The Biden Administration is considering changes to how OIRA, the “regulatory czar,” operates. There’s one simple fix the Administration should make. OIRA core function is cost-benefit analysis But the rules establishing OIRA’s jurisdiction contain an error that should make an economist blush: using nominal rather than real (inflation-adjusted) dollars.

This means that OIRA is now required to review a myriad of rules it never would have bothered with in the past. Congress carried the same figure into the Congressional Review Act, but that’s a harder to fix. The OIRA problem is easier.

Here’s the problem. OIRA is supposed to review “major” rules, which are defined as those having projected annual costs greater than $100 million. That figure goes back to Ronald Reagan’s original 1981 executive order tasking OIRA with reviewing proposed regulations. Reagan, in turn, got it the number from a 1978 executive order by Jimmy Carter. Carter’s order required a regulatory analysis for all regulations have “an annual effect on the economy of $100 million or more.” The same number stayed in place in subsequent revisions of OIRA’s authority. It apparently never occurred to anyone that $100 million in 1978 was a lot more money than $100 million today.

This is very much like the problem of bracket creep that used to plague tax law. The tax code establishes tax brackets, but those didn’t use to be adjusted for inflation. As a result, someone making the same amount of money one year in terms of purchasing power could find themselves in a higher tax bracket the following year, just because of inflation.

Congress eventually got around to fixing the problem. We can at least fix the OIRA side of the problem.

In the OIRA setting, it turns out that bracket creep has been really severe. A hundred million dollars today is equivalent to only $22 million in 1978 money, when Carter first picked the number. Or, if we prefer to use Reagan as the starting point, today’s $100 million is $31 million in 1981 dollars.

To put it another way, in current dollars, the threshold shouldn’t be $100 million. It should be either $449 million if we use Carter as the baseline, or $322 million if we use Reagan. Interestingly, a proposed regulatory reform by Senator Portman that got a lot of attention, the SMART Act, would have said a $500 million threshold for imposing additional analytic requirements and would have built in a CPI adjustment. OIRA should be equally “smart.”

Even that adjustment may not be enough. If “significance” is based on how important something is in the context of the whole economy, we also need to adjust for economic growth. Using the 1981 Reagan order as the baseline reveals how big the problem is. Nominal GDP (unadjusted for inflation) has grown by factor of seven since 1981. That's a very big change, and it has very big implications for the OIRA baseline.

As a share of the economy, $100 million in 1981 is equivalent to $700 million today. Or in reverse, today's $100 million equals about $14 million in 1981. The 1981 OIRA would have considered a regulation costing only $14 million a year to be far too trivial to bother with.

The result of this unintentional bracket creep is that OIRA is reviewing a lot of regulations that are really too minor to be worth its time. This leaves OIRA with less time to spend on more important regulations. It also increases the amount of analysis and paperwork that EPA or another agency has to do in order to prepare for OIRA review. And it adds unnecessary delay. In other words, it's just pointless red tape that exists only because someone made a dumb mistake and forgot to factor in inflation and economic growth. Since the current rule really stems from an order of Bill Clinton's, the problem should have been corrected then.

Ideally, this glitch should be fixed by executive order. If that's not feasible, OIRA should establish a streamlined review process for rules costing between $100 million and an updated figure, which should be at least $300 million. Arguably, if we adjust for both inflation and economic growth, the number should be $700 million (using the Reagan baseline) or $1 billion (using the Carter baseline). Either way, we could cut red tape that exists only by inadvertence. *

Folks, this is not rocket science. It's a dumb mistake, and it ought to be fixed.