The role of Regulatory Impact Analysis (RIA) in regulatory decision making

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Nathan Frey
Regulatory Strategies and Solutions Group, LLC
Setting the Context

- As regulators, how do we know when our policy decisions are the optimal ones?
  - How does the public know?

- Regulations are controversial and always involve winners and losers
  - How to justify decisions, gain public support for difficult decisions in the face of controversy?

- Regulations are not static – they reflect political will of the party in power
  - Bridging the gap between politics and policy = legitimacy
Regulatory Impact Analysis (RIA)

- A framework to systematically evaluate regulatory policy options and guide for arriving at the optimal solution

- An analytical document but more broadly a system or process to question policy proposals

- Goal: ensure that regulations maximize net benefits to society
Elements of the RIA Process

The process of Regulatory Impact Analysis

- Definition
- Identification
- Assessment
- Consultation
- Design

- Policy objectives
- Policy context
- Regulatory options
- Costs
- Benefit
- Other impacts
- Involving stakeholders
- Enforcement, compliance and monitoring mechanisms

After RIA is prepared: DECISION MAKING

What should RIA imply?

Regulatory Impact Assessment

- Knowing the effects of a new regulation **before** it is enacted
- Considering all options, including non regulatory alternatives
- Should be **transparent** (public consultation)
- Should be supported by **evidence** (qualitative and/or quantitative)
- It should be prepared **early** in the regulatory process
Key Considerations

- Screening methods
- Proportionality
- Data collection and data quality
- Measuring benefits and costs
- Who’s in charge?
- Sanctions for non-compliance
Screening Methods

- Establishing criteria for what regulations should be subject to RIA
  - Economic impact thresholds
  - Interagency concerns
  - Budgetary considerations
  - Disproportionate compliance impacts
  - Novel policy/legal considerations
Data Collection and Quality

- Usefulness of RIA depends on the quality of the data used to evaluate the impact.

- Ad hoc strategies for data collection often fail on grounds of both timeliness and cost.

- RIA requires that data collection be tailored to the issues related to the specific regulation intended for review.

- Two types of data collection:
  - Direct: specific survey designed and implemented to attain a precise objective (costs).
  - Indirect: data previously collected for another objective (benefits).

- Harnessing the potential of consultation as a source for data and a means to verify its quality.
Measuring Benefits and Costs

- Benefits and costs and always relative
  - Characterizing the baseline accurately is paramount

- Benefits often harder to measure
  - A benefit to whom?
  - DON’T REINVENT THE WHEEL!
  - Look to literature review

- Costs are often more objective
  - Regulated community often the best data source
  - How to know when these costs are accurate?
  - What about opportunity cost?
Ensuring RIA serves its purpose

- Assessment of RIA quality by RIA oversight body
  - Consequences for non-compliance?

- Public release of draft and final RIA for consultation

- Effective incentives for regulators – carrots vs sticks
  - Performance evaluations/appraisals for officials
  - Budgetary considerations
  - Parliamentary oversight?
What RIA is NOT

- A “one size fits all” formula.
- Analysis for analyses’ sake
- A way to justify policy decisions that have already been taken
- Paralysis by analysis – sometimes more complexity is not better
- A “free pass” – regulators are still accountable to the citizenry for policy outcomes
RIA Implementation

- RIA is a flexible and adaptable tool
  - Its underlying analytical approach should always:
    - Be proportional to the situation
    - Follow consistent guidance

- Practical guidance exists for practitioners that can be applied in many contexts
  - “RIA Light”
  - APEC methodological guide
  - OMB Circular A-4
  - BRRA handbook?

- Public consultation to inform RIAs is critical
  - Allows best available information to inform policy
  - Enhances transparency of regulatory decisions
Key Implementation Considerations

- Achieving a robust RIA process takes time
  - Implementing from scratch requires cultural change, building capacities and an incremental approaches

- High level political and bureaucratic support
  - Well understood roles, rules and methods within government
  - Centralized review, dedicated RIA unit

- Integrated into existing decision-making processes

- Transparency and predictable processes for stakeholder consultation and involvement in options framing
RIA and Public Consultation

- What should regulators do when lacking data on costs and benefits of policy choices?
  - PUBLIC CONSULTATION can fill the gaps

- Design questions/inquiries to stakeholders based on the information desired

- If data is used from consultation, tell how this information was generated and how it was used

- Transparency about data quality
  - Be clear about assumptions and caveats about limitations
Key Steps of the Consultation Process

“Let’s hold off making a decision until we have even more information we don’t really need.”
Tools of Public Consultation

- Informal consultation
  - Conducted at discretion of regulators (ad-hoc)

- Circulation of regulatory proposals for public comment
  - Presentation of concrete proposals
  - More systematic, inclusive

- Public notice and comment
  - Standardized, formal presentation of draft regulations and supporting documents

- Public Hearings
  - Usually supplements other consultation procedures

- Advisory bodies
  - Technical groups advising on concrete policy issues
Implementation Considerations

- Is the public consultation mandatory? Are guidelines available on how to conduct public consultation?

- How open is the consultation? Can anyone participate?

- Has the consultation been launched at a stage when there is still scope to influence the policy outcome? Is the consultation conducted at the beginning of the regulatory proposal or at a later stage of the process?

- Is the consultation exercise of sufficient duration for interested parties to submit considered and meaningful responses?

- Will results of the consultation be made public?

- Does a process exist to monitor and oversight the quality of the consultation process?

Key Takeaways

- Many effective models for designing RIA systems
  - Core elements common to all approaches

- RIA quality depends on data availability, quality

- Availability and quality of data on costs and benefits are enhanced by public consultation

- Guidance for regulators is essential for effective RIA and public consultation

- BRRA’s is there to make your job as regulators EASIER, not more difficult
Making it work: “RIA Light” for developing countries

Development and implementation of methodologies to improve the quality of regulations and regulatory impact assessments for enhancing market openness ensure transparency and promote economic growth

OMB circular A-4
https://www.whitehouse.gov/omb/circulars_a004_a-4/

OECD Background Document on Public Consultation

OECD checklist for regulatory decision making