

# Presidentially Directed Policy Change

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## Abstract

US presidents—working through the Office of Information and Regulatory Affairs (OIRA)—influence administrative agencies by directing agencies to modify their regulatory policy proposals before finalization. We identify two competing hypotheses from the literature to explain this presidential intervention. First, some scholars hypothesize that presidents are more likely to change proposals when the submitting agency’s political ideology differs from the president’s. Second, others argue that presidents are more likely to correct ideologically extreme agencies of either political ideology. Neither claim has been adequately investigated. We study almost 1,500 final regulations reviewed by OIRA between 2005 and 2011. In the end, neither hypothesis garners support. Instead, we demonstrate that regulations proposed by liberally oriented agencies are more likely to be changed—and the content of the rules changed to a greater degree—than those proposed by conservative agencies. Those results suggest support for a provocative third hypothesis: presidentially directed deregulation through OIRA review.

When candidates in the United States seek that country's highest political office—the presidency—they tend to campaign as leaders, not as managers. This distinction matters. In particular, it provides insights into the relationship that presidents have with the federal bureaucracy. Presidents are constitutionally tasked with faithfully executing the laws passed by the US Congress, and they depend on public sector administrative agencies to write the rules and regulations necessary to do so.<sup>1</sup> Yet presidents are not mere managers of this process; instead, presidents from both sides of the political aisle actively intervene during regulatory policymaking. This intervention shapes the content and contours of modern policy.

Presidents rarely intercede personally; instead, they rely on the Office of Information and Regulatory Affairs (OIRA), housed within the Office of Management and Budget (OMB), to represent presidential interests during regulatory policymaking (Kerwin and Furlong 2011; West 2005; Shapiro 2011). OIRA evaluates the content of significant agency rules on the president's behalf (a process referred to as *OIRA review*) and can suggest policy changes so that agency proposals better match presidential priorities, as well as other goals.<sup>2</sup> Close observers agree that agency compliance with OIRA's suggested changes is standard practice (Rosenbloom 2003), with OIRA's influence often called “substantial” (Wagner 2015, 2046) and, at times, “determinative” (Copeland 2009, 1). Yet despite strong agreement on the likely policy influence of OIRA review, scholars know remarkably little about the scale of OIRA's impact—and even less about the systematic policy and political consequences attached to that influence.

President Ronald Reagan's Executive Order 12291 established the modern OIRA review process in the early 1980s, and this process has remained a controversial component of the administrative presidency ever since (Arbuckle 2011). In part, the controversy surrounds the fact

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<sup>1</sup> We use the terms *rules* and *regulations* interchangeably in this article.

<sup>2</sup> OIRA review does not apply to rules written by independent regulatory agencies (Lubbers, 2006).

that OIRA review dramatically extended presidential policy influence and thus raised issues regarding separation of powers (West 2005). Indeed, to this day, scholars remain sharply divided on whether the effects of OIRA review are “salutary or dangerous” (Pasachoff 2016, 2185). Those on the salutary side frequently point to the need for presidential leadership during regulatory policy creation, as well as to OIRA’s focus on interagency coordination and economic efficiency during the review process (Kagan 2001; Sunstein 2013). Scholars on the other side often allege that OIRA review forwards a deregulatory, pro-business, or antiregulatory agenda on behalf of the president, which tends to differentially affect agencies with liberally oriented missions (Bagley and Revesz 2006; Shapiro 2011; Steinzor et al. 2009). Yet to date, little systematic assessment of this much-speculated possibility has taken place.

In this article, we investigate the question, “What are the policy effects of presidentially directed change during OIRA review?” We begin by laying out the theoretical foundations, context, and importance of regulatory policymaking and OIRA review. We then put forward two distinct hypotheses, commonly found in the literature, to explain the effects of president intervention. Until now, these hypotheses have not been empirically evaluated in tandem. We refer to them as the *Partisan Hypothesis* and the *Extreme Agency Hypothesis*. Importantly, they are competing hypotheses, and as such, they suggest different behavior by OIRA and thus different testable implications. To adjudicate these opposing theoretical claims, we study the population of 1,457 final rules that OIRA reviewed between January 2005 and June 2011. In our first set of analyses, we study the drivers of change during OIRA review. Then, in a second set of analyses, we study a subset of 115 final regulations reviewed by OIRA that were particularly controversial. Here, we use innovative data that allow us to track whether OIRA recommended change, as well as the scale of the change occurring during OIRA review.

To preview our results, neither the Partisan Hypothesis nor the Extreme Agency Hypothesis garners support in these data. Instead, the results raise the intriguing possibility that under both President George W. Bush and President Barack Obama, rules proposed by liberally oriented agencies had a 9 percent increased probability of being changed during OIRA review and had 13 percent more textual changes than did rules proposed by agencies with politically neutral missions. We found no effect for conservative agencies. Those results suggest potential support for a third hypothesis: presidentially directed deregulation during final rule review. We caution, however, that this article does not resolve the more than 30-year controversy surrounding OIRA review and deregulation. Instead it moves that debate forward in a meaningful way. Specifically, given President Trump's recent executive order providing even greater executive control over agency rulemaking,<sup>3</sup> attention to the policy effects of presidentially directed change during OIRA review is critical to our scholarly and practical understanding of the modern administrative presidency, policymaking, and the role of political oversight of agency action.

## **Theoretical Foundations**

Americans have a complicated, even paradoxical, relationship with regulation. Americans' attitudes about regulation are particularly salient for US presidents, who attempt to steer, influence, and direct the creation of government regulations by public sector agencies while balancing public opinion. The main presidential tool for accomplishing this balancing act is OIRA review. As DeMuth and Ginsburg (1986, 1080) write, "The establishment of White House review of agency rules was the most important political response to the growing popular . . .

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<sup>3</sup> See President Trump's Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs," January 30, 2017.

criticism of federal regulation.” And although most scholars agree that “centralized regulatory review” by OIRA “is fundamentally about presidential control over the administrative state” (Bubb and Warren 2014, 131), fewer agree on the policy effects OIRA review may hold for the economy and society at large. In this article, we suggest the importance of bureaucratic policymaking generally before detailing the rise of a key tool of the administrative presidency—OIRA review—and the competing ways in which this tool’s application may affect governance.

### ***Administrative Policymaking***

Critical substantive decisions about capital bank requirements, domestic drones, health-care markets, water quality, student loan repayment, and cancer technologies are often made via agency regulatory policymaking (also called *rulemaking*). And although some lament that current congressional leaders are unable to tackle major new legislation action (French 2016), policymaking by the federal bureaucracy continues largely unabated. The *Federal Register* lists more than 80,000 pages of new rules and rule modifications for 2014 (Dudley and Warren 2015), and Al-Ubaydli and McLaughlin (2017) highlight major growth in the number of restrictions in place across all regulations—from 830,000 regulatory restrictions in 1997 to 1 million in 2012. Moreover, Yackee and Yackee (2009) report that the top agency rule writers cover a diverse set of substantive areas, including transportation, the environment, the economy, and health. By any accounting, the aforementioned statistics represent an astonishing amount *and* breadth of policymaking, which takes place largely outside of the public’s and the media’s attention (Haeder and Yackee 2015b).

The Administrative Procedure Act of 1946 (APA) establishes the so-called notice-and-comment rulemaking process, which has become the most common way that federal agencies create and finalize legally binding government regulations (Kerwin and Furlong 2011). This

process generally begins with the formation of a draft regulation, also called a *notice of proposed rulemaking* (NPRM), which the APA requires to be open for public inspection and feedback. After receiving, considering, and responding to public feedback, the agency typically promulgates a *final rule*, which is enforceable as law. In theory, this APA-established “lawmaking” process amounts to a relatively straightforward method for gathering the thoughts of citizens, as well as interest groups, and promulgating binding public decisions.

In practice, however, the three constitutionally prescribed branches of government have complicated this process over time by adding a variety of new procedural requirements to select rulemakings (McGarity 1991; Yackee and Yackee 2010). Shapiro and Moran (2016), for instance, detail increased congressional involvement by focusing on the new “hoops and hurdles” added to some rules by statutes passed subsequent to the APA. They conclude, however, that those actions have been largely ineffective in constraining agency discretion. In contrast, there is strong agreement in the literature that the key post-APA procedural requirement established by the president—OIRA review—has had a major effect on agency decision-making, as well as on the balance of policymaking power in Washington.

### ***OIRA Review***

Few Americans appreciate that OIRA, an obscure agency in the Executive Office of the President, plays a major role in American domestic policymaking (Arbuckle 2011; Croley 2003; Dudley 2011; Haeder and Yackee 2015a; Bolton, Potter, and Thrower 2016). Nevertheless, some close observers suggest that OIRA is the “cockpit of the regulatory state” (Sunstein 2013, 1), and others write that OIRA review is “the most important institutional feature” of the administrative state (Bagley and Revesz 2006, 1260). In fact, it is common to hear that OIRA is “the most

powerful federal agency that most people have never heard of” (Martha Minow, as cited in “Notes: OIRA Avoidance” 2011, 994).

Although presidents are aware of the policymaking power attached to rulemaking, only rarely do they become personally involved in the process. Instead, they rely heavily on politically appointed administrators at OMB and OIRA to represent their interests. In 1981, President Reagan established modern OIRA review in Executive Order 12291, which required agencies to submit drafts of major NPRMs and final rules to OIRA for review before the agencies publicly announced those regulations (Miller 2011; Rosenbloom 2003). Despite lingering controversy surrounding presidential involvement in the rulemaking process, President Bill Clinton’s Executive Order 12866 in 1993 continued OIRA review. However, the Clinton order provided additional transparency and established four criteria that limited the review to “significant” regulations.<sup>4</sup> Following in the bipartisan footsteps of his predecessors, President Trump left those OIRA review criteria unchanged in his executive order issued on January 30, 2017.

Notably, it is OIRA that selects which rules are significant—and thus reviewable—under OIRA review (Acs and Cameron 2013; DeMuth 2011). For the vast majority of rules reviewed by OIRA, OIRA either (a) returns the proposal to the agency with its suggested changes or (b) returns the proposal to the agency with no change. In terms of scale, OIRA reported in 2004 that almost 400 regulations were “issued with change” after the OIRA review process, whereas 187 were “issued without change” (West 2006, 443). OIRA does not have the formal power to force agencies to modify their proposals (Driesen 2006), yet most observers assert that compliance is

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<sup>4</sup> The executive order’s criteria for significance are that a rule must (a) be economically significant, typically meaning that the rule will have an annual effect on the economy of \$100 million or more; (b) interfere with the work of other agencies; (c) exhibit a material effect on entitlements, grants, user fees, or loan programs; or (d) raise legal or policy issues for the president’s priorities.

the norm. As Carpenter and Gubb (2014, 2) conclude, “Faced with a rule that it opposes, OIRA can request changes that must be satisfied in order for the rule to be finalized.”<sup>5</sup>

The Clinton executive order, as Blumstein (2001) observes, makes explicit what many understood to be implicit within the Reagan order: that a key purpose of OIRA review is to advance presidential policy objectives. Or, in the words of DeMuth and Ginsburg (1986), OIRA’s “role is to serve as the eyes and ears of the president and to advance generally the set of policies (or just ‘attitudes’) that brought the president to the head of government.” And although the Clinton executive order’s review criteria plainly encourage presidential responsiveness, other factors also work together to make OIRA “the president’s delegate” (DeMuth and Ginsburg 1986, 1085). For instance, OIRA is led by a presidential appointee (Wiseman 2009).<sup>6</sup> Moreover, West’s (2005, but see Bressman and Vandenberg 2006) interviews with OIRA officials suggest that those civil servants who make up the majority of OIRA’s personnel internalize presidential agendas to a large extent. Gailmard and Patty’s (2013) formal model explains why this may occur. Gailmard and Patty find that advisory organizations that have only one client—such as OIRA—tend to be responsive to that client, as opposed to playing the role of neutral adviser. Thus, although presidents “cannot personally control the bureaucracy,” they can structure institutions such as OIRA to bring about responsiveness (Moe and Wilson 1994, 16). This observation leads Shapiro (2005), a former OIRA official turned scholar, to conclude that when technical and political calculations conflict during OIRA review, political calculations almost always win.

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<sup>5</sup> We are not suggesting that agencies are helpless. Agencies can elevate disputes, which they do on occasion, raising concerns with the OIRA director, the OMB director, or others in the White House. Thus, both theory and past practice strongly suggest that OIRA influences rule content but does not dominate it.

<sup>6</sup> Similarly, a presidential appointee runs OIRA’s organizational home at OMB.



## ***The Administrative Presidency and Rulemaking***

The administrative presidency—the theoretical idea that elected chief executives use institutional and structural strategies to accomplish policy-related goals through control of the bureaucracy—is a key research area (Moe 1985; Nathan 1976; Rudalevige 2009). As Moe and Wilson (1994, 4) summarize, “Policies mean little to nothing until they are given concrete expression through bureaucracy.” Nathan (1983) coined the term *administrative presidency* in part to account for presidential recognition of that fact.

Moe (1985) theorized two presidential control strategies: politicization and centralization. *Politicization* refers to presidential efforts to staff the bureaucracy with individuals who will be responsive to presidential dictates (Rudalevige 2009), and recent work has begun to unpack its systematic effects (Krause and O’Connell 2015; Lewis 2008, 2009, 2011; Resh 2015). Scholars know far less, however, about the empirical effects of *centralization*. Moe and Wilson (1994, 18) write, “Presidents can use structure to shift the locus of effective decision-making authority to the center . . . to the president.” They then go on to reference OIRA review as a key example of the president’s centralization strategy. Moe and Wilson are not alone. West (2006, 441) concludes that OIRA review “is the furthest extension of direct, centralized, and systematic presidential influence over agency policymaking to date.” Resh (2015) also references OIRA review as a clear example of presidential centralization, and Golden (2000, 8) writes that centralization helps ensure that agency proposals “conform to the president’s policy goals, and serve as a check on the activities of career bureaucrats whose policy goals may differ from the president’s.” In fact, Pasachoff (2016) implies that perhaps *too much* scholarly focus has been placed on OIRA review. Pasachoff (2016, 2185) finds that in recent years, more than a thousand published articles have cited OIRA and its centralized review process.

Given how much research refers to OIRA review, it is remarkable how little research actually empirically analyzes the office’s potentially crucial effect on shaping the regulatory implementation of statutory law. Rudalevige (2009, 15)—in his article aimed at establishing a future research agenda for administrative presidency scholarship—specifically writes of the need for more generalizable research on OIRA review, stating that new quantitative research is needed to understand how OIRA review affects agency policy proposals. That said, what we do know about OIRA’s potential policy effects is suggestive. Furlong’s (1998) survey of agency officials, for example, finds that bureaucrats consider OIRA review a highly effective method for the president to influence agency decision-making. Acs and Cameron (2013) find that agencies cannot readily avoid OIRA review even if they want to. Shapiro and Morrall (2016) find that the amount of information in agency regulatory impact analyses (RIAs), which are required for economically significant rules, is correlated with the time it takes OIRA to review agency rule proposals. Other researchers (Balla, Deets, and Maltzman 2011; Croley 2003; Haeder and Yackee 2015a) begin to measure OIRA influence across a broader selection of rules. Still others demonstrate that OIRA review may introduce delay (Bolton, Potter, and Thrower 2016; Carpenter and Gubb 2014; Shamoun and Yandle 2016; but see Yackee and Yackee 2010) (Bolton et al., 2016).

### ***Competing Hypotheses***

The aforementioned work suggests the importance of OIRA review, but its systematic policy effects (if any) remain elusive. This lack of generalizable knowledge, however, is not the result of a lack of ready explanations; we have identified two prominent, competing hypotheses present in the existing literature. Surprisingly, these hypotheses are rarely discussed in concert, and thus

far they have defied a side-by-side quantitative evaluation by researchers. We refer to them as the *Partisan Hypothesis* and the *Extreme Hypothesis*. Next, we explicate each hypothesis.

*Partisan Hypothesis: OIRA review is used to change agency regulatory proposals to a greater degree when the submitting agency's political ideology differs from the president's.*

Rezaee (2015, 3) summarizes the Partisan Hypothesis, writing that it is “conventional wisdom that OIRA is a presidential watchdog focused on reining in ideological unaligned agencies.” This hypothesis finds an intellectual home in the literature that separates the aggregate-level political preferences of agencies from their elected principals, especially the president (Clinton et al. 2012; Cohen 1986; Nixon 2004). The hypothesis is based on that notion that “while agencies themselves are not partisan, scholars agree that some agencies serve a more liberal mission and others a more conservative one” (Potter, forthcoming). More specifically, the Partisan Hypothesis rests on the proposition that OIRA tends to change rule proposals of ideologically dissimilar agencies to move them closer to the president’s preferred position. For instance, Carpenter and Gubb (2014) describe OIRA review as a type of presidential “veto” of ideologically dissimilar agencies. This type of veto-thinking is also built into Wiseman’s (2009) formal model and the empirical work of Acs and Cameron (2013). Similarly, Golden (2000) concludes that OIRA review is a key “weapon” of the administrative presidency for dealing with ideologically different agencies.

If the Partisan Hypothesis is correct, we would expect the president’s ideological disposition to affect OIRA’s policy response during the OIRA rule review process. Conservative presidents, such as George W. Bush, would be more politically disposed to agree with regulations proposed by conservatively oriented agencies. By the same token, such presidents would be more prone to disagree with regulations proposed by more liberally oriented agencies. Similarly, for a more liberal president, such as Barack Obama, one would expect the opposite

pattern to emerge. The president and OIRA, according to this account, recognize the general ideological orientation of agencies and, as a result, differentially change agency proposals. Therefore, the empirical expectation is that OIRA will modify the regulations of agencies ideologically dissimilar to the president to a larger extent, and it will be less willing to tinker with rules published by agencies ideologically similar to the president. Indeed, Ellig, McLaughlin, and Morrall (2013) provide evidence that is consistent with this hypothesis. Using three years of data drawn from the subset of rules where OIRA requires an RIA, they find that President George W. Bush demanded higher-quality RIAs from liberal agencies to pass OIRA review, while President Obama appears to have demanded that conservative agencies have higher-quality analyses.

*Extreme Agency Hypothesis: OIRA review is used to correct ideologically extreme agencies on either side of the ideological spectrum by changing their policy proposals more than those of nonextreme agencies.*

Some agencies produce policy proposals that are too extreme for the president, whose responsibilities to the nation's economic and other interests provide him or her with a broader view of the national interest in general and during rulemaking in particular (Croley 2003; DeMuth and Ginsburg 1986). As DeMuth (2011, 18) writes, "Single-purpose regulatory agencies with little in the way of a budget constraint on the resources at their disposal, will typically pay too little heed to purposes other than their own." He further argues that this problem is present across both Democratic and Republican administrations. According to the Extreme Agency Hypothesis, the president recognizes this tendency for overzealousness and uses OIRA review to correct or soften the impact of regulatory proposals submitted by extreme agencies. Bubb and Warren (2014) provide additional intellectual grounding. They argue that presidents often appoint more extreme ideological bureaucrats to agency posts; however, presidents do so with

the full knowledge that oversight mechanisms such as OIRA review give them the ability to check extreme agency action. Bubb and Warren reason that such oversight mechanisms allow presidents to appoint more zealous bureaucrats—who can be counted on to work harder on something they care deeply about—while also relying on OIRA review to curb and to moderate undesirable agency behavior on the president’s behalf.

If the Extreme Agency Hypothesis is correct, we would expect to see OIRA routinely changing the policy proposals submitted by ideologically extreme agencies while providing fewer changes to proposals from nonextreme agencies. This hypothesis ought to apply equally to liberal-leaning and conservative-leaning ideologically extreme agencies.

## Testing the Hypotheses

To assess the hypotheses, we study all 1,457 significant final regulations that OIRA reviewed between January 2005 and June 2011.<sup>7</sup> In our first set of analyses, we study whether OIRA directed an agency to change its rules during OIRA final rule review.<sup>8</sup> Then, in a second set of analyses, we study the subset of 115 final regulations reviewed by OIRA that were particularly controversial, which we define as rules that received some lobbying during OIRA final rule review. In these data, we can track whether OIRA recommended policy changes, as well as the *scale* of the policy change that occurred during OIRA review.

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<sup>7</sup> We start our analyses in 2005 because of data reliability concerns before the mid-2000s (Government Accountability Office, 2009). There are 1,526 potential cases, but because of data availability issues, there are 1,457 usable rules. Those issues include data limitations at OMB and a number of Federal Acquisition Regulation rules, which are issued jointly by the Department of Defense, the General Service Administration, and the National Aeronautics and Space Administration for use by executive agencies in acquiring goods and services.

<sup>8</sup> Given the hypotheses, we focus on rule change and not rule withdrawal. However, as West (2006) writes, a small number of rules are withdrawn during OIRA review.

### ***OIRA Final Rule Review***

Our research design specifically concentrates on OIRA’s review of draft final rules (i.e., those fully formed policy documents delivered by the originating agency to OIRA for OIRA final rule review). Although OIRA may also review an agency proposal earlier in the rulemaking process, OIRA final rule review occurs immediately before the agency’s final rule is published in the *Federal Register* (and thus becomes legally binding). The originating agency provides OIRA a completed document for its review. That document contains the agency’s reactions as well as any rule text changes made in response to public feedback that the agency received during the notice-and-comment period. If OIRA decides that no changes are needed to the agency’s draft final rule, the draft final rule text is promulgated in the *Federal Register* as a legally binding rule.

Our strategy holds two main benefits for the study. First, by focusing on OIRA final rule review, we are able to exclude from consideration any policy concessions or modifications that the agency may have undertaken in response to public feedback it received during the notice-and-comment period. Doing so allows us to concentrate squarely on the systematic policy effects attached to OIRA final rule review. Second, our strategy is a conservative one, which ought to make it more difficult to uncover statistically significant effects. After all, OIRA may formally review a rule at an earlier stage—typically at the draft NPRM stage—and also may informally provide feedback to agency officials throughout rule creation (West 2005). Consequently, opportunities exist for presidential influence through OIRA before the culmination of the OIRA final rule review. This fact ought to decrease the likelihood of our finding support for the stated hypotheses during this late stage of regulatory policymaking.

## **Variables**

The dependent variable *Rule Change* in our first set of analyses is dichotomous and captures whether OIRA made any changes to the originating agency’s draft final rules during OIRA final rule review. (Descriptive statistics for all variables can be found in table 1.) We use OIRA’s administrative records to secure this information.<sup>9</sup> It is notable that this measure does not track the magnitude or content of changes occurring during OIRA review, which suggests that even small shifts may result in a “change” on the variable (Copeland 2009; Haeder and Yackee 2015a). In these first analyses, we use a number of predictor variables to measure the hypothesized relationships. These variables include *Bush Administration*, which is a dichotomous construct capturing whether a final rule was issued under President George W. Bush, or not (the latter indicating under President Obama).<sup>10</sup> We also rely on Clinton and Lewis’s (2008) ideological scores of the originating agency.<sup>11</sup> *Liberal Agencies* are all liberal-leaning agencies on the Clinton–Lewis metric; analogously, *Conservative Agencies* are those that Clinton and Lewis determined to be conservative-leaning agencies.<sup>12</sup> The omitted category includes agencies that are considered ideologically neutral, which are all agencies that cannot be

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<sup>9</sup> The administrative files are available on OIRA’s website at <http://www.reginfo.gov/public/do/XMLReportList> (accessed August 2011).

<sup>10</sup> This variable also controls for any efficiency or learning gains in OIRA review that may accompany a president’s time in office because it captures the end of the George W. Bush administration and compares it to OIRA action at the beginning of the Obama administration.

<sup>11</sup> Clinton and Lewis (2008) rely on an expert ranking strategy to identify agency ideology. As Potter (forthcoming) explains, although agencies do not have a formal or assigned political ideology, close political and policy observers agree that select agencies are oriented toward liberal ideological missions, whereas others are oriented toward conservative missions. Consequently, scholars—including Carpenter and Gubb (2014); Ellig, McLaughlin, and Morrall (2013); and Potter (forthcoming)—routinely use proxy metrics, such as the Clinton–Lewis scores, to capture agency ideology during rulemaking. In such exercises, “partisan cues serve as a heuristic for how rules may be perceived” by external actors (Potter, Forthcoming, p. 11).

<sup>12</sup> Examples of liberal agencies on the Clinton–Lewis metric include the US Department of Health and Human Services, the US Department of Labor, and the US Environmental Protection Agency. Examples of so-called ideologically neutral agencies include the Department of Transportation and the Federal Trade Commission, and examples of conservative agencies include the US Department of Homeland Security, the US Department of Treasury, and the US Department of Commerce.

differentiated from zero on the metric.<sup>13</sup> To test the Partisan Hypothesis, we include a *President–Agency Ideology Mismatch* variable, which scores 1 when ideological affinities conflict and 0 when they match. To assess the Extreme Agency Hypothesis, we include *Extreme Agencies*, which scores 1 if the agency is either liberal or conservative and scores 0 for other agencies.

We also include a number of control variables in the first analyses. These variables include *Previous Presidential Attention*, which adds up the number of times OIRA formally reviewed the rule and thus signals overall presidential interest in the regulation. *OIRA Final Rule Review Time* counts the number of days OIRA spent with the rule during its final rule review, and *Lobbying* is a dichotomous variable that indicates whether any outside entity lobbied OIRA officials during OIRA final rule review. These three variables are collected from OIRA administrative records. A word count for each regulation’s abstract as listed in the Unified Agenda provides a proxy for *Rule Complexity*. Finally, *Rule Significance* is dichotomous and taps whether OIRA considered the rule to be economically significant, typically meaning that the rule will have an annual effect on the economy of \$100 million or more. This variable is collected from OIRA records.

The dependent variable, *Rule Change*, in our second set of analyses taps the amount of policy change occurring during OIRA final rule review. To measure change, we use automated content analysis software to compare the regulatory text of draft final rules (i.e., those fully formed policy proposals delivered by the originating agency to OIRA for OIRA final rule review) to the regulatory text of final rules (as published after OIRA final rule review). We focus on comparisons of the actual regulatory text, as opposed to the regulation’s summary or preamble information. The software—which is similar to what a college professor might use to

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<sup>13</sup> More technically, this category translates into those departments for which the 95 percent posterior density interval includes zero on the Clinton–Lewis metric.



check for plagiarism violations in student papers—allows us to look beyond minor formatting issues, reordering of information, and punctuation and word capitalization issues across the documents.<sup>14</sup> The software also captures the addition of new text in the final rule and the removal of text from the draft final rule. The theoretical range of the resulting dependent variable runs from zero (identical documents) to 100 percent different (completely changed). We personally collected information from the draft final rule in archival research at OIRA, whereas the final rule information comes from the *Federal Register*.

In the secondary analyses, we use a set of independent variables similar to those described previously, including the host of ideology-related variables, *Previous Presidential Attention*, *OIRA Final Rule Review Time*, and *Rule Significance*. In these analyses, *Lobbying* is a count of those external entities lobbying OIRA officials during final rule review, and *Rule Complexity* is measured as the word length, in thousands, of the final rule's regulatory text.

## **Data**

Figure 1 provides context for our empirical investigation. It displays all final rules reviewed by OIRA that are found in the larger dataset during our period of observation. The figure splits out the ideology (liberal, neutral, and conservative) of the originating agency and also suggests a number of patterns that are observable over time. First, it is clear that *Liberal Agencies* write more final rules that are reviewed by OIRA than do *Conservative Agencies* or agencies that are considered to be more politically neutral. Second, figure 1 suggests a slight downtick in the overall number of rules reviewed during the Obama administration versus the Bush administration in these data. Third and finally, although an uptick occurs toward the end of the

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<sup>14</sup> We use WCopyfind, version 4.1.1, accessed December 2011.

Bush administration in terms of OIRA final rule reviews, there is not a dramatic increase in the aggregate 2008 numbers over 2006.

## Results and Discussion

We know remarkably little, in practice, about the systematic policy effects attached to presidentially directed change through OIRA. Yet speculation abounds. We have identified two competing hypotheses commonly used to explain policy change during OIRA review, and we next provide the first side-by-side assessment of their veracity. Tables 2 and 3 present the key results.<sup>15</sup> Table 2 uses the 1,457-rule dataset, with the dichotomous *Rule Change* dependent variable and coefficients derived from logistical regression analyses. Table 3 uses the 115-rule dataset, the percent different *Rule Change* dependent variable, and coefficients from ordinary least squares (OLS) regression estimations. It is notable that our table 3 findings are substantively indistinguishable from those confirmed in a validation exercise.<sup>16</sup>

### *Competing Hypotheses*

In models 1 and 4, we investigate the testable implications of the Partisan Hypothesis. In short, we find no evidence that agency regulatory proposals change to a greater degree during OIRA final rule review when the submitting agency's political ideology differs from the president's in these data. Models 1 and 4 use a *President–Agency Ideology Mismatch* variable to capture these

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<sup>15</sup> Both tables use robust standard errors in parentheses, as well as discipline-standard levels of statistical significance with two-tailed tests.

<sup>16</sup> This validation confirms that substantive policy change does occur during the OIRA review process. To test this, we analyze and then score the text of each regulation using the following ranking: rule change of (1) minor substantive importance, (2) moderate importance, or (3) major importance. We then reestimate all table 2 models using a new *Rule Change* dependent variable, which is weighted by the substantive importance of the rule changes. Substantively identical results are returned. In the few instances in which the scoring may be between two scores, we estimate the results using both possible scores. Again, the results do not change the conclusions we will present later in the article. All sensitivity analyses are available on request.

relationships, and in both cases the variable is insignificant. Thus, in neither the large dataset nor the small dataset does the variable approach statistical significance. Put differently, we uncover no evidence in support of the generally accepted belief that presidents systematically use OIRA to rein in “ideological unaligned agencies” (Rezaee 2015, 3).<sup>17</sup>

In contrast, we (initially) find support for the Extreme Agency Hypothesis, which we investigate in models 2 and 5. Recall that this hypothesis is driven by the argument that presidents punish ideological extremity—both liberal and conservative—by changing rules from these agencies more during OIRA review. We see evidence in the coefficients tapping *Extreme Agencies*, which are positively signed and statistically significant in both models. In model 2, the results imply that extreme agencies see their policy proposals changed more during OIRA final rule review; specifically, there is a 5 percent increase in the average marginal effect (AME) moving from “no change” to “change” made during OIRA’s final rule review.<sup>18</sup> Moreover, if we estimate the model with an indicator tapping *very* extreme agencies—which we define as agencies for which the absolute value of the Clinton–Lewis score is larger than 1—then the average marginal effect when moving to “change” increases by 6 percent. There is also a substantive impact attached to ideologically extreme agencies in model 5, which suggests a 12 percentage point increase in the total amount of regulatory text change for extreme agencies.<sup>19</sup> Thus, it appears that OIRA review may be used to correct ideologically extreme agencies by changing their proposals more than those of nonextreme agencies.

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<sup>17</sup> In the larger dataset, 312 rules were formally reviewed by OIRA for the first time at the final rule stage. In a sensitivity analysis, we exploit this fact to address the potential concern that our Partisan Hypothesis findings would differ if only we were assessing an earlier stage of OIRA review decision-making. To do so, we rerun Model 1. Substantially similar results are returned (with the exception that *Previous Presidential Attention*, of course, drops from the analysis), and we continue to see null results attached to the *President–Agency Ideology Mismatch* variable.

<sup>18</sup> The average marginal effect is often recommended as a comprehensive way to interpret marginal effects in non-linear models. As described in “the change is computed for each observation in the estimation sample and then averaged” (p.167). We employ the Stata command *mchange* here.

<sup>19</sup> If we estimate the models with an indicator for *very* extreme agencies, the change remains at approximately 12 percentage points.

To push these results further, we took the additional step of breaking out the *Extreme Agencies* variable into its three constituent parts—liberal agencies, conservative agencies, and nonextreme agencies. The Extreme Agency Hypothesis suggests that we should see statistically significant and positive coefficients on both the extreme *Liberal Agencies* and *Conservative Agencies* variables. As we will show, however, what at first blush appeared to be support for the hypothesis disappears upon further empirical scrutiny.

We display the results from our sensitivity analyses in models 3 and 6. In short, we find that the policy proposals of liberally oriented agencies appear to be changed more often—and to a greater degree—than are proposals of conservatively oriented agencies (or neutral agencies) during OIRA final rule review. The model 3 results, for instance, suggest that there is, on average, a statistically significant 9 percent increase in the average marginal effect of a rule shifting from “no change” to “change” during OIRA review when a liberally oriented agency proposes a rule. Model 6 finds that liberal agencies see their regulatory proposals changed 13 percentage points more than do neutral agencies (which make up the excluded category). However, in no case does the *Conservative Agency* variable gain statistical significance. These results suggest that it is not extremity, per se, that drives this relationship, but rather extremity of a certain ideological direction.<sup>20</sup> These findings also hold up when we control for a rule being issued by the George W. Bush administration. In fact, if one breaks apart these data and runs model 3 or model 6 separately for rules promulgated under presidents Bush and Obama, similar results are returned. Thus, these results hold for a Republican presidency and a Democratic one.

We conclude that there is little support for the Partisan Hypothesis or the Extreme Agency Hypothesis in these data. In contrast, we uncover a pattern that is consistent with the

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<sup>20</sup> Similar results are returned if we focus on *very* liberal and *very* conservative agencies, which are defined as agencies where the absolute value of the Clinton–Lewis score is larger than 1, which creates a larger neutral agency category.

argument that liberal agency rules are differentially affected—changed—during OIRA final rule review. But what might explain this result? One possibility is a third hypothesis: presidents use OIRA review to deregulate, which is often conceptualized in the literature as presidents changing the proposals of liberally oriented agencies more than those of other types of agencies. After all, the belief that OIRA review may play a deregulation role within the agency rulemaking process goes back 30 years, to the implementation of President Reagan’s executive order (Cooper and West 1988; Croley 2003). Since that time, critics have viewed OIRA review as an “effort to stifle needed regulation” (West 2005, 80), as biased against certain types of regulation (Bagley and Revesz 2006; Shapiro 2011), or as an instrument to weaken or soften the rules promulgated by agencies with pro-regulatory agendas (Steinzor et al. 2009).<sup>21</sup> These observations are almost exclusively directed at agencies with liberally oriented missions.

There are certainly other potential possibilities—beside deregulation—for our model 3 and model 6 results. For instance, liberal agencies may be more experienced with the OIRA review process and therefore may ask for more than they ideally want in the draft final rule, knowing that their efforts will be weakened during OIRA review. Yet at least two factors mitigate against this explanation. First, as shown in figure 1, although liberal agencies are more experienced, it is also true that *all* agency types are quite experienced with OIRA final rule review. After all, each type—liberal, conservative, and neutral—is reviewed hundreds of times by OIRA in our data. Thus, any threshold effect that may exist for being somewhat more experienced with OIRA review seems trivial. Second, a danger exists when agencies ask for more than they really want with the expectation that their efforts will be weakened by OIRA

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<sup>21</sup> Policy changes made during OIRA final rule review are usually perceived as lessening the stringency of the agency’s proposal. This perception is likely a result of long-standing court rulings and administrative law doctrine suggesting that final rules must be a “logical outgrowth” of the proposed rule (Funk, Shapiro, and Weaver 2014). This doctrine makes it more likely that OIRA will reduce, rather than add to, the regulatory content of an agency’s proposal during the OIRA final rule review stage.

review: they may receive undesired outcomes. In fact, OIRA made no changes to 25 percent of the draft final rules in the larger dataset—suggesting that these rules were directly promulgated as final rules in the *Federal Register*.

Another possibility is that liberal agencies systematically produce lower-quality regulations than neutral or conservative agencies do and that this quality dimension is driving the empirical findings uncovered earlier in this paper. But again, several factors suggest that this explanation is unlikely. In particular, the systematic (albeit limited) evidence that we do have does not support the argument. Shapiro and Morrall (2016) model the quality of agency-performed RIAs, which are required to be submitted to OIRA when OIRA reviews economically significant rules, and they find no evidence that liberal agencies consistently produce lower-quality regulatory analyses than neutral or conservative agencies do. Or, another explanation is that liberal agencies systematically differ in terms of their structural features, and it is this variation that drives our results. The executive branch agencies (liberal, conservative, and neutral) in our analyses, however, are observationally equivalent on the two key structural dimensions identified by Selin (2015) (i.e. the appointment and removal of agency personnel and the ability to review agency policy decisions), which casts doubt on this potential explanation.

That said, there are clearly other theoretical drivers of *Rule Change* during OIRA final rule review beyond partisanship. Fortunately, we are able to model, and thus control for, several of the most obvious candidate explanations in our analyses. *Lobbying*, for instance, is positive and statistically significant across all model specifications, which conforms to Haeder and Yackee's (2015a) suggestion that lobbying during OIRA review is an influential driver of rule change. *Rule Significance* is positive and significant across table 1. Interestingly, 265 of the 1,457 of the rules analyzed in table 1 are economically significant. Thus, only 18 percent of

OIRA-reviewed final rules require agencies to perform formal cost–benefit analyses.<sup>22</sup> *Bush Administration* is negatively signed across both tables, but it is only significant in table 2, suggesting that President Bush may have used OIRA final rule review to change rules less aggressively than President Obama did.

## Conclusion

We know little about the policy effects attached to OIRA review, and this lack of knowledge is remarkable for three reasons. First, for 30 years, scholars of political institutions have touted OIRA review as one of the key tools used by US presidents to influence policymaking (Moe 1985; Nathan 1983). Yet we do not fully know how or to what ends this tool has been used or whether it has been effective. Second, there is broad agreement that OIRA review “matters” to the content of public policy. One close follower calls OIRA’s policy influence, at times, “determinative” (Copeland 2009, 1), and another concludes that OIRA acts as a “co-author”—even a “ghostwriter”—on some rules (Wagner 2015, 2051). In an era when the current president campaigned on the need for presidential intervention in the regulatory process, it is even more important to understand the policy effect of OIRA review during agency decision-making. Third, the process of OIRA review is “utterly opaque” (Heinzerling 2014, 326) and since its inception has been “criticized because it is carried on largely out of the public eye” (DeMuth and Ginsburg 1986, 1085). This lack of transparency, which has been attributed by some to OIRA review (Wagner 2015), makes it even more important for scholars to advance a systematic understanding of this “obscure and powerful” agency (Shapiro 2011, 138).

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<sup>22</sup> According to Executive Order 12866, only “economically significant” rules require agencies to complete formal cost–benefit analyses. Agencies may produce cost–benefit analyses when not required by OIRA to do so.

We identified two competing hypotheses in the literature to explain the policy effects tied to the president's centralized review of regulations through OIRA. We then amassed a dataset of 1,457 significant final regulations reviewed by OIRA between January 2005 and June 2011 to evaluate, for the first time, the implications derived from those hypotheses. Notably, our study is also one of the first to examine the scale of policy change taking place during OIRA review. To do so, we used plagiarism software on a subgroup of approximately 120 particularly controversial regulations. In sum, we found no support for the Partisan Hypothesis in our data. Across the two presidential administrations in our data, presidents—through OIRA review—were no more likely to change final agency regulatory proposals when the submitting agency's political ideology differed from the president's. Additionally, although we initially found support for the Extreme Agency Hypothesis, what at first appeared at first to be support disappeared upon further empirical investigation.

Instead, we uncovered several new findings. We know now that the substantive changes made during the OIRA review process can—and often do—shift the overall content of regulatory policy. We also know now that more of the policy proposals of liberally oriented agencies appear to be systematically changed—and changed more often—than those of politically neutral or conservatively oriented agencies. These results provide a critical baseline for further research. What they do not do, however, is resolve the long-standing argument over whether OIRA review is “salutary or dangerous” (Pasachoff 2016, 2185). That is, after all, a normative argument that often pits those who desire administration agencies to hold more political power in addressing perceived regulatory problems against those who desire more presidential accountability (and presumably less agency power) (Croley 2003).



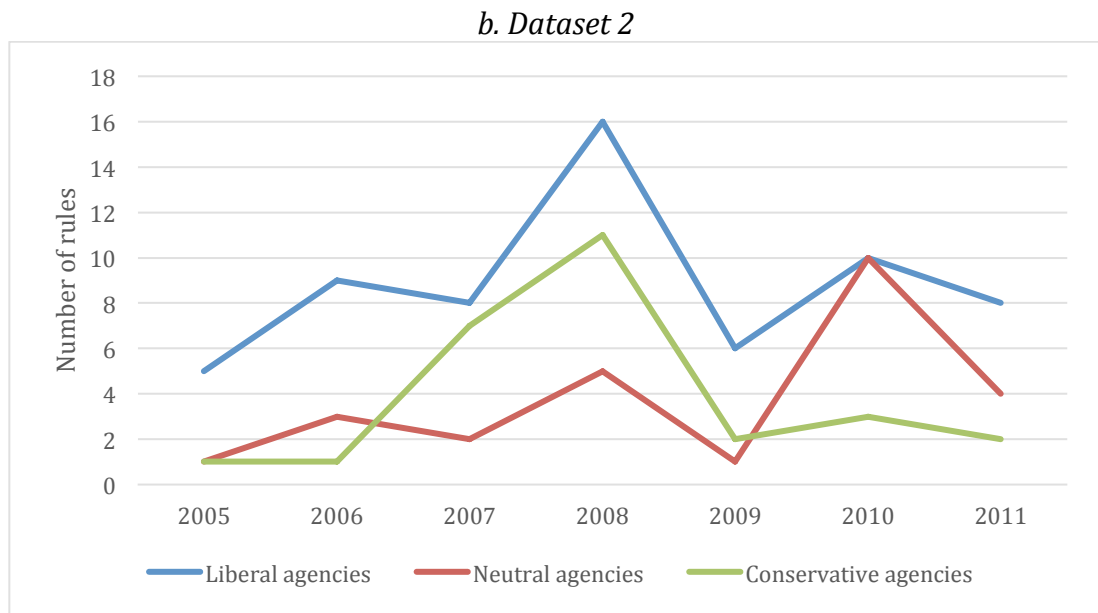
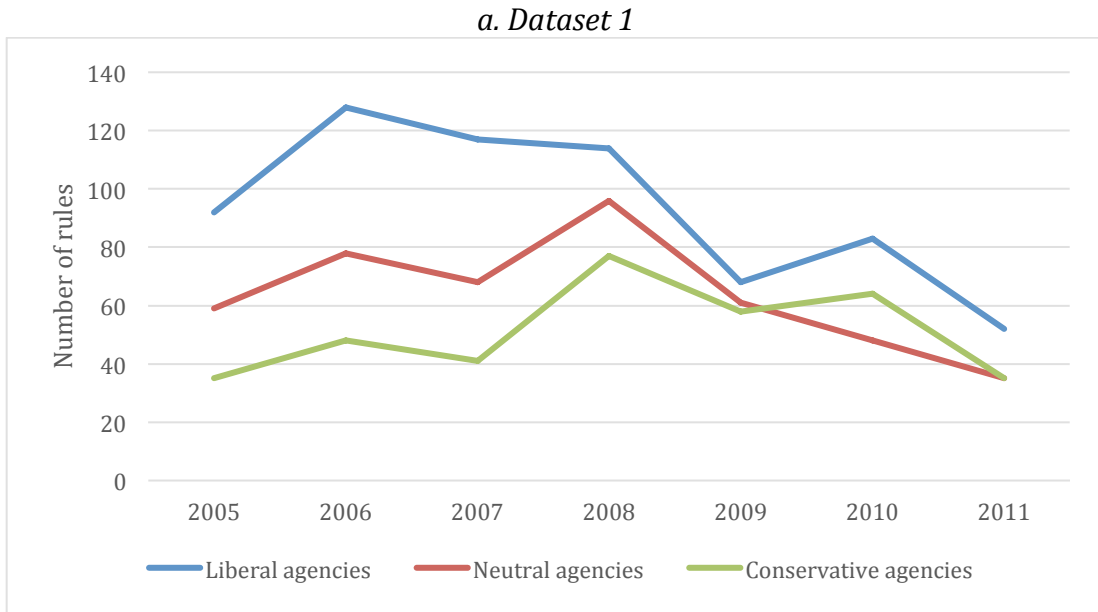
Moreover, to some, our results may imply support for a provocative third hypothesis: deregulation. For years, select observers have warned that liberally oriented agencies had their rules systematically softened during OIRA review (Bagley and Revesz 2006; Driesen 2006; Steinzor et al. 2009). To date, little systematic assessment has been made of this much-speculated about possibility. Yet we caution that evidence in support of deregulatory policy effects during OIRA review, if that is what we have uncovered, does not necessarily equate with a willfully applied deregulatory presidential strategy. It may be that some presidents have approached OIRA review with the intent of reducing the size, scope, or applicability of federal regulations, whereas others have optimized other factors that are observationally equivalent with those ends. For instance, cost–benefit considerations—and especially the difficulty in measuring the benefits attached to some regulations, such as health or environmental rules—may produce a similar bias (see, broadly, Bagley and Revesz 2006). Therefore, going forward, we need additional generalizable empirical findings, such as those in this article, to sort out presidential and OIRA intent and effects.

We also caution that future work is needed to extend our findings. For instance, while a stylized narrative around deregulation may fit some people’s ideas of Republican presidential administrations, what about the results attached to President Obama in this article? In fact, notable news coverage suggested similar criticisms during the Obama presidency, with one *CQ Weekly* story (Koss and Gardner 2012), for instance, stating that “environmentalists and consumer advocates have chafed at what they view as the administration’s tendency to soften or delay new regulations.” Although similar claims were made during the Clinton presidency, additional data collection is necessary to fully solidify our understanding of the interplay between partisanship and OIRA review over time. Moreover, future research should also extend

our work to earlier OIRA reviews of rules. For instance, while in sensitivity analysis we confirmed that our Partisan Hypothesis (null) findings were sustained in an analysis of rules that were reviewed by OIRA for the first time at the final rule stage, additional work must now explore how formal and informal presidential influence at earlier stages of the rulemaking process may influence these relationships. Finally, although a step forward, our study relies on observational data, thereby restricting our ability to make causal inferences. However, our confidence in the suggestive nature of the results is buoyed by our use of two datasets, which employ two different dependent variables and which return substantively similar results, as well as our inclusion of other likely drivers of policy change during OIRA review, such as lobbying, rule significance, and OIRA review time.

In closing, one of President Trump's first executive orders upon assuming the presidency increases presidential oversight over agency rulemaking. This action strongly suggests that during the Trump administration, OIRA is likely to gain in importance as a venue for policy decision-making. Moreover, a number of congressional initiatives are pending that would extend presidential oversight by forcing independent agencies to subject their rules to OIRA review. These present-day realities suggest a pressing need for scholars to develop a fuller and, critically, a more generalizable sense of the policy effects tied to the hitherto most prominent presidential tool used during agency policymaking: OIRA review.

**Figure 1. Number of Rules Reviewed by the Office of Information and Regulatory Affairs, 2005–2011, by Agency Ideology**



*Note:* Data from Clinton and Lewis (2008) were used to categorize agencies.

**Table 1. Descriptive Statistics**

<b>Variable</b>	<b>Mean</b>	<b>Standard Deviation</b>	<b>Min</b>	<b>Max</b>
Dataset 1:				
<i>Rule Change</i>	0.76	0.43	0	1
<i>Bush Administration</i>	0.66	0.47	0	1
<i>Liberal Agency</i>	0.45	0.50	0	1
<i>Conservative Agency</i>	0.25	0.43	0	1
<i>President–Agency Ideology Mismatch</i>	0.72	0.45	0	1
<i>Extreme Agencies</i>	0.69	0.46	0	1
<i>Previous Presidential Attention</i>	2.02	0.77	1	8
<i>OIRA Final Rule Review Time</i>	55.55	51.20	0	654
<i>Rule Complexity</i>	723.91	527.21	54	4,487
<i>Rule Significance</i>	0.18	0.39	0	1
<i>Lobbying</i>	0.08	0.27	0	1
Dataset 2:				
<i>Rule Change</i>	18.2	19.97	1	86
<i>Bush Administration</i>	0.62	0.49	0	1
<i>Liberal Agency</i>	0.54	0.50	0	1
<i>Conservative Agency</i>	0.23	0.43	0	1
<i>President–Agency Ideology Mismatch</i>	0.61	0.49	0	1
<i>Extreme Agencies</i>	0.77	0.42	0	1
<i>Previous Presidential Attention</i>	2.32	1.02	1	8
<i>OIRA Final Rule Review Time</i>	89.29	91.42	2	573
<i>Rule Complexity</i>	916.05	735.79	100	4,487
<i>Rule Significance</i>	0.40	0.49	0	1
<i>Lobbying</i>	22.14	24.92	5	178

**Table 2: Results for Large Dataset (Logit)**

<b>Variables</b>	<b>Partisan Hypothesis (1)</b>	<b>Extreme Agency Hypothesis (2)</b>	<b>Liberal Agency Hypothesis (3)</b>
<i>Previous Presidential Attention</i>	0.172** (0.0863)	0.167 (0.0859)	0.157 (0.0862)
<i>OIRA Final Rule Review Time</i>	0.00720*** (0.00156)	0.008*** (0.002)	0.008*** (0.002)
<i>Rule Complexity</i>	0.000289** (0.000139)	0.0003 (0.0001)	0.0002 (0.0001)
<i>Lobbying</i>	3.250*** (1.002)	3.195*** (1.000)	3.238*** (1.012)
<i>Rule Significance</i>	1.008*** (0.202)	0.993*** (0.204)	0.913*** (0.202)
<i>Bush Administration</i>	-0.769*** (0.152)	-0.735*** (0.146)	-0.835*** (0.151)
<i>President-Agency Ideology Mismatch</i>	-0.172 (0.150)		
<i>Extreme Agencies</i>		0.276** (0.138)	
<i>Liberal Agencies</i>			0.576*** (0.158)
<i>Conservative Agencies</i>			-0.172 (0.167)
Constant	0.602** (0.255)	0.344 (0.258)	0.474 (0.260)
Observations	1,457	1,457	1,457
McKelvey and Zavoina's $R^2$	0.313	0.316	0.334

Note: Robust standard errors in parentheses.

\*\*\*  $p < 0.01$ , \*\*  $p < 0.05$ .

**Table 3: Results for Small Dataset (OLS)**

<b>Variables</b>	<b>Partisan Hypothesis (4)</b>	<b>Extreme Agency Hypothesis (5)</b>	<b>Liberal Agency Hypothesis (6)</b>
<i>Previous Presidential Attention</i>	-2.518 (1.678)	-2.264 (1.608)	-2.375 (1.570)
<i>OIRA Final Rule Review Time</i>	0.033 (0.022)	0.0291 (0.0217)	0.0277 (0.0215)
<i>Rule Complexity</i>	-0.095** (0.044)	-0.106** (0.0431)	-0.115** (0.0454)
<i>Lobbying</i>	0.207** (0.099)	0.191** (0.0955)	0.194** (0.0933)
<i>Rule Significance</i>	5.713 (3.813)	5.508 (3.725)	5.661 (3.763)
<i>Bush Administration</i>	-3.975 (3.914)	-6.232 (3.878)	-5.679 (4.159)
<i>President–Agency Ideology Mismatch</i>	-1.593 (3.504)		
<i>Extreme Agencies</i>		11.76*** (3.140)	
<i>Liberal Agencies</i>			13.18*** (3.381)
<i>Conservative Agencies</i>			8.404 (4.948)
<i>Constant</i>	22.22*** (5.782)	14.34*** (4.948)	14.67*** (4.896)
<i>Observations</i>	115	115	115
<i>R<sup>2</sup></i>	0.175	0.231	0.240

Note: Robust standard errors in parentheses.

\*\*\*  $p < 0.01$ , \*\*  $p < 0.05$ .

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