



Submitted via Regulations.gov

June 20, 2023

Richard L. Revesz

Administrator

Office of Information and Regulatory Affairs

Re: Proposed Revisions to Circular A-4, Regulatory Analysis (Docket No. OMB-2022-0014)

Dear Administrator Revesz:

The Center for Science in the Public Interest (CSPI) writes in support of the Office of Information and Regulatory Affairs (OIRA) recent proposed revisions to Circular A-4 (“proposed revisions”).¹ CSPI is pleased that the Biden administration is taking these important steps to modernize the regulatory review process. The application of the proposed revisions to regulatory development will benefit consumers by ensuring that calculated costs and benefits accurately take into account the values and needs of impacted individuals and communities.

While we support the proposed changes, we urge the administration to take additional steps to reduce reliance on cost-benefit analysis by encouraging agencies to forgo or disregard such analysis where action is needed to fulfill a statutory mandate. While the estimated economic impact of a rule may be useful in some contexts, not every critical policy decision is best treated as if it were just another day at the market.

CSPI, “Your Food and Health Watchdog,” is one of the oldest independent, science-based consumer advocacy organizations in the country. For more than 50 years, we have worked to improve how the nation eats and to hold government and corporations accountable, leveraging scientific and regulatory expertise to advocate for sensible policy solutions in food safety, nutrition, and public health. Through this work, we have helped to create some of the basic consumer protections that underpin our food system, including the Nutrition Facts Label and ingredients disclosures on packaged foods, calories on restaurant menus, school nutrition standards, and the elimination of *trans* fat from the food supply.

We applaud the Biden administration for following through on its commitment to improve and strengthen the rulemaking process, including regulatory analysis. While the OIRA, the government’s central authority reviewing executive branch regulations, should serve as a catalyst for sensible policy development, this office has too often instead served as a barrier to creating policies designed to protect the public, often doing the bidding of large corporations.

¹ See OMB, Request for Comments on Proposed OMB Circular No. A-4, “Regulatory Analysis,” 88 Fed. Reg. 20,915 (Apr. 7, 2023).

Updating this process is important for ensuring the sound review of policies now under development by federal agencies that could benefit our food system. For example, the U.S. Department of Agriculture is currently considering rules limiting *Salmonella* contamination in raw breaded poultry products, which have been associated with numerous outbreaks, the U.S. Food and Drug Administration is contemplating a system for conveying key nutrition information on the front of food packages, and the Treasury Department has proposed requiring calories, allergens, and ingredients information on alcoholic beverages. These rulemakings are similar in that they contemplate benefits, such as reduced chronic disease rates, that may only occur multiple years in the future, and some could potentially have disparate impacts on affected communities.

CSPI therefore supports the changes to the regulatory process outlined in the proposed update to Circular A-4, which bring modern economic analysis to this review and reflect the realities of how costs and benefits are experienced in the real world.

Of particular importance are the modernization of the discount rate used by OIRA and the incorporation of income weighting, part of a renewed focus on distributional effects. We also support expansion of the geographic scope of analysis to include policies' global impact, and the helpful guidance on incorporating impacts that are difficult to quantify.

Discount Rate

The proposed reforms update the discount rates currently recommended to analyze regulatory costs and benefits. Thoughtful consideration of the discount rate is essential to correctly evaluate the impact of rules, particularly for policies whose benefits will be felt far in the future. This category includes many policies central to CSPI's work that will reduce chronic disease by improving nutrition, or those that promote health and welfare by creating a more sustainable food system. CSPI supports the proposed update to Circular A-4 directing agencies to use a 1.7% discount rate rather than the current, outdated discount rates of 3% ("social rate of time preference") and 7% ("average rate of return to capital").² A lower discount rate in effect retains the value of money over a longer period of time, producing future benefits that are more valuable and making rules that confer those benefits more cost-beneficial.

The proposed provisions put forth a 1.7% discount rate, using the same formula that was used to arrive at the current 3% discount rate when Circular A-4 was originally adopted in 2003. The rate is lower now because it is estimated based on returns on 10-year treasury securities, which have declined since 2003.³ We also support the proposed simplification that would use the 1.7% rate for all calculations, discarding the original Circular A-4 recommendation that agencies calculate a second default discount rate of 7%, which was meant to estimate "the opportunity cost of capital."⁴ The preamble to the proposal explains that knowing when to apply this rate has proven challenging because it is difficult to estimate how much capital will be displaced by any given rule.⁵ The proposed reforms still provide a means to account for opportunity costs when regulations displace or induce capital investments, using a "shadow price" to estimate the social

² OMB, Preamble: Proposed OMB Circular No. A-4, "Regulatory Analysis." <https://www.whitehouse.gov/wp-content/uploads/2023/04/DraftCircularA-4Preamble.pdf>

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

opportunity cost of an activity.⁶ This approach is reasonable and provides for a simplified discount rate that should be easier for agencies to administer.

The change to the discount rate is also important because it will help to accurately value rules that reduce the burden of chronic disease. In general, the U.S. morbidity and mortality burden has shifted away from acute conditions (e.g., many infectious diseases) towards conditions that are either chronic (e.g., diabetes, cardiovascular disease) or in which the condition occurs many years after the exposure the regulation is designed to address (e.g., occupational cancer). It is critical that our regulatory processes stay abreast of those trends by accurately accounting for health benefits that accrue far in the future.

Distributional Consequences

The proposed reforms would require agencies to place more emphasis on analyzing the distributional consequences of regulations, allowing them to consider how the regulation may differentially impact specific groups. In particular, the revisions provide agencies with a standardized method to consider the weights to be assigned to various income groups affected by a regulation. This proposed approach takes into account the established economic principle of diminishing marginal utility, i.e. that an additional \$100 in value provided to a low-income individual generates a relative increase in welfare that is greater than if the same sum were offered to an individual with high income.⁷ This change will help to ensure the true benefits of the regulation to human welfare are more accurately calculated and thus that cost-benefit assessments take real-world conditions more fully into account.

Other Beneficial Changes

We also support other proposed changes to the guidance, including the expansion of the geographic scope of analysis to include global populations (“non-citizens residing abroad”). We affirm that the United States has an obligation to consider how the benefits and costs of our policies are felt across the globe. We also appreciate the policy’s description of how to identify, describe, and consider impacts that are difficult to quantify, such as human dignity, civil rights and liberties, or unknown safety risks not yet quantifiable by science. Failure to effectively account for those values in effect affords quantifiable economic values a privileged place in rulemakings that should also reflect broader societal values and priorities.

Reducing Over-Reliance on Cost-Benefit Analysis

The proposed revisions to the method used to calculate benefits and costs, while beneficial, do not answer fundamental questions about how policy decisions should be made. In general, agencies should be allowed to proceed with their statutory obligations handed down from Congress, without interference from conflicting mandates driven by economic considerations.

Many statutes do not expressly direct agencies to weigh the costs and benefits of actions needed to give effect to the will of Congress, and sound policy can be developed without a full-fledged economic analysis of its benefits and costs. For example, the USDA’s authorizing statutes direct

⁶ OMB, Draft for Public Review: Circular A-4, April 6, 2023. <https://www.whitehouse.gov/wp-content/uploads/2023/04/DraftCircularA-4.pdf>

⁷ OMB, Draft for Public Review: Circular A-4, April 6, 2023. <https://www.whitehouse.gov/wp-content/uploads/2023/04/DraftCircularA-4.pdf>

the agency to remove meat and poultry products from commerce if they are adulterated, irrespective of benefits and costs. In 1994, the USDA appropriately implemented this authority to ban ground beef contaminated with *E coli* O157:H7, shortly after a deadly outbreak took the lives of four children.^{8,9} In doing so, the agency did not first undertake the daunting task of considering whether the benefits of the move, such as preventing the deaths of multiple young children or restoring consumer confidence in the beef supply, outweighed the costs, such as additional investment in sanitation or recalls of contaminated beef. This decision to forgo cost-benefit analysis was appropriate considering the urgency posed by the risk, as well as the agency’s statutory direction from Congress to ensure the safety of the nation’s meat and poultry supply.

The current proposal acknowledges this need by stating that regulatory analysis “does not supplant any analytic requirements or other requirements set out in the statutes that authorize or require agency action.”¹⁰ It also urges policymakers to “exercise professional judgement” in identifying the importance of factors that cannot be quantified. We urge the administration to consider ways to further reduce over-reliance on cost-benefit analysis by providing further guidance to agencies on how to identify when a statutory mandate is incompatible with such analysis, such that the cost-benefit assessment can be passed over. Agencies also should be encouraged to proceed with regulations where such rules are needed to implement a statute, even where quantified and monetized benefits do not exceed quantified and monetized costs. Some benefits, even if difficult to quantify in dollar terms, are simply worth the investment.

Conclusion

CSPI appreciates these long overdue changes to Circular A-4 and strongly supports these revisions. Thank you for your time and attention to our comment.

Sincerely,

Sarah Sorscher, JD/MPH
Director of Regulatory Affairs
Center for Science in the Public Interest

Peter Lurie, MD/MPH
President
Center for Science in the Public Interest

⁸ Murano EA, Cross HR, Riggs PK, The outbreak that changed meat and poultry inspection systems worldwide. *Anim Front*. 2018 Oct; 8(4): 4–8. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6951920/>

⁹ Bottemiller, H. Looking Back: The Story Behind Banning E. Coli O157:H7. *Food Safety News*. September 14, 2011. <https://www.foodsafetynews.com/2011/09/looking-back-in-time-the-story-behind-banning-ecoli-o157h7/>

¹⁰ OMB, Draft for Public Review: Circular A-4, April 6, 2023. <https://www.whitehouse.gov/wp-content/uploads/2023/04/DraftCircularA-4.pdf>