

**Draft Report to Congress on the Benefits and
Costs of Federal Regulations and Agency
Compliance with the Unfunded Mandates
Reform Act**



Fiscal Years 2020, 2021, 2022

OFFICE OF MANAGEMENT AND BUDGET
OFFICE OF INFORMATION AND REGULATORY AFFAIRS

**DRAFT REPORT TO CONGRESS
ON THE BENEFITS AND COSTS OF FEDERAL REGULATIONS AND
AGENCY COMPLIANCE WITH THE UNFUNDED MANDATES REFORM ACT**

EXECUTIVE SUMMARY	3
PART I: DRAFT REPORT TO CONGRESS ON THE BENEFITS AND COSTS OF FEDERAL REGULATIONS	6
CHAPTER I: THE BENEFITS AND COSTS OF FEDERAL REGULATIONS	7
CHAPTER II: THE IMPACT OF FEDERAL REGULATION ON STATE, LOCAL AND TRIBAL GOVERNMENTS, SMALL BUSINESS, WAGES AND EMPLOYMENT, AND ECONOMIC GROWTH	14
A. IMPACTS ON STATE, LOCAL, AND TRIBAL GOVERNMENTS.....	14
B. IMPACT ON SMALL BUSINESS, WAGES AND EMPLOYMENT, AND ECONOMIC GROWTH	15
CHAPTER III: RECOMMENDATIONS FOR REFORM	18
PART II: REPORT TO CONGRESS ON AGENCY COMPLIANCE WITH THE UNFUNDED MANDATES REFORM ACT	23
APPENDIX A: REPORTED FINAL RULES ON WHICH OMB CONCLUDED REVIEW IN FY20, FY21, AND FY22	28
APPENDIX B: REFERENCES	39

EXECUTIVE SUMMARY

This Accounting Statement and Report, issued pursuant to the Regulatory Right-to-Know Act,¹ presents estimates from agency-reported analyses issued in Fiscal Year 2020, Fiscal Year 2021, and Fiscal Year 2022 (FY20, FY21, and FY22, respectively).² It does not purport to demonstrate all effects of Federal regulation; instead, the report summarizes agency estimates of the anticipated benefits, costs, and transfers from the Regulatory Impact Analyses (RIAs) of individual final rules, as required by the Regulatory Right-to-Know Act. These estimates generally are prospective, and do not reflect retrospective evaluation of their impacts, though individual agency RIAs reforming a previously finalized rule may develop, as part of their analysis, estimates of the realized impacts of previous regulations. In addition, this report includes a time period that includes regulations issued before the most recent change in Administration, and does not imply an endorsement by the current Administration of all of the assumptions made and analyses conducted at the time these regulations were finalized.

This report covers three fiscal years and includes over 200 rules promulgated by executive branch agencies. Many of these rules implemented Federal budgetary programs as required or authorized by Congress; examples include the Medicare Program, the Federal Pell Grant Program, or COVID-19 pandemic relief. More information about the FY20, FY21, and FY22 rules follows:

- For 31 rules, we report agency estimates of both benefits and costs.
- For 3 rules, we report agency estimates of benefits, but costs are not reported.
- For 58 rules, we report agency estimates of costs, but benefits are not reported.
- For 115 rules, we report agency estimates of transfers (either Federal budget transfers or non-budget transfers).

It is important to emphasize, as the Office of Management and Budget (OMB) traditionally does in these types of reports, that the estimates used here have limitations. Incomplete empirical information and data are continuing challenges to agencies when assessing the likely effects of regulation. In some cases, the quantification of various effects may be imprecise, uncertain, or incomplete. In addition, the value of particular categories of benefits (such as protection of homeland security or personal privacy) may be sizable but quantification has long presented significant challenges. In spite of these difficulties, careful consideration of currently-available data and methods for assessing costs and benefits is best understood as a pragmatic way of providing insights regarding the prospects for individual regulations to improve social welfare.

Chapter I summarizes the reported effects of Federal regulations issued in FY20, FY21 and FY22. Chapter II discusses regulatory impacts on State, local, and tribal governments; small

¹ Pub. L. No. 106-554, tit. VI, § 624, 114 Stat. 2763A-161 (Dec. 21, 2000) (codified as amended at 31 U.S.C. § 1105 note).

² Fiscal years run from October 1 (of the preceding calendar year) to September 30.

businesses; wages; and economic growth. Chapter III provides recommendations for reform, including a summary of this Administration’s efforts to implement the Presidential Memorandum of January 20, 2021, and Executive Order 14094, both entitled “Modernizing Regulatory Review.”

This Report is being issued along with OMB’s required Report to Congress on Agency Compliance with the Unfunded Mandates Reform Act of 1995.³ OMB reports on agency compliance with Title II of UMRA, which generally requires that each agency conduct a cost-benefit analysis; identify and consider a reasonable number of regulatory alternatives; and select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule before promulgating any proposed or final rule that includes a Federal mandate that may result in expenditures of more than \$100 million (adjusted for inflation, with the current threshold of approximately \$190 million) in at least one year by State, local, and tribal governments, in the aggregate, or by the private sector. Each agency issuing a rule with relevant effects over that threshold must also seek input from State, local, and tribal governments.

OMB regularly reassesses and welcomes feedback on how best to provide the information required by law in this Report. New circumstances provide an opportunity to take a fresh look at how analyses are conducted, and whether OMB is providing the public with the optimal level and scope of information, given the status of the final rules covered in the Report. For example, as newly done in the report covering fiscal years 2017, 2018 and 2019, OMB is sharing data in this report via electronic spreadsheet to facilitate the public’s use and analysis of its contents.⁴

As another example, in the last report we requested public comment about whether to continue to use this Report as the mechanism to disseminate fiscal year summaries of the number of requests for correction received by agencies pursuant to OMB’s *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by Federal Agencies*⁵ and the number of peer reviews conducted pursuant to OMB’s *Final Information Quality Bulletin for Peer Review*.⁶ As an alternative, we proposed to disseminate those fiscal year summaries on OMB’s website.⁷ We did not receive significant feedback from

³ 2 U.S.C. § 1538.

⁴ As discussed in more detail below, the spreadsheet may facilitate calculation of impact subtotals that potentially hold interest for various readers.

⁵ Off. of Mgmt. & Budget, Exec. Off. of the President, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies*, 67 Fed. Reg. 8452 (Feb. 22, 2002), available at <https://www.federalregister.gov/documents/2002/02/22/R2-59/guidelines-for-ensuring-and-maximizing-the-quality-objectivity-utility-and-integrity-of-information>.

⁶ Off. of Mgmt. & Budget, Exec. Off. of the President, OMB M-05-03, *Final Information Quality Bulletin for Peer Review* (Dec. 16, 2004), available at https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/memoranda/2005/m05-03.pdf.

⁷ Such a web hosting would be consistent with U.S. Gov’t Accountability Off., GAO-16-110, *Information Quality Act: Actions Needed to Improve Transparency and Reporting of Correction Requests*, (Dec. 21, 2015), available at

the public. In order to achieve more effective and efficient display of the Information Quality Act reporting results online,⁸ we are in the process of developing a site on the Office of Information and Regulatory Affairs (OIRA) [Information Quality homepage](#) that will allow readers to see these data in a format that allows understanding of agency-to-agency temporal trends in requests for correction (and appeals) received by agencies as well as the number of peer reviews conducted. We will no longer use this Report to convey that information.

Upon publication of this draft report, OMB will request public comment via a *Federal Register* notice and will seek input from peer reviewers with expertise in areas related to regulatory policy or cost-benefit analysis. The final version of this report will include revisions made in response to public and peer reviewer comments and will be posted on the White House website and on www.regulations.gov.

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<https://www.gao.gov/products/GAO-16-110>. The Government Accountability Office (GAO) raises the concern that, although OMB posts Information Quality Act (IQA) information online, including links to agency-specific IQA guidelines, there is no central location on OMB's website where a user could access all IQA data, making specific IQA data more difficult to find and hindering transparency.

⁸ Pub. L. No. 106-554, tit. V, § 515(a), 114 Stat. 2763A-153 (Dec. 21, 2000) (codified at 44 U.S.C. § 3516 note).

**PART I: REPORT TO CONGRESS ON THE
BENEFITS AND COSTS OF FEDERAL
REGULATIONS**

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Chapter I: The Benefits and Costs of Federal Regulations

The Regulatory Right-to-Know Act calls for OMB to submit to Congress each year “an accounting statement and associated report” including

- (1) an estimate of the total annual costs and benefits (including quantifiable and nonquantifiable effects) of Federal rules and paperwork, to the extent feasible:
 - (A) in the aggregate;
 - (B) by agency and agency program; and
 - (C) by major rule;
- (2) an analysis of impacts of Federal regulation on State, local, and tribal government, small business, wages, and economic growth; and
- (3) recommendations for reform.⁹

The Regulatory Right-to-Know Act does not define “major rule.” For the purposes of this Report, we follow our longstanding practice of including all final rules promulgated by an Executive Branch agency that meet at least one of the following three conditions:

- Designated as meeting the criteria set forth in 5 U.S.C. § 804(2);¹⁰
- Designated as meeting the analysis threshold under the Unfunded Mandates Reform Act of 1995 (UMRA);¹¹ or
- Designated as “significant” under § 3(f)(1) of Executive Order 12866.¹²

⁹ 31 U.S.C. § 1105 note.

¹⁰ These criteria are defined in Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, also known as the Congressional Review Act, as applying to a rule that has resulted in or is likely to result in “(A) an annual effect on the economy of \$100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.” 5 U.S.C. § 804(2). Under the statute, agencies submit a report to each House of Congress and GAO and make available “a complete copy of the cost-benefit analysis of the rule, if any.” *Id.* § 801(a)(1)(B)(i). *See also* Off. of Mgmt. & Budget, Exec. Off. of the President, OMB M-19-14, *Guidance on Compliance with the Congressional Review Act* 6 n.23 (Apr. 11, 2019), available at <https://www.whitehouse.gov/wp-content/uploads/2019/04/M-19-14.pdf>.

¹¹ Generally, a written statement containing a qualitative and quantitative assessment of the anticipated benefits and costs of the Federal mandate is required under section 202(a) of the Unfunded Mandates Reform Act of 1995 for all rules that include a Federal mandate that may result in “the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year.” 2 U.S.C. § 1532(a).

¹² A regulatory action is considered “significant” under § 3(f)(1) of Executive Order 12866, 58 Fed. Reg. 51,735 (Oct. 4, 1995), available at <https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf>, as amended by Executive Order 14094, 88 Fed. Reg. 21,879 (Apr. 11, 2023), available at <https://www.federalregister.gov/documents/2023/04/11/2023-07760/modernizing-regulatory-review>, if it is likely to result in a rule that may have “an annual effect on the economy of \$200 million or more (adjusted every 3 years by

As has been the practice for many years, all estimates presented in this chapter are agency estimates of benefits and costs, or minor modifications of agency information prepared by OMB, that are not meant to change the basic analysis, but rather to facilitate comparisons across analyses.¹³ This chapter also includes a discussion of rules issued by independent regulatory agencies that fall within the scope of 5 U.S.C. § 804(2), although OMB does not review these rules under Executive Order 12866, as amended by Executive Order 14094.¹⁴ This discussion is based solely on data provided by these agencies to the Government Accountability Office (GAO) and OMB under the Congressional Review Act.¹⁵

As in previous reports, we have adjusted estimates to 2001 dollars (2001\$), per OMB Circular A-4. We also report estimates that reflect a recent annual gross domestic product (GDP) deflator.¹⁶

We note that aggregating benefit and cost estimates of individual regulations may produce results that are neither precise nor complete, nor, in some cases, conceptually sound. Notably:

- Individual regulatory impact analyses vary in rigor and may rely on different assumptions, including baseline scenarios, time horizons, methods (including models), data, and measures of welfare changes (including approximations thereof). Summing across estimates involves the aggregation of analytical results that may not be comparable.¹⁷

the Administrator of OIRA for changes in GDP); 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, territorial, or tribal governments or communities.”

¹³ OMB uses agencies’ published estimates where available. We note that those estimates were typically subject to internal U.S. Government review (through the interagency review process) and external review (through the public comment process). OMB did not independently estimate benefits or costs when agencies did not provide quantified estimates. We generally did not update or recalculate benefit and cost numbers. However, in some cases, there have been adjustments to the presentation—for example, if an agency reported snapshots of individual-year effects, rather than annualized values.

¹⁴ See Executive Order 12866, 58 Fed. Reg. 51,735 (Oct. 4, 1995), available at <https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf>; Executive Order 14094, 88 Fed. Reg. 21,879 (Apr. 11, 2023), available at <https://www.federalregister.gov/documents/2023/04/11/2023-07760/modernizing-regulatory-review>. Section 3(b) of Executive Order 12866 excludes “independent regulatory agencies, as defined in 44 U.S.C. 3502(10)” from OMB’s regulatory review purview.

¹⁵ 5 U.S.C. §§ 801–808.

¹⁶ Unless otherwise noted, all benefit and cost estimates are adjusted to 2001 dollars using the latest GDP deflator, available from the Bureau of Economic Analysis at the Department of Commerce. See Bureau of Econ. Analysis, *National Income and Product Accounts*, tbl. 1.1.9, Implicit Price Deflators for Gross Domestic Product, available at <https://apps.bea.gov/iTable/?reqid=19&step=3&isuri=1&1921=survey&1903=13> (last visited Sept. 19, 2023). In instances in which the nominal dollar values the agencies use for their benefits and costs are unclear, we assume the benefits and costs are presented in nominal dollar values of the year before the rule is finalized. This assumption has negligible effect on the overall totals.

¹⁷ Please see past Reports for further discussion about lack of comparability.

- The most fundamental purpose of a regulatory impact analysis is to inform policy options at the time a regulatory decision is being made; however, analytic approaches that serve this purpose may not readily lend themselves to aggregation. For example, in order to evaluate the expected costs and benefits of a regulation when it is put in place, agencies often assume there will be full compliance with the regulation. If this later turns out to be not the case and a second regulation is being contemplated to increase compliance, it would be appropriate to analyze the expected costs and benefits of the second regulation relative to the then current conditions of less-than-full compliance to determine whether that second regulation is likely to be cost-beneficial. However, summing the estimated costs and benefits of these two rules without taking account of their overlapping estimated effects would result in an overestimate of both the aggregate costs and the aggregate benefits of the two rules. These caveats regarding aggregation apply more broadly to any regulations that have interacting effects.

Several more general analysis and accounting-related points also deserve emphasis:

- The benefits and costs, as presented in this report including the accompanying spreadsheet, are not necessarily correlated. In other words, when interpreting the meaning of these ranges, the reader should not assume that when benefits are on the low end of their range, costs will also tend to be on the low end of their range. This is because, for some rules, there are factors that affect costs that have little correlation with factors that affect benefits (and vice-versa). Accordingly, to calculate the range of net benefits (*i.e.*, benefits minus costs), one should not simply subtract the lower bound of the benefits range from the lower bound of the cost range and similarly for the upper bound. It is possible that the true benefits are at the higher bound and that the true costs are at the lower bound, as well as vice-versa.
- As we have noted, it is not always possible to quantify or to monetize relevant benefits or costs of rules in light of limits in existing information. For purposes of policy decisions, non-monetized benefits and costs may be important. Some regulations have significant non-quantified or non-monetized benefits, such as protection of privacy or human dignity, and OMB has long emphasized their potential importance in both analysis and agency decision making. Analogously, to the extent that rules encroach upon privacy or human dignity, there may be important non-monetized costs of regulation.
- Prospective analyses—such as the agency RIAs that form the basis for the estimates in this Report—may overestimate or underestimate both benefits and costs; retrospective analysis can be important as a corrective mechanism.¹⁸ Executive Orders 12866 and 13563 establish the importance of such analysis, with the goal of improving relevant regulations through modification, streamlining, expansion, or

¹⁸ See Greenstone (2009).

repeal.¹⁹ The aims of retrospective analysis are to improve technical understanding, which would indirectly bolster the accuracy of prospective analysis, and to provide a basis for potentially modifying rules as a result of *ex post* evaluations.²⁰ Agencies are encouraged to write and design their rules to facilitate retrospective analysis of their effects, including consideration of the data that will be needed for future evaluation of the rules' *ex post* costs and benefits.

- While agencies are encouraged to assess distributional effects, analysis of these types of impacts has historically been limited. Expanding and increasing the level and rigor of distributional analysis is a major focus of this Administration, which is discussed in more detail in our Recommendations for Reform Chapter. Additional analyses of this type could prove illuminating.

Reported Estimates of the Effects of Rules Issued in FY20, FY21 and FY22

1. Rules Issued by Executive Departments and Agencies

In this section, Appendix A of this document, and in Table A-1 of the accompanying spreadsheet, we examine in more detail the estimated benefits and costs of the final rules that were issued by executive departments and agencies for which OMB concluded review during the period beginning October 1, 2019, and ending September 30, 2022.²¹ Rules designated significant under Section 3(f)(1) of Executive Order 12866 represented approximately 40 percent of the final rules reviewed by OMB in these fiscal years.²²

¹⁹ See Executive Order 12866, 58 Fed. Reg. 51,735, 51,739–40 (Oct. 4, 1995), available at <https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf>; Executive Order 13563 § 6, 76 Fed. Reg. 3821, 3822 (Jan. 21, 2011), available at <https://www.federalregister.gov/documents/2011/01/21/2011-1385/improving-regulation-and-regulatory-review>.

²⁰ Retrospective review has shown that both costs and benefits can be overestimated or underestimated. See Harrington et al. (2000); Harrington (2006).

²¹ Table numbers have been assigned so as to maintain consistency with analogous tables in recent past reports. Although these tables, along with the Report more generally, note some instances in which rules are not in effect due to being vacated or enjoined by Federal courts or due to subsequent agency rulemaking, such notes are not necessarily comprehensive. Aggregating impact estimates for rules that are in effect at a particular point in time, rather than for all rules regardless of legal status, is the type of option that we hope may be facilitated by the spreadsheet presentation of much of the Report's content.

²² Counts of OMB-reviewed rules are available through the “review counts” and “search” tools on the Office of Information and Regulatory Affairs (OIRA) regulatory information website (www.reginfo.gov). Two search fields have the potential to indicate significance under Section 3(f)(1) of Executive Order 12866: “economically significant” (used prior to the issuance of Executive Order 14094 on April 11, 2023) and “Section 3(f)(1) significant.” We discussed the relative contribution of economically significant rules to the total impact of Federal regulation in detail in the “response-to-comments” section on pages 26–27 of the 2004 Report. Our evaluation of a few representative agencies found that rules designated significant under Section 3(f)(1) of Executive Order 12866 represented the vast majority of the benefits and costs of all rules promulgated by these agencies and reviewed by OMB. Based on our ongoing review of rules, we believe this trend is still true today.

During this time, agencies undertook many actions in response to the COVID-19 pandemic. Additionally, many regulations were annual budget rules (*i.e.*, rules that involve changes in the Federal government’s outlays, such as Medicare funding, or receipts, such as passport fees).

The rules for which agencies estimated both monetized costs and benefits are listed in the spreadsheets accompanying this report, aggregated by agency in Table 1-5 and listed individually in Table 1-6(a). There were 8 such rules in FY 2020, and the issuing agencies estimate a total of –\$9.5 billion to –\$4.5 billion in annual benefits and –\$10.8 billion to –\$7.0 billion in annual costs (in 2001\$).²³ There were 8 such rules in FY 2021, and the issuing agencies estimate a total of \$9.8 billion to \$12.2 billion in annual benefits and –\$0.3 billion to –\$0.1 billion in annual costs (in 2001\$). There were 14 such rules in FY 2022, and the issuing agencies estimate a total of \$25.2 billion to \$48.2 billion in annual benefits and \$16.9 billion to \$19.4 billion in annual costs (in 2001\$).²⁴ We emphasize an important detail—that the totals listed in this paragraph include only the benefits and costs for the minority of rules for which both those categories of impacts were estimated.²⁵

Spreadsheet tabs containing Tables 1-6(a), 1-6(b), 1-6(c), 1-6(d), 1-7(a) and 1-7(b) list each of the rules and, where available, provide information on their monetized effects. Table 1-6(a) lists the rules for which agencies estimated both costs and benefits, Tables 1-6(b) and 1-6(c) list the rules for which agencies at least partially estimated costs and benefits, and Table 1-6(d) lists rules for which the agencies estimated neither costs nor benefits.²⁶ Table 1-7(a) in each spreadsheet lists Federal budget transfers. Table 1-7(b) lists the non-budget transfers; the

²³ On net, these rules decreased the stringency of particular regulations, and OMB made the accounting choice in the prior administration, for the purposes of comparing these rules to actions that increased stringency, to count a reduction of benefits due to a regulatory action as a “negative benefit” and the reduction of costs as a “negative cost.” This accounting approach may help communicate that estimates of negative benefits in many cases reflect the same data and methods as earlier estimates of positive benefits, and estimates of cost savings often reflect the same data and methods as earlier estimate of costs. However, other accounting options—perhaps most notably, reporting forgone benefits as costs and reporting cost savings as benefits—would yield the same net-benefits results.

²⁴ The total across FY20, FY21 and FY22 is equivalent to \$41 to \$89 billion in annual benefits and \$9 to \$20 billion in annual costs in 2022 dollars. “Annual” costs and benefits are agency estimates annualized, generally using three- and seven percent discount rates, across the time horizon over which the agency chose to analyze the rule. For discussion of the mechanics of present and annualized value calculation, *see* Off. of Mgmt. & Budget, Exec. Off. of the President, *Regulatory Impact Analysis: Frequently Asked Questions* (Feb. 7, 2011), available at https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/assets/OMB/circulars/a004/a-4_FAQ.pdf.

²⁵ The spreadsheet that contains much of this Report’s content may facilitate the calculation of other aggregates that are of interest to readers.

²⁶ In some instances, agencies have been unable to quantify the benefits and costs of rules because existing information does not permit reliable estimates. We continue to work with agencies to improve the quantification of the benefits and costs of regulations and to make progress toward quantifying impacts that have thus far been discussed only qualitatively.

primary economic impact of each of these rules is to cause transfers between parties outside the Federal Government, and the table includes agencies' estimates of these transfers, if available.²⁷

2. *Rules Issued by Independent Agencies*

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)²⁸ requires GAO to submit to Congress reports on rules that fall within the scope of 5 U.S.C. § 804(2), including rules issued by agencies not subject to Executive Order 12866.²⁹ In preparing this Report, we reviewed the information contained in GAO reports on benefits and costs of rules issued by independent agencies for the period of October 1, 2019, to September 30, 2022.³⁰ (Rules by independent agencies are not subject to OMB review under Executive Order 12866, as amended by Executive Order 14094.) The Table 1-10 tab in each of the spreadsheets accompanying this report lists each of these rules and whether GAO reports indicate that there has been estimation of at least some benefits and costs of the rules.

As noted in past reports, the independent agencies still have challenges in providing monetized estimates of benefits and costs of regulation. For example, the costs associated with disclosure-related provisions have been largely monetized because of the requirements of the Paperwork Reduction Act, whereas the costs associated with provisions that change how the markets are regulated are not generally monetized. The limited information provided by GAO does not indicate whether the rigor of the analyses conducted by these agencies is similar to that of the analyses performed by agencies subject to OMB review.

Existing Executive Orders generally do not require independent agencies to submit their regulations for OMB review, or to engage in analysis of costs and benefits. We emphasize, however, that for the purposes of informing the public and obtaining a full accounting, it would be desirable to obtain better information on the benefits and costs of the rules issued by independent agencies. Consideration of costs and benefits is a pragmatic instrument for ensuring that regulations will improve social welfare; an absence of information on costs and benefits can

²⁷ We recognize that transfers change relative prices of goods and services and, hence, transfer rules may create social benefits or costs. For example, they may impose real costs on society to the extent that they cause people to change behavior, including “deadweight losses” associated with the transfer. Rules that reduce distortions may result in analogous gains. The Regulatory Right-to-Know Act requires OMB to report the costs and benefits of these rules, and OMB encourages agencies to report these costs and benefits for transfer rules; OMB will consider incorporating any such estimates into future Reports. Transfer rules can also entail direct compliance costs; where such costs have been estimated by agencies, estimates appear in the accompanying spreadsheets.

²⁸ Subtitle E of SBREFA (5 U.S.C. §§ 801–808) is commonly referred to as the Congressional Review Act.

²⁹ 5 U.S.C. § 801(a)(2)(A). A rule is subject to the GAO reporting requirement if it is likely to result in (a) an annual effect on the economy of \$100,000,000 or more; (b) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. *See* 5 U.S.C. § 804(2).

³⁰ Gov't Accountability Office, *Congressional Review Act*, available at <https://www.gao.gov/legal/other-legal-work/congressional-review-act> (last visited Sept. 11, 2023).

lead to inferior decisions.

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Chapter II: The Impact of Federal Regulation on State, Local, and Tribal Governments, Small Business, Wages and Employment, and Economic Growth

The Regulatory Right-to-Know Act requires OMB to present an analysis of the impacts of Federal regulation on State, local, and tribal governments, small businesses, wages, and economic growth.

A. Impacts on State, Local, and Tribal Governments

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, or “the Act”) describes specific analyses and consultations that agencies must undertake for rules that may result in expenditures of over \$100 million (adjusted annually for inflation) in any year by State, local, and tribal governments in the aggregate, or by the private sector. As in previous Reports, this chapter uses a ten-year lookback for purposes of administrability. Over the past ten fiscal years, the following rules have imposed costs of more than \$100 million per year in 1995 dollars (1995\$) on State, local, and tribal governments and have been classified as public sector mandates under the Act:³¹

- *CMS’s Patient Protection and Affordable Care Act; Benefit and Payment Parameters for 2014 (issued FY13), for 2015 (issued FY14), for 2016 (issued FY15), and for 2017 (issued FY16)*: These final rules provide detail and parameters related to various aspects of Affordable Care Act implementation, including the risk adjustment, reinsurance, and risk corridors programs; cost-sharing reductions; user fees for Federally facilitated Exchanges; advance payments of the premium tax credit; the Federally facilitated Small Business Health Option Program; and the medical loss ratio program. Although HHS did not quantify the user fees associated with these rules, the combined administrative cost and user fee impact may be high enough to constitute a State, local, or tribal government mandate under UMRA.
- *DOL’s Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees (2016)*: The Department of Labor divides salaried workers into three categories: low-paid workers who must be paid overtime (1.5 times the standard hourly pay rate for any hours over 40 worked in a week) under all conditions; highly compensated workers who are never subject to overtime requirements; and those in the middle who are exempt from overtime if their duties are executive, administrative, or professional (and non-exempt otherwise). DOL’s 2016 final

³¹ We note that EPA’s rules setting air quality standards for ozone and particulate matter may ultimately lead to expenditures by State, local, or tribal governments of \$100 million or more. However, Title II of the Unfunded Mandates Reform Act provides that agency statements of compliance with section 202 must be conducted “[u]nless otherwise prohibited by law.” 2 U.S.C. § 1532(a). The conference report to this legislation indicates that this language means that the section “does not require the preparation of any estimate or analysis if the agency is prohibited by law from considering the estimate or analysis in adopting the rule.” H.R. REP. NO. 104-76, at 39 (1995) (Conf. Rep.). EPA has stated, and the courts have affirmed, that under the Clean Air Act, the criteria for setting air pollutant ambient air quality standards are exclusively health-based, and EPA is not to consider costs in setting the standards.

rule would have revised the salary thresholds that separate the three categories—at the low end, raising it from \$23,660 to \$47,476 per year, and at the high end, raising it from \$100,000 to \$134,004 per year—and required that the thresholds be indexed every three years to account for inflation. Employee remuneration impacts and compliance costs were estimated to be well over \$100 million annually. In addition to certain private sector industries, some local government entities would have been substantially affected by the rulemaking.³²

- *EPA’s National Primary Drinking Water Regulations for Lead and Copper: Regulatory Revisions (2020)*: This rule includes a suite of actions to reduce lead exposure in drinking water. Public water systems are estimated to bear a large majority of the regulatory costs.
- *HHS’s Removal of Safe Harbor Protection for Rebates to Plans or PBMs Involving Prescription Pharmaceuticals and Creation of New Safe Harbor Protection (2020)*: The rule revises the discount safe harbor to remove from the definition of “discount” reductions in price or other remuneration from a manufacturer of prescription pharmaceutical products to plan sponsors or pharmacy benefit managers. The rule may have effects on states through the Medicaid Drug Rebate Program, under which rebates are shared between the Federal Government and states based on the Federal Medical Assistance Percentage for each state.
- *HHS’s Securing Updated and Necessary Statutory Evaluations Timely (2021 and 2022)*: The Department of Health and Human Services issued and then withdrew regulations that would have created procedures for the periodic review and sunset of the Department’s regulations. Given the extensive involvement by various levels of government in the provision of health care (and in health policy more generally), the regulation would have generated extensive effects for non-Federal governments, as would its withdrawal.

Although these rules were the only ones over the past ten-year period to require public sector mandates under UMRA on State, local, and tribal governments exceeding \$100 million (adjusted for inflation), they were not the only rules with impacts on other levels of governments. For example, even for rules with monetary impacts lower than the \$100 million threshold, agencies are required to consider the federalism implications of rulemakings under Executive Order 13132.

B. Impact on Small Business, Wages and Employment, and Economic Growth

In past Reports, we have included an extensive review of the literature related to regulatory impacts on small business, wages, employment, and economic growth.³³ Here, we

³² A Federal judge issued a preliminary injunction blocking implementation of the rule, and the Department of Labor filed an unopposed motion to stay its own appeal; this rule is therefore not in effect. In 2019, DOL issued a new final rule, with State, local, and tribal impacts estimated to fall below the \$100 million threshold.

³³ See, e.g., Off. of Info. & Regul. Affs., Off. of Mgmt. & Budget, Exec. Off. of the President, *2017 Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with Unfunded Mandates Reform Act* (2017), available at https://www.whitehouse.gov/wp-content/uploads/2019/12/2019-CATS-5885-REV_DOC-2017Cost_BenefitReport11_18_2019.docx.pdf.

focus on several additional contributions to this literature.³⁴

If producers can fully pass through costs of regulations to consumers via price increases, then direct wage and employment effects could be negligible, although consumers would pay more for consumer products. Miller, Osborne, and Sheu (2017) estimate that, in the case of the portland cement industry, producers bear approximately 11 percent of the burden of market-based CO₂ regulation (implying that consumers bear the remaining 89 percent). Another study in the environmental regulation context, Curtis (2018), estimates that the NO_x cap-and-trade program has decreased employment in the manufacturing sector by 1.3 percent overall and by 4.8 percent in the most energy-intensive industries, with employment declines mostly taking the form of decreased hiring rather than increased separation of incumbent workers. Although focused on a very different industry, Hazlett and Wright (2017) reach a qualitatively similar conclusion regarding the effect of regulation; they examine the Federal Communication Commission's 2015 common carrier regulation and find that reduction of the regulatory requirements has led to growth in the broadband Internet and mobile services industries. More generally, using 1998–2011 data from the Statistics of U.S. Businesses (a survey conducted by the Census Bureau), Bailey and Thomas (2017) find that more heavily regulated industries experience fewer new firm births and slower employment growth than less heavily regulated industries, and that small firms are more likely to exit an industry in response to regulation than large firms.

As regards the potential for regulatory effects to be passed through to wages and employment, Bradley and Feldman (2020) find that a 2012 Department of Transportation enforcement action requiring more transparent display of tax-inclusive prices for air travel dramatically reduced the fraction of taxes passed on to consumers. In addition, the magnitude of these effects depended critically on concentration of route-specific markets, with a greater reduction in taxes and fees passed on to consumers in more concentrated markets. However, fees not subject to these requirements were not significantly affected. Therefore, it seems likely that the extent to which the costs of regulations may be borne by consumers could depend importantly on the extent to which they transparently affect transaction prices, and on the concentration of affected industries.

Dixon, Rimmer, and Waschik (2018) simulate the effects of a local content policy in which domestic suppliers are favored in public sector contracting; the results show the abandonment of such a policy leading to a decrease in domestic manufacturing employment that is more than offset by an increase in employment in the rest of the economy.

Currie and Walker (2019) review economics research on the costs and benefits of the Clean Air Act. Cited work that was not featured in the previous report shows that regulation stemming from the Clean Air Act increased worker productivity broadly across the economy. In

³⁴ We will continue, in this report and future reports, to seek feedback on whether readers prefer the consolidated literature review approach featured in the past or this approach of more succinctly updating on recent and supplemental contributions.

particular, Isen, Rossin-Slater, and Walker (2017) find that the 1970 Clean Air Act Amendments caused an increase in working rates and annual earnings for individuals who were exposed to lower pollution due to the regulation. Annual earnings for individuals who were children at the time of the pollution reduction experienced a 1% increase in annual earnings by age 30 and an increase in lifetime earnings of approximately \$4,300 each (in present value terms, discounted at 5%). These results are consistent with work including Graff Zivin and Neidell (2012) and Chang, Graff Zivin, Gross, and Neidell (2016) showing that air pollution reductions cause increases in worker productivity across multiple sectors.

As shown elsewhere in this Report, much regulatory activity relates to health care, and a number of studies investigate the links between health care policy and employment outcomes. Leung and Mas (2018) find no impact on employment of Medicaid expansion under the Affordable Care Act, whereas Callison and Sicilian (2018) find state Medicaid expansions to be associated with “improved labor market autonomy for white men and white women,” with results mixed for the black and Hispanic populations. Dague, DeLeire, and Leininger (2017), drawing upon a natural experiment in Wisconsin, “find enrollment into public insurance leads to sizable and statistically meaningful reductions in employment.” Shi (2016) observes that wage workers and the self-employed adjust their incomes in order to qualify for health insurance subsidies, similar to the result of Kucko, Rinz, and Solow (2018). Gruber and Sommers (2019) review the literature on the effects of the Affordable Care Act, and “find[] no evidence of major impacts on labor supply,” including through the lens of early retirement and part-time versus full-time work.

Rissing and Castilla (2016) examine a U.S. immigration program which requires that foreign workers only be offered employment positions when no willing and qualified U.S. workers are available. If the policy has been achieving its intended effects on job availability in the United States, high U.S. unemployment in an occupation should be correlated with a low rate of approvals of immigrant labor certifications. However, this study finds the opposite, on net, and attributes this outcome partly to employer self-attestations of compliance with the certification policy.

Innovation drives growth in the economy, and small businesses can have an important role in this process. Agrawal, Rosell, and Simcoe (2020) study the effect of targeted tax incentives on research and development for small private firms in Canada, and find substantial effects for these firms. These effects are especially pronounced for those who had previously engaged in research and development, and those able to take tax credits as refunds. Watzinger et al. (2020) studies the results of 1956 antitrust action against Bell Labs resulting in royalty-free compulsory licensing of all its patents and inability to enter markets outside of telecommunications. They find substantial impacts on subsequent innovation in industries outside of telecommunications, with 60 percent of this impact accounted for by young and small firms. As a result, precise targeting of regulatory interventions which account for incentives faced by relevant small businesses can amplify effects on innovation.

Chapter III: Recommendations for Reform

The Regulatory Right-to-Know Act charges OMB with including in this Report “recommendations for reform.”³⁵ Meeting the challenges and opportunities ahead requires a modern and effective regulatory system. However, until recently, parts of the Federal regulatory review process had not been updated in decades, despite substantial advances in the best available and peer-reviewed economic and other scientific information. This Report’s set of recommendations for reform focuses on prospective efforts to modernize regulatory review, as well as initiatives underway. These initiatives include implementation of Executive Order 14094, guidance on public engagement in the regulatory process, proposed revisions to OMB Circular A-4, guidance on the valuation of ecosystem services, and guidance on accounting for competition effects in benefit-cost analyses. Overall, these recommendations focus on the prioritization of analytical resources, promoting public participation, and improving regulatory analysis.

A. Prioritizing Analytic Resources Effectively

Executive Order 14094 of April 6, 2023,³⁶ reaffirms the regulatory review process as established by Executive Order 12866 and Executive Order 13563. Among other things, it clarifies and updates the categories of regulations that are covered by Executive Order 12866’s provisions on analysis and centralized review. Notably, Executive Order 14094 raises the monetary threshold that helps define which regulations require relatively more rigorous benefit-cost analysis,³⁷ from the \$100 million-per-year level set in 1993 by Executive Order 12866, to \$200 million of annual effects, adjusted every three years for changes in GDP. Executive Order 14094’s update is intended to address the fact that Executive Order 12866’s static threshold did not keep up with changing circumstances. The update is designed to focus OIRA and agency resources on regulations that will benefit most from analysis, and OIRA recommends that agencies continue to prioritize their analytical resources to promote regulatory initiatives that are likely to yield significant net benefits.³⁸

³⁵ 31 U.S.C. § 1105 note.

³⁶ Executive Order 14094, 88 Fed. Reg. 21,879 (Apr. 11, 2023), available at <https://www.federalregister.gov/documents/2023/04/11/2023-07760/modernizing-regulatory-review>.

³⁷ Note that the definition of “significant” regulations under Section 3(f)(1) of Executive Order 12866, as amended, consists of a number of sufficient criteria, including the monetary threshold. For example, a regulatory action can also be significant under Section 3(f)(1), as amended, if it is likely to result in a rule that may “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, territorial, or tribal governments or communities.” For more details, see Off. of Info. & Regul. Affs., Off. of Mgmt. & Budget, Exec. Off. of the President, *Implementation of Modernizing Regulatory Review Executive Order* (Apr. 6, 2023), available at <https://www.whitehouse.gov/wp-content/uploads/2023/04/ModernizingEOImplementation.pdf>.

³⁸ See Exec. Off. of the President, *Modernizing Regulatory Review* § 2(b)(iii) (Jan. 20, 2021), available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/modernizing-regulatory-review/>.

Relatedly, Executive Order 14094 also clarified other criteria by which a rule might be designated a “significant regulatory action” meriting review, to further improve the effectiveness of the process. Specifically, the amendments clarify that one criterion covers regulatory actions that “raise legal or policy issues for which centralized review would meaningfully further the President’s priorities or the principles set forth in this Executive order,” and that significance determinations under this criterion are to be “specifically authorized in a timely manner by the [OIRA] Administrator in each case.” OIRA has explained that this amendment reflects that the Administrator is best positioned to identify the President’s priorities and interpret the relevant principles underlying regulatory review.³⁹ Overall, these amendments are intended to further enable OIRA and agencies to prioritize their analytical resources effectively.

B. Promoting Public Participation

Executive Order 14094 also promotes public participation in agency regulatory policymaking. The Executive Order encourages agencies, as practicable and appropriate, to engage interested or affected parties, both proactively when developing regulatory priorities and to inform regulatory actions. In July 2023, OIRA released additional guidance with recommendations for agencies on how to meaningfully and equitably broaden opportunities for public input, with a focus on encouraging early engagement in priority-setting.⁴⁰ The guidance recognizes that appropriate implementation will differ for each agency and regulatory program. Although many agencies are already taking steps to implement practices offered in this guidance, for some agencies these practices will be new.

Key recommendations include prioritizing early engagement; intentional planning to address specific barriers to participation faced by affected populations, including underserved communities; leveraging the biannual *Unified Agenda* process; reviewing existing policies on outreach to ensure that they facilitate equitable and meaningful engagement, consistent with law; adopting leading practices, such as collaborating with community-based organizations to hold virtual or in-person sessions with open back-and-forth discussions; and consulting with OIRA to take advantage of flexibilities under the Paperwork Reduction Act.

Executive Order 14094 also promotes public participation by highlighting petitions for rulemaking. OIRA’s April 2023 memorandum on implementation of the Executive Order details several recommendations for how agencies can further clarify opportunities for interested persons to petition for the issuance, amendment, or repeal of a rule under the Administrative Procedure Act.⁴¹ For example, agencies can consider improvements to their websites to better

³⁹ Off. of Info. & Regul. Affs., Off. of Mgmt. & Budget, Exec. Off. of the President, *Implementation of Modernizing Regulatory Review Executive Order 5–6* (Apr. 6, 2023), available at <https://www.whitehouse.gov/wp-content/uploads/2023/04/ModernizingEOImplementation.pdf>.

⁴⁰ Off. of Info. & Regul. Affs., Off. of Mgmt. & Budget, Exec. Off. of the President, *Broadening Public Participation and Community Engagement in the Regulatory Process* (July 19, 2023), available at <https://www.whitehouse.gov/wp-content/uploads/2023/07/Broadening-Public-Participation-and-Community-Engagement-in-the-Regulatory-Process.pdf>.

⁴¹ See 5 U.S.C. § 553(e).

explain to the public how to file petitions or how to optimize their usefulness. Agencies can also consider clarifying their internal procedures to promote more efficient handling of petitions. OIRA also recommends that agencies maintain summary logs of pending petitions, which will facilitate agencies' responses to any requests for more information on recent and pending petitions that, consistent with Executive Order 14094, OIRA may make to help identify regulatory priorities.⁴²

Executive Order 14094 further directs OIRA to reform policies on requests to meet with OIRA about regulatory actions under OIRA review. Such reforms include improving access for meeting requesters that have not historically requested such meetings, and disclosing data on meetings in an open, machine-readable, and accessible format. OIRA issued,⁴³ and received public comment on,⁴⁴ draft guidance on how to improve OIRA's process for meeting with members of the public regarding regulatory actions under OIRA review. Solicitation of public input included a more than three-hour listening session on May 4, 2023, to hear from stakeholders about the proposed guidance.⁴⁵ OIRA anticipates issuing guidance reflecting this public input to continue to reform and improve opportunities for the public to participate in the work of government.

C. Improving Regulatory Analysis

1. Circular A-4

Executive Order 14094 also calls upon OMB to update its government-wide guidance on regulatory benefit-cost analysis. To that end, OMB concurrently issued proposed revisions to this guidance, known as Circular A-4, on April 6, 2023.⁴⁶ These revisions aim to help agencies better account for the full range of benefits and costs of their regulatory actions. OMB also issued a preamble to the proposed revisions⁴⁷ that provides explanation of many of the proposed

⁴² See Off. of Info. & Regul. Affs., Off. of Mgmt. & Budget, Exec. Off. of the President, *Implementation of Modernizing Regulatory Review Executive Order 9–10* (Apr. 6, 2023), available at <https://www.whitehouse.gov/wp-content/uploads/2023/04/ModernizingEOImplementation.pdf>.

⁴³ Off. of Info. & Regul. Affs., Off. of Mgmt. & Budget, Exec. Off. of the President, *Draft Guidance Implementing Section 2(e) of the Executive Order of April 6, 2023 (Modernizing Regulatory Review)* (Apr. 6, 2023), available at <https://www.whitehouse.gov/wp-content/uploads/2023/04/ModernizingEOSection2eDraftGuidance.pdf>.

⁴⁴ Comments on the draft guidance may be viewed at <https://www.regulations.gov/docket/OMB-2022-0011>.

⁴⁵ *Hearing from You: How OIRA Meets with the Public*, The White House, <https://www.whitehouse.gov/omb/information-regulatory-affairs/modernizing-regulatory-review/hearing-from-you-how-oira-meets-with-the-public/> (last visited Sept. 20, 2023).

⁴⁶ Off. of Mgmt. & Budget, Exec. Off. of the President, *Draft for Public Review, Circular A-4: Regulatory Analysis* (Apr. 6, 2023), available at <https://www.whitehouse.gov/wp-content/uploads/2023/04/DraftCircularA-4.pdf>.

⁴⁷ Off. of Mgmt. & Budget, Exec. Off. of the President, *Preamble: Proposed OMB Circular No. A-4, "Regulatory Analysis"* (Apr. 6, 2023), available at <https://www.whitehouse.gov/wp-content/uploads/2023/04/DraftCircularA-4Preamble.pdf>.

revisions and highlighted questions for public comment. In addition to public comment,⁴⁸ the proposed revisions have also undergone peer review.⁴⁹

2. *Frontiers of Benefit-Cost Analysis*

The proposed revisions to Circular A-4 stress the importance of accounting for effects that to date have been challenging to fully monetize or quantify, but OMB is also acting to help agencies' efforts to quantify and monetize such effects. Together with the White House Office of Science and Technology Policy (OSTP) and the Council of Economic Advisers (CEA), OMB has launched a Technical Working Group on the Frontiers of Benefit-Cost Analysis. This Working Group brings together agency experts to share cutting-edge methods and collaborate on needed advances in benefit-cost analysis. A key work product that this Working Group plans to develop is a regular report highlighting a set of priority effects that, while currently unquantified, may be ripe for quantification given additional data, methodologies, and resources; this will serve as a useful resource for researchers both inside and outside of government considering areas for further inquiry. OMB encourages agency participation in this Working Group and, as always, recommends agencies continue to appropriately consider new developments in economic and other scientific understanding, in order to more fully account for regulatory effects that are difficult to quantify.⁵⁰

Executive Order 14094 also noted that “Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law.” OMB encourages agencies to collaborate early on developing robust qualitative or quantitative assessments, to the extent appropriate, of regulations with significant possible effects to equity, human dignity, and fairness.

3. *Guidance on Ecosystem Services*

One such category of key effects that all too frequently is not fully monetized or quantified in analyses is ecosystem services. A modern regulatory review process should capture effects on ecosystems and the environment. Because these effects have been historically undercounted in benefit-cost analyses, Executive Order 14072, *Strengthening the Nation's Forests, Communities, and Local Economies*, calls for guidance on bridging that gap;⁵¹ OMB is partnering with other Federal experts to answer that call. On August 1, 2023, OMB announced its draft *Guidance for Assessing Changes in Environmental and Ecosystem Services in Benefit-*

⁴⁸ Comments on the proposed revisions to Circular A-4 may be viewed at <https://www.regulations.gov/docket/OMB-2022-0014>.

⁴⁹ See Off. of Mgmt. & Budget, Exec. Off. of the President, *Experts Chosen for OMB Circular A-4 Peer Review* (June 20, 2023), available at <https://www.whitehouse.gov/wp-content/uploads/2023/06/Peer-Reviewers-for-Circular-A-4.pdf>.

⁵⁰ Exec. Off. of the President, *Modernizing Regulatory Review* § 2(b)(i) (Jan. 20, 2021), available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/modernizing-regulatory-review/>.

⁵¹ Executive Order 14072, § 4(b), 87 Fed. Reg. 24,851, 24,854 (Apr. 27, 2022), available at <https://www.federalregister.gov/documents/2022/04/27/2022-09138/strengthening-the-nations-forests-communities-and-local-economies>.

Cost Analysis.⁵² This draft guidance bridges insights from ecology and economics to help agencies understand how nature affects people. The guidance is currently undergoing peer review, and OMB is reviewing public comments.⁵³ The draft guidance provides recommended steps for agencies to follow to identify and assess important effects on ecosystem services, including defining a sufficiently broad scope of analysis, describing links between action alternatives and likely changes in ecosystem services, and quantifying or qualitatively describing the important effects to the extent feasible.

4. Accounting for Competition Effects in Regulatory Benefit-Cost Analysis

Another category of effects that agencies at times can find challenging to consider are regulatory effects on competition. When regulations make goods or services markets more competitive, they can yield improvements in product quality or lower prices for consumers, or can lead firms to pressure one another to invest in new technologies or develop and bring to market new products and services. Increased competition in goods or services markets can lead to increased competition in labor markets, which can in turn lead to workers receiving better wages and benefits. Overall, competition can boost economic growth, dynamism, and increase standards of living. To help agencies better account for how potential regulatory alternatives affect competition as they develop, design, and analyze regulations in relevant cases, OMB is working with the National Economic Council (NEC), CEA, and interagency partners to develop guidance on how agencies can account for competition effects in regulatory benefit-cost analyses.

⁵² Off. of Info. & Regul. Affs., Off. of Mgmt. & Budget, Exec. Off. of the President, *Draft for Public Review: Guidance for Assessing Changes in Environmental and Ecosystem Services in Benefit-Cost Analysis* (Aug. 2023), available at <https://www.whitehouse.gov/wp-content/uploads/2023/08/DraftESGuidance.pdf>; see also OIRA Admin. Richard L. Revesz & OSTP Dir. Arati Prabhakar, *Accounting for Ecosystem Services in Benefit-Cost Analysis*, The White House (Aug. 1, 2023), <https://www.whitehouse.gov/omb/briefing-room/2023/08/01/accounting-for-ecosystem-services-in-benefit-cost-analysis/> (announcing issuance of draft guidance).

⁵³ Off. of Mgmt. & Budget, Exec. Off. of the President, *Request for Comments on Proposed Guidance for Assessing Changes in Environmental and Ecosystem Services in Benefit-Cost Analysis*, 88 Fed. Reg. 50,912 (Aug. 2, 2023), available at <https://www.federalregister.gov/documents/2023/08/02/2023-16272/request-for-comments-on-proposed-guidance-for-assessing-changes-in-environmental-and-ecosystem>; Off. of Mgmt. & Budget, Exec. Off. of the President, *Request for Nominations of Experts to Peer-Review Draft Guidance on Valuing Ecosystem Services in Federal Benefit-Cost Analyses*, 88 Fed. Reg. 33,918 (May 25, 2023), available at <https://www.federalregister.gov/documents/2023/05/25/2023-11130/request-for-nominations-of-experts-to-peer-review-draft-guidance-on-valuing-ecosystem-services-in>. OMB's development of guidance on ecosystem services complements a related effort to better understand how nature and the economy interact, through a robust accounting of the country's natural wealth. OMB recently teamed up with OSTP and the Department of Commerce to launch a whole-of-government, long-term effort to catalogue the wealth our country holds in its lands, water, air, and other nature resources. See Off. of Sci. and Tech. Pol'y, Off. of Mgmt. & Budget, and Dep't of Com., *National Strategy to Develop Statistics for Environmental-Economic Decisions: A U.S. System of Natural Capital Accounting and Associated Environmental-Economic Statistics*, (Jan. 2023), available at <https://www.whitehouse.gov/wp-content/uploads/2023/01/Natural-Capital-Accounting-Strategy-final.pdf>.

**PART II: REPORT TO CONGRESS ON
AGENCY COMPLIANCE WITH THE
UNFUNDED MANDATES REFORM ACT**

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Introduction

This report represents OMB’s annual submission to Congress on agency compliance with the Unfunded Mandates Reform Act of 1995 (UMRA, or “the Act”). This report on agency compliance with UMRA covers the period of October 2019 through September 2022; rules published before October 2019 are described in previous years’ reports.

Since 2001, this report has been included in our Report to Congress on the Benefits and Costs of Federal Regulations. This is done because the two reports together address many of the same issues. Both reports also highlight the need for regulating in a responsible manner, accounting for benefits and costs, and taking into consideration the interests of intergovernmental partners.

Title I of the UMRA focuses on the Legislative Branch, addressing the processes Congress should follow before enactment of any statutory unfunded mandates. Title II addresses the Executive Branch. It begins with a general directive for agencies to assess, unless otherwise prohibited by law, the effects of their rules on other levels of government and on the private sector.⁵⁴ Title II also describes specific analyses and consultations that agencies must undertake for rules that may result in expenditures of over \$100 million (adjusted annually for inflation) in any year by State, local, and tribal governments in the aggregate, or by the private sector.

Specifically, section 202 of the Act requires an agency to prepare a written statement for intergovernmental mandates that describes in detail the required analyses and consultations on the unfunded mandate.⁵⁵ Section 205 of the Act requires that for all rules subject to section 202, agencies must identify and consider a reasonable number of regulatory alternatives, and then generally select the least costly, most cost-effective, or least burdensome option that achieves the objectives of the rule.⁵⁶ Section 205 does not apply if the agency head explains in the final rule why such a selection was not made or if such a selection would be inconsistent with law.⁵⁷

Title II further requires agencies to “develop an effective process” for obtaining “meaningful and timely input” from State, local and tribal governments in developing rules that contain significant intergovernmental mandates.⁵⁸ Title II also singles out small governments for particular attention.⁵⁹ OMB’s guidelines assist Federal agencies in complying with the Act and are based upon the following general principles:⁶⁰

⁵⁴ 2 U.S.C. § 1531.

⁵⁵ *Id.* § 1532(a).

⁵⁶ *Id.* § 1535(a).

⁵⁷ *Id.* § 1535(b).

⁵⁸ *Id.* § 1534(a).

⁵⁹ *Id.* § 1533(a).

⁶⁰ Off. of Mgmt. & Budget, Exec. Off. of the President, OMB M-95-09, *Guidance for Implementing Title II of S. 1* (Mar. 31, 1995), available at https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/memoranda/1995-1998/m95-09.pdf.

- Intergovernmental consultations should take place as early as possible, beginning before issuance of a proposed rule and continuing through the final rule stage, and be integrated explicitly into the rulemaking process;
- Agencies should consult with a wide variety of State, local, and tribal officials;
- Agencies should prepare an estimate of direct benefits and costs for use in the consultation process;
- The scope of consultation should reflect the cost and significance of the mandate being considered;
- Effective consultation requires trust and significant and sustained attention so that all who participate can enjoy frank discussion and focus on key priorities; and
- Agencies should seek out State, local, and tribal views on costs, benefits, risks, and alternative methods of compliance and whether the Federal rule will harmonize with and not duplicate similar laws in other levels of government.

Federal agencies have been actively consulting with state, local, and tribal governments in order to ensure that regulatory activities were conducted consistent with the requirements of UMRA, and a description of agency consultation activities will be included in the final version of this Report. Providing additional opportunities for all stakeholders, including non-Federal government entities, is a continuing emphasis of this Administration.

The remainder of this report lists and briefly discusses the regulations issued from October 1, 2019, to September 30, 2022, that impose expenditures meeting the UMRA Title II threshold.⁶¹ OMB worked with regulating agencies in applying the requirements of Title II of the Act to their selection of regulatory options for these rules.

Table II. Final Rules Issued in FY20, FY21 and FY22 and Subject to Sections 202 or 205 of UMRA

<i>Agency</i>	<i>Rule Title</i>	<i>Description</i>
Department of Health and Human Services	Required Warnings for Cigarette Packages and Advertisements	This rule requires color graphics depicting the negative health consequences of smoking, to accompany textual warning statements on cigarette packages and in cigarette advertisements.
Department of Labor	Paid Leave Under the Families First Coronavirus Response Act	This rule implements the Emergency Family and Medical Leave Expansion Act, a division of the Families First Coronavirus Response Act.
Environmental Protection Agency	National Primary Drinking Water Regulations for Lead and Copper: Regulatory Revisions	This rule includes a suite of actions to reduce lead exposure in drinking water.

⁶¹ Please see Chapter II for a list of rules issued over the past ten years for which unfunded mandates in excess of \$100 million fell upon State, local, or tribal governments, rather than just the private sector. Interim final rules were not included in this chapter because section 202 of the Act “does not apply to interim final rules or non-notice rules issued under the ‘good cause’ exemption in 5 U.S.C. 553(b)(B).” *Id.* at 3.

Agency	Rule Title	Description
Department of Health and Human Services	Transparency in Coverage (CMS-9915)	This final rule implements portions of Executive Order 13877, which provides that the Secretaries of Health and Human Services, the Treasury, and Labor will facilitate access to information about expected health care costs for patients before they receive care.
Department of Health and Human Services	Removal of Safe Harbor Protection for Rebates to Plans or PBMs Involving Prescription Pharmaceuticals and Creation of New Safe Harbor Protection	The rule revises the discount safe harbor to remove from the definition of “discount” reductions in price or other remuneration from a manufacturer of prescription pharmaceutical products to plan sponsors or pharmacy benefit managers. In addition, this rule creates two new safe harbors.
Department of Health and Human Services	Securing Updated and Necessary Statutory Evaluations Timely	The Department of Health and Human Services issued and then withdrew regulations that would have created procedures for the periodic review and sunset of the Department’s regulations.
Department of Labor	Subpart U – Emergency Temporary Standard – COVID-19	The Occupational Safety and Health Administration issued an emergency temporary standard (ETS) to address COVID-19 in healthcare workplaces. The ETS was effective without prior notice but also served as a notice of proposed rulemaking (thus generating UMRA implications); the NPRM had not been finalized as of any point in FY20, FY21 or FY22.
Department of Labor	Tip Regulations Under the Fair Labor Standards Act (FLSA)	This rule withdraws one portion of the 2020 Tip Regulations Under the FLSA and finalizes revisions related to the determination of when a tipped employee is employed in dual jobs.
Department of Labor	E.O. 14026, Increasing the Minimum Wage for Federal Contractors	This rule increases the hourly minimum wage rate paid by parties that contract with the Federal Government to \$15.00 for those employees working on or in connection with a Federal Government contract.
Environmental Protection Agency	National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters: Amendments	This final rule addresses the issues that were remanded in two court decisions related to the 2013 promulgation of amendments to the National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters.
Department of Energy	Energy Conservation Standards for Manufactured Housing	This rule establishes energy conservation standards for manufactured housing.
Department of Health and Human Services	Medical Devices; Ear, Nose and Throat Devices; Establishing Over-the-Counter Hearing Aids and Aligning Other Regulations	With this rule, the Food and Drug Administration establishes an over-the-counter category of hearing aids.
Department of the Treasury	Section 6403. Corporate Transparency Act	This rule requires certain entities to file with FinCEN reports that identify two categories of individuals: the beneficial owners of an entity and individuals who have filed an application with specified governmental authorities to create the entity or register it to do business.

<i>Agency</i>	<i>Rule Title</i>	<i>Description</i>
Department of Health and Human Services	Exchange Program Integrity (CMS-9922-F)	This final rule revises standards relating to oversight of Exchanges established by states and periodic data matching frequency, and also includes requirements for certain issuers related to the collection of a separate payment for the portion of a plan's premium.
Department of Transportation	Corporate Average Fuel Economy Standards for Model Years 2024–2026 Passenger Cars and Light Trucks	This rule revises fuel economy standards for passenger cars and light trucks for model year 2024–2026 vehicles.

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**APPENDIX A:
REPORTED FINAL RULES ON WHICH OMB CONCLUDED REVIEW IN FY20, FY21 AND FY22**

Table A-20. Reported Rules on which OMB Concluded Review in FY20

<i>Agency</i>	<i>Rule Title</i>	<i>RIN</i> ⁶²
Council on Environmental Quality	Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act	0331-AA03
Department of Agriculture (USDA)	Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents	0584-AE57
USDA	Coronavirus Food Assistance Program	0503-AA65
USDA	Conservation Reserve Program (CRP)	0560-AI41
USDA	B&I CARES Act Guaranteed Loan Program	0570-AB07
USDA	Rural Broadband Grant, Loan, and Loan Guarantee Program	0572-AC46
USDA	Conservation Stewardship Program (CSP)	0578-AA67
USDA	Environmental Quality Incentives Program (EQIP) Changes	0578-AA68
USDA	Agricultural Conservation Easement Program (ACEP)	0578-AA66
USDA	Regional Conservation Partnership Program (RCPP)	0578-AA70
USDA	Establishment of a Domestic Hemp Production Program	0581-AD82
Department of Commerce (DOC)	Modification of Regulations Regarding Benefit and Specificity in Countervailing Duty Proceedings	0625-AB16
DOC	Taking and Importing Marine Mammals: Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico	0648-BB38
DOC	Setting and Adjusting Patent Fees During Fiscal Year 2020	0651-AD31
Department of Defense	Defense Federal Acquisition Regulation Supplement: Assessing Contractor Implementation of Cybersecurity Requirements (DFARS Case 2019-D041)	0750-AJ81
Department of Health and Human Services (HHS)	Control of Communicable Diseases; Foreign Quarantine: Suspension of Introduction of Persons into United States from Designated Foreign Countries or Places for Public Health Purposes	0920-AA76
HHS	Required Warnings for Cigarette Packages and Advertisements	0910-AI39
HHS	CY 2020 Home Health Prospective Payment System Rate Update and Quality Reporting Requirements (CMS-1711-F)	0938-AT68
HHS	CY 2020 Changes to the End-Stage Renal Disease (ESRD) Prospective Payment System, Quality Incentive Program, Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) (CMS-1713-P)	0938-AT70
HHS	Basic Health Program; Federal Funding Methodology for Program Year 2019 and 2020 (CMS-2407-PN)	0938-ZB42
HHS	CY 2020 Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Medicare Part B (CMS-1715-P)	0938-AT72

⁶² See Off. of Info. & Regul. Affs., Off. of Mgmt. & Budget, Exec. Off. of the President, *Increasing Openness in the Rulemaking Process – Use of the Regulation Identifier Number (RIN)* (Apr. 7, 2010), available at https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/assets/inforeg/IncreasingOpenness_04072010.pdf. The memorandum provides that agencies should use the RIN on all relevant documents throughout the entire “lifecycle” of a rule. We believe that this requirement helps members of the public to find regulatory information at each stage of the process and is promoting informed participation.

Agency	Rule Title	RIN ⁶²
HHS	CY 2020 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates (CMS-1717-P)	0938-AT74
HHS	CY 2020 Hospital Outpatient PPS Policy Changes: Price Transparency Requirements for Hospitals to Make Standard Charges Public (CMS-1717-F2)	0938-AU22
HHS	Exchange Program Integrity (CMS-9922-F)	0938-AT53
HHS	Interoperability and Patient Access (CMS-9115-F)	0938-AT79
HHS	Revisions in Response to the COVID-19 Public Health Emergency (CMS-1744-IFC)	0938-AU31
HHS	Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency	0938-AU32
HHS	Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2021; Notice Requirement for Non-Federal Governmental Plans (CMS-9916)	0938-AT98
HHS	Contract Year 2021 and 2022 Policy and Technical Changes to the Medicare Advantage, Medicare Prescription Drug Benefit, Medicaid, Medicare Cost Plans, and PACE Programs (CMS-4190)	0938-AT97
HHS	FY 2021 Skilled Nursing Facility (SNFs) Prospective Payment System Rate and Value-Based Purchasing Program Updates (CMS-1737)	0938-AU13
HHS	FY 2021 Hospice Wage Index, Payment Rate Update (CMS-1733)	0938-AU09
HHS	FY 2021 Inpatient Psychiatric Facilities Prospective Payment System Rate Updates (CMS-1731)	0938-AU07
HHS	FY 2021 Inpatient Rehabilitation Facility (IRF) Prospective Payment System Rate Update (CMS-1729)	0938-AU05
HHS	Clinical Laboratory Improvement Amendments and Patient Protection and Affordable Care Act; Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency (CMS-3401)	0938-AU33
HHS	Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals; the Long-Term Care Hospital Prospective Payment System; and FY 2021 Rates (CMS-1735)	0938-AU11
HHS	Specialty Care Models To Improve Quality of Care And Reduce Expenditures (CMS-5527)	0938-AT89
HHS	Nondiscrimination in Health and Health Education Programs or Activities	0945-AA11
HHS	21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program	0955-AA01
HHS	Head Start Designation Renewal System	0970-AC77
HHS	COVID-19 Hoarding Prevention Under the Defense Production Act	0991-AC23
Social Security Administration	Removing Inability to Communicate in English as an Education Category	0960-AH86
Department of the Interior	Migratory Bird Hunting; 2020-2021 Migratory Game Bird Hunting Regulations	1018-BD89
Department of Justice	Registration and Reregistration Fees for Controlled Substance and List I Chemical Registrants	1117-AB51
Department of Justice	Implementation of the SUPPORT Act: Dispensing and Administering Controlled Substances for Medicated-Assisted Treatment	1117-AB55
Department of Labor (DOL)	Apprenticeship Programs, Labor Standards for Registration, Amendment of Regulations	1205-AB85
DOL	Default Electronic Disclosures by Employee Pension Benefit Plans Under ERISA	1210-AB90
DOL	Pension Benefit Statements—Disclosure Regarding Lifetime Income, SECURE Act	1210-AB20

Agency	Rule Title	RIN ⁶²
DOL	Joint Employer Status Under the Fair Labor Standards Act	1235-AA26
DOL	Paid Leave Under the Families First Coronavirus Response Act	1235-AA35
DOL	Fluctuating Workweeks Under the Fair Labor Standards Act	1235-AA31
DOL	Certification of Labor Value Content Under the United States-Mexico-Canada Agreement Implementation Act	1235-AA36
Department of the Treasury (TREAS)	Small Business Administration Business Loan Program Temporary Changes; Paycheck Protection Program - Additional Criteria for Seasonal Employers	1505-AC67
TREAS	Tax Cuts and Jobs Act (TCJA) Foreign Tax Credit Guidance	1545-BP19
TREAS	Section 59A Proposed Regulations	1545-BO56
TREAS	Qualified Opportunity Funds	1545-BP04
TREAS	Rules Regarding Business Interest Limitation Under Section 163(j)	1545-BO73
TREAS	Guidance Under Section 199A (RIC-REIT)	1545-BP12
TREAS	Section 250 Regulations	1545-BO55
TREAS	Guidance Regarding the Global Intangible Low-Taxed Income High Tax Exclusion	1545-BP15
TREAS	Rules Regarding Business Interest Limitation Under Section 163(j)	1545-BO73
TREAS	Base Erosion and Anti-Abuse Tax Proposed Regulations	1545-BP36
TREAS	Revisions to the Section 168(k) Final Regulations	1545-BP32
TREAS	Allocation & Apportionment of Deductions & Foreign Taxes, Foreign Tax Redeterminations, FTC Disallowance Under 965(g), Consolidated Groups, Hybrid Arrangements & Certain Payments under 951A	1545-BP21
Department of Homeland Security (DHS)	Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications	1615-AC19
DHS	Asylum Application, Interview, and Employment Authorization for Applicants	1615-AC27
DHS	U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements	1615-AC18
DHS	Emergency Management Priorities and Allocations System (EMPAS)	1660-AB04
DHS	Prioritization and Allocation of Certain Scarce or Threatened Health and Medical Resources for Domestic Use	1660-AB01
Department of Education (ED)	Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance	1870-AA14
ED	Equitable Services - CARES Program	1810-AB59
ED	Accreditation and Related Issues	1840-AD37
ED	Total and Permanent Disability Discharge of Loans Under Title IV of the Higher Education Act	1840-AD48
ED	Eligibility of Students at Institutions of Higher Education for Funds under the Coronavirus Aid, Relief, and Economic Security (CARES) Act	1840-ZA04
ED	Ensuring Student Access to High Quality and Innovative Postsecondary Educational Programs	1840-AD38
Environmental Protection Agency (EPA)	Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category—Reconsideration	2040-AF77
EPA	Revised Definition of “Waters of the United States” (Step 2)	2040-AF75
EPA	NESHAP: Coal- and Oil-Fired Electric Utility Steam Generating Units—Review of Acid Gas Standards for Certain Existing Eastern Bituminous Coal Refuse-Fired Units	2060-AU48
EPA	Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Reconsideration	2060-AT54

Agency	Rule Title	RIN ⁶²
EPA	Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act	2060-AM75
EPA	The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks	2060-AU09
Department of Transportation (DOT)	The Safer Affordable Fuel-Efficient (Safe) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks	2127-AL76
DOT	Extension of Compliance Date for Entry Level Driver Training	2126-AC25
DOT	Hours of Service of Drivers	2126-AC19
Department of Veterans Affairs	Program of Comprehensive Assistance for Family Caregivers Amendments Under the VA MISSION Act of 2018	2900-AQ48
Small Business Administration (SBA)	Business Loan Program Temporary Changes; Paycheck Protection Program	3245-AH34
SBA	Business Loan Program Temporary Changes; Paycheck Protection Program	3245-AH35
SBA	Business Loan Program Temporary Changes; Paycheck Protection Program – Additional Eligibility Criteria and Requirements for Certain Pledges of Loans	3245-AH36
SBA	Business Loan Program Temporary Changes; Paycheck Protection Program – Requirements – Promissory Notes, Authorizations, Affiliation, and Eligibility	3245-AH37
SBA	Business Loan Program Temporary Changes; Paycheck Protection Program – Requirements – Disbursements	3245-AH38
SBA	Business Loan Program Temporary Changes; Paycheck Protection Program – Requirements – Corporate Groups and Non-Bank and Non-Insured Depository Institution Lenders	3245-AH39
SBA	Business Loan Program Temporary Changes; Paycheck Protection Program – Nondiscrimination and Additional Eligibility Criteria	3245-AH40
SBA	Business Loan Program Temporary Changes; Paycheck Protection Program – Requirements – Extension of Limited Safe Harbor with Respect to Certification Concerning Need for PPP Loan Request	3245-AH41
SBA	Business Loan Program Temporary Changes; Paycheck Protection Program – Loan Increases	3245-AH42
SBA	Business Loan Program Temporary Changes; Paycheck Protection Program – Eligibility of Certain Electric Cooperatives	3245-AH43
SBA	Business Loan Program Temporary Changes; Paycheck Protection Program – Requirements – Extension of Limited Safe Harbor with Respect to Certification Concerning Need for PPP Loan Request	3245-AH41
SBA	Business Loan Program Temporary Changes; Paycheck Protection Program – Treatment of Entities with Foreign Affiliates	3245-AH44
SBA	Business Loan Program Temporary Changes; Paycheck Protection Program – Second Extension of Limited Safe Harbor with Respect to Certification Concerning Need for PPP Loan and Lender Reporting	3245-AH45
SBA	Business Loan Program Temporary Changes; Paycheck Protection Program – SBA Loan Review Procedures and Related Borrower and Lender Responsibilities	3245-AH47
SBA	Business Loan Program Temporary Changes; Paycheck Protection Program – Requirements – Loan Forgiveness	3245-AH46
SBA	Business Loan Program Temporary Changes; Paycheck Protection Program – Eligibility of Certain Telephone Cooperatives	3245-AH48
SBA	Business Loan Program Temporary Changes; Paycheck Protection Program – Revisions to First Interim Final Rule	3245-AH49
SBA	Business Loan Program Temporary Changes; Paycheck Protection Program – Additional Revisions to First Interim Final Rule	3245-AH50

<i>Agency</i>	<i>Rule Title</i>	<i>RIN</i> ⁶²
SBA	Business Loan Program Temporary Changes; Paycheck Protection Program – Revisions to the Third and Sixth Interim Final Rules	3245-AH51
SBA	Business Loan Program Temporary Changes; Paycheck Protection Program – Revisions to Loan Forgiveness Interim Final Rule and SBA Loan Review Procedures Interim Final Rule	3245-AH52
SBA	Business Loan Program Temporary Changes; Paycheck Protection Program – Additional Eligibility Revisions to First Interim Final Rule	3245-AH53
SBA	Business Loan Program Temporary Changes; Paycheck Protection Program – Certain Eligible Payroll Costs	3245-AH54
SBA	Appeals of SBA Loan Review Decisions Under the Paycheck Protection Program	3245-AH55
SBA	Business Loan Program Temporary Changes; Paycheck Protection Program – Treatment of Owners and Forgiveness of Certain Nonpayroll Costs	3245-AH56
Federal Acquisition Regulation (FAR) Council	Federal Acquisition Regulation (FAR); FAR Case 2018-004; Increased Micro-Purchase and Simplified Acquisition Thresholds	9000-AN65
FAR Council	Federal Acquisition Regulation (FAR); FAR Case 2019-009, Prohibition on Contracting With Entities Using Certain Telecommunications and Video Surveillance Services or Equipment	9000-AN92

Table A-21. Reported Rules on which OMB Concluded Review in FY21

<i>Agency</i>	<i>Rule Title</i>	<i>RIN</i>
Department of Agriculture (USDA)	Coronavirus Food Assistance Program	0503-AA65
USDA	Coronavirus Food Assistance Program; Additional Assistance and Flexibilities	0503-AA71
USDA	Quality Loss Adjustment Program	0560-AI55
USDA	Rural eConnectivity Program (ReConnect Program)	0572-AC51
USDA	Agricultural Conservation Easement Program (ACEP)	0578-AA66
USDA	Conservation Stewardship Program (CSP)	0578-AA67
USDA	Environmental Quality Incentives Program (EQIP) Changes	0578-AA68
USDA	Regional Conservation Partnership Program (RCP)	0578-AA70
USDA	Establishment of a Domestic Hemp Production Program	0581-AD82
Department of Commerce (DOC)	Securing the Information and Communications Technology and Services Supply Chain	0605-AA51
DOC	Taking and Importing Marine Mammals: Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico	0648-BB38
DOC	Framework Adjustment 33 to the Atlantic Sea Scallop Fishery Management Plan	0648-BK51
Department of Defense	National Industrial Security Program Operating Manual (NISPOM)	0790-AK85
Department of Health and Human Services (HHS)	Removal of Safe Harbor Protection for Rebates to Plans or PBMs Involving Prescription Pharmaceuticals and Creation of New Safe Harbor Protection	0936-AA08

Agency	Rule Title	RIN
HHS	Revisions to the Safe Harbors Under the Anti-Kickback Statute and Beneficiary Inducements Civil Monetary Penalties Rules Regarding Beneficiary Inducement	0936-AA10
HHS	Modernizing and Clarifying the Physician Self-Referral Regulations (CMS-1720)	0938-AT64
HHS	Establishing Minimum Standards in Medicaid State Drug Utilization Review (DUR) and Supporting Value Based Payments (VBP) for Drugs Covered in Medicaid (CMS-2482)	0938-AT82
HHS	Medicare Coverage of Innovative Technology (MCIT) and Definition of “Reasonable and Necessary” (CMS-3372)	0938-AT88
HHS	International Pricing Index Model For Medicare Part B Drugs (CMS-5528-P)	0938-AT91
HHS	Contract Year 2022 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, Medicaid Program, Medicare Cost Plan Program, and PACE (CMS-4190)	0938-AT97
HHS	Comprehensive Care for Joint Replacement Model Three-Year Extension and Modifications to Episode Definition and Pricing (CMS-5529)	0938-AU01
HHS	Organ Procurement Organizations (OPOs) (CMS-3380)	0938-AU02
HHS	Transparency in Coverage (CMS-9915)	0938-AU04
HHS	CY 2021 Home Health Prospective Payment System Rate Update and Quality Reporting Requirements (CMS-1730)	0938-AU06
HHS	CY 2021 Changes to the End-Stage Renal Disease (ESRD) Prospective Payment System and Quality Incentive Program (CMS-1732)	0938-AU08
HHS	CY 2021 Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Medicare Part B (CMS-1734)	0938-AU10
HHS	CY 2021 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates (CMS-1736)	0938-AU12
HHS	HHS Notice of Benefit and Payment Parameters for 2022 (CMS-9914)	0938-AU18
HHS	Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency (CMS-9912)	0938-AU35
HHS	FY 2022 Skilled Nursing Facility (SNFs) Prospective Payment System Rate Update and Quality Reporting Requirements (CMS-1746)	0938-AU36
HHS	FY 2022 Inpatient Rehabilitation Facility (IRF) Prospective Payment System Rate Update and Quality Reporting Requirements (CMS-1748)	0938-AU38
HHS	FY 2022 Inpatient Psychiatric Facilities Prospective Payment System Rate and Quality Reporting Updates (CMS-1750)	0938-AU40
HHS	FY 2022 Hospice Wage Index, Payment Rate Update, and Quality Reporting Requirements (CMS-1754)	0938-AU41
HHS	Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals; the Long-Term Care Hospital Prospective Payment System; and FY 2022 Rates (CMS-1752)	0938-AU44
HHS	COVID-19 Vaccine Immunization Requirements for LTC Residents and Staff (CMS-3414)	0938-AU57
HHS	Patient Protection and Affordable Care Act; Updating Payment Parameters and Improving Health Insurance Markets for 2022 and Beyond (CMS-9906)	0938-AU60
HHS	Requirements Related to Surprise Billing; Part I (CMS-9909)	0938-AU63
HHS	Basic Health Program; Federal Funding Methodology for Program Year 2022 (CMS-2438)	0938-ZB64
HHS	Announcement of Calendar Year (CY) 2022 Medicare Advantage (MA) Capitation Rates and Part C and Part D Payment Policies	0938-ZB68

Agency	Rule Title	RIN
HHS	Information Blocking and the ONC Health IT Certification Program: Extension of Compliance Dates and Timeframes in Response to the COVID-19 Public Health Emergency	0955-AA02
HHS	Securing Updated and Necessary Statutory Evaluations Timely	0991-AC24
Department of the Interior (DOI)	Endangered and Threatened Wildlife and Plants; Removal of the Gray Wolf from the List of Endangered and Threatened Wildlife	1018-BD60
DOI	Migratory Bird Permits; Regulations Governing Take of Migratory Birds	1018-BD76
DOI	Migratory Bird Hunting; 2021–22 Migratory Game Bird Hunting Regulations	1018-BE34
DOI	Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the Northern Spotted Owl	1018-BF01
Department of Justice	Implementation of the SUPPORT Act: Dispensing and Administering Controlled Substances for Medicated-Assisted Treatment	1117-AB55
Department of Labor (DOL)	Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States	1205-AB89
DOL	Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States	1205-AC00
DOL	Financial Factors in Selecting Plan Investments	1210-AB95
DOL	Requirements Related to Surprise Billing, Part 2	1210-AC00
DOL	Improving Investment Advice for Workers & Retirees Exemption	1210-ZA29
DOL	Special Financial Assistance by PBGC	1212-AB53
DOL	Subpart U – Emergency Temporary Standard – COVID-19	1218-AD36
DOL	Tip Regulations Under the Fair Labor Standards Act (FLSA)	1235-AA21
DOL	Independent Contractor Status Under the Fair Labor Standards Act	1235-AA34
DOL	Joint Employer Status Under the Fair Labor Standards Act	1235-AA37
Department of State	Schedule of Fees for Consular Services	1400-AE15
Department of the Treasury (TREAS)	Emergency Capital Investment Program – Restrictions on Executive Compensation, Share Buybacks, and Dividends	1505-AC76
TREAS	Coronavirus State and Local Fiscal Recovery Funds	1505-AC77
TREAS	Rules for Denial of Deduction for Certain Fines, Penalties, and Other Amounts	1545-BO67
TREAS	Section 451(b) Requirements	1545-BO68
TREAS	Guidance Under Section 1061	1545-BO81
TREAS	Section 4960 Excise Tax on Tax-Exempt Organization Compensation	1545-BO99
TREAS	Like-Kind Exchanges and Tax Reform	1545-BP02
TREAS	Consolidated Net Operating Losses	1545-BP27
TREAS	Credit for Carbon Oxide Sequestration	1545-BP42
TREAS	Limitation on Deduction for Business Interest Expense	1545-BP73
Department of Homeland Security (DHS)	Modification of Registration Requirement for Petitioners Seeking To File Cap-Subject H-1B Petitions	1615-AC61
DHS	Mandatory Advance Electronic Information for International Mail Shipments	1651-AB33
DHS	Prioritization and Allocation of Certain Scarce and Critical Health and Medical Resources for Domestic Use	1660-AB01
DHS	Emergency Management Priorities and Allocations System (EMPAS)	1660-AB04
Department of Education (ED)	American Rescue Plan Elementary and Secondary School Emergency Relief Fund – Homeless Children and Youth (ARP-HCY)	1801-AA24
ED	American Rescue Plan Emergency Assistance to Non-Public Schools (ARPEANS) Program	1810-AB63

<i>Agency</i>	<i>Rule Title</i>	<i>RIN</i>
ED	Final Requirements; American Rescue Plan Act Elementary and Secondary School Emergency Relief Fund	1810-AB64
ED	Federal-State Relationship Agreements, Pell Grant, ACG, National Smart Grant and LEAP	1840-AD46
ED	Total and Permanent Disability Discharge of Loans Under Title IV of the Higher Education Act	1840-AD48
ED	Subsidized Usage Limit	1840-AD60
ED	Student Eligibility for Emergency Relief Funds	1840-AD62
Environmental Protection Agency (EPA)	National Primary Drinking Water Regulations for Lead and Copper: Regulatory Revisions	2040-AF15
EPA	Cross-State Air Pollution Rule (CSAPR) Update Remand for the 2008 Ozone NAAQS	2060-AU84
EPA	Phase down of Hydrofluorocarbons Under the American Innovation and Manufacturing Act	2060-AV17
EPA	Review of Dust-Lead Post-Abatement Clearance Levels	2070-AK50
Department of Transportation (DOT)	Operations of Small Unmanned Aircraft Over People	2120-AK85
DOT	Corporate Average Fuel Economy (CAFE) Civil Penalties	2127-AM32
DOT	Pipeline Safety: Gas Pipeline Regulatory Reform	2137-AF36
Department of Veterans Affairs (VA)	Schedule for Rating Disabilities; Musculoskeletal System and Muscle Injuries	2900-AP88
VA	Loan Guaranty: COVID-19 Veterans Assistance Partial Claim Payment Program	2900-AR05
VA	Presumptive Service Connection for Respiratory Conditions Due to Exposure to Particulate Matter	2900-AR25
Small Business Administration (SBA)	Appeals of SBA Loan Review Decisions Under the Paycheck Protection Program	3245-AH55
SBA	Business Loan Program Temporary Changes; Paycheck Protection Program – Additional Revisions to Loan Forgiveness and Loan Review Procedures Interim Final Rules	3245-AH59
SBA	Business Loan Program Temporary Changes; Extension of and Changes to Paycheck Protection Program	3245-AH62
SBA	Business Loan Program Temporary Changes; Paycheck Protection Program Second Draw Loans	3245-AH63
SBA	Business Loan Program Temporary Changes; Paycheck Protection Program – Loan Forgiveness Requirements and Loan Review Procedures as Amended by Economic Aid Act	3245-AH65
SBA	Business Loan Program Temporary Changes; Paycheck Protection Program – Revisions to Loan Amount Calculation and Eligibility	3245-AH67
SBA	Business Loan Program Temporary Changes; Paycheck Protection Program as Amended by American Rescue Plan Act	3245-AH77
SBA	Disaster Loan Program Changes	3245-AH80

Table A-22. Reported Rules on which OMB Concluded Review in FY22

<i>Agency</i>	<i>Rule Title</i>	<i>RIN</i>
Department of Agriculture (USDA)	Supplemental Dairy Margin Coverage Payments; Conservation Reserve Program; Dairy Indemnity Payment Program; Marketing Assistance Loans; Loan Deficiency Payments; Oriental Fruit Fly Program; and FSFL	0560-AI59

Agency	Rule Title	RIN
USDA	Pandemic Cover Crop Program	0563-AC77
USDA	Supplemental Nutrition Assistance Program Requirement for Interstate Data Matching	0584-AE75
USDA	Child Nutrition Programs: Temporary Standards for Milk, Whole Grains, and Sodium	0584-AE81
Department of Commerce	Procedures Covering Suspension of Liquidation, Duties and Estimated Duties in Accord with Presidential Proclamation 10414	0625-AB21
Department of Health and Human Services (HHS)	Medical Devices; Ear, Nose and Throat Devices; Establishing Over-the-Counter Hearing Aids and Aligning Other Regulations	0910-AI21
HHS	Medicare Coverage of Innovative Technology (MCIT) and Definition of “Reasonable and Necessary” (CMS-3372)	0938-AT88
HHS	Radiation Oncology (RO) Model (CMS-5527)	0938-AT89
HHS	Most Favored Nation (MFN) Model (CMS-5528)	0938-AT91
HHS	Policy and Technical Changes to the Medicare Advantage Program and Medicare Prescription Drug Benefit Program; MOOP and Cost Sharing Limits (CMS-4190)	0938-AT97
HHS	Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Policy Issues and Level II of the Healthcare Common Procedure Coding System (HCPCS) (CMS-1738)	0938-AU17
HHS	Contract Year 2023 Policy and Technical Changes to the Medicare Advantage and Medicare Prescription Drug Benefit Programs (CMS-4192)	0938-AU30
HHS	CY 2022 Home Health Prospective Payment System Rate Update, Home Infusion Therapy Services, and Quality Reporting Requirements (CMS-1747)	0938-AU37
HHS	CY 2022 Changes to the End-Stage Renal Disease (ESRD) Prospective Payment System and Quality Incentive Program (CMS-1749)	0938-AU39
HHS	CY 2022 Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Medicare Part B (CMS-1751)	0938-AU42
HHS	CY 2022 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates (CMS-1753)	0938-AU43
HHS	Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals; the Long-Term Care Hospital Prospective Payment System; and FY 2022 Rates (CMS-1752)	0938-AU44
HHS	HHS Notice of Benefit and Payment Parameters for 2023 (CMS-9911)	0938-AU65
HHS	Prescription Drug and Health Care Spending (CMS-9905)	0938-AU66
HHS	Reassignment of Medicaid Provider Claims (CMS-2444)	0938-AU73
HHS	Omnibus COVID-19 Health Care Staff Vaccination (CMS-3415)	0938-AU75
HHS	FY 2023 Skilled Nursing Facility (SNFs) Prospective Payment System and Consolidated Billing and Updates to the Value-Based Purchasing and Quality Reporting Programs (CMS-1765)	0938-AU76
HHS	FY 2023 Inpatient Rehabilitation Facility (IRF) Prospective Payment System Rate Update and Quality Reporting Program (CMS-1767)	0938-AU78
HHS	FY 2023 Inpatient Psychiatric Facilities Prospective Payment System Rate (CMS-1769)	0938-AU80
HHS	FY 2023 Hospice Wage Index, Payment Rate Update, and Quality Reporting Requirements (CMS-1773)	0938-AU83
HHS	Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals; the Long-Term Care Hospital Prospective Payment System; and FY 2023 Rates (CMS-1771)	0938-AU84
HHS	Head Start COVID-19 Vaccine Mandate	0970-AC90

Agency	Rule Title	RIN
HHS	Securing Updated and Necessary Statutory Evaluations Timely	0991-AC24
Department of the Interior	Migratory Bird Hunting; 2022–23 Migratory Game Bird Hunting Regulations	1018-BF07
Department of Labor (DOL)	Apprenticeship Programs, Labor Standards for Registration, Amendment of Regulations	1205-AC06
DOL	Requirements Related to Surprise Billing, Part 2	1210-AC00
DOL	Special Financial Assistance by PBGC	1212-AB53
DOL	COVID-19 Vaccination and Testing Emergency Temporary Standard Rulemaking	1218-AD42
DOL	Tip Regulations Under the Fair Labor Standards Act (FLSA); Partial Withdrawal	1235-AA21
DOL	E.O. 14026, Increasing the Minimum Wage for Federal Contractors	1235-AA41
Department of the Treasury (TREAS)	Coronavirus State and Local Fiscal Recovery Funds	1505-AC77
TREAS	Section 6403. Corporate Transparency Act	1506-AB49
TREAS	Guidance on the Elimination of Interbank Offered Rates	1545-BO91
TREAS	Guidance Related to the Foreign Tax Credit, Clarification of Foreign-Derived Intangible Income	1545-BP70
Department of Homeland Security (DHS)	Deferred Action for Childhood Arrivals	1615-AC64
DHS	Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal and Cat Protection Claims by Asylum Officers	1615-AC67
DHS	Implementation of the Emergency Stopgap USCIS Stabilization Act	1615-AC73
DHS	Inadmissibility on Public Charge Grounds	1615-AC74
DHS	Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Renewal Applicants	1615-AC78
DHS	Electronic System for Travel Authorization (ESTA)--Extension of and Increase in Travel Promotion Fee	1651-AB40
Department of Education (ED)	Final Priorities, Requirements, and Definitions-Mental Health Service Professional Demonstration Grant Program	1810-AB67
ED	Final Priorities, Requirements, and Definitions-School-Based Mental Health Services Grant Program	1810-AB68
Department of Energy (DOE)	Energy Conservation Standards for Manufactured Housing	1904-AC11
DOE	Energy Efficiency Standards for New Federal Commercial and Multi-Family High-Rise Residential Buildings Baseline Standards Update	1904-AE44
DOE	Backstop Requirement for General Service Lamps	1904-AF09
DOE	Definitions for General Service Lamps	1904-AF22
Environmental Protection Agency (EPA)	Federal Implementation Plan for Oil and Natural Gas Sources; Uintah and Ouray Indian Reservation in Utah	2008-AA03
EPA	National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters: Amendments	2060-AU20
EPA	Renewable Fuel Standard (RFS) Program: RFS Annual Rules	2060-AV11
EPA	Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards	2060-AV13
Department of Transportation (DOT)	Flight Attendant Duty Period Limitations and Rest Requirements	2120-AL41

<i>Agency</i>	<i>Rule Title</i>	<i>RIN</i>
DOT	Establish Side Impact Performance Requirements for Child Restraint Systems (MAP-21)	2127-AK95
DOT	Occupant Protection for Automated Driving Systems	2127-AM06
DOT	Corporate Average Fuel Economy (CAFE) Civil Penalties	2127-AM32
DOT	Passenger Car and Light Truck Corporate Average Fuel Economy Standards	2127-AM34
Department of Veterans Affairs (VA)	Civilian Health and Medical Program of the Department of Veterans Affairs	2900-AP02
VA	Supportive Services for Veterans Families	2900-AR15

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APPENDIX B: REFERENCES

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