

June 6, 2023

The Honorable Richard L. Revesz
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Filed at Regulations.gov

Re: Updates to Circular A-4: Regulatory Analysis
Docket ID: OMB-2022-0014¹

Dear Mr. Revesz:

Introduction

Business Roundtable has long advocated for a wide variety of reforms to improve the regulatory process, including improvements in how agencies conduct cost-benefit analysis (CBA or BCA).² We believe the cornerstone of sound, smart regulation is a careful and systematic evaluation of the costs and benefits of proposed and final rules, using the best science available, and clearly disclosing the results of this evaluation, including any inherent uncertainties. CBA is not a perfect tool. But by presenting a careful accounting of how a rule would likely affect innovation, and other economic considerations, a well-conducted CBA is the best way to ensure that the rule will provide net benefits to society.

We applaud the Biden Administration's reaffirmation of the core principles espoused in Executive Orders (EOs) 12866 and 13563, and we support the principles that underpin OMB's efforts to update Circular A-4, the primary document that instructs regulatory agencies on how to conduct a CBA. The longevity of these EOs is a testament to their importance and continued relevance, and we are pleased that this administration remains committed to requiring federal agencies to develop high quality analyses that accurately reflect the benefits, costs (including

¹ 88 Fed. Reg. 20915 (April 7, 2023).

² See Business Roundtable, "Using Cost Benefit Analysis to Craft Smart Regulation: A Primer and Key Considerations for Congress and Federal Agencies" (2014). Available at <https://s3.amazonaws.com/brt.org/archive/reports/BRT-Cost-Benefit-Analysis.pdf>.

opportunity costs), uncertainties, and overall economic impacts associated with proposed rules. OIRA's emphasis in revised Circular A-4 and the accompanying preamble on the importance of transparency, specifying appropriate baselines, focusing on areas of market failures, and conducting uncertainty and sensitivity analyses are all positive developments that are directionally consistent with Business Roundtable's "Smart Regulation" philosophy.³ Just as importantly, the administration's rejection of various fringe ideas that would weaken agency CBAs will better position federal agencies to develop higher quality rules that accomplish their regulatory intent while minimizing negative impacts on innovation, job creation, and economic growth.⁴

Business Roundtable is an association of more than 200 chief executive officers (CEOs) of America's leading companies, representing every sector of the U.S. economy. Business Roundtable CEOs lead U.S.-based companies that support one in four jobs and almost a quarter of GDP. Through CEO-led policy committees, Business Roundtable members develop and advocate directly for policies to promote a thriving U.S. economy and expanded opportunity for all Americans. As major employers in every state, Business Roundtable CEOs take seriously the responsibility of creating quality jobs with good wages. These leaders join with communities, workers and policymakers to build a better future for the nation and its people.

For 50 years, the membership of Business Roundtable has applied CEO expertise to the major issues facing the nation. Through research and advocacy, Business Roundtable advocates policies to spur job creation, improve U.S. competitiveness and strengthen the economy.

Executive Summary

Business Roundtable's comments focus on three main topics: (1) how agencies should discount future costs and benefits; (2) how agencies should account for the opportunity cost of capital; and (3) how agencies should assess the distributional impacts of proposed rules. In addition, our comments discuss several other topics that OIRA should emphasize or clarify as it works to finalize revised Circular A-4.

(1) The proposed discount rate of 1.7% is too low and should be raised.

³ For more on Business Roundtable's approach to Smart Regulation, see *Smart Regulation for the Innovation Economy* (May 2021) available at <https://www.businessroundtable.org/policy-perspectives/smart-regulation>.

⁴ The fringe ideas that OIRA chose not to include in revised Circular A-4 include (but are not limited to): rescinding Executive Orders 12866 and 13563; eliminating discount rates; using a 0% discount rate for long-term impacts; deemphasizing the importance of monetizing cost and benefits whenever possible (e.g., abandoning concepts such as VSL or QALY); and deemphasizing or ignoring input and/or meeting requests from regulated entities.

- OIRA's methodology, while consistent with previous efforts, suffers from two technical problems that result in a value lower than it should be.
 - The market for U.S. Treasuries is sometimes affected by "flight to safety" periods that can drive the Treasury Inflation Protected Securities (TIPS) rate to near-zero or even negative values that are well below any reasonable level for the social rate of time preference. These distortionary periods can be mitigated through the use of a 1% lower bound for the TIPS rate.
 - OIRA should use the personal consumption expenditures price index (PCE) rather than the consumer price index to estimate the value of an inflation-protect Treasury security for the period predating the advent of TIPS. The PCE, which is the Federal Reserve's preferred measure of inflation, more accurately captures how consumers' purchasing decisions are affected by price changes.
- Once these technical problems are addressed, the recommended discount rate rises to 2.25%.
- OIRA should also revisit the social discount rate every three years, subject to the above methodological tweaks, to ensure it accounts for any structural economic changes that may lead to a higher or lower social rate of time preference.

(2) As proposed, OIRA's approach to using a "shadow price" to account for the opportunity cost of capital is likely to result in agencies undervaluing this critical consideration.

- The revised Circular suggests that regulatory displacement of capital investment occurs infrequently, raising the likelihood that agencies may ignore or "assume away" opportunity costs. This is highly problematic, as the opportunity cost of capital is a key aspect of any regulatory impact assessment. Surveys and academic studies illustrate that opportunity costs, including lost investment and innovation, are both real and substantial.
- The range of shadow prices OIRA suggests that agencies consider (1.0 – 1.2) is lower than the range recommended by the key studies on which OIRA heavily relies. Business Roundtable believes that a credible, evidence-based shadow price would be between 1.2 – 1.3.
- While the extent to which regulatory compliance costs will result in capital displacement will depend on the specific regulation, experience suggests that compliance costs are far more likely to displace future investment than augment it. Accordingly, OIRA should emphasize the importance of agencies fully accounting for the potential for capital displacement in their cost estimates.

(3) The methodology OIRA uses to develop equity weights for assessing a regulation's distributional effects is flawed.

- OIRA's proposed equity weight of 1.4 depends heavily on an outlier study conducted 35 years ago that produced an estimate more than twice as high as other studies OIRA reviewed. Moreover, OIRA's calculation methodology ignores quality differences in the studies it reviews.

- We recommend that OIRA forego altogether the use of quantitative equity weights in agencies' distributional analyses. OIRA can and should encourage agencies to conduct distributional analysis more frequently and with more analytical rigor, but the current proposal is likely to produce misleading and potentially flawed results.

In addition to these three main topics, we make the following additional observations related to EO 14094, revised Circular A-4 and the accompanying preamble, and related efforts to promote Smart Regulation:

- **OIRA should hold independent regulatory commissions to the same standards as other federal agencies.** The Biden administration should require *all* agencies to conduct cost-benefit analysis of major rulemakings and to make this requirement explicit in the updated Circular.
- **OIRA should direct agencies to improve retrospective review planning.** Agencies rarely reassess existing regulations to determine whether they are still necessary, and revised Circular A-4 contains little new information on the importance of retrospective review. OIRA should require agencies to develop retrospective review plans for high impact rules *before* they are finalized.
- **OIRA should encourage agencies to perform “back of the envelope” analyses early in the rulemaking process.** Agencies should conduct a meaningful but less complex assessment of various policy options earlier in the regulatory process. Such analyses would encourage regulators to use CBA as a tool to inform a regulatory approach rather than to justify a regulatory decision that has already been made.
- **OIRA should direct agencies to target and engage relevant stakeholder groups early in the rulemaking process.** The Small Business Regulatory Enforcement Fairness Act (SBREFA) creates special outreach requirements for rules from designated agencies that are likely to have a significant impact on small entities. OIRA should encourage all agencies to experiment with an expanded SBREFA-like process that encompasses a broader set of rules and stakeholders to help identify optimal regulatory approaches.
- **OIRA should apply additional scrutiny to rules that rely heavily on ancillary benefits to achieve a positive benefit-cost ratio.** OIRA should advise agencies that, when a rule depends heavily on ancillary benefits to meet a cost-benefit test, they should carefully consider alternate regulatory approaches that produce positive net benefits in a more direct fashion, at a lower cost, and/or in a manner that is more consistent with statutory intent. Agencies should also continue to report ancillary benefits separately from direct benefits.
- **OIRA should require agency analyses to be presented in a more transparent and accessible fashion.** Regulatory impact assessments are often lengthy and highly complex. Final rules should contain a concise, standardized, and digestible summary table in the final rule that includes “bottom line” information on the most important costs and benefits and describes key assumptions, uncertainties and limitations. The accounting statement included in the revised Circular is an improvement over the previous version, but could be further improved.

- **OIRA should require agencies to develop proper baselines and coordinate with one another to avoid the potential for double-counting benefits across multiple rules.** Recent examples of regulatory overlap illustrate the need for OIRA to closely monitor the potential for regulatory duplication and ensure agencies follow the updated guidance in Circular A-4 regarding baselining and interagency coordination.

Discussion

At a recent event, OMB Deputy Administrator Dominic Mancini described Circular A-4 as “a combination of concepts, numbers, and advice.”⁵ This description is an appropriate framing device for our comments, as we generally support the conceptual changes OIRA has made in the redrafted Circular, but have suggestions for adjusting some of the numbers and advice it contains to enhance its value to regulatory agencies — and, ultimately, produce higher quality rules. For example, we conceptually support OIRA’s efforts to update the social discount rate, incorporate a shadow price of capital, and encourage agencies to conduct distributional analyses. However, we take issue with OIRA’s recommended numbers associated with each of these topics and offer suggestions for improving them, as in their current form they would result in agency regulations that look attractive “on paper” but ultimately would impose higher costs and lower net benefits for domestic stakeholders in the real world. In addition, we believe OIRA should strengthen its advice to agencies on a variety of other topics, including the importance of conducting retrospective reviews, using CBA to inform a regulatory approach rather than to justify a preordained path, and holding independent agencies to the same analysis standards as other agencies.

I. Discounting Future Costs and Benefits

A sound cost-benefit analysis requires the use of a proper discount rate that approximates the social rate of time preference. As stated in the Circular: “All future effects, regardless of what form they take (e.g., changes to consumption, health, environmental amenities, etc.), should be discounted to reflect changes in valuation of impacts across time. [B]enefits or costs that occur sooner are generally understood to be more valuable, all else equal.”⁶ By and large, economic literature agrees that individuals prefer to consume goods and services sooner rather than later.

Overall, we are generally supportive of using the TIPS rate (or, when TIPS is unavailable, the “market-implied” rate for an inflation-protected Treasury security) as a proxy for the social rate

⁵ GW Regulatory Studies Center; Society for Benefit-Cost Analysis (2023). *Revising Regulatory Review: Expert Insights on the Biden Administration’s Guidelines for Regulatory Analysis*. Panel 2: Expert Discussion on Circular A-4. Available at <https://regulatorystudies.columbian.gwu.edu/revising-regulatory-review-expert-insights-biden-administrations-guidelines-regulatory-analysis>.

⁶ Revised Circular A-4, p. 74.

of time preference.⁷ However, OIRA's proposed methodology has two technical problems that result in the proposed discount rate being lower than it should be. Business Roundtable strongly encourages OIRA to resolve these technical issues and update the social discount rate accordingly before finalizing the revised Circular.

Issue 1: Failure to correct for distortionary periods in its 30-year average.

While it is reasonable to conclude that the TIPS rate should approximate the social rate of time preference most of the time, there are periods during which the TIPS rate (or the "market-implied TIPS rate" in years prior to the establishment of TIPS) is not a reliable proxy for the social rate of time preference, and OIRA does not appear to have accounted for these periods in its calculations. Specifically, during periods of economic uncertainty, investors' fear of losing money can lead to a "flight to safety" in which heightened demand for Treasury securities drives the TIPS rate or market-implied TIPS rate below the level that reasonably could be used as a baseline discount rate — and occasionally even below zero (see Figure 1).

OIRA's inclusion of these "flight to safety" periods in its 30-year TIPS average has a material adverse effect on its suggested discount rate. Setting a TIPS rate floor when calculating the 30-year average would avoid the flight-to-safety distortionary effect. Business Roundtable believes that a floor set at 1% is a reasonable threshold, as it preserves the widely accepted notion that a dollar in hand today is worth materially more to U.S. households than a dollar a year from now. That floor would increase the 30-year average rate from 1.7% to 2.0%.

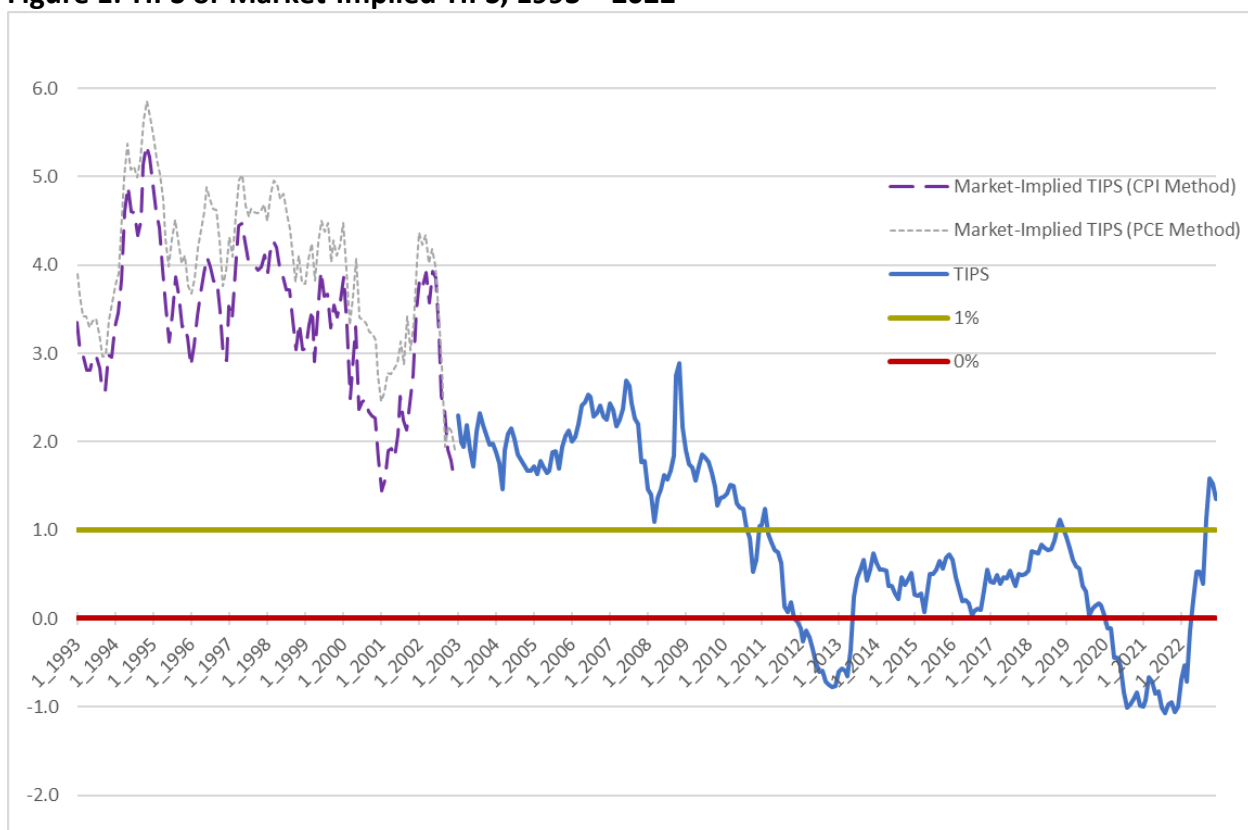
Issue 2: Use of CPI rather than PCE price index for calculating market-implied TIPS

Given that the TIPS rate is only available for the last 20 years of the 30-year period of analysis, OIRA deduces a market-implied TIPS rate by calculating the difference between the monthly average market yield for 10-year U.S. Treasury Securities and the year-over-year percent change in the monthly Consumer Price Index. However, given that the purpose of this exercise is to determine the social rate of time preference, OIRA should replace the CPI with the personal consumption expenditures price index (PCE). The PCE is a more appropriate measure of inflation for OIRA's purposes for three reasons: it offers more comprehensive coverage of goods and services, it better accounts for how consumers substitute some goods and services for others as prices change, and (unlike CPI) it is revised periodically to more accurately

⁷ We note that using TIPS may not reflect the time preferences for households that do not invest in Treasury securities, and as such may not represent the true social rate of time preference. However, given the need for a consistent discount rate and the absence of a better alternative, we support the concept of using TIPS for this purpose, subject to the caveats described in this letter.

describe past conditions.⁸ Indeed, President Obama’s Council of Economic Advisors held that “because investors in nominal bonds are concerned about their future real purchasing power, the inflation rate relevant for pricing those bonds is the change in the PCE deflator, which is closer to an ideal index of money’s purchasing power than is the fixed-weight Consumer Price Index.”⁹ The PCE price index and the CPI closely track one another, but the PCE price index is a superior measure of inflation’s effect on households according to the Federal Reserve — and, in our view, is the preferred series to use when calculating the market-implied TIPS for the period 1993–2002. The effect of using the CPI vs. PCE price index during the years in which TIPS is unavailable is also shown in Figure 1.

Figure 1: TIPS or Market-Implied TIPS, 1993 – 2022*



Source: Business Roundtable calculations of data published by the Federal Reserve Board of Governors and the U.S. Bureau of Labor Statistics.

* Note: “Market-implied TIPS,” shown during periods that predate the TIPS (1993–2002), is defined as the monthly average market yield for 10-year US Treasury Securities minus the year-

⁸ Bullard, James (2013). *President’s Message: CPI vs. PCE Inflation: Choosing a Standard Measure*. Federal Reserve Bank of St. Louis. Available at <https://www.stlouisfed.org/publications/regional-economist/july-2013/cpi-vs-pce-inflation--choosing-a-standard-measure>

⁹ White House Council of Economic Advisors (2017). *Discounting for Public Policy: Theory and Recent Evidence on the Merits of Updating the Discount Rate*. Council of Economic Advisors Issue Brief (January 2017), at 5.

over-year percent change in the monthly Consumer Price Index (CPI) or Personal Consumption Expenditures price index (PCE).

Once the two technical issues described above are corrected, the implied social discount rate is higher than the 1.7% figure OIRA proposes in the draft Circular (though it is still lower than the current 3% rate). Specifically, as shown in Table 1, using a 1% floor for the TIPS rate to account for the “flight to safety” distortionary effect and replacing the CPI with the PCE price index for the pre-TIPS period of 1993–2002 results in a social discount rate of 2.25%.¹⁰

Table 1: Implied Social Discount Rates Under Different Analysis Scenarios

30-year Averaging Method (1993 – 2022)	Implied Discount Rate	
	<i>CPI Method (1993 – 2002)</i>	<i>PCE Index Method (1993 – 2002)</i>
TIPS or Market-Implied TIPS — No Floor	1.7%	1.9%
TIPS or Market-Implied TIPS — 1% Floor	2.0%	2.25% <i>(recommended rate)</i>

Source: Business Roundtable analysis of data published by the Federal Reserve Board of Governors and the U.S. Bureau of Labor Statistics.

Newly issued EO 14094 instructs OIRA to adjust the \$200 million monetary threshold for a “significant regulatory action” every three years based on changes in GDP.¹¹ Similarly, OIRA should revisit the social discount rate every three years to ensure the agency accounts for any structural economic changes that may lead to a higher or lower social rate of time preference. This is particularly important given that, with the exception of 2022–23, both the federal funds rate and the rate of inflation have been far below historical norms since the 2008–09 recession. As of June 2023, the effective federal funds rate is above 5% — among the highest readings of the last 25 years — and may rise further given that inflation remains more than double the Fed’s target. To the extent that higher interest rates are here to stay for the foreseeable future, they will put upward pressure on the social rate of time preference. If this occurs, the discount rate used by regulatory agencies should be updated to reflect it.

¹⁰ We also raise the point that the 3% discount rate recommended by OIRA in the original Circular A-4 published in 2003 also failed to correct for distortions in the market-implied TIPS rate, and also relied on CPI instead of the PCE price index. Had OIRA incorporated a 1% floor for the market-implied TIPS in the original Circular and used the PCE price index rather than CPI, the social discount rate would have been 4.0%. In this way, agencies have been discounting at a rate below the social rate of time preference for the last 20 years. That is no reason to perpetuate that error, however.

¹¹ EO 14094, 88 Fed. Reg. 21879 (April 6, 2023), § 1(b) (new EO 12966, § 3(f)(1)).

II. Accounting for the Opportunity Cost of Capital

As President Obama’s Council of Economic Advisors stated in January 2017, regulation can displace or alter the use of capital in the private sector.¹² In recognition of this reality, OMB has long required agencies to also use a 7% discount rate that is intended to approximate the opportunity cost of capital. As OMB argues in revised Circular A-4 and the preamble, representing the opportunity cost of capital with a discount rate is methodologically suboptimal (though it is far better than ignoring the opportunity cost of capital altogether), and as a result OIRA is embracing the use of a shadow price of capital (SPC) for the first time.¹³

In principle, Business Roundtable agrees that converting the regulatory effect of capital impacts into consumption-equivalent values by multiplying these impacts by a carefully estimated SPC is a better way to represent the opportunity cost of capital. However, we are gravely concerned that OIRA’s updated guidance, as currently proposed, will lead agencies to undervalue and potentially ignore this critical component of a robust cost assessment.

Throughout the document, OIRA’s language suggests that the regulatory displacement of capital investment occurs infrequently. This suggestion, while not explicit, is nonetheless present throughout the discussion on opportunity costs — and it could result in agencies treating this important factor as an afterthought instead of as a core consideration when estimating a proposed rule’s costs. For example:

- In the preamble, OIRA raises the question of whether “capital is sufficiently mobile worldwide to largely eliminate the crowding out associated with regulatory impacts on capital.”¹⁴ To support this view, OIRA favorably cites two studies published three decades ago that made the same argument, and then asserts that “since the 1990s, U.S. capital markets have generally become more open.”¹⁵ This overly simplistic view does not reflect macroeconomic and political developments that have occurred over the last three decades and, in particular, the last 5–10 years (e.g., increased trade barriers, a return of national industrial policies, and rising geopolitical tensions). These developments have put downward pressure on cross-border capital mobility, but OIRA does not acknowledge them. This one-sided presentation raises the likelihood that agencies may conclude that, since OIRA’s guidance says that capital is perfectly or near-perfectly mobile, the SPC need not be a critical element in their analyses.

¹² White House Council of Economic Advisors (2017). *Discounting for Public Policy: Theory and Recent Evidence on the Merits of Updating the Discount Rate*. Council of Economic Advisers Issue Brief: January 2017.

¹³ Draft Circular A-4 at 78; Circular A-4 Preamble at 25.

¹⁴ Preamble at 25.

¹⁵ *Id.*

- In the preamble, OIRA repeatedly describes an SPC of 1.2 as “a *high* shadow price of capital” that reflects “a closed economy with no foreign capital flows”¹⁶ despite the fact that the 2022 Resources for the Future (RFF) study on which OIRA heavily relies to justify the use of an SPC considers 1.2 “a preferred value.”¹⁷ An April 2023 update to the RFF study proposes a “central SPC value” of 1.1 and asserts that 1.4 is the “upper end of the plausible range” for the SPC.¹⁸ Importantly, the updated RFF study does not include OIRA’s proposed SPC of 1.0 among the range of realistic estimates. Agencies could easily interpret OIRA’s draft guidance as justification for regarding 1.0 as a reasonable default assumption.
- In revised Circular A-4, OIRA describes scenarios in which using an SPC greater than 1.0 (i.e., assuming the opportunity cost of capital is greater than zero) would be appropriate but provides more detailed explanations to support use of the lower bound.¹⁹ Relatedly, agencies may interpret OIRA’s suggestion that an economy with “no foreign capital flows” should employ an SPC of 1.2 as justification for using the lower-bound SPC of 1.0, as the U.S. economy cannot be accurately described as having no foreign capital flows.

While none of these assertions and omissions from OIRA explicitly minimizes the use of an SPC, Business Roundtable believes these statements, viewed in their totality, are an example of OIRA putting its “thumb on the scale” and will result in agencies giving pro forma, superficial treatment to the notion that their proposed rules could displace private investment. Agencies may inappropriately conclude that it is not worth attempting to estimate these effects, or to use the lower bound SPC of 1.0 as a default — which is functionally equivalent to assuming that the opportunity cost of capital is zero.

In addition to determining an appropriate value for the SPC, it is critical to properly apply the SPC to estimate the capital displacement effect of a proposed regulation. The existence of this displacement effect is well established and generally understood,²⁰ though there is significant disagreement about its extent, in part because it is dependent on the specifics of a given rule. To this end, OIRA requests comments on what would constitute a “reasonable value for the incidence of resource effects on investment.”²¹ Various analyses have been conducted in recent

¹⁶ Id. (emphasis added).

¹⁷ Newell, R., Pizer, W., and Prest, B. (2022). *The Shadow Price of Capital: Accounting for Capital Displacement in Benefit–Cost Analysis*. Resources for the Future. Issue Brief 22-08.

¹⁸ Newell, R., Pizer, W., and Prest, B. (2023). *The Shadow Price of Capital: Accounting for Capital Displacement in Benefit–Cost Analysis*. Resources for the Future. Working Paper 23-07.

¹⁹ Draft Circular A-4 at 79.

²⁰ For example, see White House Council of Economic Advisors (2017), *supra* 12, at 1: “[R]esources that are required to be invested by government regulations displace capital that would otherwise be earning a positive return elsewhere in the economy” and Newell, R., Pizer, W., and Prest, B. (2023), *supra* 18, at 2 and 11: “...the traditional concern [of applying the SPC] is that costs may displace capital investment” and “[H]istorically, the focus [of applying the SPC] has been on adjusting costs for capital displacement...”

²¹ Preamble at 27.

years that shed light on this question, including surveys of Business Roundtable CEOs and other business decisionmakers who ultimately determine how private capital is allocated. Not surprisingly, these surveys consistently show that the opportunity cost of regulation, as measured by displaced investment and lost innovation, is both real and substantial. For example:

- A 2015 Business Roundtable survey asked member CEOs what they would do if their regulatory costs were suddenly and permanently decreased by 20%. Nearly 70% of respondents indicated they would increase investment in R&D/new technologies, while 62% said they would increase investment in capital replacement.
- In 2023, Business Roundtable asked the same question of its members, and the share of respondents who indicated they would increase investment in R&D or new technologies rose to 80%.
- Similarly, a 2016 survey conducted by the National Association of Manufacturers of its members found that 64% of respondents said that they would increase investment in R&D, new technologies, new products, or capital replacement if their regulatory compliance costs were suddenly, permanently, and significantly reduced.²²

The clear conclusion of these studies is that even when regulations produce net benefits to society, they still impose significant opportunity costs in terms of displaced capital investment — and agencies need to fully account for this reality in their CBAs. As such, OIRA should direct agencies to assume that capital displacement will be a likely byproduct of proposed regulations, particularly when compliance costs are expected to be substantial. It is appropriate for agencies to consider a range of incidence values depending on the specific nature of the regulation, but experience indicates that regulatory compliance costs are far more likely to displace future capital investment than augment it.

Relatedly, a variety of studies have been performed to estimate the “cumulative regulatory burden,” which is driven by both compliance costs and opportunity costs. While these studies vary in their methodological rigor, two of the most robust efforts were studies developed by economists at the Mercatus Center and economists at Cal-Berkeley and USC. The Mercatus study found that regulatory restrictions dampen economic growth by 0.8% per year, suggesting that the cumulative regulatory burden imposed roughly \$200 billion in additional costs in 2022.²³ The Berkeley/USC study found that the labor costs of compliance alone were at least \$79 billion per year in 2014 (or nearly \$100 billion in current dollars),²⁴ and the

²² National Association of Manufacturers (2016). *Holding US Back: Regulation of the U.S. Manufacturing Sector*. Report prepared by Pareto Policy Solutions, LLC.

²³ Coffey, B., McLaughlin, P., and Peretto, P. (2016) *The Cumulative Cost of Regulations*. Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, April 2016. Available at <https://www.mercatus.org/research/working-papers/cumulative-cost-regulations>.

²⁴ Trebbi, F., and Zhang, MB. (2023). *The Cost of Regulatory Compliance in the United States*. NBER Working Paper No. w30691. Available at SSRN: <https://ssrn.com/abstract=4288525>.

opportunity cost associated with compliance is likely hundreds of billions more, given that resources devoted to compliance cannot be used for more productive activities, such as improving operating efficiency or innovating to better serve customers.²⁵ Other studies have likewise shown how high regulatory costs can lead firms to shift resources away from R&D activities, reduce investment, and delay or prevent new projects, resulting in less innovation.²⁶ Ten years ago, Michael Greenstone, former Chief Economist for President Obama's Council of Economic Advisers, told a Senate Task Force that “it seems safe to conclude that the total costs of regulations can be measured in the hundreds of billions of dollars annually.”²⁷ Opportunity costs are a critical component of these costs, and it is essential that OIRA require agencies to adequately consider them in their proposed rules.

With the elimination of the 7% discount rate, it is critical that agencies consider opportunity costs in their analysis through a credible, evidence based SPC. If finalized in its current form, the current draft risks allowing agencies to undervalue the opportunity costs of their proposed rules by assuming the U.S economy is open, asserting that their regulations will not crowd out private investment, and employing an SPC of 1.0 in their analyses. Business Roundtable recommends that agencies use an SPC between 1.2 – 1.3, a range based on the same methodology employed in RFF’s 2023 study.²⁸ In addition, OIRA’s posture toward the potential for capital displacement should be revised to emphasize the importance of incorporating an adequate SPC and to avoid signaling to agencies, intentionally or unintentionally, that paying lip service to the opportunity costs associated with regulations (or assuming them away) is acceptable.

III. Accounting for Distributional Impacts

Conceptually, assessing the distributional impacts of a proposed rule is an important part of any regulatory impact analysis, and OIRA has long encouraged federal agencies to conduct such analyses during the rulemaking process. However, as OIRA points out in its preamble document, such assessments are rarely conducted in practice.

We agree with OIRA that the expanded guidance contained in the Circular A-4 rewrite is likely to lead agencies to estimate the disparate effects of their rules on different groups with greater

²⁵ NAM (2016).

²⁶ Id. See also Marcus, A. (1981). *Policy Uncertainty and Technological Innovation*. The Academy of Management Review. Vol. 6, No. 3: pp. 443-448. <https://journals.aom.org/doi/abs/10.5465/amr.1981.4285783>

²⁷ Greenstone, M. (2011). Hearing Before the Senate Budget Committee Task Force on Government Performance. *Improving Regulatory Performance: Lessons from the United Kingdom*. Available at <https://energy.mit.edu/news/improving-regulatory-performance-lessons-from-the-united-kingdom>.

²⁸ See Newell, R., Pizer, W., and Prest, B. (2023), *supra* 18, at 8–10. Note that if one uses the same methodology employed in the RFF study, makes the same assumptions regarding the savings rate (22%) and depreciation rate (10%), incorporates BRT’s recommended consumption discount rate (2.25%), and assumes a reasonable rate for the risk-free investment rate of return (4–5%), the resulting SPC is 1.19 – 1.31.

frequency. Encouraging agencies to better account for and document the likely distributional effects of proposed rules is a laudable goal that Business Roundtable supports. When deciding among regulatory alternatives, agencies should consider whether a given approach would likely make certain groups better off at the expense of others, particularly groups that have been historically disadvantaged. Further, Business Roundtable appreciates OIRA's efforts to require agencies to be both thoughtful and transparent in which groups they include in the distributional analysis based on the nature of the proposed rule and agrees that regulatory agencies should be consistent about which groups they consider across rules and over time.

However, we are concerned that the equity weight OIRA proposes is based on flawed analysis and is likely too high based on evidence provided in the preamble. Specifically, as shown in Table 2 below, OIRA's proposed equity weight of 1.4 is based on a review of nine studies and meta-studies, each of which used different methods to estimate the elasticity of marginal utility; 1.4 represents a simple average of the nine estimates.²⁹ It is notable that one of the included studies (Pindyck, 1988) was conducted 35 years ago and produced an elasticity value of 3.5 — *more than twice as high* as any of the other elasticities included in OIRA's average. As such, the Pindyck study is a clear outlier that has a significant effect on the average. After removing this study from OIRA's sample, the proposed equity weight falls from 1.40 to 1.14.

The age of the Pindyck study also raises serious questions regarding its appropriateness for determining the equity weight that agencies should use in their distributional analyses. Another study included in OIRA's sample (Szpiro, 1986) was conducted even earlier, raising similar questions regarding its appropriateness for use in this context. If OIRA removed both Reagan-era studies and limited its sample to studies conducted since 2000, the simple average would fall to 1.08 (see Table 2). Omitting these two studies from OIRA's average would better implement President Biden's direction to OIRA in updating Circular A-4 to "ensure that [it] reflects new developments in scientific and economic understanding."³⁰

Finally, OIRA's use of a simple average implicitly assigns the same weight to each study, even though some studies are actually meta-analyses that are themselves averages of several other studies. While Business Roundtable has not reviewed the studies in detail and cannot comment on which ones are more or less reliable, we believe that applying the same weight to both analyses and meta-analyses is methodologically questionable and likely ignores important differences in study quality.

Given the inherent subjectivity of determining which studies to include and how much weight to give each study, Business Roundtable recommends that OIRA forego altogether the use of quantitative equity weights in agencies' distributional analyses. OIRA can and should encourage

²⁹ Preamble at 15.

³⁰ President Biden, Memorandum for the Heads of Executive Departments and Agencies entitled "Modernizing Regulatory Review" (Jan. 20, 2021), § 2(b)(i).

agencies to conduct distributional analysis more frequently and with more analytical rigor and should also require agencies to consider the results of these analyses when deciding whether, how, and at what level of stringency to regulate. However, these goals can be accomplished without using equity weights, which as proposed will ultimately produce misleading and potentially flawed results. If OIRA chooses to allow agencies to use equity weights, it should, at a minimum, omit outliers and outdated studies from its simple average and/or require agencies to use a range of equity weights and report the range of values that result.

Table 2: OIRA-Selected Studies Used to Calculate Equity Weights

Study Author	Year	Elasticity of Marginal Utility	Meta-Analysis?
Pindyck	1988	3.5*	No
Szpiro	1986	1.5*	No
Viscusi and Aldy	2003	0.55*	Yes
Chetty	2006	0.7	No
Layard, Nickell, and Mayraz	2008	1.20	No
Kniesner et al.	2010	1.44	No
Gandelman & Hernandez-Murillo	2015	1.39	No
Havranek et. al.	2015	1.7	Yes
Viscusi and Masterman	2017	0.6*	No
<i>Average (all studies)</i>		<i>1.40</i>	
<i>Average (excluding Pindyck)</i>		<i>1.14</i>	
Average (excluding Pindyck and Szpiro)		1.08	

Source: Business Roundtable analysis of information contained in Circular A-4 Preamble, page 15, Table 1.

* Represents midpoint of study's estimated range.

IV. Areas in Need of Additional OIRA Emphasis

A. Independent Regulatory Commissions

Despite promulgating hundreds of rules over the last two decades, independent regulatory commissions (IRCs), including the Securities and Exchange Commission, Federal Communications Commission, Consumer Product Safety Commission, Federal Energy Regulatory Commission, and Federal Trade Commission, have not been required by Presidential direction to assess the costs and benefits of these actions. While certain statutes require that certain IRCs consider the economic impact of certain rulemakings, the requirements in these statutes are generally weaker than executive order requirements for covered agencies and typically do not require a detailed analysis of proposed rules or a demonstration that a rule's benefits justify the costs. Moreover, while existing OMB guidance urges IRCs to quantify costs and benefits of major regulations whenever feasible, in practice they rarely do so. Indeed, there is a general lack of transparency regarding how (or even if) the costs and benefits of major IRC rulemakings are assessed.

We urge the Biden administration to require IRCs to conduct cost-benefit analysis of major rulemakings and to make this requirement explicit in the updated A-4 Circular. Such an action would echo and strengthen President Obama's EO 13579, which directed IRCs to "promote ... a regulatory system that protects public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation" and instructed them to comply with CBA requirements to the extent permitted by law.³¹ The Administrative Conference of the United States,³² the American Bar Association³³ and other highly-respected groups have long advocated for IRCs to be held to the same standards of analysis, transparency, and accountability as other regulators. The Administration should make this requirement clear.

B. Planning for Retrospective Review

Business Roundtable has long advocated for increased agency emphasis on conducting retrospective reviews. While regulatory agencies are typically focused on new rules that they believe are needed to fulfill their mission and legal mandate, a critical part of the regulatory process is to periodically review previously promulgated regulations and assess whether the realized costs and benefits generated by the regulation align with the agency's *ex ante* analysis. Have the problems these rules were intended to address been solved, or have they changed? If the problems remain, could they be addressed more effectively, or more cost-effectively, with a different regulatory approach? The answers to these questions are particularly important for high-impact rules for which the cost of compliance is especially burdensome.

³¹ EO 13579, "Regulation and Independent Regulatory Agencies" (July 11, 2011).

³² See ACUS Recommendation 88-9, "Presidential Review of Agency Rulemaking" (Dec. 8, 1988) at 2. Available at <https://www.acus.gov/sites/default/files/documents/88-9.pdf>.

³³ See ABA Recommendation 302 (Aug. 7-8, 1990).

Business Roundtable was pleased to see that EO 14094 reaffirms EO 13563, an Obama-era directive that emphasized the importance of retrospective review in improving regulation. However, the reality is that agencies rarely reassess existing regulations to determine whether they are still necessary. Part of the reason for this failure is a matter of resources or habit. But another important factor is that retrospective review typically involves agencies having to develop surveys or other tools to identify and assess impacts after the fact. The easier, cheaper, and more defensible approach would be for the agency to have a plan in place when it promulgates a rule that identifies metrics and data collection strategies to evaluate the effects of the regulation.

Unfortunately, revised Circular A-4 contains little new information on the importance of retrospective review or renewed emphasis on how such reviews should be conducted. We urge OIRA to capitalize on the opportunity to press agencies on this issue, including requiring them to develop “prospective retrospective review plans” for high-impact rules. Such a planning requirement — which has been widely supported by the Administrative Conference of the United States,³⁴ the American Bar Association,³⁵ former OIRA Administrator Cass Sunstein³⁶ and Congress³⁷ — would specify the regulation’s objectives, define the metrics the agency will use to evaluate how well the rule accomplishes those objectives, and outline a plan for collecting data on these metrics. These actions would significantly reduce the costs and burdens of conducting robust retrospective reviews and would improve rule quality over time.

C. Using CBA to Inform (Rather than Justify) a Regulatory Approach

Under both current Circular A-4³⁸ and OIRA’s redraft,³⁹ regulatory agencies are instructed to develop and evaluate a reasonable number of alternative approaches before promulgating a rule. In practice, however, agencies often appear to have already decided on their preferred approach before they officially propose a rule, and then conduct a CBA after this decision has been made to essentially justify the decision.⁴⁰ Other researchers have reached the same conclusion:

³⁴ See ACUS Recommendation 2021-2, “Periodic Retrospective Review” (June 17, 2021), available at <https://www.acus.gov/sites/default/files/documents/Redline%20-%20Periodic%20Retrospective%20Review%20-%20Final.pdf>.

³⁵ See ABA Recommendation 106B (Feb. 8, 2016), available at <https://www.acus.gov/sites/default/files/documents/ABA-Resolution-106B-and-Report.pdf>.

³⁶ See Memorandum from Cass Sunstein to Heads of Executive Departments and Agencies entitled “Final Plans for Retrospective Analysis of Existing Rules” (June 14, 2011), at 2.

³⁷ See S. Rep. 116-55 (June 15, 2019), available at <https://www.congress.gov/congressional-report/116th-congress/senate-report/55> (reporting the “SMART Act,” S. 1420, 116th Cong., passed without opposition by the Senate Homeland Security & Governmental Affairs Committee on May 15, 2019).

³⁸ See Circular A-4 at 7.

³⁹ See revised Circular A-4 at 22.

⁴⁰ See Business Roundtable (2014), *supra* n.2, at 26.

- A survey of federal regulatory economists found that economic analysis frequently takes a backseat in regulatory decisions and that agency regulators often apply subtle pressure on their economists to make a regulatory impact analysis conform to a decision that has, for all intents and purposes, already been made.⁴¹
- RFF economists found that some recent RIAs appear to have been designed for purposes other than policy analysis, such as to provide an agency “cover” in anticipation of future litigation or to provide information about the consequences of a regulatory decision that was made on grounds other than economic analysis.⁴²

As economists Chris Carrigan and Stuart Shapiro have argued, in many cases CBAs either “omit consideration of meaningful alternatives or are so detailed that they become practically indecipherable (or both). In either case, they are habitually completed after a policy alternative is selected.”⁴³ To remedy this, they advocate for greater use of “back-of-the-envelope” analysis in which agencies conduct a meaningful assessment of various policy options much earlier in the regulatory process, but without undertaking the degree of detailed monetization and complex quantification that a full CBA typically entails.⁴⁴ OIRA should encourage agencies to conduct such analyses for rules that are expected to have significant economic effects and continue to press regulators to use CBA as a tool to inform, rather than justify, a given regulatory approach.

D. Improving Public Participation in Rulemakings

EO 14094 instructs agencies to “promote equitable and meaningful participation [in rulemakings] by a range of interested or affected parties, including underserved communities.”⁴⁵ OIRA has issued initial guidance on this requirement and promises “additional guidance and tools for agencies to help them expand public participation in the regulatory process.”⁴⁶ While OIRA has not solicited comments on this issue, it is highly germane to the project of improving agencies’ assessments of the costs and benefits of planned regulations, and so Business Roundtable offers the following suggestion.

One of the most successful developments in public engagement in rulemaking was established by the Small Business Regulatory Enforcement Fairness Act (SBREFA), which creates special

⁴¹ Williams, R. (2008). “The Influence of Regulatory Economists in Federal Health and Safety Agencies.” Working Paper No. 08-15, July 2008. Mercatus Center: George Washington University.

⁴² Wagner, W. (2009). “The CAIR RIA: Advocacy Dressed Up as Policy Analysis.” *Reforming Regulatory Impact Analysis*. Edited by Harrington, W., Heinzerling, L., and Morgenstern, R., Resources for the Future (April 2009).

⁴³ Carrigan, C., and Shapiro, S. (2014). *What’s Wrong with the Back of the Envelope? Call for Simple (and Timely) Benefit-Cost Analysis*. Working Paper, The George Washington University (October 2014), at 3.

⁴⁴ *Id.*

⁴⁵ EO 14094, § 2(a).

⁴⁶ See Richard L. Revesz, Memorandum for Regulatory Policy Officers at Executive Branch Departments and Agencies entitled “Implementation of Modernizing Regulatory Review Executive Order” (April 6, 2023), at 6-7.

outreach requirements in the case of rules being developed by one of three agencies that are likely to have a significant impact on a substantial number of small entities.⁴⁷ Under these procedures, the Small Business Administration's Office of Advocacy convenes a group of small entity representatives before a proposed rule is issued to gather input on the rule's potential negative impacts and ways to minimize them.⁴⁸ The SBREFA procedures omit key stakeholders (including the intended beneficiaries of a regulatory action and state and local government officials), but agencies could convene comparable groups representing these and other stakeholders for significant rulemakings.⁴⁹ Based on experience under the SBREFA process, OIRA and agencies could expect that these processes would streamline and improve rulemakings by identifying optimal regulatory alternatives earlier in the process (i.e., before an agency devotes resources and becomes committed to less optimal alternatives). OIRA should direct agencies to experiment with this process.⁵⁰

E. Consideration of Ancillary Benefits

Ancillary benefits play a central role in providing the economic justification for many rules, particularly those governing air quality.⁵¹ Accordingly, it is critical that agencies make careful, appropriate and transparent assumptions regarding ancillary benefits, based on the best available evidence, and characterize the uncertainty of those assumptions in achieving the estimated benefits. At the same time, while including ancillary benefits in a CBA is both valid and consistent with longstanding OMB guidance, legitimate concerns exist relating to the substantial role these benefits occasionally play in justifying high-cost regulations. This is particularly true when ancillary benefits dominate the benefits side of the equation. As such, we believe it is important for agencies to continue reporting ancillary benefits separately from direct benefits.

⁴⁷ Those agencies are the Environmental Protection Agency, the Occupational Safety and Health Administration, and the Consumer Financial Protection Bureau.

⁴⁸ See 5 U.S.C. § 609(b).

⁴⁹ See Kevin Bromberg, comment submitted to the ACUS Committee on Regulation on entitled "Early Input on Regulatory Alternatives Recommendations" (April 7, 2021); available at <https://www.acus.gov/sites/default/files/documents/Kevin%20Bromberg%20-%20Early%20Input%20on%20Regulatory%20Alternatives%20Comment.pdf>.

⁵⁰ Another option that OIRA could encourage agencies to consider is one or more standing rulemaking advisory committees. For example, the Pipeline and Hazardous Materials Safety Administration (PHMSA) maintains two such committees to review proposed standards for gas and hazardous liquid pipelines. These committees are made up of five state or federal regulators, five industry representatives, and five members of the public. These committees deliberate and present nonbinding recommendations. PHMSA then takes those recommendations into consideration in the final standard. This approach may be worthwhile in the case of rules that are significant under Section 3(f)(1) of EO 12866.

⁵¹ OMB, *2017 Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act* (Feb. 23, 2018), at 10.

In addition, Business Roundtable encourages OIRA to advise agencies that when a rule depends heavily on ancillary benefits to meet a cost-benefit test, alternative approaches should be considered that may achieve these benefits directly and in a manner that is more consistent with statutory intent. OIRA should also continue to press agencies to reduce the uncertainty surrounding the impact of ancillary benefits.

F. Presenting Benefit and Cost Data Accessibly

The current version of Circular A-4 directs regulatory agencies to be transparent when analyzing the likely effects of proposed rules, including clearly describing assumptions and methods and discussing uncertainties associated with estimates of costs and benefits. It also requires agency analysis to be reproducible, so that a qualified third party can clearly determine how estimates and conclusions were developed. However, in practice, agency assessments of costs and benefits often are not as transparent as they could be. As a result, reproducing these analyses can be difficult, if not impossible, as Business Roundtable documented in 2014.⁵²

Agencies should strive to present benefit and cost data to decisionmakers and the public as objectively and accessibly as possible. However, agency analyses are often lengthy and highly complex, particularly for high-impact rules. As a result, it is often difficult for policy makers or the public to access the information, and in many cases a top line number is seized upon by advocates for the rule to justify the costs imposed on consumers, businesses and the economy, when the true impact usually is more nuanced and complex. A more detailed reporting of costs and benefits in a digestible, standardized, and reader-friendly format — one that does not require the public to sift through many hundreds of pages of highly technical economic and regulatory analysis to understand the rule's expected impact — would better enable regulatory stakeholders to determine which benefits are direct vs. ancillary and which assumptions have the greatest impact on the agency's analysis.

To this end, OIRA should direct agencies to prepare a short, standardized summary (possibly in table form) that (1) clearly summarizes the results of the CBA (including relevant cost/benefit ranges and the extent to which the rule results in ancillary benefits); (2) lists key assumptions that drive its CBA (including any underlying risk assessments); (3) describes how dependent the analysis is on these assumptions; and (4) provides a brief overview of the key limitations inherent in the analysis. The more detailed accounting statement template contained in revised Circular A-4 is useful and a step in the right direction, but omits key information, including a breakdown of direct vs. ancillary benefits, information on the SPC used for the analysis, and a summary of distributional impacts (and, if relevant, whether equity weights were used in the analysis). Further, the accounting statement should include this information for each regulatory alternative analyzed and should be included in the final rule itself (in addition to the regulatory impact assessment) to increase visibility.

⁵² See Business Roundtable (2014), *supra* n.2, at 21-25.

We believe greater clarity regarding the presentation of data and the uncertainty and limitations of that data, if done carefully and properly, will improve transparency and interpretability, and is consistent with economic best practices. We urge OMB to continue its efforts to improve how agencies present data in RIAs to clarify assumptions, data, limitations and uncertainty to better inform the rulemaking process and make the data more accessible.

G. Potential for Double Counting and Importance of Interagency Coordination

In 2019, Business Roundtable published a report on regulatory overlap in which we provided examples of how, at times, overlapping rules issued by different agencies can create inefficiencies and dampen economic activity.⁵³ This issue is relevant to Circular A-4 because it raises the potential for double-counting costs and benefits: if two agencies are simultaneously proposing separate rules that impact the same sector and produce similar effects (e.g., improved air or water quality), it is essential for the agencies to coordinate closely during the rulemaking process to ensure the expected benefits of the rules are not double-counted, but rather attributed to only one rule (or distributed appropriately across both rules).

Business Roundtable has identified several recent examples of overlap that raise the possibility of duplication and double-counting. For instance:

- Earlier this year, we filed comments on EPA's proposed methane regulations that discussed how EPA's rulemaking, which is already highly complex, may overlap with the Department of the Interior's proposed regulations regarding venting, flaring and leaks on federal and Indian lands. To avoid this scenario, we urged EPA to reduce complexity where possible, to streamline approvals for alternative technologies and to look for ways to reduce regulatory burdens while meeting the objective of reducing methane emissions consistent with its authority under the Clean Air Act.⁵⁴
- OSHA's Process Safety Management (PSM) rule and EPA's Risk Management Program (RMP) rule provide another opportunity for agencies to potentially double-count benefits. OSHA's PSM authority is intended to protect workers at a facility from accidental releases occurring at the facility, while EPA's RMP authority is intended to protect human health and the environment "beyond the fenceline" from the same sorts of releases. Given the agencies' respective statutory requirements, overlap between these two rules is difficult to eliminate and it is therefore critical for OSHA and EPA to closely coordinate when assessing potential impacts. Both agencies are currently in the process of updating their rules, with EPA expected to issue its final rule first. However, it

⁵³ Business Roundtable (2019). *Reducing Regulatory Overlap in the 21st Century*. Available at <https://s3.amazonaws.com/brt.org/BRT.Reducing-RegulatoryOverlapinthe21stCentury.2019.05.31.pdf>.

⁵⁴ Business Roundtable Comments on EPA Supplemental Notice of Proposed Rulemaking "*Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review*," Docket ID No. EPA-HQ-OAR-2021-0317-2354, (February 13, 2023). Available at <https://www.regulations.gov/comment/EPA-HQ-OAR-2021-0317-2354>.

is unclear how the two agencies will agree on how to allocate the expected benefits their rules will produce and costs they will impose on regulated entities. As one commenter noted, “While the RMP rule imposes more costs than PSM...there is no question that the two rules overlap substantially. PSM probably accounts for the majority of the benefits produced by the operation of both rules, but again, there is clearly overlap. The result is indisputably the potential for double-counting.”⁵⁵

We have advocated for agencies to develop proper baseline scenarios — including, in some situations, multiple baseline scenarios — that incorporate the effects of other regulatory actions with overlapping benefits, including actions that are ongoing or are being challenged in the courts. OIRA’s increased emphasis in revised Circular A-4 on the importance of establishing a reliable baseline (and potentially using multiple baselines) is a positive change, and if agencies comply, it should help to mitigate the risk of double-counting.

Additionally, OIRA issued guidance in 2012 on the cumulative effects of regulations to help agencies identify and minimize the potential for redundant, overlapping, or inconsistent regulatory requirements.⁵⁶ Specifically, this guidance encouraged agencies to “consult with affected stakeholders to discuss potential interactions between rulemakings under consideration” and to “coordinate the timing, content, and requirements of multiple rulemakings that are contemplated for a particular industry or sector.”⁵⁷ We encourage OIRA to reassert these important considerations in revised Circular A-4. Relatedly, when multiple rulemakings impacting the same stakeholders are occurring simultaneously, OIRA should encourage agencies to consider extending public comment periods to increase the likelihood that potential double-counting concerns are identified and addressed.

Conclusion

Business Roundtable appreciates the opportunity to comment on OIRA’s proposed revisions to Circular A-4 which, along with Executive Orders 12866 and 13563, is among the most consequential documents related to federal regulation ever produced. We welcome OIRA’s decision to update and modernize the Circular and hope that the final version will lead regulatory agencies to produce smarter rules that help to ensure a clean environment, safe workplaces, and fair, competitive markets while also avoiding overly burdensome compliance and opportunity costs and minimizing harmful effects on innovation and economic growth.

⁵⁵ Society of Chemical Manufacturers and Affiliates (2022). Comments on PSM Stakeholder Meeting, OSHA Docket No. 2013-0020, page 7.

⁵⁶ Memorandum from Cass Sunstein, OIRA, “Cumulative Effects of Regulation,” March 20, 2012. Available at https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/assets/inforeg/cumulative-effects-guidance.pdf.

⁵⁷ Id.

The revised Circular is nearly twice as long as the original, and while there are many elements that we generally support — not least of which is the renewed commitment to conducting rigorous and transparent cost benefit analysis — there are several aspects of the guidance that are quite concerning, and other areas where we believe it could be strengthened. To improve Circular A-4, Business Roundtable recommends the following:

- Increase the proposed discount rate to 2.25%.
- Increase the proposed range for the shadow price of capital to 1.2–1.3 and emphasize the importance of agencies fully accounting for the potential for capital displacement in their cost estimates.
- Forego use of quantitative equity weights in agencies’ distributional analyses — or, at a minimum, exclude outlier and outdated studies from consideration when calculating the weights.
- Hold independent regulatory commissions to the same standards as other federal agencies.
- Direct agencies to improve retrospective review planning.
- Encourage agencies to perform “back of the envelope” analyses early in the rulemaking process.
- Direct agencies to target and engage relevant stakeholder groups early in the rulemaking process.
- Apply additional scrutiny to rules that rely heavily on ancillary benefits to achieve a positive benefit-cost ratio.
- Require agency analyses to be presented in a more transparent and accessible fashion.
- Closely monitor the potential for regulatory duplication and ensure agencies follow the updated guidance in Circular A-4 regarding baselining and interagency coordination.

* * *

Business Roundtable appreciates this opportunity to provide comments on the draft 12866 Meeting Guidance. Please contact me with any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Corey Astill', with a stylized, cursive script.

Corey Astill
Vice President, Smart Regulation
Business Roundtable