

# Modernizing Regulatory Review Actions

By: Susan E. Dudley | April 7, 2023

## In brief...

Long-awaited and substantive changes to federal regulatory practices have been announced, as the White House released a new executive order, two revised circulars, and associated guidelines.

In a much-anticipated response to President Biden’s day-one Memorandum on Modernizing Regulatory Review, the White House announced on Thursday substantive changes to federal regulatory practices. With legal scholar Richard Revesz confirmed as administrator of the Office of Information and Regulatory Affairs in December, the administration’s long-awaited regulatory policies are detailed in several documents posted yesterday afternoon and published in today’s Federal Register. This commentary briefly describes these documents, which include a new executive order, two revised circulars, and associated guidelines.

## [Executive Order Modernizing Regulatory Review](#)

President Biden’s new [executive order](#) supplements and reaffirms longstanding practices established in [Executive Order 12866](#) (1993) and [Executive Order 13563](#) (2011). While subsequent presidents have reaffirmed these orders, this is the first to amend them since 2007 (those amendments have since been rescinded). Section 1 amends the definitions in E.O. 12866 by increasing the threshold for defining an “economically significant” regulation under Sec. 3(f)(1)—those subject to more rigorous analysis of benefits and costs—from \$100 million to \$200 million. It also clarifies Sec. 3(f)(4) and requires the OIRA administrator to affirmatively approve the designation of regulations as significant under that section.

Section 2 directs both agencies and OIRA to be more proactive in engaging communities that have been under-represented in rulemaking (see related OIRA guidance below). Section 3 directs OMB to work with the Council of Economic Advisors and other departments to issue a revised Circular A-4 governing regulatory impact analysis (see summary below) by April 6, 2024. Simultaneous with the publication of the new executive order, Administrator Revesz published a [memorandum](#) to executive departments and agencies regarding its implementation.

## [Draft Revisions to Circular A-4](#)

OMB Circular A-4, first issued in 2003, provides guidance for regulatory impact analysis. The circular has a long pedigree; it was based on previous guidelines issued in the Clinton and Reagan administrations, and it benefited from public comment and peer review. Continuing that practice, the Biden administration's [proposed revisions](#) will be open for public comment for 60 days.

At 91 pages, the proposed circular is almost twice as long as the 2003 version. OMB also provides a 34-page [preamble](#) to the circular. The draft circular amends the guidance on defining the scope of an analysis, identifying the need for regulation, measuring benefits and costs, and treating uncertainty. It includes a section on conducting distributional analysis and lowers the default discount rates used to put benefits and costs into present value terms.

## [Draft Revisions to Circular A-94](#)

OMB Circular A-94, last revised in 1992, provides agencies guidance on conducting benefit-cost analysis and cost-effectiveness analysis of Federal spending programs. Like Circular A-4, it [proposes revisions](#) to discount rates and is open for public comment for 60 days.

## [Guidance on Public OIRA Meetings](#)

Executive Order 12866 created a mechanism by which members of the public could meet with OIRA when a regulation was under review. Pursuant to Section 2 of President Biden's new Order, OIRA is seeking public comment on reforms to those meetings, which it hopes [will](#)

*facilitate meeting requests from individuals and groups that have not historically requested such meetings, including those from underserved communities, improve the efficiency and effectiveness of the regulatory review process, and increase transparency around the E.O. 12866 meetings process, while treating all members of the public—no matter their resources or viewpoints—consistently and fairly.”*

Together, these announcements comprise the most significant regulatory actions of the Biden administration. Those interested in regulatory policy and practice will be poring over the details of the new circulars and guidance in the coming weeks. Comments on each proposal are due Tuesday, June 6, 2023.