

**EPN Comments on Proposed OMB Circular No. A-4,  
“Regulatory Analysis”**

Docket No.: OMB-2022-0014

June 6, 2023

Founded in 2017, the [Environmental Protection Network](https://www.epn.org/) (EPN) harnesses the expertise of more than 550 former Environmental Protection Agency (EPA) career staff and confirmation-level appointees from Democratic and Republican administrations to provide the unique perspective of former regulators and scientists with decades of historical knowledge and subject matter expertise.

EPN strongly supports the action undertaken by the Office of Management and Budget to improve regulatory impact analysis (RIA). The proposed revisions to RIA guidelines through amendments to Circulars A-4 and A-94 are long overdue. They will serve as the foundation for essential improvements in the quality of analysis as well as the efficiency and equity of regulatory actions undertaken.

The proposed guidelines represent the state-of-the-art in economic theory and practice in regulatory policy. The revisions address a full complement of policy analytic issues that have been handled in an *ad hoc* manner for decades. Addressing and integrating them in this systematic, comprehensive fashion provides a firm foundation upon which agencies and departments can conduct the highest quality of analysis and maximize the degree to which evidence-based regulatory actions are promulgated. This foundation will enable vast improvements in the well-being of Americans in general and particularly the well-being of households and communities that are under-resourced and bear a disproportionate burden of risks and costs associated with pervasive pollution/negative externalities.

OIRA is seeking comment on a wide array of topics and analytic issues in this proposal. In lieu of addressing the full complement of issues raised, EPN will focus its response on three matters of analytic importance—discounting, distributional impacts, and treatment of uncertainty and non-monetized benefits and costs. In EPN’s judgment, these three revisions will bring about the greatest advancements in the application of policy analysis to the regulatory development process.

### **Discounting Future Benefits and Costs**

The issuance of revised guidance on discounting is a great leap forward in the advancement of reality-based regulatory analysis. It liberates agency management and analysts to present data on benefits and costs that reflect the real long-term social costs of capital and the net benefits of proposed regulatory action. It will remove the imposed distortion arising from outdated rates while grounding the practice of discounting in a rigorous theoretical foundation. The principles that drove previous guidelines are retained while a new 30-year timeframe undergirds a new single rate of discount—1.7%—reflecting capital market conditions averaged over the past 30 years.

The effect will be the presentation of net benefit estimates that accord with societal valuation of future benefits and costs, particularly those accruing well into the future. These include long-term health effects such as cancer and long-term ecological system effects such as those associated with the changing climate. EPN recommends that the guidelines be revised to encourage the preparation of sensitivity analyses which

reflect these very long-term effects. Such revisions should encourage the presentation of long-term intergenerational effects at rates below the 1.7%. We recommend running sensitivity analyses at levels substantially below 1.7% commencing at the 20<sup>th</sup> or 30<sup>th</sup> year of the analysis. Such alternatives will better reflect the potential range of rates of time preference pertinent to those future generations. The sensitivity analysis would allow for assessing the effects of differential rates of time preference across generations on current net societal benefit estimates. Illustrations of this type are frequently instructive in a “what would I have to believe in order to conclude” context.

## **Distributional Effects**

In a similar manner to OIRA’s discounting revisions, we applaud its substantially expanded and refined guidelines on distributional effects. These are timely and potentially impactful in enabling a more efficient and equitable regulatory policy. Over many years, guidelines, and administrations, the consideration of distributional effects has been de rigueur but largely immaterial. These revised guidelines are far more inclusive, detailed, and rigorously grounded in theory and, hopefully, practice. EPN asserts that expanded and systematized distribution analysis can serve as both a driver of improved equity in the regulatory process as well as the potentially improved efficiency of that process. The latter will arise from the ability of agencies and departments to focus on the most highly exposed/impacted communities and landscapes and thus generate expansion of net benefits per dollar of both public and private investment.

The revised guidance on characterizing and estimating the distribution of benefits and costs across population subgroups is focused on the individual rule at issue. EPN recommends that these guidelines be amended to encourage analysts, where possible, to characterize baseline *cumulative risk* for the most highly exposed subpopulations. This baseline would enable the estimation of incremental exposures and the estimation of benefits associated with the incremental reductions in exposures associated with proposed rulemakings. The objective here is to be more granular with respect to highly exposed subpopulations in terms of exposure reductions from a population-specific cumulative exposure/risk baseline. Generation of such estimates over broad regions and multiple populations would be extremely difficult to achieve. However, focusing on subpopulations known to have high baseline exposures and risks could be achievable over time. These would be revealing with respect to the true benefits of proposed rulemakings for such populations. The underlying assumption here is that these subpopulations, by virtue of sustained cumulative exposures, have minimal to no residual “margins of safety” in a risk assessment context. Hence, they are much closer to a threshold of effect with respect to relevant adverse health outcomes. These guidelines can help foster agencies and departments to build and refine geo-specific cumulative risk/exposure models and data mapping, which will enable more granular distributional analysis over time.

The proposed guidelines take commendable steps in advancing consideration of distributional effects in the regulatory analysis process. In both spirit and substance, the guidelines establish the critical importance of distribution and equity in evaluating regulatory options. EPN suggests that two forward-looking and mutually reinforcing steps be undertaken:

- First, a “status of the science” in the assessment and decision application of distributional effects based on the body of applied work to date. In tandem, a guidance document is needed to provide perspective about how to apply this body of science to near- and midterm regulatory analysis.

- Second, a detailed interdisciplinary<sup>1</sup> research plan should be developed to build out the capacity of a distributional analytic system. This system should incorporate and reflect the theoretical and empirical rigor the topic warrants.

The first is intended to capture and apply the substantial base of analysis that has already been undertaken. The second will provide the framework and context by which many in the research arena can coalesce and build out the distributional analytic system, which this critically important subject demands. The integration of the two will inform both present applications and evidence to date in a dynamic framework for future analyses.

OIRA and its leadership should function as catalysts—reaching within and outside of government—to initiate these steps, enlisting and empowering others<sup>2</sup> to undertake the requisite research.

### **Uncertainty and Non-monetized Benefits**

The proposed guidelines incorporate a substantial discussion of the treatment of non-monetized benefits as well as uncertainty in the incidence of effects that themselves bear upon benefit and cost estimations. The discussion of these effects largely tracks the 2003 guidelines with a more comprehensive and updated documentation. This should advance consideration of these effects in the analysis of major rulemakings going forward. This advancement, however, is proceeding from a very modest baseline. The effect of this low level of explicit presentation and consideration of these effects has been to discount such effects to the point where their functional decision value tends toward zero. The historic adage has been “a non-monetized benefit or cost is functionally zero value benefit or cost.” The guidelines could be amended to call for more explicit inclusion wherein the default expectation is a focused consideration of these effects.

The guidelines emphasize the value of threshold and break-even analyses which render estimates of what values associated with such effects would shift the sign of the net benefits estimate. The guidelines could incorporate or make reference to examples of how such analyses could be conducted with respect to rulemaking type or form of risk. In so doing, the guidelines could foster more rule-specific application of these tools so as to refine and expand the breadth of their application. As in the case of distributional analysis noted above, this would help to bring the consideration of non-monetized effects and uncertainty forward. This would validate and affirm their consideration as a matter of standard practice. As investments are expanded to conduct such analysis, substantial improvements and validation will be realized. Research investments in the capacity of agencies and departments will, as a corollary, need to be buttressed and expanded to achieve such gains.

The treatment of uncertainty with respect to very long-term effects, such as those associated with climate-related ecosystem effects, should be built out further. In particular, examples of such analyses should be referenced and/or included for agency analysts to better understand and replicate. These types of effects are examples of uncertain outcomes which can dramatically affect regulatory analysis. There need to be

---

<sup>1</sup> In addition to economists, the research plan should include medical experts, toxicologists, and other specialists to contribute emerging science and data on cumulative risks and related information to inform analysis.

<sup>2</sup> We see this as a collaboration of federal experts (EPA, Council of Economic Advisors, National Research Council, etc.) and academia, think tanks, various nongovernmental organizations, and philanthropy.

standardized frameworks and methods for conducting this research and we need to start now to build this capacity.

Again, EPN commends OIRA for its proposed improvements and makes these suggestions to promote continuous advancements strengthening the field of federal regulatory impact analysis.

*These comments were prepared by Robert Wolcott, with the assistance of Robert Brenner, Roy Gamse, Karl Hausker, Ronnie Levin, Richard Morgenstern, Michael Shapiro, June Taylor, and George Wyeth, on behalf of EPN.*