

Modernizing Regulatory Review

JANUARY 20, 2021 • PRESIDENTIAL ACTIONS

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Modernizing Regulatory Review

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Background. For nearly four decades, the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) has been charged by Presidents of both parties with reviewing significant executive branch regulatory actions. This process is largely governed by Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), as amended. This memorandum reaffirms the basic principles set forth in that order and in Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review), which took important steps towards modernizing the regulatory review process. When carried out properly, that process can help to advance regulatory policies that improve the lives of the American people.

Our Nation today faces serious challenges, including a massive global pandemic; a major economic downturn; systemic racial inequality; and the undeniable reality and accelerating threat of climate change. It is the policy of my Administration to mobilize the power of the Federal Government to rebuild our Nation and address these and other challenges. As we do so, it is important that we evaluate the processes and principles that govern regulatory review to ensure swift and effective Federal action. Regulations that promote the public interest are vital for tackling national priorities.

Sec. 2. Implementation. (a) I therefore direct the Director of OMB, in consultation with representatives of executive departments and agencies (agencies), as appropriate and as soon as practicable, to begin a process with the goal of producing a set of recommendations for improving and modernizing regulatory review. These recommendations should provide concrete suggestions on how the regulatory review process can promote public health and safety, economic growth, social welfare, racial justice, environmental stewardship, human dignity, equity, and the interests of future generations. The recommendations should also include proposals that would ensure that regulatory review serves as a tool to affirmatively promote

regulations that advance these values. These recommendations should be informed by public engagement with relevant stakeholders.

(b) In particular, the recommendations should:

(i) identify ways to modernize and improve the regulatory review process, including through revisions to OMB's Circular A-4, Regulatory Analysis, 68 Fed. Reg. 58,366 (Oct. 9, 2003), to ensure that the review process promotes policies that reflect new developments in scientific and economic understanding, fully accounts for regulatory benefits that are difficult or impossible to quantify, and does not have harmful anti-regulatory or deregulatory effects;

(ii) propose procedures that take into account the distributional consequences of regulations, including as part of any quantitative or qualitative analysis of the costs and benefits of regulations, to ensure that regulatory initiatives appropriately benefit and do not inappropriately burden disadvantaged, vulnerable, or marginalized communities;

(iii) consider ways that OIRA can play a more proactive role in partnering with agencies to explore, promote, and undertake regulatory initiatives that are likely to yield significant benefits; and

(iv) identify reforms that will promote the efficiency, transparency, and inclusiveness of the interagency review process, and determine an appropriate approach with respect to the review of guidance documents.

Sec. 3. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Director of OMB is authorized and directed to publish this memorandum in the Federal Register.

JOSEPH R. BIDEN JR.