

August 28, 2023

Hon. Richard Revesz
Administrator
Office of Information and Regulatory Affairs
U.S. Office of Management and Budget
Washington, D.C. 20503

Dear Administrator Revesz:

As former presidents of the Society for Benefit-Cost Analysis or editors of the *Journal of Benefit-Cost Analysis*, we write to offer our support for your efforts to update Circular A-4 (OMB [2023](#)), and to encourage you to ensure final changes are based on widely accepted principles and objective evidence. Writing as individual experts on benefit-cost analysis and not in any official capacity for SBCA or our respective institutions, we appreciate that you solicited public comment on the draft revisions and enlisted a panel of experts to provide peer review. Several of us have offered more detailed comments through those channels.¹

Circular A-4 (OMB [2003](#)) provides guidance to agencies for considering the impacts of alternative regulatory actions as required by Executive Order 12866 (Clinton [1993](#)). That order directs agencies to “promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people.” It further directs agencies to “assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating,” and to “select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach” (Clinton [1993](#), Sec.1.a). It recognizes that all significant impacts should be considered, although some may be difficult to quantify or monetize.

E.O. 12866 and Circular A-4 have proven durable across different presidential administrations² because they are based on objective and nonpartisan principles and are designed to provide information to policymakers on an important dimension of policy decisions—the efficiency of different approaches to achieving policy goals. It is appropriate to update the Circular to reflect new data and advancements in economic understanding of regulatory impacts over the last 20 years, and we commend OMB for its efforts. However, to retain the Circular’s acceptance and stability, it will be important not to stray from widely accepted principles and methods.

¹ The [peer review panel](#) included three former SBCA presidents (Blomquist, Cordes, and Viscusi) and two former JBCA editors (Blomquist and Farrow). The public comments submitted by those signing this letter are available at <https://www.regulations.gov/docket/OMB-2022-0014>, and include Dudley [OMB-2022-0014-0129](#), Kenkel [OMB-2022-0014-3910](#), Robinson [OMB-2022-0014-3921](#), and Whittington [OMB 2022-0014-0143](#).

² OMB issued the current Circular in 2003; it reinforced and expanded upon the Clinton administration’s “Economic Analysis of Federal Regulations Under Executive Order No. 12866” (OMB [1996](#)), which in turn had its basis in the Reagan (OMB 1988) and the George H. W. Bush (OMB 1992) administrations’ “Regulatory Impact Analysis Guidance.”

The proposed revisions contain worthwhile updates, but also some guidance that deviates from the best available current economic science. To the extent that the Circular is perceived as not being neutral, or as embedding practices that favor certain policy preferences, it risks the stability of the longstanding bipartisan support for regulatory impact analysis.

Regulatory impact analysis *informs* policy decisions; it does not *determine* them. Benefit-cost analysis (BCA), an important component of regulatory analysis, applies an economic lens to examine the welfare differences among alternative policies (Arrow et. al. [1996](#)). “It promotes efficiency by identifying the set of feasible projects that would yield the largest positive net benefits to society” (Weimer [2018](#), 2383). Policymakers must consider other factors when making regulatory decisions, including legal constraints, political viability, distributional impacts, practicality, etc., but BCA provides “useful information for decision makers and the public[...], even when economic efficiency is not the only or the overriding public policy objective” (OMB [2003](#), 2).

To retain the integrity of regulatory impact analysis and OMB’s role in providing a “dispassionate and analytical second opinion” (Obama [2009](#)) on agency actions, we offer the following recommendations.

General Principles

While the draft Circular contains much important and useful information, it is very long, dense, and repetitive. As a result, important points are often obscured, and requirements are at times unclear. We recommend that OMB shorten and reorganize the Circular to emphasize key points and to ensure the analysis is evidence-based, clearly describes the data sources and assumptions used and their justification, and explores the implications of associated uncertainties.

As scholars and practitioners, we recognize that conducting regulatory impact analyses is a complex undertaking. Experience over the past several decades has led to important insights into best practices, including what is feasible and most likely to ensure high quality analyses given available resources and data.

As OMB documents in its annual reports to congress on the benefits and costs of federal regulations, however, agencies do not estimate the benefits and costs of most major regulations, despite the requirements of E.O. 12866. The revised Circular, in many instances, calls for analysis that is more sophisticated and complex than the original Circular (Morgenstern et. al. [2023](#), 4, 8, 11). Agencies have limited staff and other resources, often operating under tight mandated deadlines, and the available data are often sparse or inconsistent. Without significantly more training and resources, it is unlikely that most agencies will have the capacity to develop estimates of benefits and costs consistent with the draft guidance.

Further, agencies operate under different statutory authorities and face different constraints resulting from litigation, so it is impossible for a single guidance document to cover all this variation. To ensure that the guidance is both useful and used, establishing and enforcing general

principles seems preferable to attempting to cover all possible scenarios. Clearer, more streamlined guidance that emphasizes transparency in the presentation of alternatives, assumptions, and uncertainties, and their impact on estimated impacts would likely yield more meaningful analysis that could be more readily communicated to the officials responsible for setting policy and the public.

Behavioral Science Insights

We agree that advances in behavioral sciences since 2003 merit attention in the revised Circular. These advances provide insights into how organizations and individuals are likely to respond to policies, and can assist in both regulatory design and analysis (Robinson & Hammitt [2011](#); Thaler and Sunstein [2009](#)). However, only rarely do they alone provide a sufficient justification for regulation. The draft provides too much latitude for identifying a “compelling public need” (Clinton [1993](#), Sec.1.a) based on paternalistic assumptions that people do not act in their own interest. At a minimum, before presumed behavioral biases can be used to justify overriding individual choices, OMB should require agencies to “provide evidence that individuals behave irrationally (and do not learn) in the specific situation covered by the proposed regulation” (Dudley et. al. [2017](#), 192; Viscusi & Gayer [2016](#); Weimer [2017](#)). More generally, there should be a behavioral transfer test (Viscusi and Gayer [2016](#)) to justify the applicability of any behavioral assumptions used in the analysis.

Geographic Scope

Regarding effects that fall on people outside the United States, the draft Circular offers several “contexts [in which] it may be particularly appropriate to include effects experienced by noncitizens residing abroad in your primary analysis” (OMB [2023](#), 10). In those cases, we agree that agencies should provide a separate analysis of “the effects experienced by U.S. citizens and residents” (OMB [2023](#), 10). Disaggregating the effects so that decisionmakers understand which are experienced within and outside the United States can be very informative. However, the draft Circular A-4 provides an exception to preparing an analysis showing the benefits and costs on U.S. citizens and residents in circumstances when “such effects cannot be separated in a practical and reasonably accurate manner, or that the separate presentation of such effects would likely be misleading or confusing” (OMB [2023](#), 10). This vague and open-ended exception should be removed from the guidance. Transparency regarding where the likely benefits and costs will fall geographically is essential for understanding distributional impacts, as well as for complying with statutory mandates (Fraas et. al. [2023](#)).

Distributional Impacts

The 2003 Circular mentions distributional impacts only briefly, and the guidance provided in sections 10 (a) – (d) of the revised draft Circular will provide agencies valuable direction for informing policymakers of the effects of proposed policies on different groups. However, section 10 (e) on distributional weights is not appropriate to include in the guidance. There are no widely

accepted principles, nor is there professional consensus, for making such interpersonal utility comparisons, and, as Harberger (1978) observed, “the implications for policy of a thorough and consistent use of distributional weights turn out to be quite disturbing.”

Moreover, before agencies can put weights on the benefits and costs that accrue to different groups, they must be able to estimate their distribution, including in the baseline (counterfactual). In most cases, agencies do not have the experience or tools to do this. Few, if any, regulatory analyses provide data on the distribution of both costs and benefits based on income or other socioeconomic factors (Robinson, Hammitt, and Zeckhauser, 2016).

Rather than encouraging agencies to embed in their quantitative BCAs weights that reflect particular normative frameworks and are difficult to understand and interpret, Circular A-4 should advise them to develop the expertise required to present information on distributional impacts as clearly as the evidence allows—as discussed in sections 10 (a) – (d) of the Draft—to allow policymakers to make normative policy decisions that take the incidence of regulatory benefits and costs into account. The most recent issue of the *Journal of Benefit-Cost Analysis* offers concrete suggestions for taking distributional impacts into account in regulatory impact analysis. In particular, OMB should consider Kniesner and Viscusi (2023) on valuing mortality risk reductions using equal value per statistical life (VSL) estimates and Cecot (2023) on the importance of considering the incidence of costs.

Discount Rate

The draft Circular directs agencies to use a default rate of 1.7% to discount all effects for up to 30 years into the future, and lower rates thereafter. However, the appropriate rate for discounting future benefits and costs is far less settled in the economic literature than such a precise figure warrants (Fraas et. al. 2023; Morgenstern et. al. 2023; Burgess & Zerbe 2013; Moore et al 2013). Given the complexity of the subject and the important effect discount rates have on estimates of benefits and costs, the Circular should not direct agencies to use a single number. Instead, it should provide a range of perhaps two or three rates and direct agencies to use the range to demonstrate the sensitivity of the results to the choice of discount rate.

Conclusion

As President Obama’s Circular A-4 Primer states:

Important goals of regulatory analysis are (1) to establish whether federal regulation is necessary and justified to achieve a social goal and (2) to clarify how to design regulations in the most efficient, least burdensome, and most cost-effective manner (OMB 2011, 2).

While some of the proposed revisions to Circular A-4 are worthwhile, other aspects of the draft undermine these goals such that policymakers would not have important information on the welfare effects of regulatory actions. While policy choices will certainly be influenced by

considerations and values other than net benefits and economic efficiency, trying to embed those values in the analysis risks losing the transparency and integrity of regulatory impact analysis, which for decades has served as a ballast across administrations with widely varying normative policy objectives.

Circular A-4 was grounded in the philosophy and principles of E.O. 12866 and has earned bipartisan acceptance across several very different administrations. Some of the proposed changes depart from widely accepted practices, principles, and evidence, and could be perceived as favoring particular policy preferences. If that is the case, a future administration with a different set of policy preferences would likely replace this circular with another designed to support its preferred policies, leading to wide swings in regulatory actions. We believe that after 20 years, revisions to Circular A-4 are appropriate and timely. However, we also believe that the Circular should have bipartisan support and not be subject to revision with each incoming administration.

Respectfully,

Arnold Harberger (SBCA 2009)

Lynn Karoly (SBCA 2017)

Richard Zerbe (SBCA 2010)

Donald Kenkel (SBCA 2018)

Glenn Jenkins (SBCA 2011)

Clark Nardinelli (SBCA 2019)

Joseph Cordes (SBCA 2012)

Craig Thornton (SBCA 2020)

David Weimer (SBCA 2013)

Dale Whittington (SBCA 2021)

Lisa Robinson (SBCA 2014)

Thomas Kniesner (JBCA 2019-present)

W. Kip Viscusi (SBCA 2015)

William Hoyt (JBCA 2014-2019)

Susan Dudley (SBCA 2016)

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