

Articles

# Regulating Financial Institutions: The Value of Opacity

## [Record]

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## Abstract

In this article, we explore a question of institutional design: What characteristics make a regulatory agency effective? We build on the growing body of administrative law literature that rigorously examines the impacts of transparency, insulation, and related administrative processes. We argue that there are certain benefits associated with an opaque and insulated structure, including the ability to regulate unfettered by partisan politics and majoritarian preferences. We examine Canada's financial institution regulator, the Office of the Superintendent of Financial Institutions (OSFI), whose efficacy in part explains the resilience of Canada's banking sector throughout the financial crisis of 2008. In particular, OSFI operates in a "black box", keeping information about the formation of policy and its enforcement of this policy confidential. With its informational advantage, it is able to undermine the possibility that banks will collude or rent-seek. Our conclusions regarding the value of opacity cut against generally held views about the benefits of transparency in regulatory bodies.

## Résumé

Dans cet article, nous explorons une question d'organisation institutionnelle : quelles sont les caractéristiques d'une agence de réglementation efficace ? Nous nous appuyons sur une littérature croissante, en droit administratif, portant sur les impacts de la transparence, de l'isolation, et d'autres processus administratifs reliés. Nous soutenons qu'il y a certains avantages liés à une structure opaque et isolée, à savoir la capacité de réglementer sans l'influence des politiques partisans ou des préférences majoritaires. Nous examinons l'organisme de réglementation des institutions financières du Canada, le Bureau du surintendant des institutions financières (BSIF), dont l'efficacité explique en partie la résilience du secteur bancaire canadien lors de la crise financière de 2008. Le BSIF travaille à huis clos ; il ne dévoile ni le processus d'élaboration de ses politiques, ni sa manière de les appliquer. Cet avantage au niveau de l'information lui permet de diminuer les risques de collusion et de recherche de rente de la part des banques. Nos conclusions sur la valeur de l'opacité font contrepoids aux positions généralement admises concernant les avantages de la transparence au sein des organismes de réglementation.

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