

**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

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

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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 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 FY 2020, FY 2021, and FY 2022. Chapter II discusses regulatory impacts on State, local, and Tribal governments; small businesses; wages and employment; and economic growth. Chapter III provides recommendations for reform, including a summary of this Administration's efforts to

¹ Treasury and General Government Appropriations Act, 2001, 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.

implement the Presidential Memorandum of January 20, 2021, and Executive Order 14094 of April 6, 2023, 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 \$200 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 Office of Mgmt. & Budget, Exec. Off. of the President, *Final Guideline: Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies; Republication*, 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, *Actions Needed to Improve Transparency and Reporting of Correction Requests* (Dec. 21, 2015), available at <https://www.gao.gov/products/GAO-16-110>. 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.

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' Information Quality home](#) page 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 the preceding draft report, OMB requested public comment via a *Federal Register* notice and sought input from peer reviewers with expertise in areas related to regulatory policy or cost-benefit analysis. The final version of this report includes revisions made in response to public and peer reviewer comments and is being posted on the White House website and on www.regulations.gov.

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

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

Chapter I: The Benefits and Costs of Federal Regulations

The Regulatory Right-to-Know Act calls for the Office of Management and Budget (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 Section 3(f)(1) of Executive Order 12866.¹²

⁹ 31 U.S.C. § 1105 note. The Regulatory Right-to-Know Act was enacted as part of the of Treasury and General Government Appropriations Act, 2001, Pub. L. No. 106-554 (2000), *available at* <https://www.govinfo.gov/content/pkg/PLAW-106publ554/html/PLAW-106publ554.htm>.

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).

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 Section 3(f)(1) of Executive Order 12866, as amended by Executive Order No. 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 2003 OMB Circular No. A-4.¹⁶ We also report estimates that reflect a recent annual gross domestic product (GDP) deflator.¹⁷

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. In particular, we recommend keeping in mind the following points:

- 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).

the Administrator of OIRA for changes in gross domestic product); 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 These executive orders can be found at <https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf> and <https://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf>. 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 Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, codified at 5 U.S.C. §§ 801–808, is colloquially referred to as the Congressional Review Act.

¹⁶ Unless otherwise noted, references to “Circular No. A-4” in this Report refer to the September 17, 2003, publication of the document. This document was the current version of Circular No. A-4 when a draft of this report was made available for public comment and peer review on October 27, 2023. On November 9, 2023, OMB published a revised Circular No. A-4 that will inform future versions of this Report.

¹⁷ 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, 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.

Summing across estimates involves the aggregation of analytical results that may not be comparable.¹⁸

- 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. Even more concrete outcomes like the effect of hazards on human health and the environment can be difficult to quantify or monetize. These effects on health and environment should be modeled qualitatively if measurement is too difficult to include in the benefit and cost estimates directly.

¹⁸ Please see past Reports for further discussion about lack of comparability.

- 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.¹⁹ Executive Orders 12866 and 13563 establish the importance of such analysis, with the goal of improving relevant regulations through modification, streamlining, expansion, or repeal.²⁰ 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.²¹ Retrospective analyses are not without their own challenges, however. Conducting retrospective analysis that isolates the independent effect of specific rules, or accounts for unanticipated benefits and costs, is an area of current research.²² Thoughtful retrospective analyses by agencies can complement the prospective analyses that are included in RIAs. 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, 2022.²³ Rules designated

¹⁹ See Michael Greenstone, *Toward a Culture of Persistent Regulatory Experimentation and Evaluation*, in *New Perspectives on Regulation* 113-14 (David Moss & John Cisternino eds., 2009).

²⁰ See Executive Order 12866, § 5, 58 Fed. Reg. 51,735, 51,739–40 (Oct. 4, 1993); Executive Order 13563, § 6, 76 Fed. Reg. 3,821, 3,822 (Jan. 21, 2011).

²¹ Retrospective review has shown that both costs and benefits can be overestimated or underestimated. See Winston Harrington et al., *On the Accuracy of Regulatory Cost Estimates*, 19 J. Pol’y Analysis & Mgmt. 297 (2000); Winston Harrington, *Grading Estimates of the Benefits and Costs of Federal Regulation: A Review of Reviews*, Res. for the Future Discussion Paper 06-39 (Sept. 1, 2006), available at <https://www.rff.org/publications/working-papers/grading-estimates-of-the-benefits-and-costs-of-federal-regulation/>.

²² See Lori S. Benneer & Jonathan B. Wiener, *Institutional Roles and Goals for Retrospective Regulatory Analysis*, 12 J. BENEFIT-COST ANALYSIS 466 (2021).

²³ 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

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.²⁴

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\$).²⁵ 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\$).²⁶ We emphasize an important detail—that the totals

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.

²⁴ 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 in early April, 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.

²⁵ 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.

²⁶ 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.

listed in this paragraph include only the benefits and costs for the minority of rules for which both those categories of impacts were estimated.²⁷

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.²⁸ Table 1-7(a) in each spreadsheet lists Federal budget transfers. Table 1-7(b) lists the non-budget transfers; the 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.²⁹

2. Rules Issued by Independent Agencies

The Congressional Review Act requires the 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 12866.³⁰ 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, 2022.³¹ (Rules by independent agencies are not subject to OMB review under Executive Order 12866.) 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

²⁷ The spreadsheet that contains much of this Report's content may facilitate the calculation of other aggregates that are of interest to readers.

²⁸ 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.

²⁹ 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.

³⁰ A rule is subject to the GAO reporting requirement if it is likely to result in (a) either annual costs or benefits of \$100 million or more or (b) a significant adverse impact on the economy as defined by the Congressional Review Act. See 5 U.S.C. § 804(2).

³¹ Gov't Accountability Off., *Congressional Review Act* (last visited Jan. 31, 2024), available at <https://www.gao.gov/legal/other-legal-work/congressional-review-act>.

Paperwork Reduction Act of 1995 (PRA),³² 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 lead to inferior decisions.

³² See 44 U.S.C. § 3506(c) (requiring “a specific, objectively supported estimate of burden”); see also *id.* § 3502(1) (including independent regulatory agencies within the scope of the PRA).

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 Act³³:

- *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 aspect 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

³³ 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 “unless 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. Conf. Rep. No. 104-76, at 39 (1995). 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.³⁴

- *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.³⁵ Here, we

³⁴ 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.

³⁵ 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 the 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.³⁶

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), examines the effect of the NO_x Budget Trading Program—a cap-and-trade program created to reduce NO_x from power plants and high-emissions manufacturing firms. The study finds that the program 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. Interpreting the results in terms of pass through of costs, the author notes that the power sector appears to have been able to pass costs through to manufacturing customers and, thus, much of the effect on manufacturing firms came indirectly from the power sector. 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—suggesting incomplete cost pass through—than less heavily regulated industries, and that small firms are more likely to exit an industry in response to regulation than large firms. A limitation of the studies cited here is that regulations are not implemented exogenously, so confounding variables could explain the patterns found by the authors.

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. This result shows that broader labor market effects of a regulation can differ substantially from the effects on regulated firms.

³⁶ 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.

In line with this finding, Currie and Walker (2019) review economics research on the costs and benefits of the Clean Air Act, citing work that was not featured in the previous report that shows that regulation stemming from the Clean Air Act increased worker productivity broadly across the economy. In 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. 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. In contrast to the relatively small or heterogeneous effects in the above papers, 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.” The authors note that the effect size might be related to the level of economic activity. Unemployment in Wisconsin was 8.5 percent at the time of the study, a period of recovery from the 2007–2009 recession.

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.”³⁷ 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 focus 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, revisions to OMB Circular No. 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, 2023,³⁸ 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,³⁹ from \$100 million per year, the level set in 1993 by Executive Order 12866, to \$200 million per year, adjusted every three years for changes in gross domestic product. 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 Office of Information and Regulatory Affairs (OIRA) and agency resources on regulations that will benefit most from analysis, and OIRA recommends that agencies continue to prioritize their analytical resources, both within and across analyses, to promote regulatory initiatives that are likely to yield significant net benefits and, more generally, the highest value of information.⁴⁰

³⁷ 31 U.S.C. § 1105 note.

³⁸ Executive Order No. 14094, 88 Fed. Reg. 21,879 (Apr. 11, 2023), *available at* <https://www.federalregister.gov/documents/2023/04/11/2023-07760/modernizing-regulatory-review>.

³⁹ 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> [hereinafter Implementation Memo].

⁴⁰ See Presidential Memorandum on 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/>. Note that agencies allocating resources efficiently could include allocating toward programs about which there is little research. Resolving uncertainty on alternate candidate regulations could be a viable route forward in certain circumstances to ensure policies with the highest likely net benefits are pursued.

Relatedly, Executive Order 14094 also clarified another criterion 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.⁴¹ 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.⁴² 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 PRA.

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.⁴³ For example, agencies can consider improvements to their websites to better

⁴¹ Implementation Memo, *supra* note 39, at 5–6.

⁴² 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>.

⁴³ 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.⁴⁴

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,⁴⁵ and received public comment on,⁴⁶ 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.⁴⁷ Reflecting that feedback, OIRA issued final guidance on December 20, 2023,⁴⁸ along with an explanation and response to input.⁴⁹ Both documents describe a number of steps OIRA is taking to encourage feedback from a broad array of stakeholders through these meetings, including making it easier to request meetings through OIRA's online portal; providing plain language information on OIRA's website to help individuals prepare for these meetings; posting a video how-to guide (in English and in a Spanish version prepared by OIRA Administrator Richard Revesz) on how to request meetings; and offering periodic and accessible public trainings on effective participation in these meetings.

C. Improving Regulatory Analysis

I. Circular No. 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

⁴⁴ The April Memorandum contains more details on these recommendations. See Implementation Memo, *supra* note 39, at 9–10.

⁴⁵ 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>.

⁴⁶ Comments on the draft guidance may be viewed at Regulations.gov, Off. of Mgmt. & Budget, *EO 12866 Meetings Guidance*, available at <https://www.regulations.gov/docket/OMB-2022-0011>.

⁴⁷ The White House, *Hearing from You: How OIRA Meets with the Public*, (last visited Sept. 20, 2023), available at <https://www.whitehouse.gov/omb/information-regulatory-affairs/modernizing-regulatory-review/hearing-from-you-how-oira-meets-with-the-public/>.

⁴⁸ Off. of Info. & Regul. Affs., Off. of Mgmt. & Budget, Exec. Off. of the President, *Guidance Implementing Section 2(e) of Executive Order 14094 (Modernizing Regulatory Review)* (Dec. 20, 2023), available at https://www.whitehouse.gov/wp-content/uploads/2023/12/Modernizing-EO-Section-2e-Guidance_FINAL.pdf.

⁴⁹ Off. of Info. & Regul. Affs., Off. of Mgmt. & Budget, Exec. Off. of the President, *Guidance Implementing Section 2(e) of Executive Order 14094 (Modernizing Regulatory Review): Explanation and Response to Public Input* (Dec. 20, 2023), available at https://www.whitehouse.gov/wp-content/uploads/2023/12/ERPI-Modernizing-EO-Section-2e-Guidance_FINAL.pdf.

this guidance, known as Circular No. A-4, on April 6, 2023.⁵⁰ OMB also issued a preamble to the proposed revisions⁵¹ that provides explanation of many of the proposed revisions and highlighted questions for public comment. In addition to public comment,⁵² the proposed revisions have also undergone peer review.⁵³

OMB published the revised Circular No. A-4 on November 9, 2023.⁵⁴ In addition to publishing the revised Circular, OMB responded specifically to the comments raised by peer reviewers and public commenters in a separate document.⁵⁵ These revisions aim to help agencies better account for the full range of benefits and costs of their regulatory actions.

2. *Frontiers of Benefit-Cost Analysis*

The revisions to Circular No. A-4 stress the importance of accounting for effects that to date have been challenging to fully monetize or quantify; 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 and the Council of Economic Advisers, 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 from this Working Group 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. The first report was published by the White House National Science and Technology Council on December 14, 2023.⁵⁶ This and future reports will serve as useful resources for researchers both inside and outside of government considering areas for further inquiry.

⁵⁰ Off. of Mgmt. & Budget, Exec. Off. of the President, *Draft Circular A-4: Regulatory Analysis* (Apr. 6, 2023), available at <https://www.whitehouse.gov/wp-content/uploads/2023/04/DraftCircularA-4.pdf>.

⁵¹ 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>.

⁵² Comments on the proposed revisions to Circular No. A-4 may be viewed at Regulations.gov, Off. of Mgmt. & Budget, *Circular A-4 Modernization Updates*, available at <https://www.regulations.gov/docket/OMB-2022-0014>.

⁵³ See Off. of Mgmt. & Budget, Exec. Off. of the President, *Request for Nominations of Experts to Peer-Review Draft Guidance on Conducting Analysis of Federal Regulations*, 88 Fed. Reg. 20,912 (Apr. 7, 2023), available at <https://www.federalregister.gov/documents/2023/04/07/2023-07362/request-for-nominations-of-experts-to-peer-review-draft-guidance-on-conducting-analysis-of-federal>.

⁵⁴ See Off. of Mgmt. & Budget, Exec. Off. of the President, *Circular No. A-4* (Nov. 9, 2023), available at <https://www.whitehouse.gov/wp-content/uploads/2023/11/CircularA-4.pdf>.

⁵⁵ See Off. of Mgmt. & Budget, Exec. Off. of the President, *OMB Circular No. A-4: Explanation and Response to Public Input* (Nov. 9, 2023), available at <https://www.whitehouse.gov/wp-content/uploads/2023/11/CircularA-4Explanation.pdf>.

⁵⁶ See Subcomm. on the Frontiers of Benefit-Cost Analysis, Nat'l Sci. & Tech. Council, Exec. Off. of the President, *Advancing the Frontiers of Benefit-Cost Analysis: Federal Priorities and Directions for Future Research* (Dec. 2023), available at <https://www.whitehouse.gov/wp-content/uploads/2023/12/FINAL-SFBCA-Annual-Report-2023.pdf>.

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.⁵⁷

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 gap⁵⁸; 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-Cost Analysis*.⁵⁹ This draft guidance bridges insights from ecology and economics to help agencies understand how nature affects people. The guidance is currently undergoing public comments and peer review.⁶⁰ 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 change in ecosystem services, and quantifying or qualitatively describing the important effects to the extent feasible.

⁵⁷ Presidential Memorandum on Modernizing Regulatory Review, *supra* note 40, § 2(b)(ii).

⁵⁸ Executive Order No. 14072, § 4(b), 87 Fed. Reg. 24,851, 24,854 (Apr. 27, 2022), available at <https://www.govinfo.gov/content/pkg/FR-2022-04-27/pdf/2022-09138.pdf>.

⁵⁹ Off. of Info. & Regul. Affs., Off. of Mgmt. & Budget, Exec. Off. of the President, *Draft 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), available at <https://www.whitehouse.gov/omb/briefing-room/2023/08/01/accounting-for-ecosystem-services-in-benefit-cost-analysis/> (announcing issuance of draft guidance).

⁶⁰ 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. The *National Strategy to Develop Statistics for Environmental-Economic Decisions: A U.S. System of Natural Capital Accounting and Associated Environmental-Economic Statistics* charts a path toward that accounting. The National Strategy is available at <https://www.whitehouse.gov/wp-content/uploads/2023/01/Natural-Capital-Accounting-Strategy-final.pdf>.

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 worked with the National Economic Council, the Council of Economic Advisers, and interagency partners to develop guidance on how agencies can account for competition effects in regulatory benefit-cost analyses. OMB published this guidance on October 11, 2023.⁶¹

⁶¹ Off. of Info. & Regul. Affs., Off. of Mgmt. & Budget, Exec. Off. of the President, *Guidance on Accounting for Competition Effects When Developing and Analyzing Regulatory Actions* (Oct. 2023), available at <https://www.whitehouse.gov/wp-content/uploads/2023/10/RegulatoryCompetitionGuidance.pdf>.

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

Introduction

This report represents OMB’s annual submission to Congress on agency compliance with the Unfunded Mandates Reform Act of 1995 (UMRA). 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 Unfunded Mandates Reform Act of 1995 (UMRA, or “the Act”) 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.⁶² 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.⁶³ 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.⁶⁴ 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.⁶⁵

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.⁶⁶ Title II also singles out small governments for particular attention.⁶⁷ OMB’s guidelines assist Federal agencies in complying with the Act and are based upon the following general principles⁶⁸:

⁶² 2 U.S.C. § 1531.

⁶³ *Id.* § 1532(a).

⁶⁴ *Id.* § 1535(a).

⁶⁵ *Id.* § 1535(b).

⁶⁶ *Id.* § 1534(a).

⁶⁷ *Id.* § 1533(a).

⁶⁸ Off. of Mgmt. & Budget, Exec. Off. of the President, OMB M-95-09, *Guidance for Implementing Title II of S. 1* (Mar. 31, 1995) [hereinafter OMB M-95-09], 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.⁶⁹ 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.

⁶⁹ 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).” OMB M-95-09, 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.

**APPENDIX A:
REPORTED FINAL RULES ON WHICH OMB CONCLUDED REVIEW IN FY20, FY21, AND FY22⁷⁰**

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

<i>Agency</i>	<i>Rule Title</i>	<i>RIN</i>
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 (RCPD)	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

⁷⁰ Off. of Mgmt. & Budget, Exec. Off. of the President, *Increasing Openness in the Rulemaking Process – Use of the Regulation Identification Number (RIN)* (Apr. 7, 2010), available at https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/assets/inforeg/IncreasingOpenness_04072010.pdf. This 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. Where possible, links to RIAs are provided.

Agency	Rule Title	RIN
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 (DOJ)	Registration and Reregistration Fees for Controlled Substance and List I Chemical Registrants	1117-AB51
DOJ	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

Agency	Rule Title	RIN
DOL	Pension Benefit Statements—Disclosure Regarding Lifetime Income, SECURE Act	1210-AB20
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	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

Agency	Rule Title	RIN
EPA	Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Reconsideration	2060-AT54
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 – 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>
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 (RCPP)	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

Agency	Rule Title	RIN
ED	American Rescue Plan Emergency Assistance to Non-Public Schools (ARPEANS) Program	1810-AB63
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
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

Agency	Rule Title	RIN
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
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

Agency	Rule Title	RIN
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
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

APPENDIX B: RESPONSE TO COMMENTS

We wish to express our sincere appreciation for the thoughtful peer reviews and public comments we received on the Draft Report. In particular, we would like to thank our invited peer reviewers: Caroline Cecot (George Mason University), Stephen Newbold (University of Wyoming), Lisa Robinson (Harvard University), and Glenn Sheriff (Arizona State University). We are grateful for their time and the thoughtfulness of their comments. For a full list of peer reviewers and public commenters, please refer to the end of this appendix. For convenience, commenters are referred to by letter throughout this discussion. In addition to the summaries that appear below, commenters made a number of other recommendations that have not been adopted in this document but may be considered for future Reports.

Peer Reviewers W and Y expressed dissatisfaction with this and the previous Report consisting of three fiscal years rather than the previous annual Report. Both commenters noted that this could negatively impact transparency and accountability. For example, it might have been valuable to promptly examine the COVID-19-related regulations enacted in FY2020. OMB agrees that annual issuance of the Report is preferable, and intends to resume publication of annual Reports in future years.

Commenters generally appreciated the inclusion of Excel™ files in appendices. Commenters also made suggestions for additional inclusions. For example, Peer Reviewer X and Public Commenter A requested inclusion of tables reporting the total benefits and costs by year. OMB's intention with providing the Excel™ spreadsheet of rules is to allow users to conduct analysis specific to their own needs. Within these spreadsheets users can restrict to specific agencies or specific years to aggregate benefits and costs. Peer Reviewer Y suggested including URL links to RIAs directly in the Report rather than the RINs. We agree that this could be helpful. We added links to the RIAs in the Federal Register or Regulations.gov when such documents could be identified. These links are provided as hyperlinks on top of the RINs in the tables in Appendix A of this document.

Public Commenter A suggested reporting the estimated net present value of the regulations alongside the annualized values that are currently reported. OMB reports the annualized values for comparability across all reported regulations. Annualized values adjust for varying lengths of analysis across regulations. For example, regulation pertaining to energy efficiency standards for consumer products might run 30 years for the maximum lifecycle of that product, whereas a regulation for radiation cleanup efforts might run 60 years to account for long-term impacts on affected regions and communities. Aggregate net present values are not immediately comparable between these two examples.

Peer Reviewer Y noted that dollar amounts are reported in 2001 US dollars, and suggested that this practice be updated. For consistency with previous years' reports and given recommendations laid out in the 2003 version of Circular No. A-4, OMB reports in 2001 dollars for this FY2020, FY2021, and FY2022 Omnibus Report. We note that in the Excel™ appendix

spreadsheets, dollar amounts are also reported in 2022 dollars. OMB will reassess the policy of reporting in 2001 dollars for future Reports.

Peer Reviewers W and Y discussed possibilities for improving public accessibility to RIAs. Peer Reviewer W suggested improvements to the current Regulations.gov website and rules docket, including better delineation of the RIA versus other supporting material and pointing to a recent effort by the state of Virginia in providing public access to its permitting regulations.⁷¹ Both reviewers additionally suggested OMB curate a website of RIAs as it reviews them. OMB appreciates the importance of easily accessible RIAs to researchers and the public more broadly. While the improvements to transparency suggested above are interesting proposals, they are beyond the scope of this Report. OMB is, however, interested in assessing the possibility of making improvements to the publication and ease of access of RIAs in the future.

Peer Reviewers W and Y provided feedback on the discussion of retrospective review in this Report. Peer Reviewer W suggested additional citations to include in the document. Peer Reviewer Y suggested a deeper discussion of the limitations of retrospective analysis. We appreciate the feedback on this part of the discussion, and have incorporated modifications to the text to reflect these updates in understanding on retrospective analysis.

Peer Reviewer Y requested a synthesis of the effects of regulation on small businesses, wages, employment, and growth as well as more discussion of the limitations of the studies. Peer Reviewer W appreciated the discussion of these effects through the lens of individual research papers. They suggested further contextualizing some of the individual research papers that were included in the report. Peer Reviewer Z noted, for that same section, that while employment might be impacted at business or sectoral levels, national employment rates are unlikely to be affected. OMB appreciates that research into these fields is broad and varied in its conclusions, and reflected that by discussion of individual papers. We hope that parties interested in the effects of regulation on small business, wages, employment, and growth can use the cited papers as starting points for their own further exploration of these topics. In response to Peer Reviewer W's comments, further context has been added to the paper listed in the report. OMB believes that this additional context also helps the reader understand the relationship between the papers, aiding synthesis of the results along the lines of Peer Reviewer Y's comments. In response to Peer Reviewer Y, the discussion of the papers now highlights some key limitations with studies in this area as well as draws more contrast between different studies on the same topic. With regard to Peer Reviewer Z's comment, previous Reports by OMB have identified the challenge of jobs analysis in RIAs. The revised 2023 Circular No. A-4 reflects these challenges and provides guidance on when it is advisable to include the analysis of

⁷¹ VA Dept. of Environmental Quality, *Virginia Permit Transparency (VPT) and Permitting Enhancement and Evaluation Platform (PEEP)* (Jan. 31, 2024), available at <https://www.deq.virginia.gov/get-involved/permitting-enhancement-and-evaluation-platform-peek>.

employment and other macroeconomic factors in the benefit-cost analysis. Circular No. A-4 in particular points to previous discussion in the 2015 iteration of this Report.⁷²

Peer Reviewer Y suggested including a discussion of how time and attention is allocated by OMB within individual regulatory reviews. OMB attempts to conduct a holistic review of each regulation according to the guidance laid out in Circular No. A-4. Considering each regulation sits within its own context and therefore presents unique challenges, it is difficult to describe a general procedure for how resources are prioritized in review.

Peer Reviewer X requested a discussion of the difference between benefits, costs, and transfers that would be educative to the lay reader. Per OMB Circular No. A-4, transfers are “monetary payments from one group to another that do not affect total resources available to society.” In that sense, transfers are offsetting benefits and costs that in general do not directly contribute to a change in estimated net benefits of a regulation. Nonetheless, transfers are often worthwhile to include in the analysis of a regulation, and the Report would be less complete if it omitted this category of effects.

Public Commenter A noted a potential error in the FY21 spreadsheet’s entries for the “Securing the Information and Communications Technology and Services Supply Chain” rule. We appreciate the close attention to the Report’s contents and have corrected the data entry error.

Peer Reviewer X expressed confusion at the negative benefits and costs presented on page 11 of this Report, and requested further clarification. These estimates are generally the result of rescinded regulations and reflect an accounting convention used in a previous administration. Benefits and costs in the regulatory analysis were therefore estimated as the negative of the estimates in the original regulations (with some adjustments—for example, to account for sunk costs).

Public Commenter A requested an additional breakdown of the pecuniary versus non-pecuniary benefits of regulations included in the Report. Non-pecuniary benefits are important factors to consider in the analysis of regulations. OMB encourages agencies in their RIAs to qualitatively model difficult-to-measure costs and benefits if quantitative analysis proves too challenging. For the purposes of this Report, non-pecuniary benefits are difficult to include in any tables because they are specific to the contexts of the underlying rule. In contrast, pecuniary costs and benefits can be expressed in a similar fashion across a variety of rules.

⁷² See Off. of Info. & Regul. Affs., Off. of Mgmt. & Budget, Exec. Off. of the President, *2015 Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act*, 42-45 (2015), available at https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/inforeg/inforeg/2015_cb/2015-cost-benefit-report.pdf.

List of peer reviewers and public commenters:

Peer Reviewer W: Caroline Cecot (George Mason University)

Peer Reviewer X: Stephen Newbold (University of Wyoming)

Peer Reviewer Y: Lisa Robinson (Harvard University)

Peer Reviewer Z: Glenn Sheriff (Arizona State University)

Public Commenter A: James Broughel (Competitive Enterprise Institute)

APPENDIX C: AGENCY CONSULTATION ACTIVITIES UNDER THE UNFUNDED MANDATES REFORM ACT OF 1995

Sections 203 and 204 of the Unfunded Mandates Reform Act (UMRA) require agencies to seek input from State, local, and Tribal governments on new Federal regulations imposing significant intergovernmental mandates. This appendix summarizes selected federalism consultation activities by agencies whose actions affect State, local, and Tribal governments.⁷³

Multiple agencies subject to UMRA conducted consultation activities not only in their regulatory processes, but also in their program planning and implementation phases. These agencies have worked to enhance the regulatory environment by improving the way in which the Federal Government relates to its intergovernmental partners. Many of the departments and agencies not listed here (*e.g.*, the Departments of State and Veterans Affairs, and the General Services Administration) do not often impose mandates upon States, localities, or Tribes, and thus have fewer occasions to consult with these governments. Other agencies, such as the National Archives and Records Administration, are exempt from UMRA's reporting requirements, but may nonetheless engage in consultation where their activities would affect State, local, and Tribal governments.

As the following descriptions indicate, Federal agencies conduct a wide range of consultations. Agency consultations sometimes involve multiple levels of government, depending on the agency's understanding of the scope and impact of its rule or policy.

A. Department of Agriculture (USDA)

*Child Nutrition Program Integrity*⁷⁴

Tribal representatives were informed about this rulemaking during the Food and Nutrition Service (FNS) listening session at the meeting of the National Congress of American Indians in February 2020 and at the Tribal consultation that took place on May 23, 2023.

Because the Child Nutrition Programs are State-administered, FNS has formal and informal discussions with State and local officials, including representatives of Indian Tribal Organizations, on an ongoing basis regarding program requirements and operations. This provides FNS with the opportunity to receive regular input from State administrators and local program operators, which contributes to the development of feasible requirements.

⁷³ The consultation activities described in this appendix are illustrative of intergovernmental consultations conducted by Federal agencies and are not limited to consultations on regulations meeting the UMRA threshold for an unfunded mandate. This should not be considered an exhaustive list of federalism consultation activities.

⁷⁴ Food & Nutrition Serv., U.S. Dep't of Agric., *Final Rule: Child Nutrition Program Integrity*, 88 Fed. Reg. 57,792, 57,826 (Aug. 23, 2023), available at <https://www.federalregister.gov/documents/2023/08/23/2023-17992/child-nutrition-program-integrity>.

FNS gathered input from National, State, and local community partners through a variety of public engagement activities. Webinars, listening sessions, and town hall meetings helped FNS monitor program operations, identify best practices, and take into consideration requests from States and local program operators. Since Child Nutrition Programs are State administered, federally-funded programs, FNS Regional offices have informal and formal discussions with State and local officials on an ongoing basis regarding program implementation and performance. Additionally, FNS published rulemaking actions to obtain formal public comment.

Child Nutrition Programs: Revisions to Meal Patterns Consistent With the 2020 Dietary Guidelines for Americans⁷⁵

To develop these proposed standards, USDA relied on input from key child nutrition program stakeholders. Throughout 2022, USDA held over 50 listening sessions with State agencies, school food authorities, advocacy organizations (including a parent organization), Tribal stakeholders, professional associations, food manufacturers, and other Federal agencies. During these conversations, participants shared their insights and perspectives on developing ambitious, achievable, and durable standards to improve children’s health. These conversations were part of USDA’s effort to build consensus on long-term solutions for healthier school meals through collaborative action. Stakeholders also provided important insight into the successes and challenges that schools experience implementing the nutrition standards, including input on the support, guidance, and resources needed from USDA to improve school meals for children.

Since the child nutrition programs are State-administered, USDA’s FNS Regional Offices have formal and informal discussions with State and local officials, including representatives of Indian Tribal Organizations, on an ongoing basis regarding program requirements and operations. These discussions provided USDA with the opportunity to receive input from program administrators and contributed to the development of feasible program requirements. FNS also held listening sessions related to this topic with Indian Tribes and took that feedback into account in rulemaking.

Child Nutrition Programs: Transitional Standards for Milk, Whole Grains, and Sodium⁷⁶

Because the Child Nutrition Programs are State-administered, USDA’s FNS Regional Offices have formal and informal discussions with State and local officials, including representatives of Indian Tribal Organizations, on an ongoing basis regarding program requirements and operations. These discussions provided USDA with the opportunity to receive input from program administrators and contributed to the development of feasible program requirements.

⁷⁵ Food & Nutrition Serv., U.S. Dep’t of Agric., *Proposed Rule: Child Nutrition Programs: Revisions to Meal Patterns Consistent With the 2020 Dietary Guidelines for Americans*, 88 Fed. Reg. 8050, 8086 (Feb. 7, 2023), available at <https://www.federalregister.gov/documents/2023/02/07/2023-02102/child-nutrition-programs-revisions-to-meal-patterns-consistent-with-the-2020-dietary-guidelines-for>.

⁷⁶ Food & Nutrition Serv., U.S. Dep’t of Agric., *Final Rule: Child Nutrition Programs: Transitional Standards for Milk, Whole Grains, and Sodium*, 87 Fed. Reg. 6984, 7004 (Feb. 7, 2022), available at <https://www.federalregister.gov/documents/2022/02/07/2022-02327/child-nutrition-programs-transitional-standards-for-milk-whole-grains-and-sodium>.

Environmental Quality Incentives Program⁷⁷

Tribal consultation for this rule was included in the two 2018 Farm Bill Tribal consultations held on May 1, 2019, at the National Museum of the American Indian, in Washington, DC, and on June 26–28, 2019, in Sparks, NV. NRCS also regularly obtains input through Tribal Conservation Advisory Councils. Additionally, NRCS held several sessions with Indian Tribes and entities across the country in fiscal year 2019 to describe the 2018 Farm Bill changes to NRCS conservation programs, obtain input about how to improve Tribal and Tribal member access to NRCS conservation assistance, and make any appropriate adjustments to the regulations.

Establishment of a Domestic Hemp Production Program⁷⁸

The Agricultural Marketing Service (AMS) conducted significant outreach with State officials including individual meetings, participation in conferences with State officials, and listening sessions where State officials from all States were invited. AMS will continue to consult with State officials to obtain their feedback as this program is implemented.

AMS conducted extensive outreach to Tribal governments through individual discussions with Tribal representatives, by extending the regulatory comment periods and through more formal consultations. On May 1 and May 2, 2019, USDA held a formal Tribal consultation, in Washington, DC, on the 2018 Farm Bill including a session on hemp production. In addition to listening sessions for the general public, USDA hosted a listening session for Tribal governments following the formal Tribal consultation on May 2, 2019. On December 11, 2019, USDA held a second formal Tribal consultation, in Las Vegas, NV. This consultation provided information on the interim final rule. On September 24, 2020, USDA held a third formal Tribal consultation, virtually, and provided information on the interim final rule.

Streamlining Program Requirements and Improving Integrity in the Summer Food Service Program (SFSP)⁷⁹

FNS hosted a listening session to inform Tribal Nations about this rulemaking. Because SFSP is State-administered, USDA has formal and informal discussions with State and local officials,

⁷⁷ Nat. Res. Conservation Serv. & Commodity Credit Corp., U.S. Dep't of Agric., *Interim Rule: Environmental Quality Incentives Program*, 84 Fed. Reg. 69,272, 69,279 (Dec. 17, 2019), available at <https://www.federalregister.gov/documents/2019/12/17/2019-26872/environmental-quality-incentives-program>.

⁷⁸ Agric. Mktg. Serv., U.S. Dep't of Agric., *Final Rule: Establishment of a Domestic Hemp Production Program*, 86 Fed. Reg. 5596, 5597, 5616, 5664 (Jan. 19, 2021), available at <https://www.federalregister.gov/documents/2021/01/19/2021-00967/establishment-of-a-domestic-hemp-production-program>.

⁷⁹ Food & Nutrition Serv., U.S. Dep't of Agric., *Final Rule: Streamlining Program Requirements and Improving Integrity in the Summer Food Service Program (SFSP)*, 87 Fed. Reg. 57,304, 57,345 (Sept. 19, 2022), available at <https://www.federalregister.gov/documents/2022/09/19/2022-20084/streamlining-program-requirements-and-improving-integrity-in-the-summer-food-service-program-sfsp>.

including representatives of Indian Tribal Organizations, on an ongoing basis regarding program requirements and operations. These discussions provided USDA with the opportunity to receive input from State administrators and local program operators, which contributed to the development of feasible requirements.

Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents⁸⁰

FNS briefed Tribes on this rule at the February 14th, 2019 listening session.

B. Department of Commerce (DOC) / National Oceanic and Atmospheric Administration (NOAA)

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Halibut Abundance-Based Management of Amendment 80 Prohibited Species Catch Limit⁸¹

Under Executive Order 13175 and agency policies, the National Marine Fisheries Service (NMFS) notified all potentially affected Tribal governments in Alaska and Alaska Native Corporations of this action and supporting analyses, as well as of the opportunity to submit comments regarding this proposed action, and to engage in Tribal consultations on the action.

NMFS conducted listening sessions and Tribal consultations regarding this rule. On August 18, 2020, NMFS mailed Tribal consultation invitation letters to Alaska Native Tribe, Alaska Native Corporations, and Alaska Native Organizations. On April 26, 2021, NMFS mailed Tribal consultation invitation letters to Alaska Native representatives. On November 10, 2021, NMFS mailed a letter inviting Alaska Native representatives to participate in a halibut bycatch listening session on November 29, 2021, to discuss Halibut ABM. NMFS listened to concerns on halibut bycatch issues and provided the time for Alaska Native representatives and NMFS staff to get acquainted. In 2021, NMFS conducted Tribal consultation on the Halibut ABM action with Alaska Native representatives that expressed interest. NMFS shared information about the action and its potential implementation during the meeting but primarily wanted to hear and better understand Tribal perspectives regarding Tribal impacts. On February 9, 2022, NMFS continued the Tribal consultation process by mailing Tribal consultation letters to 19 federally recognized Tribes and representatives. On March 4, 2022, NMFS sent a letter to the Bering Intergovernmental Tribal Council inviting additional Tribal feedback. NMFS also provided a copy of the proposed rule directly to all potentially impacted federally registered Tribal

⁸⁰ Food & Nutrition Serv., U.S. Dep't of Agric., *Final Rule: Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents*, 84 Fed. Reg. 66,782, 66,808 (Dec. 5, 2019), available at <https://www.federalregister.gov/documents/2019/12/05/2019-26044/supplemental-nutrition-assistance-program-requirements-for-able-bodied-adults-without-dependents>.

⁸¹ Nat'l Marine Fisheries Serv., Nat'l Oceanic & Atmospheric Admin., Dep't of Com., *Final Rule: Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Halibut Abundance-Based Management of Amendment 80 Prohibited Species Catch Limit*, 88 Fed. Reg. 82,740, 82,767–68 (Nov. 24, 2023), available at <https://www.federalregister.gov/documents/2023/11/24/2023-25513/fisheries-of-the-exclusive-economic-zone-off-alaska-bering-sea-and-aleutian-islands-halibut>.

governments in Alaska and Alaska Native Corporations to notify them of the opportunity to comment or request a consultation.

C. Department of Energy (DOE) / Federal Energy Regulatory Commission (FERC)

Improvements to Generator Interconnection Procedures and Agreements⁸²

On June 17, 2021, FERC established a Joint Federal-State Task Force on Electric Transmission (Task Force) to formally explore broad categories of transmission-related topics. FERC explained that the development of new transmission infrastructure implicated a host of different issues, including generator interconnection. The Task Force is comprised of all FERC Commissioners as well as representatives from 10 State commissions nominated by the National Association of Regulatory Utility Commissioners (NARUC), with two originating from each NARUC region. The Task Force convenes for multiple formal meetings annually, which are open to the public. Since its creation and as of the date of issuance of this final rule, the Task Force has met seven times.

D. Department of Health and Human Services (HHS)

Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Proposed Policy Changes and Fiscal Year 2023 Rates; Quality Programs and Medicare Promoting Interoperability Program Requirements for Eligible Hospitals and Critical Access Hospitals; Costs Incurred for Qualified and Non-Qualified Deferred Compensation Plans; and Changes to Hospital and Critical Access Hospital Conditions of Participation⁸³

HHS engaged in consultation with Tribal officials on the methodology for determining uncompensated care payments to IHS and Tribal hospitals.

⁸² Fed. Energy Regul. Comm'n, Dep't of Energy, *Final Rule: Improvements to Generator Interconnection Procedure and Agreements*, 88 Fed. Reg. 61,014, 61,019 (Sept. 6, 2023), available at <https://www.federalregister.gov/documents/2023/09/06/2023-16628/improvements-to-generator-interconnection-procedures-and-agreements>.

⁸³ Ctrs. for Medicare & Medicaid Servs., Dep't of Health & Hum. Servs., *Proposed Rule: Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and Long-Term Hospital Prospective Payment System and Proposed Policy Changes and Fiscal Year 2023 Rates; Quality Programs and Medicare Promoting Interoperability Program Requirements for Eligible Hospitals and Critical Access Hospitals; Costs Incurred for Qualified and Non-Qualified Deferred Compensation Plans; and Changes to Hospital and Critical Access Hospital Conditions of Participation*, 87 Fed. Reg. 28,108, 28,743 (May 10, 2022), available at <https://www.federalregister.gov/documents/2022/05/10/2022-08268/medicare-program-hospital-inpatient-prospective-payment-systems-for-acute-care-hospitals-and-the>.

Older Americans Act: Grants to State and Community Programs on Aging; Grants to Indian Tribes for Support and Nutrition Services; Grants for Supportive and Nutritional Services to Older Hawaiian Natives; and Allotments for Vulnerable Elder Rights Protection Activities⁸⁴

The Administration for Community Living (ACL) conducted a listening session at the National Title VI Conference on April 18, 2022. ACL also promoted the Request for Information (RFI) with Title VI grantees and Indian Tribes. A Tribal consultation meeting took place at the National Title VI Conference April 12, 2023. ACL conducted a Tribal consultation meeting on Thursday June 22, 2023, from 2:00 p.m. to 4:00 p.m. eastern time.

E. Department of Homeland Security (DHS)

Public Charge Ground of Inadmissibility⁸⁵

DHS welcomed input from individuals, organizations, government entities and agencies, and all other interested members of the public. DHS also provided notice of public virtual listening sessions on the public charge ground of inadmissibility and the Advanced Notice of Proposed Rulemaking (ANPRM). The United States Citizenship and Immigration Services (USCIS) held two public listening sessions, one specifically for the general public on September 14, 2021, and one for State, territorial, local, and Tribal benefits-granting agencies and nonprofit organization on October 5, 2021.

F. Department of the Interior (DOI)

American Indian Probate Regulations⁸⁶

DOI evaluated this rule under DOI's consultation policy and under the criteria in Executive Order 13175 and determined that it has substantial direct effects on federally recognized Indian Tribes because the rule affects the probate of trust or restricted property held by individuals, many or most of whom are likely Tribal members. DOI therefore conducted Tribal consultation on this rule.

⁸⁴ Admin. for Cmty. Living, Dep't of Health & Hum. Servs., *Notice of Proposed Rulemaking: Older Americans Act: Grants to State and Community Programs on Aging; Grants to Indian Tribes for Support and Nutrition Services; Grants for Supportive and Nutritional Services to Older Hawaiian Natives; and Allotments for Vulnerable Elder Rights Protection Activities*, 88 Fed. Reg. 39,568, 39,608 (June 16, 2023), available at <https://www.federalregister.gov/documents/2023/06/16/2023-12829/older-americans-act-grants-to-state-and-community-programs-on-aging-grants-to-indian-tribes-for>.

⁸⁵ U.S. Citizenship & Immigr. Servs., Dep't of Homeland Sec., *Notice of Proposed Rulemaking: Public Charge Ground of Inadmissibility*, 87 Fed. Reg. 10,570, 10,597 (Feb. 24, 2022), available at <https://www.federalregister.gov/documents/2022/02/24/2022-03788/public-charge-ground-of-inadmissibility>.

⁸⁶ Bureau of Indian Affs., Off. of the Sec'y, Dep't of Interior, *Final Rule: American Indian Probate Regulations*, 86 Fed. Reg. 72,068, 72,069, 72,081 (Dec. 20, 2021), available at <https://www.federalregister.gov/documents/2021/12/20/2021-27257/american-indian-probate-regulations>.

In 2016 and 2017, the Bureau of Indian Affairs (BIA) reached out to Tribes for input on how the probate process was working, hosting a Tribal listening session in Spokane, Washington, on June 27, 2016, hosting two Tribal consultation teleconference sessions on July 12 and July 13, 2016, and accepting written comment through January 4, 2017. During the public comment period, the Department hosted a Tribal consultation session on February 9, 2021, and a public meeting on February 11, 2021. The Department also held an additional public session at the request of Tribal members on March 9, 2021.

Federal Acknowledgment of American Indian Tribes⁸⁷

On December 18, 2020, the Department of Interior announced its intent to reconsider a preexisting ban on petitions for Federal recognition by petitioners whose petitions had previously been denied. On February 25, 2021, the Department held a Tribal consultation session and solicited written comments on the ban through March 31, 2021.

DOI evaluated this rule under DOI's consultation policy and under the criteria in Executive Order 13175 and hosted consultation with federally recognized Indian Tribes, on June 2, 2022, and June 6, 2022, in preparation of this proposed rule. A listening session for present, former, and prospective petitioners was also held on June 9, 2022.

Use of Bureau-Operated Schools by Third Parties Under Lease Agreements and Fundraising Activity by Bureau-Operated School Personnel⁸⁸

DOI engaged Tribal government representatives by distributing a letter, dated June 19, 2014, with a copy of the draft rule and requesting comment on the draft rule by July 31, 2014. DOI also published a proposed rule on June 21, 2016, and hosted a listening session and two teleconference consultations on the rule. DOI hosted an additional consultation November 13, 2020.

G. Department of Justice (DOJ)

Special Tribal Criminal Jurisdiction Reimbursement⁸⁹

⁸⁷ Bureau of Indian Affs., Dep't of Interior, *Proposed Rule: Federal Acknowledgment of American Indian Tribes*, 87 Fed. Reg. 24,908, 24,910, 24,917 (Apr. 27, 2022), available at <https://www.federalregister.gov/documents/2022/04/27/2022-08488/federal-acknowledgment-of-american-indian-tribes>.

⁸⁸ Bureau of Indian Educ., Dep't of Interior, *Final Rule: Use of Bureau-Operated Schools by Third Parties Under Lease Agreements and Fundraising Activity by Bureau-Operated School Personnel*, 86 Fed. Reg. 34,943, 34,947 (July 1, 2021), available at <https://www.federalregister.gov/documents/2021/07/01/2021-13196/use-of-bureau-operated-schools-by-third-parties-under-lease-agreements-and-fundraising-activity-by>.

⁸⁹ Off. of Violence Against Women, Dep't of Just., *Interim Final Rule: Special Tribal Criminal Jurisdiction Reimbursement*, 88 Fed. Reg. 21,459, 21,462 (Apr. 11, 2023), available at <https://www.federalregister.gov/documents/2023/04/11/2023-07519/special-tribal-criminal-jurisdiction-reimbursement>.

On July 27 and July 28, 2022, the Office of Violence on Women (OVW) held online Tribal consultations with Tribal leaders regarding implementation of the new Tribal Reimbursement Program. There were 72 non-federal attendees, and eleven Tribal leaders and designated representatives of Tribal leaders provided testimony. In addition, OVW held a roundtable with a selected group of implementing Tribes to discuss their experiences with implementation, including information on costs, on August 24, 2022, and a listening session on August 31, 2022, at an Intragovernmental Working Group (ITWG) meeting that was open to all attendees at the ITWG. Participants in each of the sessions noted similar concerns. OVW also received comments with the same themes during its Annual Violence Against Women Tribal Consultation, which was held September 21–23, 2022 in Anchorage, AK. On July 19 and July 20, and August 3, 2022, the Office of Tribal Justice held consultations regarding a pilot program for the Attorney General to designate Alaska Tribes to exercise special Tribal criminal jurisdiction.

H. Department of Labor (DOL)

Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees⁹⁰

DOL held a series of stakeholder listening sessions between March 8, 2022, and June 3, 2022 to gather input on its part 541 regulations. Stakeholders invited to participate in these listening sessions included representatives from labor unions; worker advocate groups; industry associations; small business associations; State and local governments; Tribal governments; non-profits; and representatives from specific industries such as K–12 education, higher education, healthcare, retail, restaurant, manufacturing, and wholesale. Stakeholders were invited to share their input on issues including the appropriate Employee Assistance Program (EAP) salary level, the costs and benefits of increasing the salary level to employers and employees, the methodology for updating the salary level and frequency of updates, and whether changes to the duties test are warranted. A listening session was held specifically for state and local governments on April 1, 2022, and a session for Tribal governments was held on May 12, 2022. The input received at these listening sessions aided DOL in drafting its proposed rule.

Occupational Exposure to COVID-19; Emergency Temporary Standard⁹¹

The Occupational Safety and Health Administration (OSHA) held a listening session to hear the concerns of Tribal representatives during the preparation of this Emergency Temporary Standard (ETS).

⁹⁰ Wage & Hour Div., Dep't of Labor, *Notice of Proposed Rulemaking: Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees*, 88 Fed. Reg. 62,152, 62,238 (Sept. 8, 2023), available at <https://www.federalregister.gov/documents/2023/09/08/2023-19032/defining-and-delimiting-the-exemptions-for-executive-administrative-professional-outside-sales-and-computer-employees>.

⁹¹ Occupational Safety & Health Admin., Dep't of Labor, *Interim Final Rule & Request for Comments: Occupational Exposure to COVID-19; Emergency Temporary Standard*, 86 Fed. Reg. 32,376, 32,558 (June 21, 2021), available at <https://www.federalregister.gov/documents/2021/06/21/2021-12428/occupational-exposure-to-covid-19-emergency-temporary-standard>.

I. Department of Transportation (DOT)

Tribal Transportation Facility Bridge Program⁹²

FHWA and BIA met with approximately 80 federally recognized Tribes at the National Transportation in Indian Country Conference (NTICC) in Big Sky, Montana, on September 18, 2019, and at the BIA Providers Conference in Anchorage, Alaska, on December 4, 2019, to advise and receive input on this proposed rule. Several meetings and consultations with the Tribal Governments were held again in 2022 about the Tribal Transportation Facility Bridge Program and the Notice of Proposed Rulemaking. These meetings included (1) Inter-Tribal Council of Arizona Virtual Meeting, on March 10, 2022; (2) BIA Alaska Providers' Conference Virtual Meeting, on April 6, 2022; (3) Tribal Transportation Program Coordinating Committee (TTPCC), in Albuquerque, New Mexico, on May 17, 2022; (4) Intertribal Transportation Association (ITA) Virtual Meeting, on June 29, 2022; (5) United South and Eastern Tribes Virtual Meeting, on July 19, 2022; (6) TTPCC Meeting in Lewiston, Idaho, on August 9, 2022; (7) NTICC Meeting in Louisville, Kentucky, on August 25, 2022; (8) BIA Alaska Provider's Conference in Anchorage, Alaska, on November 30, 2022; and (9) ITA meeting in Las Vegas, Nevada, December 7, 2022. FHWA and BIA continued to discuss the proposed rule with the Tribal Governments and the TTPCC, a committee established by Federal regulations to provide input and recommendations on the Tribal Transportation Program to FHWA and BIA. In addition, FHWA held four public information, education, and consultation meetings during the public comment period to explain the rule, answer questions, and take oral testimony. One meeting was held virtually, on April 4, 2023. Three additional meetings were held in or near Indian country: (1) April 20, 2023, at the Department of Interior University, National Indian Programs Training Center, Albuquerque, NM; (2) May 17, 2023, at the Great Northern Jerome Hill Theater, St. Paul, MN; and (3) May 18, 2023, at the Northwest Regional Transportation Symposium, Northern Quest Resort and Casino, Airway Heights, WA.

Tribal Transportation Self-Governance Program⁹³

In the Notice of Proposed Rulemaking (NPRM), DOT announced three Tribal consultations and a virtual listening session. DOT held four public information, education, and consultation meetings during the public comment period to explain the rule, answer questions, and take oral testimony. The first took place on October 21, 2019, during the National Congress of American Indians' Annual Convention in Albuquerque, NM. The second, on November 5, 2019, at the United South and Eastern Tribes Annual Meeting in Choctaw, MS. The third, on November 19,

⁹² Fed. Highway Admin., U.S. Dep't of Transp., *Notice of Proposed Rulemaking: Tribal Transportation Facility Bridge Program*, 88 Fed. Reg. 19,571, 19,574–75 (Apr. 3, 2023), available at <https://www.federalregister.gov/documents/2023/04/03/2023-06490/tribal-transportation-facility-bridge-program>.

⁹³ Off. of the Sec'y, Dep't of Transp., *Final Rule: Tribal Transportation Self-Governance Program*, 85 Fed. Reg. 33,494, 33,496 (June 1, 2020), available at <https://www.federalregister.gov/documents/2020/06/01/2020-11618/tribal-transportation-self-governance-program>.

2019, at a Federal Aviation Administration facility in Des Moines, WA. On November 21, 2019, the Department held a virtual listening session via webinar. On December 5, 2019, a DOT representative held an information listening session at the 29th Annual Bureau of Indian Affairs (BIA) Tribal Providers Conference in Anchorage, AK.

J. Environmental Protection Agency (EPA)

Clean Water Act Section 401 Water Quality Certification Improvement Rule⁹⁴

EPA held a series of virtual listening sessions for certifying authorities (June 14, June 23, and June 24, 2021), project applicants (June 15, 2021), and the public (June 15 and June 23, 2021) to gain further pre-proposal input. EPA also met with stakeholders upon request during development of the proposed rule.

EPA held a virtual public hearing on July 18, 2022, and hosted a series of stakeholder listening sessions throughout June 2022, including one listening session for project proponents on June 14, 2022, three listening sessions for States and territories on June 15, June 22, and June 28, 2022. The Agency also hosted a Federal agency listening session on June 14, 2022.

EPA consulted with Tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes early in the process of developing this rulemaking to allow them to have meaningful and timely input into its development. EPA initiated a Tribal consultation and coordination process on June 7, 2021. EPA engaged with the Tribes over a 90-day consultation period during the development of the proposed rule that concluded on September 7, 2021, including two Tribal consultation kickoff webinars on June 29, 2021, and July 7, 2021. The Agency received consultation letters from eight Tribes and three Tribal Organizations. In addition, the Agency convened other listening sessions that Tribal members and representatives attended, for certifying authorities, and for the public. EPA also hosted three listening sessions specifically for Tribal representatives on June 15, June 22, and June 28, 2022.

National Primary Drinking Water Regulations: Consumer Confidence Report Rule Revisions⁹⁵

On August 25, 2022, EPA initiated a 60-day federalism consultation by hosting a meeting with members of state and local government associations and invited water utility associations. EPA presented background information on the proposed rule and sought feedback on key

⁹⁴ Env't Prot. Agency, *Final Rule: Clean Water Act Section 401 Water Quality Certification Improvement Rule*, 88 Fed. Reg. 66,558, 66,566, 66,660 (Sept. 27, 2023), available at <https://www.federalregister.gov/documents/2023/09/27/2023-20219/clean-water-act-section-401-water-quality-certification-improvement-rule>.

⁹⁵ Env't Prot. Agency, *Proposed Rule: National Primary Drinking Water Regulations: Consumer Confidence Report Rule Revisions*, 88 Fed. Reg. 20,092, 20,096, 20,107 (Apr. 5, 2023), available at <https://www.federalregister.gov/documents/2023/04/05/2023-06674/national-primary-drinking-water-regulations-consumer-confidence-report-rule-revisions>.

considerations for the rulemaking. EPA requested feedback on the content of reports delivered twice a year, support for communities with large proportions of non-English speaking populations, and the inclusion of annual collection of compliance monitoring data within the rulemaking.

EPA held a federalism consultation with state and local government and partnership organizations on August 25, 2022, to allow them the opportunity to provide meaningful and timely input into its development. EPA invited the following national organizations representing state and local government and partnership organizations to participate in the consultation: the National Governors Association, National Association of Counties, National League of Cities, United States Conference of Mayors, National Conference of State Legislatures, Environmental Council of the States, Association of Metropolitan Water Agencies, American Water Works Association, Association of State Drinking Water Administrators, Association of Clean Water Administrators, Association of State and Territorial Health Officials, National Rural Water Association, National Water Resources Association, and Western States Water Council to request their input on this rulemaking.

Consistent with EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011), EPA consulted with Tribal officials during the development of this action to gain an understanding of Tribal views of potential revisions to specific areas of the Consumer Confidence Report Rule. The initial Tribal consultation and coordination period began on March 14, 2022, during which a Tribal consultation notification letter was mailed to Tribal leaders of federally recognized Tribes. During the initial consultation period EPA hosted two identical national webinars with interested Tribes on March 22, 2022, and April 7, 2022, to request input and provide rulemaking information to interested parties. The close of the initial consultation period and deadline for feedback and written comments to EPA was June 14, 2022. EPA received both verbal and written comments during the two informational webinars.

Preceding the conclusion of the initial Tribal consultation period, EPA began considering additional revisions that would expand the scope of the rule revision to include a requirement for primacy agencies to submit comprehensive Compliance Monitoring Data annually to the agency. EPA offered supplemental consultation to the Navajo Nation as a primacy agency who could be affected by the expanded scope.

Vessel Incidental Discharge National Standards of Performance⁹⁶

EPA, in coordination with the United States Coast Guard (USCG), hosted two informational webinars on May 7 and May 15, 2019, to enhance public awareness about the Vessel Incidental Discharge Act (VIDA) and provide a general opportunity for engagement. During the webinars, EPA and USCG provided a general overview of the VIDA, discussed interim and future discharge requirements, described future state and public engagement opportunities, and

⁹⁶ Env't Prot. Agency, *Proposed Rule: Vessel Incidental Discharge National Standards of Performance*, 85 Fed. Reg. 67,818, 67,825–26 (Oct. 26, 2020), available at <https://www.federalregister.gov/documents/2020/10/26/2020-22385/vessel-incident-discharge-national-standards-of-performance>.

answered clarifying questions raised by the audience. Additionally, EPA, in coordination with the USCG, hosted a public, in-person listening session at the U.S. Merchant Marine Academy in New York on May 29–30, 2019.

EPA and the USGC conducted a federalism consultation briefing on July 9, 2019 in Washington, DC, to allow States and local officials to have meaningful and timely input into the development of EPA rulemaking. EPA provided an overview of the VIDA, described the interim requirements and the framework of future regulations, identified state provisions associated with the VIDA, and received comments and questions. The briefing was attended by representatives from the National Governors Association, the National Conference of State Legislatures, the U.S. Conference of Mayors, the County Executives of America, the National Association of Counties, the National League of Cities, Environmental Council of the States, the Association of Clean Water Administrators, the National Water Resources Association, the Association of Fish and Wildlife Agencies, the National Association of State Boating Law Administrators, the Western Governors Association, and the Western States Water Council. Pre-proposal comments were accepted from July 9, 2019, to September 9, 2019.

On July 10 and July 18, 2019, EPA and the USCG, with the support and assistance of the National Governors Association, held meetings with Governor representatives to provide an overview of the VIDA, discuss State authorities under the VIDA, and solicit input on a process that would meet both the statutory requirements and State needs. Based on this input, EPA developed a “Governors’ input process” for this rulemaking. Thirteen States participated in the process as did representatives from the Western Governors Association, the Pacific States Marine Fisheries Commission, and the All Islands Coral Reef Committee.

EPA developed the VIDA Governors’ input process to outline EPA’s intended approach to engage with the States and address their expressed interest for multiple enhanced engagement opportunities, additional details regarding the direction of the proposed standards, and more involvement in the development of the national standards of performance. The Governors’ input process included three regional, web-based forums for Governors and their representatives to inform EPA on their challenges and concerns. The three regional, web-based forums were held on September 10, September 12, and September 19, 2019. During each forum experts from EPA provided a brief background followed by organized discussions regarding the key discharges identified by regional representatives. During the discussions, interested Governors’ representatives commented on the presentation content, shared applicable scientific or technical information, and provided suggested options for EPA to consider during the development of the national standards. EPA held two follow-up calls with representatives from the Great Lakes states on December 18, 2019. EPA also held a follow-up call with representatives from the West Coast states on January 15, 2020.

EPA initiated a Tribal consultation and coordination process for this action by sending a “Notice of Consultation and Coordination” letter on June 18, 2019, to all 573 federally recognized Tribes. The letter invited Tribal leaders and designated consultation representatives to participate in the Tribal consultation and coordination process, which lasted from July 11 to September 11, 2019. EPA held an informational webinar for Tribal representatives on July 11,

2019, to obtain meaningful and timely input during the development of the proposed rule. During the webinar, EPA provided an overview of the VIDA, described the interim requirements and the framework of future regulations, and identified Tribal provisions associated with the VIDA. A total of nine Tribal representatives participated in the webinar. EPA also provided an informational presentation on the VIDA during the Region 10 Regional Tribal Operations Committee (RTOC) call on July 18, 2019, as requested by the RTOC. During the consultation period, Tribes and Tribal organizations sent two pre-proposal comment letters to EPA as part of the consultation process. In addition, EPA held one consultation meeting with the leadership of a Tribe, at the Tribe's request, to obtain pre-proposal input and answer questions regarding the rule. EPA incorporated the feedback it received from Tribal representatives in the proposed rule.

K. Office of Personnel Management (OPM)

Access to Federal Employees Health Benefits (FEHB) for Employees of Certain Tribally Controlled Schools⁹⁷

On March 24, 2021, OPM issued a Dear Tribal Leader Letter (DTLL) that outlined proposed consultation topics and provided background on OPM's mission and activities. OPM also posted a public notice of the Consultation on its website and on the National Congress of American Indians (NCAI)'s consultation site, and OPM created a new page dedicated to current and future consultation activities. On April 16, 2021, OPM held a virtual Tribal consultation with Tribes about Federal human resources policies and programs; ways to improve consultation and sustain strong partnerships with Tribal governments; access to Federal employee benefits, including the FEHB Program and the newly eligible Tribal employees of entitled Tribally controlled schools under the FY21 Consolidated Appropriations Act; and recruitment and hiring. A Dear Tribal Principals Letter was also issued on May 20, 2021, announcing a Listening Session detailing FEHB enrollment, which was held on June 8, 2021.

Prescription Drug and Health Care Spending⁹⁸ (also Internal Revenue Service, Treasury, DOL, HHS)

While developing these interim final rules, the Departments consulted with the states and attempted to balance the states' interests in regulating health insurance issuers with the need to ensure transparency in the prescription drug and health care market and collect data on a consistent basis in order to inform nationwide analyses.

⁹⁷ Off. of Pers. Mgmt., *Interim Final Rule: Access to Federal Employees Health Benefits (FEHB) for Employees of Certain Tribally Controlled Schools*, 86 Fed. Reg. 49,461, 49,462 (Sept. 3, 2021), available at <https://www.federalregister.gov/documents/2021/09/03/2021-19042/access-to-federal-employees-health-benefits-fehb-for-employees-of-certain-tribally-controlled>.

⁹⁸ Off. of Pers. Mgmt.; Internal Revenue Serv., Dep't of the Treas.; Emp. Benefits Sec. Admin., Dep't of Labor; Ctrs. for Medicare & Medicaid Servs., Dep't of Health & Hum. Servs., *Interim Final Rules: Prescription Drug and Health Care Spending*, 86 Fed. Reg. 66,662, 66,666, 66,696 (Nov. 23, 2021), available at <https://www.federalregister.gov/documents/2021/11/23/2021-25183/prescription-drug-and-health-care-spending>.

The Departments consulted with stakeholders through regular contact with states, issuers, plans, trade groups, employers, and other interested parties.

L. Small Business Administration (SBA)

Consolidation of Mentor-Protégé Programs and Other Government Contracting Amendments⁹⁹

As part of the rulemaking process, SBA also held Tribal consultations pursuant to Executive Order 13175, Tribal Consultations, in Minneapolis, MN, Anchorage, AK, Albuquerque, NM, and Oklahoma City, OK, to provide interested Tribal representatives with an opportunity to discuss their views on various 8(a) Business Development (BD) related issues. These consultations were in addition to those held by SBA in Anchorage, AK, Albuquerque, NM, and Oklahoma City, OK, before the proposed rule was issued. Additionally, SBA held a Listening Session in Honolulu, HI, to obtain comments and input from key program stakeholders in the Hawaiian small business community, including stakeholders owned by Native Hawaiian Organizations.

Ownership and Control and Contractual Assistance Requirements for the 8(a) Business Development Program¹⁰⁰

On August 26, 2022, SBA also published a Notice in the Federal Register announcing that SBA intended to conduct Tribal consultations and listening sessions relating to a proposal to require a Community Benefits Plan laying out how a tribe, Alaska Native Corporation (ANC), or Native Hawaiian Organization (NHO) that owned and controlled one or more 8(a) BD Participants intended to give benefits back to the Native community as a result of its 8(a) BD participation. SBA held consultations in Anchorage, AK, on September 14, 2022, in Albuquerque, NM, on September 20, 2022, in Oklahoma City, OK, on September 22, 2022, and in Washington, DC, on October 5, 2022. In addition, SBA held a listening session on this topic in Honolulu, HI, on September 28, 2022.

⁹⁹ U.S. Small Bus. Admin., *Final Rule: Consolidation of Mentor-Protégé Programs and Other Government Contracting Amendments*, 85 Fed. Reg. 66,146, 66,146 (Oct. 16, 2020), available at <https://www.federalregister.gov/documents/2020/10/16/2020-19428/consolidation-of-mentor-protg-programs-and-other-government-contracting-amendments>.

¹⁰⁰ U.S. Small Bus. Admin., *Final Rule: Ownership and Control and Contractual Assistance Requirements for the 8(a) Business Development Program*, 88 Fed. Reg. 26,164, 26,165, 26,187 (Apr. 27, 2023), available at <https://www.federalregister.gov/documents/2023/04/27/2023-07855/ownership-and-control-and-contractual-assistance-requirements-for-the-8a-business-development>.

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