. The reforms themselves in turn created internal procedures, guidance, and permission to engage more deeply on themes of economic power and racial inequity. And these reforms also created more points of input, leverage, and collaboration between policymakers and movements—from the equity process to the new analytic focus on distributional analysis to the opening of new participatory channels.

This is not to say that these process reforms are sufficient on their own, but it does suggest new approaches to continue going forward and future possibilities for redesigning the governance machinery.

I. Paradigms and Protocols: Regulatory Review and the New Political Economy

Regulatory review and the protocols that shape intra-executive branch policymaking play a large role in shaping how regulatory policies are conceptualized, designed, and ultimately implemented. These procedures are not deterministic, but they do shape the way agencies and regulatory policymakers approach public problems. They have implications for what kinds of conceptual frameworks and policy approaches are more or less likely to flourish in a given administration.

It is important to have a basic understanding of how regulatory policy is formulated. The starting point is Congress, which passes legislation establishing policy goals, criteria, and objectives that the executive branch is then charged with implementing. The implementation of legislative directives often requires regulations—policies designed by agencies to fill in gaps, add specificity, and operationalize broad legislative



mandates. These statutes, however precise, leave varying degrees of room for agencies to exercise their independent judgment and understanding in shaping how the policies are ultimately implemented and enforced.

These regulatory policies are in turn shaped by a whole host of executive branch protocols and processes. Within an agency, policies are shaped by career civil service expert staff, under the direction of political appointee leadership. Agencies are themselves coordinated by offices within the White House and the broader Executive Office of the President, including policy councils like the Domestic Policy Council (DPC) or the National Economic Council (NEC), and by the mixed political and civil service staff sitting in the Office of Management and Budget (OMB). Sometimes this coordination is explicit: prescribed by executive orders, other presidential directives, or through OMB guidances or requirements for agencies. Other times, this coordination happens through the day-to-day interactions between agencies and the policy councils or OMB.

For rulemaking in particular, there is a specific process that agencies have to go through. Under the Administrative Procedure Act (APA), agencies must first draft a proposed rule, which is published for public comment. Agencies then promulgate a final rule that takes into account the input received from the public. In the course of this process, agencies must adhere to the directives and mandate set out by the statutes they are implementing. Agencies must also follow the legal requirements developed by the courts—including, for example, requirements for empirical evidence and consistency to prevent courts from striking down policies as “arbitrary and capricious” under the APA.

On top of these legal requirements, since 1993, agencies have followed a review procedure spelled out under Executive Order 12866 ([EO 12866](#)). This procedure mandates that the Office of Information and Regulatory Affairs (OIRA) coordinate an interagency and White House review of the agency proposal, aligning the policy with ensuing feedback while also reviewing the empirical analysis upon which agencies base their policy reasoning. (Other similar review processes also sit in different parts of OMB: Budgetary offices review and coordinate agency spending policies; the financial management office reviews and coordinates financial and grantmaking policies; OIRA also reviews changes to federal forms, and so on.)

While seemingly dry and technical, these internal policies about how to review and analyze regulations have been the subject of ongoing debate. For some critics, such internal procedures raise the specter of overly intrusive and politicized presidential interference with agency expertise. For others, it is the technocratic use of cost-benefit analysis that is itself the problem, potentially stacking the deck against particular ways of understanding the world and shaping public policy. For still others, the central concern is neither presidentialism nor cost-benefit analysis, but the worry that such multiplying of procedural hurdles and processes in the first place acts to slow down



and winnow away the capacity of the state to act boldly, quickly, and at scale. Finally, several critiques raise questions about the degree to which these protocols allow for (or frustrate) values of equity, participation, and democracy writ large.

The scholarly debate over regulatory review and OIRA's role is vast and more multifaceted than can be addressed here. This brief focuses on a particular aspect of this debate: What might different kinds of changes to these internal executive branch procedures mean for the overall worldview, orientation, and *paradigm* that defines regulatory policymaking? While this brief draws on publicly available information and my own scholarship, it is also informed by my personal experience serving in both government and civil society—first as president of the racial justice think tank and advocacy organization Demos (2018–21), and then as senior counselor and later associate administrator (delegated the duties of the administrator) at OIRA (2021–23).

As others have noted, we have seen a flurry of new political-economic thinking moving away from neoliberal presumptions and recentering the importance of economic power, racial and gender inequity, and the state's affirmative obligations in a democratic society. From the standpoint of policy design, these progressive, post-neoliberal concepts suggest a few key frontiers for reimagining policy design processes:

- First, if a progressive and democratic state is to **operate with both accountability and efficacy**—meaning, it can operate at speed and scale while retaining some form of public accountability—then we need a policymaking process within the executive branch that strikes a better balance on both speed and inclusion.
- Second, if a central theme of progressive post-neoliberalism is a refocus on often-observed **realities of unequal power and deep racialized, gendered, and economic inequities**, then we need a policymaking ethos and process that helps orient regulatory policy around those underlying structural inequities.
- Third, both of these commitments—to efficacy and democracy on the one hand and to an orientation toward structural inequity on the other—suggest we need **new approaches to data, evidence, analysis, and input into the policy design process** that are capacious enough to capture and address those kinds of dynamics in ways that more conventional, out-of-date analytical models may fail to do so.



II. Regulatory Reform from the Inside Out: Key Governance Reforms, 2021–24

From 2021 through 2024, the Biden administration pursued a series of quiet experiments in reforming the regulatory process. In his presidential memorandum on “modernizing regulatory review,” President Biden explicitly sought to evolve, modernize, and adapt inherited systems (for example, by reaffirming Executive Order 12866 and the basic framework of OIRA review), but with a greater eye toward questions of addressing climate change, decreasing inequality, and enabling more proactive forms of regulatory innovation ([White House 2021](#)). This directive came alongside a host of other presidential initiatives that sought to develop new intra-executive branch systems for conceptualizing, designing, and implementing regulatory policies. These included EO 13985 on Advancing Racial Equity and Support for Underserved Communities ([EO 13985](#)), EO 14036 on Promoting Competition ([EO 14036](#)), and EO 14058 on Transforming Federal Customer Experience ([EO 14058](#)), among others. Taken as a whole, these initiatives drove a series of efforts along three frontiers: (1) better balancing speed, efficacy, and participation; (2) orienting policy design toward structural inequities; and (3) developing alternative approaches to data, analysis, and inputs into the policy design process.

Efficacy, Speed, and Inclusion

A central process challenge for regulatory review is balancing the functions of coordinating, aligning, and approving regulatory policies with imperatives of both speed and inclusive stakeholder participation. Both participation and speed are components of the deeper value of *efficacy*. Rather than efficiency, a focus on efficacy prioritizes the goal of regulatory policies that actually speak to the needs of the public and deliver those gains, benefits, and protections as quickly and effectively as possible.

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Regulatory reforms developed in recent years provide some steps forward in these directions.



Streamlining Regulatory Review Processes

For the review of individual regulations, Biden's executive order on modernizing regulatory review ([EO 14094](#)) takes useful steps toward reduced process burdens for agencies and a more efficient approach to the review process. EO 14094 raises the "significance threshold" that triggers the most formal type of OIRA review of proposed and final regulations. Previously, this threshold had been set at \$100 million of impact—a figure codified in the Bill Clinton-era EO 12866, but which is ultimately traceable to uses in the Ronald Reagan and even Jimmy Carter administrations. Given routine changes in both inflation and GDP growth, this fixed threshold has effectively swept in more and more of the regulatory output of agencies into the OIRA review process, straining both agency and OIRA bandwidth. The new executive order raises the threshold to \$200 million and puts in place a process for updating the threshold every three years, indexed to GDP growth.

For urgent and priority policy initiatives, the Biden administration also developed a novel fast-track review process that enabled full-scale White House and interagency coordination and alignment. This new process included very tight, fixed timeframes to ensure policies were approved and implemented rapidly. In 2021, at the height of the COVID-19 pandemic and recession, Congress passed the American Rescue Plan, which authorized urgent relief and investments to states, households, and key industries. Given the urgency of moving billions of dollars of aid out the door, the administration set a two-weeks-or-less requirement for review of implementing rules and policies ([OMB 2021a](#), [OMB 2021b](#)). (By comparison, a routine regulatory review process might take 90 days or longer.) Implementing this kind of rapid review did require more dedicated staffing, and it meant that more complex policy choices had to be reviewed less intensively than might otherwise be the case, with fewer rounds of revisions or edits between reviews. This kind of bespoke, more centralized and streamlined review process has also been adapted for the implementation of other signature pieces of legislation, including the Inflation Reduction Act and the Bipartisan Infrastructure Law. These new processes suggest a way forward for retaining the best contributions of centralized review and coordination, while prioritizing greater efficiency and speed in implementation.

Enhancing Participation and Inclusion

A second key area of process experimentation has been around questions of participation and inclusion. The regulatory process suffers from two distinct challenges in this regard. On the one hand, some tension remains between the desire for speed and efficiency and aspirations for greater participation and inclusion. On the other hand, there are huge disparities in the abilities of different constituencies to participate in and connect to the regulatory process. The process remains highly opaque and is accessible predominantly to those more well-resourced and sophisticated interest groups.



Under the Biden administration, OIRA and EOP both developed significant new mandates and best practices for participatory engagement. First, the administration’s commitments on racial equity in its day one executive order on advancing equity included a specific mandate for agencies to prioritize greater participation from vulnerable, marginalized, or historically disadvantaged communities in policymaking ([EO 13985](#)). The subsequent equity executive order ([EO 14091](#)) provided an even more explicit and assertive mandate for agencies to more “proactively engage” with impacted communities.² Along these lines, the executive order on regulatory review ([EO 14094](#)) included a similarly assertive call for agencies to affirmatively promote inclusive regulatory policy by creating meaningful opportunities for participation, and in particular, by doing so earlier in the policy design process—well before rules are finalized for notice and comment.³ These mandates are echoed in more issue or constituency-specific directives, such as the executive orders on environmental justice⁴ and service delivery ([EO 14058](#)) and the various memos on consultation with Tribal nations ([White House 2021b](#); [2022](#)).

Beyond these directives, the way participation is being conceptualized and operationalized is also notable. Conventionally, participation is usually fostered through notice-and-comment procedures around proposed rules or through passive receipt of whatever inputs may materialize from interested parties. As a result, participation is often not proactively initiated or constructed by the agency, and often takes place after the agency has already decided on many of the important policy decisions in formulating a new proposal. By contrast, in the context of the administration’s efforts on equity, inclusion has been characterized not just in terms of passively taking input from vocal stakeholders, but as requiring proactive affirmative engagement with those most impacted and those who may not be resourced or built to lobby effectively for themselves.

Participation was also explicitly cast as an “upstream” need: requiring meaningful engagement with impacted communities early in the policy design process, rather than waiting until a policy is already fully baked before going out for public comment ([OMB 2021d](#); [GSA 2022](#)). Recent guidance to agencies from OIRA emphasizes the inadequacy of notice-and-comment procedures and encourages agencies to develop more proactive and early-stage modes of engagement ([OMB 2024](#)) and provides an in-depth set of best practices and recommendations for agencies on how to engage impacted and vulnerable communities more effectively ([OIRA 2024](#)). This guidance also encourages agencies to plan participatory engagements in advance and update their protocols on ex-parte contacts and Paperwork Reduction Act (PRA) clearances to better facilitate routine engagement with communities on the ground. Most of the agency-specific action plans developed under the auspices of the equity executive

² EO 14091, §5.

³ See EO 14094, §2.

⁴ EO 14096, §3(a)(vii).



order include notable early-stage efforts at this kind of proactive consultation and engagement.⁵ That said, the vision of participation advanced in these various directives has yet to be operationalized widely and at scale by the agencies. There have been several valuable and impactful pilots documented in a recent OIRA report, indicating that more agencies are taking these directives more seriously ([OIRA 2024](#)). It should also be noted that these efforts are not meant to integrate with the fast-track review processes noted earlier; in part, the shift to upstream and proactive consultation should alleviate some of the burden on participation within specific regulatory or planning projects.

Advancing Public Service Delivery

These concepts of streamlining internal bureaucratic processes and enhancing inclusive approaches to policy design animated another central reform to the regulatory process, specifically around improving how federal agencies design and deliver public benefits programs. In this domain, the Biden administration shifted the conventional approach to service delivery that tended to emphasize minimizing “waste, fraud, and abuse”—often by intentionally or unintentionally making it harder for the most vulnerable communities to access the benefits to which they were entitled—to a focus on user experience, direct engagement with impacted communities, and designing for uptake as a goal.

This new approach to service delivery is most apparent in the “customer experience” executive order ([EO 14058](#)), which challenged OMB and the agencies to rethink how the most high-volume and high-impact service providers among federal programs approached their systems for enrollment, outreach, and implementation of benefits ([Performance.gov n.d.](#)).⁶ In implementing this executive order, OMB has organized the agencies to focus on five central “life experiences” where individuals and communities are most in need of government support—such as seeking relief after a natural disaster or needing supports after childbirth—and working with agencies and the range of related assistance programs to integrate data systems, streamline enrollment procedures, and focus on getting more benefits to actual individuals in need ([Performance.gov 2022a](#), [2022b](#)). These redesign efforts have involved significant deployments of internal expertise in stakeholder consultation, data systems, user-based design thinking, and more.

Meanwhile, the OMB has also launched a new effort specifically to reduce administrative burdens and the “time tax” by pressing agencies to be more thoughtful about how they design forms and enrollment procedures across the board. Under the Paperwork Reduction Act (PRA), OIRA is charged with reviewing most governmental forms and “information collections,” and has a statutory mandate to minimize “burden”

⁵ See, for e.g., [White House 2023a](#) and [PolicyLink 2023](#), which note that most of the agency equity action plans provided new steps on stakeholder engagement and participation.

⁶ On the particular role and focus on high-impact service providers, see [OMB 2024](#).



on end users. While that mandate has often been viewed in the context of economic burdens on businesses, the new guidance makes clear that it applies equally to the case of burdens imposed on individuals, particularly those seeking to access critical services and supports ([OMB 2022](#); [Rahman 2022](#)). Through more expansive guidance and a suite of best-practice tools and trainings, OIRA has begun to push agencies to better consider issues like how people may not be able to manage the time and hassle of unnecessary documentation ([OMB 2023b](#); [2022b](#)).⁷

It is hard to overstate how potentially significant and impactful this shift is, as a matter of both protocol and culture change in the agencies. At the same time, these are still emergent efforts. The task of redesigning high-impact services and public benefit programs will take years, and there are limits to how much can be done absent statutory changes to the mandates and operations of some of the most critical—and most onerous—benefits programs, like disability insurance. Agencies also face real skill gaps and capacity limitations that require expanded budgets and smart hiring, as well as ongoing leadership and culture change efforts. And the old habits of clunky and overly burdensome service delivery persist across much of government. But as a marker of what a future administrative state that is committed to a robust—and expanded—safety net might look like, these are important foundations to build on.

Power, Equity, and Structural Root Causes

A second frontier for regulatory reform takes on a different recurring challenge in regulatory policy: the tendency to overlook underlying structural causes of inequality. Most regulatory policies are circumscribed by their statutory limits and the ways in which policy is carved up by issue- or agency-specific silos. But so many of the deep inequities that shape the day-to-day realities for communities of color, low-income communities, rural communities, Tribes, and other marginalized constituencies turn on deeper root causes that concentrate power.

In large part as a response to the tremendous mobilization that shaped the 2020 election—at the height of the pandemic and the Movement for Black Lives following George Floyd’s murder—the Biden administration took on commitments to advancing racial equity and addressing disparities of economic power. These concepts represent important shifts in how we understand the root causes and dynamics of inequity in our political economy. But how should such broad concepts translate into a different ethos of policymaking approach and design? To answer this question, the administration sought to institutionalize a new *system-level* orientation—to both equity and economic power—through a novel “whole-of-government” approach. Central to this approach was going beyond long lists of policy priorities and instead trying to reshape the ethos and framework that policymakers used to develop policy in the first place.

⁷ See more generally, [OMB n.d.](#)



Equity

The equity executive orders represented a very real new experiment in rewiring the internal workings and orientation of administrative agencies to engage more deeply with equity as a concept and value ([EO 13985](#); [14035](#); [14091](#)).

The concept of equity is both familiar and novel. It is well-grounded in some traditions of constitutionalism and in existing statutory authorities from the Civil Rights Act onward. But the turn to equity also represents a real conceptual shift from decades of prior policymaking practice in which equity was either not foregrounded as a specific concern, or was relegated to other policy domains such as civil rights enforcement offices. A common throughline in many equity-informed critiques of public policy is how race-neutral or race-blind ways of designing policy often result in reifying or exacerbating preexisting disparities. Reorienting policymaking to center equity, to avoid these default tendencies, requires building an alternative conceptual apparatus and internal procedures that inject equity concepts and values into the policymaking process. The internal protocols developed under the various equity-related executive orders point to a distinctive approach to this challenge: creating new internal procedures and requirements that together operate as a larger organizational and change management strategy aimed at building up the capacity of agencies to engage with equity as a concept and a practice.⁸

Reorienting policymaking to center equity, to avoid these default tendencies, requires building an alternative conceptual apparatus and internal procedures that inject equity concepts and values into the policymaking process.

Under the executive order on advancing equity, agencies have been tasked with developing “equity action plans,” which are as much about what the plans seek to achieve as they are about developing a planning and strategy muscle within agencies to engage on issues of systemic inequity and develop sustained workstreams around these issues ([EO 13985](#); [White House 2023a](#)). These efforts have been extended in a subsequent executive order ([EO 14091](#)).

These orders create a new EOP-driven process for building new capacity in the agencies and helping them move toward organizational and culture change aimed at a reorientation toward equity as a concept, goal, and process ([Briggs and McGahey, 2022](#); [Briggs and Sherman 2023](#)). Indeed, the complexity of this effort is worth dwelling upon. The internal interagency equity infrastructure covers a vast range of bureaucratic functions, including but not limited to: prompting and supporting agency efforts at policy design and strategic planning, culminating in annual equity action plans ([White](#)

⁸ See e.g., [Briggs and Sherman 2023](#) (noting the change management component of the administration’s implementation of the equity Executive Orders).



[House 2023a](#); [PolicyLink 2023](#)); bolstering the data-collection and evidence-building capacities of agencies to identify and track systemic inequities that hit particular communities especially hard ([White House 2022b](#); [2022c](#)); and creating new supports and mandates for more proactive engagement with impacted communities to improve their participation in regulatory policymaking.⁹

Competition and Market Power

Similarly to the equity effort, the administration sought to institutionalize, through internal bureaucratic mechanisms, renewed attention on antimonopoly and corporate concentration. Agencies shift course all the time, particularly when party control of the executive branch changes hands. But competition policy is somewhat different in that the shift was not a simple matter of flipping a switch. Precisely because competition law and policy had operated under an old conventional wisdom for decades, the revival of competition policy necessarily meant pushing agencies to rediscover authorities and tools that, while very well-established in law, were not necessarily as well-established in day-to-day internal bureaucratic practice.

The centerpiece of this effort was the administration’s executive order calling for a “whole-of-government” approach to competition ([EO 14036](#); [Wu 2023](#)). The order called for a long list of specific policy actions distributed across a large set of agencies. The FTC was of course front and center in this effort, launching potentially transformative new rulemakings tackling employee noncompete clauses ([FTC 2023](#); [McCorvey and Ruberg 2023](#))—a key source of disproportionate employer power and limitation on workers’ ability to find better employment opportunities elsewhere—among other rules ([FTC 2019](#); [FTC 2024](#)). The DOJ’s antitrust division has also quietly dialed up enforcement of existing rules and regulations in ways that are starting to address concentration in a range of markets ([Isidore 2023](#); [Dayen 2023b](#); [Kerr 2023](#)). Similarly, the FTC’s enforcement efforts have also spurred important shifts in key markets, from the “right to repair” to important salvos fired on data privacy ([FTC 2022](#)).¹⁰ But other agencies have also committed to a slew of specific new regulatory actions, including reviving long-dormant authorities under antitrust statutes, from the USDA’s authorities to regulate concentration in agriculture and meat production under the Packers and Stockyards Act ([Shepardson and Bartz 2021](#))¹¹ to the DOT’s authorities to regulate market structure in airlines and transportation infrastructure.¹² By calling in these other agencies, the executive order resurfaced often-overlooked agency authorities (for example, USDA’s authorities as a market regulator in food and livestock markets, or DOT’s role as a consumer protection and market competition regulator in airlines), and

⁹ [EO 13985](#), 3 C.F.R. §409(5); [EO 14091](#), 88 Fed. Reg. 10825 §5.

¹⁰ 16 C.F.R. §314 (2022).

¹¹ 7 U.S.C. §§ 181-229b.

¹² See e.g., [Garcia 2023](#) on the precedent-breaking fine levied on Southwest Airlines; See more broadly Sitaraman 2023.



thereby helped spark a broader reorientation of these agencies' sense of mission, mandate, and function.

The second key aspect of the executive order on competition was the creation of the Competition Council, one part of a larger effort to facilitate a shift in how agencies conceptualize and design policy. The White House has established a cabinet-level structure in the new Competition Council, where the heads of agencies with competition-related authorities meet directly with the president every quarter to share updates on progress and align on new initiatives. This level of presidential engagement provides a critical push for agencies that need to adapt their processes and cultures to this long-overlooked set of policy directions, while also providing for a deeper level of coordination across agencies ([Dayen 2023a](#); [Wu 2023](#)). The executive order also charged agencies like OIRA and the DOJ to provide additional guidance and support for other agencies in how to analyze regulatory actions for their impacts on concentration and competition—a task that, while well-known in some agencies such as the FTC and DOJ Antitrust Division, represented a new skill set and muscle to other agencies.¹³

Evolving Data and Analysis

A third frontier for reforming regulatory policymaking lies in the need to develop new conceptual approaches to analyzing public problems. Here the focus is less on individual regulations and more on the analysis, information, and processes used to *develop* policies in the first place. Ultimately, a more holistic and flexible approach to analysis will be required to fully support and enable the kinds of structural, systemic, and public-serving interventions that future administrations will have to develop.¹⁴

One of the headline governance reforms of the Biden administration to date has been the effort to revamp the requirements for regulatory impact analysis under EO 12866 and OMB Circular A-4. The president's day one memorandum called for modernizing cost-benefit analysis in the context of OIRA review of regulations, particularly to address issues of climate change, human dignity, equity, and otherwise hard-to-quantify benefits ([White House 2021](#)). These efforts resulted in the release of the first-ever rewrite of OIRA's guidelines for regulatory impact analysis, OMB Circular A-4 ([OMB 2023c](#)). These analytic updates were not just about incorporating the latest

¹³ For shifts on how agencies now should analyze competition effects, see e.g., [OIRA and OMB 2023](#); [DOJ and FTC 2023a](#); [Consumer Federation of America 2023](#); and [Castle et al. 2023](#).

¹⁴ It is worth noting that the influence of these analytical requirements on policy design and strategy can be overstated; analytical requirements can indeed incentivize certain kinds of logics and trade-offs while undercutting other values and goals, but agencies are also subject to a host of political, normative, and other drivers, which can lead to decision-making that may or may not track closely with the analyses that agencies produce in parallel. Indeed, some of the disciplining pressure of analysis comes not from the exercise of ex-ante analysis, but rather from the threat of ex-post judicial review—particularly in an era where courts have been increasingly aggressive about using judicial review to enforce a particular approach to evaluating costs and benefits.



best practices from social science and policy analysis, they also represented an attempt to reimagine analytical frameworks to better align with our contemporary understandings of economic and social policy ([Rahman 2023a](#); [Rahman 2023b](#); [Rahman 2023c](#)).¹⁵ In particular, the revised A-4 provides for a much more accurate (and lower) discount rate, which means future intergenerational and long-term impacts will weigh more heavily on present-day valuations—a shift especially critical for accurately showing the vast benefits of actions that mitigate the dangers of catastrophic climate change in the future. Similarly, the revised A-4 also provides a thorough new approach for assessing distributional impacts while also providing more detailed guidance for agencies to more fully consider qualitative and hard-to-quantify impacts, including matters of civil rights, equity, or dignity.

Ultimately, a more holistic and flexible approach to analysis will be required to fully support and enable the kinds of structural, systemic, and public-serving interventions that future administrations will have to develop.

This revision of A-4 has also been bolstered by a set of complementary analytical reforms. OMB Circular A-94, which governs the cost-benefit analysis requirements for applicants to certain federal funding programs, has also been revised—now including a greater attention to distributional analysis, a higher threshold exempting lower-dollar projects from the potentially burdensome analytical requirements, and other reforms ([Liscow and Sunstein 2023](#); [OMB 2023d](#)). The new A-4 also includes several changes to take more structural economic dynamics into account, including new language on analyzing market power and concentration in light of the executive order on competition, which included specific directives for OIRA to update its competition analysis guidelines.¹⁶ That directive has resulted in a new stand-alone guidance from OIRA on how agencies should analyze competition, concentration, and market power ([OIRA and OMB 2023](#)). On the climate front, the revisions to A-4 have been complemented by a new long-term strategy to develop statistics for environmental economics, to better account for the value of natural ecosystems and conservation ([White House et al. 2023](#)). Meanwhile, the EPA has released its own revised figure for calculating the social cost of greenhouse gases (SC-GHG), raising the estimate to roughly \$190 per ton ([EPA 2022](#)). This revised estimate is now being incorporated into federal budgeting and procurement decisions through new guidance from OMB ([Davenport 2023](#)).

A related dimension to this shift in analytical frameworks is the manner in which agencies collect data and evidence to inform policymaking. Across a range of initiatives,

¹⁵ For a more detailed account of the modernizing regulatory review proposals, see [LPE Project 2019](#).

¹⁶ This shift also echoes similar, and potentially more transformative, shifts in the merger guidelines newly updated by DOJ and FTC to shape future enforcement decisions on merger reviews. See [DOJ and FTC 2023](#).



particularly in the context of the administration’s work on equity, there is a concerted effort to develop new forms of data collection and evidence building to help inform more accurate and sophisticated policies that can respond to, for example, more granular understandings of inequities that particular communities face. Thus, the executive order on equity ([EO 13985](#)) launched the Equitable Data Working Group, whose final report included calls for agencies to develop more disaggregated forms of data collection and to build the capacity to conduct more robust equity analysis of programs and policies ([Equitable Data Working Group 2022](#)).

These efforts in turn have informed new efforts to update the federal government’s standard policies and recommended best practices for categorizing race and ethnicity ([Orvis 2023](#); [OMB 2023](#); [2024](#)) and for tabulating sexual orientation and gender identity data. This attention to data as an input into policymaking was echoed in subsequent executive orders on sexual orientation and gender identity ([EO 14075](#)). The administration recently released an “evidence agenda” laying out a strategy by which agencies can develop a more granular understanding of LGBTQ+ communities to inform improved policy design ([National Science and Technology Council 2023](#)). This emphasis on data policy is important and often overlooked; agencies collect data in a myriad of forms, from surveys to administrative processes (e.g., enrollments in government programs). This data is not always fully leveraged to inform the kind of broad-based evidence base that more nuanced policymaking often requires. Under the Evidence Act of 2018 and more recent OMB guidance, agencies are tasked with developing long-term plans to deepen their evidence base and ability to learn about on-the-ground issues that can better inform regulatory policy going forward ([H.R. 4174 2019](#); [OMB 2021c](#)). These efforts around data infrastructure represent a continuation of that trend.

In a similar vein, the revisions to Circular A-4 have also spurred an effort to catalyze new forms of data generation and social scientific research that produce the kinds of data needed to inform newer interest in issues like equity, distributional analysis, environmental impacts, and the like. It is notable, for example, that OMB has in the Biden administration worked with entities like the Council of Economic Advisers, the Office of Science and Technology Policy, and academic researchers to identify new areas of research where agencies are in particular need of data, evidence, and analysis ([White House et al. 2023](#); [White House 2023b](#)).



III. Regulatory Reform as Organizational Change

A central implication of the efforts described above is the importance of internal organizational cultures and dynamics, both in conditioning administrative reform efforts and in embedding and giving life to new ideas as they are incorporated into agency functioning.

Internally, creative and successful administrative innovation depends on the confluence of personnel appointments and hires, with political support internal to the executive branch and with existing bureaucratic processes and capacities that are close enough to the goals at hand to make genuinely impactful administrative process innovations possible. Much of the focus on policy change in new administrations tends to emphasize personnel appointments and presidential vision, but personnel and top-down directives are only a part of the story. Reforming or evolving approaches to governance requires, at times, adapting and working through existing vehicles and processes; at other times, reprogramming and rewiring them. New ideas and policies may be most challenging to launch and embed where they do not map neatly on to existing protocols. As a result, new policy directions, particularly when premised on underlying conceptual shifts (for example, bringing concepts like equity into the frame, or shifting focus to macro-level political economy questions such as those on market concentration and industrial policy) necessarily require thoughtful and effective approaches to organizational and cultural change management within the agencies and the executive branch themselves.

Indeed, some of the most interesting initiatives in the Biden administration are notable for their approach to this challenge of organizational evolution and change management. The executive order on competition, for example, set forth not only a new policy direction and list of specific regulations, but also created a structure for interagency accountability, peer learning, and positive reinforcement through the Competition Council, as a self-conscious effort in driving culture change in the agencies.¹⁷ Similarly, the administration's work on equity took a deliberate change management approach focused on cultivating new thinking, learning, and modes of behavior within the agencies, as a way of building up capacity and an interagency community of practitioners capable of supporting one another and innovating new approaches going forward.¹⁸

¹⁷ See [Dayen 2023a](#), describing the change management strategy behind the Competition Council and the management of the competition work by the National Economic Council.

¹⁸ See [Briggs and Sherman 2023](#), noting the change management component of the administration's implementation of the equity executive orders.



These intra-executive branch efforts at organizational evolution and change share some common features:

- First, they create (or revive) a new shared language around the key concepts animating these policy initiatives: “equity,” “competition,” and the like. Through a combination of top-down directives such as the executive orders and horizontal dialogue through interagency convenings and conversations, these concepts gradually gain a shared definition and facilitate mutual understanding across agencies and among career and appointee staff alike about the vision and direction of these initiatives.
- Second, these efforts often create new processes (interagency policy committees, review and approval procedures, deliberate moments for agency leads to share updates with higher-ups) as well as particular products (papers, reports, public events) that structure the day-to-day cadence of bureaucratic operations. Participating in these processes, producing these products, and translating new concepts and initiatives into internal protocols are therefore key ways in which new ideas gain traction and, over time, are embedded into ordinary regulatory practice.
- Third, these processes balance top-down and bottom-up aspects. Centralized bodies like the Competition Council or the coordinating role of the Domestic Policy Council in driving the implementation of the equity executive order provide accountability and direction. But across each of the dimensions described in Part II, these new efforts were also very much embedded in agencies, activating and responding to agencies’ own efforts at institutionalizing and implementing these approaches.
- Fourth, these efforts also create, whether formally or informally, a community of practice that enables officials from different agencies and at different levels of positional authority to compare notes, learn from one another’s efforts, and create the kind of social and relational cohorts that are often necessary to sustain efforts at organizational change or evolution.

New approaches can unlock real reservoirs of creativity, innovation, and even internal accountability from within agencies themselves. As with any instance of organizational change or evolution, such new approaches are at their best when they activate existing internal champions and catalyze new ideas from within the organization. Agency staff have tremendous expertise, dedication, and knowledge that give life to these efforts, from addressing equity or concentration to redesigning public service delivery to developing new modes of participation. At the same time, these internal dynamics operate at their best when embedded in a wider ecosystem. The more agency staff are in mutually reinforcing dialogues with peers and colleagues both inside the government and in the wider ecosystem of scholars, researchers, advocates, and grassroots



communities, the more these concepts and approaches become embedded and improved over time.

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This attention to the internal realities of bureaucratic organizations is not just a second-best approach to policy change. All policy requires bureaucratic organization to function, and a major way in which we breathe life into policies is through the collective human effort of individuals organized through institutions to implement and evolve those policies. As a result, internal administrative process, protocol, personnel, and culture are important aspects of any governance regime.

Implications and Future Possibilities

We live in an era of increasingly urgent and systemic challenges, from climate change to chronic inequities to new disruptive forms of technology and power. A regulatory state that serves the public will have to develop new approaches to conceptualizing, designing, analyzing, and ultimately implementing regulatory policies that are better suited for tackling these problems head-on. To do so, we urgently need to streamline and reimagine our increasingly outdated administrative procedures and protocols ([Bagley 2019](#); [Gunn-Wright 2023](#); [Rahman 2024](#)).

At the same time, the administrative state is under increasing threat. Extremist judges dismantling the authorities and capacities of regulatory agencies are, in effect, concentrating the political power and influence of economically-dominant actors ([Rosenblum 2023](#); [2024](#); [Bagley 2024a](#); [2024b](#); [Rahman and Thelen 2022](#)). A growing cadre of policy advocates are espousing an explicitly authoritarian vision of regulatory power exemplified in the Heritage Foundation's Project 2025. That plan seeks to dismantle the regulatory powers most needed to protect workers and civil rights and to curb corporate power, while also weaponizing other administrative functions to bring the coercive powers of the state to bear against immigrants, women, LGBTQ+ communities, communities of color, and other vulnerable communities ([Goodwin 2024](#)).

These pressures—of the empirical challenges the country faces and the extremist visions of dismantled and weaponized administration—underscore the need for a progressive reimagining of regulatory capacity. Regulatory institutions are the hidden infrastructure for realizing (or failing to realize) our aspirations for a democratic political economy ([Rahman 2022](#)). What kind of regulatory state do we need to build the kind of democratic political economy we want? The above reforms from 2021 through



2024 are by no means exhaustive or a full realization of an alternative vision of regulatory policymaking. But they represent a set of concrete innovations that offer a critical foundation for, and possible pathway toward, a more fulsome reimagining of the regulatory state.

First, we need a regulatory state whose procedures and systems are built around efficacy, speed, and inclusion—in ways that remix and redesign how those values are currently operationalized. Efforts to streamline regulatory review, to refocus service delivery around actually getting aid to those most urgently in need, and to create new fast-track coordination processes to manage complex, multi-agency and multifaceted policy initiatives like the American Rescue Plan are important steps in this direction.

Second, we need a regulatory state that is not structured around specific issue areas or administrative silos, but instead is oriented toward underlying structural root causes, making structural racial inequity or economic power visible and tractable. The efforts to create a “whole-of-government” process on equity or market competition offer examples of how we might rewire the conceptual frameworks and ethos of regulatory policymaking going forward.

And third, we need a regulatory state whose expertise and analytical prowess takes seriously a wider range of analytical approaches and data inputs to inform structurally oriented regulatory policy, rather than effacing the realities of race, gender, class, or systemic inequities. Revisions to Circular A-4 and the creation of new forms of evidence and data inputs offer ways forward on this path as well. More broadly, these interventions represent starting points for potentially more transformative changes in the future. We could imagine, for example, more systematic ways of documenting and analyzing inequities and driving regulatory agendas that tackle those inequities methodically.

Taken together, these experiments offer useful building blocks for future administrations and movements seeking to reimagine the regulatory state. The reforms described here have helped facilitate and fuel a number of signature policies for the Biden administration—including, for example, the ways in which new infrastructure and industrial policy investments have been designed to help channel resources to workers and to underserved communities; or in specific rulemakings that agencies have advanced to better address systemic inequities and disparities of economic power, such as the various competition regulations on issues from hearing aids to agriculture. But the bigger impacts of these shifts in the internal culture and conceptualization of policy remain to be seen. Over time, if these approaches are continued by future administrations, they could coalesce into a new conventional approach to policy design and process that better incorporate values of equity, participation, efficacy, and a sharper focus on systemic disparities of power.



But that continuity is a challenge. Even within a presidential administration, fluctuations in staffing and budgets and external pressures from Congress or from opponents make it difficult to sustain these kinds of new practices. Should a future administration continue these efforts, that support would play a large role in helping consolidate these new approaches and increase the ways in which they enable a different kind of policymaking. Ultimately, continued attention to these *internal* protocols and the ways in which they shape the discourse and practice of policymaking within agencies will be important. For progressives to achieve the changes that the public needs and demands, it will be vital to reimagine and evolve our structures of government to meet those needs. The reforms described above offer a starting point for both future administrations and future advocates.



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