President Obama's new executive order (and the two somewhat related memoranda) largely re-emphasizes long-standing themes and, on the whole, recommits the Administration to the type of balanced, analysis-based decisonmaking it has attempted to pursue—perhaps imperfectly, but admirably—during its first two years.

Much of the order simply repeats, clarifies, or modestly expands language from President Clinton's Order 12866 (signed in 1993 and still operational today). For example, the call to reach out to affected parties in section 2(c) of the Obama Order just echoes section 6(a)(1) of the Clinton Order. And the exhortation for agencies to coordinate more, in Obama's section 3 (as well as in the compliance memo's third directive), has obvious roots in Clinton's section 4.

Obama's Section 6, on retrospective reviews, has drawn the most attention. The idea is not new: many presidents have called for one-time or ongoing reviews of existing rules; theoretically, under Order 12866, agencies already should have long ago designed permanent programs for periodic review of significant regulations. What is new about Obama's Order is now these review programs are again an administrative priority instead of a hypothetical goal. Importantly, reviews are also now more clearly balanced, grounded in data, and transparent. Section 6 calls for agencies not just to eliminate old, ineffective, and burdensome rules, but also to "expand" rules that may be "insufficient" to achieve regulatory objections—instead of a one-way ratchet, the review has as much potential to expand a regulation's scope or increase its stringency. Such determinations must now be based on "what has been learned," another crucial change. Together with Section 1 (which stated that agencies "must measure, and seek to improve, the actual results of regulatory requirements"), this standard embodies a model of evidence-based decisionmaking: the government should monitor a rule's actual costs and benefits on a continual basis and adjust the rule accordingly.

Finally, retrospective analyses are now to be "released online," giving the public more opportunity to understand and comment on agency decisions. Indeed, online transparency is emphasized generally in the order (as well as in the compliance memo). Again, the goal of public participation is not new, but this order recommits to the principal and adds details to formerly vague pronouncements. The same is true of the very important additions on distributive analysis: whereas Clinton's Order merely tacked terms like "equity" on to list of benefits, Obama's Order explains that agencies may separately consider and qualitatively discuss equity, dignity, fairness, and distribution. Other clarifications include that "best science" (Clinton's § 1(b)(7)) should be "objective" (Obama's § 5), and that flexible regulatory alternatives (Clinton's § 1(b)(3)) should include warnings, default rules, and informational tools (Obama's § 4).

The order and memoranda are not perfect. For example, the regulatory flexibility memo requires agencies to explicitly justify in writing all decisions not to create special small business exemptions: assuming agencies do not just comply perfunctorily, the public might question whether small businesses really deserve more analysis and protection than other vulnerable subgroups or distributive impacts. And the order does not accomplish every possible reform: notably, it does not tackle the problem of agency inaction head on (though arguably retrospective review could indirectly address that issue). But, on the whole, the order is another positive step toward a balanced, effective regulatory review structure. What remains to be seen is how precisely the order will be implemented by this and future administrations, and what role the public and stakeholders want to play in shaping that implementation.