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Cost-Benefit Analysis in Federal Agency Rulemaking

Since the 1970s, federal agencies have been required to consider the costs and benefits of new regulations that are expected to have large economic effects. Under current requirements, agencies are to design regulations in a cost-effective manner and ensure that the benefits of their regulations justify the costs.

Cost-benefit analysis of regulations is primarily required by Executive Order (E.O.) 12866, which was issued in 1993 by President Bill Clinton and remains in effect, as amended. E.O. 12866 was largely based on President Ronald Reagan's E.O. 12291 (1981), which required agencies to conduct cost-benefit analysis for "major" rules and required that benefits of covered regulations outweigh the costs. E.O. 12866 establishes the primary analytical requirements that are part of the federal rulemaking process, and these requirements are further informed by other executive orders, guidance from the Office of Management and Budget (OMB), and statutory mandates.

This In Focus provides a brief overview and discussion of the key cross-cutting executive orders and statutes that require cost-benefit and other types of regulatory impact analyses in the federal rulemaking process.

Role of Cost-Benefit Analysis in Regulatory Decisionmaking

Cost-benefit analysis involves describing the potential costs and benefits of a regulation in quantified and monetized terms when possible, and otherwise in qualitative terms. Then, the potential costs and benefits of a rule are compared, with regard to both the quantified and qualitative considerations. The analysis federal agencies engage in during the rulemaking process often includes both quantified and nonquantifiable effects.

The phrase *regulatory impact analysis* is sometimes used interchangeably in general discussion with the phrase *cost-benefit analysis*. However, *regulatory impact analysis* is a broader term that includes cost-benefit analysis and other types of quantitative and qualitative analyses, such as cost-effectiveness analysis and distributional analysis.

Generally, the role of regulatory impact analysis in federal rulemaking is not necessarily for the analysis to be determinative or dispositive. That is, agencies do not typically make decisions about the final output of a rulemaking solely on the outcome of their regulatory impact analyses. Other factors will likely be part of an agency's regulatory decision, such as statutory mandates and considerations, as well as the political and policy priorities of the current Administration. Regulatory impact analysis should generally be viewed as one of several inputs into federal agencies' regulatory decisions.

Overview of Regulatory Cost-Benefit Analysis Requirements

The principal requirements of the federal rulemaking process were established in Section 553 of the Administrative Procedure Act (APA) of 1946. The APA itself does not include an explicit requirement for cost-benefit analysis. Rather, the primary requirement for agencies is in E.O. 12866, which requires covered agencies to conduct analyses for rules that are considered *economically significant*—that is, rules that are expected to have "an annual effect on the economy of \$100 million or more." E.O. 12866 also requires a less-detailed assessment of costs and benefits for a broader category of rules ("significant" rules), and it contains a number of considerations ("principles") relating to costs and benefits for all rules. OMB has expanded on the executive order's requirements by issuing various guidance documents, most significantly Circular A-4.

Congress has enacted a handful of statutes with more narrowly applicable requirements for regulatory impact analysis. These include the Regulatory Flexibility Act (5 U.S.C. §§601-612), the Paperwork Reduction Act (44 U.S.C. §§3501-3521), and the Unfunded Mandates Reform Act (2 U.S.C. §§1531-1538), which are discussed below.

Executive Order 12866

Section 1 of E.O. 12866, entitled "Statement of Regulatory Philosophy and Principles," references the consideration of costs and benefits for all rules. For example, it encourages agencies to design their regulations "in the most cost-effective manner to achieve the regulatory objective" and to ensure that the benefits of a regulation justify the costs.

Section 6(a)(3)(B) of the order requires covered agencies to assess the potential costs and benefits of *significant* rules and to submit this assessment along with each proposed and final rule to OMB's Office of Information and Regulatory Affairs (OIRA) for review. Significant rules are those that may

- (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive order.

For *economically significant* rules, which are those rules that fall into category (1) of significant rules, the E.O. requires a more rigorous and detailed cost-benefit analysis. Section 6(a)(3)(C) indicates that agencies should assess the costs, benefits, and “reasonably feasible alternatives” for economically significant rules. The assessment is to include “to the extent feasible, a quantification” of costs and benefits that are anticipated from a regulation, as well as the costs and benefits of “potentially effective and reasonably feasible” alternatives. Agencies are then required to make this information public after the proposed or final rule is published in the *Federal Register*.

OMB Circular A-4

OMB first issued Circular A-4 in 2003 “to assist analysts in the regulatory agencies by defining good regulatory analysis ... and standardizing the way benefits and costs of Federal regulatory actions are measured and reported.” The circular recommended that an analysis include elements such as a statement of the need for the proposed action, an examination of alternative approaches, and an evaluation of qualitative and quantitative benefits and costs of the proposed action and the main alternatives. The circular also provided guidance on when varying analytical approaches may be appropriate (e.g., when to use cost-benefit analysis vs. cost-effectiveness analysis).

In 2023, pursuant to E.O. 14094, the Biden Administration revised Circular A-4 after soliciting public comments on several proposed changes. Among other amendments, the revised circular provided more guidance to agencies about how to analyze distributional effects of regulations and how to account for effects that are difficult to monetize, and it lowered the recommended discount rates agencies are to use when estimating the value of costs and benefits over time. In 2025, President Trump ordered the repeal of these changes, reinstating the original version from 2003.

E.O. 12866 and Independent Regulatory Agencies

In 2025, President Trump issued E.O. 14215, which extended the coverage of E.O. 12866’s cost-benefit analysis requirements to independent regulatory agencies, a statutorily designated class of agencies that had historically been exempted from executive orders governing OIRA review and cost-benefit analysis. The independent regulatory agencies are listed in Title 44, Section 3502(5), of the *U.S. Code* and include, for example, the Federal Reserve Board and the Federal Communications Commission. Presidents had chosen to exempt these agencies from E.O. 12866 and its predecessor orders on the grounds that Congress designed them to be independent of the President and, by extension, OIRA and OMB. In recent years, some Members of Congress and others have supported extending the analytical requirements of E.O. 12866 to the independent regulatory agencies, and the legality of the change was the subject of an Office of Legal Counsel memorandum during the first Trump Administration.

Other Recent Developments

In 2025, the Trump Administration issued E.O. 14192, “Unleashing Prosperity Through Deregulation,” which includes two major elements related to the consideration of regulatory costs. First, E.O. 14192 established a “ten-for-one rule” where any incremental costs associated with new regulations must “be offset by the elimination of existing costs associated with at least 10 prior regulations.”

Additionally, E.O. 14192 established a policy where the “total incremental cost of all new regulations ... shall be significantly less than zero.” This policy is sometimes referred to as a regulatory budget; in this case, the costs allowed under the regulatory budget are to be capped by OMB at or below zero. In March 2025, OIRA issued initial guidance to agencies on implementation of E.O. 14192. As of June 16, 2026, it appears that OMB has not yet set the cost caps for FY2026.

Statutory Requirements for Cost-Benefit and Regulatory Impact Analysis

Congress has also enacted various statutory requirements for agencies to consider specific regulatory impacts.

The Regulatory Flexibility Act of 1980 requires agencies to conduct regulatory flexibility analyses for proposed and final rules that will have a “significant economic impact on a substantial number of small entities” (defined as small businesses, governmental jurisdictions, and certain nonprofit organizations). For proposed rules, such an analysis is referred to as an “initial regulatory flexibility analysis,” and for final rules, it is a “final regulatory flexibility analysis.” These analyses are to include elements such as a description and estimate of the number of small entities to which a rule would apply and “a description of the steps the agency has taken to minimize the significant economic impact on small entities.”

The Paperwork Reduction Act of 1980 requires agencies to estimate the paperwork burden resulting from regulations and other actions that will result in a collection of information. The act is not a rulemaking statute per se, as one of its primary purposes is to empower OMB to monitor and reduce the government’s overall paperwork burden. However, many rules contain a reporting or disclosure requirement, which would trigger the act’s requirements for estimating paperwork burden and obtaining OMB approval for the information collection.

The Unfunded Mandates Reform Act of 1995 added requirements for agencies (other than independent regulatory agencies) to analyze costs resulting from regulations imposing federal mandates on state, local, and tribal governments and the private sector. This analytical requirement is triggered when a rule may result in the expenditure of over \$100 million (adjusted annually for inflation) in any one year. If an agency anticipates such a mandate, it is to conduct an assessment of quantitative and qualitative costs and benefits and other economic effects of the mandate.

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