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June 6, 2023

Richard L. Revesz  
Administrator  
Office of Information and Regulatory Affairs  
Office of Management and Budget  
1800 G Street, NW, 9th Floor  
Washington, DC 20503

Submitted via: [www.regulations.gov](http://www.regulations.gov)

**RE: Proposed Revisions to Circular A-4, Regulatory Analysis, and Circular A-94, Federal Spending (Docket Nos. OMB-2022-0014 & OMB-2023-0011)**

Dear Administrator Revesz:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 230 national organizations to promote and protect the civil and human rights of all persons in the United States, and the undersigned organizations, we write in support of the Office of Information and Regulatory Affairs' recent proposed revisions to Circular A-4<sup>1</sup> and Circular A-94.<sup>2</sup> The Leadership Conference is the nation's oldest, largest, and most diverse civil and human rights coalition and provides a powerful unified voice for the many constituencies we represent. Our coalition understands that reform of the regulatory process can advance the most important civil rights issues of our day. Efforts to make the process more accessible and inclusive to all people will in turn lead to a more open and just society — an America as good as its ideals.

The proposed revisions are much-needed updates that will help the government make policies that respond to the needs and realities of people in this country. The regulatory process has profound impacts on our lives — from the quality of the air we breathe, to our access to health care, to job conditions and protections, to data and technology privacy, to advancements in democracy, equity, and civil and human rights, to name just some of its implications.

<sup>1</sup> See OMB, Request for Comments on Proposed OMB Circular No. A-4, "Regulatory Analysis," 88 Fed. Reg. 20,915 (Apr. 7, 2023), <https://www.federalregister.gov/documents/2023/04/07/2023-07364/request-for-comments-on-proposed-omb-circular-no-a-4-regulatory-analysis>. This comment addresses both the proposed revisions to Circular A-4 and its preamble.

<sup>2</sup> See OMB, Public Comment on Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs, 88 Fed. Reg. 20,913 (Apr. 7, 2023), <https://www.federalregister.gov/documents/2023/04/07/2023-07179/public-comment-on-guidelines-and-discount-rates-for-benefit-cost-analysis-of-federal-programs>.

As advocates, part of our work is to ensure that government regulations reflect the lived experience of the communities we represent. However, the process has historically been difficult for these communities to access, navigate, and contribute to in a truly meaningful and inclusive way. And the costs and benefits certain regulations may impose on systemically marginalized groups have often been ignored, or not properly and inclusively considered. The proposed revisions to Circulars A-4 and A-94 take into account the effects of regulations on the broad range of groups our coalition represents, including people of color, low-income people, children, older adults, people with disabilities, LGBTQ people, women, immigrants, students, workers, and so many others whom our society has often forced through law and policy to live at the margins.

Our coalition strongly believes that regulations must further civil and human rights for all and must address discrimination that is entrenched in systems and institutions. One such example is the proposed regulations implementing Section 1557 of the Affordable Care Act, a landmark regulatory effort to address discrimination in health care. Another example are OMB's proposals to update race and ethnicity statistical standards, which are designed to help ensure that the statistical policy governing how we measure the demographic composition of our population accurately reflects continued racial and ethnic change in the United States.

Our organizations routinely weigh in on proposed regulations that have profound impact on the issues and communities we care about. Our effectiveness as advocates relies on our ability to contribute to this process in a meaningful way, and for our contributions to be appropriately considered. We believe the revisions represent a much-needed update to OIRA's review of proposed regulations and spending. The proposals bring modern economic analysis to this review and reflect the realities of how costs and benefits are experienced in the real world. And importantly, the proposals will ensure that the diversity and lived experience of people and communities most impacted are accounted for in the regulatory process. Of particular importance are the incorporation of income weighting, the renewed focus on distributional effects, and the modernization of the discount rate used by OIRA.

## **I. Incorporation of Income Weighting**

We commend OIRA's recognition of an obvious truth: that the gain or loss of one dollar has very different consequences for a low-income worker than it does for a millionaire. However, current standards treat the economic costs or benefits of a regulation the same for all people, regardless of income. Without income weighting, federal regulators may undervalue the benefits and harms a regulation may have on lower-income people, who are disproportionately people of color, people with disabilities, LGBTQ people, women, and other protected classes due to longstanding systemic discrimination.

Research shows that a person's status as a member of a community that has historically faced discrimination does not only result in explicit bias and associated costs, but also hidden costs to those communities. For example, people of color routinely encounter structural barriers that limit their economic potential.<sup>3</sup> People with disabilities face a range of out-of-pocket expenses as a result of

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<sup>3</sup> Stuart Wolpert, "UCLA-led study reveals 'hidden costs' of being Black in the U.S.," UCLA Newsroom (Mar. 8, 2021), <https://newsroom.ucla.edu/releases/hidden-costs-of-being-black>.

pervasive ableism that increase the risk of poverty.<sup>4</sup> LGBTQ people were hit harder financially and faced higher rates of unemployment than non-LGBTQ populations following the economic downturn caused by the COVID-19 pandemic.<sup>5</sup> Incorporating income weighting would help federal regulators more accurately understand the true costs and benefits of proposed regulations and thereby achieve more equitable results.

Requiring agencies to consider how their actions will impact people in the real world is common sense. We support OIRA's proposal of a method by which agencies can more accurately measure the true costs and benefits of regulations.

## II. Focus on Distributional Effects

For similar reasons, we support OIRA's emphasis that agencies should consider distributional effects in conducting their benefit-cost analyses — that is, how regulatory actions will have different impacts on different groups. As outlined above, we are deeply familiar with the ways in which benefits and costs are not spread evenly across communities, including those that have been historically disregarded or subjected to discrimination. To that end, we applaud OIRA's specific recognition that “promoting distributional fairness and advancing equity” and “protecting civil rights and civil liberties or advancing democratic values” are causes that might spur the need for regulatory action. Additionally, OIRA has made clear that any evaluation of the distributional effects of a regulation must be considered in the context of “inequitable conditions that exist in the baseline,” which will help to account for systemic racism and advance equity.

It is impossible to accurately measure regulatory impact without also considering structural inequities that disproportionately impact certain groups. Health impacts, for example, often hit communities of color or people with disabilities harder than others, but current cost-benefit comparisons may not reveal the true implications for these groups. Recent studies found that America's Black communities experienced an excess of 1.6 million deaths compared with the White population during the last two decades as a result of deep societal inequities.<sup>6</sup> The staggering rate of lost years of life comes with an economic toll, with the cost to society estimated in one study at hundreds of billions of dollars.<sup>7</sup> Latino, Native American, Asian, Pacific Islander, multiracial, and other people of color also experience greater economic burden because of society's failure to achieve equity. Lack of access to health care, education, jobs and fair wages, and housing similarly have economic consequences for these groups. Additionally, those with multiple systemically marginalized identities may be even more impacted by certain policy: For example, an older

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<sup>4</sup> “The Extra Costs of Living with a Disability in the U.S. - Resetting the Policy Table,” National Disability Institute (Oct. 2020), <https://www.nationaldisabilityinstitute.org/reports/extra-costs-living-with-disability/>.

<sup>5</sup> Sharita Gruberg and Michael Madowitz, “Same-Sex Couples Experience Higher Unemployment Rates Throughout an Economic Recovery,” Center for American Progress (May 5, 2020), <https://www.americanprogress.org/article/same-sex-couples-experience-higher-unemployment-rates-throughout-economic-recovery/>.

<sup>6</sup> Akilah Johnson, “Black communities endured wave of excess deaths in past 2 decades, studies find,” The New York Times (May 16, 2023), <https://www.washingtonpost.com/health/2023/05/16/black-communities-excess-deaths/>.

<sup>7</sup> *Id.*

adult who is also Limited English Proficient (LEP), or a person of color with a disability, may face compounded economic costs because of the intersection of these identities and associated bias.

The regulatory process must take into account these contextual considerations when examining how different groups of people may be impacted by regulatory action. For example, a rule lowering standards for vehicles could worsen air quality and increase the risk of asthma and other respiratory disease. This could in turn harm the health of communities of color, which are often located near highways due to the legacy of transportation discrimination. Federal agencies should be required to rethink rules that have such concentrated negative impacts. Additionally, they must take into consideration how generations of systemic discrimination inform the impact of rulemaking on certain communities.

Compounding this is the reality that people who have resources like capital, both economic and social, are often better equipped to benefit from disruption and change, whereas people without these resources cannot. Focusing on distributional effects is an important way of pressure-testing theoretical benefits and costs to make sure that, in the real world, they are not benefiting those who need them least and costing those who can least afford to pay. Evaluations of regulatory alternatives should describe the magnitude, likelihood, and severity of impacts on particular groups. And the hard data is not the only thing that matters — agencies must make an effort to examine potential costs and benefits that are harder to quantify, like how improvements in diversity, civil rights, and human dignity can improve the quality and longevity of life.

### **III. Modernization of the Discount Rate**

Finally, we support OIRA's proposal to modernize the assessment of future costs and benefits by lowering the discount rates. Many important policies may require immediate investments but reap long-term benefits. For example, access to early childhood education or child care can affect earning potential over the course of a person's life, and school nutrition programs may lead to longer-term health and education benefits. Requirements for disaggregated demographic data will inform policy that has long-term implications on the provision of funds and services for communities and can reveal discrimination and disparities in outcomes over time. Similarly, preventative health care, like regular cancer screenings and dental checkups, may lead to lower long-term health care costs. Access to stable and affordable housing may create enduring positive effects on job, health, and education stability. Finally, regulatory reforms related to our justice system and justice-involved people may impose costs and benefits years after the policies are enacted.

Modern policy making should fully and accurately account for longer-term benefits and costs, but the existing review process requires federal regulators to discount these future consequences. As a result, federal agencies may undervalue policies that impose present day costs even if they have substantial longer-term benefits. OIRA's proposal would empower federal regulators to put a higher value on the longer-term benefits and costs of federal regulations, so that the regulatory process will take into account how they play out over many years for the communities we represent.



For the reasons above, we strongly encourage the administration to finalize the proposed revisions to Circular A-4 and Circular A-94. The revisions represent a significant step towards a more inclusive interagency process that reflects the diversity and lived experience of people in this country. Fully implemented, these reforms have the potential to produce considerable improvements to the federal regulatory process, making it more effective, improving the quality of agency analysis, and bettering the lives of people in our communities.

Thank you for taking the time to consider our views and the impact these proposed revisions will have on the civil and human rights of those communities who have been historically left out of the regulatory process. Please do not hesitate to reach out to Peggy Ramin, policy counsel for health and anti-poverty, at [ramin@civilrights.org](mailto:ramin@civilrights.org) with any questions.

Sincerely,

The Leadership Conference on Civil and Human Rights  
The Leadership Conference