

Submitted via Regulations.gov

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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Thank you for issuing this critical proposed update to Circular A-4 and the "Draft Guidance Implementing Section 2(e) of the Executive Order of April 6, 2023 (Modernizing Regulatory Review)" regarding EO 12866 meetings. Americans for Financial Reform Education Fund (AFREF) is 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, the financial system, the broader economy, and the environment; empower and benefit members of marginalized communities; and enable swift action to address multiple intertwined crises including the stunning growth of racial and economic inequality, the lack of affordable and safe housing, and climate change.

AFREF is a nonpartisan and nonprofit coalition of more than 200 civil rights, consumer, labor, business, investor, faith-based, and civic and community groups. Formed in the wake of the 2008 crisis, we are working to lay the foundation for a strong, stable, and ethical financial system – one that serves the economy and the nation as a whole. Our vision is a world where the rules that govern the economy center human needs and help all families and communities to flourish. Our mission is to fight to eliminate inequity and systemic racism in the financial system in service of a just and sustainable economy. For more on our work, please visit our website at <https://ourfinancialsecurity.org>.

We applaud the Biden administration for following through on its commitment to modernizing regulatory review with proposals to improve and strengthen the rulemaking process, including regulatory analysis. These reforms will make the rulemaking process more efficient, inclusive, accountable, and effective at protecting the public.

Ensuring that the regulatory process is responsive to the public is critical to our work. The U.S. Office of Information and Regulatory Affairs (OIRA) regulatory review process has often served

as a barrier to, rather than as a catalyst for, regulations that are designed to protect the public. As the President's [Memorandum](#) on Modernizing Regulatory Review (Memorandum) points out, the regulatory review process has historically: disregarded important values like human dignity, equity, and the interests of future generations; failed to account for a wide range of regulatory benefits and is insufficiently attentive to distributional concerns, thus inappropriately burdening disadvantaged or marginalized communities; discouraged stronger protections instead of proactively promoting them; imposed costly delays; and been marked by a lack of basic transparency that is necessary for upholding the democratic values this administration champions.

AFREF supports the changes to the regulatory process outlined in the proposed update to Circular A-4 and draft guidance on EO 12866 meetings, but there is more to be done. 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. An important part of actively seeking out different perspectives to include in the regulatory process is reforming the EO 12866 meetings process. EO 12866 meetings are meetings that members of the public can request with OIRA officials about regulations under OIRA review.

AFREF appreciates how the draft guidance on EO 12866 meetings values public participation. In order to ensure effective and durable public participation in EO 12866 meetings, the Biden administration must take all necessary and appropriate action to bolster public involvement in this important democratic process. We will now comment on how this can be accomplished by responding to questions posed by this draft guidance.

Section B, Question 1: How will OIRA provide information to facilitate the initiation of meeting requests from potential participants who have not historically requested such meetings, including those from underserved communities?

AFREF agrees that the strategies under consideration outlined in the draft guidance are good and necessary. 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. All training

must be offered in languages other than English consistent with EO 13166, accessible by persons with disabilities, and scheduled at times that work with the community leaders' and civil society organizations' schedules. Meeting people where they are at is critical to accomplishing this goal, and education for people on the ground who are directly affected by the regulation at issue is key. Further, OIRA must ensure that communities and community members have the technological ability to comment, including web access, and take steps as necessary to ensure communities have the tools to request and attend meetings.

Section C, Question 1: What efforts will OIRA take to ensure access to those “who have not historically requested” 12866 meetings?

AFREF supports this part of the guidance.

Section D, Question 1: How will OIRA discourage duplicative oral communications in the E.O. 12866 process?

AFREF believes this part of the guidance is good.

Section E, Question 1: How will OIRA approach the Modernizing E.O.'s call to consider “consolidation of meetings by requester, subject matter, or any other consistently applied factors deemed appropriate to improve efficiency and effectiveness”?

AFREF agrees that EO 12866 meeting consolidation is a good practice that will bring like-minded individuals to the table collectively while conserving OIRA's time, energy, and resources and promoting efficiency in the rulemaking process.

However, to better facilitate consolidation, in addition to the suggestions outlined in this question, we suggest that OIRA create an online forum, perhaps as a part of www.reginfo.gov, where similarly minded commenters can coordinate in virtual “groups.” As we state throughout our comment, it is important to meet people where they are.

Furthermore, it is imperative that OIRA make accommodations for commenters who do not speak English as their first language or are commenters with disabilities.

Section F, Question 3: What additional information is OIRA considering collecting and disclosing in the future?

AFREF supports the inclusion of this information. However, there are areas for improvement, and we recommend the addition of the following information to add to the list provided in the guidance. For example:

- 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.

- Regarding “meeting request types,” this is a good idea and the organization types are appropriate. Other categorizations should include coalitions, collectives, and public and private educational institutions.
- Regarding “lobbying status,” OIRA should ask meeting requesters to indicate whether they are registered lobbyists.
- Regarding “the collection of some information from meeting requesters for internal purposes,” all of the suggestions listed should be implemented. There should also be conflict of interest disclosures submitted by meeting requesters. This information, including conflict of interest disclosures, should be made public. These measures will further transparency and accountability in the rulemaking process.

We thank you for your consideration of our suggestions to improve the EO 12866 meeting 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. AFREF supports the long overdue reforms proposed by the Biden Administration to Circular A-4 that improve regulatory cost-benefit analysis.

Currently, the use of regulatory cost-benefit analysis to support federal agency rulemaking under EO 12866 is deeply flawed in several respects. First, agencies are required to analyze regulatory costs and benefits using discount rates that were established in Circular A-4 and are now long outdated and overdue for revision. In practice, this means that agencies have been significantly understating the very real benefits that new regulatory protections provide to the public due to the fact that those benefits accrue in the future rather than immediately. In other words, the use of a discount rate when computing the costs and benefits of federal regulations leads agencies to place less weight on long-term regulatory benefits to the public while placing more weight on the short-term regulatory compliance costs to corporations. The higher the discount rate, the more regulatory cost-benefit analysis puts a thumb on the scale against strong regulations that protect the public and in favor of weak regulations that are corporate-friendly.

AFREF supports 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. The 1.7% rate is based on the most current and sound economic evidence and adjusts the discount rate based on the same calculation that was used to arrive at the 3% discount rate when Circular A-4 was originally adopted in 2003. Thus, this is a much-needed reform that improves regulatory cost-benefit analysis by ensuring that agencies are 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. AFREF also supports 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. As the proposed reforms make clear, the 7% discount rate is based on the problematic “opportunity cost of capital” concept that does not accurately reflect, and routinely overstates, the costs to industry of complying with new regulations. AFREF supports agencies using only the 1.7% discount rate when conducting regulatory cost-benefit analysis.

In addition, AFREF supports 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 the distributional consequences of regulations. It is well known that new regulatory protections often disproportionately benefit certain segments of the population more than others, in particular low-income, vulnerable, minority, or underserved populations. Nonetheless, such disproportionate benefits are not currently reflected or incorporated in regulatory cost-benefit analysis under Circular A-4. In short, regulatory cost-benefit analysis in its current state often ignores or minimizes how new regulatory protections can make our society more fair, equitable, inclusive, and just by disproportionately benefiting certain populations. It is critical that OMB adopt the proposed reforms requiring analysis of distributional effects to ensure that regulatory cost-benefit analysis accurately reflects the disproportionate benefits that new regulatory protections may provide to low-income, vulnerable, 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 is a welcome and long overdue change that AFREF supports. There have been longstanding concerns over the pace of OIRA regulatory review, particularly regarding lengthy reviews that exceed the review periods allowed under EO 12866, leading to delays of new regulatory protections. This is due in part to the fact that OIRA review is triggered if the impact of the regulation exceeds \$100 million dollars annually, a threshold that 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

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

Sincerely,
Americans for Financial Reform Education Fund