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June 6, 2023

Richard L. Revesz

Administrator, Office of Information and Regulatory Affairs

The White House Office of Management and Budget

Re: Request for Comments on Guidance Implementing Section 2(e) of the Executive Order of April 6, 2023 (Modernizing Regulatory Review) (Docket ID No. OMB-2022-0011); Request for Comments on Proposed OMB Circular No. A-4, “Regulatory Analysis” (Docket ID No. OMB-2022-0014)

Dear Administrator Revesz:

Thank you for issuing this critical proposed update to Circular A-4 and the “Draft Guidance Implementing Section 2(e) of the Executive Order of April 6, 2023 (Modernizing Regulatory Review)” regarding EO 12866 meetings. We are pleased that the Biden administration is taking important steps to modernize the regulatory process. A strong and modern regulatory system will protect consumers, workers, public health, and the environment; empower members of marginalized communities; and enable swift action to address the climate crisis. The administration’s proposals are the most important and impactful set of reforms to the regulatory process in decades. These reforms will make the rulemaking process more efficient, inclusive, accessible, accountable, and effective at protecting the public. We support many aspects of this proposed update to Circular A-4 and draft guidance on EO 12866 meetings and urge the implementation of additional changes that build on this framework as soon as possible.

Draft Guidance Implementing Section 2(e) of the Executive Order of April 6, 2023 (Modernizing Regulatory Review)

The EO has several common themes: first, the importance of broadening public participation, actively seeking out different perspectives to include in the regulatory process; second, considering the nonquantifiable impacts of rules; and third, taking seriously the distributional and equity impacts of rulemaking.

EO 12866 meetings process

We support the changes under consideration outlined in the draft guidance. In particular, “offering periodic and accessible public training on effective participation in E.O. 12866 meetings, in collaboration with agencies and civil society organizations so as to reach communities that might not have historically participated in the E.O. 12866 meeting process before,” is critical. OIRA should also reach out directly to community leaders, in addition to civil society organizations, to provide training on how to submit meeting requests through www.reginfo.gov and prepare for EO 12866 meetings. For example, OMB should also ensure

that information is provided in a culturally and linguistically appropriate manner to assist limited English proficient individuals to meaningfully participate in the process including providing translated information about how to request and participate in OMB meetings and provision of oral language assistance during meetings. OMB should also ensure that meetings are accessible to persons with disabilities including physical accessibility (if meetings occur in person), virtual accessibility (for online meetings), and that materials are available in alternative formats.

Further, OIRA must ensure that communities and community members have the technological ability to comment, including having adequate web access, and take steps as necessary to ensure communities have the tools to request and attend meetings. Technological ability includes providing translated information and oral interpretation as well as accepting comments in non-English languages. It also includes ensuring screen readers and other adaptive aids can be seamlessly integrated with OMB's systems by people with disabilities.

Finally, regarding information OIRA is considering collecting and disclosing in the future, we support the inclusion of this information and recommend the addition of additional information. For example: regarding "narrative descriptions accompanying meeting requests," OIRA should require "meeting requesters to provide a brief summary of the views they anticipate presenting;" regarding "primary meeting requesters," OIRA should make "individuals or organizations that the primary meeting requester may be representing at the time of the request" a required field; and regarding "the collection of some information from meeting requesters for internal purposes," conflict of interest disclosures should be submitted by meeting requesters, and should be made public. These measures will further transparency and accountability in the rulemaking process.

Circular A-4

Cost-Benefit Analysis

While regulatory cost-benefit and economic analysis have played an increasingly significant role in federal rulemaking since the adoption of EO 12866 and Circular A-4, the increasing reliance on regulatory cost-benefit analysis has led to numerous criticisms that it routinely results in agencies blocking, weakening, or delaying regulations which in turn results in regulations that are less effective at protecting the public. We support the long overdue reforms proposed by the Biden administration to Circular A-4 that improve regulatory cost-benefit analysis.

Discount Rate

We support the proposed update to Circular A-4 directing agencies to use a 1.7% discount rate rather than the current and outdated 3% discount rate. Thus, this is a much-needed reform that improves regulatory cost-benefit analysis by ensuring that agencies are more accurately counting the benefits of regulations to the public, rather than allowing regulatory costs to count more than benefits as is currently the case under Circular A-4. We also support changes to simplify regulatory cost-benefit analysis by removing the requirement that agencies analyze costs and benefits using an alternative 7% discount rate that further skews the analysis against benefits to

the public in favor of costs to corporations. We support agencies using only the 1.7% discount rate when conducting regulatory cost-benefit analysis.

Distributional Analysis

In addition, we support proposed reforms to Circular A-4 that would address a major flaw in regulatory cost-benefit analysis by requiring agencies to place more emphasis on analyzing how new regulatory protections benefit certain segments of the population more than others, including low-income, minority, or underserved populations. It is well-known that new regulatory protections make our society more fair, equitable, inclusive, and just by disproportionately benefiting certain populations. Yet under Circular A-4, regulatory cost-benefit analysis downplays or ignores this entirely. It is critical that OMB adopt the proposed reforms requiring analysis of distributional effects to ensure that regulatory cost-benefit analysis is accurately reflecting the disproportionate benefits that new regulatory protections provide to low-income, minority, or underserved populations.

Redefining “Economically Significant”

The proposed reforms to redefine the threshold for regulations subject to OIRA regulatory review under section 3(f)(1) of EO 12866 are a welcome and long overdue change that we support. There have long been concerns over the slow pace of OIRA regulatory review, which have often led to delays of new regulatory protections. This is due in part to the fact that the threshold triggering OIRA review, currently whether a regulation exceeds \$100 million dollars in annual impact, has never been updated or adjusted for inflation since its adoption in 1993. As a result, the volume of regulations that OIRA reviews has increased, which has created an OIRA regulatory review process that is significantly less efficient and effective.

The proposal to raise the threshold for OIRA regulatory review from \$100 million dollars to \$200 million dollars, and increase the threshold every three years, will streamline OIRA review by reducing the volume of regulations that OIRA reviews and thereby freeing up OIRA staff time and resources to expedite reviews in order to avoid lengthy delays as has occurred in the past. We encourage OMB to consider potential reforms in the future to make the OIRA review process even more streamlined and efficient by reducing the review periods permitted under EO 12866 from the current 90 days to 60 days or shorter.

Conclusion

We appreciate these long overdue changes to Circular A-4 and EO 12866 meetings and strongly support these revisions in conjunction with our recommendations to improve these processes. Thank you for your time and attention to our comment.

Sincerely,

American Federation of Teachers
Americans for Financial Reform Education Fund
Center for Progressive Reform

Center for Reproductive Rights
Center for Science in the Public Interest (CSPI)
Clean Water Action
Coalition for Sensible Safeguards
Consumer Action
Consumer Federation of America
Consumers for Auto Reliability and Safety
Economic Policy Institute
Friends of the Earth
Government Information Watch
International Union, UAW
Institute for Agriculture and Trade Policy
League of Conservation Voters
Jobs to Move America
National Consumers League
National Disability Rights Network (NDRN)
National Employment Law Project
National Health Law Program
National Partnership for Women & Families
Oceana
Public Citizen
Union of Concerned Scientists
United Steelworkers
Waterkeeper Alliance