

The Honorable Richard L. Revesz
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
1650 Pennsylvania Ave., N.W.
Washington, D.C. 20504

Re: Proposed Revisions to OMB Circular A-4, OMB-2022-0014

Dear Administrator Revesz:

I write in reference to the above-captioned request for comments on the proposed revisions to OMB Circular A-4. I appreciate the time and attention you and the OIRA staff have devoted to the proposed revisions. I write to urge that you decline to finalize the proposed elimination of the term “ancillary benefits”; alternatively, if you eliminate the term, I urge that you include additional text making clear that agencies must separately identify the regulatory benefits that they believe are most relevant to congressional purposes.

Circular A-4 currently directs agencies to account for ancillary benefits, which it defines as “favorable impact[s] of the rule that [are] typically unrelated or secondary to the statutory purpose of the rulemaking.” The draft proposes to eliminate the term “ancillary benefits,” on the basis that “categories of effects such as ‘ancillary’ ... are not meaningfully different for analytical purposes from categories of effects that are ‘primary’....” Preamble at 7. Instead of calling for identification of ancillary benefits, the draft would direct agencies to “look beyond the obvious benefits ... of [a] regulation and consider any important additional benefits.” Proposal at 39. It defines an additional benefit as “a favorable impact ... of the regulation that is typically unrelated to the main purpose of the regulation.” *Id.*

The preamble is incorrect that ancillary benefits play no meaningfully different role in analysis from primary benefits. To see the point, it is important to recall that regulatory impact analysis has multiple purposes. One among them is assisting the American people, Congress, and agencies themselves to assess whether and to what extent agencies are executing congressional direction or, on the contrary, carrying out projects all their own. Where the lion’s share of benefits of a proposed rulemaking are primary benefits, that is a good indication that the agency is seeking to remedy the same problem that Congress had in mind when enacting the statute under which the agency proposes to act and therefore is seeking to carry out congressional direction. On the other hand, when ancillary benefits predominate, that suggests the proposed regulation represents a focus on a mission other than the one Congress has provided. Without separate identification of ancillary benefits, Congress, the people, and the agencies will face difficulty in understanding whether agency action is mainly trained on congressional, or agency, objectives.

For similar reasons, the proposal also goes astray by defining additional benefits as benefits

unrelated to the *regulation's* (rather than the statute's) main purpose. To assess the extent to which a proposed regulation carries out congressional direction, the important question is whether the principal benefits are those Congress (not the regulation) intended.

For these reasons, I urge that you retain the term “ancillary benefits” and the requirement that agencies account for such benefits. If this term is abandoned, I urge that you nevertheless require agencies to identify separately those benefits which they believe Congress principally sought to achieve in enacting the statute under which the agencies propose to act.

Sincerely,

Paul J. Ray