

June 20, 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

Re: Proposed Revisions to Circular A-4, Regulatory Analysis (Docket No. OMB-2022-0014).

Dear Administrator Revez:

The undersigned organizations represent a diverse cross-section of groups concerned about the regulatory process and its impact on access to health coverage and health care. We thank you for this opportunity to comment on the proposed updates to Circular A-4.¹ The proposed revisions represent a much-needed update to Office of Management and Budget's (OMB) 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. Of particular importance are the renewed focus on distributional effects, and the modernization of the discount rate used by OMB. The regulatory process has a profound impact on access to health coverage and health care. The proposed revisions to Circular A-4 better account for the experiences of low-income and underserved populations and will promote more equitable access to health coverage and health care. The proposed reforms will also make the regulatory process more efficient, accessible, and effective at protecting the public.

¹ See OMB, *Request for Comments on Proposed OMB Circular No. A-4, "Regulatory Analysis,"* 88 Fed. Reg. 20915 (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>; see also OMB, *Draft for Public Review, Circular A-4* (April 6, 2023), <https://www.whitehouse.gov/wp-content/uploads/2023/04/DraftCircularA-4.pdf> [hereinafter OMB Proposed Changes to Circular A4].

Modernization of the Discount Rate

We support OMB’s proposal to modernize the assessment of future costs and benefits by lowering the “discount rate.” A discount-rate is used during cost-benefit analysis to translate benefits that occur at different times into a common, present value.² Lowering the discount rate will yield a more appropriate analysis of rules that impose costs in the short-term, but also create long-term benefits. For example, regulations that improve access to health coverage and preventive care—such as cancer or diabetes screenings—can help mitigate longer-term and costly health complications.³ Modern policy making should fully and accurately account for longer term benefits and costs, but these consequences have been artificially discounted by the existing review process. OMB’s proposed changes would allow federal agencies to place a higher benefit on the long-term cost and benefits of regulations, to better account for how they play out over time.

Focus on Distributional Effects

We also support OMB’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 advocates, we are deeply familiar with the fact that some regulations benefit certain segments of the population more than others, and the current process often disregards the impacts on groups that have historically faced discrimination and been excluded from the regulatory process.

Given this, we commend OMB for appropriately recognizing that “promoting distributional fairness and advancing equity” and “protecting civil rights and civil liberties or advancing democratic values” are appropriate justifications for regulatory action.⁴ For example, certain health programs, including the Affordable Care Act, Medicare, and Medicaid were enacted both to improve the efficiency of our health care delivery systems, but also to promote equity. Regulations issued by the Department of Health and Human Services (HHS) should consider the impact on low-income and

² NYU Institute for Policy Integrity, *Digging Into the Proposed Circular A-4 Update* (May 1, 2023), <https://medium.com/policy-integrity-blog/digging-into-the-proposed-circular-a-4-update-a7ad1c404ad0>.

³ HHS, Office of the Assistant Sec’y for Planning and Evaluation, *Issue Brief: Access to Preventive Services without Cost-Sharing: Evidence from the Affordable Care Act* (2022), <https://aspe.hhs.gov/sites/default/files/documents/786fa55a84e7e3833961933124d70d2/preventive-services-ib-2022.pdf>.

⁴ OMB Proposed Changes to Circular A4 at 15.

underserved populations.⁵ One prime example of this is the regulations implementing Section 1557 of the Affordable Care Act, that address equity concerns by preventing discrimination on the basis of race, ethnicity, language, gender, sexual orientation, gender identity, age and disability.

Application of the Marginal Costs of Public Funds Factor

We also believe that OMB appropriately advises federal agencies against applying a “marginal cost of public funds” factor when evaluating spending rules. As OMB notes “the longstanding approach of not making such adjustments in analysis of individual regulations is due to several reasons, but is primarily because such regulations typically do not make offsetting changes to tax policy.”⁶ The effect of current spending on future taxation is too uncertain to consider when considering the costs of regulations. Furthermore, even if taxation did increase in the future as a result of increased spending now, the distributional benefits of such taxation might offset its distortionary costs.

Other Changes

We also note that the changes to Circular A-4 appropriately reflect that transfers—such as increases in government health care spending—can “induce important behavioral changes.”⁷ In the health care context, improving access to health coverage and care has been shown to yield a variety of benefits, including better access to treatment and care, reduced mortality, and improved quality of life. For example, requiring states to spend money to improve and streamline enrollment systems—as recent Medicaid proposed regulations would likely do—can result in more individuals obtaining health insurance, for which they are eligible, but have previously had difficulty navigating complex enrollment applications and systems.

Additionally, we appreciate OMB’s emphasis on income weighting, recognizing 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 and underserved communities.

⁵ See OMB Proposed Changes to Circular A4 at 19 (specifically noting that Medicare and Medicaid are health programs designed to promote equity and access to care).

⁶ OMB Proposed Changes to Circular A4 at 60.

⁷ *Id.*

Conclusion

For all the reasons listed above, we encourage OMB to finalize the proposed revisions to Circular A-4. We believe these changes will help create a more efficient, effective, and inclusive regulatory process. We thank you for taking the time to consider our input on the way these changes will impact access to health care and health coverage. If you have any questions, please do not hesitate to reach out to Dania Douglas of the National Health Law Program at douglas@healthlaw.org.

Sincerely,

National Health Law Program

Alabama Disabilities Advocacy Program

American Association of People with Disabilities

American Association on Health and Disability

American Kidney Fund

American Lung Association

Arizona Center for Law in the Public Interest

Association of People Supporting Employment First (APSE)

Autistic People of Color Fund (APOC)

Autistic Self Advocacy Network

Big Cities Health Coalition

Center for Civil Justice

Center for Elder Law & Justice

Center for Law and Social Policy (CLASP)

Coalition on Human Needs

Colorado Center on Law and Policy

Cystic Fibrosis Foundation

Endangered Species Coalition

Equality California

Family Values at Work

Family Voices NJ

Hepatitis B Foundation

Jacobs Institute of Women's Health

Lakeshore Foundation

Legal Council for Health Justice

Maine Parent Federation

Maui Economic Opportunity, Inc.

Medicare Rights Center

National Center for Parent Leadership, Advocacy, and Community Empowerment

(National PLACE)

National Council of Jewish Women

National Disability Rights Network (NDRN)

National Health Care for the Homeless Council

National Organization for Women

National Partnership for Women & Families

Planned Parenthood Federation of America

Positive Women's Network-USA

Public Advocacy for Kids (PAK)

Public Justice Center

Sojourners

South Carolina Appleseed Legal Justice Center

Tennessee Justice Center

The Leadership Conference on Civil and Human Rights

The Parents' Place of MD

William E. Morris Institute for Justice