

Agency Checklist: Regulatory Impact Analysis

With this document, the Office of Information and Regulatory Affairs is providing a checklist to assist agencies in producing regulatory impact analyses (RIAs), as required for economically significant rules by Executive Order 12866 and OMB Circular A-4.

Nothing herein alters, adds to, or reformulates existing requirements in any way. Moreover, this checklist is limited to the requirements of Executive Order 12866 (available at: http://www.reginfo.gov/public/jsp/Utilities/EO_12866.pdf) and Circular A-4 (available at: <http://www.whitehouse.gov/OMB/circulars/a004/a-4.pdf>); it does not address requirements imposed by other authorities, such as the National Environmental Policy Act, the Regulatory Flexibility Act, the Unfunded Mandates Reform Act, the Paperwork Reduction Act, and various Executive Orders that require analysis. Executive Order 12866 and Circular A-4, as well as those other authorities, should be consulted for further information.

Checklist for Regulatory Impact Analysis:

- Does the RIA include a reasonably detailed description of the **need for the regulatory action**?^{1, 2}
- Does the RIA include an explanation of how the regulatory action will **meet that need**?³
- Does the RIA use an appropriate **baseline** (i.e., best assessment of how the world would look in the absence of the proposed action)?⁴
- Is the information in the RIA based on **the best reasonably obtainable scientific, technical, and economic information** and is it presented in an **accurate, clear, complete, and unbiased manner**?⁵
- Are the data, sources, and methods used in the RIA provided to the public **on the Internet** so that a qualified person can reproduce the analysis?⁶
- To the extent feasible, does the RIA quantify and monetize the anticipated **benefits** from the regulatory action?^{7, 8}
- To the extent feasible, does the RIA quantify and monetize the anticipated **costs**?⁹
- Does the RIA explain and support **a reasoned determination that the benefits of the intended regulation justify its costs** (recognizing that some benefits and costs are difficult to quantify)?¹⁰
- Does the RIA assess the **potentially effective and reasonably feasible alternatives**?¹¹
 - Does the RIA assess the benefits and costs of different regulatory provisions separately if the rule includes a number of distinct provisions?¹²
 - Does the RIA assess at least one alternative that is less stringent and at least one alternative that is more stringent?¹³
 - Does the RIA consider setting different requirements for large and small firms?¹⁴

- Does the preferred option have the highest **net benefits** (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires a different approach?¹⁵
- Does the RIA include an explanation of why the planned regulatory action is **preferable** to the identified potential alternatives?¹⁶
- Does the RIA use appropriate **discount rates** for benefits and costs that are expected to occur in the future?¹⁷
- Does the RIA include, if and where relevant, an appropriate **uncertainty analysis**?¹⁸
- Does the RIA include, if and where relevant, a separate description of **distributive impacts** and **equity**?¹⁹
 - Does the RIA provide a description/accounting of transfer payments?²⁰
 - Does the RIA analyze relevant effects on disadvantaged or vulnerable populations (e.g., disabled or poor)?²¹
- Does the analysis include a clear, plain-language **executive summary**, including an **accounting statement** that summarizes the benefit and cost estimates for the regulatory action under consideration, including the qualitative and non-monetized benefits and costs?²²
- Does the analysis include a clear and transparent **table** presenting (to the extent feasible) anticipated benefits and costs (quantitative and qualitative)?²³

¹ Required under Executive Order 12866, Section 6(a)(3)(B)(i): “The text of the draft regulatory action, together with a reasonably detailed description of the need for the regulatory action and an explanation of how the regulatory action will meet that need.”

² Circular A-4 states: “If the regulation is designed to correct a significant market failure, you should describe the failure both qualitatively and (where feasible) quantitatively.” (P. 4)

³ See note 1 above.

⁴ Circular A-4 states: “You need to measure the benefits and costs of a rule against a baseline. This baseline should be the best assessment of the way the world would look absent the proposed action... In some cases, substantial portions of a rule may simply restate statutory requirements that would be self-implementing, even in the absence of the regulatory action. In these cases, you should use a pre-statute baseline.” (P. 15-16)

⁵ Circular A-4 states: “Because of its influential nature and its special role in the rulemaking process, it is appropriate to set minimum quality standards for regulatory analysis. You should provide documentation that the analysis is based on the best reasonably obtainable scientific, technical, and economic information available... you should assure compliance with the Information Quality Guidelines for your agency and OMB’s Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies...” (P. 17). The IQ Guidelines (paragraph V.3.a) define objectivity to include “whether disseminated information is being presented in an accurate, clear, complete, and unbiased manner.”

<http://www.whitehouse.gov/omb/assets/omb/fedreg/reproducible2.pdf>

⁶ Circular A-4 states: “A good analysis should be transparent and your results must be reproducible. You should clearly set out the basic assumptions, methods, and data underlying the analysis and discuss the uncertainties

associated with the estimates. A qualified third party reading the analysis should be able to understand the basic elements of your analysis and the way in which you developed your estimates. To provide greater access to your analysis, you should generally post it, with all the supporting documents, on the internet so the public can review the findings.” (P. 17). OMB IQ Guidelines (paragraph V.3.b.ii) further states: “If an agency is responsible for disseminating influential scientific, financial, or statistical information, agency guidelines shall include a high degree of transparency about data and methods to facilitate the reproducibility of such information by qualified third parties.”

⁷ Required under Executive Order 12866, Section 6(a)(3)(C)(i): “An assessment, including the underlying analysis, of benefits anticipated from the regulatory action (such as, but not limited to, the promotion of the efficient functioning of the economy and private markets, the enhancement of health and safety, the protection of the natural environment, and the elimination or reduction of discrimination or bias) together with, to the extent feasible, a quantification of those benefits.”

⁸ Circular A-4 states: “You should monetize quantitative estimates whenever possible. Use sound and defensible values or procedures to monetize benefits and costs, and ensure that key analytical assumptions are defensible. If monetization is impossible, explain why and present all available quantitative information.” (P. 19). Circular A-4 also offers a discussion of appropriate methods for monetizing benefits that might not easily be turned into monetary equivalents.

⁹ Required under Executive Order 12866, Section 6(a)(3)(C)(ii): “An assessment, including the underlying analysis, of costs anticipated from the regulatory action (such as, but not limited to, the direct cost both to the government in administering the regulation and to businesses and others in complying with the regulation, and any adverse effects on the efficient functioning of the economy, private markets (including productivity, employment, and competitiveness), health, safety, and the natural environment), together with, to the extent feasible, a quantification of those costs;” See also note 6 above.

¹⁰ Executive Order 12866, Section 1(b)(6) states that to the extent permitted by law, “[e]ach agency shall assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.” As Executive Order 12866 recognizes, a statute may require an agency to proceed with a regulation even if the benefits do not justify the costs; in such a case, the agency’s analysis may not show any such justification.

¹¹ Required under Executive Order 12866, Section 6(a)(3)(C)(iii): “An assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, identified by the agencies or the public (including improving the current regulation and reasonably viable nonregulatory actions)...”

¹² Circular A-4 states: “You should analyze the benefits and costs of different regulatory provisions separately when a rule includes a number of distinct provisions.” (P. 17)

¹³ Circular A-4 states: “you generally should analyze at least three options: the preferred option; a more stringent option that achieves additional benefits (and presumably costs more) beyond those realized by the preferred option; and a less stringent option that costs less (and presumably generates fewer benefits) than the preferred option.” (P. 16)

¹⁴ Circular A-4 states: “You should consider setting different requirements for large and small firms, basing the requirements on estimated differences in the expected costs of compliance or in the expected benefits. The balance of benefits and costs can shift depending on the size of the firms being regulated. Small firms may find it more costly to comply with regulation, especially if there are large fixed costs required for regulatory compliance. On the other hand, it is not efficient to place a heavier burden on one segment of a regulated industry solely because it can better afford the higher cost. This has the potential to load costs on the most productive firms, costs that are disproportionate to the damages they create. You should also remember that a rule with a significant impact on a substantial number of small entities will trigger the requirements set forth in the Regulatory Flexibility Act. (5 U.S.C. 603(c), 604).” (P. 8)

¹⁵ Executive Order 12866, Section 1(a) states: “agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity) unless a statute requires another regulatory approach.”

¹⁶ Required under Executive Order 12866, Section 6(a)(3)(C)(iii): “An assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, identified by the agencies or the public (including improving the current regulation and reasonably viable nonregulatory actions), and an explanation why the planned regulatory action is preferable to the identified potential alternatives.”

¹⁷ Circular A-4 contains a detailed discussion, generally calling for discount rates of 7 percent and 3 percent for both benefits and costs. It states: “Benefits and costs do not always take place in the same time period. When they do not, it is incorrect simply to add all of the expected net benefits or costs without taking account of when they actually occur. If benefits or costs are delayed or otherwise separated in time from each other, the difference in timing should be reflected in your analysis.... For regulatory analysis, you should provide estimates of net benefits using both 3 percent and 7 percent.... If your rule will have important intergenerational benefits or costs you might consider a further sensitivity analysis using a lower but positive discount rate in addition to calculating net benefits using discount rates of 3 and 7 percent.” (PP. 31, 34, 36)

¹⁸ Circular A-4 provides a detailed discussion. Among other things, it states: “Examples of quantitative analysis, broadly defined, would include formal estimates of the probabilities of environmental damage to soil or water, the possible loss of habitat, or risks to endangered species as well as probabilities of harm to human health and safety. There are also uncertainties associated with estimates of economic benefits and costs, such as the cost savings associated with increased energy efficiency. Thus, your analysis should include two fundamental components: a quantitative analysis characterizing the probabilities of the relevant outcomes and an assignment of economic value to the projected outcomes.” (P. 40). Circular A-4 also states: “You should clearly set out the basic assumptions, methods, and data underlying the analysis and discuss the uncertainties associated with the estimates.” (P. 17)

¹⁹ Executive Order 12866, Section 1(b)(5) states; “When an agency determines that a regulation is the best available method of achieving the regulatory objective, it shall design its regulations in the most cost-effective manner to achieve the regulatory objective. In doing so, each agency shall consider incentives for innovation, consistency, predictability, the costs of enforcement and compliance (to the government, regulated entities, and the public), flexibility, *distributive impacts*, and *equity*” (emphasis added).

Circular A-4 states: “The term ‘distributional effect’ refers to the impact of a regulatory action across the population and economy, divided up in various ways (e.g., income groups, race, sex, industrial sector, geography)... Your regulatory analysis should provide a separate description of distributional effects (i.e., how both benefits and costs are distributed among sub-populations of particular concern) so that decision makers can properly consider them along with the effects on economic efficiency... Where distributive effects are thought to be important, the effects of various regulatory alternatives should be described quantitatively to the extent possible, including the magnitude, likelihood, and severity of impacts on particular groups.” (P. 14)

²⁰ Circular A-4 states: “Distinguishing between real costs and transfer payments is an important, but sometimes difficult, problem in cost estimation. . . . Transfer payments are monetary payments from one group to another that do not affect total resources available to society. . . . You should not include transfers in the estimates of the benefits and costs of a regulation. Instead, address them in a separate discussion of the regulation's distributional effects.” (P. 14)

²¹ Circular A-4 states: “Your regulatory analysis should provide a separate description of distributional effects (i.e., how both benefits and costs are distributed among sub-populations of particular concern) so that decision makers

can properly consider them along with the effects on economic efficiency. Executive Order 12866 authorizes this approach. Where distributive effects are thought to be important, the effects of various regulatory alternatives should be described quantitatively to the extent possible, including the magnitude, likelihood, and severity of impacts on particular groups.” (P. 14)

²² Circular A-4 states: “Your analysis should also have an executive summary, including a standardized accounting statement.” (P. 3). OMB recommends that: “Regulatory analysis should be made as transparent as possible by a prominent and accessible executive summary—written in a “plain language” manner designed to be understandable to the public—that outlines the central judgments that support regulations, including the key findings of the analysis (such as central assumptions and uncertainties)...If an agency has analyzed the costs and benefits of regulatory alternatives to the planned action (as is required for economically significant regulatory actions), the summary should include such information.” See *2010 Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities*, page 51. Available at: http://www.whitehouse.gov/sites/default/files/omb/legislative/reports/2010_Benefit_Cost_Report.pdf

²³ Circular A-4 states: “You need to provide an accounting statement with tables reporting benefit and cost estimates for each major final rule for your agency.” (P. 44). Circular A-4 includes an example of a format for agency consideration. OMB recommends “that agencies should clearly and prominently present, in the preamble and in the executive summary of the regulatory impact analysis, one or more tables summarizing the assessment of costs and benefits required under Executive Order 12866 Section 6(a)(3)(C)(i)-(iii). The tables should provide a transparent statement of both quantitative and qualitative benefits and costs of the proposed or planned action as well as of reasonable alternatives. The tables should include all relevant information that can be quantified and monetized, along with relevant information that can be described only in qualitative terms. It will often be useful to accompany a simple, clear table of aggregated costs and benefits with a separate table offering disaggregated figures, showing the components of the aggregate figures. To the extent feasible in light of the nature of the issue and the relevant data, all benefits and costs should be quantified and monetized. To communicate any uncertainties, we recommend that the table should offer a range of values, in addition to best estimates, and it should clearly indicate impacts that cannot be quantified or monetized. If nonquantifiable variables are involved, they should be clearly identified. Agencies should attempt, to the extent feasible, not merely to identify such variables but also to signify their importance.” See *2010 Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities*, page 51. Available at: http://www.whitehouse.gov/sites/default/files/omb/legislative/reports/2010_Benefit_Cost_Report.pdf